

Decision Notice

Decision 018/2015: Mr Gary Smith and East Ayrshire Council

Application of the Data Protection Act 1998 to independent coal report

Reference No: 201402009

Decision Date: 10 February 2015



Scottish Information
Commissioner

Summary

On 17 January 2014, Mr Smith asked East Ayrshire Council (the Council) for information concerning the application of the Data Protection Act 1998 to an independent coal report.

The Council responded by providing some information to Mr Smith and withholding other information under various exemptions. Following a review, Mr Smith remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had partially failed to respond to Mr Smith's request for information in accordance with Part 1 of FOISA. She found that the Council has correctly applied the exemptions to most of the withheld information, but that it had been incorrect to withhold some of it on the basis of its effect on the free and frank exchange of views. She required the Council to disclose this information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 30(b)(ii) (Prejudice to effective conduct of public affairs); 36(1) (Confidentiality); 38(1)(b), (2)(a)(i) and (b), (5) (definitions of "data protection principles", "data subject" and "personal data").

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions) (definition of "personal data"); Schedule 1 - The data protection principles, Part 1 Principles (the first data protection principle); Schedule 2 - Conditions relevant for the purpose of the first principle: processing of any personal data (condition 6(1))

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendices form part of this decision.

Background

1. On 17 January 2014, Mr Smith made a request for information to the Council. The information request is reproduced at Appendix 2 below and makes reference to the Report of the Independent Review of Regulation of Opencast Coal Operations in East Ayrshire¹ (the Coal Report).
2. The Council responded on 18 February 2014. It provided some information and withheld other information under sections 30(b), 36(1) and 38(1)(b) of FOISA. It stated that it did not hold any information falling within the scope of parts 4, 7 and 9 of the request. In relation to part 1, it provided an explanation but no recorded information.
3. On 28 February 2014, Mr Smith wrote to the Council requesting a review of its decision. He did not agree with the application of the exemptions cited by the Council. In addition, he believed the Council should hold further information falling within the scope of part 1 of the request.

¹ <http://www.east-ayrshire.gov.uk/Resources/PDF/C/Coal-Independent-Review-of-the-Regulation-of-Opencast-Coal-Operations-in-East-Ayrshire---Redacted-report-by-the-Independent-Review-Team.pdf>

4. The Council notified Mr Smith of the outcome of its review on 31 March 2014. It provided some further explanation in respect of part 1 of the request. In all other respects, it upheld the application of the exemptions claimed in its original response.
5. On 12 August 2014, Mr Smith wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Smith was dissatisfied with the outcome of the Council's review because he believed (i) the Council could meet the objectives stated in applying the exemptions without withholding the information, and (ii) in any event, the public interest favoured disclosure. He was also of the view that the Council's response to part 1 of his request was missing specific detail, in relation to the particular provisions of the DPA deployed by the Council.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Smith made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 18 August 2014, the Council was notified in writing that Mr Smith had made a valid application. It was asked to send the Commissioner the information withheld from him. The Council provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application, including justifying its reliance on any provisions of FOISA it considered applicable to the information requested. The Council was also asked for details of the searches it had carried out for information falling within the scope of the request.
9. Mr Smith was also asked for, and provided, submissions during the investigation.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Smith and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable in this case.
12. In his appeal Mr Smith stated that he was not satisfied that all the information falling within the scope of his request had been located by the Council. In particular, he believed more information should be held on the specific provisions of the DPA applied by the Council.
13. The investigating officer asked the Council to respond to the following questions regarding the searches it carried out to locate any information falling within the scope of the request:
 - What searches were carried out of (a) paper files, (b) electronic files (c) email accounts and (d) mobile phone records?
 - Which search terms/key word searches were used in the electronic searches?
 - Which paper files were searched for paper documents, handwritten notes etc.?

- Which members of staff carried out the respective searches?
- Which sections of the Council were most likely to have held information falling within the scope of the request, and which sections/areas were actually searched?

The Council was also asked for evidence of the searches carried out (e.g. responses from the departments asked to carry out the searches).

14. The Council explained in its submissions the resources searched (and why), who conducted the searches and what search terms and parameters were used. The Council submitted that no other possible location was known which might contain relevant information other than those locations that it had searched.
15. Having considered the submissions from the Council and from Mr Smith, the Commissioner is satisfied that the searches conducted by the Council were proportionate in the circumstances and would have been capable of identifying any further relevant information, if held. On the balance of probabilities, she is satisfied that the Council holds no further relevant information, in addition to that already located. To the extent that the Council holds recorded information on the specific provisions of the DPA applied to the Coal Report, this is in the information withheld under section 36(1) of FOISA.

Section 36(1) - legal advice

16. Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt from disclosure under section 36(1) of FOISA. One type of communication covered by this exemption is that to which legal advice privilege, a form of legal professional privilege, applies. Legal advice privilege covers communications between lawyers and their clients in the course of which legal advice is sought or given.
17. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled. The information must relate to communications with a professional legal adviser, such as a solicitor or an advocate. The legal adviser must be acting in his/her professional capacity and the communications must occur in the context of the legal adviser's professional relationship with his/her client.
18. The Commissioner is satisfied that the information contained in 15 of the 17 documents withheld under section 36(1) meets the criteria set out in the preceding paragraph. The two remaining documents do not meet these criteria (they do not involved the obtaining of legal advice) but are considered further below (the exemption in section 30(b)(ii) of FOISA was also applied to this information).
19. For a claim of confidentiality to be maintained, the information must not have been made public, either in full or in a summary sufficiently detailed to have the effect of disclosing the advice. If this happens, the information ceases to be confidential. Where confidentiality has been lost in respect of all or part of the information under consideration, any privilege associated with that information (or the relevant part) is also effectively lost.
20. Having considered the contents of the withheld information, the Commissioner is satisfied (where she has accepted the application of section 36(1)) that the information has not been made public, either in full or in summary.

21. The Commissioner is satisfied, therefore, that the information in the 15 documents is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. As a result, the Commissioner accepts that this information is exempt from disclosure under section 36(1) of FOISA.
22. The exemption in section 36(1) is a qualified exemption, which means that its application 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 36(1), 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

23. Mr Smith was of the view that openness served the greater public good, and contributed to local accountability by Council officers and elected members. He considered disclosure to be warranted in view of perceived administrative failures on the Council's part, in relation to opencast operations in its area. He also highlighted potential misuse of the DPA to withhold information from the Coal Report
24. The Council acknowledged some general importance and public interest in establishing what sections of the DPA were deployed when parts of the Coal Report were redacted; however, it was not of the view that it was in the public interest for the legal advice sought and received on the issue to be disclosed. The Council submitted that there was a significant public interest in protecting the ability of Council officers to seek and receive comprehensive legal advice in confidence to enable them to make fully informed decisions on the legislative competence of the publication of the Coal Report.
25. It was the view of the Council that there should not be a departure from the principle that communications between a lawyer and their client should remain confidential. The Council stated that it had published as much of the Coal Report as possible, subject to Data Protection considerations. It believed the matters addressed in the Coal Report could thus be scrutinized, contributing to transparency and corporate responsibility and addressing the public interest in this area.
26. The Council was of the view that there should not be a departure, in this case, from the principle that communications between a lawyer and their client should remain confidential. It stated that it had accepted corporate responsibility for any shortcomings identified in the Coal Report. The Council believed it had published as much as possible of the Coal Report in accordance with Data Protection considerations, in order that the matters addressed could be scrutinised and to contribute to transparency and corporate accountability. It submitted that this largely addressed the public interest in the matter.
27. The Commissioner acknowledges that there will be occasions where the significant public interest in withholding legally privileged communications may be outweighed by the public interest in disclosing the information. For example, disclosure may be appropriate where:
 - the privileged material discloses wrongdoing by/within an authority
 - the material discloses a misrepresentation to the public of advice received
 - the material discloses an apparently irresponsible and wilful disregard of advice
 - a large number of people are affected by the advice
 - the passage of time is so great that disclosure cannot cause harm.

28. After careful consideration, the Commissioner is satisfied that none of the considerations set out above apply here. In the circumstances, she can identify no considerations of equal or greater force which would favour disclosure. She notes that a redacted version of the Coal Report has been published, which contributes towards the public interest in transparency.
29. On the other hand, the Commissioner must acknowledge the strong inherent public interest in maintaining legal professional privilege, in this case in the form of legal advice privilege.
30. In all the circumstances of the case, therefore, the Commissioner is satisfied that the public interest in disclosing this information is outweighed by the public interest in maintaining the exemption in section 36(1). Consequently, she finds that the Council was entitled to withhold the information contained in the 15 documents referred to above, under that exemption.
31. In the light of the above conclusion, the Commissioner is not required to go on to consider the Council's application of section 30(b)(i) of FOISA to this information.

Section 30(b)(ii) - free and frank exchange of views

32. To apply the exemption in section 30(b)(ii) of FOISA, public authorities must show that disclosure of the information would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
33. Public authorities must assess whether officials or other parties would, or would be likely to, be deterred from exchanging views in future, if the information were disclosed. There must be reasonable grounds for anticipating that inhibition would be at least likely. The mere possibility of inhibition will not be enough. Also, that inhibition must be substantial – in other words, of real and demonstrable significance.

Documents 1, 2, 3 and 7

34. Documents 1, 2, 3 and 7 contain communications between the Council's Chief Executive and councillors, updating them as to the status (at that time) of the proposed publication of the Coal Report and initiating meetings to discuss matters. The Council submitted that these communications were made with an expectation of confidentiality and contained candid discussion, which would be inhibited if information of this type were to be routinely released.
35. The Commissioner has considered these withheld documents and is unable to accept this argument. She can identify nothing in this information which might reasonably be expected to have the inhibiting effect suggested by the Council. These documents impart information and propose further discussion, but contain nothing of any particular candour. They highlight the confidential nature, at that point, of the Coal Report itself, but there is nothing in their content or context to suggest that any obligation of confidence should attach to these communications themselves.
36. In the circumstances, the Commissioner is not persuaded that the Council has demonstrated that substantial inhibition to the free and frank exchange of views would, or would be likely to, follow disclosure of the information in these particular documents. She is unable, therefore, to accept that the information can properly be considered exempt under section 30(b)(ii) of FOISA (and so is not required to go on to consider the public interest test in section 2(1)(b)).
37. The Commissioner will, however, go on to consider the redacted parts of these four documents (the names of junior staff) to which the Council has applied section 38(1)(b) of FOISA.

The remaining information withheld under section 30(b)(ii)

38. These are all communications between the Council and the Coal Report's author. The Council argued again that these were exchanged with an expectation of confidentiality and contained candid discussion, which would be inhibited if this type of information were to be routinely released
39. The Council submitted that it was necessary for its officers, councillors and the Chair of the independent investigation to be able to exchange free and frank views in a private space, in order to reach a shared understanding and be able to resolve any issues arising. There is a significant difference, the Council believed, in being able to express such views in a private forum and in circumstances where they are likely to be made public.
40. If this type of communications (regarding personal data issues) were routinely released, the Council stated, then potentially future discussions of this nature could become either more circumspect or verbal in nature and unrecorded.
41. The Commissioner has considered the content of these documents carefully in the light of the Council's submissions. These could have been more substantial in relation to the nature of the anticipated harm and the risk of that harm occurring. She would also emphasise that her concern is with the effects of disclosing this particular withheld information, not that of disclosing information of this kind routinely.
42. In all the circumstances, given the content of this information and the way in which it is expressed, the Commissioner accepts that its disclosure would be likely to inhibit the free and frank exchange of views (for the purposes of deliberation) substantially. Views are expressed candidly, with apparent reason, to the extent that it does appear to her unlikely that they would have been presented as fully and effectively had their disclosure been expected.
43. In these circumstances, the Commissioner accepts that the Council was entitled to conclude that this information was exempt under section 30(b)(ii) of FOISA. As this is a qualified exemption, she must now consider the public interest test.

Public interest

44. Mr Smith's public interest arguments are outlined above, in relation to section 36(1) of FOISA. In general terms, the Council acknowledged the significant public interest in openness and transparency.
45. The Council also believed there to be significant public interest in being able to communicate in private with councillors and the Chair of the independent investigation, to assess critically all relevant factors and reach the best possible decision.
46. The Council submitted that this could only be done here on the basis of a free exchange of views, of a sort which could not take place if the information was to be disclosed. It was the Council's view that the information was (by its very nature) confidential, given that it contained consideration of the DPA and personal data issues. It believed disclosure would lead to future discussion of this nature becoming more circumspect, or verbal, in nature and unrecorded.
47. If discussions became more circumspect, the Council submitted, this would also be contrary to the public interest and detrimental to the effective conduct of Council business and policy formulation. If they were not recorded, the Council believed misunderstandings or errors could occur, in the absence of a point of reference, which would be detrimental to the administration of the decision-making process.

48. In the Council's view, the public interest in openness and transparency is satisfied by (i) the release of relevant information concerning the remit and instructions to the external solicitors and (ii) the Data Protection decisions ultimately reached, without the need to disclose the debate which surrounded these decisions. The Council noted that it had published the Coal Report on its website, with parts redacted due to Data Protection considerations.
49. The Council argued that the specific public interest in safeguarding the decision-making process and protecting the "private space" described above, outweighed the general public interest in openness and transparency.
50. The Commissioner has considered the submissions made by both parties and recognises that there is generally a public interest in ensuring transparency in the dealings of public authorities. However, she believes the information withheld under section 30(b)(ii) of FOISA would illuminate the more specific issues highlighted by Mr Smith only to a limited extent. Against that, she acknowledges the real detriment to the effectiveness of the Council's deliberative and decision-making processes which would be the likely consequence of disclosure in this case: that would not serve the public interest.
51. On balance, the Commissioner concludes that, in all the circumstances of this case, the public interest in maintaining the exemption in section 30(b)(ii) of FOISA outweighs that in disclosure of the information. She therefore concludes that the Council was entitled to withhold the remaining information withheld under this exemption.

Section 38(1)(b) of FOISA

52. The Council applied the exemption in section 38(1)(b) of FOISA to the names of junior administrative staff in number of documents.
53. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and if its disclosure to a member of the public (otherwise than under FOISA) would contravene any of the data protection principles laid down in Schedule 1 to the DPA. The Council submitted that disclosure of the names of these staff members would breach the first data protection principle.
54. This exemption in section 38(1)(b) is an absolute exemption, so is not subject to the public interest test laid down by section 2(1)(b) of FOISA.

Is the information personal data?

55. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix).
56. In this case, the Commissioner is satisfied that the withheld information relates to living individuals who can be identified from that information. The individuals are named, in the context of their employment with the Council.
57. The Commissioner will consider whether disclosure of the junior staff names which are personal data would contravene one or more of the data protection principles.

Would disclosure breach the first data protection principle?

58. The Council submitted that disclosure of the information would breach the first data protection principle, which requires that personal data shall be processed 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. In the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA must also be met. The processing under consideration in this case is disclosure of the names into the public domain, in response to Mr Smith's information request. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA and is satisfied that the personal data under consideration here do not fall into any of the relevant categories. It is therefore not necessary to consider the conditions in Schedule 3 in this case.
59. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
60. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, she must then consider whether the disclosure of this personal data would be fair and lawful.
61. Condition 1 applies when the data subject (i.e. the individual(s) to whom the data relate) has consented to the release of the information. The Council explained that consent had not been obtained in this case. It also explained why consent was unlikely to be forthcoming.
62. In all the circumstances, the Commissioner accepts that condition 1 in Schedule 2 cannot be met here.

Condition 6

63. The Commissioner is of the view that condition 6 is the only other Schedule 2 condition which might be considered to apply in this case. Condition 6 allows personal data to be processed if that 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.
64. There are a number of tests which must be met before condition 6(1) can apply. These are:
- Is Mr Smith pursuing a legitimate interest?
 - If so, is the disclosure necessary to achieve those legitimate interests? In other words, is disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject?
 - Even if disclosure is necessary for the legitimate purposes of the applicant, would disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject?

Does Mr Smith have a legitimate interest?

65. There is no presumption in favour of disclosure of personal data under the general obligation laid down in FOISA. Accordingly, the legitimate interests of Mr Smith must outweigh the rights and freedoms or legitimate interests of the data subject before condition 6 will permit such disclosure. If the two are evenly balanced, the Commissioner must find that the Council was correct to refuse to disclose the personal data to Mr Smith.
66. There is no definition within the DPA of what constitutes a "legitimate interest", but the Commissioner takes the view that matters in which an individual properly has a legitimate interest should be distinguished from matters about which he or she is simply inquisitive. In her published guidance² on section 38 of FOISA, the Commissioner states:
- In some cases, the legitimate interest might be personal to the applicant - e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety.*
67. Mr Smith provided reasons why he believed these names should be disclosed, in the interests of transparency.
68. The Commissioner notes that the names in question are those of relatively junior administrative staff. Disclosure of their names would not illuminate the content of the documents significantly.
69. In the circumstances, the Commissioner can identify no legitimate interest which Mr Smith might have obtaining in the withheld names. She does not believe disclosure would add anything of significance to understanding the Council's position in relation to the application of the DPA to the Coal Report, or any other aspect of the Coal Report process.
70. The Commissioner therefore finds that none of the conditions in Schedule 2 to the DPA can be met in this case. This being the case, disclosure of the withheld personal data would be unlawful. In all the circumstances, it would be contrary to the first data protection principle, so the Council was entitled to withhold the personal data under section 38(1)(b) of FOISA.
71. In summary, therefore, the Commissioner requires the Council to disclose to Mr Smith documents 1, 2, 3 and 7, with the names of junior staff redacted.

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<http://www.itspublicknowledge.info/nmsruntime/logLink.aspx?linkURL=http%3a%2f%2fwww.itspublicknowledge.info%2fLaw%2fFOISA-EIRsGuidance%2fsection38%2fSection38.asp>

Decision

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

The Commissioner finds, on balance of probabilities, that the Council located all of the information falling within the scope of Mr Smith's request. She also finds that the Council was entitled to withhold information under sections 30(b)(ii), 36(1) and 38(1)(b) of FOISA.

However, the Commissioner finds that the Council was not entitled to withhold other information from Mr Smith under section 30(b)(ii), and that in doing so it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Council to disclose the information listed in paragraph 71 of this decision, by **27 March 2015**.

Appeal

Should either Mr Smith or East Ayrshire Council wish to appeal against this decision, they have the right to 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

10 February 2015

Appendix 1: 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.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

(b) would, or would be likely to, inhibit substantially-

...

(ii) the free and frank exchange of views for the purposes of deliberation;

...

36 Confidentiality

(1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...

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.
- ...
- (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;
- ...

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;
- ...

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 2 - Conditions relevant for purposes of the first principle: processing of any personal data

...

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.

...

Appendix 2: Information requested by Mr Smith

"I wish to know if [the DPA] has been applied to any part of [Coal Report] and if so what section(s) of [the DPA] were deployed, and for what purpose. [Part 1]

I also wish to receive copies of the undernoted:

- Any internal Council paper documents including handwritten notes, dealing with [the Coal Report] and making reference to [the DPA]. [Part 2]
- Any internal Council e-mails dealing with [the Coal Report] and making reference to [the DPA]. [Part 3]
- Any internal mobile text(s) on Council mobile telephones dealing with [the Coal Report] and making reference to [the DPA]. [Part 4]
- Any external – outgoing or incoming – paper documents, including handwritten notes, dealing with [the Coal Report] and making reference to [the DPA]. [Part 5]
- Any external – outgoing or incoming – e-mails dealing with [the Coal Report] and making reference to [the DPA]. [Part 6]
- Any external – outgoing or incoming – texts dealing with [the Coal Report] and making reference to [the DPA] [Part 7]
- Any paper communication including handwritten notes; e-mail communication; and text communication, between any Council official, or elected member, and the author of [the Coal Report] and making reference to [the DPA]. [Part 8]
- Any Council computer records pertaining to any of the above elements requested. [Part 9]"

