



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2007/0129

Information Commissioner's Ref: FS50115331

Heard at Field House, London, EC4

Decision Promulgated

On 14 May 2008

12 June 2008

BEFORE

Chairman

ROBIN CALLENDER SMITH

and

ROSALIND TATAM

JENNI THOMPSON

Between

ANTHONY TURCOTTE

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

LONDON BOROUGH OF CAMDEN

Additional Party

Representation:

For the Appellant: Mr A Turcotte (in person)

For the Respondent: Mr Gerry Facenna (Counsel instructed by the Information Commissioner)

For the Additional Party: Ms Zoe Rowland (Freedom of Information Officer, London Borough of Camden)

Decision

The Tribunal upholds the decision notice dated 12 November 2007 and dismisses the appeal.

Reasons for Decision

Introduction

1. This is an appeal under Section 57 of the Freedom of Information Act 2000 by Mr Anthony Turcotte, an unrepresented Appellant, against a decision dated 12 November 2007 by the Information Commissioner that the London Borough of Camden's decision not to supply information to the Appellant under Section 40 (2) of the Freedom of Information Act 2000 – and the Council's reasoning for doing this – was correct. The Information Commissioner (IC) is the Respondent in the appeal and the London Borough of Camden (LBC) has been joined as an additional party.
2. At the appeal hearing the representative for the London Borough of Camden, who had adopted the Information Commissioner's position in relation to the appeal, attended as the hearing concluded and took no part in the hearing itself.

The request for information

3. As part of his interest in ensuring Succession Rights for partners on the death of a tenant and in establishing tenants' networks, on 27 December 2005 Mr Anthony Turcotte asked the London Borough of Camden for a copy of all Community Housing Group (CHG) properties under the local authority.
4. In a further request on 29 December 2005 he made a second request asking various questions in relation to evictions. Specifically he wanted to know how many tenants were evicted in total in 2000/2003, the names and CHG addresses of these tenants, the dates of eviction and the reasons for eviction. Mr Turcotte was not able to request information directly from the CHG under the Freedom of Information

Act because CHG is not a public authority within the terms of the Statute.

5. On 6 January 2006 the Council responded to request 1 refusing to supply the information by applying section 40(3) of the Act. The Council stated the information requested constituted personal data within the definition of the Data Protection Act 1998 (the "DPA"). Disclosure of such information would contravene the data protection principles and section 10(a) of the DPA (right to prevent processing likely to cause damage or distress). In relation to request 2, in the same letter, it stated it did not hold the information and it would not be practical to obtain it.
6. The Council put forward public interest arguments explaining its decision, namely that the first data protection principle is that personal data must be processed fairly and lawfully. In this case the Council maintained that the information was such that the relevant people (the data subjects) would not expect the information to be disclosed.
7. The Council further relied on the sixth principle, that data shall be processed in accordance with the rights of the data subjects. In this case the Council maintained that the disclosure of information requested would contravene section 11 (the right to prevent processing for the purposes of direct marketing). On balance, it considered that disclosure to a third party of the personal information would constitute or could facilitate an unwarranted invasion of privacy.
8. The Appellant asked the Council to review its refusal to provide the information on 27 January 2006. On 6 March 2006 the Appellant made a further request (Request 3). This was for copies of any and all correspondence between the London Borough of Camden and Community Housing Group, in relation to CHG's refusal to supply a copy of its list of tenants to the Appellant.

9. The Council responded to this third request in their review decision letter dated 17 March 2006, where the Council informed the Appellant his review was partly successful. The reason for its decision is as follows:
- i) In relation to request 1, the copy of all CHG properties under the Council's authority, the panel confirmed that due to previous advice received by them, it would be appropriate to release details of the properties concerned but not the identity of the occupiers.
 - ii) In relation to request 2 the panel agreed with the reasons and refusal in their letter of 6 January 2006.
 - iii) The panel considered request 3, copy correspondence, to be a new request and explained that this would be processed separately.
10. On 10 April 2006 the Council supplied the Appellant with a list of CHG properties in Camden, but redacted the list to remove flat and house numbers. The Council explained that the redaction was necessary to fulfil the Council's obligations under the 1998 Act: the Appellant had indicated that he intended to use the information to contact CHG Tenants by mail in order to form a tenants association and the Council concluded that disclosure of the full address information would therefore breach the 1998 Act, in particular section 11 (the right to prevent processing for the purposes of direct marketing).
11. The Appellant appealed to the Commissioner on 20 April 2006. The only aspect of the information requests specifically raised in the Appellant's letter to the Commissioner was the Council's redaction of the address information (Request 1).

The Complaint to the Information Commissioner

12. On 6 August 2007 the Commissioner communicated a provisional view to the Appellant, setting out the requests, the parties' arguments, and the Commissioner's provisional reasoning, which was to uphold the Council's decision to withhold information. In the light of that view, the Commissioner invited the Appellant to consider withdrawing his request. The Appellant indicated that he did not agree with the Commissioner's provisional view, however, and asked for a formal decision to be taken.

13. Ultimately, the Commissioner's decision was that he agreed with the Council's decision to provide only redacted information, on the basis of the exemption in section 40(2) of the 2000 Act and the fact that disclosure of the full information would breach the 1998 Act. The Commissioner's reasoning is set out in paragraphs 20 to 28 of the Decision Notice. In summary, the Commissioner concluded that:

- a. the house number of an individual CHG property, taken together with electoral roll information and the qualification criteria for housing by CHG (which may include homelessness or other significant housing needs) would allow individuals to be identified and would enable those individuals to be identified as members of a group. The full information therefore amounted to personal data within the meaning of the 1998 and 2000 Acts;
- b. the information being requested was not a list of all Council-owned properties but a focussed subset of properties within the Council's area (i.e. those owned by CHG) that would enable action to be taken in relation to the individual occupiers of those properties;
- c. those individuals who had been housed by CHG would have no expectation that the personal information held by the Council

would be provided to third parties in that way, and would expect that the information would only be used by the Council in relation to the administration of the properties in question;

- d. it would therefore be unfair and unlawful for the information to be released without redaction and would be in breach of the first data protection principle; and
- e. the exemption in section 40(2) of the 2000 Act (which is an absolute exemption) therefore applied.

Appeal to the Tribunal

14. The Appellant's grounds of appeal are set out in a letter dated 4 December 2007 accompanying the Notice of Appeal.

15. That letter contains a large amount material that is not directly relevant to the issues raised by this appeal against the Commissioner's decision, or to the Council's handling of the original information request.

16. Insofar as the letter referred to matters the Appellant raised with the Council relating to the eviction of tenants or their partners, the Council had indicated that it did not hold the information and it would not be practicable for it to obtain the information. It became apparent during the course of the appeal that the Appellant was not in fact asking for that information to be supplied to him, but only that the Council should obtain the information from CHG in order to investigate whether any tenant had been evicted illegally. At all events, those matters did not form part of the Appellant's appeal to the Commissioner. The 2000 Act is concerned with the right to obtain information held by a public authority but it cannot be used to require a public authority to obtain and act upon information that it does not hold.

17. The grounds of appeal refer to sections 10 and 11 of the 1998 Act. However, while those sections were referred to by the Council in its response to the original information request, the Commissioner's reasoning in the Decision Notice did not rely on those sections in upholding the decision to redact the address information and thus these Sections were not part of the Appeal before the Tribunal.
18. The Commissioner's position (supported by the London Borough of Camden) was that the provision of full addresses of all the CHG properties in the Council's area, when taken together with publicly-available electoral roll information, would allow individual occupiers to be identified.
19. Moreover, because the qualification criteria for housing by CHG included homelessness or significant housing needs, the data would permit individuals to be identified as part of a distinct—and potentially vulnerable—group. It would allow specific action to be taken in relation to that distinct group of individuals.
20. The Commissioner's view was that, regardless of the Appellant's particular intentions in relation to the data, which may be benign and public spirited, the individuals concerned would not expect their personal data to be released in that way, or to be used for any purpose other than the Council's administration of its statutory housing duties.

Statutory Provisions

21. Section 40(1)-(3) of the 2000 Act provide:

'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 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), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33 A (1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.’

22. Section 1(1) of the 1998 Act defines ‘personal data’ as follows (the definition also applies to section 40 of the 2000 Act):

“data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller...”

23. The first data protection principle (Schedule 1, Part I of the 1998 Act) is that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met...”

Preliminary Issue at the Oral Hearing

24. Mr Turcotte sought to introduce other issues in relation to succession rights and extend the ambit of the appeal to cover the Nominations Agreement information and issues that, although related to material in the Agreed Bundle, had not yet been considered by the Information Commissioner.
25. Mr Facenna, on behalf of the Information Commissioner, argued that – if the Tribunal took this route – it would be leapfrogging the Information Commissioner and taking a decision itself on matters yet to be considered by the London Borough of Camden which was several stages away before coming to the Information Commissioner for consideration.
26. On this preliminary issue the Tribunal decided that it could not extend this appeal to encompass these new issues because no substantive decisions had been taken in respect of them. To seek to treat them as part of the appeal would have been to usurp the function of the Information Commissioner in respect of what might become before him in the future. It was not a proper function of the Tribunal to do this and it would have been both unfair and unjust – as well as well unlawful – to do so.

Legal submissions and analysis

27. Mr Facenna repeated the Information Commissioner's views and pointed out that the Appellant had not challenged the legal basis of the decision under appeal. No witness evidence had been lodged by the Appellant. To disclose the full addresses of the CHG properties in LB Camden's area – when taken with electoral role information – would allow individual occupiers to be identified. Because the qualification criteria for housing by CHG included homelessness or significant housing needs, the data would permit individuals to be identified as part of a distinct – and potentially vulnerable – group. It would allow

specific action to be taken in relation to that distinct group of individuals.

28. Mr Turcotte urged the Tribunal to consider information he had been able to gain – on apparently these points – from the Housing Corporation and from Westminster Council (which was presented as part of his documentation in the appeal).

29. He was perplexed because, if he could obtain this information from other bodies, he could not understand why LB Camden (with the support of the Information Commissioner) would not also release this type of information to him. If he was given the information he would be able to write to this identified group and ask them if they wished to give him a mandate to act on their behalf.

30. The Tribunal pointed out to him that giving him that information would be “publishing” it to him. His response was: “I was quite shocked [in one of the documents disclosed on his enquiries] when I saw my address. But I want to use the information responsibly. I am not asking that it is “published” so that it is open for all. That is not my purpose. I only want it for the purpose of seeing whether we can garner support and then I would destroy it.”

Conclusion

31. The Tribunal is satisfied to the required standard that the Information Commissioner’s decision is correct. Revelation by the London Borough of Camden of the information sought by the Appellant would allow identification of a vulnerable group of individuals in breach of Section 40 of the Freedom of Information Act 2000 by reference to Section 1(1) of the Data Protection Act 1998.

32. Mr Turcotte, in his remarks quoted in the Paragraph 30 above, accepted this. He feels that – given his desire to protect the housing and succession rights of certain tenants in Camden – he could receive

this information “responsibly” and, that because of that, it should be issued to him. That, patently, would be outside the law.

33. The Tribunal can understand why Mr Turcotte is perplexed when bodies like the Housing Corporation and Westminster Council seem so unguarded in response to similar information requests made by him. The fact is, however, that the Information Commissioner made the correct decision in relation to the LB Camden’s actions. What other public bodies have chosen to reveal in circumstances that might be regarded as outside the current legislation is not a matter for this Tribunal.

34. Our decision is unanimous.

35. There is no order as to costs.

Signed

Robin Callender Smith

Deputy Chairman

Date 12 June 2008