

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 18 February 2010**

**Public Authority:** North Yorkshire Fire & Rescue Service  
**Address:** Fire Service Headquarters  
Thurston Road  
Northallerton  
North Yorkshire, DL6 2ND

### Summary

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The complainant requested the exact salary details for various senior management posts within the North Yorkshire Fire & Rescue Service (NYFRS) between 2004 and 2009. The council refused to disclose this citing section 40(2) of the Freedom of Information Act 2000. It said that the information was the managers' personal data and processing it would be unfair. However, it did point out that £10,000 salary bands were already published for these posts which it believed represented a reasonable balance of the legitimate public interest in the use of public funds and the individuals' right to privacy. Following negotiations with the Commissioner, North Yorkshire Council (the council) on behalf of NYFRS agreed to disclose the salary bands of the management posts concerned in increments of £5,000. The Commissioner has decided that the specific information requested is exempt from disclosure under section 40(2) of the Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

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2. In an email to NYFRS dated 1 February 2009 the complainant stated:
  - *'Could you provide me with details of salaries for the following post(s) within NYFRS for the period 2004-2009 - CFO, DCFO, ACFO and AM?'*<sup>1</sup>
  - *Could you provide me with details of salaries for the following post(s) within NYFRS for the period 2007-2009 - Non-Uniformed Principal Officer?*
  - *Could you provide me with details of salaries for the following post(s) within HFRS<sup>2</sup> for the period 2007-2009 - Head of Function all work streams or AM equivalent?*
  - *If you are unable to provide any of this information could you state your reasons for not doing so as other Fire and Rescue Services within the Yorkshire and Humberside Region have already provided this same information?'*
3. NYFRS responded in an email dated 3 March 2009 in which it confirmed that it held the requested information. However, it said it considered that the information in relation to the actual sums paid to identifiable individuals was exempt from disclosure in accordance with Section 40(2) Freedom of Information Act 2000 as it was personal data for the purposes of the Data Protection Act 1998 (DPA). NYFRS added that the managers' salaries were available in bandings of £10,000 which it is felt under the current regulations balanced the legitimate public interest in the use of public funds and the individuals' 'right to privacy'. It therefore disclosed the salary bandings for the senior managers identified in the request for the years specified with the exception of 2009.
4. On 3 March 2009 the complainant sent a further email to NYFRS in which he requested an internal review on the basis that that he had not been provided with the information requested. He said it was his belief that 'the exact salaries of all senior management within NYFRS should be available to the public and also should be readily available on the Service's website'. He therefore requested that this information be supplied.
5. On 2 April 2009 North Yorkshire Council (the council) responded by email on behalf of NYFRS<sup>3</sup> with the outcome of its internal review. It upheld NYFRS's original decision on the basis that disclosure of senior managers' exact salaries (as opposed to £10,000 bands) would be unfair processing of a individual's personal data under the DPA and therefore exempt under section 40(2) of the Act. The council reiterated that £10,000 salary bands for the managers concerned

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<sup>1</sup> CFO, DCFO, ACFO and AM stand for Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer and Area Manager respectively

<sup>2</sup> HFRS was subsequently corrected to NYFRS in the correspondence

<sup>3</sup> To ensure the independence of the appeal process, NYFRS's Director of Corporate Services asked the council's Assistant Chief Executive (Legal and Democratic Services) if she would nominate someone to consider the complainant's appeal on NYFRS's behalf.

had already been disclosed by NYFRS and pointed out that the figures for 2009 were not yet available. The council added its belief that it was reasonable to expect disclosure of salary bands rather than precise salaries as the latter would reveal much more about the individuals' personal financial situation. It said that this view was supported in the Information Commissioner's Office decision [FS50163927](#)<sup>4</sup>. The council accepted that there was a legitimate public interest in information about the use of public funds and ensuring openness and transparency in making payments to senior managers in public bodies. However, it said that this did not outweigh the fact that disclosure of the specific information requested would result in a breach of the individuals' right to have their personal data retained confidentially. Finally, the council said it understood that the information provided in bands of £10,000 was based upon the provision that the remuneration of employees was included in the Authority's annual statement of accounts in multiples of £10,000 starting with £50,000 ([See paragraph 7 of the Accounts and Audit Regulations 2003 - SI 2003/533](#))<sup>5</sup>.

## The Investigation

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### Scope of the case

6. On 2 April 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider ordering NYFRS to disclose the exact or actual salaries of the senior managers listed in his original request. The scope of this complaint is therefore limited to the exact salaries of the senior managers identified in the information request above for the specified years with the exception of those for 2009 which were not available when the request was made.

### Chronology

7. On 4 June 2009 the Commissioner sent an email to the council (still acting on behalf of NYFRS) inviting it to reconsider its position on the basis that NYFRS already published [salary information](#)<sup>6</sup> on its website (excluding the CFO, DCFO and ACFO) in very narrow salary bands for junior members of staff (e.g. Grade 2 Support - £14,545 - £15,247)<sup>7</sup> and taking into account that other fire authorities had all disclosed the exact salaries of their senior members of staff.

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<sup>4</sup> The Information Commissioner's Office  
[http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs\\_50163927.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50163927.pdf)

<sup>5</sup> <http://www.opsi.gov.uk/SI/si2003/20030533.htm> (amended by the [Accounts and Audit \(Amendment No 2\) \(England\) Regulations 2009 \(SI 2009/3322\)](#) which come into force on 31 March 2010)

<sup>6</sup> [http://www.northyorksfire.gov.uk/performance/accounts\\_expenses/staff\\_pay\\_and\\_grading\\_structure/index.html](http://www.northyorksfire.gov.uk/performance/accounts_expenses/staff_pay_and_grading_structure/index.html)

<sup>7</sup> For November 2008

8. The council responded by phone on 20 July 2009 when it said that it had spoken with the senior managers involved and none were prepared to consent to their exact salaries being disclosed. However, it added that it was prepared to disclose the salaries of these individuals in bands of £5,000 in accordance with the Commissioner's Guidance on [When should salaries be disclosed?](#) and the proposed changes to the [Accounts and Audit Regulations 2003 - SI 2003/533](#)<sup>8</sup>.
9. On 21 July 2009 the council sent an email to the complainant with details of the managers' salaries in bands of £5,000 which it said it believed constituted an 'appropriate response' to his request.
10. The complaint advised the Commissioner that he was not happy with the council's revised response on the basis that the salary of a 'Fire Fighter' (a comparatively junior member of staff) was published as a matter of routine. He said it was freely available on request from NYFRS and the National Joint Council and was therefore open to close scrutiny by all. See the [Fire Brigades Union's website](#).<sup>9</sup>
11. On 30 July 2009 the Commissioner sent an email to the council and invited it to reconsider its position again in the light of the complainant's further comments regarding the public accessibility of the salary details for Fire Fighters and junior members of staff.
12. The council responded on 30 July 2009 and said that rates of pay for fire fighting staff published by the NYFRS were those published by the National Joint Council for Local Authority Fire and Rescue Services (the Authority). It added that the range published by the Authority covered the three types of Fire Fighter from 'Trainee' grade through 'Development' grade to 'Competent Fire Fighter' grade with a range of about £7,000. The council pointed out that no details of any additional allowances were disclosed. It therefore concluded that only if one knew an individual's job (i.e. Fire Fighter) and grade (i.e. Trainee, Development or Competent) would someone be able to ascertain the individual's basic salary from the published information. It added that there was no published link between an individual and pay.
13. The Commissioner sent a further email to the council on 5 August 2009 directing it to the [Fire Brigades Union website](#) and inviting it once more to reconsider its position in the light of the salary information published. The Commissioner pointed out that the Fire Brigades Union published precise basic annual salaries (and selected overtime rates) for the various grades of Fire Fighter together with more senior member's of staff such as Area Managers, Group Managers Station Managers, Watch Managers and Crew Managers. He added that exact salaries for very senior managers such as the CFO, DCFO and ACFO were not published by NYFRS or the council.

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<sup>8</sup> <http://www.opsi.gov.uk/SI/si2003/20030533.htm> (amended by the [Accounts and Audit \(Amendment No 2\) \(England\) Regulations 2009 \(SI 2009/3322\)](#) which come into force on 31 March 2010 and stipulate the disclosure of salaries in bands of £,5,000

<sup>9</sup> <http://www.fbu.org.uk/workplace/pay/index.php>

14. On 27 August the council responded by stating that it was not prepared to change its revised response to the complainant's information request (which it reiterated was appropriate) for the reasons stated in its email dated 30 July 2009.

## Analysis

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### Exemptions

15. NYFRS initially and the council subsequently cited the exemption in section 40(2) (personal data) as justification for withholding the requested information.

### Section 40(2) of the Act

16. Section 40(2) provides an exemption to the duty to disclose information where the information requested constitutes the personal data of a third party, (subject to the provisions of the Data Protection Act 1998). Section 40 is an absolute exemption and therefore, there is no need to apply the public interest test under section 2 of the Act.
17. Section 1(1) of the DPA defines personal data as 'data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and indication of the intentions of the data controller or any other person in respect of the individual...'
18. When considering disclosure or non-disclosure of third-party personal information, an authority is required to consider the data protection principles as set out in Schedule 1 of the Data Protection Act 1998 (DPA).
19. The first data protection principle requires that personal data shall be processed fairly and lawfully.
20. A full text of section 40 of the Act is available in the Legal Annex at the end of this Notice.

### Is the information personal data?

21. When considering whether the information is personal data the Commissioner has taken into account his own published guidance: '[Determining what is personal data](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)' which can be assessed at: [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
22. From his guidance there are two questions to be answered in the affirmative when deciding whether the information, if disclosed to the public, would constitute the personal data of the individuals:

- (a) Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?
- (b) Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?

23. Although the withheld information does not specifically identify the individuals concerned (as it simply refers to them as the CFO, DCFO, ACFO, Non Uniformed Principal Officer, Area Manager and Non Uniformed Head of Function) it is apparent to the Commissioner that this information together with other information in the possession of or likely to come into the possession of members of the public would be sufficient to identify the senior managers. An example of this would be the [NYFRS's website](#).<sup>10</sup> The Commissioner is therefore satisfied that the exact salaries paid by NYFRS is personal data within the meaning of the DPA as it identifies and relates to living individuals.

### **Would disclosure contravene the first data protection principle?**

24. In considering whether disclosure of the senior managers' exact salaries would be unfair and contravene the first data protection principle, the Commissioner has taken the following factors into account:

- a. The reasonable expectations of the managers about what would happen to their personal data
- b. Whether the senior managers specifically refused consent
- c. Whether the information relates to the managers' personal and private life or their public life
- d. The seniority of the position and the roles of the senior managers within NYFRS
- e. Current and new legislation on the Accounts and Audit Regulations
- f. His current Guidance on [When should salaries be disclosed?](#)
- g. The legitimate interests of the public in knowing the exact salaries of the senior managers within NYFRS
- h. The unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects.

#### **a. Reasonable expectations**

25. The Commissioner accepts that the senior managers would have a reasonable expectation that their salaries in £5,000 bands would be disclosed but not necessarily their exact salaries. See the Information Tribunal's decision in Brian Gibson and the Information Commissioner [EA/2009/0054](#) which is a general endorsement of the Commissioner's approach of disclosing salary info within £5,000 bands.

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<sup>10</sup> [http://www.northyorksfire.gov.uk/about\\_us/index.html](http://www.northyorksfire.gov.uk/about_us/index.html)

**b. Consent refused**

26. The Commissioner understands that the council has discussed the matter with the managers concerned who have agreed to have their salaries disclosed in bands on £5,000 but not the exact amounts.

**c. Personal and private or public life**

27. The Information Commissioner's Office has produced [Awareness Guidance on section 40 of the Act](#), which makes it clear that where the information relates to the individual's private life (ie their home, family, social life or finances) as opposed to their public life (ie their work as a public official or employee) it will deserve more protection than information about them acting in an official or work capacity. The Commissioner is satisfied that the information concerning the managers' salaries relates to their public life.

**d. Seniority and roles**

28. The above [Awareness Guidance on section 40 of the Act](#), also makes it clear that public authorities should take into account the seniority of employees when personal information about their staff is requested under the Act. 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 generally be disclosed unless it would put them at risk, or unless it also reveals details of the private lives of other people (eg the official's family). However, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life.
29. The Commissioner is satisfied that the positions of the managers concerned are very senior, particularly those occupied by the Chief Fire Officer, Deputy Chief Fire Officer and Assistant Chief Fire Officer all of whom are described as '[Senior Management](#)' on the [NYFRS's website](#).<sup>11</sup> The Commissioner is also satisfied that the roles of the managers concerned, particularly those who comprise the Senior Management, require them to make influential decisions regarding both policy and spending.

**e. Accounts and Audit Regulations**

30. The Commissioner has taken into account the [Accounts and Audit Regulations 2003 - SI 2003/533](#)<sup>12</sup> paragraph 7 of which requires a local authority to prepare an annual statement of accounts which notes of the number of employees whose remuneration falls into a bracket of a scale in multiples of £10,000 starting with £50,000. The Commissioner has also taken into account the [Accounts and Audit](#)

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<sup>11</sup> [http://www.northyorksfire.gov.uk/about\\_us/index.html](http://www.northyorksfire.gov.uk/about_us/index.html)

<sup>12</sup> <http://www.opsi.gov.uk/SI/si2003/20030533.htm> (amended by the [Accounts and Audit \(Amendment No 2\) \(England\) Regulations 2009 \(SI 2009/3322\)](#) which come into force on 31 March 2010)

[\(Amendment No 2\) \(England\) Regulations 2009 \(SI 2009/3322\)](#) which come into force on 31 March 2010. These amend the 2003 Regulations by reducing the remuneration scale brackets from £10,000 to £5,000. The Commissioner has noted and accepts the council's point that the implication of these Regulations is that disclosure of salary scales for senior employees in bands of £5,000 as opposed to £10,000 is not inappropriate.

**f. Commissioner's Guidance**

31. The Commissioner has taken into account his own Guidance on [When should salaries be disclosed?](#) in which he has commented that exact salaries should only be disclosed in 'exceptional circumstances'. It is clear that the managers for whom salary details has been requested should have a reasonable expectation that some information in relation to their pay should be disclosed. However, the Commissioner believes that it would be too intrusive to reveal their exact salaries.

**g. Legitimate interests of the public**

32. The Commissioner recognises that there is a clear public interest in knowing how much money is spent on public sector salaries especially the amounts paid to managers who occupy positions of seniority with public facing profiles and responsibilities for major decisions. In most case the public interest can be satisfied by the disclosure of salaries in bands of £5,000 which the council has done in this case.
33. The complainant has argued that if the exact salaries for comparatively junior members of the force, such as the various grades of Fire Fighters, are in the public domain then the same, if not a greater deal of scrutiny should apply for the senior managers who are the subject of his information request.
34. The Commissioner has noted that the Fire Brigade Union publishes the precise basic annual salaries (and selected overtime rates) for the various grades of Fire Fighter together with more senior member's of staff such as Area Managers, Group Managers Station Managers, Watch Managers and Crew Managers. He has also noted that no exact salaries are published for very senior managers such as the CFO, DCFO and ACFO by NYFRS or the council. However, the Commissioner has concluded that the requested information is for the exact salaries for specific and identifiable individuals whereas the salaries published by the Fire Brigades Union are for generic grades without being related to particular individuals. The Commissioner accepts the council's argument that if someone requested the salary details for a named individual Fire Fighter, they would not disclose this information. Furthermore, the council has pointed out that the exact salary details for this particular individual would not be apparent from the figures on the Fire Brigades Union's website unless the requestor knew the individuals' actual grade. The fact that other fire authorities may have informally disclosed the exact salaries of its senior managers is something that the Commissioner has noted but has not regarded as setting a precedent as each case must be assessed on its own merits.



**h. Unwarranted processing by reason of prejudice to the rights and freedoms/legitimate interests of the data subject**

35. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects.
36. On balance the Commissioner does not believe that the public's legitimate interests to know the exact salaries would outweigh any unwarranted prejudice that might be caused to the data subjects' rights, freedoms and legitimate interests for the reasons stated above.
37. The Commissioner has concluded that the information requested was correctly withheld by the council under section 40(2) of the Act.

**The Decision**

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38. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

**Steps Required**

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39. The Commissioner requires no steps to be taken.

## Right of Appeal

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40. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 18<sup>th</sup> day of February 2010**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### The Freedom of Information Act 2000

#### Section 40 – Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) 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 [1998 c. 29.] Data Protection Act 1998, 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

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

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

- “data” means information which—
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “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;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a) organisation, adaptation or alteration of the information or data,

(b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.