

The Data Protection Act (DPA) states that personal data includes "*any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual*".

**As opinions are "personal data", the right of subject access therefore applies to any opinion or indication of intention toward the data subject.**

It can be difficult to determine whether an opinion:

- relates to the person who holds it,
- relates to the person or issue the opinion is of, 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 person that 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 record the name of the housing department executive who gave her opinion of the government's proposal.

It can be more difficult to determine whether an opinion **relates** to the person 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 establish whether information recording a person's opinion is the **personal data of the person holding the opinion**:

- does the opinion tell you anything significant about the person 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 a person or issue?
- is the opinion being used, or could it be used, to find out something about the person 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 person holding it.

If the answer is 'no', then the opinion is unlikely to be the personal data of the person holding it – but it does remain the **personal data of the person the opinion is about**.

Making this decision can call for the exercise of careful judgement in the circumstances of a particular case. However, the considerations set out above, together with the two case examples set out on the following pages, should help you understand the issues.

## Case Examples

### 1. Probation officer's report

Below are extracts from a fictitious probation officer's report. The first paragraph of the probation officer's report is the personal data of his client, Gail Wallis; it identifies her and the information relates to her, recounting her previous behaviour and indicating her current status. It is statement of fact and not an opinion about her.

"Gail Wallis has been in contact with our agency since her release from prison on 21 October 2010. She is currently subject to a Good Behaviour Contract agreement that is due to expire in October 2012. She has a case-worker at her local Substance Dependency Support Unit and is required under her Contract to attend the Unit weekly."

The client is the subject of the information, not the probation officer. It is possible to infer information about the probation officer from this paragraph – for example, that he is a probation officer and works with that particular client – but the information does not relate to him.

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 Gail Wallis 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."

The information **highlighted in BOLD**, is the probation officer's opinion about Gail Wallis – it identifies her and relates to her. It is therefore the personal data of Gail Wallis.

Although the opinion expressed about Gail Wallis is clearly the opinion of her probation officer, the information does not reveal anything substantive about the probation officer's own characteristics or behaviour, and is not therefore the personal data of the probation officer.

The other parts of the paragraph do tell us something about the probation officer himself – his professional approach and work-history. This part of the paragraph is, therefore, the probation officer's own personal data, although it is not an opinion.

### 2. Housing Department Minutes

The minutes of the meeting of the housing department may merely record the following:

"Ms Morrissey reported that 85% of the housing stock in the Promenade Estate was built before 1895. 47% of the properties surveyed lack basic amenities and are in severe disrepair. Ms Morrissey expressed her opinion that we should take advantage of the government's new funding offer and demolish the estate ASAP."

Although this information reveals Ms 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 Promenade Estate, not to her – it is not therefore her "personal data".

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 held by Ms Morrissey 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".

This is a difficult area and calls for careful judgement – there is not always an obvious answer.

One factor that might favour the disclosure of recorded opinions to the person who held the opinion is that the person will already know the content of the information because he or she gave the opinion in the first place. However, this does not mean that the opinion is necessarily his or her personal data.