

Mr A Larsen
Global Witness
Lloyds Chambers
1 Portsoken Street
London
E1 8BT

15 December 2014

Case Reference Numbers

RFA0486390 Re: Beny Steinmetz
RFA0522808 Re: Sandra Merloni-Horemans
RFA0522817 Re: Dag Cramer
RFA0524632 Re: David Clark

HowardKennedyfsi ref EXM/050812.00018
HowardKennedyfsi Doc ref MZW/21505411.3

Dear Mr Larsen

I write in reference to your Solicitors HowardKennedyFsi's letter of 17 October 2014 regarding the data protection concerns raised by Mishcon de Reya on behalf of their clients' Mr Beny Steinmetz, Ms Sandra Merloni-Horemans, Mr Dag Cramer and Mr David Clark ("the data subjects") about Global Witness and the way you have handled their subject access requests. I understand that the data subjects have requested an assessment under section 44 of the Data Protection Act ("DPA") and a determination under section 45 of the DPA.

Determination as to the Special Purposes

As you are aware, the Information Commissioner may make a determination under section 45 of the DPA where it appears that any personal data is not being processed only for the special purposes, or is not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller (in this case Global Witness).

In these cases the Information Commissioner is not in a position to make such a determination as we accept the submissions you have made that Global Witness is processing the data subjects' personal data only for the special purposes.

Request for assessment

Under section 42 of the DPA, it is the Information Commissioner's role to provide individuals with an assessment of a data controller's compliance with the DPA when processing their personal data. This assessment is essentially our view or opinion, based on the information provided to us, as to whether a data controller is likely or unlikely to have complied with the provisions of the DPA.

Concerns raised with us

In these cases, the matters the data subjects' have raised that are relevant to the DPA relate to the sixth data protection principle. This provides that personal information must be processed in accordance with the data subject's rights.

Section 7 of the DPA provides that individuals can ask any organisation for a copy of the information it is holding about them. This is known as the right of subject access. However, there are provisions and exemptions in the DPA which mean that personal data may legitimately be withheld in response to subject access requests.

The data subjects are concerned that Global Witness has refused their subject access requests, claiming that the personal data requested is being processed for the special purposes.

Our view

On the basis of all of the information provided by the data subjects and Global Witness, we have decided that it is likely that Global Witness has complied with the requirements of the DPA in these cases.

This is because, from the information provided, we are satisfied that Global Witness can rely on the exemption under section 32 of the DPA to withhold the personal data requested by the data subjects in their subject access requests.

As you will be aware, section 32 is an exemption from the majority of the DPA (including the right of subject access under section 7) where personal data is only being processed for the special purposes. There are four elements that we need to consider when deciding whether the exemption applies in any particular case:

- (1) whether the personal data is processed only for journalism, art or literature,
- (2) whether that processing is taking place with a view to publication of some material,
- (3) whether the data controller has a reasonable belief that publication is in the public interest, and
- (4) whether the data controller has a reasonable belief that compliance is incompatible with journalism.

In response to the data subjects' concerns, you have explained the following for each element of the special purposes exemption.

(1) Is the processing only for journalism, art or literature ("the special purposes")?

For the section 32 exemption to apply, Global Witness can **ONLY** be processing the personal data requested for the special purposes. Consequently, if Global Witness is processing the personal data requested for any other purpose, for example promoting your services or for research purposes, then it is unlikely that this exemption will apply.

You say that Global Witness is a not-for-profit, non-governmental organisation that investigates, reports and campaigns to raise public awareness about issues concerning natural resource related corruption around the world. You have explained your social watchdog role. You have explained that the personal data requested is processed for the purpose of campaigning journalism.

As explained in our data protection guide for the media (and noted by you), the Information Commissioner has accepted that non-media organisations may be able to invoke the exemption if their purpose in processing the specific information is to publish information, opinions or ideas for general public consumption. It is our view that this constitutes a journalistic purpose even if they are not professional journalists and the publication forms part of a wider campaign to promote a particular cause.

Non-media organisations may also perform some processing of personal data for purposes other than journalism; however, when considering whether section 32 applies, the focus is on whether the specific data requested is being processed only for the purposes of journalism. In the data subjects' cases, you have explained that the personal data requested is being processed only for the purpose of reporting on the Simandou controversy as part of your wider campaign. We are, therefore, satisfied that Global Witness is only processing the personal data requested by the data subjects for the purpose of journalism.

(2) Is the personal data being processed with a view to publication?

You do not have to intend to publish the actual personal data in question to satisfy this aspect of the exemption, but you will need to demonstrate that your aim is to publish a story and the personal data is being processed in connection with that story.

You have confirmed that all the personal data Global Witness has obtained or generated is with a view to the publication of journalistic material, specifically (in the data subjects' cases) the publications of reports concerning the Simandou controversy. You say that this position is supported by the articles that Global Witness has already published.

You have also confirmed that the story concerning the Simandou controversy is ongoing and that Global Witness intends to publish further reports as the story unfolds. We are, therefore, satisfied that Global Witness' aim is to publish reports about the Simandou controversy and the personal data requested by the data subjects' is being processed in connection with those reports.

(3) Does Global Witness have a reasonable belief that publication is in the public interest?

The DPA puts the onus on data controllers to make their own independent decisions on whether publication is in the public interest, as long as those decisions are reasonable.

You have explained that the data subjects' personal data has been, and continues to be, processed as part of Global Witness' journalistic campaign to raise awareness about the Simandou Controversy, which you considers to be a major corruption scandal and very high profile matter.

You have stated that Global Witness reasonably believes that the publication would be in the public interest and that the public interest outweighs the privacy rights of the affected data subjects. Furthermore, you say that Global Witness does not reveal the intimate details of the data subjects' private lives but instead it relates to the data subjects' professional lives in connection with the company you say is involved in the Simandou controversy. You say that the data subjects' can have no reasonable expectation of privacy in respect of their professional activities as those activities are directly or indirectly relating to the Simandou deal.

You say that it is vital to raise public awareness about the events surrounding the Simandou deal because of the value of the deal and because it was made with the Government of one of the poorest countries in the world.

It is not the role of the Information Commissioner to decide whether the allegations Global Witness has made are true, nor is it our role to determine whether the publication in question definitely is, or is not, in the public interest. Instead, we must consider whether Global Witness' view that publication is in the public interest is reasonable, having regard in particular to the special importance of the public interest in freedom of expression, as well as the individual circumstances of the case.

In view of the above, we do not consider Global Witness' belief in this regard to be unreasonable. We would also take the view that, although individuals do not lose their right to privacy when acting in a professional capacity, they should reasonably expect a lower level of privacy than they would expect in relation to their private lives, particularly where the issues involved are relatively high profile.

(4) Is compliance with the relevant provision of the DPA incompatible with journalism?

In this case, the provision of the DPA in question is the data subjects' right of access under section 7. We must, therefore, consider whether compliance with their subject access requests is incompatible with the purposes of journalism. In other words, you have to demonstrate that it is either impossible to comply with the data subjects' subject access requests and still fulfil your journalistic purpose, or that in light of your journalistic aim it is unreasonable in the circumstances to comply, having balanced the public interest in journalism against the effect that non-compliance will have upon the data protection rights of the data subjects'.

You have explained that complying with the data subjects' rights under section 7 would have an effect on Global Witness' journalistic activities because it would give the data subjects' details of the nature and direction of your investigation and you believe that the data subjects would use this as a strategy to try to thwart Global Witness' further journalistic activities.

In addition, you have advised that compliance would have an impact on Global Witness' sources or potential sources who you say will lose confidence in Global Witness' ability to protect their identities.

For the reasons given, we do not consider Global Witness' concerns about the negative effect that complying with the data subjects' subject access requests would have on your journalistic activities to be unreasonable.

Based on the information provided we are satisfied that it is likely that Global Witness has met all four elements of section 32 and can, therefore, rely on the special purposes exemption to decline to comply with the data subjects' subject access requests.

Finally, you will recall that on the 13 August 2013 we made the assessment that Global Witness was unlikely to have complied with the requirements of the DPA in regards to the handling of Mr Steinmetz's subject access request under case reference RFA0486390. This assessment was based solely on the information provided to us at that time. In view of this new information, we have revised our initial assessment of Mr Steinmetz's concern; it is now our view that Global Witness is likely to have complied with the requirements of the DPA in this case.

In light of all of the above, we do not recommend that Global Witness need take any action in relation to this matter. Thank you for your cooperation in this matter.

Yours sincerely


Michelle Armitt
Case Officer
The Information Commissioner's Office
Direct dial number: 01625 545649