

Decision Notice



Decision 151/2012 Bal-Na-Gask (Holdings) Ltd and Strathclyde Partnership
for Transport

Information relating to Bal-Na-Gask (Holdings) Ltd

Reference No: 201102063
Decision Date: 5 September 2012

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Summary

Bal-Na-Gask (Holdings) Ltd (Bal-Na-Gask) asked Strathclyde Partnership for Transport (SPT) for information it held about the company. SPT disclosed some information, subject to the redaction of information considered to be personal data for which disclosure would breach the first data protection principle. SPT also withheld legal advice, and notified Bal-Na-Gask that it did not hold information which would address certain parts of its request.

Following an investigation, the Commissioner found that SPT did not hold certain of the requested information. While she agreed that SPT had been entitled to withhold most of the information from Bal-Na-Gask, she ordered SPT to disclose some personal data to Bal-Na-Gask.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 17(1) (Notice that information is not held); 36(1) (Confidentiality); 38(1)(b) and (2)(a)(i) and (b) and (5) (definitions of “the data protection principles”, “data subject” and “personal data”) (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of personal data); Schedules 1 (The data protection principles) (the first data protection principle) and 2 (Conditions relevant for the purposes of the first principle: processing of any personal data: condition 6)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Both Appendix 1 and Appendix 2 (described below) form part of this decision.

Background

1. On 24 March 2011, Bal-Na-Gask (a provider of transport services, trading as “Go Well Coaches”) wrote to SPT to request a range of information held by SPT and relating to Bal-Na-Gask. This request is replicated in full (subject to minor modifications) in Appendix 2 to this decision.

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2. SPT responded on 26 April 2011. In response to Part 1 of the request, SPT disclosed a number of documents, subject to the redaction of the information it found to be exempt from disclosure under section 38(1)(b) of FOISA, on the basis that it was personal data, disclosure of which would breach the first data protection principle.
3. SPT withheld certain information falling within the scope of point d) in Part 1 on the basis that it was exempt from disclosure under section 36(1) of FOISA. It explained that this was because it contained communications from its solicitor. With respect to notes taken at a meeting, also sought in point d), SPT notified Bal-Na-Gask that it did not hold any notes of that meeting .
4. In response to Part 2 of Bal-Na-Gask's request, SPT explained that, whilst it holds certain records relating to vehicle inspections, it does not hold the general and statistical information that had been requested in points a) to e). The information sought in point f) (concerning tendering prices and winning bidders in relation to various contracts) was provided in full.
5. SPT also disclosed a list of SPT vehicle inspections carried out in the North Lanarkshire Council area between 1 February 1998 and 31 August 2006, and the outcome of the inspection, where known. This disclosure was subject to the redaction of information considered exempt from disclosure under section 38(1)(b) of FOISA.
6. On 13 June 2011, Bal-Na-Gask wrote to SPT requesting a review of its decision. In particular, Bal-Na-Gask commented that the information that had been disclosed to it was "incomplete and censored". It identified a number of areas where it considered there to be gaps within the information supplied, and asked that an attachment to one of the emails provided be disclosed also. Bal-Na-Gask also challenged SPT's claim that it held no records of the meeting mentioned in point d) within Part 1 of its request.
7. Bal-Na-Gask also expressed dissatisfaction with SPT's decision to redact the name of the sender, recipient, or both from communications that had been disclosed, and commented that Bal-Na-Gask has a right to know who wrote, received and made any recommendations concerning the company.
8. Bal-Na-Gask also disagreed with SPT's view that the public interest lay in withholding the information withheld under section 36(1). It reiterated its request for copies of communications from SPT's solicitor relating to it, its directors or employees
9. SPT notified Bal-Na-Gask of the outcome of its review on 5 July 2011. It advised that further searches had been carried out and additional relevant information had been identified. (SPT commented that, over the 12 years covered by the request, SPT and its statutory predecessors were subject to a number of restructuring exercises resulting in changes to departments.) This additional information was disclosed, subject to the redaction of information considered to be exempt from disclosure under section 38(1)(b) of FOISA.

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10. SPT advised Bal-Na-Gask that the further searches it had carried out had not uncovered any notes of the meeting relevant to point d) within Part 1 of its request. It therefore upheld its previous decision that it did not hold any information which would address that part of Bal-Na-Gask's request. SPT also explained that these searches had failed to identify the missing email attachment.
11. With respect to the information which SPT had decided to withhold, SPT upheld its decision to redact information on the grounds that it was exempt from disclosure under section 38(1)(b) of FOISA.
12. SPT reconsidered its application of the public interest test in relation to the information to which it had applied section 36(1) of FOISA, and released certain of the documents that had previously been withheld. However, SPT continued to apply the exemption in section 36(1) to information contained in one document.
13. On 1 November 2011, Bal-Na-Gask wrote to the Commissioner, stating that it was dissatisfied with the outcome of SPT's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14. The application was validated by establishing that Bal-Na-Gask had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

15. On 16 November 2011, SPT was notified in writing that an application had been received from Bal-Na-Gask and was asked to provide the Commissioner with the information withheld from it. SPT responded with the information requested and the case was then allocated to an investigating officer.
16. The investigating officer subsequently contacted SPT on 8 December 2011, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions.
17. In particular, SPT was asked to justify its reliance on the exemptions in sections 36(1) and 38(1)(b) of FOISA. It was also asked to provide submissions setting out the nature and breadth of searches carried out to determine whether relevant information was held which would address the parts of Bal-Na-Gask's request where it had identified gaps in the information disclosed. SPT was also asked to provide a copy of any records retention policy it has in place which relates to information of the types requested.
18. Having undertaken an initial review of the information supplied to the Commissioner, the investigating officer also asked SPT to confirm whether it considered that some parts fell within the terms of the request under consideration in this decision.



19. SPT responded on 17 January 2012, providing submissions explaining its application of the exemptions in sections 38(1)(b) and 36(1) of FOISA to the withheld information, and a copy of the document “Management Framework for the Disposal/Retention of Information Held by the Partnership”. SPT also provided submissions explaining the searches it had carried out and why it believed it held no further information falling within the scope of Bal-Na-Gask’s request for information.
20. SPT also acknowledged that some of that information provided to the Commissioner actually fell outwith the terms of the request, since it comprised correspondence between SPT and Bal-Na-Gask, whereas the request under consideration sought internal correspondence and communications with North Lanarkshire Council (the Council).
21. During the course of the investigation, further submissions were sought and received from SPT to inform the Commissioner’s consideration of the application of the exemption in section 38(1)(b) and in relation to the searches undertaken to establish whether SPT held the statistical information sought in Part 2 of Bal-Na-Gask’s request.
22. During the investigation, SPT disclosed a complete copy of one document (35) that had previously been disclosed in redacted form. The Commissioner understands that this was received by Bal-Na-Gask on 28 February 2012. As a consequence, this will not be considered any further in this decision. SPT also disclosed additional information after it recognised that in two instances the Traffic Commissioner’s initials had been withheld in error. Only the remaining withheld information within these documents has been considered in what follows.
23. Bal-Na-Gask was invited to comment on the matters raised by this case, in particular in relation to its interests in accessing the personal data which had been withheld. Bal-Na-Gask was also invited to comment on why it considered that the public interest lay in disclosure of the information withheld under 36(1) of FOISA. Bal-Na-Gask’s comments were received on 2 March 2012.
24. The relevant submissions received from both SPT and Bal-Na-Gask will be considered fully in the Commissioner’s analysis and findings below.

Commissioner’s analysis and findings

25. 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 Bal-Na-Gask and SPT and is satisfied that no matter of relevance has been overlooked.



Matters to be considered

26. In its application to the Commissioner, Bal-Na-Gask indicated that it did not consider that its request had been considered in full, and expressed dissatisfaction with SPT's decision to withhold information on the basis that it was exempt from disclosure under section 36(1) and 38(1)(b) of FOISA. Each of these matters will be considered in full below.
27. However, when doing so, the Commissioner can only consider whether SPT correctly identified, and either disclosed or appropriately withheld, information falling within the terms of Bal-Na-Gask's request of 24 March 2011. Although Bal-Na-Gask's request for review included a document identifying a range of information that it maintained should have been disclosed in response to its request, the Commissioner has noted that some of the information listed did not actually fall within the terms of that request. As a result, the Commissioner is not able to consider whether SPT should have disclosed all of the types of information Bal-Na-Gask mentioned in its request for review. She has, however, considered all of the information that would, if held, fall within the scope of its request.
28. The Commissioner has also noted that SPT disclosed certain information to Bal-Na-Gask that went beyond the terms of its request. These documents (within the bundle B2 provided to her office) were disclosed subject to the redaction of personal data. Having concluded that these documents fall outwith the scope of Bal-Na-Gask's request, the Commissioner will not consider them, or SPT's decision to withhold certain content, in this decision.

Part 1 of request

29. Within Part 1 of its request Bal-Na-Gask requested (a) maintenance reports and communications with SPT's engineering department; (b) internal communications pertaining to it throughout the period it fulfilled SPT contracts and (c) internal communications pertaining to it after it had been suspended from fulfilling those contracts. It also requested (d) any notes taken at a specified meeting and communications between the attendees, and with the Council, after the meeting.
30. The Commissioner first considered whether SPT was correct to notify Bal –Na- Gask that it did not hold any minutes of the specified meeting, and whether it had otherwise located all of the information falling within the terms of Part 1 of Bal-Na-Gask's information request.

Did SPT locate all information sought within Part 1 of the request?

31. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
32. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.

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33. As mentioned earlier, SPT gave Bal-Na-Gask notice, in terms of section 17(1) of FOISA, that it did not hold any notes of the specified meeting sought in point d) within Part 1 of its request. In its request for review, Bal-Na-Gask asked SPT to undertake further searches as it considered that it should hold notes of this particular meeting.
34. Bal-Na-Gask also highlighted what it considered to be further gaps within the information supplied. This included an attachment entitled “vehinsp340.doc,” which was mentioned in one of the emails disclosed (document 6), but not provided.
35. As noted above, however, some of the suggested omissions were types of information that fell outwith the terms of Bal-Na-Gask’s original information request, for example, by seeking correspondence between SPT and Bal-Na-Gask, when the original request had focussed on SPT’s maintenance file, internal communications and correspondence with the Council.
36. Following its review, SPT identified some further information falling within Part 1 of Bal-Na-Gask’s information request, which was disclosed (subject to redaction of personal data). However, SPT confirmed its position that it held no notes of the relevant meeting, and stated that it did not (any longer) hold the document titled “vehinsp340.doc”.
37. The Commissioner has therefore considered whether, at the time it received Bal-Na-Gask’s request, SPT held any notes of the meeting, or the document “vehinsp340.doc”.
38. SPT was asked to explain the searches that it had undertaken in order to ascertain whether it held this information. In relation to the notes of the meeting, SPT was also asked whether searches were carried out of email folders, files and notebooks of staff who had attended the meeting.
39. SPT provided details of the searches undertaken; the staff who were involved in carrying out these searches; what information it routinely holds to meet its business needs and why it considered that the searches carried out would have identified any relevant information that was held. It also provided a copy of the document “Management Framework for the Disposal/Retention of Information Held by the Partnership”.
40. It explained that, as part of the search for all of the information requested, its Legal Services department contacted the Bus Contracts Manager, Senior Engineering Inspector, and Senior Legal Adviser asking for any relevant information held by their departments to be forwarded on.
41. SPT noted that the information searched by its Legal Services and Bus Operations included all paper files held on site, six boxes of files retrieved from archives, and all electronic files available. As a result of restructuring within SPT, it had been confirmed that any relevant information would have been transferred to Bus Operations, when associated staff moves also took place. The staff member who would have been expected to retain copies of any notes of the relevant meeting had confirmed that he had searched all of his paper and electronic records and confirmed that he had been unable to trace any such notes.



42. SPT also noted that further searches had been undertaken during the review, particularly with respect to the meeting. It highlighted that the document “vehinsp340.doc” had been discussed at meetings with two Engineering Inspectors, who had searched their records, but it had not been retrieved. Files previously checked were also reviewed again.
43. During the investigation, at the request of the investigating officer, a further search was undertaken by one of the parties for the communication to which the document “vehinsp340.doc” was attached. SPT confirmed that this search also failed to locate that document.
44. Having considered all of the submissions from SPT about the searches undertaken to identify information falling within the terms of Part 1 of Bal-Na-Gask’s information request, the Commissioner is satisfied that these were reasonable, and thorough, taking into consideration the range of locations where relevant information might be held.
45. Although it is clear that the document “vehinsp340.doc” was held at one time by SPT, the email to which it was attached was sent in May 2003. Therefore, almost eight years had passed by the time Bal-Na-Gask made the information request.
46. There is no evidence within the documents identified by SPT to suggest that notes were ever held in relation to the meeting specified in point d) of Part 1 of Bal-Na-Gask’s request. However, it might be expected that, at one time, one or more of the parties took some sort of informal notes during the meeting, even if no formal minute was prepared.
47. In both cases, having seen evidence of the thorough searches undertaken by SPT, the Commissioner considers that if these particular items existed and were still held, and recoverable by reasonable means, then those searches would have allowed them to be retrieved.
48. On the balance of probabilities, the Commissioner finds that neither item was held by SPT on the date it received Bal-Na-Gask’s information request. The Commissioner is satisfied that SPT located all of the information it held at that time, falling within the terms of Part 1 of that request.
49. The Commissioner is therefore satisfied that SPT was entitled to notify Bal-Na-Gask, in terms of section 17(1) of FOISA, that it did not hold any notes relating to the meeting specified in point d) of Part 1 of its request.
50. She is also satisfied that it was entitled to advise Bal-Na-Gask, following its review, that it did not hold the document ‘vehinsp340.doc’.

Section 38(1)(b) – Personal information

51. SPT has applied the exemption in section 38(1)(b) of FOISA to a range of information redacted from that disclosed in response to Part 1 of Bal-Na-Gask’s request.



52. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or, as appropriate, 38(2)(b), exempts information from disclosure if it is “personal data” as defined in section 1(1) of the DPA, and its disclosure would contravene one or more of the data protection principles set out in Schedule 1 to the DPA.
53. In order to rely on this exemption, therefore, SPT must show firstly that the information being withheld is personal data for the purposes of the DPA, and secondly that disclosure of the information into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles to be found in Schedule 1 to the DPA.

Is the information personal data?

54. 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 likely to come into the possession of, the data controller (the full definition is set out in the Appendix).
55. SPT has applied the exemption in section 38(1)(b) to names, job titles, contact details, signatures and initials of employees of SPT and the Council, and names of private individuals and an employee of the Office of the Traffic Commissioner. The Commissioner is satisfied that this information is the personal data of the individuals concerned, as it relates to them, and they can be identified from it.
56. However, the Commissioner notes that SPT has also withheld two dates (within documents 43 and 44) and she is unable to accept that these are personal data. She recognises that these are hand-written, but finds that that particular information neither relates to a living individual, or identifies any person.
57. Since she does not accept that this information is personal data, it cannot be exempt from disclosure in terms of section 38(1)(b) of FOISA. SPT has not applied any other exemption in FOISA to this information, and so she requires SPT to disclose the two dates to Bal-Na-Gask.
58. With respect to the remaining information, the Commissioner will go on to address the remaining tests regarding the application of section 38(1)(b).

Would disclosure of the personal data contravene the first data protection principle?

59. SPT argued that disclosure of the personal data would breach the first data protection principle. This requires that personal data be processed fairly and lawfully and, in particular, that it shall not be processed unless at least one of the conditions in Schedule 2 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. The processing under consideration in this case is disclosure of the personal data into the public domain in response to Bal-Na-Gask’s information request.



60. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and she is satisfied that the personal data under consideration in this case do not fall into any of the categories set out in that definition. Therefore, it is not necessary to consider the conditions in Schedule 3 to the DPA in this case.
61. 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 the schedules which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
62. 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. Where a Schedule 2 condition can be met, she will then go on to consider whether the disclosure of this personal data would otherwise be fair and lawful.

Can any conditions in schedule 2 be met?

63. The Commissioner considers that condition 6 would appear to be the only condition which might permit disclosure to Bal-Na-Gask in the circumstances of this case. Condition 6 allows personal data to be processed if 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 subjects (i.e. those individuals to whom the data relate).
64. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
- Does Bal-Na-Gask have a legitimate interest in obtaining the personal data?
 - If yes, is disclosure necessary to achieve these legitimate interests? In other words, is the disclosure proportionate as a means and fairly balanced as to its ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subjects?
 - Even if processing is necessary for Bal-Na-Gask's legitimate interests, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects?
65. There is no presumption in favour of the release of personal data under the general obligation laid down in FOISA. Accordingly, the legitimate interests of Bal-Na-Gask must outweigh the rights and freedoms or legitimate interests of the data subjects before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that SPT was correct to refuse to disclose the personal data to Bal-Na-Gask.



Does Bal-Na-Gask have a legitimate interest?

66. When invited to comment on its legitimate interest, Bal-Na-Gask provided some background information, explaining that it had previously entered into contracts with the Council, on whose behalf SPT acted as an agent, for the provision of school transport. It also explained that it had instigated legal proceedings in relation to the termination of those contracts, and it was in this context that it had requested information from SPT.
67. Bal-Na-Gask submitted that it has a legitimate interest in receiving full un-redacted copies of the documents, as the company has the right to know who wrote what about it and to whom the information was sent. Bal-Na-Gask also maintained that it has a legitimate interest in knowing who made decisions about it, especially the decision to terminate the contracts, which have impacted on the company and led to the current dispute with the Council.
68. SPT stated that it did not ask Bal-Na-Gask whether it has a legitimate interest in the information, although it considered its purpose to be clear from the terms of its correspondence. It went on to indicate that it did not consider that Bal-Na-Gask had a legitimate interest which would allow condition 6 in Schedule 2 to the DPA to be met in this case.
69. SPT maintained that the employees whose details have been redacted are relatively junior members of staff who were not party to the action between the Council and Bal-Na-Gask, and did not take any executive decisions in this regard. As such, it maintained that their personal data was not relevant. SPT submitted that the same principle applied also to the personal data of individuals who were not SPT employees.
70. Having considered the submissions from both Bal-Na-Gask and SPT, the Commissioner accepts that Bal-Na-Gask has a legitimate interest in seeking to understand the circumstances which led to the termination of the contracts that it had with the Council (managed through SPT) for the provision of school transport. The Commissioner also recognises that this understanding would be increased by knowing who wrote about the company to whom, and who made decisions about the company, especially regarding the termination of the contracts.
71. The Commissioner considers that this interest ties in with the general public interest in ensuring that SPT is accountable and transparent in its decision making in relation to the award and termination of contracts which involve spending money from the public purse.
72. The Commissioner has noted SPT's comments about the status of the individuals concerned, and its view that their identities are not relevant to Bal-Na-Gask's concerns. However, she does not accept that the observation that individuals concerned may be employed at relatively junior levels, or may not have executive responsibility for the decisions taken, prevents Bal-Na-Gask from having a legitimate interest in knowing who was involved in matters affecting it.
73. However, the roles and level of seniority of the data subjects will be relevant when considering the balance of their legitimate interests against those of Bal-Na-Gask below.



74. For these reasons, the Commissioner has concluded that Bal-Na-Gask has a legitimate interest in obtaining the personal data under consideration.

Is disclosure necessary to achieve those legitimate interests?

75. The Commissioner must now consider whether disclosure is necessary for those legitimate interests, and in doing so she must consider whether these interests might reasonably be met by any alternative means.
76. When considering this test, the Commissioner has focussed on the particular legitimate interest identified by Bal-Na-Gask, which is to know who wrote what about the company, to whom the information was sent, and who ultimately made decisions, especially the decision to terminate the contracts.
77. Having reviewed the personal data that has been withheld, the Commissioner considers that it would be necessary for much of the withheld personal data to be disclosed to Bal-Na-Gask to achieve these legitimate interests. However, she has distinguished between types of personal data which would and would not contribute to the achievement of its legitimate interests.
78. The Commissioner considers that in order to fully understand the matters of concern to it, Bal-Na-Gask needs to know who was involved in discussions, and their role within their respective organisations, and the full substance of what was communicated. Accordingly, she recognises that Bal-Na-Gask's legitimate interests cannot be met without the disclosure of much of the personal data under consideration in this case, including the names (and signatures and initials) and job titles of individuals concerned.
79. In some instances, the Commissioner has noted the only place where a person's name or the organisation they represent is set out within a communication is in an email address which has been partly or wholly withheld. In these cases, the Commissioner also considers that disclosure of the part of the email address that reveal their name, organisation, or both (depending on which parts are otherwise not clear) is necessary to meet Bal-Na-Gask's legitimate interests.
80. Other than this, however, the Commissioner considers that Bal-Na-Gask's legitimate interest can be met without disclosing individual contact details such as direct telephone numbers, or email addresses in cases where the individual's name and organisation is otherwise clear within the correspondence concerned.
81. Access to these contact details (other than where doing so would confirm the identity or the employer of the individual concerned) would not increase Bal-Na-Gask's understanding what was communicated to whom, by whom. In the circumstances, the Commissioner finds that the test of necessity is not met in relation to this information.
82. For this information, the Commissioner has consequently found that condition 6 cannot be met in this case and disclosure would breach the first data protection principle. The Commissioner therefore finds that information was correctly withheld on the basis that it is exempt from disclosure under section 38(1)(b) of FOISA.



83. With regard to the remaining withheld personal data, the Commissioner is not aware of any alternative means by which Bal-Na-Gask's legitimate interest can be met without disclosure, and she is satisfied that disclosure of the information is necessary for the purposes of the legitimate interests identified by Bal-Na-Gask.

Would disclosure cause unwarranted prejudice to the legitimate interests of the data subjects?

84. The Commissioner must next go on to consider whether disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the individuals, in relation to the personal data for which disclosure was found to be necessary, i.e.:

- names of individuals who are not employees of public authorities
- names, signatures, initials and job titles of employees of SPT, the Council and the Office of the Traffic Commissioner
- parts of email addresses which name the individual and/or the organisation they represent, where their name and/or organisation is not otherwise made clear within an email

85. As noted above, this test involves a balancing exercise between the legitimate interests of Bal-Na-Gask and those of the individuals in question. Only if the legitimate interests of Bal-Na-Gask outweigh those of the data subjects can the information be disclosed without breaching the first data protection principle.

86. In the Commissioner's briefing on section 38 of FOISA¹, she notes a number of factors which should be taken into account in carrying out the balancing exercise. These include:

- whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
- the potential harm or distress that may be caused by the disclosure
- whether the individual objected to the disclosure
- the reasonable expectations of the individuals as to whether the information should be disclosed.

87. As was highlighted previously, SPT maintained that the employees whose details have been redacted are relatively junior, not senior, members of staff who are not party to the action between the Council and Bal-Na-Gask and did not take any executive decisions in this regard. As such, it maintained that their personal data was not "relevant".

88. Bal-Na-Gask considers that it has a right to know who wrote what about the company; to whom the information was sent; and who made decisions – especially the one to terminate contracts. These people are, Bal-Na-Gask submitted, employees of a public body and are accountable for their actions. By providing the names of the people and departments Bal-Na-Gask contend that SPT would not be infringing their privacy.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.asp>

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Names of individuals who are not employees of public authorities

89. The Commissioner first considered the names of the individuals who are not employees of a public authority, noting that in one instance the individual concerned was the sender of a communication to SPT. In all other instances, the individuals are mentioned within communications within SPT.
90. When carrying out the balancing exercise, the Commissioner has noted that these individuals had no direct involvement or influence in decision-making regarding Bal-Na-Gask. As such, the disclosure of these names would make only a limited contribution to the pursuit of Bal-Na-Gask's legitimate interests.
91. With respect to the expectations of these individuals, the Commissioner recognises that those mentioned within (but not party to) SPT's communication may not be aware that their names are included in those documents, and so would have no expectation that their names would be disclosed in this context. The other person had written to SPT in a professional capacity, but the Commissioner accepts also that they would have limited expectation that their name would be disclosed in response to a freedom of information request.
92. On balance, the Commissioner does not agree that Bal-Na-Gask's legitimate interest in accessing this information outweighs the prejudice that would be caused to this group of data subjects' rights, freedoms and legitimate interests. She accordingly considers that such prejudice would be unwarranted and that condition 6 is not met in relation to the names of private individuals.

Employees of SPT, the Council and the Office of the Traffic Commissioner

93. Turning to the employees of SPT, the Council and the Office of the Traffic Commissioner, the Commissioner has noted Bal-Na-Gask's comments, and recognises that these data subjects work for public authorities and so would have greater expectation of being held publicly accountable for their actions than would private individuals or those employed outwith the public sector. She has also noted that the information under consideration relates solely to the actions of the employees in their professional roles and so its disclosure would not disclose anything about their private and personal lives.
94. In relation to signatures and hand written initials, the Commissioner accepts that none of these employees would expect this information to be publicly disclosed in response to a request made under FOISA. In reaching this conclusion, the Commissioner has been mindful of decision notice FS50296349² from the Information Commissioner (who is responsible for enforcing the DPA across the UK), in which he accepted that release of signatures would be unfair as it could leave those individuals vulnerable to identity theft. The Commissioner believes that similar considerations apply in relation to the signatures and handwritten initials withheld in this case.

² www.ico.gov.uk/~media/documents/.../2011/fs_50296349.ashx



95. On balance, the Commissioner finds that Bal-Na-Gask's legitimate interest in receiving these signatures and hand-written initials do not outweigh the prejudice that would be caused the data subjects' rights, freedoms and legitimate interests. The Commissioner therefore finds that condition 6 is not met in relation to this information.
96. With respect to job titles and type-written initials, SPT's submissions have indicated that the staff concerned are relatively junior members of staff who would not expect to be publicly identified in the context of the information under consideration. Having reviewed the withheld information, the Commissioner acknowledges that many of the employees concerned hold (or held at the time when the information was created) relatively junior positions within their organisations. However, some of the redacted information relates to staff holding (or who held) senior positions, or making decisions regarding Bal-Na-Gask within SPT and the Council.
97. The Commissioner's guidance on section 38 of FOISA makes clear that the relative seniority of employees will be a relevant consideration when assessing the balancing exercise, noting, on page 13:
- "The seniority of their position and whether they have a public facing role will also be relevant. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should also generally be disclosed unless it also reveals details of the private lives of other people, such as their family."
98. With respect to the withheld job titles, the Commissioner does not consider that disclosure of this information (considered in isolation) would affect the privacy of the individuals concerned in a significant way. For junior staff, she recognises that a job title might be held by a range of individuals, and so disclosure of a job title alone might not simply allow the unique identification of the person concerned. For more senior employees, a job title is more likely to be associated with a particular individual and so identify them uniquely.
99. In either case, the Commissioner considers that disclosure of the job titles that have been withheld in this case would contribute to Bal-Na-Gask's understanding of who said what, to whom, by indicating the status of individuals involved in matters and decisions relating to it.
100. The Commissioner considers that public authority employees, especially those holding senior positions, would not reasonably expect that their job titles would be withheld in response to a FOISA request, particularly where disclosure relates to their role or to actions or decisions for which their organisation is accountable. Nonetheless, she recognises that less senior employees might have less expectation that their job titles would be disclosed, particularly in the light of her guidance.



101. On balance, the Commissioner concludes that it would not cause unwarranted prejudice to the rights and freedoms, or legitimate interests of any of the staff concerned for their job titles to be released in response to Bal-Na-Gask's information request. Having balanced the legitimate interests of Bal-Na-Gask against those of the data subjects, taking into consideration the expectations of those individuals and the very limited intrusion into their privacy that would be caused by disclosure, the Commissioner is satisfied that, Bal-Na-Gask's legitimate interests outweigh those rights and freedoms or legitimate interests of the data subjects.
102. The Commissioner is therefore satisfied that condition 6 can be met in relation to all of the job titles that have been withheld in this case.
103. For similar reasons, she is also satisfied for that condition 6 can be met in relation to any instance where disclosure of the part of an email revealing the organisation a person represents was found to be necessary for the purposes of Bal-na-Gask's legitimate interests. Disclosure of information revealing which organisation a person represents in this context will assist Bal-Na-Gask significantly in understanding the status of the individuals involved in communications, while disclosure of this information would have a negligible impact on the privacy of the individual concerned. Having undertaken the balancing exercise, the Commissioner concludes that for this information also, the legitimate interests of Bal-Na-Gask outweigh those of the employees concerned.
104. The Commissioner finally considered the names and initials of individual staff, along with the parts of email addresses that indicate a sender or recipient's name (which remains under consideration only where the person's name is not otherwise contained within a message).
105. With respect to this information, the Commissioner has reached different conclusions depending on the seniority of the staff concerned. She considers that the data subjects who are employed in relatively junior posts, or who had no significant involvement in the decisions concerning Bal-Na-Gask, within SPT, the Council, and the Office of the Traffic Commissioner would hold only limited expectations that they would be publicly named in relation to the work they had undertaken in relation to matters involving Bal-Na-Gask.
106. She recognises that the responsibility and accountability for actions and decisions relating to the contracts between Bal-Na-Gask and Council rested with staff at a senior level within SPT and the Council. She considers that it could be both intrusive and distressing for more junior members of staff if they were publicly named in relation to matters that are the subject of an ongoing legal action.
107. While she recognises that Bal-Na-Gask's legitimate interests cannot be entirely fulfilled without disclosure of the names of the individuals employed in junior positions, or those not involved in decision making concerning Bal-Na-Gask, she considers that doing so would constitute an unwarranted intrusion. Having balanced the competing legitimate interests, she finds that those of Bal-Na-Gask do not outweigh the prejudice that would be caused by disclosure to this group of data subjects' rights, freedoms and legitimate interests.



108. With respect to the names of more senior employees (of SPT and the Council), the Commissioner considers that they could only reasonably have a greater expectation than their junior colleagues that their identity would be disclosed in relation to a request of the type made by Bal-Na-Gask. She considers that the senior staff hold positions in relation to which they would expect to be held accountable, to a degree publicly, through disclosures under FOISA, for their actions and decisions. Furthermore, these individuals hold (or held) positions of influence and responsibility with respect to the decisions regarding contracts with Bal-Na-Gask. While she is aware that some of these individuals have left their posts since the time of the communications under consideration, the Commissioner does not consider this fact would have a significant bearing on their expectations regarding their identification with work undertaken in their former roles.
109. The Commissioner accordingly considers that the disclosure of their identity would contribute more to Bal-Na-Gask's legitimate interests than would disclosing the identity of more junior staff, and that the senior members of staff would have fewer expectations of privacy. Since the information under consideration relates entirely to the professional activities of the individuals concerned, she considers that any intrusion into the privacy of the individuals caused by disclosure would be limited, and that, given their seniority, disclosure would be unlikely to cause distress.
110. For the names (the relevant parts of email addresses under consideration) and initials of senior Council and SPT employees, the Commissioner has concluded that disclosure would not cause unwarranted prejudice to the rights, freedoms or legitimate interests of the data subjects. On balance, she concludes that the legitimate interests of Bal-Na-Gask outweigh those legitimate interests of the staff concerned, and so condition 6 can be met in relation to these names.

Conclusions regarding section 38(1)(b)

111. In summary, the Commissioner has concluded that condition 6 in schedule 2 (to the DPA) is not met in relation to the withheld signatures and handwritten initials and the names of private individuals and those of junior members of staff employed by SPT, the Council and the Office of the Traffic Commissioner (including any cases where disclosure of these individual' names in the context of their email address was considered necessary for the purposes of Bal-Na-Gask's legitimate interests).
112. As no schedule 2 condition can be met, that personal data cannot be disclosed without contravening the first data protection principle. The Commissioner therefore concludes that the personal data listed in paragraph 110 was properly withheld under the exemption in section 38(1)(b) of FOISA.
113. However, the Commissioner has concluded that condition 6 in schedule 2 (to the DPA) has been met in relation to the withheld job titles, parts of email address indicating the organisation a person represents (where that is not otherwise revealed in the content of the email), and names and initials of senior employees of SPT and the Council (including where this has been considered in the context of a withheld email address).



114. Having reached this conclusion, the Commissioner has gone on to consider whether (as required by the first data protection principle) disclosure would also be fair and lawful. For the reasons already outlined in relation to condition 6, she finds that disclosure would be fair. SPT has not put forward any arguments as to why the disclosure of the information would be unlawful, other than in terms of a breach of the data protection principles. In the circumstances, the Commissioner can identify no reason why disclosure should be considered unlawful.
115. As the Commissioner has concluded that disclosure of the information in paragraph 113 would not be unfair or unlawful and a schedule 2 condition can be met, she finds that disclosure would not breach the first data protection principle. Consequently, the Commissioner has concluded that SPT misapplied the exemption in section 38(1)(b) of FOISA to the information detailed in paragraph 113.
116. As noted in paragraph 56 above, she has also concluded the exemption in section 38(1)(b) was wrongly applied to the two dates that were incorrectly identified by SPT as personal data.

Section 36(1) - Confidentiality

117. SPT has applied the exemption in section 36(1) of FOISA to information contained in one document (numbered 7a), falling within the scope of point d) of Part one of Bal-Na-Gask's request. This had asked for (inter alia) communications with the Legal and Operations departments after a specified meeting.
118. Section 36(1) of FOISA exempts from disclosure information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. Among the types of communications which fall into this category are those which are subject to legal professional privilege. One aspect of legal professional privilege is litigation privilege, which covers documents created in contemplation of litigation (also known as communications *post litem motam*).
119. Communications *post litem motam* are granted confidentiality in order to ensure that any person or organisation involved in or contemplating a court action can prepare their case as fully as possible, without the risk that their opponents or prospective opponents will gain access to the material generated by their preparations. The privilege covers communications at the stage when litigation is pending or in contemplation. Whether a particular document was prepared in contemplation of litigation will be a question of fact, the key question generally being whether litigation was actually in contemplation at a particular time.
120. For information to be covered by litigation privilege, it must have been created for the "dominant purpose" of obtaining legal advice on litigation or for lawyers to use in preparing their case. This is a question of fact in each case. Information created for another purpose before the litigation was anticipated may sometimes still be covered if brought together for the purpose of the litigation. This may be the case if pre-existing documents are relevant to the case and the lawyer has exercised skill and judgement in selecting and compiling them, particularly if the selection of documents reveals the trend of the advice on the case. However, pre-existing documents will not become privileged just by being passed to a lawyer.



121. Litigation privilege will apply to documents created by the party to the potential litigation, expert reports prepared on their behalf and legal advice given in relation to potential litigation: the communications need not involve a lawyer to qualify. The litigation contemplated need never actually happen for the privilege to apply, and it will continue to apply after any litigation has been concluded.
122. By way of background, SPT explained that Strathclyde Passenger Transport Executive (SPTe), SPT's statutory predecessor, acted as an agent for the Council for the purpose of advertising, evaluating and managing school transport contracts on its behalf. SPTe awarded contracts to Bal-Na-Gask on behalf of the Council from 1998 to 2006. These contracts were terminated by the Council in September 2006, and an action was raised by Bal-Na-Gask against the Council around March 2011 in relation to the termination of the contracts.
123. SPT argued that the information in document 7a is subject to legal professional privilege as it relates to the defence of litigation that is pending against the Council by Bal-Na-Gask. SPT explained that the information was prepared by solicitors acting for the Council and SPT in relation to these proceedings.
124. Having considered the submissions from SPT, the Commissioner accepts the information contained in document 7a was communicated in contemplation of litigation (after the point where the relevant action was raised), regarding the termination of contracts between Bal-Na-Gask and the Council.
125. However, before the Commissioner can accept that the information is exempt under section 36(1) of FOISA, she must also consider whether it retained the quality of confidence at the time SPT dealt with Bal-Na-Gask's information request and its request for review. Given that none of the information in this document has been shared more widely than between solicitors acting for the Council and SPT, the Commissioner accepts that in the circumstances the information in document 7a did retain the quality of confidence at the time that SPT dealt with Bal-Na-Gask's information request and requirement for review.
126. The Commissioner therefore finds that the exemption in section 36(1) of FOISA was correctly applied to the information within document 7a.

Public interest test

127. The exemption in section 36(1) is a qualified exemption, which means that it is subject to the public interest test set out in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If the two are evenly balanced, the presumption should always be in favour of disclosure.



128. As has been noted in a number of previous decisions, the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications on administration of justice grounds. Many of the arguments in favour of maintaining confidentiality of communications were discussed in a House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England (2004) UKHL 48*, and the Commissioner will apply the same reasoning to communications attracting legal professional privilege generally, including cases such as this which concerns litigation privilege.
129. SPT argued that no specific public interest would be served in the disclosure of the withheld information and it maintained that there is a strong public interest in allowing parties to legal proceedings to be able to prepare for the anticipated litigation, without it becoming public knowledge.
130. In its application, Bal-Na-Gask also highlighted its ongoing action against the Council and submitted that the information being withheld by SPT could have a significant bearing on the legal case. It expressed the view that withholding this information may have an adverse effect on the outcome of the proceedings.
131. In its submissions, Bal-Na-Gask indicated that the public interest would, in its view, be better served if there is transparency in any public body. It suggested that to “hide the information away from public view” can only lead to the belief that SPT is more interested in preserving its own interests and those of the Councils it acts for.
132. The Commissioner has considered the public interest arguments put forward by both parties, and she accepts that there is a general public interest in authorities being open to scrutiny and being accountable for their actions. She considers that this extends to knowing the nature of the communication under consideration, and acknowledges that its disclosure would contribute to transparency and accountability in this context. However, on balance, the Commissioner has concluded in this case that there is a greater public interest in allowing the Council to prepare fully for litigation, without that preparation being open to examination by the other party (in this case Bal-Na-Gask).
133. The Commissioner is therefore satisfied, in all the circumstances of this case, that the public interest in disclosure of the information in document 7a is outweighed by the public interest in maintaining the exemption in section 36(1) of FOISA, and so SPT was entitled to withhold the information under that exemption.

Part 2 – Does SPT hold the information sought in points a) – e)?

134. When responding to Part 2 of the information request, SPT notified Bal-Na-Gask that it did not hold the information sought in points a) – e). Points a) – d) sought a range of statistical information relating to the outcomes of maintenance inspections on vehicles operating on contracts issued by SPT. Point e) requested details of operators who have returned to contracts following a period of suspension or notice of termination. (The information sought in point f) was provided in full to Bal-Na-Gask.)

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135. As noted previously, in terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
136. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
137. In order to determine whether SPT dealt with points a) – e) of Part 2 of Bal-Na-Gask's request in accordance with Part 1 of FOISA, the Commissioner must be satisfied as to whether, at the time it received Bal-Na-Gask's request, SPT held any recorded information which would fall within the scope of these parts of its request.
138. The general searches undertaken by SPT when responding to Bal-Na-Gask's request and request for review are summarised in paragraphs 39 - 43 above. With respect to the points under consideration here, SPT acknowledged that it holds information on individual operators and their vehicles, but it does not compile or hold statistical information of the type requested, as it has no operational requirement for it.
139. However, in seeking to be of assistance to Bal-Na-Gask, SPT advised that it provided Bal-Na-Gask with information listing vehicle inspections (grouped by operator) between 1 February 1998 and 31 August 2006, and the outcome of these inspections (where known).
140. SPT explained that it did not carry out any searches for this information as it had established from speaking to relevant staff that it did not have any operational requirement to hold information of the type requested.
141. During the investigation, the investigating officer identified reports prepared by the Council's Director of Education which appeared to contain information of the nature requested by Bal-Na-Gask (relating to the total number of vehicle inspections, the number of immediate prohibitions, delayed prohibitions and defect notices from 1 February 1998 to 31 August 2006). This information was highlighted to SPT and it was invited to comment as to whether it held further pertinent information. SPT was also asked to carry out searches in relation to points (a) to (e) of Part 2 of the request, and to confirm whether the information could be collated from records relating to specific inspections and associated events.
142. In response, SPT advised that it periodically supplies various Councils with a summary of its activities relating to school transport performance monitoring within the Council area, but that this only provides an overview and does not include any statistical analysis. SPT also explained that the relevant information included in the Council reports was included within the information that was disclosed to Bal-Na-Gask. SPT advised that Bal-Na-Gask had also been supplied with copies of all Vehicle Engineering Inspection Reports and all Service Compliance/Customer Care reports that SPT hold relating to it.

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143. SPT maintained that it does not separate, record or analyse information on numbers of prohibitions, engineering defects by type, appeals, or operators who have returned to contracts after suspension. However, it advised that it had prepared the document disclosed to Bal-Na-Gask, being the only information it could produce that related to this part of the request, in an effort to be of assistance.
144. In responding to the investigating officer's query as to whether information could be collated from records relating to specific events, SPT noted that it does not hold complete records for the period 1998 to 2006 and therefore cannot provide this information. SPT also reaffirmed that it does not have a requirement for information in the format requested by Bal-Na-Gask.
145. Having taken into account the above submissions from SPT, together with the specific content of these parts of Bal-Na-Gask's request, the Commissioner accepts, on the balance of probabilities, that SPT does not (and did not at the time of Bal-Na-Gask's request) hold information which would address, in full, these parts of Bal-Na-Gask's request.
146. The Commissioner acknowledges that where certain information was held by SPT which would address part of these parts of Bal-Na-Gask's request, SPT has collated this and provided it to Bal-Na-Gask.
147. The Commissioner is therefore satisfied that SPT was entitled to advise Bal-Na-Gask, in terms of section 17(1) of FOISA, that it did not hold information which would fully address points a) – e) within Part 2 of its request.

DECISION

The Commissioner finds that Strathclyde Partnership for Transport (SPT) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Bal-Na-Gask (Holdings) Ltd (Bal-Na-Gask).

The Commissioner finds SPT was entitled to apply the exemption in section 36(1) of FOISA to the information contained in document 7a and to notify Bal-Na-Gask, in terms of section 17(1) of FOISA that it did not hold any minutes of the meeting mentioned in Part 1, point d), or the information sought in Part 2, points a) – e) of Bal-Na-Gask's information request. The Commissioner also finds that SPT correctly applied the exemption in section 38(1)(b) of FOISA to the information detailed in paragraph 110 above.

However, the Commissioner finds that the exemption in section 38(1)(b) was incorrectly applied to the information detailed in paragraphs 56 and 113. The Commissioner finds that the SPT breached Part 1 (in particular section 1(1)) of FOISA by withholding this information.

The Commissioner therefore requires SPT to disclose the information detailed in paragraphs 56 and 113 by 22 October 2012.

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Appeal

Should either Bal-Na-Gask (Holdings) Ltd or Strathclyde Partnership for Transport 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.

Margaret Keyse
Head of Enforcement
5 September 2012



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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...
- (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.



17 Notice that information is not held

(1) Where-

(a) a Scottish public authority receives a request which would require it either-

(i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

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;



- (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 – Bal-Na-Gask’s information request

[Note – Bal-Na-Gask’s request included several points, set out in two groups and listed by letters a, b, c etc. within each group. Within this decision, the first group of requests labelled a – d below are referred to as Part 1 of the request. The second group labelled a – f are referred to as Part 2]

“We are writing to make a formal request for copies of information and various records held by SPT on Bal-Na-Gask (Holdings) Ltd.

We require copies of the following:-

- a) Full maintenance file, internal reports, transcripts, memos and any other communication within the engineering department – including copies of attachments to file folder.
- b) All communications between the various SPT departments, especially Engineering, Legal and Operations, pertaining to Bal-Na-Gask (Holdings) Ltd throughout the period they fulfilled SPT contracts.
- c) All communications between the various SPT departments, especially Engineering, Legal and Operations, after the suspension from and also the subsequent termination (in August/September 2005) by SPT, of all contracts operated by Bal-Na-Gask (Holdings) Ltd.
- d) Any notes taken at [a specified meeting] along with any notes, emails, discussions and any other form of communication between the various parties. This includes communications with the Legal and Operations departments and North Lanarkshire Council, after the meeting and up to and after the termination of the contracts.

We would also require the following general and statistical information which may be limited solely to the North Lanarkshire Council area.

- a) Details of any and all records and statistics held on the results of maintenance inspections and spot checks by SPT on vehicles provided by all operators on contracts issued by SPT over the same period as above – detailing the numbers and percentages of vehicles being issued with –
 - i) Immediate “prohibitions”
 - ii) Delayed “prohibitions”
 - iii) Advisory items
 - iv) No defects found
- b) Breakdown of the types of faults found for example brakes, steering and suspension.
- c) Details of number and percentages of appeals against the issuing of-
 - i) Immediate prohibitions
 - ii) Delayed prohibitions



- iii) Advisory items
- d) Details of the success of the appeals against –
 - i) Immediate prohibitions
 - ii) Delayed prohibitions
 - iii) Advisory items
- e) Details of operators who have returned to the same or other contract(s) following a period of suspension or after a notice of termination.
- f) Details of the tender prices received and names of successful bidders for various contracts as detailed on attached sheet (see below).

If any of the information can be accessed directly by us please let us know where and how this can be done.”

[Content of attached sheet]

TENDER DETAILS REQUESTED

COMMENCEMENT DATE

TENDER NOS:

18/01/07	4030F1, 4503C1, 4030F1 & 4503C1 LINKED
15/07/07	4107J, 0135C, 0134D, 4382
20/10/07	4362A, 4364A
10/01/08	4362B, 4364B, 4366B
13/07/08	4030G1, 4503D1, 4030G1 & 4503D1 LINKED
05/01/09	4470, 4615G
12/07/09	VB008C, VB045C, VB102, 4491G
19/10/09	VC001E, VC002D, VC005E
30/11/09	4119