

FOIA s.40(2) – Absolute exemption - personal data

DPA s.1(1) – Personal data

DPA Sch 2 – Data Protection Principles

The Corporate Officer of the House of Commons v IC & Norman Baker MP

EA/2006/0015 and 0016

16th January 2007

Cases:

CNN Systems Ltd v The Data Protection Registrar [1991] UKIT DA90_25498 and DA90_25499

Infolink Ltd v The Data Protection Registrar [1992] UKIT DA90_25496

Durant v Financial Services Authority [2003] EWCA Civ 1746

Facts

The Appellant made a request for a breakdown of the aggregate figure for travel claims by MPs. The HOC disclosed the amounts paid to MPs for various allowances including an aggregate figure for travel expenses, but not further broken down by mode of travel. The House had consulted with MPs as to the publication of the allowances and, in effect, obtained their consent to such disclosure, but not for any more detailed information to be published, although the House held such information. The request was refused on the ground that certain information as to MPs' travel expenses was already disclosed under the House's publication scheme (Publication Scheme), and disclosure of the additional information sought by the Appellant would breach the data protection principles and that the information sought was exempt from disclosure, under s.40 FOIA.

The IC considered that the exemption under s.40 FOIA did not apply, on the basis that the disputed information could be disclosed without contravening any of the data protection principles. The IC required the disclosure of information relating to MPs' travel expenses.

Findings

Personal Information

Under s.40(2) FOIA any request for personal information is exempt information if it relates to the personal data of a data subject who is not the requester. The Tribunal found that once s.40(2) was engaged then the request is considered under the DPA without further consideration of FOIA. The exemption is only engaged if firstly the information is *data* under the DPA and secondly where there has been a contravention of any of the data protection principles (DPP). The Tribunal found that MPs travel expenses are both *data* and *personal data* under s.1(1) DPA and that it did not matter whether the data was held on computer or in paper form .

Fair Processing

The Tribunal also found that the first DPP was potentially contravened and that in order to show that disclosure of the information was fair processing that a number of findings would need to be made. The first consideration under para 2(3) of Part II to Sch 1 DPA is that the data subject is provided with the identity of the data controller, namely the HOC, he or she knows the purpose(s) for which the data are intended, and any further information necessary to enable the processing to be fair. During the consultation phase MPs were informed that their allowances would be published. Disclosure of travel expenses by mode of travel was wider but the Tribunal found that it was not a new purpose and that the general fairness provisions were satisfied.

The Tribunal then went on to consider whether the first and paramount consideration must be given to the interests of data subjects, namely MPs, and whether it is correct to draw a distinction between personal data related to an individual's public and his/her private life. The Tribunal distinguished its decisions in *CNN Systems Ltd v The Data Protection Registrar* and *Infolink Ltd v The Data Protection Registrar*. Where public officials are concerned and the purposes for which data are processed arise through the performance of a public function. As a result the Tribunal found that when assessing the fair processing requirements under the DPA that the consideration given to the interests of data subjects, who are public officials where data are processed for a public function is no longer first and paramount. Their interests are still important, but where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives. This principle still applies even where a few aspects of their private lives are intertwined with their public lives but where the vast majority of processing of personal data relates to the data subject's public life.

Legitimate Interests Balance

Also in order to show 'fair processing' one of the conditions in Sch 2 DPA must be satisfied. The only one that is relevant in this case is at paragraph 6. The tribunal found that the application of paragraph 6 involves a balance between competing interests broadly comparable, but not identical, to the balance that applies under the public interest test for qualified exemptions under FOIA. Paragraph 6 requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed which in this context are members of the public (section 40 (3)(a)); and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects which in this case are MPs. However because the processing must be 'necessary' for the legitimate interests of members of the public to apply the Tribunal found that only where (i) outweighs or is greater than (ii) should the personal data be disclosed.

Having considered the main legitimate interests of the requesters or members of the public and the main prejudices to the rights, freedoms and legitimate interests of the MPs as data subjects raised in this case, the Tribunal found that the legitimate interests of members of the public outweighed the prejudice to the rights, freedoms and legitimate interests of MPs. The Tribunal considered its decision would only result in a very limited invasion of an MP's privacy considered in the context of their public role and the spending of public money. In coming to this decision the Tribunal

noted that the Scottish Parliament has for some years disclosed the detailed travel claims of MSPs supporting mileage, air travel, car hire and taxis and that in the Scottish IC's Decision 033/2005 in *Paul Hutcheon, The Sunday Herald and the Scottish Parliamentary Corporate Body* (SPCB) the Scottish Commissioner went further and ordered the release of the destination points of taxi journeys of an MSP.

Conclusion

The Tribunal found that the first data protection principle applied and the information should be disclosed because it was necessary for the purposes of the legitimate interests being pursued by Mr Baker and the public which outweighed the prejudice to the rights and freedoms or legitimate interests of MPs. Therefore the appeal was dismissed.