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Case Reference: EA/2023/0450P

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard in GRC Remote Hearing Rooms, Leicester

Heard on: 18 March 2024

**Decision given on: 05 April 2024
Promulgated on: 09 April 2024**

Before

**TRIBUNAL JUDGE A. MARKS CBE
TRIBUNAL MEMBER K. GRIMLEY EVANS
TRIBUNAL MEMBER DR. P. MANN**

Between

STEPHEN MASTERMAN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

The Appellant: represented himself

The Respondent: Eric Metcalfe, Barrister

Decision: The appeal is **allowed**. The substituted Decision Notice appears in the annex to this decision.

REASONS

Introduction

1. This is an appeal against the Information Commissioner's decision notice IC-242064-J9M4 dated 20 September 2023 ('DN').
2. On 10 March 2023, the Appellant ('Mr Masterman') requested from Brighton and Hove City Council ('the Council') the licence conditions for a House in Multiple Occupation ('HMO') in Hove.
3. On 12 April 2023, the Council confirmed that it held the information but refused to disclose it, relying on the exemption in the Freedom of Information Act 2000 ('FOIA') section 40(2) (third party personal information).
4. The Commissioner decided that the Council was entitled to rely on s.40(2) FOIA.
5. Both parties agreed to the Tribunal deciding the appeal on the basis of the papers in the case rather than requiring an oral hearing. The Tribunal was satisfied, in accordance with Rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended), that it could properly determine the issues in this case without an oral hearing.

The request, internal review and response

6. Mr Masterman's request of the Council on 10 March 2023 read:

"I am writing to request the licence conditions in plain English as they are listed in a summary short hand none specific form on the list of HMO licences on the council website.

The HMO : [ADDRESS]

Licensing conditions are listed as follows;-

Electrical Works, Electrical Works, Enlargement of bedrooms, Enlargement of bedrooms, HMO - Elec Mandatory conds, HMO - Elec Mandatory conds, HMO - Fire Mandatory conds, HMO - Fire Mandatory conds, HMO - Furniture Mandatory conds, HMO - Furniture Mandatory conds, HMO - Gas Mandatory conds, HMO - Gas Mandatory conds, HMO - Property Chges Mandatory conds, HMO - Property Chges Mandatory conds, HMO - Property Maint Mandatory conds, HMO - Property Maint Mandatory conds, HMO - RubbishRecyc Mandatory conds, HMO - RubbishRecyc Mandatory conds, HMO - Tenant Agrmnt Mandatory conds, HMO - Tenant Agrmnt Mandatory conds, Management / Disrepair, Management / Disrepair, Management / Repairs, Management / Repairs, Notes, Notes, Other Fire Works, Other Fire Works, Structural Fire Works, Structural Fire Works."

7. On 19 April 2023 Mr Masterman asked the Council to carry out an internal review of its decision not to withhold the information it holds.
8. On 4 May 2023, the Council responded. It maintained its position that the exemption in s.40(2) FOIA applies and it would therefore not disclose the information requested.

Complaint to the Commissioner

9. On 26 May 2023, Mr Masterman complained to the Commissioner about the Council's handling of his request.

10. In his complaint, Mr Masterman challenged the Council's claim that the requested information is exempt under s.40(2), arguing that the government requires licence conditions to be published to allow scrutiny.

The Decision Notice

11. On 20 September 2023, the Commissioner issued his DN which in summary concluded, having seen the withheld information and received additional submissions from the parties, that:

(a) Part 2 of the Housing Act 2004 governs the licensing of HMOs by local authorities. s.67(1) provides that a HMO licence '*may include such conditions as the local housing authority consider appropriate*' for regulating the '*management, use and occupation of the house*' and '*its condition and contents*'. S.232(1) provides that local housing authorities must maintain a register of all HMO licences they grant.

(b) Mr Masterman's request relates to the HMO licence conditions in relation to a specific named address. Although the landlord was not named in the request, the Commissioner was satisfied that it related to them and their property and therefore constituted their personal data under s.3(2) Data Protection Act 2018;

(c) The most relevant data protection principle in this case is Article 5(1)(a) of the UK General Data Protection Regulation ('UK GDPR'). This raises the question whether the processing (by disclosure in response to a FOIA request) of the personal data in this case was necessary for the purposes of the legitimate interests pursued by a third party (the requester, Mr Masterman) under Article 6(1)(f).

(d) In this case, Mr Masterman sought the requested information because his property had been damaged by damp due to the way a fixture had been placed in the HMO. He wanted to raise this issue with the Council so that it could improve its HMO inspection policies and procedures, and also to ensure that safety regulations were being adhered to. There was also a wider legitimate interest in the disclosure of the requested information, as it would impact the other properties surrounding the one in question;

(e) The Commissioner was satisfied in this case that there were no less intrusive means of achieving the legitimate aims identified: therefore disclosure would meet the 'necessity test';

(f) The Commissioner was satisfied that the landlord of the property would have a reasonable expectation that their personal data would not be disclosed to the wider world. If the information were released and it was found out that the landlord had been fined or prosecuted, this would mean that personal information about the individual had been released to the world at large. In all the circumstances, therefore, the Commissioner did not consider that there was sufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms and therefore any disclosure would be unlawful.

Appeal to the Tribunal

12. On 19 October 2023, Mr Masterman sent a Notice of Appeal to the Tribunal challenging the DN.

13. The basis of the appeal is that the DN is wrong, and that the Council should provide the information requested.

14. Mr Masterman's Grounds of Appeal were, in summary:

(a) The responsibilities of the Council regarding HMO housing are not limited to the HMO alone but extend to nearby properties and the local community.

(b) The Council is invoking s.40(2) to refuse to provide summary details of the licence conditions despite the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 ('the 2006 Regulations') imposing a requirement to publish such a summary. Instead, the Council has published the conditions in '*an unintelligible code*'.

(c) The Council states that a HMO is a private residence though the government regards them as businesses. Moreover, most of the information the Council has published about the HMO is much more personal (for example the names and address of the property owner and their contact address) than the information he seeks i.e. the licence conditions.

(d) Mr Masterman seeks information only on the commercial aspect of the property and the way the Council regulates it.

(e) Mr Masterman's own property is directly adjacent to the HMO in question and he is concerned that, as part of a terrace of houses in a very narrow mews, problems with the condition of the HMO or the activities of its occupants could seriously affect his property. Indeed, his property is being damaged by the way in which the HMO was converted from a private residence into a revenue generating commercial enterprise.

15. Mr Masterman asked the Tribunal to require disclosure of the information sought, namely the HMO licence conditions '*in plain English*'.

The Law

Section 1(1) FOIA: general right of access to information held by public authorities

Any person making a request to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if this is the case, to have that information communicated to him...

Section 2 FOIA: Effect of the exemptions in Part II

...(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

(a)...

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information...

Regulation 2 Environmental Information Regulations: definition of 'environmental information'

16. '*Environmental information*' is defined by Regulation 2(1) of the Environmental Information Regulations ('EIR') as any information on:

‘(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used with the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)’.

Regulation 12 EIR: Exceptions to the duty to disclose environmental information

12.(1)...

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

Regulation 13 EIR: Personal data

17. EIR 13 renders information exempt from disclosure to the extent it includes personal data of a third party, and its disclosure would contravene any of the data protection principles (‘DP principles’) relating to the processing of personal data as set out in Article 5 UK GDPR.

18. The first question is whether the withheld information constitutes personal data under DPA. ‘Personal data’ is defined by s.3(2) DPA as:

‘...any information relating to an identified or identifiable living individual’.

19. Information relates to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

20. If the information is personal data, the second question is whether its disclosure would breach any of the DP principles.

21. Article 5(1)(a) UK GDPR provides that personal data shall be processed *‘lawfully, fairly and in a transparent manner in relation to the data subject’*.

22. *‘Processing’* of personal data includes its disclosure in response to a FOIA request: thus information can only be so disclosed if to do so would be lawful, fair and transparent.

23. Article 6(1) UK GDPR provides that where a public authority is holding personal information as part of its general processing, such processing will be *‘lawful’* if and to the extent that at least one of six conditions applies. These conditions include (most relevantly for the present case):

‘(f) The processing is necessary for the purposes of legitimate interests pursued 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...’

Section 40 FOIA: personal information

24. The equivalent provision to EIR 13 in FOIA is s.40 which is in similar terms for the purposes of this case.

The role of the Tribunal

25. The powers of the Tribunal in determining appeals against the Commissioner’s decisions for the purposes of FOIA are as follows:

s.57 Appeal against notices...

(a) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice...

s.58 Determination of appeals

(1) If on an appeal under section 57 the Tribunal considers -

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

Evidence

26. Before the hearing, the parties had submitted written evidence. This comprised an Open Bundle of 117 pages (including an Index). The panel also had access to a Closed Bundle.

Summary of submissions on behalf of the Commissioner

27. In summary, Mr Metcalfe, on behalf of the Commissioner, invites the Tribunal to dismiss the appeal for the following reasons:

(a) The Commissioner took proper account of the extent of the legitimate public interest in favour of the disclosure of the requested information such as the impact on other properties surrounding the HMO in question; and in ensuring the Council reviews the points made when a licence is issued and that such works are carried out in the interests of the broader community;

(b) The Commissioner was entitled to accept the Council's evidence that it treated HMOs as private residences and that therefore the **contents** of the conditions – as opposed to the **types** of conditions imposed – were not made public. The Commissioner place particular weight on the fact that the contents of the conditions reveal details about the condition and layout of a property used as a private residence by multiple individuals. It is not just the licence-holder's personal data, therefore, which would be disclosed but also information about the conditions in which other private individuals are living;

(c) That the licence-holder's name and the address of the property in question are in the public domain does not alter the fact that the details about the licence conditions (which are not in the public domain) remain the licence-holder's personal information because it is information about the condition of a property for which the licence holder is responsible. That information, moreover, is not in the public domain, even if the types of conditions which have been imposed pursuant to the HMO licence are publicly available.

(d) The Commissioner also noted that disclosure of the details of the conditions might reveal whether a licence-holder had been fined or prosecuted for non-compliance.

(e) For the above reasons, the Commissioner was reasonably entitled to conclude that the licence-holder had a reasonable expectation of privacy that the contents of the specific conditions of their licence relating to their private property would not be disclosed.

Summary of submissions by Mr Masterman

28. The HMO register of licences that is required to be published by all councils acting as regulatory authorities should not contain coded information. The register is provided to inform the public that an HMO is compliant. It is useful to potential renters to determine if the property is suitable for them. It is also important to the wider public that the local authority is regulating and ensuring minimum standards are being met.

29. The Council's register in this case contains nothing which could be considered a '*summary of the conditions*' applicable to the licence of the HMO in question: it is merely a list of headings or types.

30. Mr Masterman made his FOIA request as suggested by the Council's own Private Sector Housing Manager where she said there was '*no secret code. If you would like further information about a particular property, you can make a FOIA request...*'

31. The most personal information about this HMO's landlord – namely their name and address – is clearly stated on the Council's HMO register. The information he requests is not personal data but

business data, reporting the condition of an asset put forward for rental for human habitation. The conditions were simply a snapshot of the property's condition when presented to the Council for a licence for letting as an HMO.

32. It would assist both the Council, tenants and potential tenants if the licence conditions were published in plain English. Tenants (and would-be tenants) would be able to tell if the property was kept in good order and the landlord took seriously their compliance with regulations. Landlords would do the necessary works in order to let out their rooms because tenants would be less keen to stay or even take up residence if the works were not done. This would assist compliance without costly intervention by the regulatory body.

33. Failing to publish the licence conditions in plain English but only in coded form avoids public scrutiny of both the conditions and the Council itself in taking regulatory action. Nobody except the Council itself knows whether the required works have been completed or not.

34. The Council have convinced the Commissioner that this is about HMO landlords/managers/tenants' privacy but it is not: HMO licensing is there to ensure that a minimum standard product is available to the public, maintaining compliance with regulations and improving HMO standards.

35. The Commissioner also accepts the Council's argument that disclosing the licence conditions would lead to information about convictions and fines but has not explained how. Such information is not required to be on the licence and has not been requested.

36. At the point of licensing, there should be no tenants (unless it is renewal of an existing licence) so there can be no infringement of their privacy. On renewal, any conditions on the original licence should have been checked for compliance as the maximum time for carrying out any works should be no more than a year, less for safety or security items. If the works have not been completed in time, under the powers given to the regulating authority, an Interim Management Order should have been issued to assess if the required conditions can physically be met and/or the landlord/manager has the financial resources to complete them. If not, then a Final Management Order should be issued and the HMO closed for business.

37. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 prescribe in Regulation 11 the particulars to be published under s.232(a) of the Housing Act 2004 in relation to HMO licences. These particulars include:

- (a) not just the name and address of the licence holder and the person managing the licensed HMO but also (at paragraph (e)) '*a summary of the conditions of the licence*';
- (b) the licensed HMO's number of storeys; number of rooms providing sleeping accommodation and living accommodation; if there are flats, the number that are self-contained and not self-contained; and the maximum number of persons or households permitted to occupy the licensed HMO.

38. All the above information must be provided by the HMO owner when they apply for a licence – so they are effectively agreeing to its publication. If they want personal privacy, they can form a holding company for the property as a business which many landlords have done.

39. The Council has overstepped its authority by not fully disclosing what they should and using s.40 FOIA to avoid scrutiny of the way they are implementing HMO regulations and licensing.

40. The Council has since provided to Mr Masterman what they call the conditions ‘*in long hand*’. However, these do still not meet the requirements of the regulations.

41. It is not for the Council to decide who can see what with regard to HMO licences: the legislation says what is to be published and that needs to be in English. If the Council is concerned that what they think to be personal information will be released, they can inform applicants for HMO licences how their anonymity could be achieved.

Discussion

Possible unfairness of information being withheld from Mr Masterman

42. The panel first went on to consider the possible unfairness of withholding certain information from Mr Masterman, namely the licence conditions he seeks. This information has been provided to the Tribunal on the basis that it is withheld from both Mr Masterman and the public pursuant to GRC Rule 14.

43. For the purposes of the hearing, the panel was provided with a Closed Bundle containing the withheld information. The panel takes account of the Tribunal’s Practice Note on Closed Material. This explains that, where disclosure of the disputed information would defeat the object of the exercise, the law permits the Tribunal to deviate from the normal rule about all material seen by the Tribunal being available to all parties. However, such deviation is permissible only so far as is necessary to ensure that the purpose of the proceedings is not defeated.

44. The panel accepts that there is inevitably **some** prejudice in material being withheld from a party requesting it, but considers that this prejudice is mitigated by:

- (a) the Tribunal’s expertise, and exercise of an investigatory rather than adversarial function;
- (b) the Commissioner being an independent, expert regulator who does not take sides. On the contrary, the Commissioner’s role is to point out the strengths and weaknesses of both parties’ cases in assessing the correct application of the law and regulations; and
- (c) informing parties excluded from ‘closed’ information as much as possible with maximum possible candour in the written reasoned decision.

45. In this case, the Commissioner considers that the withheld information includes personal data, a characterisation which Mr Masterman disputes and which he **does** wish to be disclosed.

46. Having considered all these matters and having carefully read the withheld information, the panel is satisfied that withholding the requested information was and remains necessary to ensure the purpose of the proceedings is not defeated. Moreover, the prejudice to Mr Masterman’s position – mitigated as described above – is justified in the interests of justice overall.

FOIA or EIR?

47. Though mentioned in passing in the final paragraph of the DN, there is no discussion in the DN whether the information sought in this case falls within the definition of ‘*environmental information*’.

48. Although we have been unable to find any direct authority on the point – nor have any authorities been drawn to our attention – in the panel’s view the information sought in this case is

covered by the definition cited in paragraph 16 above namely EIR2(1), ‘(f)...conditions of human life...inasmuch as they are or may be affected by ...any of the matters referred to in ... (c)’.

49. Our reasoning is that ‘conditions of human life’ in EIR 2(1)(f) includes conditions in which human beings live, in this case in a registered HMO property. Moreover, those conditions ‘are or may be affected by measures or policies’ in EIR 2(1)(c) such as, in this case, HMO licensing conditions which determine amongst other things density of occupation of HMOs, rubbish recycling and means of escape. These in turn affect elements of the environment such as water and land in EIR2(1)(a) and factors likely to affect elements of the environment such as energy and noise in EIR2(1)(b).

50. Though there are differences between requests under FOIA and EIR such as time limits for responding, for the purposes of this case we consider the only significant difference between the two regimes is the presumption of disclosure under EIR.

51. Overall, therefore, our fact-finding and other discussion below applies similarly— apart from that one difference – to both EIR and FOIA regimes.

The facts

52. Having established the above matters, the panel went on to consider the relevant facts of this case. Based on all the evidence the panel has seen and heard, the panel has made the following findings of fact:

- (a) No information was provided in response to Mr Masterman’s request save for a ‘long hand’ version of the types of condition as mentioned in paragraph 40 above.
- (b) As explained above, during these proceedings the remainder of the requested information was withheld under GRC Rule 14 and will remain so held as indicated in paragraph 73 below.
- (c) Neither the Council in its correspondence with the Tribunal nor the Commissioner in his DN or pleadings has mentioned the 2006 Regulations raised by Mr Masterman (see paragraph 37 above) which came into force on 6 April 2006.
- (d) Regulation 11 of the 2006 Regulations sets out the prescribed particulars to be entered into a Register of Licences established and maintained under s.232(1)(a) of the Housing Act.
- (e) Amongst the prescribed particulars provided by Regulation 11 is ‘(e) a summary of the conditions of the licence;’
- (f) ‘Summary’ is defined in the Cambridge Dictionary as ‘a short, clear description that gives the main facts or ideas about something’.
- (g) The HMO licence register maintained by the Council lists the HMO licence conditions in question (see paragraph 6 above) by heading or type.

Error of law or wrongful exercise of discretion in balancing the public interest

Is there an error of law in the Commissioner’s Decision Notice?

53. Having made the above findings of fact, the remaining issues for the panel in this case are (a) whether the Commissioner made any error of law in the DN and (b) whether the Commissioner ought to have exercised his discretion differently.

54. The panel considers that the Commissioner made an error of law in regarding the applicable regime for dealing with Mr Masterman's request as FOIA rather than EIR. Having said that, however, the panel recognises that both regimes contain similar provisions for withholding third party personal data - in the case of FOIA the exemption in s.40(2) - and in the case of EIR the exception in Regulation 13. Thus analysis in the DN is largely applicable to the EIR regime as well as FOIA.

55. Mr Masterman argues that the Commissioner made an error of law in finding that the licence conditions he seeks are '*personal data*'.

56. However, the panel is satisfied that the information sought in this case does constitute personal data. This is because the licence conditions clearly relate to a property owned by the HMO licence-holder whose name and address are published on the Council's register of HMO licences. Those conditions are therefore clearly linked to that individual who is both living and identifiable.

57. On the second question whether disclosure of the requested information would contravene any DP principles, the panel agrees with the Commissioner that the most relevant DP principle in this case is Article 5(1)(a) cited in paragraph 21 above.

58. The panel also accepts the Commissioner's analysis in paragraphs 23 to 34 in the DN about lawful processing of personal data under Article 6(1)(f) of the UK GDPR, including:

- (a) the legitimate interest test (whether a legitimate interest is being pursued in the request for information);
- (b) the necessity test (whether disclosure of the information is necessary to meet the legitimate interest in question); and
- (c) the balancing test (whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject).

Did the Commissioner wrongfully exercise his discretion in balancing the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms?

59. The panel does not accept the Commissioner's conclusion that the landlord of the property in this case would have a reasonable expectation that this particular personal data would not be disclosed to the wider world.

60. On the contrary, the Housing Act and the 2006 Regulations regulate – by means of mandatory licensing - HMO properties occupied by five persons or more people living in two or more households. This regulated activity is designed to raise the standard of accommodation available in the private rented sector. It is aimed at providing greater protection to the health, safety and welfare of the occupants of such residential properties. These occupants are often vulnerable individuals such as students, benefit claimants and those on low incomes who cannot afford to rent self-contained properties.

61. HMOs are subject not only to licensing with conditions – many of which are mandatory and set down in regulations – but also to publication of a summary of such conditions on a register established and maintained by the relevant local housing authority.

62. This statutory regime was designed in part to ensure that renters, would-be renters and the public would be protected from 'poor' landlords seeking to avoid the licensing requirements of larger HMOs by focussing their operations on smaller HMOs. In addition, the legislation was aimed

at tackling defects and deficiencies that might give rise to hazards in such residential accommodation – and enabling prospective tenants and others in the community easily to identify properties run by reputable landlords by using the register of licences maintained in consistent form by all local housing authorities.

63. Against this backdrop, far from expecting licencing conditions to remain private, we conclude that the data subject (the landlord of the HMO property in this case) must have anticipated that the essence of the licence conditions would be published on the Council’s register of licensed HMOs.

64. Had the Council published a **summary** of the HMO licence conditions in accordance with Regulation 11 of the 2006 Regulations, it seems unlikely that Mr Masterman would have needed to make his request at all.

65. In this case, however, the Council published the **types** of licensing conditions, not a **summary** of them. In light of the statutory framework and in particular the requirement for a public register to publish a summary of conditions, we do not accept the Commissioner’s submissions that the **contents** of the conditions – as opposed to the **types** of conditions – were not to be made public because HMOs are private residences and therefore the information is undisclosed personal data.

66. Likewise, we reject the ‘particular’ weight the Commissioner placed on the fact that the contents of the conditions would reveal details about the condition and layout of a property used as a private residence by multiple individuals and hence those individuals’ personal data. In the first place, at the time the licence was issued, no such individuals should have been in occupation as an HMO licence was required first. Secondly, those HMO occupants – unlike the licence holder who is named – would not be identifiable from disclosure of the licence and its conditions to the wider world. Hence we do not consider that the licence conditions are linked to the HMO occupiers (other than the licence holder) so as to comprise their personal data.

67. The panel does not understand the Council’s argument, accepted by the Commissioner, that because breach of licence conditions is a criminal offence which could lead to prosecution and punishment by a fine, this too renders the conditions ‘private’ or ‘personal’ information. This appears to us to be too tenuous and hypothetical – and even **were** a licence-holder to be prosecuted and fined for breach of the conditions, that information would not appear on the licence conditions themselves which is all that Mr Masterman is requesting.

68. Overall, the panel concludes that processing of personal data (by disclosing information in response to Mr Masterman’s FOIA request) is necessary (being the only means of obtaining the information) for the purposes of legitimate interests pursued by Mr Masterman. Those legitimate interests include not only Mr Masterman’s as occupier of a neighbouring property but also those of owners and occupiers of other nearby properties, occupiers of the HMO itself, members of the public contemplating occupation of accommodation within the HMO, and the wider community.

69. Further, the panel considers that these legitimate interests are not overridden by the interests, fundamental rights and freedoms of the landlord as the data subject. In view of the relevant legislation regulating the activity of managing a HMO, that landlord must be taken to have a reasonable expectation that the HMO licence conditions, albeit in summary form rather than in full, would be published on the Council’s register of HMO licences.

Conclusion

70. For the reasons set out above, the panel finds that the Commissioner’s DN was wrong in law in applying the FOIA rather than EIR regime, though in practice little turns on this apart from the

latter's presumption of disclosure. This decision's reasoning applies equally to both regimes save that the legitimate interests referred to in paragraph 69 above weigh even more strongly if EIR applies due to the presumption in favour of disclosure.

71. Further, the panel finds that the Commissioner ought to have exercised his discretion differently, namely in favour of the requester's pursuit of legitimate interests rather than the data subject's interests, fundamental rights and freedoms.

72. Accordingly, the appeal is allowed and a substituted decision notice is included in the annex to this decision.

73. The substituted decision notice specifies the information which the panel has determined must be disclosed within 35 days from promulgation of this decision. To preserve a meaningful right of appeal, however, the information (contained in the closed bundle provided to the Tribunal) remains confidential under GRC Rule 14 until disclosed as required by this decision or, if later, until the outcome of any appeal of this decision.

APPENDIX

Substituted Decision Notice

To: Brighton and Hove City Council ('the Council')
Information Rights Team
Room 233, Hove Town Hall
Norton Road
Hove BN3 3BQ

Your FOI Reference: 12820969

The Tribunal directs the Council within 35 days of the date of promulgation of Decision reference **EA-2023-0450P** of the First Tier Tribunal, General Regulatory Chamber (Information Rights) to disclose the requested information, namely the Licence Conditions relating to the property identified in the request by Mr Stephen Masterman dated 10 March 2023.

Dated: 5 April 2024

Signed:



Alexandra Marks CBE (*Recorder sitting as a Judge of the First-tier Tribunal*)