

# Decision Notice



Decision 007/2011 Mr Gordon Aikman and the Chief Constable of Strathclyde Police

Information pertaining to the compassionate release of Abdelbasit Ali Mohamed Al-Megrahi

Reference No: 200902158  
Decision Date: 11 January 2011

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr Gordon Aikman (Mr Aikman) requested from the Chief Constable of Strathclyde Police (Strathclyde Police) information relating to the compassionate release of Abdelbasit Ali Mohmed Al-Megrahi from Greenock Prison. Strathclyde Police responded by withholding the information under sections 38(1)(b) (Personal information), 35(1)(a) and (b) (Law enforcement) and 39(1) (Health, safety and the environment) of FOISA. Following a review, Mr Aikman remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had only partially complied with Part 1 of FOISA in responding to Mr Aikman's information request.

He considered that the exemption in section 38(1)(b) did not apply to much of the information, on the basis that the information was not personal data for the purposes of the Data Protection Act 1998 (the DPA). He agreed that the information which was personal data should be withheld.

The Commissioner also found that some of the information which was not personal data was exempt from disclosure under section 35(1)(a) of FOISA, on the basis that its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime.

The Commissioner ordered Strathclyde Police to disclose most of the information it had withheld to Mr Aikman.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 35(1)(a) and (b) (Law enforcement); 38(1)(b), (2)(b), (3) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal information) and 39(1) (Health, safety and the environment)

Data Protection Act 1998 (the DPA): section 1(1) (Basic interpretative provisions) (definition of "personal data"); 2(e) and (h) (Sensitive personal data); Schedules 1 (The data protection principles, Part I The principles) (the first data protection principle) and 3 (Conditions relevant for purposes of the first principle: processing of sensitive personal data) (conditions 1 and 5)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. This, and the attached Schedule (listing the information which is to be withheld), form part of this decision.



## Background

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1. On 26 August 2009, Mr Aikman wrote to Strathclyde Police, asking for:
  - all correspondence between Strathclyde Police and the Cabinet Secretary for Justice/Scottish Government officials in relation to Mr Abdelbasit Ali Mohmed Al-Megrahi
  - all correspondence between Strathclyde Police and the Cabinet Secretary for Justice/Scottish Government officials in relation to the consideration of compassionate alternatives for the release of Mr Abdelbasit Ali Mohmed Al-Megrahi within Scotland and all related documents and supporting information
  - details of all options for compassionate release within Scotland for Mr Abdelbasit Ali Mohmed Al-Megrahi requested or presented to the Cabinet Secretary for Justice/Scottish Government officials for consideration, including all details relating to security, policing requirements and associated costs of each option
2. Strathclyde Police responded on 9 October 2009, stating that, as Mr Aikman had not specified any time period in the first part of his request, they had interpreted the request as being for all correspondence relating to the recent release of Mr Al-Megrahi from Greenock Prison. Strathclyde Police withheld the information which they considered to fall within the scope of Mr Aikman's request under the exemptions at sections 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA.
3. On 19 October 2009, Mr Aikman wrote to Strathclyde Police, asking them to review their decision. Mr Aikman did not agree that any of the exemptions relied on by Strathclyde Police applied in this case. Mr Aikman noted that he had not given a timescale in the first part of his request, but asked Strathclyde Police to interpret the request as meaning all correspondence between Strathclyde Police and the Scottish Government in relation to *the release* (the Commissioner's emphasis) of Mr Al-Megrahi.
4. Strathclyde Police notified Mr Aikman of the outcome of their review on 17 November 2009 and upheld the original decision.
5. On the same day, Mr Aikman wrote to the Commissioner, stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Aikman 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 their response to that request.



## Investigation

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7. On 14 January 2010, Strathclyde Police were notified in writing that an application had been received from Mr Aikman and were asked to provide the Commissioner with any information withheld from him. Strathclyde Police responded with the information requested, and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted Strathclyde Police on 2 March 2010, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. Strathclyde Police were asked to justify their reliance on any provisions of FOISA they considered applied to the information requested by Mr Aikman.
9. Strathclyde Police provided submissions on 23 March 2010.
10. The investigating officer contacted Mr Aikman on 24 March 2010 to clarify the scope of his request. Mr Aikman responded on 29 March 2010, stating that he wished his request to cover as wide a scope as possible.
11. Mr Aikman also provided the investigating officer with submissions on 2 June 2010. These are summarised along with those of Strathclyde Police in the Commissioner's analysis and findings section below.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Aikman and Strathclyde Police, and is satisfied that no matter of relevance has been overlooked.

### The scope of the request

13. Strathclyde Police provided the Commissioner with documentation which was split into two batches, the first dating from August 2009 and the second from October 2008.
14. The Commissioner notes that, on being asked by the investigating officer about the scope of his request, Mr Aikman stated that he wished his request to cover as wide a scope as possible. However, he also notes that, when Mr Aikman asked Strathclyde Police to review their request, he stated that he was looking for correspondence in relation to Mr Al-Megrahi's *release*.



15. Mr Al-Megrahi was released in August 2009. Therefore, the Commissioner concludes that the documentation contained within the second batch does not fall within the scope of Mr Aikman's request, as it pertains to a court application for interim liberation court application from October 2008.
16. The Commissioner will now go on to consider the withheld information contained in the first batch. This information is made up of a chain of five emails between Strathclyde Police and the Scottish Government, discussing a parliamentary statement and a parliamentary debate on the resource implications of Mr Al-Megrahi's compassionate release. The information also contains a note of a telephone conversation between Strathclyde Police and the Scottish Government.
17. The Commissioner is aware that an almost identical document to that of the telephone discussion note has been publicly available on the Scottish Government's website since September 2009. Indeed, some of the information contained in the telephone note is also included in the email chain.
18. Strathclyde Police have applied the exemption in section 38(1)(b) to all of the information withheld from Mr Aikman and have applied the exemptions at sections 35(1)(a) and (b) and 39(1) to two pieces of information appearing in the emails, one of which appears in three separate places (albeit worded slightly differently) in the emails.

#### **Section 38(1)(b) – personal data**

19. Strathclyde Police have relied on the exemption in section 38(1)(b) (as read with either section 38(2)(b) or section 38(3)) of FOISA to withhold the information.
20. In order to be able to rely on this exemption, the information must be personal data. "Personal data" is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller. (The full definition of "personal data" is set out in the Appendix.)

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

21. In their submissions, Strathclyde Police referred to the judgement of the Court of Appeal in *Durant v Financial Services Authority* [2003] EWCA Civ 1746, in determining what might constitute "personal data".
22. Mr Durant made a subject access request under the DPA, seeking access to documents generated by the Financial Services Authority (the FSA) in response to a complaint made to them by Mr Durant about the conduct of Barclays Bank plc. Although the FSA disclosed much of the information sought by Mr Durant, it refused to disclose some of the documentation because, in its view, it did not "relate to" Mr Durant and therefore did not fall within the definition of personal data contained in section 1(1) of the DPA.



23. The sort of information withheld from Mr Durant included (amongst other things) a file relating to complaints by customers of Barclays Bank which was arranged alphabetically by the surname of the complainant and included some material about Mr Durant's complaint.
24. Mr Durant argued that, as he was the source of the material which had resulted in the generation of the information which he was seeking, all the information which had been generated by the FSA in response to his complaint was his personal data. In contrast, the FSA argued that the phrase "relate to" has to be construed more narrowly, so that the information had to refer to, or concern, Mr Durant.
25. The Court of Appeal was therefore required to determine whether any occasion Mr Durant was named within documentation held by the FSA constituted his personal data or whether something more significant was required.
26. Lord Justice Auld, delivering the leading Opinion, said:

*"... not all information retrieved from a computer search against an individual's name or unique identifier is personal data within the [DPA]. Mere mention of the data subject in a document held by a data controller does not necessarily amount to his personal data. Whether it does so in any particular instance depends on where it falls in a continuum of relevance or proximity to the data subject as distinct, say, from transactions or matters in which he may have been involved to a greater or lesser degree. It seems to me that there are two notions that may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject's involvement in a matter or an event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved, or some transaction or event in which he may have figured or have had an interest, for example, as in this case, an investigation into some other person's or body's contact that he may have instigated. In short, it is information that affects his privacy, whether in his personal or family life, business or professional capacity."*
27. Applying the definition of personal data as explained by Durant, it is not possible to take a blanket approach to the information which has been withheld. Rather, it is necessary to consider the information in each case, including to what extent the focus of the information is a third party, and to what extent the information is biographical, has personal connotations or affects the data subject's privacy.





28. Strathclyde Police takes the view that all of the information withheld from Mr Aikman comprises the personal data of Mr Al-Megrahi or his family, given that the information addresses the matter of the security arrangements which were planned to be put in place for Mr Al-Megrahi's relocation. The information refers to the numbers of police officers to be involved; what it was they were going to do; for how long they were going to do it and how much that might cost. However, in Strathclyde Police's view, the information was not addressing such matters in the abstract but was, instead, specifically about Mr Al-Megrahi and his family in the family home. Strathclyde Police therefore consider that it is not a question of Mr Al-Megrahi's name, or details of his family, appearing by way of incidental comment within the text of the information; Strathclyde Police believe it is clear that, in this instance, the information is "biographical in a significant way" in line with the views of Auld LJ.
29. Strathclyde Police also commented that, in their view, it is not possible to contemplate an exchange of correspondence which addresses the matter of police security arrangements, at the domestic residence of a person and his or her family, without that being considered to be "significant biographical detail."
30. However, having considered the tests put forward by Auld LJ and the information which has been withheld from Mr Aikman, the Commissioner does not agree that all of the information which has been withheld is Mr Al-Megrahi's personal data (or the personal data of his family).
31. While the Commissioner agrees that a small amount of the information withheld from Mr Aikman is the personal data of Mr Al-Megrahi and/or his family, in that it clearly focusses on them (this information is described in the attached Schedule), the focus of the majority of the information is on shift patterns, the number of officers required, etc. Other information appears to be administrative, referring to, for example, the parliamentary statement and debate and what information can be disclosed. Clearly, it cannot be said that such information has no relevance at all to Mr Al-Megrahi or to his family, but, considering the "continuum of relevance or proximity to the data subject" envisaged by Auld LJ, the Commissioner has come to the conclusion that the focus of such information is not on Mr Al-Megrahi or, indeed, on his family and, further, that the information is not "biographical in a significant way" in line with the views of Auld LJ.
32. The Commissioner considers that only the information described in the attached Schedule is personal data for the purposes of FOISA. Given that he does not accept that the remainder of the information which has been withheld from Mr Aikman is personal data, he cannot uphold the use of the exemption in section 38(1)(b) of FOISA in relation to that information.

*Is the personal data exempt from disclosure?*

33. The Commissioner will now go on to consider whether the information which he considers to be personal data is exempt from disclosure. As noted above, Strathclyde Police consider that the information is exempt under section 38(1)(b) as read with both section 38(2)(a)(i) and section 38(3) of FOISA.



34. Personal data may be withheld if its disclosure to a member of the public under FOISA would contravene any of the data protection principles (section 38(1)(b) as read with section 38(2)(b)) or if, by virtue of any provision of Part IV of the DPA, a data subject who made a subject access request for the information would not be entitled to obtain the information (section 38(1)(b) as read with section 38(3)).
35. The Commissioner will consider whether disclosure would contravene any of the data protection principles first.
36. Strathclyde Police have argued that disclosure would breach the first data protection principle, which requires that personal data be processed (in this case, by being disclosed into the public domain as a result of Mr Aikman's information request) fairly and lawfully and, in particular, 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 to the DPA is also met.

*Is the information sensitive personal data?*

37. The Commissioner considers that the personal data which has been withheld falls within the definition of sensitive personal data in terms of section 2(e) of the DPA (information as to the data subject's physical or mental health or condition) and/or section 2(h) of the DPA (information as to 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).

*Would disclosure of the sensitive personal data breach the first data protection principle?*

38. Given the additional restrictions surrounding the disclosure of sensitive personal data, it makes sense to look at whether there are any conditions in Schedule 3 which would permit the data to be disclosed, before considering the Schedule 2 conditions.
39. There are 10 conditions listed in Schedule 3 to the DPA. One of these conditions, condition 10, also allows sensitive personal data to be processed in circumstances specified in an order made by the Secretary of State in addition to the other conditions in Schedule 3. The Commissioner has also considered the additional conditions for processing sensitive personal data as contained in legislation such as the Data Protection (Processing of Sensitive Personal Data) Order 2000<sup>1</sup>.
40. In guidance issued by the Commissioner regarding the exemption in section 38(1)(b)<sup>2</sup>, it is noted that the conditions in Schedule 3 are very restrictive in nature and, as a result, generally only the first and fifth conditions are likely to be relevant when considering a request for sensitive personal data under FOISA.

<sup>1</sup> [http://www.legislation.gov.uk/uksi/2000/417/pdfs/uksi\\_20000417\\_en.pdf](http://www.legislation.gov.uk/uksi/2000/417/pdfs/uksi_20000417_en.pdf)

<sup>2</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.asp>





41. Condition 1 allows processing where the data subject has given *explicit* (and fully informed) consent to the release of the information. Condition 5 allows processing where information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

*Condition 1*

42. Strathclyde Police informed the Commissioner that no explicit consent had been given to them by Mr Al-Megrahi for release of any of the information in question. The Commissioner has therefore concluded that condition 1 is not met in this case.

*Condition 5*

43. In considering condition 5, the Commissioner has noted that information concerning the proceedings relating to an offence committed by Mr Al-Megrahi, and the sentence of the court in such proceedings has been posted by Mr Al-Megrahi's representatives on his website at <http://megrahimystory.net/> and that Mr Al-Megrahi's Scottish solicitors, Taylor & Kelly, have talked publicly about this.
44. He also notes that Mr Al-Megrahi has given interviews in the press discussing his conviction and that, as a result of massive worldwide media coverage, a lot of information discussing his commission of a crime and his sentencing is already in the public domain.
45. Mr Aikman submitted that, given the high profile and international nature of Mr Al-Megrahi's case, the public interest would be best served by the full release of the information requested. He argued that it was vital for scrutiny of the actions of public bodies that the public understand what dialogue there was, and what considerations were made regarding the release of Mr Al-Megrahi.
46. Strathclyde Police submitted that it did not consider that the fact that certain aspects of Mr Al-Megrahi's circumstances featured in certain media news reports at or around the time the request was received meant that it should consider itself absolved from its responsibilities under the DPA.
47. The Commissioner considers that although, as noted above, some of the information has been published on the Scottish Government's website, the specific information as detailed in the email chain and the telephone note in question has not, as far as the Commissioner is aware, been discussed publicly by Mr Al-Megrahi or his representatives.
48. The Commissioner must take account of the specific content of the information in question and, after due consideration, he concludes that condition 5 has not been met. Having considered the other conditions listed in Schedule 3 (including condition 10), the Commissioner finds that there are no conditions in Schedule 3 which would permit the disclosure of the information. As such, he is required to find that the disclosure of the personal data would breach the first data protection principle of the DPA and that, as a consequence, the personal data is exempt from disclosure under section 38(1)(b) of FOISA.



49. In the light of the above, the Commissioner will not go on to consider whether the personal data is also exempt under section 38(1)(b) as read with section 38(3).
50. The Commissioner will now go on to consider the other exemptions applied by Strathclyde Police.

#### **Section 35(1)(a) and (b) – Law enforcement**

51. Strathclyde Police relied on the exemptions in sections 35(1)(a) and (b) to withhold two pieces of information from Mr Aikman (one of which, as noted above, is repeated three times, albeit worded slightly differently) relating to the policing operational tactics in the event of Mr Al-Megrahi's release into the community.
52. Section 35(1)(a) exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance on this exemption highlights<sup>3</sup>, the term "prevention or detection of crime" is wide ranging, encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and detection.
53. Section 35(1)(b) exempts information if its disclosure would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. As the Commissioner's guidance also states, there is likely to be a considerable overlap between information relating to "the apprehension or prosecution of offenders" and that relating to "the prevention or detection of crime".
54. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that the authority would have to identify harm of real and demonstrable significance. The harm would also have to be at least likely, and therefore more than simply a remote possibility.
55. Strathclyde Police submitted that any internal briefing papers, or similar, which provide an explanation of the deployment, location, tactics or technical measures associated with the close protection of Mr Al-Megrahi (or any other individual requiring such protection) are exempt information under both sections 35(1)(a) and (b) of FOISA in order to uphold current and future deployment of close protection to individuals who require such a level of safeguarding. They went on to state that the police service utilises a number of tactics and procedures when carrying out this type of activity and that, in general, these tactics and procedures remain confidential as public awareness will compromise their effectiveness.

<sup>3</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.asp>



56. Strathclyde Police also submitted, that as the location of Mr Al-Megrahi's family home is well known and had featured in the media, taking that house as a model, any information on the policing operations could be used to assemble a blueprint of sensitive policing activities related to close protection operations. Strathclyde Police argued that this would allow organised crime groups and terrorists to gain an understanding of how the police operate in such circumstances and thereby inform their future activity.
57. They stressed that this could result in substantial prejudice to their ability to prevent and detect crime – both in terms of protecting persons subject to close protection, and their ability to persuade key witnesses who may require such services to cooperate with future police investigations.
58. The Commissioner has carefully considered the submissions from both Strathclyde Police and Mr Aikman, and has come to the conclusion, for the reasons given by Strathclyde Police, that the disclosure of the information in question would be likely to prejudice substantially either the prevention or detection of crime.
59. The Commissioner has therefore concluded that Strathclyde Police was justified in applying the exemption in sections 35(1)(a) of FOISA to the information in question.
60. Section 35(1)(a) of FOISA is a qualified exemption, which means that it is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 35(1)(a), the Commissioner must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

### **Public Interest Test**

61. Strathclyde Police accepted that the disclosure of the information would provide the public with knowledge on the level of police resources required for close protection purposes and would thus provide accurate information to inform any public debate on the topic. They also accepted that disclosure would increase their accountability in terms of resources deployed and thus for the spending of public funds.
62. However, they considered that maintaining the effectiveness and efficiency of the police force in conducting such tasks, along with the safety of the public and of individual police officers, outweighed the public interest in disclosing the information.
63. It is the view of the Commissioner that there is certainly some degree of public interest in disclosure of the withheld information, in that it would allow for greater transparency in the public costs attributed to the manpower required for such operations.
64. However, the Commissioner notes that there is already information in the public domain about the resource demands in general of maintaining close protection in this case, as referred to in paragraph 17 above. He is not persuaded that the public interest would be any better served by the disclosure of specific police shift pattern details and a release of a level of detail beyond that what is already in the public domain.



65. The Commissioner is of the view that there is a greater public interest in maintaining the operational effectiveness of Strathclyde Police's tactical procedures safeguarding policing. He concludes that it would be prudent to ensure that the harm envisaged by Strathclyde Police be avoided and that, on balance, the public interest in favour of maintaining the exemption in section 35(1)(a) of FOISA outweighs that in favour of disclosing the information in this case.
66. The Commissioner has therefore concluded that Strathclyde Police were correct to withhold the information under the exemption in section 35(1)(a) of FOISA.

### **Section 39(1) – Health, safety and the environment**

67. As noted in paragraph 18 above, Strathclyde Police also argued that the information which they withheld under section 35(1) is also exempt under section 39(1) of FOISA, on the basis that disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.
68. However, as the Commissioner has found that the information is exempt by virtue of section 35(1)(a), he is not required to, and has not, gone on to consider whether it is also exempt under section 39(1).

## **DECISION**

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Aikman.

The Commissioner finds that much of the information which has been withheld does not constitute personal data and is therefore not exempt under section 38(1)(b) of FOISA. In withholding this information under 38(1)(b), the Commissioner finds that Strathclyde Police failed to comply with Part 1 of FOISA and, in particular, section 1(1) of FOISA.

The Commissioner also finds that Strathclyde Police was entitled to withhold certain information under the exemption in section 35(1)(a). In withholding this information, Strathclyde Police complied with Part 1, and in particular section 1(1), of FOISA.

The Commissioner requires Strathclyde Police to disclose to Mr Aikman all of the information falling within the scope of his information request, except for the information described in the Schedule to this decision.

The information must be disclosed to Mr Aikman by 25 February 2011.

Decision 007/2011  
Mr Gordon Aikman  
and the Chief Constable of Strathclyde Police



## **Appeal**

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Should either Strathclyde Police or Mr Aikman 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**  
**11 January 2011**



## Appendix

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### 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 2, 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.





**35 Law enforcement**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially –

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;

...

**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.

(3) The second condition is that, by virtue of any provision of Part IV of that Act, the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

...



(5) In this section-

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

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

...

### **39 Health, safety and the environment**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

...

## **Data Protection Act 1998**

### **1 Basic interpretative provisions**

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

...

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

### **2 Sensitive personal data**

In this Act "sensitive personal data" means personal data consisting of information as to –

(e) his physical or mental health or condition

...

(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.



## **Schedule 1: The data protection principles**

### **Part I: The principles**

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

### **Schedule 3: Conditions relevant for purposes of the first principle: processing of sensitive personal data**

- 1 The data subject has given his explicit consent to the processing of personal data.  
...
- 5 The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.  
...



## Schedule

### Information to be withheld

DOCUMENT	DESCRIPTION OF INFORMATION TO BE WITHHELD	EXEMPTION UPHELD
Email dated 24 August 2009 (11:25)	First sentence of fifth paragraph (begins "if ...")	Section 38(1)(b)
	Third and fourth bullet points of fifth paragraph	Section 38(1)(b)
Email dated 24 August 2009 (12:19)	The last figure on the second line and the first three words on the third line of the second paragraph	Section 35(1)
Email dated 31 August 2009 (13:43)	The words in parenthesis on the sixth line of the first paragraph	Section 35(1)
Email dated 31 August 2009 (14:02)	First set of words in parenthesis in second bullet point	Section 35(1)
Note of telephone call	The sixth to twelfth (inclusive) words on the second line in the second bullet point	Section 35(1)
	Both points under the fourth bullet point	Section 38(1)(b)