



Neutral citation number: [2023] UKFTT 00986 (GRC)

Case Reference: EA/2022/0447

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights  
Decision notice IC-148733-T1K1**

**Considered on the papers: 24 August and 9 November 2023  
Decision given on: 28 November 2023**

**Before**

**TRIBUNAL JUDGE CHRISTOPHER HUGHES OBE  
TRIBUNAL MEMBER SUSAN WOLF  
TRIBUNAL MEMBER DAVE SIVERS**

**Between**

**DARBARI RACHHPAUL SINGH BEDI**

**Appellant**

**And**

**THE INFORMATION COMMISSIONER**

**Respondent**

**Decision:** The appeal is Dismissed

## **REASONS**

1. The Appellant and his wife are tenants of the London Borough of Hounslow. In October 2014 they began proceedings against the Council in the County Court for disrepair under s11 Landlord and Tenant Act 1985. Following a proposal to decant them the proceedings were restored on 7 October 2021.
2. The request which is the subject of this appeal was not the first FOI request the Appellant had made arising out of the dispute with the Council; on 9 April 2021 he made a request (subsequently considered by the ICO in decision notice IC-130057-N4Q2):-

*“1. the addresses of all properties (flats) owned/managed by your client, which have become vacant since 8 March 2017 in [road];*

*2. which of the identified properties in [road] were empty for a period of weeks/months;*

*3. the dates when these said properties were let to new tenants;*

*4. the addresses of all properties owned/managed by your clients which have become vacant since 8 March 2017 and are close by to [road];*

*5. the dates when these said properties were let to new tenants.”*

3. In that case the Council supplied certain information on 14 July and more information on 19 October 2021 but relied on section 40(2) FOIA as an exemption to the duty to disclose the rest of the information.

4. Building on the information supplied the Appellant wrote to the Chief Executive of the Council on 23 October 2021 and made a further information request:

*“Concerning the vacant properties referred to in the tables contained in the second page of the letter, I do not require, nor did I make the request for the names of tenants but specific addresses and therefore exemptions may not have applied!*

*However, we need to know the following:*

- Which of these properties are located on the ground floor; and*
- Please forward full and frank disclosures as the Act allows”*

5. The Council made a substantive reply on 19 January 2022:

*Response*

- Which of these properties are located on the ground floor;*

*2 x Ground floor – Alexandra Gardens, Chiswick*

*2 x Ground floor – Staveley Gardens, Chiswick*

*4 x Ground floor – Edensor Gardens, Chiswick*

*The full addresses for these properties are exempt under section 40(2).*

*Exemption 40(2) – Section 40(2) exempts information in response to a request if it is personal data belonging to an individual other than yourself and it satisfies one of the conditions listed in the legislation.*

*In this case because the number of addresses is small, the disclosure could identify a living individual and could breach the fairness principle of the Data Protection Act which means such disclosure would be unlawful.*

6. On 24 January he replied arguing that he had been misinterpreted since all he wanted was the addresses of ground floor properties vacant during the period 8 March 2017 and 9 April 2021 and for how long they were vacant during this time. He emphasised that he did not seek information either before or after the period the properties were vacant and stating *“I deny that, merely because the number of properties was small, I was capable of identifying any living individual connected with them”*

7. On 7 November 2022 following an internal review the Council provided a list of ground floor properties identified as being in Chiswick and the number of days each was vacant. The Appellant complained to the Information Commissioner (the ICO) who investigated and issued a decision notice on 29 November 2022 upholding the Council's refusal to disclose all the requested information.
8. The Appellant argued
- that the information sought was not personal information,
  - that contrary to the ICO's assert that enough information had been disclosed for his legitimate interest, there was a real risk that for the purposes of his dispute with the Council it was inadequate to show that it was neither reasonable nor necessary for him and his wife to be decanted to a remote part of the Council's area
  - that the request was not at all intrusive as a means of satisfying his need for information
  - that his use of the information as evidence in court would not constitute disclosure to the world at large and therefore the ICO should have performed a balancing exercise on the request
9. In the decision notice the ICO explored whether disclosure of the requested information – addresses of flats with dates when they were vacant would amount to personal information (DN paragraphs 15-21). Personal data is defined by section 3(2) of the Data Protection Act as *“any information relating to an identified or identifiable living individual.”*
10. The approach to determining whether information is personal data is laid down in the relevant Regulation adopted by the European Union EU2016/679 which provides at recital 26
- “The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments...”*
11. The ICO noted that data meets that definition if it relates to a living person and stated:
- “17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data,*
- 18. Information will relate to a person if it is about them, linked to them, has biographical significance for them,”*

12. In this case a specific location is identified (an address) and biographical significance arises from disclosure of the fact that an individual has moved into or out of a vacant property owned by the Council could identify individuals particularly when linked to publicly available data:

*“20. The Commissioner further advises that those individuals may not only be identifiable from the requested information, but when combined with other information (such as the number of occupiers) the complainant is ‘reasonably likely’ able to use the electoral roll data and establish the identity of the occupants. This information therefore falls within the definition of ‘personal data’ ... “*

13. While the Appellant has disputed this; and in his final submissions affirmed *“I submit that the information I requested was not capable of identifying individuals directly or indirectly because all I wanted was information concerning the specific location of properties, in relation to [home address] the date they became vacant and the date they ceased to be vacant between 8 March 2017 and 9 April 2021. I never required any information about tenants past, present, or future”*. The issue at this point in the analysis is not whether he wanted specific personal information disclosed to him, but whether the information he requested to be disclosed to the whole world (FOI disclosure is disclosure to the world not just to the requester – whatever the wishes of the requester) met the criteria for being personal information.

14. The Tribunal is satisfied that this is a request for personal data. The disclosure of the data is only justified if one of the criteria for the disclosure (“processing” in data protection terms) is lawful, fair and transparent to the data subject.

15. Article 6 of the Regulation provides:

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

16. Grounds set out in (a) –(e) above clearly do not apply – the individuals affected do not consent, there is no relevant contract involving the other individuals, (subject to the decision of a tribunal or court) the Council has no obligation to disclose, no vital interests are involved (it is not a matter of life and death) it is not necessary for the Council to disclose it in order to carry out its duties.
17. In this case the challenge for the Appellant is to show that the disclosure is necessary for his legitimate interest which may be broadly described as asserting his rights against the Council with respect to proposals for accommodation on decanting him and his wife so that works may be carried out; it appears from the documents before the tribunal that he has argued that a location somewhat closer than approximately 10 miles away (as described by the Appellant a 20 mile round trip) should have been offered.
18. However, he has been given the information set out in paragraph 5 and described in paragraph 7. While the ICO correctly identified the information as being helpful in the Appellant’s dispute with the Council the partial addresses and number of days vacant satisfied that legitimate interest and disclosing the full addresses would neither add value nor be the least intrusive means of achieving the legitimate interest (DN 34-40). As the ICO correctly argued in response to the appeal, should the fuller information be necessary to secure a just resolution of the dispute in the court then disclosure in the course of litigation under the rules of the court would enable the Appellant to see and use the information without publishing it to the world; similarly the powers of the Housing Ombudsman (whom the Appellant has sought to involve) could also be used to find a resolution which did not impact on the rights of the other tenants.
19. The tribunal is therefore satisfied that there is no lawful basis for the disclosure of the requested information through FOI and the appeal is dismissed.

Signed

Hughes

Date: 20 November 2023