



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0265

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50546586

Dated: 29 September 2014

Appellant: Tom Wall
Respondent: The Information Commissioner
Heard on the papers: Southampton
Date of Hearing: 12 March 2015

Before
Chris Hughes
Judge
Melanie Howard and Paul Taylor
Tribunal Members

Date of Decision: 13 April 2015

Date of Promulgation: 15 April 2015

Subject matter:-

**Freedom of Information Act
Data Protection Act**

DECISION

The appeal is upheld and (to the extent necessary) this judgement stands as a substituted decision notice.

The public authority (the Ministry of Justice) is required to disclose all information within the scope of the request within 35 days.

REASONS FOR DECISION

Introduction

1. The appellant in these proceedings ("Mr Wall") is the digital editor of Environmental Health News, which is published by the Chartered Institute of Environmental Health. Following correspondence on 22 April 2014 Mr Wall sought information from the Ministry of Justice (MoJ):-
2. *"...my new request is below:*

Can you provide me with a list of the names of offenders found guilty of offences under the Housing Act 2004 held on the MoJ Court Proceedings Database?

I would also like to request the column and row headings on MoJ Court Proceedings database (without any data)?"
3. The MoJ confirmed that it held the first part of the information requested but refused to supply it, it supplied the information requested in the second part of the request and maintained this position on review.
4. Mr Wall complained to the respondent in these proceedings ("the ICO") who in his decision notice ordered the disclosure of the names of corporate defendants convicted under the Housing Act.
5. The ICO found that the information sought was personal data other than of the requester and therefore the data protection principles applied; further more it was sensitive personal data as it was information as (Data Protection Act s.2):-

"(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings."
6. In order for the disclosure to be fair and lawful the first data protection principle requires that at least one of the conditions in Schedule 2 of DPA be met and, since it is sensitive personal data, at least one of the conditions in Schedule 3.

7. In considering the fairness of disclosure the ICO considered the reasonable expectations of the data subject, the consequences of disclosure and the balance between the rights and freedoms of the data subject and the public interest.
8. He noted that while the conviction was the subject of a public process public awareness of the case was likely to be “very limited and quickly forgotten” and the MoJ had argued that release of the data could adversely affect the data subjects (DN 31-33).
9. He considered the public interest in disclosure noting the importance of the private rented sector, Mr Wall’s argument that vulnerable homeless people would be at risk from unscrupulous landlords “exposing them to potential harm from unhealthy and dangerous conditions” and noted the MoJ acknowledgement that disclosure would inform the public. He concluded that balancing the rights and freedoms of the data subjects and the legitimate interests of the public, disclosure would be fair.
10. He then considered the Schedule 3 provisions and in particular two of them – (1, 5) consent of the data subject or the information having been made available by the data subject and found neither applied. He did not consider any of the other conditions (disclosure for stated purposes) were applicable. While disagreeing with the MoJ and concluding that disclosure was potentially fair; he found that the personal data was exempt from disclosure given that no schedule 3 condition could be satisfied.
11. He also noted the MoJ’s position with respect to the Court Proceedings Database that it contained information on a wide range of offences and a decision establishing a precedent “for putting data from the Court Proceedings Database into the public domain should be treated very cautiously”. However the ICO emphasised the importance of making such decisions on disclosure on a case by case basis, “the issue of precedent does not arise”.
12. In his appeal Mr Wall argued that there was a “substantial public interest” in the disclosure to assist the public and local authorities in dealing with landlords who were “not fit and proper persons” to hold certain licences. He argued that the information was already in the public domain and might

therefore fall within condition 5, he drew attention to the disclosure of the prosecutions database of 33 local authorities to Environmental Health news as a result of FOIA requests. He argued the applicability of the Data Protection (Processing of Sensitive Personal Data) Order 2000, the substantial public interest and that the convictions were already public.

13. In his helpful response to the appeal the ICO identified the two substantive issues, whether disclosure was permitted under either schedule 3 condition 5 or 10.

14. With respect to condition 5 the ICO rejected Mr Wall's contention that it was on the basis that "the data relates to criminal sentences made in open court" and noted the condition required the information to have been made public "as a result of steps deliberately taken by the data subject". This is plainly correct. While the individuals will have been convicted as a result of their own deliberate actions; they did not intend to put information about their convictions in the public domain. The point is without merit.

15. The more substantive issue is whether there is a "substantial" public interest. The ICO argued that:

- Of the multiplicity of offences created by the Housing Act only one is indictable and even that is not imprisonable. The offences are at the lower end of seriousness, punishable (for example) by "a fine not exceeding £20 in respect of each day or part of a day during which the offence continues".
- "The (relative) lack of gravity of the offences is relevant to the proportionality of disclosure of these individuals' sensitive personal data, balancing it against the harm and distress caused to these individuals".
- The database is likely to contain information on convictions which are now some years old and individuals might expect publicity on these convictions to diminish over time.
- Local authorities have their own databases which significantly reduce the public interest in disclosure; "While the Appellant stigmatises the

quality of those databases, it does not follow that the appropriate response to any lack of quality (if true) is for the names of all those convicted of Housing Act offences to be disclosed to the appellant for private publication. The matter could be appropriately and proportionately resolved between the local authorities and the MoJ.”

- Certain offences could be committed by private individuals in respect of their own homes.

16. The ICO further argued that it needed to be demonstrated that the publication of the information in an unlimited way, naming and shaming individuals, without consideration of the circumstances of the offence and any mitigation was an additional potential detriment.

17. The ICO conceded that if condition 10 was satisfied “it is very likely that Schedule 2 condition 6 will also be satisfied”.

18. In a thoughtful response Mr Wall dealt with these points (bundle page 36):-

- he emphasised the serious consequences of poor housing in terms of respiratory, cardiovascular and other diseases as well as hypothermia and poorer mental health associated with living in cold homes. The private rented sector has the highest proportion of homes falling below the decent homes standard with 33% below the minimum standard for repair, warmth facilities and safety. Potentially life-threatening hazards are present in 19% of privately rented homes. There is a significantly higher risk of dying from a fire in a bedsit than in other types of housing; the cost to the NHS of poor housing is estimated at £600 million per year with a total cost of £1.5 billion.
- Only the worst landlords are ever prosecuted-with prosecutions arising when they failed to engage with the local authority and there is no chance of work being carried out; immediate action is only taken when the conditions are so bad that the lives of tenants are in danger.
- Penalties are not the only measure of seriousness and the information is about the data subjects’ business interests as landlords rather than their private lives.

- The information is relevant to local authorities in determining whether a landlord is a fit and proper person.
- The standard of information retained by local authorities is variable and in any event only relates to their own prosecutions. The MoJ has not disclosed the information to local authorities and in any event this disclosure would not enable the public to avoid unfit landlords.
- It seems unlikely that an individual has been prosecuted for an offence in their own home. Stephen Battersby (an expert in the field) was not aware of any prosecution of a home owner and indicated that in the most serious cases of hazard he would expect a notice to be served but that no offence would be committed if they carry out remedial works.
- He quoted submissions from various experts including Newham Council (a major London housing authority) which indicated that it would help local authorities with licensing schemes to identify landlords making tenants lives a misery; it would inform local authorities' prosecution decisions and the failure to publish them enabled "criminal landlords to move their rental operations to different areas and escape justice". The chartered Institute of Environmental Health indicated the difficulties for their members working in private sector housing to know whether a landlord had relevant convictions, which was important in considering whether they were fit and proper persons. Information would help local authorities and their enforcement role and help prospective tenants to make informed choices.

19. He disputed the argument advanced by the ICO as to the consequences of publication of the information; which would be in the magazine of the Chartered Institute of Environmental Health, a charitable body. Information was for the special purpose of journalism which brought it within the Data Protection (Processing of Sensitive Personal Data) Order 2000.

20. Information would assist the public in enabling them to avoid renting homes from unscrupulous or unsuitable landlords which would put them at risk. Councils would also be assisted when placing vulnerable homeless people

outside their area if the information was available. Significant sums of public money in the form of housing benefit went to landlords and it was in the public interest, where possible, to avoid handing it to unfit persons.

The question for the Tribunal

21. During the process of litigation the parties have very helpfully narrowed the issues for consideration by the tribunal. The core issue is whether the provisions of the Data Protection (Processing of Sensitive Personal Data) Order 2000, allow disclosure in this case.

Relevant legal provisions

22. section 3 of DPA provides that journalism is a "special purpose":-

The special purposes.

In this Act "the special purposes" means any one or more of the following—

(a) the purposes of journalism,

(b) artistic purposes, and

(c) literary purposes.

23. Schedule 3 to the DPA that sets out the specific conditions relevant to the processing of sensitive data.

SCHEDULE 3

Conditions relevant for purposes of the first principle: processing of sensitive personal data

...

10 The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

24. The Data Protection (Processing of Sensitive Personal Data) Order 2000 provides:-

1.-(1) This Order may be cited as the Data Protection (Processing of Sensitive Personal Data) Order 2000 and shall come into force on 1st March 2000.

(2) In this Order, "the Act" means the Data Protection Act 1998.

2. For the purposes of paragraph 10 of Schedule 3 to the Act, the circumstances specified in any of the paragraphs in the Schedule to this Order are circumstances in which sensitive personal data may be processed.

25. The Schedule to the Order provides:-

3.-(1) The disclosure of personal data-

(a) is in the substantial public interest;

(b) is in connection with-

(i) the commission by any person of any unlawful act (whether alleged or established),

(ii) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person (whether alleged or established), or

(iii) mismanagement in the administration of, or failures in services provided by, any body or association (whether alleged or established);

(c) is for the special purposes as defined in section 3 of the Act; and

(d) is made with a view to the publication of those data by any person and the data controller reasonably believes that such publication would be in the public interest

(2) In this paragraph, "act" includes a failure to act..

Consideration

26. The information requested is for the purpose of journalism and relates to convictions for unlawful acts which may go to the unfitness of persons to act as landlords and relates to the failure of the service such persons have provided. It is clear that sub-paragraphs (b) and (c) are complied with.

27. The Tribunal found the arguments of Mr Wall with respect to substantive public interest clear, cogent and persuasive. The arguments of the ICO were helpful but ultimately unconvincing, indeed one argument of the ICO may be interpreted either way – that the offences are not seen as so heinous as some others makes it less harmful to the individual to disclose it.

28. Unfit housing is a matter of major public concern and has a significant impact on the health of tenants. The Housing Act is a key mechanism for local authorities to improve housing standards and protect the health of vulnerable tenants. One mechanism for doing this is by means of prosecution, another is licensing schemes for landlords. Local authorities place vulnerable families in accommodation outside their areas tenants seek accommodation, The publication of information about convictions under the Housing Act would be of considerable value to local authorities in discharge of their functions and assist prospective tenants and those assisting them in avoiding landlords with a history of breaches of the Housing Act.
29. The sanctions under the Housing Act are comparatively small and the opprobrium of a conviction may well not rank with other forms of criminal misbehaviour, however the potential for harm to others from such activity is very great, the potential for financial benefit from the misbehaviour is also substantial. Breaches of the Housing Act are economically motivated and what is proposed is a method of advancing the policy objective of the Housing Act by increasing the availability of relevant information to key actors in the rented housing market – the local authorities as regulator and purchaser and the tenants themselves. Any impact on the data subjects will overwhelmingly be on their commercial reputations rather than more personal matters.
30. The Tribunal is therefore satisfied that not only is the disclosure of this information in the substantial public interest, but also any reasonably informed data controller with knowledge of the social needs and the impact of such disclosure would so conclude.
31. The Tribunal recognises the point made by the ICO in his response that progress on improving the quality of local authority databases in this area could be made by discussion between local authorities and the MoJ; however there is no indication that any such structured solution or amendment to the MoJ publication scheme is being considered.

Conclusion and remedy

32. The tribunal is therefore satisfied that the appeal should be allowed and directs the MoJ to disclose the information requested within 35 days, save where the Rehabilitation of Offenders Act would prohibit the publication.

33. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 13 April 2015