



Freedom of Information (Scotland) Act 2002

2002 asp 13

PART 2

EXEMPT INFORMATION

38 Personal information

- (1) Information is exempt information if it constitutes—
 - (a) personal data of which the applicant is the data subject;
 - (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;
 - (c) personal census information; or
 - (d) a deceased person’s health record.
- (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
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress); and
 - (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.
- (3) The second condition is that, by virtue of any provision of Part IV of that Act, the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).
- (4) 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 that Act are to be 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;

“health record” has the meaning assigned to that term by section 1(1) of the Access to Health Records Act 1990 (c. 23); and

“personal census information” means any census information—

(a) as defined in section 8(7) of the Census Act 1920 (c. 41); or

(b) acquired or derived by virtue of sections 1 to 9 of the Census (Great Britain) Act 1910 (c. 27),

which relates to an identifiable person or household.

(6) In section 8(7) of the Census Act 1920 (penalties), in the definition of “personal census information”, at the end there is added “but does not include information which, by virtue of section 58(2)(b) of the Freedom of Information (Scotland) Act 2002 (asp 13) (falling away of exemptions with time), is not exempt information within the meaning of that Act”.