

## Environmental Information Regulations 2004

### Decision Notice

Date: 26 October 2009

**Public Authority:** St Edmundsbury Borough Council  
**Address:** West Suffolk House  
Western Way  
Bury St Edmunds  
Suffolk  
IP33 3YU

### Summary

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The complainant requested the name and address of an individual who had made a complaint that was to be considered by the Council's planning enforcement team. The public authority applied sections 30(2)(a)(iii) and 40(2) of the Freedom of Information Act to withhold the information. The Commissioner has determined that the information was actually environmental information and should have been considered under the Environmental Information Regulations. The Commissioner as Regulator of the DPA has used his discretion to apply regulation 13 on the public authority's behalf. He has found that it would apply to this request and that the information can be withheld. He has, however, found procedural breaches of regulations 14(3)(a), 14(3)(b), 14(5)(a) and 14(5)(b). He requires no remedial steps to be taken in this case.

### The Commissioner's Role

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1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

### The Request

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2. On 20 April 2009 the complainant requested the following information:

*'Presumably the identity of the complainant is noted on your file and is publicly available information. Please can you confirm the name and address?'*

The request was made in the context of a complaint being made to the public authority about the complainant's company in relation to a planning matter.

3. On 18 May 2009 the public authority responded to the request for information. It stated that it held the information but that it would not provide it under the Freedom of Information Act. It said that its position was that this information was exempt by virtue of section 30(2)(a)(iii), as it related to an investigation which was conducted for the purposes specified in section 31(2) and by virtue of powers conferred by or under any enactment. It informed the complainant that it believed that this exemption applied because otherwise it would compromise a 'protected informant'. It said that its investigations were carried out in confidentiality and this is to enable open and frank discussions to lead to a thorough and detailed investigation. It provided a detailed public interest test. It also said that section 40(2) could also be applied to the withheld information.
4. On 3 June 2009 the complainant requested by email that the Council conducts an internal review.
5. On 5 June 2009 the public authority communicated the results of its internal review. It detailed its view about why the details of objectors to planning permission are in the public domain and, why in its view, details relating to a complainant who was alleging a breach of the law were not. It explained that it was reasonable that its investigative process should not be prejudiced in this case. It said that it also had to consider whether there would be repercussions from the individuals who were subject to the complaint and that confidentiality ensured safety. It also explained that the information was the personal data of the individual and that it was not prepared to release the information without their prior consent. It explained that the information may be released into the public domain in the event that the complainant becomes a witness for the Council in any proceedings that arise from the complaint. However, until that time it still believed that the information was exempt.
6. On 16 June 2009 the complainant said that he had identified the individual and that he did not accept the Council's position and would appeal to the Commissioner.

## The Investigation

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### Scope of the case

7. On 7 July 2009 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 point:
  - That he did not believe that there should be a difference between objectors in the planning process and complainants about planning enforcement matters and that the information should be available in both instances.

8. On 25 September 2009 the complainant agreed with the Commissioner that the scope of this case was to determine whether the information requested on 20 April 2009 was correctly withheld by the Council.

## Chronology

9. On 28 August 2009 the Commissioner telephoned the public authority. He asked to be updated about the central issue in this case and for it to confirm that its position had not changed with the passage of time. He confirmed this in an email and received a response the next day.
10. On 1 September 2009 the Commissioner telephoned the complainant. He explained the scope of his investigation and asked whether, due to outcome of the central issue, he wanted the case to continue. The outcome was that the Council had investigated the complaint and decided that it would take no action. He consolidated what was said an email and received a response on 25 September 2009.

## Analysis

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### Substantive Procedural Matters

#### *Is the information environmental?*

11. The Commissioner has first considered whether the request made by the complainant is a request for environmental information as defined by the EIR.
12. The Commissioner considers that the information falls within the regulation 2(1)(c): 'measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures designed to protect those elements.'
13. The information is connected to the planning regime, which concerns the protection of the land and landscape and is accordingly likely to affect the land and landscape as referred to in regulation 2(1)(a).

### Exceptions

#### *Regulation 13*

14. Regulation 13 is the equivalent of section 40(2) of the Act and exists to protect the personal data of which the applicant is not the data subject.
15. The Commissioner is the regulator of both the DPA and the EIR. The wording of the EIR ensures that the rights provided under it cannot prejudice or take precedence over a data subject's rights under the DPA. This interpretation was

confirmed in the recent House of Lords decision: *Common Services Agency (Appellants) v Scottish Information Commissioner (Respondent) (Scotland)* [2008] UKHL 47. While the House of Lords decided the case on the basis of the Freedom of Information (Scotland) Act 2002, the relevant provisions are so similar that the Commissioner believes that he can use the reasoning of this decision in considering the application of the regulations.

16. In *Bowbrick v Information Commissioner* in paragraph 51 the Information Tribunal confirmed that the Commissioner had discretion under the Act to look at section 40 issues when considering cases under the Act:

*'If the Commissioner considered that there was a section 40 issue in relation to the data protection rights of a party, but the public authority, for whatever reason, did not claim the exemption, it would be entirely appropriate for the Commissioner to consider this data protection issue because if this information is revealed, it may be a breach of the data protection rights of data subjects....Section 40 is designed to ensure that freedom of information operates without prejudice to the data protection rights of data subjects.'*

17. The Commissioner believes that the reasoning above can also be used by him to apply the exception found in regulation 13 on the public authority's behalf (where section 40(2) was applied by the public authority originally). He has therefore done so and considered the public authority's arguments under the correct regime.
18. The public authority has argued that the disclosure of the name and address of this individual to the public would involve disclosing personal data and that doing so would contravene one of the data protection principles of the Data Protection Act 1998 ("DPA"). These aspects would cross refer to Regulation 13(2)(a)(i). A full copy of regulation 13 can be found in the legal annex attached to this Notice.
19. The complainant has argued that this information should be disclosed. He explained that he does not believe there is a difference between objectors to planning permission and 'protected informants' in planning enforcement matters. While the full nature of the distinction lies beyond the Commissioner's remit, he has been able to consider the relevant differences and how they inform expectations when considering fairness in this case.
20. The public authority's main arguments centred on the application of the first data protection principle. It believes that disclosure of the personal data in question would be unfair and would not satisfy one of the conditions for processing listed in Schedule 2 of DPA. These arguments are considered in more detail below.
21. In analysing the application of regulation 13(2)(a)(i), the Commissioner therefore considered:
- a) whether the information in question was personal data; and
  - b) whether disclosure of the personal data under the regulations would contravene the first data protection principle.

*Is the information personal data?*

22. Personal data is defined in section 1 of DPA as data

*“which relate to a living individual who can be identified from those data or those and other information in the possession of or which is likely to come into the possession of the data controller and includes expressions of opinions about the individual and indications of the intentions of any other person in respect of that individual”.*

23. The Commissioner notes that the withheld information consists of someone's name and address. In this case, the Commissioner is satisfied that a living individual can be identified by their name and address. The Commissioner accepts that the information in the context of this request is personal data as defined by the DPA.

*Would disclosure contravene the first data protection principle?*

24. The first data protection principle has two main components. These are as follows:

- A requirement to process all personal data fairly and lawfully; and
- A requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data;

25. Both requirements must be satisfied to ensure compliance with the first data protection principle. If one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner will consider whether the disclosure is fair and lawful first, and only if disclosure is fair and lawful, will he consider whether a condition in Schedule 2 is also satisfied.

*Would disclosure be fair and lawful?*

26. It is important to note that any disclosure under the Regulations is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Regulations it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed this approach in relation to the Act and the Commissioner believes that this is also the correct position under the Regulations. In particular he is influenced by the paragraph 52 that was worded as follows: *“Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions”* ([http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews\\_HBrooke\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf)).

27. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- The individual's reasonable expectation of what would happen to their personal data and whether disclosure would be incompatible with the purposes for which it was obtained;
  - Whether this expectation would be limited by any accompanying expectation that this sort of information would be available;
  - Whether disclosure would cause any unnecessary or unjustified damage to the individual; and
  - Legitimate interests of the public in knowing about what the process that is in force is and the necessity for the public to have confidence in the planning enforcement process.
28. The public authority informed the Commissioner that it believed that the release of the withheld information would be unfair to the data subject. It does not think that the data subject would have had a reasonable expectation of the withheld information being released in this case. Instead there was an expectation of confidentiality and privacy especially given that the public authority had undertaken to keep this information confidential except in the event that the witness is required for court proceedings. The Commissioner, having looked at the nature of the information, is convinced that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.
29. The Commissioner's guidance on requests for personal information suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*
30. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. The expectation in this case would be that this information would be withheld, as it does not relate to an employee in a public role. It only relates to a third party who has raised an issue within the public authority's statutory responsibility.
31. The Commissioner has considered whether there would be an accompanying expectation that this sort of information would be made available. The Commissioner believes that there is a fair expectation that information published in planning objections provide the name of the objectors. This enables the applicants to discuss how to resolve issues that have arisen and deal with the problem often before buying land. The Commissioner believes that there are



different considerations when considering 'protected informants' who have complained that land has not been developed in accordance with planning permission. These individuals are informing the Council on behalf of the public. While it is up to the Council to choose how to investigate the complaint, it is essential that the public is protected in order to ensure fair process and to allow planning issues to be investigated. The Commissioner does not see that there is an expectation that the name would be disclosed to the public in this instance.

32. The Commissioner has considered in detail the submissions of the public authority and in particular whether it felt that the release of the information would cause unnecessary or unjustified damage to the individual involved. Having considered the process and the nature of the information the Commissioner is satisfied that the release of it to the public could potentially cause unnecessary and unjustified damage to the individual in this case.
33. In finally considering the legitimate interests of the public, the Commissioner notes that the public authority has now investigated the case and has informed the public of its findings. The Commissioner believes that the public interest is served in protecting the individual in this case, as he notes that otherwise there would be a considerable 'chilling effect' and fewer cases would be reported to be considered and the law would be harder to enforce.
34. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject. The central reason for this conclusion is that the legitimate expectations of the individual are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the exception in regulation 13 applies to it.

### **Procedural Requirements**

35. As the Council dealt with the information request under the wrong regime, the Commissioner has identified procedural breaches in this case. There is a breach of both regulation 14(3)(a) and 14(3)(b). They require that where environmental information is being withheld the exception that is relied on must be cited and the reasons provided within twenty working days of receiving the request. The public authority failed to specify the exception it relied on or why.
36. The complainant was also not informed of his right to make representations to the public authority under regulation 11 or of the enforcement and appeal provisions of the Regulations applied by regulation 18. This meant that the public authority also breached regulations 14(5)(a) and 14(5)(b).

## The Decision

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37. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Regulations:

- *Withholding the name and address of the 'protected informant' in accordance with regulation 13.*

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- *Failing to cite the correct exception within twenty working days, so contravening Regulation 14(3)(a).*
- \* *Failing to provide reasoning why it was applying that exception, so contravening Regulation 14(3)(b).*
- \* *Failing to inform the complainant in the refusal notice that he was entitled to make representations of the public authority under Regulation 11, so contravening Regulation 14(5)(a).*
- \* *Failing to inform the complainant in the refusal notice of the enforcement and appeal provisions of the Act applied by Regulation 18, so contravening Regulation 14(5)(b).*

## Steps Required

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38. The Commissioner requires no steps to be taken.



## Right of Appeal

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39. 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 26<sup>th</sup> day of October 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### \* **Environmental Information Regulations 2001**

#### **Regulation 2 - Interpretation**

##### **Regulation 2(1)** In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

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- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;  
“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and  
“working day” has the same meaning as in section 10(6) of the Act.

## **Regulation 5 - Duty to make available environmental information on request**

**Regulation 5(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

**Regulation 5(2)** Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

**Regulation 5(3)** To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

**Regulation 5(4)** For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

**Regulation 5(5)** Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

**Regulation 5(6)** Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

## **Regulation 11 - Representation and reconsideration**

**Regulation 11(1)** Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

**Regulation 11(2)** Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

**Regulation 11(3)** The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

**Regulation 11(4)** A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

**Regulation 11(5)** Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

## **Regulation 12 - Exceptions to the duty to disclose environmental information**

**Regulation 12(1)** Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(5)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

- (f) the interests of the person who provided the information where that person –
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

### **Regulation 13 – personal data**

**Regulation 13(1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

**Regulation 13(2)** The first condition is –

- (a) in a case where the information falls within any 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 these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

**Regulation 13(3)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

**Regulation 13(4)** In determining whether anything done before 24<sup>th</sup> October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

**Regulation 13(5)** For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
- (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.

## **Regulation 14 - Refusal to disclose information**

**Regulation 14(1)** If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

**Regulation 14(2)** The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

**Regulation 14(3)** The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

**Regulation 14(4)** If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

**Regulation 14(5)** The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.

\* **Freedom of Information Act 2000**

**Section 1 - General right of access to information held by public authorities**

- (1) 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.

**Section 30 – Investigations and proceedings conducted by public authorities**

**Section 30(2)** provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
  - (i) investigations falling within subsection (1)(a) or (b),
  - (ii) criminal proceedings which the authority has power to conduct,
  - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
  - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.”

**Section 31(2)** provides that -

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,



- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

#### **Section 40 – Personal information**

(1) 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.

(2) 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.

(3) 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 [1998 c. 29.] 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

\* **Data Protection Act 1998**

**Section 1 - Basic interpretative provisions**

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

- “data” means information which—
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “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;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
  - (a) organisation, adaptation or alteration of the information or data,
  - (b) retrieval, consultation or use of the information or data,
  - (c)

disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d)

alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.