

# Decision Notice

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**Decision 073/2017: Ms Lorna Anderson and Dundee City Council**

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**Foster carer complaints and de-registrations**

Reference No: 201602096 and 201602097

Decision Date: 11 May 2017



Scottish Information  
Commissioner

## Summary

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The Council was asked for statistics and related information on complaints made by, and de-registrations of, foster-carers.

The Council disclosed some information but withheld most of the information. It considered the withheld information to be personal data, disclosure of which would breach the Data Protection Act.

The Commissioner accepted that the information she identified as being in the scope of the requests was personal data and was correctly withheld as such. She also identified instances where the Council should have informed the applicant that information was not held.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 16(1) (Refusal of request); 17(1) (Notice that information is not held); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definition 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"); Schedule 1 (The data protection principles, Part 1 - the principles) (the first data protection principle); Schedule 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 Appendix 1 to this decision. The Appendices form part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

## Background

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1. On 12 September 2016 Ms Anderson submitted two separate requests for information to the Council, both seeking similar data. Each request is reproduced in full in Appendix 2 to this decision.

### Request 1

2. In this request, Ms Anderson sought mainly statistical data on foster carer de-registrations in 2015 and 2016.
3. The Council responded on 26 September 2016, disclosing statistics for questions 1, 4 and 8. It also disclosed some information for question 2. The Council confirmed it was withholding the information it held for the remaining questions.
4. The Council stated in its initial response that all of the withheld information involved statistical data where the values were "less than five". In its review response (see below), it stated that

the numbers were “very small”. For clarity, the Commissioner notes that all the values involved were less than ten.

5. Given that the numbers were so low, the Council believed that identification of the individuals concerned was possible. For this reason, it withheld these figures as third party personal data under section 38(1)(b) of FOISA, as read with (2)(a)(i).

## **Request 2**

6. In this request, Ms Anderson sought mainly statistical data on complaints made by foster carers over a four-year period.
7. The Council responded on 4 October 2016. It explained that there were less than five complaints. It did not believe it could give further information without identifying the individuals concerned. It therefore withheld the remaining information under section 38(1)(b) of FOISA.

## **Review of requests 1 and 2**

8. On 1 (request 1) and 5 (request 2) October 2016, Ms Anderson wrote to the Council, seeking a review of its respective decisions. She did not agree with the Council’s reasons for withholding the information, submitting that she had framed her requests to avoid identification of others. She did not accept that there was a real risk of identification.
9. The Council notified Ms Anderson of the outcomes of each review on 14 (request 2) and 17 (request 1) October 2016, in both cases upholding the original decisions without modification (see paragraph 4 above for the nomenclature used in relation to request 1).

## **Applications to the Commissioner**

10. On 14 (request 2) and 16 (request 1) November 2016, Ms Anderson wrote to the Commissioner. In each case, she applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Anderson stated she was dissatisfied with the outcome of the Council’s review because, in each case, she believed she had framed her request so that any information would be anonymised.

## **Investigation**

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11. The applications were accepted as valid. The Commissioner confirmed that Ms Anderson made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
12. On 13 December 2016, the Council was notified in writing that Ms Anderson had made two valid applications. Given the closely related issues raised by both applications, it was decided to carry out a single investigation, with a view to producing a single decision.
13. The Council was asked to send the Commissioner the information withheld from Ms Anderson. The Council provided the information and the case was allocated to an investigating officer.
14. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, with reference to the risk of identification from the withheld information and other aspects of the application of section 38(1)(b) of FOISA.

## Commissioner's analysis and findings

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

### Information falling within scope

#### *Request 1*

16. The withheld data for request 1 correlates to part of question 2, and questions 3, 5, 6 and 7. The data are almost entirely statistical. The data for question 6, however, merits further consideration.
17. Question 6 relates to the "outcomes" of the appeals identified for question 5. The Council explained in its submissions that the outcome for 2016 was not known at the time Ms Anderson made her request, so an answer to that question was not available at the time. The year-end having been reached, the Council confirmed that it was now known that there were no relevant appeal panel outcomes. It informed Ms Anderson of this on 2 February 2017.
18. On the basis of the submissions received, the Commissioner is satisfied that the Council held no information for question 6, in relation to 2016, at the end of that year. Clearly, therefore, the position was the same at the point the request was received. The year in question existed at that point, even if it was not yet complete, and therefore the Council was required to provide some form of response for that year. At that point, the appropriate response in relation to 2016 and that question was to notify Ms Anderson that no information was held. In failing to do so, the Council failed to comply with section 17(1) of FOISA.
19. Given that the Council confirmed the true position during the investigation, the Commissioner does not require any further action in respect of this breach.

#### *Request 2*

20. The Council was asked whether it wished to comment again on what information was under consideration for request 2. Specifically, the investigating officer asked the Council to identify which content, within the nine documents it had furnished to the Commissioner, it considered could address each of the three questions posed by Ms Anderson in request 2.
21. The Council remained of the view that all nine documents, in their entirety, should be considered here. It stated that it took this request as embracing "the whole [complaints] correspondence." It failed to state which data within the collection of documents addressed each of the three questions.
22. Having considered the nine documents carefully, the Commissioner does not consider that the Council took the correct approach. The documents contain information falling within the scope of the three questions in request 2, but they also contain information which does not. The Council should have employed greater scrutiny to identify which information actually fell within the scope of the request, which is quite clearly expressed as embracing three distinct elements:

- the number of carers making complaints in each of the specific years
- the substance of each complaint
- the outcome of each complaint.

Within the documents supplied by the Council, there is information relating to the handling of each complaint which cannot, on a reasonable interpretation, be considered to fall within the scope of request 2. The Council should have left this out of account in responding to the request: it is not information the Commissioner should be asked to – or can – consider here.

23. It is also apparent to the Commissioner that no information is held by the Council on complaints made in 2015 and 2016. For 2016, its reasoning was basically the same as in relation to question 6 in request 1. For the same reasons as in relation to that other question, the Commissioner must find that the appropriate response for the incomplete year would have been to respond in terms of section 17(1) of FOISA: in not doing so, the Council failed to comply with section 17(1).
24. The Council confirmed the position in relation to 2016 to Ms Anderson during the investigation, so the Commissioner does not (in respect of that part of request 2) require the Council to take any further action in response to Ms Anderson's request.
25. For 2015, the Council appears to be arguing that the answer is withheld under section 38(1)(b) of FOISA. On the other hand, it acknowledges that no relevant information exists for that year. That being the case, in the absence of a claim that the "neither confirm nor deny" provisions in section 18 apply, FOISA does not allow for a refusal under an exemption: a refusal notice under section 16(1) of FOISA can only be given in respect of information the public authority actually holds. The Council is not arguing that the relevant part of request 2 is subject to section 18, so the Commissioner must find that the only option available to it was to issue a notice under section 17(1) of FOISA. Again, the Council failed to comply with section 17(1) in failing to give such a notice.
26. The position for 2015 is apparent from this decision, so the Commissioner does not require the Council to take any further action on this point, in response to Ms Anderson's request.
27. Further, the Commissioner is not satisfied that the information held for this request includes information on the outcome (or result) of every complaint. While it may not have been possible to link this absence of information with specific complaints (depending on the outcome of the Commissioner's consideration of section 38(1)(b) of FOISA – see below), the fact that a full set of information was not held for this question should still have been made clear to the applicant.
28. The Commissioner will now go on to consider the withheld information which falls within the scope of Ms Anderson's two requests and applications.

### **Section 38(1)(b) - Personal information**

29. The Council relied on section 38(1)(b) to withhold information it held and which fell within the scope of Ms Anderson's requests. It submitted that this information comprised personal data which were exempt from disclosure in terms of section 38(1)(b) of FOISA.
30. The exemption in section 38(1)(b) of FOISA, as claimed by the Council in this case, exempts personal data where disclosure to a member of the public, otherwise than under FOISA, would contravene any of the data protection principles (contained in Schedule 1 to the DPA). Here, the Council claimed disclosure would breach the first data protection principle.

*Is the withheld information personal data?*

31. For this exemption to apply, the withheld information would need to fall within the definition of “personal data” contained in section 1(1) of the DPA. The full definition is set out in Appendix 1, but basically it applies to data relating to a living individual who can be identified from either (a) the data themselves or (b) those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
32. In her applications, Ms Anderson submitted that she had been careful to frame her questions so that the resulting data would be anonymised. She did not believe her request would capture personal data capable of identifying others.
33. The Council provided submissions specific to the individual situations of specific current and former foster carers, which cannot be repeated here without disclosing, or risking disclosure of, the personal data of those individuals. Its submissions are reproduced in what follows in more general terms.
34. In the Council’s view, the fact that someone looked after children as a foster carer could be considered their personal data. It was part of their right to a private family life and, in many cases, would draw attention to vulnerable children. The Council recognised that the request was mostly for numbers, but explained that the numbers concerned were very small (within a relatively small pool of 90 foster carers registered by the Council). It submitted that revealing these numbers would allow the identification of the foster carers and children concerned “with a bit of diligent detective work”. It explained how this would be practicable, in the circumstances, and why it considered it likely, highlighting existing networks and other known factors.
35. The Commissioner has considered the above submissions carefully, including the numbers concerned and all other relevant factors. She must bear in mind that any risk of identification need not be confined to what the applicant might reasonably be expected to do: disclosure under FOISA is to the world at large.
36. When assessing whether the withheld information is entirely personal data as the Council contends, the Commissioner has also given consideration to the guidance published by the UK Information Commissioner (the ICO) on what is personal data<sup>1</sup>. This includes guidance on personal data in complaints files, which may be the personal data of the complainer, depending on the circumstances. With regard to the possibility of statistical information qualifying as personal data, she has taken account of the decision of the High Court (England and Wales) in the case of *Department of Health v Information Commissioner [2011] EWHC 1430 (Admin)*<sup>2</sup>.
37. The Commissioner has therefore considered whether there would be a realistic prospect of the individuals concerned being identified were the statistics to be disclosed. She is satisfied that there would be. By extension, she is satisfied that there would be a real risk of the non-statistical information sought by Ms Hand (relating to the substance of complaints, the outcomes of complaints and appeal panels, and reasons for appeal panel decisions) being

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

<sup>2</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2011/1430.html>

linked to specific complaints. Given the risks, she does not consider there to be any reasonably practicable means of anonymising any of the information.

38. In all the circumstances, therefore, the Commissioner is satisfied that all the withheld information can be considered to relate to living individuals, who can be identified from that information taken with other information readily accessible to a reasonable number of people, at least, as described in the Council's submissions. Taking account of the High Court decision referred to above, she is satisfied that this means the information falls within the second part of the definition of "personal data" contained in section 1(1) of the DPA. Clearly, information impacting so directly on the private and family lives of the individuals concerned must be deemed to relate to those individuals.

*Would disclosure contravene the first data protection principle?*

39. The Council submitted that disclosure of the withheld personal data would breach the first data protection principle: therefore, the data were exempt under section 38(1)(b) of FOISA. Section 38(1)(b), applied on this basis, is absolute exemption and so is not subject to the public interest test.
40. The first data protection principle 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. In the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA must also be met. The Commissioner is satisfied that the withheld information does not fall into any of the categories of sensitive personal data in section 2 of the DPA.
41. 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 47<sup>3</sup> 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. The processing under consideration in this case would be the disclosure of the personal data into the public domain, in response to Ms Anderson's information requests.
42. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. These three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits disclosure, it is likely that disclosure will also be fair and lawful.
43. The Commissioner will now consider whether there are any conditions in Schedule 2 which would permit the requested information to be disclosed. If any of these conditions can be met, she must then consider whether such disclosure would be fair and lawful.

*Can any of the conditions in Schedule 2 be met?*

44. The Commissioner's view is that condition 6 in Schedule 2 is the only one which might permit disclosure in this case.
45. 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

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<sup>3</sup> <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>

particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject (the individual(s) to whom the data relate).

46. There are a number of different tests which must be satisfied before condition 6 can be met. These are:
- (i) Does Ms Anderson have a legitimate interest or interests?
  - (ii) If yes, is the processing involved necessary for the purposes of those interests? In other words, is the processing proportionate as a means and fairly balanced as to ends, or could these interests be achieved by means which interfere less with the privacy of the data subject(s)?
  - (iii) Even if the processing is necessary for Ms Anderson's legitimate interests, is the processing nevertheless unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject(s)?
47. There is no presumption in favour of disclosure of personal data under the general obligation laid down by section 1(1) of FOISA. Accordingly, the legitimate interests of Ms Anderson must outweigh the rights and freedoms or legitimate interests of the data subject(s) before condition 6 will permit disclosure. If the two are evenly balanced, the Commissioner must find that the Council would be able to refuse to disclose the information to Ms Anderson.

*Is Ms Anderson pursuing a legitimate interest or interests?*

48. Ms Anderson stated that her interest here was in improving foster carer services in general across Scotland. She had sent the same request to other Scottish local authorities. She explained she was attempting to source statistical data regarding the recruitment and retention of foster carers, with a view to understanding what was affecting this.
49. Ms Anderson commented that due to the increasing need for foster carers in Scotland, she believed it was important to look at the possible reasons why so many carers were leaving the profession (as appeared to be the case from her initial information gathering). She noted the money being invested into advertising for carers, completing assessments and related training.
50. To support her comments, Ms Anderson provided details of an upcoming "root and branch" review of the Looked After Children care system recently announced by the First Minister. She explained that "The Looked After Children Data Strategy 2015"<sup>4</sup> sets out the strategic direction for developing data on looked after children over the next five years. It focuses on ensuring data quality and providing the evidence to realise policy ambitions set out in a report entitled "Getting It Right for Looked After Children: Early Engagement, Early Permanence and Improving the Quality of Care."
51. She went on to submit that the strategy identifies short and longer term actions to be taken by the Scottish Government's Children and Families Statistics team and highlights the remaining evidence gaps. She hoped to contribute to the Data Strategy by broadening the evidence base. One issue she highlighted as remaining unclear as a result of these gaps was whether being de-registered by one agency prevented someone from registering elsewhere.

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<sup>4</sup> <http://www.gov.scot/Topics/Statistics/Browse/Children/LACDataStrat2015>

52. The Commissioner finds that Ms Anderson (and the wider public) do have a legitimate interest in understanding the information on de-registrations and complaints held by the Council. There is clearly a legitimate interest in knowing what the issues may be, given the backdrop of public debate and government consultation on these and wider matters.
53. The numbers of complaints made by foster carers, how many de-registrations take place each year, the reasons for these and how many are appealed are clearly important indicators of patterns of foster care provision and serve to illustrate what is happening in the Dundee area.
54. The Commissioner also notes public funding is involved in provision of foster caring services and acknowledges that the public will wish to understand why foster carers complain or why they are de-registered. This information improves transparency and understanding of existing provision within their communities and gives some indications of how taxpayers' money is being used.

*Is the processing necessary for the purposes of these interests?*

55. In reaching a decision on this, the Commissioner must consider whether these interests might reasonably be met by any alternative means.
56. The Council commented that it did not wish to appear to be denying Ms Anderson her right to be dissatisfied or complain, or even campaign against the Council, but it highlighted her existing rights of complaint to the Council, and thereafter to the Scottish Public Services Ombudsman, on specific aspects of service provision. On more general issues relating to its foster care services, she could complain to the Care Inspectorate, while complaints about individual members of social work staff could be made to the Scottish Social Services Council. In this context, it did not consider there to be a justification for her receiving the information she sought.
57. It is clear from the Council's submissions that it does not believe Ms Anderson needed all the information she had requested to pursue her legitimate interests here, nor did it believe she should pursue these under FOISA. It does not appear to have focused on the information requested, but rather on a perception (which may or may not be correct) that her primary motivation was to pursue complaints. What the Commissioner must consider here is the actual information sought by Ms Anderson and whether its disclosure can be considered necessary for the purposes of the legitimate interests she has identified.
58. Having considered all relevant arguments carefully, the Commissioner is satisfied that there is a value in obtaining the withheld personal data, which could not reasonably be met by alternative means. In the circumstances, she is satisfied that disclosure is necessary to meet Ms Anderson's legitimate interests.

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

59. As the Commissioner is satisfied that disclosure of the withheld personal data would be necessary to fulfil Ms Anderson's legitimate interests, she is now required to consider whether that disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interest of the data subjects. As noted above, this involves a balancing exercise between the legitimate interests of Ms Anderson and those of the affected data subjects. Only if the legitimate interests of Ms Anderson outweigh those of the data subjects can the information be disclosed without breaching the first data protection principle.
60. In considering the rights, freedoms and legitimate interests of the data subjects, the Council submitted that the information under consideration, while not strictly sensitive personal data,

was (to the extent that it related to looked after children) of a nature which meant it required extra care in its handling. It submitted that the information was private to the data subjects, impinging on their right to private and family life. In all the circumstances, the data subjects had a reasonable expectation that the information would remain private. There might be other ways in which information on their status as foster carers might become public, but it was not for the Council to make it so (in contravention, it submitted, of the DPA).

61. The Commissioner must, as indicated previously, approach this case on the basis that disclosure under FOISA is disclosure to the world at large and not simply to the applicant. She has accepted that the information is the personal data of the individuals concerned and that it cannot practicably be anonymised. She accepts the Council's arguments that the data subjects would have a reasonable expectation that information about their individual status as foster carers would remain private, and that the Council should be trusted to keep it so.
62. Having balanced the legitimate interest of the data subjects against those of Ms Anderson, the Commissioner finds that any legitimate interests served by disclosure of the withheld personal data would not outweigh the unwarranted prejudice that would result in this case to the rights and freedoms or legitimate interests of the individuals in question. The Commissioner recognises the genuine concerns highlighted by Ms Anderson in this case, but would observe that it should be possible for any policy review in this area to collect and analyse information on these issues, at a national level, without breaching the DPA. In the circumstances of this particular case, the Commissioner concludes that condition 6 in Schedule 2 to the DPA cannot be met in relation to the withheld personal data.
63. Having accepted that disclosure of the withheld personal data would lead to unwarranted prejudice to the rights and freedoms or legitimate interest of the data subjects, as described above, the Commissioner must also conclude that its disclosure would be unfair. As no condition in Schedule 2 to the DPA can be met, she must regard disclosure as unlawful. In all the circumstances, therefore, the Commissioner's conclusion is that the first data protection principle would be breached by disclosure of the information and that this information was properly withheld under section 38(1)(b) of FOISA.

## Decision

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The Commissioner finds that the Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the two information requests made by Ms Anderson.

The Commissioner finds that the Council was correct in withholding information under section 38(1)(b) of FOISA.

However, the Council failed to comply with section 17(1) of FOISA, in failing to confirm to Ms Anderson that (in certain respects) it did not hold information falling within the scope of her requests. As this was addressed during the investigation or in this decision, the Commissioner does not require the Council to take any action in respect of these failures, in response to Ms Anderson's application.

## **Appeal**

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Should either Ms Anderson or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

## **Enforcement**

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

**Margaret Keyse**  
**Acting Scottish Information Commissioner**

**11 May 2017**

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (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.

...

#### 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.

...

## **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.

...

## **38 Personal information**

(1) Information is exempt information if it constitutes-

...

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

(2) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles; or

...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

(5) In this section-

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

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

...

# Data Protection Act 1998

## 1 Basic interpretative provisions

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

...

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

(a) from those data, or

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

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

...

## Schedule 1 – The data protection principles

### Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

### Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

## **Appendix 2: Ms Anderson's two requests of 12 September 2016**

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On 12 September 2016, Ms Anderson delivered two separate requests to Dundee City Council (DCC) for the following information:

### **Request 1 – Council ref 20160912001**

- 1) How many DCC foster carer de-registrations were recommended by DCC SWD [Social Work Department] in 2015 and in 2016 annually?
- 2) Reasons for the recommendations for Dundee City Council foster carer de-registration in 2015 and 2016 annually
- 3) How many DCC foster Carers appealed the SWD recommendation against the SWD recommendation to be de-registered in 2015 and 2016 annually?
- 4) How many DCC foster carer de-registration recommendations were agreed by the review panel in 2015 and in 2016 annually?
- 5) How many DCC foster carer de-registration recommendations were agreed by the appeal panel in 2015 and in 2016 annually?
- 6) The outcomes of the DCC foster carer appeal panels where the appeal panel agreed with the SWD recommendation in 2015 and in 2016 annually?
- 7) How many DCC foster carers completed exit forms in 2015 and in 2016 annually?
- 8) How many new DCC foster carers were approved in 2015 and in 2016 annually?

### **Request 2 – Council ref 20160912002**

- (i) How many foster carers complained to DCC annually in 2013, 2014, 2015 and 2016?
- (ii) What were the foster carers' complaints?
- (iii) What was the result of the foster carers' complaints?

**Scottish Information Commissioner**

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