

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 10 November 2009**

**Public Authority:** Office for Standards in Education (Ofsted)  
**Address:** Alexandra House  
33 Kingsway  
London  
WC2B 6SE

### Summary

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The complainant requested information concerning the numbers of persons de-registered by Ofsted in relation to their work in early years childcare provision. The complainant also asked for information relating to Ofsted's decisions in cases where persons have been disqualified from working in early years provision and for details of those cases where Ofsted has received an application to waive a disqualification. The Commissioner has determined that the requested information is the personal data of current and former childcare providers and to disclose this information would contravene the first data protection principle. The Commissioner therefore finds that Ofsted correctly applied section 40(2) of the Act.

The Commissioner finds that Ofsted breached sections 1(1)(a), 1(1)(b) and 10(1) in relation to parts 'a' and 'g' of the request, and to have breached section 10(1) in relation to the request made on 29 June 2006.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant made a series of requests to Ofsted for the following information:

### 29 June 2006

- a. The total number of nursery providers that have been de-registered in the last four years.
- b. The names of the nursery providers that have been de-registered in the last four years.

### 17 July 2006

- c. Can you tell me how many times Ofsted has been asked [to waive a disqualification from working in a childcare provision], the decision made and what the details or circumstances are in each case?
  - d. Can you tell me how many times Ofsted decided to waive an individual's disqualification to work in early years childcare after such a request has been made?
  - e. Can you tell me how many people with convictions have been registered by Ofsted to provide early years childcare and the details of those convictions?
  - f. Can you tell me how many people who are or who have ever been on the sex offenders register – have been registered to provide early years childcare and the details or circumstances of these decisions?
  - g. Where Ofsted has been requested to waive disqualification, information concerning the circumstances of the decision made (without the names identified).
3. On 28 July 2006 Ofsted responded to parts 'a' to 'f' of the complainant's request. In relation to part 'a', Ofsted gave the complainant the total number of registrations for daycare providers it cancelled between March 2003 and March 2006 and explained that it did not hold information for the period before 2003.
4. For part 'b' of the request Ofsted refused to supply the names of the nursery providers it had de-registered. Ofsted gave its view that the names of each individual constituted personal data and cited section 40(2) of the Act as its reason for withholding the information. It argued that disclosure of the names of the de-registered individuals would be unfair and would therefore contravene the data protection principles.
5. In answer to the complainant's request at part 'c', Ofsted gave a figure of the total number of applications it had received which asked it to waive disqualification. This figure was broken down to give the numbers where the application for waiver had been 'granted', 'refused' or 'was under consideration'. Ofsted attempted to give some context to the disclosed figures, giving examples of situations where a person might be disqualified, and where the reason did not relate to issues of suitability. The provision of the statistics illustrating the numbers of waiver

applications 'granted', 'refused' or 'under consideration' answered part 'd' of the request.

6. In response to parts 'e' and 'f' of the request, the complainant was informed that Ofsted does not hold the requested information. Ofsted did however confirm that it held details of convictions and other suitability issues within its Regulatory Support Application database (RSA database). This information would be held in free text boxes and would require each record to be individually accessed in order to collate the requested figure. Ofsted explained that it carried out enhanced Criminal Records Bureau (CRB) checks on all persons to determine their suitability and would therefore hold details of their convictions, cautions, warnings and reprimands. Ofsted would also know whether a person was included on any statutory list which barred that person from working with children. Ofsted explained that not all convictions and cautions would result in automatic disqualification. In situations where this was the case, decisions on whether to allow registration would be made by experienced staff and senior managers.
7. On 2 August 2006 the complainant wrote to Ofsted requesting an internal review of its handling of her request.
8. On 22 August 2006 Ofsted sent the complainant information relating to the request it had received, asking for waiver of disqualification information (part 'g' of the request). The figures Ofsted provided were broken down to illustrate nine broad categories of reasons for disqualification and whether the decision was granted, refused or undecided.
9. On 24 August 2006 the complainant clarified what was being sought in connection to part 'g' of the request. The complainant wrote:

*"We would like further information about the cases in the following broad categories that you outlined: where the provider lives with a disqualified person, have been medically unsuitable, where they have failed to demonstrate that they could meet the National Standards, have been convicted of an offence, where the children are subject to care orders and the miscellaneous category.*

*I'd like to find out the outline of each case, the reasons for decisions made, any communication that relates to them and any further information pertaining to those cases: I think there are 25 case in total of which 7 are as yet undecided".*
10. Ofsted acknowledged the newly clarified part 'g' request by email on 24 August.
11. On 13 September 2006 Ofsted wrote to the complainant to inform her of the results of its internal review. For the parts of the request at 'a', 'e', 'f' and 'g', Ofsted informed the complainant that the information was not recorded at the time of the request and that it had provided figures for parts 'a' and 'g' at its own discretion and outside of the Act. Ofsted chose not to respond to parts 'e' and 'f' because it determined that the effort would have been disproportionate, requiring a manual search of the free text field in its RSA software. More than 100,000 providers of childcare would have to be searched in order to identify the criteria set by the requestor. In relation to the request at parts 'b' and 'c', Ofsted

confirmed that the information engaged section 40(2) of the Act because disclosure would breach the first data protection principle. The complainant had been sent limited but relevant information in answer to part 'g' of her request. Ofsted confirmed that it had given this information in broad terms because much of the requested detail would constitute personal data. Ofsted concluded that the detailed information engaged section 40(2) of the Act and that disclosure would breach the first data protection principle.

## The Investigation

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### Scope of the case

12. On 30 October 2006 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant informed the Commissioner that she accepted Ofsted's response to parts 'a', 'd', 'e' and 'f' and asked that the Commissioner review parts 'b', 'c' and 'g'. In recognition of the complainant's request, the Commissioner has limited the scope of this decision notice to parts 'b', 'c' and 'g' of the request.

### Chronology

13. The Commissioner wrote to Ofsted on 3 September 2007 making enquiries about each element of the complainant's request. The Commissioner asked to be provided with representative samples of the withheld information and for responses to his enquiries concerning the application of section 40(2) of the Act. The Commissioner also asked to be given an assessment of the time Ofsted had already taken (or it envisaged) to undertake the activities necessary to comply with the request.
14. On 29 October 2007, following a number of telephone conversations clarifying the extent of the Commissioner's requests and enquiries, Ofsted provided representative samples of the withheld information. The information included the following:
  - A spreadsheet of summative data. This relates to named cases where requests have been made to Ofsted for waiver of disqualification to work in childcare. It includes a précis of the reason for disqualification, whether the waiver was agreed and code references relating to 11 categories of grounds for the decisions. Ofsted provided context for the spreadsheet through the provision of its guidance notes relating to the recording of suitability decisions.
  - Illustrative case files. These concern the registration details of named individuals and include records of events relating to the registration process (meetings and other actions); memos; Inspector's notes; details of investigations; summaries of convictions, cautions reprimands and warnings; and various notes and letters connected with the registrations.

- An outline of Ofsted's arguments in support of its application of section 40(2) of the Act.
- An indication of the time taken by Ofsted in providing the information already sent to the complainant and estimates of the activities required and time needed to comply with the remaining elements of the request.

## Analysis

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### Substantive Procedural Matters

15. Ofsted provided the complainant with statistical information in response to parts 'a' and 'g' of the request and told the complainant that it did so outside the Act and at its own discretion. Ofsted stated that:

*"If Departments do not hold information in the format requested there is no duty upon them to create statistical data to meet that request."*

16. The Commissioner's general position is that information is held by a public authority, and thereby subject to the provisions of the Act, if it can be retrieved, extracted and or collated from the relevant recorded information held by the public authority.
17. He accepts that the activities necessary to retrieve and extract the requested statistics may require the public authority to exercise levels of skill, knowledge and judgement which may properly be considered in connection with the provisions of section 12 of the Act (where the cost of compliance exceeds the appropriate limit).
18. Where retrieval and extraction of the requested information would require complex judgement and/or specialist knowledge it is unlikely that the Commissioner would consider the information to be held.
19. In this case, the fact that Ofsted was able and willing to respond to parts 'a' and 'g' of the request, indicates that compliance with the request did not require the degree of specialist skill and level of judgement that would lead the Commissioner to conclude that the information was not held. Therefore the Commissioner has determined that the information was held at the time of the complainant's request and was subject to the provisions of sections 1(1)(a) and 1(1)(b) of the Act. He does not accept that Ofsted provided the requested information in respect of parts 'a' and 'g' outside the Act.

## Section 40

### Part 'b': "The names of the nursery providers that have been de-registered in the last four years".

20. Section 40(2) states that:

"Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied."*

Section 40(3) states that:

"The first condition is –

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –*

- (i) any of the data protection principles, or*
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*

*(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemption in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."*

21. For section 40(2) to be engaged the requested information must fall within the definition of personal data under section 1(1) of the DPA. This states that:

'personal data' means data which relate to a living individual who can be identified –

- "(a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".*

22. The Commissioner agrees with Ofsted that the names of de-registered nursery providers fall within this definition. The Commissioner also agrees with Ofsted that the relevant principal in relation to this part of the request is the first data protection principle; the requirement that processing should be fair and lawful.

23. The first data protection principle has two components:
1. the personal data should be processed fairly and lawfully, and
  2. personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.
24. The Commissioner has considered the withheld information in relation to this part of the request and the reasonable expectations of the data subjects concerning the release of their names. He has taken into account the following.
- The 'Disclosure Regulations and Fair Processing' statement, contained within Ofsted's Day-care application pack: Declaration and Consent Form (DC2).
  - The possible connotation of 'de-registration'.
  - The public service functions of nursery providers.
25. Ofsted argues that the disclosure of the names of de-registered nursery providers would be unfair and unwarranted to those individuals. When making an application for registration, nursery providers do so in reliance on the 'Disclosure Regulations and Fair Processing' statement, contained within Ofsted's 'Day-care application pack: Declaration and Consent Form' (DC2). This statement informs applicants of the persons and organisations to whom Ofsted may give their information. The full statement is reproduced at the end of this Notice. The Commissioner does not consider that the Fair Processing statement is exhaustive in its scope, nor does it necessarily preclude processing beyond the stated purposes. The Commissioner is mindful of the Information Tribunal's decision in *House of Commons v the Information Commissioner and Norman Baker MP*. He accepts that, in this case, the Fair Processing statement provides applicants with a reasonable expectation of how their data may be processed.
26. In this case, the information being sought is the data subjects' names in association with their de-registration. This information has a different quality to information relating to details of extant registrations. The Commissioner notes that a person may be de-registered for a variety of reasons. These include: failure to pay an annual fee, moving away from a particular area, retirement from childcare provision, becoming medically unsuitable, failure to meet the National Standards and being convicted of an offence. The reasons for de-registration can be characterised as ranging from the innocuous, where there are no negative connotations, to those which are clearly of a serious nature. The Commissioner believes that the disclosure of the names of de-registered nursery providers, without the details behind the de-registration, could result in negative assumptions about the individuals being made. Such assumptions, whether right or wrong, could be detrimental to their reputations.
27. For the reasons outlined in paragraphs 25 and 26 above, the Commissioner is satisfied that the disclosure of the names of de-registered nursery providers would be unfair. It is not necessary therefore to determine whether any of the conditions in Schedule 2 of the DPA are met. In reaching this conclusion, the Commissioner has followed the approach he previously took in his decision in case FS50075174. He is satisfied that the release of the requested information



into the public domain, publicly identifying de-registered nursery providers, would not in his view, constitute fair and lawful processing.

28. However, the Commissioner has decided to comment on one assertion made by the complainant. In considering the fairness of releasing this information, the complainant drew Ofsted's attention to the Commissioner's guidance on section 40 (Personal Data). In this guidance, the Commissioner considers the notion of fairness and makes the distinction between information relating to an individual's personal life and that relating to their public life. The guidance states;

*"Information which is about the home or family life of an individual, his or her personal finances, or consisting of personal references is likely to deserve protection. By contrast, information which is about someone acting in a work or official capacity should normally be provided on request unless there is some risk to the individual concerned."*

The complainant argues that, in the context of this request, the names of the de-registered nursery providers relates to their professional / public capacity, and therefore the release of this information and of other identifiable details is not unfair and is not in contravention of the first data protection principle.

29. Furthermore, the complainant asserts that nurseries should not be considered entirely as private enterprises or be a matter of private concern between Ofsted and the individual provider. The complainant argues that;

*"...although most nurseries are run as private businesses, they are nonetheless not completely independent of state funding. Every nursery that caters for children aged 3 or above is in receipt of public funds through Government funded places for children. Therefore although nurseries can be said to offer services to the public, they also are operating in the sphere of public life, in much the same way as many other public service providers. In these situations, where a person has been de-registered or its equivalent, for whatever reason, this information is publicly available"*.

30. The Commissioner agrees with the complainant that nursery providers perform a public service function. He has based his reasoning on the judgment in *House of Lords: YL v Birmingham City Council [2007] UKHL 27*. One of the primary functions of nursery provision is the care of the very young. Ofsted's role in registering nursery providers is to ensure that the provider is suitable for his/her role and complies with (or is able to comply with) approved care standards. A failure to provide satisfactory care could result in significant harm to vulnerable people. This is reflected in the state's role in the regulation of providers through the agency of Ofsted and by the extent of Ofsted's regulatory powers.

31. The Commissioner accepts that there is a public interest in knowing that Ofsted is performing its regulatory function properly. He has examined the sample materials Ofsted provided and can find no evidence suggesting that Ofsted is not performing any of the necessary inspections and checks of those people engaged in nursery provision.



## Section 40

**Part 'c': "Can you tell me how many times Ofsted has been asked [to waive a disqualification from working in a childcare provision], the decision made and what the details or circumstances are in each case?"**

32. Ofsted's response to part 'c' of the request was to provide the total number of applications for waiver (61 individuals), the numbers of these where waiver was granted (47) or refused (5) and the number of applications under consideration at the time of the request (9). Ofsted explained that each application related to a named individual and therefore the provision of the individual circumstances could not be disclosed as this would breach the provisions of the Data Protection Act.
33. The Commissioner considers that the information Ofsted gave to the complainant answered part 'c' of the request in all respects other than the provision of the details or circumstances of each case. The Commissioner notes the congruence of the final element of part 'c' with part 'g' of the request. He will therefore consider Ofsted's response to this element of the request in his analysis of part 'g' below.

## Section 40

**Part 'g': "Where Ofsted has been requested to waive disqualification, information concerning the circumstances of the decisions made (without the names identified)."**

34. In relation to part 'g' of the request, the complainant was provided with a table illustrating the number of requests made to Ofsted to waive disqualification. This table outlines nine broad categories of reasons for disqualification and is reproduced at the end of this Notice.
35. The complainant was dissatisfied with the level of information provided by Ofsted and on 24 August 2006 clarified her request to the following.

*"We would like further information about the cases in the following broad categories that you outlined: where the provider lives with a disqualified person, have been medically unsuitable, where they have failed to demonstrate that they could meet the National Standards, have been convicted of an offence, where the children are subject to care orders and the miscellaneous category.*

*I'd like to find out the outline of each case, the reasons for decisions made, any communication that relates to them and any further information pertaining to those cases: I think there are 25 cases in total of which 7 are as yet undecided".*

36. The Commissioner has examined a sample of the files held by Ofsted which relate to cases where waiver has been sought. He is satisfied that the information contained within those files represents the personal data of the applicant and of third parties. Furthermore, some of the files contain information which can be

correctly characterised as being sensitive personal data, as defined by section 2 of the DPA.

37. Section 2 of the DPA defines sensitive personal data as data consisting of information as to:
- (a) “the racial or ethnic origin of the data subject,
  - (b) his political opinions,
  - (c) his religious beliefs or other beliefs of a similar nature,
  - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
  - (e) his physical or mental health or condition,
  - (f) his sexual life,
  - (g) the commission or alleged commission by him of any offence, or
  - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.”
38. The Commissioner notes that at least two of the categories of information identified by the complainant in her refined request concern information falling within the scope of the definition of sensitive personal data.
39. Nevertheless he has considered the extent to which the information contained within those files could be anonymised to the extent that it is no longer personal data.
40. The Commissioner notes that the refined request covers a relatively small number of cases (25) and that the information contained within each file refers to a set of circumstances which, in the context of that small number, can be reasonably characterised as being unique. With this in mind, the Commissioner considers that the level of information required by the complainant would not allow Ofsted to ensure, with a sufficient level of probability, that the data subjects could not be identified.
41. In the Commissioner’s view the requested information cannot be anonymised within the terms of the complainant’s request and therefore continues to be personal data and sensitive personal data.
42. The information considered by Ofsted could not be redacted to the extent that it would allow the complainant to understand the reasons for its decisions on suitability grounds without the necessary biographical details being retained.
43. Having determined that the requested information is personal data, the Commissioner has considered whether it would be fair to the data subjects for Ofsted to disclose it. For the reasons outlined above at paragraphs 20 and 21 the Commissioner is satisfied that disclosure of the requested information would be unfair. Consequently he has not gone on to consider whether any of the conditions in Schedule 2 of the DPA would be met, and where the information concerns sensitive personal data, whether any of the conditions in Schedule 3 would be met.

## **Procedural Requirements**

44. The Commissioner has determined that Ofsted breached section 10(1) of the Act by failing to confirm that it held the information requested on 29 June 2006 within twenty working days.
45. In failing to confirm that it held the relevant information to part 'g' of the request within twenty days, the Commissioner has determined that Ofsted breached section 1(1)(a) and section 10(1) of the Act.

## **The Decision**

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44. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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45. The Commissioner requires no steps to be taken.

## Right of Appeal

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46. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 10th day of November 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

**Information supplied by Ofsted in response to part 'g' of the request**

Reason for disqualification	Total no. of waiver applications received	No. of waiver applications granted	No. of waiver applications refused	No. of waiver applications undecided
Registration refused – insufficient information provided to enable Ofsted to determine suitability	15	13	1	1
Registration cancelled – failed to respond to communication from Ofsted (unable to determine continued suitability)	8	7	0	1
Provider lives with a disqualified person	9	6	1	2
Medically unsuitable	5	4	1	0
Registration cancelled for non-payment of fees	13	13	0	0
Registration refused – failure to demonstrate that they could meet the National Standards	3	2	0	1
Convicted of an offence	2	1	1	3
Children subject to care orders	4	0	1	0
Miscellaneous	2	1	0	1
<b>Total</b>	<b>61</b>	<b>47</b>	<b>5</b>	<b>9</b>

(Figures are those available at the time of the request)

## Legal Annex

### The Freedom of Information Act 2000

#### General Right of Access

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

#### Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

#### Personal information.

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(2)** provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of



the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

## The Data Protection Act 1998

### SCHEDULE 1 PART 1

#### THE PRINCIPLES

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up to date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under this Act.
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

### SCHEDULE 2

#### CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

- 1 The data subject has given his consent to the processing.
- 2 The processing is necessary—
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
- 3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

- 4 The processing is necessary in order to protect the vital interests of the data subject.
- 5 The processing is necessary—
  - (a) for the administration of justice,
  - (b) for the exercise of any functions conferred on any person by or under any enactment,
  - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
  - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
- 6 (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

### SCHEDULE 3

#### CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF SENSITIVE PERSONAL DATA

- 1 The data subject has given his explicit consent to the processing of the personal data.
- 2 (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
  - (2) The Secretary of State may by order—
    - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
    - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
- 3 The processing is necessary—
  - (a) in order to protect the vital interests of the data subject or another person, in a case where—
    - (i) consent cannot be given by or on behalf of the data subject, or
    - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
  - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
- 4 The processing—
  - (a) is carried out in the course of its legitimate activities by any body or association which—
    - (i) is not established or conducted for profit, and

- (ii) exists for political, philosophical, religious or trade-union purposes,
- (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
- (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
- (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5 The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6 The processing—

- (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
- (b) is necessary for the purpose of obtaining legal advice, or
- (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7 (1) The processing is necessary—

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under an enactment, or
- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order—

- (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
- (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8 (1) The processing is necessary for medical purposes and is undertaken by—

- (a) a health professional, or
- (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9 (1) The processing—

- (a) is of sensitive personal data consisting of information as to racial or ethnic origin,
- (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
- (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10 The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

### **Extract from Ofsted's DC2 Guidance Notes**

#### **What happens to the information provided?**

Ofsted processes your personal information in accordance with the Data Protection Act 1998. Under the Act you have certain rights regarding access to the personal information that Ofsted holds about you. You can request to see the personal information that Ofsted holds about you. You should contact Ofsted if you wish to make such a request.

We may get information about you from others or we may give information to them. We will only do so in accordance with the law. We may check information we receive about you with what is already in our records. This can include information provided by you as well as by others such as other government departments and agencies. We will not give information about you to anyone unless the law permits us to do so.

The law states that we can give information to the following people or organisations:

- to parents (using that childcare service), we can give information about the setting, conditions of registration, quality of care and any enforcement action on request
- to childcare organisations, that is, Children's Information Service, we can give details of childcare providers in their area, including names, addresses, registration dates, telephone numbers, and information relating to enforcement activity as appropriate, on a regular basis
- to child protection agencies and the police, we can give information about particular child protection cases and enforcement activity
- to other government departments and local authorities, we can give information about individual providers and all the providers in the relevant area on receipt of a written request.

This duty is placed on Ofsted by the Child Minding and Day Care (Disclosure Functions) (England) Regulations 2004.