

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 10 October 2007**

**Public Authority:** Tunbridge Wells Borough Council  
**Address:** Town Hall  
Mount Pleasant Road  
Tunbridge Wells  
Kent  
TN1 1RS

### Summary

---

The complainant requested information in relation to the public authority's investigation of a possible breach of planning control. The public authority refused the request by applying sections 30 and 41 of the Freedom of Information Act 2000 (the Act). The Commissioner found that the request should have been dealt with under the Environmental Information Regulations 2004 (the EIR). The public authority subsequently confirmed to the Commissioner that the withheld information in relation to three elements of the request was no longer held, but withheld the information in relation to the fourth element of the request by applying regulations 12(5)(f) and 13 of the EIR. The Commissioner found that the information was not held in relation to the first three elements of the request and that regulations 12(5)(f) and 13 can not be applied to withhold the remaining information. The Commissioner therefore requires the remaining information to be released.

### The Commissioner's Role

---

1. The 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 Act are imported into the EIR.

### The Request

---

2. On 6 June 2005, the complainant requested information from the public authority. A full transcript of the request is included at Annex A of this Decision Notice. However,

for ease of reference, a short description of the various elements of the request are set out below:

- A) Correspondence between the public authority and the complainant's neighbour relating to the use of the neighbour's property
  - B) Copies of notes of investigations into the business use of the neighbour's property
  - C) Copies of internal memoranda on the use of the neighbour's property
  - D) Copies of any advice supplied in connection with the use of the neighbour's property
  - E) Copy of communications between officers of the public authority and members of the public authority about the use of the neighbour's property
  - F) Copy of any report by officials of the public authority to members of the public authority about the use of the neighbour's property
3. On 4 July 2005, the public authority responded to the various elements of the request as follows:
- A) Some information was provided but two items of correspondence were withheld by applying section 41 of the Act
  - B) The public authority withheld the notes of investigations by applying section 30 of the Act
  - C) The public authority released one memorandum but withheld an email by applying section 30 of the Act
  - D) The public authority provided the information
  - E) The public authority stated that no information was held in relation to such communications
  - F) The public authority released two reports but redacted parts of the reports by applying section 41 of the Act
4. On 6 July 2005, the complainant wrote to the public authority requesting a review of its response.
5. On 9 August 2005, the public authority wrote to the complainant upholding its original response.

## The Investigation

---

### Scope of the case

6. On 19 August 2005 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 whether the public authority was entitled to withhold the information.

### Chronology

7. On 25 October 2006, the Commissioner wrote to the public authority asking it for an update on the position of the complaint. He also asked the public authority to provide him with the information withheld from the complainant in order to assess whether this request should have been dealt with under the EIR rather than under the Act.
8. On 29 November 2006, the public authority wrote to the Commissioner stating that it was enclosing the withheld information. The public authority confirmed that it would also like to apply the exemption under section 36 of the Act as well as sections 30 and 41 already cited to withhold the information.
9. It did not appear to the Commissioner that the information provided by the public authority corresponded with the response given to the complainant. On 14 December 2006, the Commissioner therefore wrote to the public authority asking it for clarification on the information it held in response to elements A, B, C and F of the request.
10. On 9 January 2007, the public authority wrote to the Commissioner with the following clarification on the elements of the complainant's request:
  - A) The public authority confirmed that it no longer held the two items of correspondence previously withheld by applying section 41 of the Act
  - B) The public authority confirmed that the notes of investigations it was withholding were those already provided to the Commissioner and dated 9 August 2005
  - C) The public authority confirmed that it no longer held the email, which it was previously withholding by applying section 30 of the Act
  - F) The public authority provided unredacted copies of the two reports
11. On 15 January 2007, the Commissioner wrote to the public authority asking for the following information on elements B and F of the request:
  - B) The Commissioner commented that the notes of investigations dated 9 August 2005 could not have been available when the public authority responded to the

request on 4 July 2005. He therefore asked the public authority to explain what information it was withholding when it responded.

F) The Commissioner asked the public authority to provide redacted copies of the reports and explain why it was withholding parts of the two reports

12. On 15 January 2007, the Commissioner wrote to the complainant to provide an update on progress. He confirmed that his investigation would now focus on elements B and F of the request.
13. On 17 January 2007, the complainant confirmed that he wished the Commissioner to investigate whether the public authority was entitled to withhold information in response to elements B and F of the request. The complainant also asked the Commissioner to satisfy himself that the public authority no longer held the information in response to elements A and C of the request.
14. On 18 January 2007, the public authority provided the following response to the Commissioner in relation to elements B and F of the request:

B) The public authority confirmed that notes of investigations were held at the time of its response to the request, but these have since been destroyed (see 'Other matters' section)

F) The public authority stated that it was enclosing redacted copies of the reports. It also explained that the withheld information contained in the two reports had been provided in confidence by the complainant's neighbour
15. Redacted copies of the reports were not in fact enclosed with the public authority's response of 18 January 2007. Instead, the public authority enclosed further copies of the unredacted reports.
16. On 19 February 2007, the Commissioner wrote to the public authority stating that he would like to focus on the two reports withheld in response to element F of the request. He stated that he had not yet received redacted copies of the reports as initially requested on 15 January 2007. He therefore warned the public authority that he would issue an Information Notice to obtain the redacted copies if the public authority did not provide the information by 19 March 2007.
17. He also stated that he considered the information withheld in the two reports to be environmental information. He therefore asked the public authority to confirm which exception in the EIR it wished to apply to withhold the information and explain its reasons for applying that exception.
18. On 22 February 2007, the public authority wrote to the Commissioner enclosing redacted copies of the reports. It also confirmed that it wished to apply regulations 12(5)(f) and 13 of the EIR to withhold the information and provided reasons for its application of these exceptions.
19. On 12 March 2007, the Commissioner wrote to the public authority asking for further explanation on the application of the exceptions. He requested information

- on two specific points in relation to regulation 13. The public authority provided the information on regulation 12(5)(f) and the information in response to one of the points on regulation 13 on 16 March 2007.
20. On 26 March 2007, the Commissioner wrote to the public authority stating that he did not consider regulation 12(5)(f) to be applicable to withhold the information. He also asked the public authority to provide the information to the second point on the application of regulation 13 as initially requested on 12 March 2006. He therefore warned the public authority that he would issue an Information Notice to obtain this information if it was not provided by 25 April 2007. The public authority then provided this information on 24 April 2007.
  21. On 2 May 2007, the Commissioner wrote to the public authority requesting further explanation on the application of regulation 13, which the public authority provided on 22 May 2007.
  22. On 7 June 2007, the Commissioner wrote to the public authority stating that he did not consider that regulation 13 could be applied to withhold the information in the two reports and outlined his reasons for this assessment. He also asked the public authority for further information in relation to the notes of investigations (element B of the request), which the public authority provided on 18 June 2007.

## Analysis

---

### Procedural matters

23. The Commissioner has analysed the complaint in relation to elements A, B, C and F of the request as requested by the complainant and outlined at paragraph 13 above.

### Correct legislation

24. The requested information was generated by the public authority in relation to its investigation of a possible breach of planning control by the complainant's neighbour. The public authority has confirmed that it had regard to government advice in "Planning Policy Guidance Note 4: 'Industrial and Commercial Development and Small Firms.'" This guidance states that local planning authorities should ensure that developments are effectively controlled where material changes of use, for which planning permission is required, are likely to have taken place. The likelihood of such material changes may be indicated by increased visitors, traffic, noise or fumes. Planning control could involve refusal of planning permission or enforcement of the activity level permitted within the current planning permission. This would likely impact on the level of visitors, traffic, noise, fumes which is in turn likely to affect the state of the elements of the environment, particularly air and atmosphere. Therefore, the Commissioner is satisfied that the information is environmental by virtue of regulation 2(1)(c)<sup>1</sup> of

---

<sup>1</sup> See annex B (legal annex) for relevant extract of legislation

the EIR as it is information on a measure affecting or likely to affect elements and factors referred to in 2(1)(a) and (b) of the Regulations. The measure being control of the ancillary business use of a residential property.

25. The public authority dealt with the request under the Act. However, as the requested information is environmental information, the request should have been dealt with under the EIR.

### **Information not held**

#### **Element A of request**

26. In its response to the complainant on 4 July 2005, the public authority withheld two items of correspondence from the complainant's neighbour responding to the public authority's letters of 25/4/02 and 15/5/02. The public authority has confirmed that this information is no longer held and that it has searched through the Planning, Legal and Customer Services files in its attempt to locate it. The public authority has confirmed that, as this was a closed enforcement case, the letters were destroyed as part of a re-organisation of the Enforcement Team in October 2005. The public authority has also confirmed that it does not have a legal obligation to retain this information.
27. The Commissioner is therefore satisfied that the public authority no longer holds this information.

#### **Element B of request**

28. In its response to the complainant on 4 July 2005, the public authority withheld notes of investigations, but has confirmed that these have since been destroyed. The public authority has specifically confirmed that it was withholding pocket book and contemporaneous notes made by one of its officers. The public authority has confirmed that these were personal notes and were destroyed when the officer left the public authority in January 2006.
29. The public authority has confirmed that any important notes of investigations would be kept on the enforcement case file. However, the public authority has confirmed that this information is no longer held and that it has searched through the Planning, Legal and Customer Services files in its attempt to locate the information. The public authority has also confirmed that it does not have a legal obligation to retain this information.
30. The Commissioner is satisfied that the public authority no longer holds this information.

#### **Element C of request**

31. In its response to the complainant on 4 July 2005, the public authority withheld an email, but has confirmed that, following a check with its IT section, there is no longer any record of this email being held.

32. The Commissioner is satisfied that the public authority no longer holds this information.

### **Exception**

#### **Element F of request**

33. The public authority initially withheld some information contained in the Planning Committee reports of 10 September and 17 December 2003 by applying section 41 of the Act. Following the Commissioner's consideration that this request should be dealt with under the EIR, the public authority applied regulations 12(5)(f) and 13 of the EIR to withhold the information. Those two exceptions will now be analysed in turn below.

#### **Regulation 12(5)(f)**

34. The first part of this regulation of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

"12(5)(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"

35. The public authority has stated that the complainant could have been put under the legal obligation provided by section 171C of the Town and Country Planning Act 1990 to supply the information. Therefore, the Commissioner considers that Regulation 12(5)(f) cannot be applied to withhold the information.

#### **Regulation 13<sup>1</sup>**

36. The public authority has stated that the withheld sections of the reports provide details of the use of the complainant's neighbour's property for business purposes. In addition, the public authority has claimed that the information is personal data obtained in confidence from the complainant's neighbour, who did not give his consent for it to be released. It would therefore betray that confidence to release the information.
37. The public authority has already released the remainder of the reports to the complainant. The Commissioner considers that some of that disclosed information is very similar in nature to the withheld sections. The Commissioner has therefore firstly analysed whether the exception applies to the withheld. In addition, he has also analysed whether the public authority has already contravened one of the principles in the Data Protection Act 1998 (the DPA) by disclosing some of the information in the remainder of the reports.
38. In order to apply the exception under regulation 13 of the EIR, disclosure of the information must firstly be personal data. Personal data is defined in section 1 of the Data Protection Act 1998 (the DPA) as follows:

“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 or any other person in respect of the individual

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.”

39. The Commissioner has viewed a copy of the withheld information (and the similar information already disclosed) and is satisfied that it is personal data.

40. It must then be established whether disclosure of that data would contravene one of the principles in the DPA. Whilst the public authority has not specifically stated so, it is clear from the arguments provided that the public authority believes that the first principle of the DPA would be contravened by disclosure of the withheld information.

41. The first principle states as follows:

“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”

42. The Commissioner has considered the three aspects of fairness, lawfulness and the schedule 2 (or 3) conditions and has set out his findings below.

## **Fairness**

### **Circumstances in which the information was provided**

43. In determining whether personal data are processed fairly, section 1 of Schedule 1 Part 2<sup>1</sup> of the DPA provides that regard is to be had as to the understanding of how the data would be used. In this case, it is clear that the complainant’s neighbour, who provided the information (both that disclosed and withheld), was under the impression that the public authority would keep it confidential. The public authority has agreed that this was the understanding upon which the information was provided.

### **Breach of confidence**

44. The public authority has also put forward the argument that release of the withheld information would betray the confidence of the complainant’s neighbour. Whilst it has been established above that the information (both withheld and



disclosed) was provided in confidential circumstances, information also needs to have the necessary quality of confidence for it to be confidential. The Commissioner considers that the information is trivial. In addition, the withheld information is trivial in nature when considered alongside the information already disclosed information and cannot therefore be said to be confidential.

45. For the above reasons, the Commissioner considers it was fair to release the already disclosed information and would also be fair to release the withheld information.

### **Lawfulness**

46. It has been established above that the law of confidence could not be breached by release since the information cannot be said to be confidential. The public authority has not put forward any other law that may be breached and there is no other law which the Commissioner is aware of that would be breached by disclosure. Therefore, the Commissioner considers it lawful to release the information.

### **Schedule 2 (or 3 condition)**

47. The information (both disclosed and withheld) in this case is not sensitive personal data, so it only needs to be established whether there is a condition for processing under Schedule 2 of the DPA. The public authority has provided the Commissioner with a copy of a letter showing that the complainant's neighbour has not given his consent to the release of the information. However, it should be noted that consent is only one of the six conditions for processing information. The Commissioner considers that Schedule 2 Condition 6 provides an appropriate basis for release of the information in this case.

48. Schedule 2 Condition 6 states as follows:

"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."

49. In this case, the public authority has a legitimate interest in releasing the information since it promotes accountability to the public. The public would be able to see whether all the information gathered by the public authority had been taken into account in reaching its decision that there had been no breach of planning control. This would place an obligation on the public authority and other public authorities to provide reasoned explanations for decisions and in turn improve the quality of decision making and recording of those decisions.

50. Whilst the information relates to the complainant's neighbour's business, the Commissioner does not consider that prejudice could have been caused to the neighbour's rights and freedoms or legitimate interests by release of the information already disclosed. Furthermore, there is no evidence to suggest that such prejudice has been caused now that this information has been released. In addition, the Commissioner does not consider that release of the withheld information would cause such prejudice.
51. The Commissioner therefore considers that release of the information is not unwarranted and so can take place on the basis of Schedule 2 Condition 6. In addition, the Commissioner does not consider that any of the other principles of the DPA would be contravened by release of the information.

## The Decision

---

52. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the EIR:
- the public authority was not entitled to apply regulations 12(5)(f) and 13 and therefore did not deal with element F of the request in accordance with regulation 5(1) of the EIR

## Steps Required

---

53. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR:
- release to the complainant the withheld information contained at paragraphs 10 and 14 of the public authority's planning reports dated 10 September and 17 December 2003 respectively
54. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Other matters

---

55. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters.

## Provision of information to the Commissioner

56. As already outlined in the chronology above, the public authority did not provide the Commissioner with two separate pieces of information when he first requested them on 15 January and 12 March 2007 respectively. It was necessary

for the Commissioner to repeat his request on 19 February and 26 March 2007 respectively whilst warning the public authority that he would issue an Information Notice to obtain the information if it was not provided in response.

57. Whilst the public authority provided the information following the second requests, this caused delay in enabling the Commissioner to resolve this complaint. When corresponding on future complaints, the Commissioner would like to remind the public authority to provide information when first requested.

### **Destruction of information**

58. The Commissioner has found that the information initially held in relation to elements A, B and C of the request has since been destroyed by the public authority (paragraphs 26 to 32 above). However, the Commissioner does not consider that the public authority destroyed this information with the intention of preventing its disclosure to the complainant. The Commissioner does not therefore intend to take any further action in relation to regulation 19(1)<sup>1</sup> of the EIR.
59. The Commissioner does however draw the public authority's attention to the Code of Practice issued under section 46<sup>2</sup> of the Act. Paragraph 9.9 of that Code of Practice states that:
- “If a record due for destruction is known to be the subject of a request for information, destruction should be delayed until disclosure has taken place or, if the authority has decided not to disclose the information, until the complaint and appeal provisions of the FOIA have been exhausted.”
60. The public authority had already destroyed the information in relation to elements A, B and C of the request before the Commissioner began his investigation of the complaint. As such, the public authority clearly did not follow the above paragraph of the Section 46 Code of Practice in relation to the current complaint. The Commissioner would suggest that the public authority ensures that it adheres to this particular paragraph and, for that matter all other paragraphs, of the Code of Practice in relation to future requests and complaints. Failure to follow the Section 46 Code of Practice may result in the Commissioner taking enforcement action in the future.
61. The Commissioner would also point out that the destruction of information by the public authority due to organisational restructure is not records management best practice. Attention is drawn to the 'Retention Guidelines for Local Authorities' produced by the Records Management Society. This suggests a retention period of 15 years for information in connection with 'The process of regulating the planned use of land or buildings.'

---

<sup>2</sup> Regulation 16(5) provides that the Section 46 Code of Practice applies equally to the EIR as it does to the Act.

## **Failure to comply**

---

62. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

---

63. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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 10<sup>th</sup> day of October 2007**

**Signed .....**

**Steve Wood**  
**Assistant Commissioner**

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

## **Annex A – the request**

“1. Copies of all correspondence and notes of meetings and telephone conversations which have taken place between (i) officials of Tunbridge Wells Borough Council and (ii) the occupants of [name and address redacted] and their advisers or representatives, and relates to the use of the property [address redacted] and or/enforcement action in connection with its use between the dates January 2001 and 2005.

2. Copies of the Notes of investigations of [name redacted] (Planning Investigations Officer) and other planning officials of Tunbridge Wells Borough Council into the business use of [address redacted] together with any related plans, measurements or photographs. In particular, but not exclusively, those which are referred to in [name redacted]’s letter to me of 28 May 2002.

3. Copies of any internal memoranda between officials employed by or on behalf of Tunbridge Wells Borough Council and notes of meetings between such persons which covering the use of property at [address redacted] and any enforcement action which might be taken.

4. Copies of any advice (internal or external) supplied in connection with the use of the property [address redacted] and/or enforcement action that might be taken.

5. A copy of communications between officers of the Council and members of the Council including discussions between Mr R Stone (the then Chief Executive) and [names redacted] concerning the use of the property [address redacted] and/or enforcement action that might be taken.

6. A copy of any report by officials of Tunbridge Wells Borough Council to members of the Council concerning the use of property [address redacted] and/or enforcement action that might be taken and in particular joint report (030910/WAP003).”

## **Annex B – legal annex**

### **Environmental Information Regulations 2004**

#### **Regulation 2(1) provides -**

“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

–

- (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;

**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 12(4)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –  
it does not hold that information when an applicant's request is received

**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(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 19(1)** Where –

- (a) a request for environmental information has been made to a public authority under regulation 5; and
- (b) the applicant would have been entitled (subject to payment of any charge) to that information in accordance with that regulation,

any person to whom this paragraph applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to which the applicant would have been entitled.

### **Data Protection Act 1998 (the DPA)**

Schedule 1 Part 2 Section 1(1) of the DPA states-

“In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.”