



NEJVYŠŠÍ SPRÁVNÍ SOUD



Seminar organized by Supreme Administrative Court of the Czech Republic and ACA-Europe

Supreme administrative courts and evolution of the right to publicity, privacy and information.

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Answers to Questionnaire: United kingdom



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Supreme Administrative Courts and evolution of the right to publicity, privacy and information

(Questionnaire)

1. Briefly describe the administrative institutional backing of free access to information and of the protection of personal data. Whenever those agendas are institutionally linked, provide for a brief description of such relations.

Access to information held by public bodies within the UK is governed by the Freedom of Information Act 2000 (FOIA), or equivalent legislation in Scotland. Access to personal data is governed by the Data Protection Act 1998 (DPA). There is an independent ombudsman responsible for ensuring that public bodies are compliant with this legislation – the Information Commissioners Office (ICO). Access to court records is exempt under the provisions of the FOIA (by virtue of section 32 of the Act. However, courts have arrangements in place to allow interested parties to apply to the relevant court for access to records. In addition, judgments are made public and court reports are published on a number of websites.

2. Describe in general terms the regular administrative and court procedure in a typical disputable case of free access to information. Describe also the procedural role of your supreme administrative instance.

Anyone who wishes to access administrative information held by a court or tribunal needs to apply to the relevant body – so for example in England & Wales this would be Her Majesty's Courts & Tribunals Service (HMCTS). If the information requested is a case record, then the application should be made directly to the relevant court or tribunal that holds the record. The UK Supreme Court (UKSC) is an independent body, not administered by HMCTS, so applications for information held by the UKSC can be made directly to the Court. If a request for information is declined the applicant can ask the organisation to whom the request was made to conduct an internal review. If the information is still withheld then the applicant can apply to the ICO for a review and decision. If either party disagrees with the ICO decision it can be appealed to the Information Tribunal and, ultimately to the Court of Appeal and, if a point of law is at issue, to the UKSC. This happened recently in the cases of *R (on the application of Evans) and another v Attorney General* and *Kennedy v The Charity Commission*. The judgments in these cases can be found at -

https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0137_Judgment.pdf
and https://www.supremecourt.uk/decided-cases/docs/uksc_2012_0122_judgment.pdf

3. Describe the procedural role of your supreme administrative instance in the agenda of protection of personal data.

As mentioned above, the ICO has responsibility for ensuring compliance with Data Protection legislation. In the event of a dispute the same route could be followed (ICO, Information Tribunal etc).

The UKSC would not be involved unless a point of law arose in a data protection case heard by a lower court or tribunal. The UKSC is not responsible for the administration of either FOIA or DPA unless a substantive point of law was identified in a case heard by a lower court.

4. Provide for a general overview of historical development of access to information rights in your jurisdiction while focusing on most important legislative and judicial milestones. Also, please try to generally describe the main driving forces behind the development of these rights.

As explained above, the relevant legislation in the UK is the FOIA or DPA. The Ministry of Justice has policy responsibility within government for these pieces of legislation, and the ICO is responsible for compliance and enforcement.

5. Give basic subjective observation as to the role and importance of free access to information in political system of your country. In particular, focus on how the importance of freedom of information is perceived by general public and by non-governmental sector.

This is not a question that the UKSC could answer. As explained above, the MoJ has policy responsibility within government and would be best placed to answer this question.

6. Give subjective general observation as to whether and eventually how free access to information rights are in practice abused or misused by the petitioners.

We can only answer based on the requests that the UKSC has received. We would not have any knowledge regarding the experiences of other public bodies. The UKSC has received a number of requests under the FOI which are from commercial organisations who then use the information provided to target sales calls to people within the organisation. However, for a wider answer to this question, you should refer to the MoJ and the ICO, who will have a wider view on this.

7. Give a list and brief explanation of security, law enforcement and/or defence institutions that can benefit in your country from the exceptions laid down in Art. 7(e), Art. 8(4) and 8(5) of the Directive 95/46/EC.

The FOIA contains a number of exemptions. These include exemptions covering some information held by the security services, the police, the courts or that relate to national security, relations between the UK and other countries and relations between the UK government and the devolved administrations of Scotland, Wales and Northern Ireland. Details of the exemptions are provided below.

OUTLINE LIST OF EXEMPTIONS UNDER FREEDOM OF INFORMATION ACT

Exemptions provide discretionary exceptions to the public's right of access to information held by the University under the terms of the Freedom of Information Act 2000. There are 23 exemptions provided under the Act that are either absolute or conditional in their effect, which are as follows:

Absolute Exemptions

Exemptions that are wholly exempt in their application include:

- Information accessible to the applicant by other means (s21)
- Information supplied by, or relating to, bodies dealing with security matters (s23)
- Information relating to Court records (s32)
- Parliamentary privilege (s34)
- Information provided in confidence (s41) and
- Information prohibited from disclosure by any other piece of legislation or enactment (s44)

Exemptions that are absolute only in part include:

- Information that would prejudice the effective conduct of public affairs (s36), and
- Personal information (s40)

Conditional Exemptions

Exemptions requiring the application of a public interest test include:

- Information intended for future publication (s22)
- National Security (s24)
- Investigations and proceedings conducted by public authorities (s30)
- Formulation of Government Policy (s35)
- Communications with Her Majesty and honours (s37)
- Health and Safety (s38)
- Environmental information (s39)
- Legal professional privilege (s42)

Exemptions requiring the application of a public interest test and/or a prejudice test include:

- Defence (s26)
- International relations (s27)
- Relations within the United Kingdom (s28)
- The economy (s29)
- Law enforcement (s31)
- Audit Functions (s33)
- Commercial Interests (s43)

The DPA contains provisions that will allow the sharing of personal data in exceptional circumstances between or with certain bodies (i.e. the police for the purposes of law enforcement, or some central and local government bodies for the prevention of fraud). Similarly, some data held by the police or the security services would be exempt from disclosure in certain circumstances.

Processing of personal data for the following purposes are exempt from the Data Protection Act 1998 ("the Act"):

1. Personal data required or held on the grounds of National Security

Exempted by a certificate issued by a minister of Cabinet rank.

2. Personal data publicly available by law

e.g. the electoral register

3. Personal data held for personal, domestic and recreational purposes

e.g. a personal address book.

4. Personal data held by an unincorporated members club

e.g. lists of club members, although members must be asked if they object to the uses and data cannot be disclosed without the consent of the members.

5. Exemptions from the Restrictions on Disclosure

In certain circumstances the University is able to disclose personal data to third parties (other individuals or organisations not listed on the disclosure section of the register entry). These exemptions are subject to strict conditions and to University policy, and should only be authorised by the University Secretary.

The non-disclosure exemptions include:

- disclosure with the consent of the data subject;
- disclosure to employees or agents so they can carry out their duties;
- the detection of crime, the assessment or collection of tax, the apprehension or prosecution of offenders;
- national security;
- disclosure required by law;
- when obtaining legal advice;
- emergency disclosures, where disclosure is required to prevent injury or damage to health.

6. Exemptions from the Data Protection principles under the Act

6.1 Examination exemptions

There are two exemptions from the Act in relation to certain exam-related information (examination scripts and examination marks). Further information on these exemptions are available via the University guidance material Examination and Data Protection.

6.2 Research exemption

The Act makes special provisions for research if the research activity fulfils all of the conditions set out in Section 33 of the Act. Further information is available via the University's guidance in relation to the Section 33 research exemption.

8. Subjectively identify most emerging actual problems that arise from processing of personal data by aforementioned security, law enforcement and/or defence institutions. Whenever appropriate, demonstrate them on particular examples.

This is a question that would need to be answered by the MoJ and the ICO.