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[REDACTED]
Head of Legal
Newsquest Media Group Ltd
58 Church Street
Weybridge
Surrey
KT13 8DP

26 March 2014

Case Reference Number RFA0497152

Dear [REDACTED]

Thank you for your letter dated 1 October 2013 regarding [REDACTED] [REDACTED] data protection complaint and my apologies for the delay in responding. I have been awaiting the issue of new internal guidance before making a decision on this case.

When I last wrote to you, I explained that when we receive complaints, our obligation is to make an assessment. The assessment is the Information Commissioner's view about whether an organisation has followed the rules of good practice for handling information in the Data Protection Act 1998 (the DPA).

I also explained that our aim is to ensure that organisations deal with personal information properly in the future. Our assessment decisions can help us to decide whether we should take action against a particular organisation.

Our decision

In this case we have decided that it is likely that [REDACTED] Newsquest Media Group Ltd [REDACTED] has complied with the requirements of the DPA.

This is because, in my view, it appears likely that [REDACTED] has handled [REDACTED] personal data in line with the requirements of the DPA.

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Nature of the Complaint

As I explained in my previous correspondence, [REDACTED] is concerned that [REDACTED] is retaining a press article within its public archive which relates to a previous, spent conviction dating back [REDACTED] years to [REDACTED]

[REDACTED] appears to have written to [REDACTED] on 23 July 2012 outlining [REDACTED] concern that the article was once again appearing as an archive entry on its website and requesting that the article be removed. Furthermore, [REDACTED] has suggested that [REDACTED] made a previous similar request to have the article removed to which [REDACTED] agreed.

[REDACTED] is concerned that [REDACTED] is retaining [REDACTED] personal data for longer than is necessary which in turn is preventing [REDACTED] from being fully rehabilitated. It would also appear that [REDACTED] request to remove a similar article from another publication ([REDACTED]) has been successful.

In addition, [REDACTED] is concerned that a similar conviction relating to a former colleague does not seem to appear in [REDACTED] archive searches of [REDACTED] and that there may therefore be inconsistencies in [REDACTED] archives.

As I understand it, you acknowledge that [REDACTED] is retaining [REDACTED] personal data within its archive in line with section 32 of the DPA, the special purposes exemption. You maintain, therefore, that [REDACTED] has complied with the DPA.

Section 32

Section 32 DPA says: "*Personal data which are processed only for the special purposes are exempt from any provision to which this subsection relates if-*

- (a) *the processing is undertaken with a view to publication by any person of any journalistic, literary, or artistic material,*
- (b) *the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and*
- (c) *the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes."*

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Section 32 of the DPA requires that four conditions be satisfied to enable the proper application of the exemption, which are considered below:

The first condition : data are processed only for the special purposes

The first condition requires that personal data are processed only for the special purposes. We take a fairly broad view on what counts as 'processing only for the purposes of journalism' to properly protect Article 10, rights to freedom of expression. If something is done with the aim of disclosing information, opinion or ideas to the public by any means, it will be for the purposes of journalism. Our focus is to look at the purposes of the particular processing activity in question.

Was the article processed only for the purposes of disclosing information, opinion or ideas to the public? Our view is generally that it is not necessary to consider the purpose for which the data was originally collected, although in this case these would appear to be the one and the same.

On [REDACTED] carried a report of [REDACTED] conviction for fraud carried out over a period of twelve years against [REDACTED] then employer [REDACTED]. A copy of this report which you state remains statutorily privileged in law was stored in your archives.

As the material is a newspaper article, you are confident that it is therefore 'special purpose' material under the DPA.

You have highlighted that the retention in archives of journalistic reports of criminal convictions does not represent a breach of the DPA; if this were so, then newspaper archives in general would be rendered impracticable to operate and worthless to users. The archives would have to be closed and large parts of them destroyed, meaning the loss of a valuable and historical public resource.

You state that paper archives traditionally stored physically at newspaper offices and public libraries have become increasingly accessible electronically as newspapers gradually digitise their archives when commercially viable.

You have confirmed that [REDACTED] is gradually undertaking this process of digitising its archives, which you believe is the source of [REDACTED] complaint. It is not that this report has just been added to your archives, it is that it has just become more easily accessible electronically via the internet.

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This also appears to explain why ██████████ assertion that ██████ colleague who was convicted of a similar offence six or seven years earlier does not appear when conducting a similar internet search. These records relating to ██████ colleague are not yet available electronically and can only be sourced in the newspaper's paper archive.

Bearing the aforementioned in mind, I am satisfied that the publication of the article within your archive appears to have been made only for the purposes of disclosing information and opinion to the public.

The second condition

The second condition requires that the processing is undertaken with a view to the publication of journalistic material. Reporting, publishing and then storing articles within ██████████ archives (either in paper or electronic format) would appear to satisfy this criteria, so we would accept that this counts as publication of journalistic material.

The third condition

The third condition requires ██████████ to demonstrate that it reasonably believed that publication would be in the public interest. Our main focus here is in relation to the process ██████████ followed and ensuring that the decision is not obviously unreasonable, i.e. no reasonable person could possibly agree.

You have explained that Newspaper archives have existed for hundreds of years and as previously stated, were first kept physically as an historic and public resource. Details of the report on ██████████ trial and conviction have been retained within your archive in line with this practice and tradition and were already available for anyone wishing to search the archives manually.

It is your belief that it is the introduction of new technology and the digitisation of previously held paper archives which has highlighted ██████████ problem. ██████████ has simply continued to compile and maintain its archive in a consistent and objective manner as it has always done. However, as a result of this digitisation process it is now much quicker and convenient to access these archives via the internet.

You have stated that this digitisation process does not affect the underlying laws, interests and principles that support the continued existence or use of those archives which you believe are now coming into their own due to ease of access.

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You have highlighted that conducting an internet search based solely on [REDACTED] name does not produce any direct reference to [REDACTED] conviction. It seems that previous knowledge of [REDACTED] past conviction and the circulation area of [REDACTED] is required to produce a result.

On the basis of the aforementioned, it is my view that the article was published and retained within [REDACTED] archives in line with standard industry and [REDACTED] practice with a view to publishing in the public interest.

The fourth condition

The fourth condition requires [REDACTED] to demonstrate that it reasonably believed that compliance with each provision of the DPA was incompatible with the purpose of journalism. This requires you to demonstrate that [REDACTED] did not think that there was a more compliant way to get this information into the public domain.

You have explained that Newsquest Media Group publishes some 200 regional titles around the UK, all of them with their own archives, some of those archives being more than 200 years.

These archives contain reports of countless numbers of criminal proceedings. If it is demonstrated that any of these reports is materially inaccurate as a report of what was said in court, or the report has been superseded by later events, you will consider what amendment or annotation might be necessary, which might include deletion.

The Editor retains a general discretion over the archives for any other purpose, just as he or she does over the printed newspaper, but such discretionary power would be exercised only in exceptional circumstances and subject always to the Editor's own judgment on the merits of any particular case. You have declined to comment on the [REDACTED] decision to remove the article which again would be at the discretion of its Editor.

You have explained that your guiding principle is the need to maintain the integrity of the archives as far as possible in order to preserve their value as an historical record, which generally means keeping those archives indefinitely.

[REDACTED]
[REDACTED] report of the proceedings itself which represents an accurate record of events.

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On the basis of the above, it is my view that [REDACTED] decision to publish this article complies with the fourth condition of the DPA.

First principle

The first data protection principle says that personal information must be fairly and lawfully processed.

[REDACTED] has suggested that [REDACTED] previous request to [REDACTED] to have the article removed was agreed. However, [REDACTED] has not provided any evidence of this and you confirm that [REDACTED] has been unable to find any correspondence relating to this previous request or agreement.

If evidence existed to support [REDACTED] assertion, then there could potentially be a breach of the first principle on the basis that information was not processed in line with [REDACTED] expectation. However, Section 32 "relates to the provisions of (a) the data protection principles except the seventh data protection principle" (which is not relevant in this instance). This means that the first principle does not apply in this instance.

Fifth principle

The fifth principle states that personal information must not be kept for longer than is necessary.

The fifth principle acknowledges that there may often be good grounds for keeping personal data for historical, statistical or research purposes. The DPA provides that data held for these purposes may be kept indefinitely as long as it is not used in connection with decisions affecting particular individuals, or in a way that is likely to cause damage or distress.

How long certain kinds of personal data should be kept may also be governed by specific business-sector requirements and agreed practices (ie, as with the newspaper industry).

However, it should be noted that with the appropriate application of Section 32, the fifth principle does not apply in this instance.

In light of all of the above, we do not recommend that [REDACTED] need take any further action in relation to this matter.

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We will now write to [REDACTED] and advise [REDACTED] of our assessment decision and the case will then be closed.

Yours sincerely

Elaine Stewart
Case Officer
Complaints Resolution
Direct dial number: 01625 545229

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