

Annex A – Consideration of Data Protection Regulations

Offences against the Data Controller

The events described in this document are alleged to have taken place in [redacted] 2018, before the current Data Protection Act 2018 came into force and before GDPR. Consideration is therefore given to the Data Protection Act 2008 that was in effect at the time. The two acts are broadly similar with respect to disclosure of information without consent of the controller and the responsibilities of the controller.

It is and was an offence (Section 55 of Data Protection Act 1998 and Section 170 of Data Protection Act 2018, which came into force on 25 May 2018) to pass information to a third party without the consent of the data controller. Any offence or breach of discipline in this regard has been committed against Scottish Government and it is for Scottish Government to take any action with the Information Commissioner’s Office. Any decision to prosecute would be made by The Lord Advocate.

It is also an offence for anyone receiving this information to pass it on further. This is alleged to have happened here, with the former employee reporting that they passed the information to at least 4 other people. It is however a defence if the person passing on the data did so in the belief that they had been given the information with the data controller’s consent. For clarity, no such permission existed in this case.

If the parties involved legitimately knew details of this case from circumstances other than through release from the controller then no data protection issues arise.

Offences by the Data Controller

The Data Protection Act 1998, Schedule 1; Data Protection principles, part 1, states that “appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.”

If a name has been passed on, then Scottish Government would potentially have a case to answer in respect of the robustness of the technical and organisational measures it had in place at that time.