

Decision Notice

Decision 197/2018: Mr B and Aberdeenshire Council

Council tax arrears of councillors

Reference No: 201800653

Decision Date: 05 December 2018



Scottish Information
Commissioner

Summary

The Council was asked for the names of councillors who were known to be in arrears with council tax payments during a specific period. The Council was also asked (for each councillor in arrears) for the length of time they had been in arrears and total value of the arrears. The Council supplied the names of the two councillors in arrears, and other information, but refused to disclose the length of time they had been in arrears and total value of their arrears. The Council argued that this was personal data, the disclosure of which would breach the data protection principles (and was therefore exempt from disclosure under section 38(1)(b) of FOISA).

The Commissioner found that the Council had correctly withheld the requested information in terms of section 38(1)(b) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA 1998) sections 1(1) (Basic interpretative provision) (definition of personal data); Schedule 1 (The data protection principles, Part 1 - the principles) (the first data protection principle); and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (conditions 1 and 6))

Data Protection Act 2018 (the DPA 2018) Schedule 20 (Transitional provision etc - paragraph 56)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 20 February 2018, Mr B made a request for information to Aberdeenshire Council (the Council). He asked:
 - Can you give me the names of any elected members who are, on 20 February 2018, in arrears with their council tax?
 - If so, can you detail for each councillor, alongside their name, the total value of the arrears, and the length of time they have been in arrears?
 - Can you give me the names of any councillors who are, on 20 February 2018, in a payment plan to pay off their arrears?
 - Can you detail for each councillor, how much debt they still have to pay, how much debt they had when a payment plan was started, and when that payment plan was started?

- Can you also release any legal advice or correspondence given to or about that councillor and their ability to fulfil their role under the Local Government Finance Act 1992¹ (“the 1992 Act”)?
- Can you tell me if the Council has instructed sheriff officers against any elected official since 4 May 2017?

Mr B referred the Council to section 112 of the 1992 Act (which prohibits a councillor from voting on council tax if he/she has council tax arrears of two months or more) and to *Decision 019/2018 Mr Tom Taylor and East Renfrewshire Council*² which dealt with councillors’ arrears of council tax.

2. The Council responded on 20 March 2018. It disclosed the names of two councillors who were in arrears with their council tax, and confirmed that both were in arrears of two or more months on 20 February 2018 and had entered into a payment plan. The Council withheld other information in terms of sections 38(1)(b) (Personal information) and 36(1) of FOISA (Confidentiality).
3. On 23 March 2018, Mr B wrote to the Council requesting a review of its decision on the basis that he did not believe the length and total amount of arrears should be withheld.
4. The Council notified Mr B of the outcome of its review on 13 April 2018. The Council upheld its decision to withhold information about the length of time each councillor had been in arrears, and the total amount of each councillor’s arrears, under section 38(1)(b) of FOISA. The Council took the view that disclosing the exact amount of council tax owing, and the length of time in which the individual had been in arrears, was “unnecessary, unwarranted and [infringed] on the Councillors’ rights as individuals to privacy in terms of their personal life and financial affairs.”
5. On 13 April 2018, Mr B applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr B was dissatisfied with the outcome of the Council’s review as he believed there was a public interest in disclosure of the information. He believed access to the information he had requested would allow voters to be able to tell exactly how likely it was that each councillor will pay off their debt.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr B made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 14 May 2018, the Council was notified in writing that Mr B had made a valid application. The case was allocated to an investigating officer and the Council was asked to send the Commissioner the information withheld from Mr B. The Council provided the information.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

¹ Local Government Finance Act 1992 (<http://www.legislation.gov.uk/ukpga/1992/14/contents>)

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2018/201701113.aspx>

9. The Commissioner also contacted the two councillors in arrears to invite their comments in respect of disclosure of the information relating to them under FOISA.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr B and the Council. He is satisfied that no matter of relevance has been overlooked.

Scope of the investigation

11. In his request for review, Mr B did not challenge the decision to withhold some of the information covered by his request (e.g. legal advice). The Commissioner's decision is therefore limited to considering whether the Council was entitled to withhold information about the length of time each councillor had been in arrears, and the total amount of each councillor's arrears.

Section 38(1)(b) - Personal Information

12. The Council relied on section 38(1)(b) of FOISA to withhold the council tax amount and length of arrears of two councillors. The information requested, and withheld, by the Council was therefore two pieces of recorded information (for each councillor): arrears (an amount) and the length of time that they have been in arrears (a time period).
13. In reaching his decision, the Commissioner has considered whether, in relation to each individual, disclosure of any or all of the information would breach the data protection principles. He has therefore considered each piece of information and each councillor separately, though the decision notice does not refer to each separately.

Data Protection Act 2018 (Transitional provisions)

14. On 25 May 2018, the DPA 1998 was repealed by the DPA 2018. The DPA 2018 amended section 38 of FOISA and also introduced a set of transitional provisions which set out what should happen where a public authority dealt with an information request before FOISA was amended on 25 May 2018, but where the matter is being considered by the Commissioner after that date.
15. In line with paragraph 56 of Schedule 20 to the DPA 2018 (see Appendix 1), if an information request was dealt with before 25 May 2018 (as is the case here - the review response was issued on 13 April 2018), the Commissioner must consider the law as it was before 25 May 2018 when determining whether the authority dealt with the request in accordance with Part 1 of FOISA.
16. Paragraph 56 of Schedule 20 goes on to say that, if the Commissioner concludes that the request was not dealt with in accordance with Part 1 of FOISA (as it stood before 25 May 2018), he cannot require the authority to take steps which it would not be required to take in order to comply with Part 1 of FOISA on or after 25 May 2018.
17. The Commissioner will therefore consider whether the Council was entitled to apply the exemption in section 38(1)(b) of FOISA under the "old" law. If he finds that the Council was not entitled to withhold the information under the old law, he will only order the Council to disclose the information if disclosure would not now be contrary to the new law.

Section 38(1)(b) of FOISA pre-25 May 2018

18. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) (or, as appropriate, section 38(2)(b)) exempts information from disclosure if it is "personal data", as defined in section 1(1) of the DPA 1998, and its disclosure would contravene one or more of the data protection principles set out in Schedule 1 to the DPA 1998. This exemption is an absolute exemption: this means that it is not subject to the public interest test in section 2(1)(b) of FOISA.
19. In order to rely on this exemption, the Council must show, firstly, that the information (the amount and length of arrears) is personal data for the purposes of the DPA 1998 and, secondly, that disclosing the information would contravene one or more of the data protection principles to be found in Schedule 1 to the DPA 1998. The Council submitted that disclosing the information would contravene the first data protection principle.

Is the information personal data?

20. "Personal data" are defined in section 1(1) of the DPA 1998 as "data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller ..." (The full definition is in Appendix 1.)
21. The Council took the view that the length and amount of arrears were the personal data of the respective councillors. Mr B suggested that he did not believe the length and total amount of arrears should be regarded as personal information, in line with his view that the information should be made public.
22. The Commissioner agrees with the Council that the information is personal data: the information clearly relates to identifiable individuals (the two named councillors of the Council).

Would disclosure contravene the first data protection principle?

23. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA 1998 is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA 1998 is also met. "Processing" in the context of a disclosure under FOISA means disclosing the personal data into the public domain.
24. The Commissioner agrees with the Council that the personal data do not comprise sensitive personal data. Consequently, it is not necessary for him to consider the conditions in Schedule 3 in this case.
25. There are three separate aspects to the first data protection principle:
 - (i) fairness
 - (ii) lawfulness and
 - (iii) the conditions in the schedules.

These three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits the personal data to be disclosed, it is likely that disclosure will also be fair and lawful.

Can any of the conditions in Schedule 2 of the DPA 1998 be met?

26. When considering the conditions in Schedule 2, the Commissioner notes Lord Hope's comment in the case of *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47³ that the conditions require careful treatment in the context of a request for information under FOISA, given that the conditions are not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interest of data subjects.

Condition 1: consent

27. The first condition in Schedule 2 which might be considered relevant in this case is condition 1. Condition 1 applies when the data subject has consented to the processing.
28. The Council told the Commissioner that the councillors in question have not given the Council their consent to disclose the specific details of their council tax arrears. The Council had consulted both councillors and had not received express consent from either to release the specific details of the amount or length of their arrears.
29. The Council noted that one of the councillors had made a public statement about their council tax arrears and the reason for it.⁴ The councillor is reported to have said:
- “... my lawyers are in conversation with Aberdeenshire Council about releasing the full details of why I have run this campaign.
- Aberdeenshire Council have refused to release those details, which in my view should be released under the Freedom of Information Act.”
30. However, in the Council's view, this statement appeared to be solely in relation to the provision of information about the councillor's reason for non-payment, something which was not covered by Mr B's request.
31. The Commissioner accepts that the statement quoted in the media cannot be regarded as express consent to the Council to disclose the information relating to that councillor.
32. In the circumstances, the Commissioner is satisfied that consent has not been given by either councillor to disclosure of the information at issue and condition 1 of Schedule 2 cannot be met.

Condition 6: legitimate interests

33. Condition 6 in Schedule 2 is, in the Commissioner's view, the only other condition which might allow the extent and length of arrears to be disclosed to Mr B. The Council also identified this condition as relevant in its response to the request for information (20 March 2018), supported by its review response (13 April 2018). Condition 6 allows personal data to be processed if 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(s).
34. The tests which must be met before condition 6 can apply are:

³ <http://www.bailii.org/uk/cases/UKHL/2008/47.html>

⁴ <http://www.thenational.scot/news/16203208.tory-councillor-suspended-over-council-tax-payment/>

- (i) Does Mr B have a legitimate interest or interests in obtaining the personal data i.e. the amount and length of arrears?
- (ii) If so, is the disclosure necessary to achieve those legitimate interests? In other words, is the processing proportionate as a means and fairly balanced as to ends, or could these interests be achieved by means which interfere less with the privacy of the councillors?
- (iii) Even if the processing is necessary for Mr B's legitimate interests, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the councillors?

35. As stated above, there is no presumption in favour of disclosure of personal data under the general obligation laid down in FOISA. The legitimate interests of Mr B must outweigh the rights and freedoms or legitimate interests of the respective councillor before their amount or length of arrears can be disclosed. If both sets of legitimate interests – that is, those of Mr B and the respective councillor - are evenly balanced, the Commissioner must find that the Council was correct to refuse to disclose the information to Mr B.

36. The Commissioner has considered these tests in relation to each councillor, taking into account their particular circumstances (as notified to the Commissioner).

Does Mr B have a legitimate interest in obtaining the information?

37. The DPA does not define "legitimate interest", but the Commissioner takes the view that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's published guidance on section 38(1)(b) of FOISA states:

"In some cases, the legitimate interest might be personal to the applicant - e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety."

38. The Council acknowledged that Mr B had a legitimate interest in the information. For example, it accepted that the information may be required in order to:

- Assess whether a councillor is able to fulfil their elected role in full given the provisions contained within section 112 of the 1992 Act;
- Ascertain whether councillors who are in such arrears have breached the law by participating in a vote contrary to section 112;
- Ascertain whether such councillors are taking steps to rectify the position in order to fulfil their elected role in full;
- Confirm that the Council takes action against its members where they find themselves in arrears; and
- Ascertain whether the rules when it comes to the recovery of such debts are applied fairly to all individuals irrespective of their role in society.

39. The Council's view on legitimate interests relating to information about an individual councillor's non-payment of council tax relates closely to the conclusions reached by the Commissioner in *Decision 019/2018*, to which Mr B referred in his request. In that decision,

the Commissioner considered section 112 of the 1992 Act and the privacy expectations of councillors who were in arrears with council tax payments.

40. As noted above, section 112 of the 1992 Act makes it an offence for a councillor in council tax arrears (with at least two months' arrears) to vote on financial matters relating to council tax at a meeting of the Council or one of its committees. It is also an offence, if any such councillor present, who is aware of the arrears, fails to disclose that they are in such arrears of council tax. The Council told the Commissioner that the two councillors in question were barred from taking part in a budget-setting vote on 8 February 2018. (The Council commented that being in council tax arrears does not prevent a councillor from fulfilling any other aspect of their role.)
41. It is now public knowledge that the two councillors were, during a particular period, in arrears with their council tax payments and did not vote when the Council set its budget in February 2018. This information goes some way towards satisfying Mr B's legitimate interests in scrutinising compliance with section 112 of the 1992 Act.
42. The Commissioner is also satisfied that there is a legitimate interest in the disclosure of the amount of arrears for each councillor, and the length of time each has been in arrears. The scrutiny of elected officials, including their standards of behaviour and performance in their elected role, is an important facet of local democracy.

Is disclosure of the information necessary for the purposes of these legitimate interests?

43. Having accepted that Mr B has a legitimate interest in the personal data, the Commissioner must consider whether disclosure of the personal data is necessary for Mr B's legitimate interests. In doing so, he must consider whether these interests might reasonably be met by any alternative means.
44. The Council considered that disclosure was not necessary to achieve an appropriate level of public scrutiny: the information it had already disclosed allowed Mr B to check the minutes of Council meetings to assess whether, and the extent to which, each councillor took part. The Council commented that length and amount of arrears are not disclosed at committee meetings, even where a member attends and is required to declare his or her inability to take part.
45. The Council also noted that it had confirmed that the councillors in question have entered into payment plans, and argued that this also added to the sufficiency of information available to meet any legitimate interest. Further details might enhance a journalist's story and increase interest in any article which is produced, but this was not the test it had to consider. The Council considered the legitimate interest in the information could be met in a less intrusive way, and argued that its initial response achieved this.
46. The Commissioner has considered the submissions from both parties carefully and in the light of the decision by the Supreme Court in *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55⁵. In this case, the Supreme Court stated (at paragraph 27):

"... A measure which interferes with a right protected by Community law must be the least restrictive for the achievement of a legitimate aim. Indeed, in ordinary language we would

⁵ <http://www.bailii.org/uk/cases/UKSC/2013/55.html>

understand that a measure would not be necessary if the legitimate aim could be achieved by something less."

47. As the Supreme Court confirmed, "necessary" means "reasonably" rather than absolutely or strictly necessary. When considering whether disclosure would be necessary, public authorities need to consider whether the disclosure is proportionate as a means and fairly balanced as to ends, or whether the requester's legitimate interests can be met by means which interfere less with the privacy of the data subjects.
48. The Commissioner can identify no other viable means of meeting Mr B's legitimate interests which would interfere less with the privacy of the data subjects than providing the withheld information.
49. The Commissioner acknowledges that declarations made at future Council meetings *may* indicate whether a councillor is still in arrears and unable to vote on certain matters. However, this does not pertain to the situation at the time of Mr B's request or request for review. In any event, there may be reasons that do not relate to arrears of council tax to explain why a councillor does not attend or vote at a meeting.
50. In all the circumstances, and for the reasons recounted above, the Commissioner is satisfied that disclosure of the information is necessary for the purposes of Mr B's legitimate interests.

Would disclosure be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the councillors?

51. As the Commissioner is satisfied that disclosure of the information is necessary to fulfil Mr B's legitimate interests, he is required to consider whether disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of each of the councillors. This involves a balancing exercise between the legitimate interests of Mr B and those of the councillors. Only if the legitimate interests of Mr B outweigh those of the councillors can the information be disclosed without breaching the first data protection principle.
52. In the Commissioner's guidance on section 38(1)(b) of FOISA, he notes a number of factors which should be taken into account in carrying out the balancing exercise. These include:
 - whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
 - the potential harm or distress that may be caused by the disclosure
 - whether the individual objected to the disclosure
 - the reasonable expectations of the individuals as to whether the information should be disclosed.
53. Data subjects do not, in the context of FOISA, have the right to veto the disclosure of their names or other personal data. However, the Commissioner will take account of any express refusal to consent to disclosure when balancing the requester's legitimate interests with those of the data subject. As noted above, neither councillor gave explicit consent to information about the extent and length of their arrears being disclosed.
54. The Commissioner's guidance on section 38(1)(b) of FOISA makes it clear that, when deciding whether disclosure would cause unwarranted prejudice to an individual, the Commissioner will consider the seniority of the person's role and whether their role is public facing.

55. Councillors make important decisions on behalf of the public and on behalf of their constituents. Their role is a very public one. This means it may be reasonable to disclose personal data of a councillor's personal data, where it would not be reasonable to disclose the personal data of a member of the public.
56. At the time of Mr B's request and request for review, both individuals were serving councillors.
57. The Council confirmed that councillors had been told that where they are in two or more months of arrears they should expect their names to be released; names would only be withheld in exceptional circumstances. The Council had indicated to councillors that, where it deemed it appropriate to disclose information about matters such as the length/amount of arrears, the information to be disclosed would be limited to the period for which the councillors had been in office.
58. Mr B submitted that how long the councillors had been in arrears – and how much the arrears were for – should be disclosed to allow the public to assess whether the councillors are able to meet their liability.
59. The Council did not agree. It said that the ability of the councillors to pay what they owed depended on their financial position, something which the public would not be aware of, and something councillors would not expect to be disclosed.
60. The Commissioner agrees with the Council; financial information, especially the amount of arrears, is information which a councillor would generally (the Commissioner's emphasis) expect to be kept confidential. There is a difference between a councillor being named as being in arrears and the actual amount of arrears being disclosed. It is clear from the 1992 Act (from which Mr B's legitimate interests largely arise) that what is relevant is the length, not the amount, of the arrears.
61. Given that the 1992 Act would not prevent a member of the public from standing for election as councillor, a councillor would generally expect their council tax record prior to them taking up office to remain confidential, just as someone who is no longer a councillor would have a greater expectation that their council tax record while in office would remain confidential.
62. The Commissioner has also considered the potential harm or distress that may be caused by disclosure.
63. The Commissioner is aware that there is widespread media interest in council tax arrears of councillors, both in this and in other local authority areas. He fully acknowledges the likelihood that any personal data about the councillors in this case would be publicised in the media if disclosed under FOISA.
64. Each case needs to be considered individually. There may be a number of different reasons why a councillor in arrears did not pay their council tax on time, ranging from simply forgetting to pay, or being unable to pay, through to refusing to pay. The reasons for not making a payment are also relevant; in order to explain matters, the councillor may have to disclose personal matters that may cause distress to them or to others.
65. At the most general level, disclosing a failure to pay council tax, to any extent, is likely to cause some reputational damage, and to have an impact on public perceptions and confidence in a councillor as a public figure, unless there are mitigating circumstances (which may be private) that are also made known to the public.

The Commissioner's conclusion on condition 6 of Schedule 2

66. As noted above, the Commissioner is required to consider whether disclosing the information would cause unwarranted prejudice to the rights and freedoms or legitimate interests of each councillor. This involves a balancing exercise between the legitimate interests of Mr B and those of the councillors. Only if the legitimate interests of Mr B outweigh those of each councillor can the information be disclosed without breaching the first data protection principle.
67. The Commissioner recognises the important role that journalists play in the scrutiny of the performance and processes of public bodies. Mr B wishes to scrutinise the actions of elected members and the processes followed by the Council. This is a legitimate and important function. The subject of his scrutiny (broadly, the proper voting on tax or other financial matters and the personal conduct of those who vote and act in respect of such matters) is an important area of concern.
68. The Commissioner has attributed weight to Mr B's legitimate interest, while acknowledging that the Council is correct to point to the public record of votes in its published minutes and that it has confirmed that a payment plan is in operation for each councillor.
69. However, the Commissioner has concluded, on balance, that Mr B's legitimate interest in obtaining the information is outweighed by reason of prejudice to the councillors' rights and freedoms or legitimate interests. The Commissioner has taken into account all of the submissions made to him, some of which he has not been able to describe in this decision notice, given their confidential nature. While it is appropriate that the councillors in arrears of council tax have been named, on this occasion the legitimate interests of the councillors outweigh the legitimate interests of Mr B. This does not mean that information about the length or the extent of a councillor's council tax arrears can never be disclosed but, in the circumstances of this case, the Commissioner has concluded that the Council was correct not to disclose the information.
70. Given that there is no condition in Schedule 2 which would permit the Council to disclose the length and amount of arrears, disclosure would breach the first data protection principle. This means that the information is exempt from disclosure under section 38(1)(b) of FOISA.

Section 38(1)(b) of FOISA on or after 25 May 2018

71. Given that the Commissioner has found that the Council complied with Part 1 of FOISA (as it stood before 25 May 2018) in responding to the request by Mr B, he is not required to go on to consider whether disclosure of the personal data would breach Part 1 of FOISA as it currently stands.

Decision

The Commissioner finds that Aberdeenshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr B.

Appeal

Should either Mr B or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Daren Fitzhenry
Scottish Information Commissioner

5 December 2018

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
- ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
- ...
- (e) in subsection (1) of section 38 –
- ...
- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.
- ...

38 Personal information

- (1) Information is exempt information if it constitutes-
- ...
- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- ...
- (2) 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 (c.29), 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

...

(b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

(5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“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;

...

Schedule 1 – The data protection principles

Part I – 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.

...

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.

...

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.

Data Protection Act 2018

Schedule 20 - Transitional provision etc

56 Freedom of Information (Scotland) Act 2002

- (1) This paragraph applies where a request for information was made to a Scottish public authority under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act") before the relevant time.
- (2) To the extent that the request is dealt with after the relevant time, the amendments of the 2002 Act in Schedule 19 to this Act have effect for the purposes of determining whether the authority deals with the request in accordance with Part 1 of the 2002 Act.
- (3) To the extent that the request was dealt with before the relevant time -
 - (a) the amendments of the 2002 Act in Schedule 19 to this Act do not have effect for the purposes of determining whether the authority deals with the request in accordance with Part 1 of the 2002 Act as amended by Schedule 19 to this Act, but
 - (b) the powers of the Scottish Information Commissioner and the Court of Session, on an application or appeal under the 2002 Act, do not include power to require the authority to take steps which it would not be required to take in order to comply with Part 1 of the 2002 Act as amended by Schedule 19 to this Act.
- (4) In this paragraph -

"Scottish public authority" has the same meaning as in the 2002 Act;

"the relevant time" means the time when the amendments of the 2002 Act in Schedule 19 to this Act come into force.

Scottish Information Commissioner

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