

## EMPTY PROPERTY REFUSAL JUNE 2013

We do not disclose details of empty properties under the Freedom of Information Act and we do not publish this information on our web sites. This is based on the Information Tribunal decision in the case of Mr P England and the London Borough of Bexley and the Information Commissioner Appeal no: EA/2006/0060 & 0066. In this particular case Mr England had requested statistics of empty residential properties including the addresses of the properties concerned and information as to why the property was empty, or details of ownership, from the London Borough of Bexley. Following a refusal by the London Borough of Bexley the case had been placed before the Information Commissioner and subsequently before the Information Tribunal for determination.

The Information Tribunal found that the address of the property and the address or other details of the owner, where the owner was an individual, were personal data as defined by the Data Protection Act 1998, and fell within the exemption in Section 40 (3) (a) (i) (Personal Information) of the Freedom of Information Act 2000. In addition after considering the presentations by the appellants and their expert witnesses the Tribunal also found that for properties owned by individuals the Section 31 (1) (a) (Law Enforcement) exemption was engaged and that the public interest in withholding the information outweighed the public interest in providing the information.

The explanation of this decision can be found here:

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i146/ENgland.pdf>

We are refusing this information based on the determination reached by the Information Tribunal and extend this to include properties owned by companies and not individuals due to the same risks posed. We have explained below the reasoning in this case, and the reason why we concur.

The Tribunal looked at the information held and what had been requested. Some empty properties were not owned by individuals. In these cases, the exemption for personal data did not apply. However for properties where the owner was an individual the Tribunal concluded that the information about ownership, and the information about the property (the address) from which ownership information might be obtained through Land Registry searches were both personal data.

The Section 40 (3) (a) (i) exemption in the Freedom of Information Act is engaged if the processing of personal data in response to a request would breach one or more of the data protection principles. In this case the Tribunal considered that the individuals concerned had supplied information about their empty properties to the council purely for the council's use, for Council Tax purposes, and with no expectation that the information would be published to the wider public domain. Guidance available from the Government also makes it clear that where empty properties are concerned the co-operation of the owners should be obtained. The Tribunal considered that to disclose the information without the consent of the owners and without their knowledge would not be a fair use of the data. The Tribunal also considered that to obtain information for one statutory process and then re-use it for another purpose without informing the owner of the data would be a breach of Data Protection law. Accordingly provision of this data would be a breach of the data protection principles, and the data was absolutely exempt.

In addition the Tribunal looked at the provisions of the exemption at Section 31 (1) (a). This was the exemption originally claimed by the council in its refusal notice. The argument put forward by the council was that if a list of empty properties were made publicly available then there was a higher likelihood of vandalism, squatting and criminal actions in respect of these properties. The Tribunal looked in particular at the impact of crime on individuals and found that for those properties owned by individuals the public interest lay with withholding the information to enable them to better protect and secure their properties. However they did rule that for those properties owned by organisations there was a much less significant impact – since such organisations would be expected to provide suitable security and oversight of properties. The council considers that despite this having less of an impact than privately owned properties, the public interest test of Section 31 is still met for companies and therefore we apply this exemption to this information.

We must abide by the provisions of the Data Protection Act and it would be neither fair nor lawful to supply a list of empty properties (*and their owners for public use*). Similarly we would consider that there is a significant degree of concern for individuals if the fact their property is empty comes into the public domain, and that there is a heightened possibility that such properties could be targeted by criminal activity to the detriment of the owner. Accordingly we are refusing this information.

The attached annex gives the two exemptions and explains the public interest test in the case of the Section 31 exemption.

Please see [http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007\\_2013-01-22.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf) for details of a dismissed appeal on this topic.

## **APPENDIX A**

### **Section 40 Personal information**

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress)

### **Section 31 Law enforcement**

- (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a) the prevention or detection of crime.

#### **Factors for withholding**

- prevention of squatting and criminal damage which might occur if addresses of empty properties were in the public domain
- withholding the data enables individuals to better protect their properties

#### **Factors for disclosure**

- promotion of the re-use of empty properties

#### **Reasons why public interest favours withholding information**

- there is an increased danger of criminal damage to properties or use of properties by squatters if the addresses are in the public domain. In particular, websites aimed at squatters advise on empty properties which might be accessible
- individuals are less likely to be able to protect their properties against criminal damage or other invasive activity
- therefore for those properties owned by individuals the public interest lies in withholding the information to enable them to better protect and secure their properties