



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

**Appeal No: EA/2013/0147**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50488972**  
**Dated: 8 July 2013**

**Appellant: Tracy Norman**

**Respondent: The Information Commissioner**

**Heard at: Port Talbot**

**Date of Hearing: 26 February 2014**

**Before**

**Chris Hughes**

**Judge**

**and**

**Jaqueline Blake and Gareth Jones**

**Tribunal Members**

**Date of Decision: 28 April 2014**

**Attendances:**

For the Appellant: in person

For the Respondent: did not attend

**Subject matter:**

Freedom of Information Act 2000

Data Protection Act 1998

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal allows the appeal for reasons set out in its decision which may stand in place of the decision notice dated 8 July 2013

**Action Required**

The public authority disclose the requested information subject to the redaction of all addresses and names within 28 days.

Dated this 28th day of April 2014

Judge Hughes

[Signed on original]

## **REASONS FOR DECISION**

### Introduction

1. On 5 July 2011 Ms Norman wrote seeking information about pest control activity at an address by her local authority the City and County of Swansea (“Swansea”, “the Council”). The information sought related to individuals who had been involved from Swansea, the pest control reports generated and steps Swansea had taken to get consent for disclosure of requests she had previously made. The request covered both Ms Norman’s own personal data and also fell to be considered under FOIA. In response Swansea disclosed certain information and treated other information as exempt under S40(2) FOIA (personal data of a third party). After an internal review in June 2012 Swansea disclosed further information and continued to rely on S40(2) with respect to the remainder.

### The complaint to the Information Commissioner

2. Ms Norman complained to the Commissioner. In his decision notice he concluded that some of the withheld material contained material related to complaints which Ms Norman had made from which she was clearly identifiable, that material was her personal data and exempt from disclosure under S40(1). With respect to the remainder of the withheld information he considered the application of S40(2).
3. In the decision notice the Commissioner considered the possible consequences of disclosure in this case and concluded that the disclosure could cause significant personal distress to the occupier of the property as it would put in the public domain the fact that the property had been the subject of pest control problems; however he acknowledged that while giving proper weight to the expectation of privacy of the data subject (DN 31- 33) :-

*“it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.*

*The Council has confirmed that any public health problems at the property in question have been thoroughly investigated and resolved to the satisfaction of the public health official and the occupier of the property.*

*[Ms Norman] has argued that as the pest control matter is also affecting their own property, they should be provided with the requested information in order to understand the actions taken by the Council to resolve the problem”*

4. The Commissioner however considered that disclosure of the information was to the public at large and that:-

*“any purely personal reasons for wanting the requested information is relevant to the consideration of a freedom of information request. FOIA is about disclosure to the public and public interests. It is not about specified individuals or private interests.”*

5. He concluded that it would be unfair to the individuals concerned to disclose the withheld information and so contravene the first principle of the DPA. Since it was unfair, he did not consider whether the disclosure was lawful or whether one of the Schedule 2 conditions was met.

#### The appeal to the Tribunal

6. In her appeal Ms Norman argued that most of the information arose from her complaints but the Council had already passed this information on to a third party. She knew that other adjoining residents had already complained and she had been officially told this but she was entirely happy for names to be redacted. She raises questions under the European Convention on Human Rights; pointing out that Article 8 and Article 1 of the first protocol were qualified rights and that her right to the peaceful enjoyment of her possessions under Article 1 was prejudiced by the failure of Swansea to enforce obligations on property owners under the Prevention of Damage by Pests Act 1949. She stated that at one stage 25 dogs had been removed from the premises in question and that at various stages six orders had been served on the occupier. The occupier had already told her of some of the information which was likely to be included in the disputed material, notably telling her in November 2011 that he had sent the pest control officer away the previous day.
7. In his response the Commissioner argued that none of Ms Norman’s arguments had any bearing on the lawfulness or fairness of disclosure of the disputed information and in particular he stated that they would not support a conclusion that condition 6 of schedule 2 of DPA was satisfied. The failure or otherwise of the Council or the occupier to comply with its obligations under the 1949 Act was a matter for the civil

courts and not the Tribunal. There was no legitimate interest on the part of the wider public which would necessitate disclosure of the disputed information and the Appellant's *strictly private* interests could be addressed through the courts. Even if a legitimate interest did exist it would still be an unwarranted prejudice to the rights and legitimate interests of the relevant data subjects.

### Evidence

8. In her evidence Ms Norman gave a clear account of the difficulties she had experienced over the years with respect to environmental health hazards relating to an adjoining property in the row of 11 19<sup>th</sup> century terraced houses. For a protracted period a large number of dogs had been kept in the property in profoundly insanitary conditions – not being walked outside. Mixed excrement was frequently seen running down the wall of the relevant property. A stench regularly pervaded the immediate area. She had involved Swansea who did not take decisive action. She sought to involve the RSPCA, however since the municipal authority was involved they declined to act. Ultimately the dogs ceased to live in the property, however she has grounds for thinking that a similar situation would recur.
9. There had over all the years since she acquired her home, been a recurrent rat infestation in the adjoining property which led to infestation of her home. During her evidence she showed footage of rats in the adjacent garden. She had spent significant amounts on rehabilitating her home, however the recurrent infestations had continued to cause damage. She had repeatedly involved Swansea, whose staff freely acknowledged that the source of the infestation was from the adjoining property. They had provided her with rat poison and had visited the neighbouring property to carry out baiting, however the infestation recurred. This had caused her considerable stress, interfered with her sleep and affected her work. At one stage she had been forced, by the infestation, to leave her home for eight months. Her neighbours had also been affected. Damage caused by the rats to electrical wiring had caused one set of neighbours to cease having a grandchild stay, because of well-founded fear of an electrical fire. She had made repeated contact with Swansea including with elected members. She had involved the Welsh Ombudsman who had started to investigate the issues. In order to resolve the matter swiftly had come to an agreement with

Swansea to resolve the matter. Ms Norman had not yet decided whether to accept the resolution.

Legal analysis

10. It is necessary to consider the legal framework in some more detail. It was accepted before the Tribunal that the material requested – public health records relating to a property, was the personal data of the property owner. Accordingly the Tribunal proceeded on that basis. Such data does not fall within S2 – it is not sensitive personal data.
11. Such data must be processed (in this case released) in accordance with the Data Protection Principles. The First Data protection principle provides (so far as is relevant):-
  1. 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
12. For Ms Norman to have the information disclosed the disclosure must be fair, lawful and meet one of the Schedule 2 conditions.
13. The interpretative material in the Schedule as to the first principle casts little light on how the question is, in this case, to be addressed. The data subject has not been deceived or misled and the question is whether the data controller (Swansea) is authorised by FOIA to supply the information. The disclosure must be fair and lawful, and those are matters which need to be assessed by the Tribunal in the light of all relevant matters. The most relevant of the conditions in Schedule 2 to the current circumstances is :-

*6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.*

Consideration

14. Although the legislative framework is somewhat elaborate encompassing the provisions of FOIA and DPA the question before the Tribunal is relatively straightforward. The Tribunal is asked to rule that Swansea should disclose personal information in this case because overall it is in the public interest to so to do and it is necessary for the legitimate interests of Ms Norman even in the light of the prejudice caused to the data subject by the disclosure of the data.
15. As a preliminary step to considering the over-arching question it is appropriate to address specific arguments raised by the Commissioner. At paragraph 34 of the DN he stated *FOIA is about disclosure to the public and public interests. It is not about specified individuals or private interests.* It seemed to the Tribunal that this is an over-simplified definition of the public interest. Public and private interests are not separated by a Berlin wall as two fundamentally different types of good. Rather public and private interests interact and impact on each other. One definition of the public interest in any public decision or choice (expressed in utilitarian terms) could be the aggregate of each private interest directly affected by the matter (positively or negatively) to the extent to which they are affected taken together with the impact on all wider issues going to the public good which are potentially extremely wide but in specific cases of individual decisions are much more restricted and only engaged to the extent to which they are affected. It is simply too reductionist to argue that the existence of a private interest in the outcome of a public decision is of no materiality to the decision as to where the public interest lies.
16. The question of determining where the public interest lies is one which is susceptible to reasoning as to consequences as well as to the simple articulation of “rights” whether to the protection of data and the legitimate interests of the individual affected.
17. In this case the public interest question relates to how Swansea has exercised all its functions with respect to environmental health and other matters over a period of time in order to protect the health and welfare of persons affected by the unusual situation affecting this row of houses and their residents. Swansea is a unitary authority with a wide range of functions and powers covering all aspects of the environment and the



welfare of its residents. Ms Norman is deeply concerned and could very reasonably ask, in the public interest how this position has come about. The Council has relations with other public bodies and voluntary bodies concerned for the public interest – why has a profoundly unsatisfactory situation been allowed to persist for so long to the actual detriment of a number of residents and the significant risk to a wider number of residents? How were statutory powers of the Council considered by its staff, why were Court proceedings not instituted, how did the Council as a corporate whole approach the question? In dealing with this question of accountability and transparency (DN 31-36) the Commissioner explicitly noted that:- *The Council has confirmed that any public health problems at the property in question have been thoroughly investigated and resolved to the satisfaction of the public health official and the occupier of the property.* It is clear that significant reliance was placed on this by the Commissioner in coming to his conclusion. The Tribunal was satisfied that this was an accurate statement of the facts as perceived by the Council and by the householder. However in this case the evidence strongly points to the fact that public health officials have been unsuccessful and the views of the occupier may not be a reliable guide. When Ms Norman, in her appeal, drew attention to another narrative, validated by the Welsh Ombudsman, the Commissioner did not respond.

18. Miss Norman showed to the Tribunal a communication she had received from the Welsh Ombudsman dated 3 December 2013. This conclusively demonstrated that a proper and objective evaluation of the circumstances could not conceivably result in the statement made to the Commissioner by Swansea and accepted by the Commissioner as effectively drawing a line under the issue that:-

*The Council has confirmed that any public health problems at the property in question have been thoroughly investigated and resolved to the satisfaction of the public health official and the occupier of the property*

19. In his proposed resolution the Ombudsman:-

- Required Swansea to pay Miss Norman £750
- Found serious shortcomings in the response of the Council to the issue for a long period – February 2009 – April 2010

- Required Swansea to work with all the affected persons and come up with a realistic programme within a reasonable periods to resolve the issues and provide a report back to the Ombudsman

### Conclusion

20. It is clear that Swansea misled the Commissioner and the light of this the Commissioner misdirected himself.
21. Swansea has a range of powers and functions which properly integrated and deployed are intended to ensure the health and welfare of its residents. The management of rodent populations is a significant public health issue and understanding how it is carried out is clearly a matter of public interest. How Swansea deploys the full range of its powers and relationships with other bodies to ensure public health is of significant public interest. Prolonged failure to use them effectively prejudiced the health and welfare of the residents of this row of houses and could very easily have contributed to more serious incidents or wider damage to health. The material sought – which largely consists of reports relating to pest infestation, provides information of value to the public in understanding how the statutory powers were or were not used and thus contribute to understanding of this significant failure by Swansea and how in future such failures could be avoided. Miss Norman and other residents in the row of houses have an immediate and pressing need for the information so as to be properly informed in dealing with Swansea and ensuring an effective programme of action to maintain public health.
22. The Tribunal is satisfied that it would, in all the circumstances of the case be both fair and lawful for the disputed information to be disclosed subject to the redaction of names and private addresses. This would meet the pressing social need for proper governance and accountability in this shameful failure of Swansea to recognise its overarching duty to ensure the health of the people. It should be sufficient to serve the very pressing needs of Miss Norman with respect to understanding the issues in agreeing a proper programme with Swansea to protect her health and safety and in doing so it would also serve to protect the health of other residents in this row including the individual to whom the data most closely relates.

23. The Tribunal therefore allows the appeal and directs that the disputed material be disclosed within 28 days subject to redaction of names and addresses.

Judge Hughes

[Signed on original]

Date: 28<sup>th</sup> April 2014