

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 17 March 2009**

**Public Authority:** The Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

### Summary

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The complainant made a request for copies of the internal review reports relating to six named offenders who had been charged with a serious further offence while under the supervision of the Probation Service. The public authority declined to provide the information, citing the third party personal data exemption in section 40 of the Freedom of Information Act 2000 ('the Act'). Following its internal review, the public authority also claimed the exemptions in sections 21, 38(1)(a) and 31(1)(a) and (c). After considering the case, the Commissioner has upheld the public authority's decision to withhold the information as exempt under section 40. The Commissioner has therefore not considered the other exemptions cited by the public authority. However, the Commissioner has taken the view that the public authority did not deal with the request for information in accordance with the Act, since it failed to specify at least by the internal review stage the appropriate sub-section of section 40 (ie section 40(2) rather than 40(3)) which applied to the withheld information, in breach of its obligations under section 17(1)(b). The Commissioner does not require the public authority to take any further steps in relation to the complainant's request.

### 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. On 29 March 2006, the complainant made a request to the Home Office for copies of the completed review reports relating to six named offenders. The reports covered by the request are Serious Further Offence (SFO) reports. These

are reports of internal reviews carried out by the Probation Service into the management of cases where an offender who is under the supervision of the Probation Service has been charged with a serious further violent or sexual offence.

3. The Home Office responded on 20 April 2006, confirming that although they held the information requested, it was exempt under section 40(3) in that disclosure would breach the Data Protection principles.
4. The complainant requested an internal review on 22 April 2006. He argued that the reports do not amount to personal information about the offenders because the focus of the reviews is not the offenders but rather the probation officers who dealt with their cases and the wider Probation Service.. In support of his argument for disclosure, the complainant referred to the publication of a review report written by HM Chief Inspector of Probation.
5. On 21 August 2006, the Home Office responded with the outcome of its internal review. This upheld its decision to withhold the information under section 40(3) of the Freedom of Information Act and additionally concluded that sections 21, 38(1)(a) and 31(1)(a) and (c) applied. It acknowledged the public interest in openness and transparency in the Probation Service and that knowing how cases are assessed can lead to increased trust and engagement between the public and the Government, but argued that the public interest against disclosure was strong and favoured retention.
6. The Commissioner notes that at the time of the request the public authority was the Home Office. However, since the request was made, the Home Office has been re-structured and some of its responsibilities, including those relating to probation matters, have become the responsibility of the Ministry of Justice (MoJ). As such this decision notice will reference the MoJ as the public authority.

## The Investigation

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### Scope of the case

7. On 7 December 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - that the MoJ's claim that the release of the information would breach the Data Protection Act (DPA) is inconsistent with previous releases of such reports;

- that the identity of public officials is protected if they are criticised in an official report for mistakes they made at work and that in any event, no consideration has been given to redacting their names;
- that it is ludicrous for the MoJ to suggest that the reports can be withheld under section 21 because some of the background information they contain is already in the public domain;
- with regard to the public interest test, on balance it is in the public interest for the public to be informed about shortcomings in probation supervision which have been found in an official investigation.

## Chronology

8. The Commissioner wrote to the MoJ on 22 August 2008 asking it to provide him with copies of the withheld reports and full and detailed explanations as to why each of the exemptions cited are engaged. He also referred to the complainant's point about the review report published by Her Majesty's Inspectorate of Probation (HMIP) and asked the MoJ for their comments in this respect.
9. The Commissioner contacted the MoJ on 25 September 2008 as he had not received a response. The MoJ said that it had no record of receiving the correspondence and asked the Commissioner to re-send his letter. This was re-sent the same day (25 September 2008) by post and email.
10. The MoJ responded on 23 October 2008. It confirmed that it still wished to claim the exemptions at sections 21, 31, 38 and 40 and provided further explanation of its reasons for applying these exemptions.
11. In order to assist with his investigation, the Commissioner wrote to the MoJ on 26 November 2008, asking it to provide him with a copy of the templates used for the SFO reports within the scope of the request.
12. These were provided on 2 December 2008. In this correspondence, the MoJ referred the Commissioner to the Probation Circular in place at the time of the request that set out the instructions governing the review of cases in which an offender under supervision commits a serious further offence. The circular also includes a template of the SFO documents.  
  
[http://npsintranet.probation.gsi.gov.uk/document\\_library/Probation\\_Circulars/pc54-2003.pdf](http://npsintranet.probation.gsi.gov.uk/document_library/Probation_Circulars/pc54-2003.pdf)
13. The Commissioner wrote to the MoJ on 6 January 2009 asking for further information on the SFO process and clarification of its application of the exemption at section 40 of the Act. The Commissioner also reminded the MoJ that his correspondence dated 22 August 2008 contained questions relating to the HMIP report that had not been answered. The Commissioner repeated his questions for the avoidance of doubt.

14. The MoJ responded on 29 January 2009 setting out its submissions in relation to the points raised in the Commissioner's correspondence of 6 January 2009. The Commissioner has carefully considered these submissions and sets out his conclusions below.

## Analysis

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### Exemption – section 40 (personal information relating to third parties)

15. In this case, the MoJ stated that the requested information constituted the personal data of third parties and was therefore exempt under section 40(3). The Commissioner takes the view that the correct way to cite the exemption in relation to third party data is to cite section 40(2). The public authority's response to the request, dated 20 April 2006, therefore failed to comply with section 17(1)(b) of the Act, which requires the public authority to give the applicant a notice which *'specifies the exemption in question'*.
16. Section 40(2) of the Act is an exemption which relates to the personal information of persons other than the requestor. This provision creates an absolute exemption (one not subject to the public interest test) for information falling within the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (the DPA) where disclosure would breach one of the DPA principles.
17. A full text of sections 40(2) and 40(3)(a)(i) can be found in the Legal Annex at the end of this Notice.

### The third parties

18. In order to reach a view on the MoJ's arguments the Commissioner has first considered whether the withheld information is the personal data of the third parties.
19. The reports contain information relating to the offenders and probation staff as well as minimal references to other individuals. The Commissioner has looked at these three groups separately when considering whether or not the reports constitute their personal, or sensitive personal, data.

### Is the information personal data?

20. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

*'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 intention of the data controller or any other person in respect of the individual'.*

21. The Commissioner is satisfied that the reports would fall within the definition of personal data as defined above as all of the reports comprise personal data relating to offenders, members of the probation service and other individuals.

### **Is the information sensitive personal data?**

22. Sensitive personal data is defined in section 2 of the DPA. It is personal data which falls into one of the categories set out in section 2 of the DPA, ie personal 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,*
- (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'.*

23. In this instance some of the withheld information relates to individuals who are offenders who committed another serious offence while under the supervision of the Probation Service. The Commissioner is satisfied that because of the circumstances in which it is held the information about these individuals is inevitably information that reveals that they have, or are alleged to have, committed criminal offences and/or reveals the disposal of such proceedings or the sentence of a court. In addition, some of the information relates to their racial or ethnic origin and their physical or mental health. The reports therefore contain the sensitive personal data of those third parties.
24. The Commissioner is satisfied that the sensitive personal data within the reports relates only to the offenders and not to the probation officers and other individuals.

### **The Data Protection Principles**

25. The Commissioner accepts that the information requested constitutes the personal data, and in some instances sensitive personal data, of living individuals other than the applicant. However, for the section 40(2) exemption to apply by virtue of section 40(3)(a)(i), the public authority would need to show that disclosure would contravene any of the data protection principles set out in the DPA.

26. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and in particular shall not be processed unless*

- a) at least one of the conditions in DPA 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'.*

### **The Offenders**

27. The Commissioner is satisfied that all of the personal data relating to the offenders is sensitive personal data. The Commissioner has therefore initially considered whether one of the conditions in schedule 3 can be met (the Schedule is annexed to this Decision Notice).
28. Having considered the conditions listed in schedule 3, and in particular those in paragraphs 6 and 7, the Commissioner has formed the view that none of these conditions can be met.
29. Accordingly, the Commissioner believes that the disclosure of this information would be in breach of the first principle of the DPA. Therefore he is satisfied that the exemption in section 40(2) of the Act is engaged in respect of the information relating to the offenders and provides an exemption from disclosure.
30. As the Commissioner has decided that a schedule 3 condition for the disclosure of this information cannot be met, and that therefore disclosure would be in breach of the first principle of the DPA, he has not gone on to consider whether there is a schedule 2 condition or whether disclosure would be fair or lawful.
31. The Commissioner notes that the complainant referred to the publication of a review report written by HM Chief Inspector of Probation in support of his argument for disclosure. The complainant pointed out that the author of the report states that he had had access to one of the probation reports within the scope of the complainant's request. The Commissioner has considered the complainant's suggestion that this sets a precedent for disclosure. However, the Commissioner does not accept this argument. As set out above, it is the Commissioner's view that, in relation to this request for information, no schedule 3 condition is met that lawfully enables further processing of the sensitive personal data contained within the reports.

### **Probation Officers**

32. In this instance, the reports in question are compiled from information provided by probation staff involved in the management of offenders who committed a serious further offence while under the supervision of the Probation Service. These reports identify the staff by name and job title, and detail their actions and opinions, as well as the actions and opinions of some of their colleagues.

33. The public authority, while accepting that the probation officers were acting in an official capacity, argues that disclosure would be unfair for the following reasons:
- given the accountability structure in the National Probation Service, it would be unfair to single out particular probation officers when offenders go on to commit serious offences;
  - disclosure would subject the probation officers to undue pressure and press interest.
34. The complainant has argued that the Freedom of Information Act does not protect the confidentiality of individual public servants when acting in the course of their normal duties.
35. In his *Awareness Guidance 1* the Commissioner suggested factors that may be relevant when considering whether disclosure would breach the first data protection principle. In this case the Commissioner has given consideration to the following:
- the legitimate interests of the public in knowing the names of the individuals, against the effects of disclosure of their names;
  - the seniority of the individuals;
  - whether disclosure would cause any unnecessary or unjustified distress to the individuals;
  - the individual's reasonable expectations of what would happen to their personal data.
36. The Commissioner has noted the MoJ's arguments that Serious Further Offence (SFO) forms are marked 'confidential' and that while each probation area has a publication scheme, SFOs are not included in the schemes. Further, it has argued that, from an operational standpoint, it would damage the Probation Service's ability to conduct future investigations if probation officers '*are not confident that their contribution to SFO reports may be released years later*' [sic]. The Commissioner takes this to mean that probation officers need to be confident that SFO reports will not be released years later. The MoJ states that if the probation officers are not confident that what they say will be held in confidence it will make them less candid, and that this will affect the lessons the Probation Service can learn when serious further offences are committed by persons on probation, which is not in the public interest.
37. To support this point the MoJ has brought to the attention of the Commissioner the Probation Circular 54/2003 '*Notification, Screening and Review System for Serious Further Offences (SFOs) committed by supervised offenders*' which was in force at the time the request was made. The Commissioner notes the statement that:

*'It is not the purpose of this review system to allocate blame, but to assess what has occurred, establish what lessons might be learned and to improve practice in the management of offenders. It remains the case that such management is the responsibility of Probation Areas and is not solely held by individual members of staff'.*

38. During the course of his investigation, the Commissioner has been advised by the MoJ that the SFO process does not ordinarily involve feedback to the public about incidents and lessons learned. The Commissioner is mindful of the complainant's point that the public has a right to know about shortcomings in probation supervision which have been found in an official investigation. In this respect, the Commissioner notes that there is provision within the SFO review process to demonstrate public accountability in that one of the responsibilities of Her Majesty's Inspectorate of Probation (HMIP) is *'to investigate specific cases, which may include those subject to a Full Review, and report directly to the Minister subject to the relevant protocol'*.
39. The Commissioner further notes that, since the request was made, the Probation Service has published a document entitled *'Guidance on the implementation of practice recommendations arising from an HMIP independent review of a serious offence case'*.
40. Whilst the Commissioner is of the opinion that individuals employed in a role where they are performing a public function should expect more information about them to be disclosed, he feels that the circumstances of these cases are such that the probation officers would not reasonably expect their identities to be revealed. The Commissioner accepts the argument that probation staff believed that the reports produced were confidential and would only be used for the probation service's internal investigation into the serious further offences.
41. The Commissioner believes that a distinction can be drawn between staff at different levels in terms of the information which they should expect to have disclosed about them. This is because the more senior a member of staff is the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds. In this case, it is the Commissioner's view that the probation officers were employed in an operational capacity, not at a senior level in the public authority.
42. The serious further offences generated a significant amount of media interest and the Commissioner is of the opinion that, were the identities of the probation staff to be revealed, there would be a very real risk that they would be subject to undue press interest or pressure to the extent that disclosure could be considered unfair. In coming to this conclusion, the Commissioner has taken account of the level of seniority of the individuals concerned in the overall structure of the Probation Service.
43. The Commissioner is satisfied that disclosure would constitute unfair processing in breach of the first data protection principle as it would not be in the reasonable expectation of the contributors for the reports to be made available to the public at large and disclosure would be an unwarranted interference with their privacy.



## Other individuals

44. The Commissioner notes that, in a few instances, the reports contain a residual amount of personal data, not of a sensitive nature, which relates to individuals other than the offenders and the probation officers, such as relatives and friends. Although this information is limited in nature, the Commissioner is satisfied that those other individuals identified in the reports would have had no expectation that their personal information would be used in this way and that as they are only peripherally involved it would not be fair for them to be identified.

## Redaction

45. As part of his investigation, the Commissioner has addressed the point raised by the complainant that the public should be informed about shortcomings in probation supervision which have been found in an official investigation. To this end, the Commissioner has considered whether the reports could be sufficiently redacted in order to disclose them without breaching section 40(2).
46. The Commissioner's view is that the reports in question, including the summary of findings and recommendations contained in the reports, are very much linked with the sensitive personal data of the offenders and the personal data of the probation officers such that disclosure of redacted versions would in effect render them meaningless.
47. The Commissioner is satisfied that section 40(2) is engaged in this instance. Section 40(2) of the Act is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.

## Other exemptions – sections 21, 31 and 38

48. Since the Commissioner has concluded that the MoJ withheld the information appropriately by virtue of section 40(2) of the Act, he does not propose to reach any conclusion in this Decision Notice regarding the MoJ's application of the exemptions in sections 21, 31 and 38.

## The Decision

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49. The Commissioner's decision is that the MoJ did not deal with the request for information in accordance with the Act, since it failed to specify at least by the internal review stage the appropriate sub-section of section 40 (ie section 40(2) rather than 40(3)) which applied to the withheld information, in breach of its obligations under section 17(1)(b).

## Steps Required

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50. The Commissioner requires no steps to be taken.

## Other matters

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51. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
52. There is no timescale laid down in the Act for a public authority to complete an internal review. However, as he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. In the absence of exceptional circumstances, a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer, but the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed. In this case the complainant's internal review request was made on 22 April 2006 and the MoJ issued its decision on 21 August 2006. The MoJ therefore took 84 working days to complete the review. The Commissioner recognises that the MoJ's internal review in this case was conducted prior to the issuing of the *'Good Practice Guidance No 5'* in February 2007. However, he does not believe that any exceptional circumstances existed in this case to justify that delay, and he therefore wishes to register his view that the MoJ fell short of the standards of good practice in failing to complete its internal review within a reasonable timescale.

## Right of Appeal

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53. 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 17<sup>th</sup> day of March 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annexe

### THE FREEDOM OF INFORMATION ACT

**Section 17(1)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.'*

**Section 17(2)** states –

*'Where–*

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-*
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

*the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'*

**Section 17(3)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -*

*(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*

*(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

**Section 17(4)** provides that -

*'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'*

**Section 17(5)** provides that –

*'A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.'*

**Section 17(7)** provides that –

*'A notice under subsection (1), (3) or (5) must—*

*(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*

*(b) contain particulars of the right conferred by section 50.'*

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

### SCHEDULE 2 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

**SCHEDULE 2** provides that –

*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.*

*(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.'*

### **SCHEDULE 3 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF SENSITIVE PERSONAL DATA**

**SCHEDULE 3** provides that –

*'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.’*