

Annex 1

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 requires third party personal data to be withheld in circumstances where its disclosure would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (DPA).

We consider that disclosure of this personal data would breach the first data protection principle. The first data protection principle requires that processing of personal data must be fair and lawful and, in particular, that it should not be processed unless one of the conditions set out in Schedule 2 of the DPA is met.

In determining whether disclosure would contravene the first data protection principle, we have considered whether disclosure would amount to fair and lawful processing of those individuals' personal data. The individuals concerned do not have public facing roles. We consider that those individuals would be under the reasonable expectation that their information would remain confidential and not disclosed to the public at large. As such, we do not consider that disclosure of the redacted personal data would be fair.

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v1.0) states:

"The public authority must decide.....whether it would be fair to disclose the personal data. If the public authority concludes that it would not be fair, then it must not disclose the information in response to the FOIA request".

In this instance, because the individuals would have had no expectation that their personal data would be released into the public domain, we believe that release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

