

Access to information held in complaint files

Introduction

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give the public rights to access information held by public authorities.

An overview of the main provisions of FOIA and the EIR can be found in [The Guide to Freedom of Information](#) and [The Guide to the Environmental Information Regulations](#).

This is part of a series of guidance, which goes into more detail than the guides, to help public authorities to fully understand their obligations and promote good practice.

This guidance explains in more detail how to apply FOIA exemptions and EIR exceptions relating to personal data. It therefore refers to the processing of personal data in accordance with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA). It is a guide to our general recommended approach, although decisions will always be made on a case by case basis.

The DPA and UK GDPR set out the UK data protection regime. The DPA also sets out separate data protection rules for the processing of personal data by competent authorities¹ for law enforcement purposes (DPA Part 3); and for processing by the intelligence services (DPA Part 4). For more information see our [Guide to Data Protection](#).

This guidance is based on precedents established under the Data Protection Act 1998 (DPA98). It will be regularly reviewed and kept

¹ A competent authority for the purposes of law enforcement means a person specified in Schedule 7 of the DPA and any other person if, and to the extent that, the person has statutory functions to exercise public authority or public powers for the law enforcement purposes.

in line with new decisions of the Information Commissioner, tribunals and courts. Additional guidance is available on [our guidance pages](#).

This guidance

This guidance is to help you to deal with requests for information which involve access to personal data held in complaint files.

It covers what you should do when an individual makes a subject access request under the UK GDPR and the DPA for access to their own personal data in a complaint file.

It also deals with the issues that arise when an individual asks you for access to personal data held about somebody else in a complaint file under either FOIA or the EIR.

This guidance will help you to decide:

- whether information in a complaint file is personal data, and if so whose personal data it is;
- who gets access to which data when you receive a data protection subject access request from one of the parties whose personal data is contained in a complaint file; and
- how you should deal with personal data held in a complaint file when you receive a freedom of information (FOI) or EIR request for that file.

The guidance focuses on whether information is personal data and if so, whether you should disclose it to a third party.

It looks at the sort of requests you may have to deal with in practice. It avoids detailed legal exposition but analyses the content of some typical complaint files to help you understand the law and deal properly with access requests.

This guidance does not address all the other FOI or DPA exemptions that might be relevant when someone makes a request for access to the information contained in a complaint file. For further information, see our FOI guidance to [exemptions](#) and our UK GDPR guidance on [exemptions](#).

For further information, please see our guidance [What is personal data?](#) and [Personal information \(section 40 and regulation 13\)](#).

Some basics

Under the UK GDPR and the DPA, individuals have a right to access information about themselves. This is commonly known as subject access. It does not give an individual the right of access to information about another person – unless they are acting on behalf of someone else, for example a parent acting on behalf of a child. The UK GDPR and the DPA apply to all organisations that process personal data – public or private sector.

Remember you must handle a request for the requester's personal data as a subject access request under the UK GDPR or the DPA, as applicable. Further information about how to deal with a subject access request is available in our UK GDPR guidance [Right of access](#) and in our law enforcement guidance [The right of access](#).

In most cases you will handle a subject access request under the UK GDPR (as general processing) and may refer to the DPA for relevant exemptions. However, if an individual makes a subject access request for personal data which you are processing for law enforcement purposes, you need to handle this entirely under Part 3 of the DPA. Likewise, you should handle a subject access request which falls under intelligence services processing under Part 4 of the DPA.

There is separate guidance to [law enforcement processing](#).

Under FOIA, any individual can make a request for access to any information held by a public authority. However, an individual's own personal data is exempt from FOIA's access right – and you must deal with it according to data protection subject access rules. Potentially, FOIA does give one individual a right of access to information about another person. However, in most cases, you have to decide whether providing the third party information contravenes the data protection principles and therefore if this data is exempt from disclosure.

Because FOIA only applies to public authorities, individuals normally have no right of access to third party personal data held by private sector organisations.

How to approach a complaint file

Complaint files can be complex, often consisting of various elements:

- the complainant's personal data;
- third party personal data;
- a mix of the complainant's data and the third party data which is inextricably linked and cannot be separated; and
- information that is not personal data at all.

This means that sometimes you need to consider each document within a complaint file separately, and even the content of particular documents, to assess the status of the information they contain.

However, you may be able to take a more high-level approach. You could make an informed decision by looking at a file's index and using your experience about the sort of information a file, section of a file or document is likely to contain, rather than looking at every line of every document.

If you have good information management procedures in place, this will make it easier for you to deal with either data protection or freedom of information access requests. For example, you will find it easier to deal with requests to locate personal data, to decide whose personal data it is and to make decisions about its disclosure, if you have reliable indexes, contents pages, descriptions of documents and metadata. You may be able to establish a routine for dealing with the same sorts of requests when they are made for information in the same sorts of file.

Being helpful to the public versus legal requirement

It is good practice for you to be as helpful as possible to individuals who make access requests.

It can also often be easier to give an applicant a mixture of all the personal data and ordinary information relevant to their request, rather than to look at every document in a file to decide whether or not it is their personal data. This is a feasible way to progress a case where none of the information is particularly sensitive or contentious. For example, a file relating to a customer's complaint about a routine consumer protection issue.

However, you should be clear about the approach you take to deal with access requests. In particular, if you recommend that you will provide information to the applicant on a discretionary basis, you should be clear that you are under no legal obligation to provide it. Individuals have no right of appeal to the ICO or Information Tribunal in respect of information that they have no legal right of access to and providing the information on a discretionary basis does not mean that it becomes the applicant's personal data.

The limits of personal data within a complaint file

Typically, a complaint file will start off at the more 'personal' end of the spectrum – an exchange of personal views about an issue or something that has happened. As an investigation progresses, more general information may be included in the file. For example, your organisation's policies and procedures or geographical information about the place where an accident took place. The latter information may not be personal data, even though it is contained in a complainant's file and may be relevant to the complaint. It is important to be able to detect any 'cut-off' points, at which information within a complaint file ceases to be personal data and becomes ordinary, non-personal information.

See document 1 below - the first three bullet points are about a particular individual's behaviour. However, the fourth point - though a related one - is about the relationship between one organisation and another and is not 'personal' at all.

Document 1 – extract from minutes of internal meeting:

Weekly case review meeting

Attendees: Joey Jacobs (JJ), George Lemon (GL), Sabina Patel (SP), Karen Stone (KS)

Relevant extract:

Agenda item 7 - Long Lane complaint

1. GL confirmed that two visits had now been made to Long Lane following a complaint about Peter Abalone by a neighbour and initial investigation indicating a significant problem.

2. JJ summarised original complaint and said what he saw when he visited Long Lane. Explained that in his view there had been no real improvement in the situation despite warnings and would not be. KS confirmed no previous complaints relating to the property and suggested it was worth making further attempts at resolution, especially considering Mr Abalone's possible health issues.
3. SP raised concern about level of risk from amount of glass in the street. GL confirmed arrangements had been made to remove. First stage formal warning will be issued and then situation to be monitored. Will be reviewed at next meeting.
4. GL explained that the Long Lane case highlights the need to chase-up the application for a regional 'clean-up' grant that SP had submitted to the Regional Rejuvenation Agency in October last year. SP provided an update and explained that due to a cut in the RRA's own funding, it was unlikely any clear-up grant would be forthcoming.

Is everything in a complaint file the complainant's personal data?

The short answer is 'no'. For information to be personal data it must **relate to** an individual and allow an individual to be **identified** from it – not all the information in a file will do this. However, the context in which information is held, and the way it is used, can have a bearing on whether it **relates to** an individual and therefore whether it can be the individual's personal data. Even if information is used to inform a decision about someone, this does not necessarily mean that the information is personal data.

For example, a company's corporate policy might be used to inform a decision about whether to continue an individual's employment, but this does not mean the policy is, or becomes, the employee's personal data. For further information, please see our guidance on [What is personal data?](#)

Document 2 below is about legal advice written by a company lawyer.

Originally the advice related to the various issues the lawyer had given advice about. At that stage it was not about the lawyer himself, and he was certainly not the **subject** of it. Later on, the lawyer's manager collated all the advice the lawyer had given in a file about him, because she was concerned about the standard of the advice being given. At this point, the focus of the information changed from the issues the lawyer has dealt with, to the lawyer himself – the collection of information started to **relate to** him. In addition, the lawyer is **identified** as the author of the advice, it records his personal opinions and therefore it has become his personal data.

Document 2 - extract from legal advice by the company's solicitor:

The behaviour of our delivery man, Mr Stevens, could certainly leave the company open to legal action should Mr O'Dwyer decide to pursue the matter through the courts. Although Mr Stevens' actions may not amount to an actual assault, the courts could still award Mr O'Dwyer considerable compensation for the anxiety and distress that seems to have been caused, and for his inconvenience in that we failed to install the washing machine when we were contracted to do so.

I note that Mr Stevens has a bit of a 'history' since he joined us. My advice would be to offer to settle out of court and to sort out his washing machine ASAP. We can discuss the numbers once we have contacted Mr O'Dwyer again to assess his intentions. I'll defer to HR on the Stevens situation.

Maurice Carpentier, Company Solicitor.

Some information in a complaint file will never be personal data, regardless of the context it is held in and the way it is used – even if it is used in a way that affects an individual. For example, the company's disciplinary policy contains general corporate rules and procedures. It does not **identify** the lawyer (or anyone else). However, it cannot **relate to** the lawyer either, in the way that his legal advice does. Therefore the disciplinary procedure is not the lawyer's personal data, even if it is held in a disciplinary file about him and is used to inform decisions that affect him.

Remember that Article 12(1) of the UK GDPR states that the controller should communicate with the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language. If, for example, a document in the company's disciplinary file says that action is being taken against Mr Carpentier under section 4-1-3 of its code of corporate conduct, the company needs

to explain the meaning of this section of the code. It might do this by explaining what section 4-1-3 says, or by providing a copy of that part of the code, or even the whole code of conduct.

Are somebody's opinions their personal data?

Complaint files often contain information recording an individual's opinion. For example a probation officer's opinion of whether a client is likely to re-offend or a housing department executive's opinion of a new government proposal to offer increased funding for the demolition of 'slum' housing.

It can be difficult to determine whether an opinion relates to:

- the individual who holds it;
- the individual or issue the opinion is related to; or
- both.

However, for an opinion to be personal data it must both **identify** an individual and **relate to** him or her.

It is usually easy to determine whether the individual who holds the opinion is identified or not. For example, a probation officer's report will usually be signed and the minutes of a Housing Committee meeting will usually record the name of the housing department executive who gave their opinion of the government's proposal.

It can be more difficult to determine whether an opinion **relates to** the individual holding it. This can call for careful judgement based on the nature of the information, the context in which it is held and the purpose for which it is used.

The following questions may help you decide whether information recording an individual's opinion is their personal data:

- Does the opinion tell you anything significant about the individual holding the opinion – for example biographical details, characteristics or their personal beliefs?
- Just how 'personal' is the opinion? Is it a subjective, personal view rather than a professional, objective appraisal of an individual or issue?

- Is the opinion being used, or could it be used, to find out something about the individual holding the opinion, to treat him or her in a certain way or to inform a decision in respect of him or her?

If the answer to any of these questions is 'yes' then the opinion is likely to be the personal data of the individual holding it.

If the answer is 'no', then the opinion is unlikely to be the personal data of the individual holding it – of course it could be the personal data of the individual the opinion is about.

In the case of the probation officer's report below, the first paragraph of the report is only the personal data of his client; it identifies the client and the information recounts her previous behaviour and her current status. Although the opinion expressed is clearly that of her probation officer, the information does not reveal anything substantive about the probation officer's own characteristics or behaviour. The client is the subject of the information, not the probation officer. It is possible to infer information about the probation officer from his opinion – for example that he is a probation officer and works with that particular client. However, this does not mean that this part of the probation officer's opinion is his personal data.

"Gail Wallis has been in contact with our agency since her release from HMWP Livenham on 21 October 2017. She is currently subject to a Good Behaviour Contract agreement that is due to expire in October 2021. She has a case-worker at her local Substance Dependency Support Unit and is required under her Contract to attend the Unit weekly."

However, the probation officer's report goes on to say the following:

" Given my 15 years' experience of dealing with clients like this, including my management of those on drug rehabilitation programmes, I am happy to conclude that my client no longer poses a threat to herself or to those around her and is unlikely to reoffend - provided access to the necessary support services is in place. My own approach is always to give clients the benefit of the doubt in cases like this, and usually this has worked out to the client's and the department's satisfaction.
Idries Thesiger – Issues Resolution Officer."

This part of the report does tell us something about the probation officer himself – his professional approach and work history. This part of the report is, therefore, the probation officer’s own personal data.

Similar considerations apply in the case of the housing department executive. The minutes of the meeting may merely record the following:

“Ms Morrissey reported that 85% of the housing stock in the Seedham Road estate in Stevenham was built before 1895. 47% of the properties the LA has surveyed lack basic amenities and are in severe disrepair. Ms Morrissey’s expressed her opinion that we should take advantage of the government’s new funding offer and demolish the estate ASAP.”

Although this information reveals Irina Morrissey’s professional opinion of the housing issue, it reveals nothing of Ms Morrissey’s own characteristics, behaviour or personal beliefs. Her opinion relates to the Seedham Road estate, not to her.

The situation would be different if the minutes of the meeting did record information that relates to Ms Morrissey’s personal beliefs, for example. The minutes might record the following:

“Ms Morrissey then expressed her opinion that given the sort of people who live in the estate, and their record of criminality and anti-social behaviour, it would be better off if we bull-dozed the place and didn’t bother re-housing its occupants.”

This opinion clearly reveals something about Ms Morrissey herself – it relates to her attitudes, state of mind and possibly her political beliefs. It is therefore Ms Morrissey’s personal data. The situation would be even clearer if Ms Morrissey’s employer were to collate records of her outbursts from the minutes of the various meetings she has spoken at with a view to taking action against her under its Equality and Diversity policy.

We recognise that this is a difficult area and it calls for careful judgement – there is not always an obvious answer. One factor that might favour the disclosure of recorded opinions to the individual who held the opinion is that they will already know the content of the information because they gave the opinion in the first place. However, this does not mean that the opinion is necessarily their

personal data, or that you can necessarily withhold the opinion on data protection grounds if there is an FOI request for access to it.

Can more than one person be the subject of personal data?

Yes, information can have more than one person as its subject. An obvious example is a witness statement. It says who the witness is, records their whereabouts and typically details what the witness saw another person do or say. Normally, both the witness and the other person are identified in the statement. Although a witness statement is primarily about the witness (where they were, what they saw etc.), it also identifies and relates to the other person because it says what the witness saw them do, heard them say etc. Therefore information like this can be personal data about two (or more) people. See document 3 below.

Document 3 – witness statement:

Note of preliminary conversation between Mrs Wainwright, Staff/Pupil Liaison Officer, and David Tang, Year 10 pupil.

I spoke to David Tang about his experiences at hockey practice sessions. In particular I explored his recollection of last Thursday's hockey practice. David said that Mr Boon was 'getting stroppy' with the team as they have not been very successful in recent weeks. He said that Mr Boon had 'gone off the deep end' with James Monk last week.

David said that he was aware that James Monk's parents have complained about Mr Boon. David gave me an account of the incident in question. I asked David if anyone else witnessed this incident but he said that he didn't think so. I discussed the school's procedures for investigating complaints with David, and tried to impress upon him the importance of telling the truth and sticking to the facts of the matter as he recalls them. I asked David if he would be willing to write down his version of last Thursday's events:

2. David Tang's written account of incident between Mr Boon and James Monk:

Mr Boon was on everybody's case at last week's hockey practice. He was shouting at everyone all the time. He was especially picking on me and James Monk.

We were having a game at the end of practice and Mr Boon kept picking on me and James. James missed a shot at goal towards the end of the game. When we were walking off the

field Mr Boon told him that he was a horrible little loser and that he didn't deserve to attend this school. I remembered the words clearly because he'd said the same thing to me at last week's practice. I think he's a horrid bully.

Third party personal data

Both the DPA and FOIA/EIR have mechanisms for dealing with situations where one individual makes a request but the personal data of another individual falls within its scope.

In practice, the effect of applying either the DPA or FOIA/EIR disclosure tests to third party personal data is likely to be the same. It is best to make sure, though, that you cite the correct statutory language when dealing with a case.

In FOIA and the EIR, the most common test for the disclosure of third party personal data is whether this would breach the data protection principles.

However, the DPA itself works slightly differently to FOIA and the EIR, and there are data protection exemptions you must consider when deciding whether to disclose third party data in response to a subject access request. Which data protection exemption applies depends on the nature of the data and the reasons you are processing it:

Type of Personal data processed	Exemptions for third-party personal data under the subject access right	Test for disclosure (See exemption for full details)
General processing under the UK GDPR	Schedule 2 Part 3 paragraph 16(1) of the DPA.	(a) has the third party consented to the disclosure? (b) is it reasonable in the circumstances to disclose the third-party data without their consent?

Processing for law enforcement purposes (under DPA Part 3)	Part 3 Chapter 3 Section 45(4)(e) of the DPA.	Is it a necessary and proportionate measure to refuse disclosure in order to protect the rights and freedoms of others?
Intelligence services processing (under DPA Part 4)	Part 4 Chapter 3 section 94(6) of the DPA.	(a) has the third party consented to the disclosure? (b) is it reasonable in the circumstances to disclose the third-party data without their consent?

If the other person consents to you disclosing the information about them, then it is reasonable to do so. However, if there is no such consent, you must decide whether to disclose the information anyway and if this would be reasonable. When making this judgement, you must consider all the relevant circumstances.

This usually involves considering:

- the reasonable expectations of the other person and in particular, any duty of confidentiality owed to them;
- any express refusal of consent by the other individual and whether they are capable of giving consent;
- the type of information that would be disclosed; and
- in a work context, factors such as an individual's seniority and role. In general, it is more likely to be reasonable to disclose information about an employee acting in a professional capacity than about a private citizen.

For further information about responding to an FOI request for third party data, see our guidance [Personal information \(section 40 and regulation 13\)](#). For information about responding to a subject access request which includes third party data, see our UK GDPR guidance [Right of access](#) and our law enforcement guidance [The right of access](#).

For further information about FOI and data protection requests for personal data and third party data see also our guidance [Personal data of both the requester and others](#).

Case study 1

A complaint file held by a supermarket about the behaviour of a delivery man

Extract from the complainant's letter about the delivery man's behaviour:

Mr B O'Dwyer
47 Catkin Street
Livenham
LV6 7H8

Dear sir,

I was having a washing machine delivered last Monday (6 January) but **one of the delivery men – his colleague informed me that he's called Noel Stevens - started to go crazy because I wanted him to bring the machine through the garden and through my back door, rather than through the house. When I told him I wasn't prepared to move the furniture in my hall, he literally started to jump and down, swearing and threatening to hit me. He told me what I could do with my washing machine and left it in the middle of the road.** I have been suffering from severe stress following an accident 2 years ago and this has made it worse. I want to know what you intend to do about this.

Note added by supermarket: sure we had similar complaint from same guy few years ago about a cooker – can Complaints Dept. check files pls?

Is it personal data?

- We can assume that this letter is kept in a complaint file listed under Mr O'Dwyer's name and that all the information in the file is relevant to his complaint. However, this does not mean that the entire content of the file is necessarily Mr O'Dwyer's personal data.
- All of the information in the letter **relates to** Mr O'Dwyer, because it describes the incident he was involved in and his feelings about it. Mr O'Dwyer is clearly **identified** in relation to the information. The information in this letter is therefore Mr O'Dwyer's personal data.

- Mr O'Dwyer is the **subject** of the personal data in the letter. This means that he is its data subject and has a right of subject access to that information, unless an exemption applies. Note that Mr O'Dwyer may not be the only subject of the personal data.
- Some of the letter – **highlighted in red** - identifies Mr Stevens and relates to his behaviour. This is therefore personal data about Mr Stevens and he may have a right of subject access to this part of Mr O'Dwyer's letter.
- Remember that information is not necessarily the personal data of just one person. In cases like this, where one person is complaining about another, the information is usually personal data that relates to both the complainant and the person being complained about, and both have subject access rights. The supermarket must use the DPA test of reasonableness to decide whether they can release the personal data.

If Mr O'Dwyer makes a subject access request:

- The supermarket should provide him with a copy of the whole letter, even though it contains some information that is also personal data about Mr Stevens. As Mr O'Dwyer wrote the letter and already knows what it says about Mr Stevens, it is reasonable in the circumstances to provide Mr O'Dwyer with the whole letter.
- Mr O'Dwyer should also get the comments that the supermarket's investigator wrote on the letter because they relate to him and state the supermarket's intentions towards him – ie to check whether he has made any similar complaints in the past.

If Mr Stevens makes a subject access request:

- The letter contains some information that relates to, and identifies, Mr Stevens. This means that he is the subject of the personal data in this part of the letter, and the supermarket should provide it to him. In practice, this means the supermarket should provide a redacted version of the letter, or an extract from it ie the section of the letter highlighted - unless an exemption applies.

If a third party makes a freedom of information request:

The supermarket is not a public authority so FOI rights do not apply.

Witness statement from the complainant's neighbour:

Mrs P Oddman
45 Catkin Street
Livenham
LV6 7H8

Dear sir,

My neighbour, Bernard O'Dwyer, has asked me to write to you about what I saw last Monday. I was washing my front windows when I noticed that my neighbour was having a washing machine delivered. I don't know why but one of the delivery men seemed to get very agitated and started behaving really threateningly towards Mr O'Dwyer. I have never seen anything like it. Although Mr O'Dwyer tried to calm him down, in the end the delivery man drove off at high speed, leaving the washing machine and his colleague standing in the street.

Is it personal data?

- The information in the letter is the personal data of Mrs Oddman because it identifies her, relates to her whereabouts and actions and contains her account of the incident.
- The letter also contains the personal data of Mr O'Dwyer because it identifies him and details his behaviour. Although Mrs Oddman's letter does not name the delivery man, the information about him – highlighted in red - is personal data in the hands of the supermarket because it holds the other information needed – both in the complaint files and in sources such as delivery schedules – to identify Mr Stevens.
- A witness statement might be less explicit in terms of the identification and observation of another individual. For example, Mrs Oddman's statement might have said that she hadn't seen anyone doing anything. In this case the information in the statement is Mrs Oddman's personal data but not Mr Stevens' – even though it is held in a file about him.

If Mrs Oddman makes a subject access request:

- The supermarket should provide Mrs Oddman with a copy of the whole letter, even though some of it is also personal data about Mr O'Dwyer and Mr Stevens.

If Mr O’Dwyer makes a subject access request:

- Mrs Oddman’s letter contains Mr O’Dwyer’s personal data. It is reasonable for the supermarket to provide Mr O’Dwyer with a copy of the personal data about him contained in Mrs Oddman’s letter. Mrs Oddman says that the complainant asked her to write to the supermarket and it is likely that Mr O’Dwyer is aware of the content of the letter. If in doubt, the supermarket could ask the witness for her consent to provide a copy of her letter to Mr O’Dwyer.

If Mr Stevens makes a subject access request:

- Much of Mrs Oddman’s letter constitutes personal data about Mr Stevens – where she describes his behaviour (highlighted in red). This means that Mr Stevens does have subject access rights for that part of Mrs Oddman’s letter.
- However it is not reasonable in the circumstances for the supermarket to provide Mr Stevens with a copy of the personal data about him contained in Mrs Oddman’s letter. This is because, given the nature of the incident, it is likely that the witness expects her letter to be held in confidence by the supermarket. It is therefore unreasonable to disclose any of Mrs Oddman’s letter to Mr Stevens. The supermarket could seek Mrs Oddman’s consent to disclose all, or part, of her letter to Mr Stevens.

Summary of other complaints about the delivery man extracted from his personnel file:

N Stevens - Deliveries Department - Employee no.57689391

Summary of previous complaint activity.

- 16-9-2016: Complaint: dropped chest freezer down cellar steps and threatened householder
- 4-4-2017: Complaint: abusive behaviour whilst delivering toaster
- 6-1-2018: Complaint: abusive and threatening behaviour and failure to install washing machine

Is it personal data?

This is personal data about Mr Stevens because it identifies him and relates to his behaviour.

If Mr Stevens makes a subject access request:

- The supermarket should provide him with a copy of this information. The information is exclusively about Mr Stevens. Even if the information is held in a file about Mr O'Dwyer's complaint, it is not Mr O'Dwyer's personal data because it neither identifies nor relates to Mr O'Dwyer. (In reality this information would also be held in Mr Stevens' personnel file.)

If Mr O'Dwyer, Mrs Oddman or any other third party makes a subject access request:

- If Mr O'Dwyer makes a subject access request for all the information the supermarket holds about him, they should not provide him with information about other complaints made about Mr Stevens. Even though the information is held in a file about Mr O'Dwyer's complaint, and may be relevant to it, it is personal data about Mr Stevens and not Mr O'Dwyer.

Extract from legal advice by the company's solicitor:

The behaviour of our delivery man, Mr Stevens, could certainly leave the company open to legal action should Mr O'Dwyer decide to pursue the matter through the courts. Although Mr Stevens' actions may not amount to an actual assault, the courts could still award Mr O'Dwyer considerable compensation for the anxiety and distress that seems to have been caused, and for his inconvenience in that we failed to install the washing machine when we were contracted to do so.

I note that Mr Stevens has a bit of a 'history' since he joined us. My advice would be to offer to settle out of court and to sort out his washing machine ASAP. We can discuss the numbers once we have contacted Mr O'Dwyer again to assess his intentions. I'll defer to HR on the Stevens situation.

Maurice Carpentier, Company Solicitor.

Is it personal data?

- This information identifies three people, but this does not necessarily mean that the legal advice is the personal data of all, or any, of the individuals named. To establish whether the information is personal data, and if so whose, the supermarket must consider which individual, or individuals, the information **relates to**.

If Mr Carpentier makes a subject access request:

- Mr Carpentier has no right of subject access to the legal advice because even though he is identified as its author, the legal advice relates to Mr O'Dwyer and his complaint – nothing in the legal advice relates to Mr Carpentier and he certainly is not the subject of it.
- Mr Carpentier's legal advice does contain his name and job title. This is his personal data and the supermarket should provide it to him. However we would not expect the supermarket to provide '*Maurice Carpentier, Company Solicitor*' more than once, even if it appears on various documents he has authored.
- Please note that later on the supermarket may decide to collate a file of the poor legal advice Mr Carpentier has been giving, with a view to taking disciplinary action against him. If this happens the legal advice itself would become Mr Carpentier's personal data because the focus of the information would become Mr Carpentier's own professional competence, rather than the various topics and people his legal advice is about.

If Mr O'Dwyer makes a subject access request:

- The information relates to Mr O'Dwyer and his complaint. In particular it sets out the company's intentions about Mr O'Dwyer, should he make a claim against them. This means that the information is Mr O'Dwyer's personal data – although the information may be exempt from subject access on the grounds of legal professional privilege.
- Leaving aside legal professional privilege, it is not reasonable in the circumstances to disclose personal data about Mr Stevens contained in the legal advice to Mr O'Dwyer – particularly that he has a 'history' with the company and that HR may act against him. It is reasonable to provide Mr Stevens' personal data to Mr O'Dwyer in so far as it consists of information that Mr O'Dwyer is already aware of. However, the legal advice consists of the supermarket's internal considerations and calculations and some of it is not personal data.

If Mr Stevens makes a subject access request:

- The legal advice identifies Mr Stevens and much of it relates to him. This is Mr Stevens' personal data. He is entitled to this under subject access unless an exemption, for example legal professional privilege, applies.

Supermarket policies and procedures

- Complaints procedure
- Staff conduct policy
- 'Our customer care charter'

Is it personal data?

- These documents contain the supermarket's general policies and procedures. They are relevant to the incident in question because the supermarket may use them to decide whether to take any action against Mr Stevens, and perhaps to assess whether to offer Mr O'Dwyer's compensation. However, even though these documents are held in Mr O'Dwyer's complaint file they do not **identify** any individual or **relate to** any individual. Therefore they cannot constitute personal data and no one has a right of subject access to them. However, it might be reasonable for the supermarket to provide copies of these documents to Mr O'Dwyer or the other individuals involved in this matter, because they contain relevant background information. However, the supermarket is under no legal obligation to do so.

Case study 2

A local authority's investigation file into Mrs Belshaw's complaint about the state of her neighbour's property.

1. Livenham County Council site visit report

Report prepared by: Joey Jacobs

Address/ location visited: 2 Long Street, Livenham

Reason for visit: Report by neighbour at no.4, Mrs Belshaw, of persistent mess in drive and into road from cans and bottles.

Date and time of visit: 15 January 14:00

Report: When I arrived at the premises a large quantity of cans and beer bottles were covering most of the drive of 2 Long Street. There was no recycling box visible and the black bin was already overflowing with rubbish bags. Approximately 20 cans had spilt onto the pavement and there were a large number of broken bottles on the pavement and in the gutter.

The occupant, Mr Abalone, was at home and explained that he had never been given a recycling box by the Council. He said he had been having a clear out and was planning to take the rubbish to the tip himself but his car was in the garage, which was inaccessible because of the rubbish. He also explained that he is being treated for depression and is in no position at the moment to clear the mess up. He did seem a bit under the weather.

I confirmed that the Council had received a complaint about the mess and explained consequences of not taking action to clear it up. Told Mr Abalone because of the scale of the problem we would visit again in a week and expected it to be cleared. I would order a new box for him. I left my business card with him so he can contact me.

Follow up action:

- Replacement recycling box to be ordered – confirmed 17/01
- Follow up site visit TBC – [file note – In area 23/01 visit arranged PM]

2. Internal email between Council staff

From: Joey.Jacobs@livenhamcouncil.gov.uk

To: Mihaila.Stari@livehnamcouncil.gov.uk

Subject: Site visit to Long Street - litter problem

Mihaila,

As discussed on the phone I went to Long Street last week and I have spoken to Mr Abalone at number 2. The outside of

the property is a mess and there is a lot of glass on the street. I've given Mr Abalone a week to clear it up but I don't think it's likely he'll do it. I am in the area again on the 23rd so I'll have another look but will let you know if I need you to make other arrangements to get it cleared up or there is any further action we need to take.

Thanks

Joey

Is it personal data?

- Both these documents contain Mr Abalone's personal data because much of their content identifies him and relates to him, detailing his behaviour, describing his reaction to the accusation against him and setting out the authority's intentions towards him.
- The first of these documents contains some personal data about Mrs Belshaw – she is named in the document and it tells us that she has made a complaint (**highlighted in green**) – this part of the document identifies her and relates to her.
- Information contained in these documents that identifies the authority's two officials and details their activities, whereabouts, intentions and thoughts is personal data about them. However, not all the information in the documents is personal data about the officials. For example, the paragraph highlighted in red in the first document relates exclusively to Mr Abalone and is his personal data, it does not relate to the council officials and is not therefore their personal data.

If Mr Abalone makes a subject access request:

- We have established that most of the information in the documents is personal data about Mr Abalone, and he has a right of subject access to it, unless an exemption applies.
- If the local authority owes a duty of confidentiality to an individual, they should ensure that any disclosure of information provided by that individual does not breach the duty of confidentiality. That said, a public authority should not agree to hold information in confidence where it is not appropriate to do so.

- The local authority should disclose personal data about their officials to Mr Abalone unless they have identified a specific risk. Mr Jones has already identified himself to Mr Abalone, and the personal data about the two officials only details their professional, public activities; there is nothing particularly private about it. This means that disclosing personal data relating to the two officials to Mr Abalone would not breach the data protection principles. In particular, the disclosure would be fair because both officials are in a public-facing role and are normally expected to identify themselves to members of the public.

If Mrs Belshaw makes a subject access request:

- Even though the two documents are held in a file listed under Mrs Belshaw's name, this does not mean that all of the information they contain is Mrs Belshaw's personal data.
- Only the information in the first document (**highlighted in green**) that identifies Mrs Belshaw as the complainant is her personal data and the local authority should provide it to her.
- As matters progress, the focus of the local authority's investigation becomes Mr Abalone and his property. This means that even though the file is listed under Mrs Belshaw, most of its content is personal data about Mr Abalone. This is reflected in the two documents above, which only contain one brief, incidental reference to Mrs Belshaw.

If the local authority receives an EIR request for any information it holds about littering in the Long Street area:

- The local authority has to decide whether releasing the personal data in these documents under FOIA or the EIR breaches the data protection principles – in particular whether there is a legitimate interest in the disclosure which overrides the rights and freedoms of any data subject. Most of the information is personal data about Mr Abalone and it unlikely there will be a legitimate interest in releasing this information to the general public. Furthermore, some of the data is special category data, and there is unlikely to be a condition for processing this data. There is also no legitimate interest in releasing information identifying Mrs Belshaw as the complainant.

- However, there is a legitimate interest in releasing personal data detailing the activities of the council officials and information describing the mess at Mr Abalone's property; anyone walking down Long Street would be aware of this anyway. In this case the legitimate desire of other residents to know what the council is doing about Mr Abalone's mess might therefore lead the authority to release certain de-personalised information about the issue.
- The authority should give consideration to whether they can redact certain information so that an individual is no longer identifiable. This will not be possible in all cases.