

Decision Notice



Decision 084/2006 Mr Ian Cameron and Aberdeenshire Council

Huntly Nordic Ski and Outdoor Centre

Reference No: 200600082
Decision Date: 30 March 2009

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Ian Cameron asked Aberdeenshire Council to provide him with information relating to people employed by the Council at Huntly Nordic Ski and Outdoor Centre (the Centre). Mr Cameron also sought information about the relationship between the Centre and Huntly Nordic Ski Club (the Club). The Council provided Mr Cameron with information regarding the relationship between the Centre and the Club, but refused to disclose any information about its employees on the basis that the information was personal data and was exempt from disclosure in terms of section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Mr Cameron subsequently applied to the Commissioner for a decision as to whether the Council had been correct to withhold this information. Following an investigation, the Commissioner agreed that some of the information which had been withheld from Mr Cameron was exempt from disclosure, but issued a decision, on 18 May 2006, ordering the Council to disclose the names and job titles of its employees at the Centre to Mr Cameron.

The Council appealed the Commissioner's decision to the Court of Session and the Commissioner conceded the appeal. This led to the Court of Session quashing the original decision and remitting the case back to the Commissioner. This decision replaces the decision issued in 2006.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions) and 38(1)(b), (2)(a)(i) and (b) (Personal information)

Data Protection Act 1988 (the DPA): sections 1(1) (Basic interpretative provisions) (the definition of personal data); 2 (Sensitive personal data) and 4(4) (The data protection principles); Schedule 1 (The data protection 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(1))

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

Common Services Agency v Scottish Information Commissioner [2008] UKHL 47

Decision of the (English) High Court in the case Corporate Officer of the House of Commons and the Information Commissioner and Leapman, Brooke and Thomas EA/2007/0060 etc.

Information Commissioner's guidance: "Freedom of Information: access to information about public authorities' employees"



Background

1. On 2 October 2005, Mr Cameron submitted an information request to the Council for the following information:
 - names of all staff employed by the Council at the Centre since its establishment
 - their start dates and terms of appointment including current staff
 - the nature of the roles undertaken by each individual and the extent of their responsibilities
 - clarification on the nature of the relationship between the Centre and the Club, including any charges made by the Centre to the Club for use of its facilities.
2. The Council responded on 1 November 2005, providing Mr Cameron with information about the relationship between the Centre and the Club, but withholding the remaining information on the basis that it was exempt from disclosure under section 38(1)(b) of FOISA.
3. Mr Cameron asked the Council to review its decision on 4 November 2005.
4. The Council did so and notified Mr Cameron of the outcome of the review on 1 December 2005, advising him that it had upheld its original decision in full.
5. On 21 December 2005, Mr Cameron wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to him for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Cameron had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.
7. The Commissioner subsequently issued a decision in relation to Mr Cameron's application on 18 May 2006, ordering the Council to disclose the names and job titles of the employees to Mr Cameron. The Council appealed to the Court of Session against this decision under section 56(b)(ii) of FOISA. The Commissioner conceded the appeal on the basis that he had incorrectly interpreted one of the tests in condition 6 of Schedule 2 to the DPA, which is relevant to the interpretation of the exemption in section 38(1)(b) of FOISA. This led to the Court of Session quashing the original decision and remitting the case back to the Commissioner. This, therefore, replaces the original decision. It takes account of the investigation which initially took place following Mr Cameron's application to the Commissioner as well as the further investigation which took place after the Court of Session had remitted the case back to the Commissioner.



Investigation

8. A letter was sent by the investigating officer to the Council on 25 January 2006, notifying the Council of Mr Cameron's application and inviting its comments in terms of section 49(3)(a) of FOISA. The Council was asked to provide, amongst other items, a copy of the information which had been withheld and a detailed analysis of its use of the exemption under section 38(1)(b) of FOISA.

Submissions from the Council

9. As indicated previously, the Council relied on the exemption in section 38(1)(b) of FOISA for withholding information sought by Mr Cameron. In its submissions to the Commissioner, the Council advised that it took the view that information about an employee's terms and conditions of appointment, which would normally include starting date, hours worked and details of salary grade, is personal data within the meaning of section 1(1) of the DPA and that staff would not normally expect this level of detail to be public knowledge. The Council believe that disclosure of this personal data would breach the first data protection principle, which requires personal information to be processed fairly and lawfully. The Council also considered that no condition in Schedule 2 of the DPA would be met by disclosure of the information.
10. After the Commissioner's initial decision was remitted back to him by the Court of Session, the investigating officer sought further submissions from the Council with regard to its reliance on the exemption in section 38(1)(b) and, in particular, on the tests set out in condition 6 of Schedule 2 to the DPA.
11. In responding to this request, the Council also said that it was not apparent what legitimate interest Mr Cameron would have. The Council commented that Mr Cameron appears to be alleging impropriety against the Council, but that it was not clear how Mr Cameron having personal data in relation to one or more employees at the Centre would take him much further forward.
12. The Council also advised the Commissioner that, since September 2005, Mr Cameron had made ten separate information requests relating to the Centre and that it had endeavoured to respond to these requests as effectively as possible. The Council further advised the Commissioner that staff have offered to meet with Mr Cameron to discuss any concerns he might have, and to gain a better understanding of what he wants, but that (as at the time of the additional submissions from the Council), Mr Cameron had not taken up any such invitation.
13. The Council states that, given that Mr Cameron has never directly alleged any impropriety against the Council, it has not been able to investigate the validity of his claims. The Council considers, however, that Mr Cameron has never made a specific claim because his claim has no substance.
14. The Council believes that Mr Cameron is using FOISA to perpetuate a long standing grievance against the Centre and against one member of staff in particular.



15. The Council concluded by stating that it did not believe that Mr Cameron has established that he has a legitimate interest in obtaining the requested information and that, although it was conceivable that there may be information in which Mr Cameron would have a legitimate interest if he made an allegation of impropriety against a specific individual, given that he has chosen not to do so, it does not consider that Mr Cameron has a legitimate interest in obtaining the information sought.

Submissions from Mr Cameron

16. After the case was remitted back to him by the Court of Session, the Commissioner also sought additional submissions from Mr Cameron as to why he considered that he had a legitimate interest in obtaining the information.
17. In response, Mr Cameron provided the Commissioner with very detailed submissions as to why he considered that he had a legitimate interest in the information. This related to the manner in which, according to Mr Cameron, business was being done by the Centre and the Council in terms of the acquisition of equipment and the involvement of staff in that process. Mr Cameron indicated that he was also concerned that policies relating to employment and procurement were not being complied with. Mr Cameron considered that his legitimate interests also reflect those of the general public in ensuring that public funds are spent appropriately and that Council procedures are complied with.

Commissioner's analysis and findings

19. In coming to a decision on this matter, the Commissioner has considered all of the information withheld from Mr Cameron, together with the submissions made to him by both Mr Cameron and the Council throughout the investigation, and is satisfied that no matter of relevance has been overlooked.
20. As noted above, the Council relied on the exemption in section 38(1)(b) to withhold the information from Mr Cameron. There are a number of exemptions contained within section 38(1)(b), but it is clear from correspondence with the Council that it was relying on the exemption as read with either section 38(2)(a)(i) or 38(2)(b). It is unclear whether the information held by the Council falls within categories (a) to (d) in the definition of data in section 1(1) of the DPA (in which case section 38(2)(a)(i) is relevant) or to category (e) data (in which case section 38(2)(b) is relevant). However, given that the exemption has the same effect regardless of the category of data involved, the Commissioner did not find it necessary to examine this point further during the investigation.



21. In order for the Council to be able to rely on the exemption under section 38(1)(b), as read with section 38(2)(a)(i) or section 38(2)(b), it must show that the information which has been requested is personal data for the purposes of section 1(1) of the DPA and that the disclosure of the information to a member of the public otherwise than under FOISA would contravene one or more of the data protection principles set down in the DPA. In this case, the Council has argued that the information in question is personal data and that disclosure of the data would breach the first data protection principle. This principle states that the processing of data must be fair and lawful and, in particular, that personal data shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 (again, to the DPA) is also met.
22. Therefore, the Commissioner will first consider whether the information sought by Mr Cameron is personal data as defined in section 1(1) of the DPA. As noted above, Mr Cameron is seeking the names of the staff at the Centre employed by the Council, their job titles, start dates and terms of appointment, the nature of their roles and the extent of their responsibilities.
23. Section 1(1) of the DPA defines personal data 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 (the full definition is set out in the Appendix).
24. Having considered the information which has been withheld from Mr Cameron, the Commissioner is satisfied that the names of the staff, their job titles, their start dates and their terms of appointment comprises the employees' personal data. The employees can clearly be identified from the data, or from the data and other information which is in the possession of the Council as data controller. The information relates to individual employees, is biographical in a significant sense and has the individuals as its focus.
25. However, the Commissioner is not satisfied that the nature of the employees' roles or the extent of the employees' responsibilities (i.e. their job descriptions) is personal data as he considers that this information relates to the posts undertaken by the employees rather than to the individual employees.
26. In any event, following discussions with the Council during the initial investigation, the Council agreed to disclose copies of the job descriptions it held in relation to the posts undertaken by the employees in question. This information has already been provided to Mr Cameron. Consequently, the Commissioner will not address the question of the job descriptions further in this decision notice.
27. Given that the Commissioner is satisfied that the remaining information which has been withheld from Mr Cameron is the employees' personal data, he must go on to consider whether the disclosure of this personal data would breach the first data protection principle.



28. Before going on to consider the first data protection principle, it makes sense to consider whether the personal data falls into one of the categories of sensitive personal data set out in section 2 of the DPA. The Commissioner has considered these categories (set out in full in the Appendix), but does not consider that the personal data requested by Mr Cameron is sensitive personal data. (He also notes that the Council did not argue that the personal data sought by Mr Cameron is sensitive personal data.)
29. As noted above, the first data protection principle requires that personal data be processed fairly and lawfully and, in particular, that it shall not be processed unless at least one of the conditions in Schedule 2 is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met. Given that the Commissioner is satisfied that the information is not sensitive personal data, he need only consider whether any of the conditions in Schedule 2 can be met.
30. Part II of Schedule 1 to the DPA provides assistance in defining “fairness” for the purposes of the first data protection principle. As Lord Hope notes in the case of *Common Services Agency v Scottish Information Commissioner* (the *Collie* judgement), “fairness” is concerned essentially with the method by which the data is obtained, and in particular with whether the person from whom the data was obtained was deceived or misled as to the purpose or purposes for which the data are to be processed.
31. As Lord Hope also noted in the *Collie* judgement, the concept of lawfulness cannot sensibly be addressed without considering the conditions set out in Schedule 2 (and Schedule 3 also, where it is applicable), because any disclosure which fails to meet at least one of the necessary conditions would be contrary to section 4(4) of the DPA (which provides that it shall be the duty of the data controller to comply with the data protection principles). There may also be other reasons as to why the disclosure of information is unlawful, e.g. because disclosure of the information would be a breach of confidence, or because there is a specific law forbidding disclosure. In this case, however, the Council has not put forward any arguments as to why the disclosure of the personal data is unlawful otherwise than as a result of breaching the first data protection principle.
32. When considering the conditions in Schedule 2, the Commissioner has also noted Lord Hope’s comment in the *Collie* judgement that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but were designed to protect personal data from being processed in a way that might prejudice the rights and freedoms or legitimate interests of the data subject.
33. The Council considers that none of the conditions in Schedule 2 can be met. There are six conditions in Schedule 2, but only conditions 1 or 6(1) (set out in full in the Appendix) are likely to be relevant in the context of disclosing personal data under FOISA. Condition 1 could apply here if the employees had consented to their names and job titles being disclosed to Mr Cameron under FOISA, but the Council has advised the Commissioner that consent has not been given. This leaves condition 6(1).



34. Condition 6(1) of Schedule 2 to the DPA permits personal data to be processed (in this case, disclosed in response to Mr Cameron's information request), if the disclosure of the data 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 (in this case, the Council employees). It is clear from the wording of this condition that each case will turn on its own facts and circumstances.
35. There are, therefore, a number of different tests which must be considered before condition 6(1) can be met. These are:
- Does Mr Cameron have a legitimate interest in obtaining the employees' personal data?
 - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or can Mr Cameron's legitimate interests be achieved by means which interfere less with the privacy of the employees in question?
 - Even if the processing is necessary for Mr Cameron's legitimate purposes, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the employees? This will involve a balancing exercise between the legitimate interests of Mr Cameron and those of the employees. As noted by Lord Hope in the Collie judgement, there is no presumption in favour of the release of personal data under the general obligation laid down by FOISA. This highlights that only if the legitimate interests of Mr Cameron outweigh those of the employees will condition 6(1) permit the personal data to be disclosed. If the two are equally balanced, the Commissioner must find that the Council was correct to refuse to disclose the personal data to Mr Cameron.
37. As he did in the original decision, the Commissioner will address the start dates and terms of appointment and the names of the employees separately.

Start dates and terms of appointment

38. In line with the decision originally published by the Commissioner, he will consider, firstly, whether it is fair for the employees' start and end dates to be disclosed to Mr Cameron. (The Commissioner's decision on this point was not appealed to the Court of Session.) The Commissioner considered that the phrase "terms of appointment" was unclear and asked Mr Cameron to clarify what he had meant by this. He is satisfied that Mr Cameron's intention behind this particular request accords with that of the Council, in that the phrase means employment start and end dates.
39. In coming to a decision on this matter, the Commissioner has considered guidance issued by the (UK) Information Commissioner (who is responsible for enforcing the DPA throughout the UK) entitled "Freedom of Information: access to information about public authorities' employees".



40. In this guidance, the Information Commissioner sets out some general factors for public authorities to consider when deciding whether to release information identifying an employee, including whether the information is about an employee's professional or personal life. The Information Commissioner notes that the threshold for releasing professional information will generally be lower than that for releasing truly personal or sensitive information, e.g. information found in an employee's occupational health record.
41. The Commissioner agrees that personal data which is about the home or family life of an individual, personal finances, personal references or any disciplinary action taken in relation to that individual is likely to deserve protection. This is particularly so if the member of staff is junior or does not carry out a public facing role.
42. The Commissioner also considers that, in coming to a conclusion about what is – and is not – fair, account should be taken of matters such as the potential harm or distress that may be caused by the disclosure, whether the individual has objected to the disclosure (although this would not automatically make the disclosure unfair) and the reasonable expectations of the individual as to whether their personal data would be disclosed.
43. Here, the Council has submitted that the employees in question would not have an expectation that information about their start (and, where relevant, end dates) would be made publicly available. The Commissioner accepts that this is the case.
44. While the employees would no doubt have an expectation that information about their employment start and end dates would be held and processed by the Council for the purposes of their personnel records, the Commissioner does not believe they would expect this information to be made publicly available, unless they themselves choose to make it so. This is not information which, in the Commissioner's view, the Council or any public authority would routinely disclose to the public and it is likely that if they did disclose this information it would be to another authority, such as the Inland Revenue, as a result of a legal requirement to provide this information. Although the information does relate to a person's employment, the Commissioner considers that it has more to do with the employees' personal as opposed to professional life.
45. For these reasons, the Commissioner is satisfied that the release of this personal data would not be fair. In the circumstances, he is not required to go on to consider whether there any conditions in Schedule 2 can be met. Accordingly, he finds that disclosure of this personal data would breach the first data protection principle contained in the DPA and that the data is exempt from disclosure in terms of section 38(1)(b) of FOISA.

Names and job titles of the employees

46. Mr Cameron also requested the names and job titles of the employees at the Centre. The Commissioner originally ordered names and job titles to be disclosed and this was the subject of the appeal to the Court of Session on the basis that the Commissioner had misdirected himself as to the interpretation of condition 6 of Schedule 2 to the DPA. The Commissioner therefore considers it appropriate to address condition 6 first, rather than the other aspects of the first data protection principle.



Does Mr Cameron have a legitimate interest?

47. In his submissions to the Commissioner, Mr Cameron set out why he considers he has a legitimate interest in the names and job titles of the employees being disclosed. Mr Cameron has concerns about the apparent way in which business is being done by the Centre and the Council in terms of the acquisition of equipment and the involvement of Council staff in that process. He considers that there a need to create public confidence in how public money is spent and in being reassured that it is being spent properly, and in line with the Council's own financial rules.
48. Mr Cameron therefore believes that it is not only he who has a legitimate interest in the disclosure of this information, but that there is also a wider legitimate interest in this information being disclosed. Mr Cameron believes that there is a legitimate interest in relation to the use of public funds by staff members at the Centre. He has also indicated that he believes that the case between the Corporate Officer of the House of Commons and the Information Commissioner and Leapman, Brooke and Thomas, which was heard by the Information Tribunal, supports his arguments. (This is addressed in more detail below.)
49. The Commissioner accepts that Mr Cameron, who is an Aberdeenshire Council tax payer, has a legitimate interest in the disclosure of the names and job titles of those persons employed at the Centre since its establishment, given his concerns about the running of the Centre, and about the relationship between the Centre and the Ski Club. (The Commissioner does not consider it necessary – or appropriate – to set out these concerns in any detail in this decision.) Furthermore, the Commissioner considers that Mr Cameron's legitimate interest also reflects the wider general legitimate interest in ensuring transparency and accountability on the part of public authorities, particularly with regard to the manner in which public funds are spent and whether Council policies and procedures are being followed and complied with. The Commissioner considers that the matters raised by Mr Cameron show a clear public interest in disclosure, rather than that of simple public curiosity as to the workings of the Council and the Centre.
50. The Tribunal case referred to by Mr Cameron looked at whether MPs' expenses should be disclosed in response to an information request under the Freedom of Information Act 2000. The Tribunal ordered the information to be disclosed and its decision was subsequently appealed to the (English) High Court. The High Court accepted that the public interest factors which had been brought to the Tribunal's attention, including concerns about transparency, accountability and value for money were legitimate interests. The Commissioner considers that the same can be said in Mr Cameron's case. However, the Tribunal also advised that "While it is proper to recognise the public interest in disclosure of information as being relevant under condition 6, we think that it is important not to lose sight of the principle object of the DPA, which is to protect personal data and allow it to be processed only in defined circumstances. The first part of condition 6 can only be satisfied where the disclosure is necessary for the purposes identified". This leads on to the second test for condition 6.



Is the disclosure necessary to achieve these legitimate aims?

51. The Commissioner must now go on to consider whether the disclosure of the employees' names and job titles is necessary to achieve these legitimate aims. As mentioned above, it is apparent from Mr Cameron's submissions that he is concerned about the running of the Centre and whether Council policies relating to employment and procurement are being complied with. The Commissioner understands why Mr Cameron is of the view that he needs this information to achieve his legitimate interests, but, having reconsidered this point in some detail, has come to the conclusion that these legitimate interests can be satisfied otherwise than through the disclosure of the employees' names and job titles under FOISA.
52. The Commissioner understands that the main reason Mr Cameron wants this information is to allow him to make a report or complaint to an appropriate body. However, the Commissioner is not satisfied that the disclosure of the information under FOISA is *necessary* to allow him to make such a report or complaint, on the basis that the appropriate body would be able to take any necessary steps including, if it considered it appropriate, identifying the relevant individuals.
53. In coming to this conclusion, the Commissioner has taken account of the comments made in the Information Tribunal/High Court case referred to in paragraph 50 above. In its decision, having been satisfied that the matters raised in the case did constitute a legitimate interest, the Information Tribunal decided, given their findings of fact concerning the inadequacies of the Parliamentary systems for claims and payment of expenses over a particular timescale, that disclosure of the information was necessary to meet the legitimate interest. The Tribunal also concluded that these objectives could not be met by means that interfere less with the privacy of the MPs personal data, but the High Court recognised that if the arrangement for oversight and control in relation to MPs' expenses were to change, then this might lead to a different conclusion. In considering Mr Cameron's case, however, the Commissioner has concluded that his legitimate interests can be met without the need for the disclosure of the employee's names and job titles, and that it is not proportionate to release this information given that his legitimate interests can be achieved by means which interfere less with the privacy of the employees.
54. As the Commissioner is satisfied that Mr Cameron's legitimate interests can be fulfilled otherwise than by disclosure of the employees names and job titles, he will not go on to consider whether disclosure of the information would cause unwarranted prejudice to the rights and freedoms or legitimate interests of the employees.
55. The Commissioner is therefore satisfied that condition 6(1) of Schedule 2 of the Data Protection Act would not be fulfilled by release of the names and job titles of the staff employed at the Centre since its establishment. As a result, the Commissioner finds that disclosure of the personal data would breach the first data protection principle and that the information is therefore exempt under section 38(1)(b) of FOISA.



DECISION

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

The Commissioner is satisfied that the disclosure of the employees' start and end employment dates, together with their names and job titles, would breach the first data protection principle and that the information is therefore exempt under section 38(1)(b) of FOISA.

Appeal

Should either Mr Cameron or the Council wish to appeal against this decision, there is an 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 notice.

Kevin Dunion
Scottish Information Commissioner
30 March 2009



Appendix

Relevant statutory provisions

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.

...

- (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 1, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (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.



Data Protection Act 1988

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 indications of the intentions of the data controller or any other person in respect of the individual;

...

2 Sensitive personal data

In this Act, “sensitive personal data” means 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, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

4 The data protection principles

...

(4) Subject to section 27(1), it shall be the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.



Schedule 1 The data protection principles

Part 1 The principles

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

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.
...