

Decision Notice



Decision 164/2013 Mr Julian Calvert and Argyll and Bute Council

Kilcreggan Pier, Pontoons and Ferry Services

Reference No: 201202231

Decision Date: 8 August 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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Summary

On 10 July 2012, Mr Calvert asked Argyll and Bute Council (the Council) to provide him with information for the last 12 months relating to Kilcreggan ferry service, pier and pontoons. Following a review, the Council disclosed some information, but relied on exemptions in FOISA for withholding other information.

Following an investigation, the Commissioner found that the Council was entitled to withhold the information from Mr Calvert, although it should have notified him that it was withholding certain information from him under section 25(1) of FOISA on the basis that it was otherwise accessible to him.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) and (2)(a), (c) and (e)(ii) (Effect of exemptions); 16(1) (Refusal of request); 25(1) (Information otherwise accessible); 36(2) (Confidentiality); 38(1)(b), 2(a)(i), 2(b) and (5) (definitions of “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, Part 1: the principles) (the first data protection principle) and 2 (Conditions relevant for 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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 10 July 2012, Mr Calvert wrote to the Council to ask for the following information;
 - a) copies of all email correspondence and records of meetings between Council officers (and Strathclyde Partnership for Transport (SPT) if applicable) in the last 12 months, referring to Kilcreggan ferry services;



- b) copies of all email correspondence and records of meetings between Council officers (and SPT if applicable) in the last 12 months, referring to Kilcreggan pier and barriers or other means of marshalling passengers;
 - c) copies of all email correspondence and records of meetings between Council officers (and SPT, if applicable) in the last 12 months, referring to pontoons at Kilcreggan;
 - d) full details, including costs, of any feasibility studies conducted concerning pontoons at Kilcreggan in the last 12 months.
2. The Council responded on 17 August 2012, confirming that it held information falling within the scope of Mr Calvert's request. The Council estimated the cost of complying with Mr Calvert's request to exceed £600, and therefore gave notice (in accordance with section 12(1) of FOISA) that it would not be complying with the request.
 3. On 13 September 2012, Mr Calvert wrote to the Council requesting a review of its decision. He considered the Council's cost estimate to be unreasonable and believed it should have provided him with advice and assistance on how he could rephrase his request.
 4. On 9 October 2012, the Council acknowledged Mr Calvert's request for review and invited him to consider refining the terms of his request.
 5. In an email of 10 October 2012, Mr Calvert told the Council that he was interested in the information covered by all four parts of his request. He asked the Council to treat them as four separate information requests. He noted that the Council had already released information falling within the scope of part b) of his request to someone else.
 6. On 15 October 2012, the Council provided Mr Calvert with the information falling within part b) of his request.
 7. The Council notified Mr Calvert of the outcome of its review on 26 October 2012. It disclosed information which fell within scope of parts a) and c) of his request, subject to what it considered to be appropriate redactions. The Council explained that it had already provided him with information falling within scope of part b) of his request (see above).
 8. In relation to part d) of his request, the Council informed Mr Calvert that this information formed part of a larger study, the report on which had yet to be finalised. It withheld this information under section 30(c) of FOISA (prejudice to effective conduct of public affairs), explaining in addition that it expected the final report to be published within 12 weeks and therefore was applying section 27(1) (information intended for future publication) of FOISA.
 9. On 31 October 2012, Mr Calvert wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 10. The application was validated by establishing that Mr Calvert made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.



Investigation

11. On 14 November 2012, the Council was notified in writing that an application had been received from Mr Calvert and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
12. The investigating officer later contacted the Council to give it an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. In particular, the Council was asked to justify its reliance on the exemptions applied in the schedule of documents accompanying the withheld information (which included additional exemptions not cited to Mr Calvert earlier).
13. Information falling within scope of parts a) and d) of Mr Calvert's request was released during the investigation. The information released during the investigation will not be considered further in this decision.
14. As a consequence of information being disclosed during the investigation, the Council explained that it was now only seeking to withhold information under the exemptions in sections 25(1) and 36(2) of FOISA only. It provided submissions on these.
15. Later in the investigation, it identified further information falling within the scope of part a) of Mr Calvert's request, which it sought to withhold under section 38(1)(b) of FOISA. Relevant submissions were obtained from the Council.
16. During the investigation, Mr Calvert informed the investigating officer that he did not require the Commissioner to consider the information redacted from what was disclosed to him, in response to his request for review, on 26 October 2012. He also provided submissions relating to the Council's application of sections 36(2) and 38(1)(b) of FOISA.

Commissioner's analysis and findings

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



Information not claimed to be exempt

18. The Council submitted that certain of the information it had identified did not fall within the scope of Mr Calvert's request. This was because the information was created after the request was received. The Commissioner has considered this information and accepts, for this reason, that it does not fall within the scope of the request. Consequently, she will not consider this information any further. She accepts that the same would apply to any information which would, but for the date of its creation, have been caught by the searches described at the end of this decision.

Section 25(1) – Information otherwise accessible

19. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute: in other words, it is not subject to the public interest test set out in section 2(1)(b) of FOISA. Accordingly, where information is otherwise reasonably available to the applicant, there is no need for a public authority to provide an alternative right of access to it through FOISA.
20. Where an authority is seeking to argue that requested information is otherwise accessible to the applicant, the onus is on it to demonstrate that the information is reasonably obtainable by the applicant otherwise than by making a request under FOISA.
21. In its submissions, the Council explained that, as Mr Calvert was included on the email distribution list for these documents, the information is already available to him.
22. Having considered the withheld information, the Commissioner is satisfied that Mr Calvert was a recipient of all of it. The Commissioner therefore finds that this information could reasonably be obtained by Mr Calvert, other than by requesting it under section 1(1) of FOISA. Consequently, the Commissioner upholds the Council's application of section 25(1) of FOISA to this information.
23. However, in responding to Mr Calvert's request and requirement for review, the Council did not notify him that it was relying on section 25(1) of FOISA for any relevant information it held.
24. Furthermore, the Council did not inform Mr Calvert that it held this information, or explain why section 25(1) applied. In its submissions to the Commissioner on this matter, the Council explained that it had not considered it necessary to communicate with Mr Calvert in relation to this information, given that he had it already.
25. While there is some logic to the Council's submission, the requirements of section 16(1) of FOISA (set out in the Appendix) are nevertheless clear. The Council did not comply with these in relation to this information.



Section 36(2) – Confidentiality

26. The exemption (which is set out in full in the Appendix) contains a two-stage test, both parts of which must be fulfilled before it can be relied upon. The first is that the information must have been obtained by a Scottish public authority from another person. “Person” is defined widely and means another individual, another Scottish public authority or any other legal entity, such as a company or partnership.

Was the information obtained by a Scottish public authority from another person?

27. In most cases, it is relatively simple to determine whether the information has been obtained from a third party. In this case, it is evident from reading the document containing the information withheld under this exemption that it was provided to the Council by another legal entity.

Would disclosure of the information constitute an actionable breach of confidence?

28. The second part of the test is that disclosure of the information by the public authority must constitute a breach of confidence, actionable by either the person who gave the information to the public authority or by any other person. The Commissioner takes the view that “actionable” means that the basic requirements for a successful action must appear to be fulfilled.
29. Generally, there are considered to be three main requirements which must be met before a claim for breach of confidence can be established to satisfy the second element of this test. These are:
- (a) the information must have the necessary quality of confidence about it;
 - (ii) the public authority must have received the information in circumstances which imposed an obligation on it to maintain confidentiality and
 - (iii) unauthorised disclosure must be to the detriment of the person who communicated the information.

Necessary quality of confidence

30. For information to have “the necessary quality of confidence”, it must be information which is not a matter of public knowledge. The information must have the basic attribute of inaccessibility. The Commissioner is satisfied that this is the case here, as it is clear that this information has only been seen by the author and intended recipients and has not been made available in the public domain.

Obligation to maintain confidentiality

31. An obligation to maintain confidentiality can be either “express” or “implied”. An implied obligation of confidentiality can arise as a result of the relationship between the parties or the particular circumstances in which information was obtained.



32. The Council claimed an implied obligation of confidentiality on the basis that the information was passed to it because of its role as a partner to other bodies involved in matters relating to the Kilcreggan ferry service. The Council also argued that this correspondence was between a firm of solicitors and another party in relation to a matter confidential to them. In the circumstances, the Commissioner accepts that the information was obtained subject to an implied obligation of confidentiality.

Unauthorised disclosure which would cause detriment

33. The third part of the test is that unauthorised disclosure of the information must be to the detriment of the person(s) who communicated it, or any other person. The damage need not be substantial, and indeed could follow from the mere fact of unauthorised use or disclosure in breach of confidence.
34. As indicated above, the Council indicated that the matter referred to in the withheld information was private. It submitted that both parties would have the right to raise an action for breach of confidence against it, if the information was released into the public domain.
35. Although the Council did not receive this information directly from the solicitor who created it, it sought their permission for disclosure. The Council confirmed that the solicitor had refused consent on the basis that it was confidential correspondence.
36. The Commissioner is satisfied, on the basis of the submissions received from the Council, that there would be relevant detriment in the event of disclosure.
37. The Commissioner is therefore satisfied that all the tests for an actionable breach of confidence above are met in relation to the withheld information in this document.

Public interest defence

38. The exemption in section 36(2) of FOISA is an absolute exemption in terms of section 2(2) of FOISA, and so is not subject to the public interest test in section 2(1)(b). Nonetheless, the law of confidence recognises that in certain circumstances the strong public interest in maintaining confidences may be outweighed by the public interest in disclosure of the information. This is generally known as the public interest defence. In deciding whether to enforce an obligation of confidentiality, the courts are required to balance these competing interests, but there is no presumption in favour of disclosure.
39. The courts have identified a relevant public interest defence in cases where withholding information would cover up serious wrong doing, and where it would lead to the public being misled on, or would unjustifiably inhibit public scrutiny of, a matter of genuine public concern.
40. Mr Calvert identified serious safety concerns surrounding the new ferry service. He also referred to the effects of the pier ceasing to be manned, on the pier itself and the wider community.
41. The Council could identify no public interest defence available to it which would allow the release of this information.



42. While it is clear there is a significant public interest in the way in which the Kilcreggan ferry is being operated, the Commissioner does not consider that this public interest would be met in any way by disclosure of this withheld information. Therefore, the Commissioner has concluded that no public interest defence would apply and accepts that the Council was correct to withhold this information under section 36(2) of FOISA.

Section 38 – Personal information

43. The Council has applied the exemption in section 38(1)(b) to information falling within the scope of part a) of Mr Calvert's request. The Council has argued that disclosure of this information would breach the first data protection principle.
44. 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.
45. In order to rely on this exemption, therefore, the Council must show that the information being withheld is personal data for the purposes of the DPA and 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?

46. 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).
47. The Commissioner is satisfied that, when taken in context and considered as a whole, the information in each of the documents withheld under section 38(1)(b) is personal data. Living individuals can be identified from this information. The information clearly relates to these individuals, as it can be considered to be biographical about, and to focus on, them.

Would disclosure breach the first data protection principle?

48. As noted above, the Council has argued that making this information available would breach the first data protection principle. This states 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, 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 in this case would be making the information available in response to Mr Calvert's request.
49. 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 in this case.



50. 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 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
51. The Commissioner must 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 the personal data would otherwise be fair and lawful.
52. When considering the conditions in Schedule 2, the Commissioner has noted Lord Hope's comment in the case of *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47¹ that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interests of the data subject.

Can any Schedule 2 condition be met?

53. As the Council acknowledged, condition 6 would appear to be the only condition in Schedule 2 which might be relevant in the circumstances of this case (although it concluded that the condition did not apply). 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 subject(s) (i.e. the individual(s) to whom the data relate).
54. As explained in the Commissioner's guidance² there are a number of different tests which must be satisfied before condition 6 can be met. These are:
- Is Mr Calvert pursuing a legitimate interest or interests?
 - If yes, is the processing necessary for the purposes of those interests? In other words, is the processing proportionate as a means and fairly balanced to its ends, or could these legitimate interests be achieved by means which interfere less with the privacy of the data subject(s).
 - Even if the processing is necessary for Mr Calvert's legitimate interests, is it unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject(s)?

¹ http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm_1.htm

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



55. There is no presumption in favour of the release of personal data under the general obligation laid down by FOISA. Accordingly, the legitimate interests of Mr Calvert 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 the Council was correct to refuse to disclose the personal data to Mr Calvert.

Is Mr Calvert pursuing a legitimate interest or interests?

56. 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 an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner’s published guidance on personal information 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.*
57. Mr Calvert was invited to comment on what he believed to be his legitimate interest, to inform the Commissioner’s consideration of condition 6(1). He indicated that it is important for him, and other users of Kilcreggan Pier and ferry service, to have the information, given the risk of vandalism, lack of repair and health and safety concerns which would arise if the pier were unmanned. He referred to serious safety concerns surrounding the ferry service, following a change in contractor, and noted that the Council was responsible for monitoring any ongoing potential risk to public safety at the pier.
58. Mr Calvert submitted that release of the withheld information would allow a greater understanding of issues which had attracted a great deal of public concern, and affected public health and safety and the daily lives of individuals. Disclosure would, Mr Calvert argued, ensure accountability and transparency in relation to the way the Council spent public money.
59. The Commissioner has considered these comments carefully, noting that the Council does not accept that Mr Calvert is pursuing any legitimate interest. In the circumstances, she accepts that Mr Calvert, and other users of Kilcreggan Pier and ferry service, have a legitimate interest in the decision making process by the Council which led to the issue of redundancy notices to pier staff.

Is the processing necessary for the purposes of those interests?

60. When considering this, the Commissioner must also consider whether these interests might reasonably be met by any alternative means, which would interfere less with the privacy of the individual whose name has been withheld.
61. During the course of the investigation some information was disclosed to Mr Calvert which concerned the decision by the Council to issue redundancy notices to pier staff. This information included responses from the Council to:



- concerns raised about the redundancies
 - questions about the redundancies and the reasons for them
 - questions about the effect of the pier being unmanned on maintenance, berthing of ferries alongside, and any potential cost savings to the Council
 - concerns regarding the safety of the pier if it was unmanned.
62. Having considered the reasons why she has accepted Mr Calvert has legitimate interests in disclosure of this information, and taking account of the information disclosed already, the Commissioner does not believe that disclosure of the withheld information would add anything further to the pursuit of those interests.
63. In the circumstances, the Commissioner has concluded that it is not necessary for the withheld information to be disclosed to Mr Calvert.
64. As the Commissioner has concluded that it is not necessary for the withheld information to be made available, she finds that condition 6 in Schedule 2 could not be met in relation to that disclosure. In the absence of a condition permitting processing, it would not be either fair or lawful to make the information available. The Commissioner therefore accepts that the information was properly withheld under section 38(1)(b) of FOISA.

Other information

65. 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 qualifications which are not relevant here, the information falling within the scope of the request and held by the authority at the time the request is received.

Information concerning damage to Kilcreggan Pier

66. In his application to the Commissioner, Mr Calvert expressed dissatisfaction at the limited information provided about damage sustained to Kilcreggan Pier. He had expected there to be more and referred to a tendering exercise for related works to the Pier.
67. In response, the Council explained that it had carried out searches of its email archive, and other records held by the officer most directly involved with matters concerning Kilcreggan Pier. The Council provided the Commissioner with details of the search terms used.
68. With regard to the tendering process referred to by Mr Calvert, the Council explained that the necessary work was identified in 2011, but funding restrictions prevented tenders from being issued until 19 October 2012 (i.e. after the date on which Mr Calvert's request was received).
69. Having considered these submissions from the Council, the Commissioner is satisfied that the searches carried out by the Council for this information were adequate and proportionate in the circumstances, and should have identified any other relevant, recorded information it held.



Information concerning the Council decision to issue redundancy notices to pier staff

70. Mr Calvert also commented that he had expected to receive more information about the Council making pier staff redundant. As noted above in relation to section 38(1)(b) of FOISA, the Council did identify further information, and this has been fully considered above. No further consideration will be given to this information here.
71. In addition to this, the Council informed the Commissioner of the nature and extent of the searches it had undertaken in seeking this information. It identified the search terms used and the records searched, including those of the officers directly involved in the redundancy process. It concluded that it held no further information falling within the scope of Mr Calvert's request.
72. Having considered these submissions from the Council, the Commissioner is satisfied that the searches carried out by the Council for this information were adequate and proportionate in the circumstances, and should have identified any other relevant, recorded information it held.

DECISION

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

The Commissioner finds that the Council was entitled to withhold information under the exemptions in sections 25(1), 36(2) and 38(1)(b) of FOISA. It also complied with Part 1 in identifying, locating and providing certain information.

In failing to notify Mr Calvert that it was applying the exemption in section 25(1) of FOISA, the Council failed to comply with Part 1 (and in particular section 16(1)) of FOISA.

The Commissioner does not require the Council to take any action in relation to this breach, in response to Mr Calvert's application.

Decision 164/2013
Mr Julian Calvert
and Argyll and Bute Council



Appeal

Should either Mr Calvert or Argyll and Bute Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement
8 August 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (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
- ...
- (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 –
- (a) section 25;
- ...
- (c) section 36(2);
- ...
- (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.

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-
 - (a) discloses that it holds the information;
 - (b) states that it so claims;
 - (c) specifies the exemption in question; and
 - (d) states (if not otherwise apparent) why the exemption applies.

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

36 Confidentiality

...

- (2) Information is exempt information if-
 - (a) it was obtained by a Scottish public authority from another person (including another such authority); and
 - (b) its disclosure by the authority so obtaining it to the public (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person.



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.

...

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Mr Julian Calvert
and Argyll and Bute Council

