

## ICO and Tribunal decisions 'Empty Property Address Data'

# S31(1)(a)

### Private Properties

Details of empty private properties are exempt from disclosure. This decision is based on previous Commissioner and Tribunal decisions, the most notable of which are the L B of Bexley decisions [EA2006-0060&0066](#).

Subsequent to these decisions, and following a number of similar decisions, the specific point of the address of empty private properties was decided upon in case [FS50259951](#).

### Council Properties

Empty Council properties ready for Tenants (both residential and commercial) are already published on the Council's [website](#) and through local estate agents. This information is therefore also exempt under section 21 of the FOI Act.

Details of longer term empty Council properties [say 6 months plus] are likely to be exempt, though there is yet to be a tribunal decision specifically on this point. Such properties come into a number of categories including difficult to let, in need of major refurbishment including internal and/or structural and being prepared for or in the process of disposal.

### Rationale

In the Bexley case the applicant had requested a list of empty houses compiled by the council; these were both for empty Council properties and private properties. The Tribunal established that providing such a list was likely to increase the risk of crime against those properties and so s31(1)(a) was engaged.

In considering the public interest in maintaining the exemption the Tribunal heard evidence about the effects that crime had on private individuals. It found that "...in relation to properties that are not owned by individuals but rather by the public sector...,whilst the issues concerning the damage to property are relevant and the impact on the area, the impact on the individuals as owners, is not a factor that will be in play. This in our view [ICO] has the effect of lessening the public interest in maintaining the exemption... ." (para 79) [NBC note – the status of the empty property will impact on the exemption weighting]

The Tribunal went on to say that in relation to properties owned by individuals, "The impact of crime on individuals as an inherent part of the public interest in this circumstance is a significant factor and leads to the exemption outweighing the public interest in disclosure in our view. "

Although it is clear that the Tribunal placed greater weight on the public interest in protecting individuals from the impact of crime, this certainly does not mean there is little public interest in protecting public authorities or corporate bodies against crime. It's merely that there is a heightened public interest in protecting individuals.

### NBC line to take

The addresses of properties owned by individuals are personal data about those individuals and must not be disclosed. Details of empty Council properties would usually be disclosed or is already published. However 'long term empty' needs more careful consideration as such properties are more susceptible to criminal activity including vandalism, asset stripping and squatting. Without a decision to base advice on the current stance is to withhold under section 31(1)(a).

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**S31(1)(a)**

### Further Information from ICO Knowledge Base

ICO guidance - 'Data Protection Technical Guidance – Determining what is personal data'

Having heard evidence on the subject, the Tribunal was satisfied that "...knowing the address of a property makes it likely that the identity of the owner will be found." (para 94)

The Commissioner had relied on the analysis of the Durant judgement to argue that although it may be possible to identify the owner, this did not make the address personal data. The reasons being two fold, (i) the focus of the information was the property not the owner and (ii) "even if it was possible to connect an individual to a particular empty property, this would not affect the privacy of the individual... ." (para 95).

The Commissioner would not now stand by this position and has published new guidance on what constitutes personal data, which provides a wider interpretation of personal data than was originally adopted following the Durant judgement.

Obviously the council could identify the owners from the Council Tax register and the Tribunal went onto conclude that, "The address alone, in our view, also amounts to personal data because the likelihood of identification of the owner.... In our view this information amounts to personal data because it says various things about the owner. It says that they are the owner of the property and therefore have a substantial asset. ...The key point is that it says something about somebody's private life and is biographically significant." The Tribunal went on to say that the important question was "...what meaning or meanings the data may have in the context of someone's private life. Does the fact that Mr X owns a property potentially worth several thousand of pounds say something about Mr X? In our view it does, and the owner is the focus of that information." (para 98)

Following this rationale it can be argued that addresses of all properties owned by individuals will be personal data, not just empty ones. However it should be noted that in some situations eg where an individual is the landlord of a rented house, the address of that property is likely to be both personal data of the landlord and the tenant.

The Tribunal's decision was that the addresses of empty properties not owned by individuals should be released together with the names of those owners.

