



Steven Dickinson

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ICON > Policy Delivery knowledgebase > **CWAN015**

FOI POLICY INTERNAL KNOWLEDGE BASE			
FoI or EIR		Section/Regulation	Issue
FOI EIR		S40 R13	Sensitive personal data and fairness
<b>Summary:</b>  If the requested information is sensitive personal data of a third party then in most cases it will be unfair to disclose it. We have some standard wording that can be used in DNs in such cases.  If we find that disclosure of sensitive personal data would be fair, we then have to establish that Schedule 3 condition 1 or 5 is satisfied.			
<b>Further Information:</b>  Our guidance on s40/r13 says that the first step in considering fairness is to establish whether the requested information is sensitive personal data, as defined in section 2(a)-(h) of the DPA. If so, then in the majority of cases the data subject will have a reasonable expectation that the information would not be disclosed and furthermore the consequences of disclosure could be distressing to them. For example, it is almost self- evident that to disclose someone’s medical records will be unfair as in our society there is a clear expectation that medical information will remain confidential, both to preserve the relationship between doctor and patient and also because the disclosure will be damaging or distressing to the data subject. In the majority of cases we are therefore likely to find that disclosure would be unfair.  In such cases, where we find that disclosure of sensitive personal data would be unfair, the following standard wording can be used in the DN:-  <i>"The Commissioner notes that the information in this case falls under s2(<b>complete</b>) of the Data Protection Act 1998 as it relates to the data subject’s.....(<b>complete</b>). As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely (*) to have a detrimental or distressing effect (*) on the data subject, the Commissioner considers that it would be unfair to disclose the requested information."</i>  (*) – It might be possible to be more specific or use stronger language in certain circumstances.  However, section 2 of the DPA lists a wide range of types of sensitive personal data. A data subject may have no objection to the disclosure of some sensitive personal data; the guidance document gives the example of the political opinions of a Member of Parliament. If the data subject has consented to the disclosure or deliberately made the information public themselves, then it is likely that we would find that disclosure would be fair.  If we do find that the disclosure of sensitive personal data would be fair, then following the approach set out in the guidance document, we then have to establish that a Schedule 3 condition is satisfied. If we found that disclosure would be fair because the data subject consented to it, then condition 1 may be satisfied; if we found that it was fair because the data subject deliberately put the information in the public domain themselves, then condition 5 may be satisfied.			
<b>Source of Casework Advice Note</b>		Policy Delivery	<b>Details</b>
<b>Related Casework Advice Notes</b>			
<b>Related Documents</b>		ICO guidance: <a href="#">Personal information</a>	
<b>Contact:</b> CW			
<b>Date:</b> 08/07/2013			<b>Reference number:</b> CWAN 015

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