



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No. EA/2011/0037

BETWEEN

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION

INTRODUCTION

1. This appeal is against the decision of the Information Commissioner (“the Respondent”) contained in a Decision Notice (“DN”) dated 17 January 2011 (reference FS50292926). The disputed information comprises a list of addresses of all council houses and flats in the Councils’ (“the Appellants”) borough. The Respondent ordered disclosure of the disputed information (subject to a limited exception). The Appellant relied on s. 40(2) FOIA.
2. For the Reasons given below, this Tribunal finds that the Respondent was right to order disclosure of the disputed information. Accordingly, the Appeal is refused.

RELEVANT STATUTORY FRAMEWORK

3. This is set out in paragraphs 4-7 of the Respondent's Response dated 4 March 2011 ("the Commissioner's Response") and is not repeated here.

BACKGROUND AND CHRONOLOGY

4. This is set out at paragraphs 8-12 of the Respondent's Response and is not repeated here.

RELEVANT CASE LAW

5. In reaching its decision, the Tribunal has been guided by the following two Decision Notices: (i) **Mid Devon DC** FS 50082890 4.5.06; and, **Braintree DC** FS 50066606 3.1.07. In both instances the disputed information was a list of addresses owned by the relevant public authority. In both instances, the relevant Council's relied on section 40 of the FOIA as the basis for refusing to release the disputed information. In **Mid Devon**, the applicant's purpose in requesting the addresses of tenants was so that he could send them information concerning the proposed transfer of council housing stock to a Registered Social Landlord (**Mid Devon** at paragraph 4.1).
6. In those respects, **Mid Devon** and **Braintree** are, on the face of it, based on similar facts to the present case. In both **Mid Devon** and **Braintree**, the Commissioner required the respective Council's to provide the complainant's with the requested information.
7. In **Mid Devon**, the Commissioner was satisfied that the information requested was personal data. In considering the issue of fairness, he did not consider that there would be any "general unfairness" to individuals in being identified as council tenants. In taking this view, he was mindful of the "low inherent sensitivity" of the data.
8. Similarly, in **Braintree**, the Commissioner did not consider that there would be any "general unfairness" to individuals in being identified as council tenants. In

taking this view, the Commissioner was mindful of the “low inherent sensitivity of the data”.

9. The Appellant in the present case relies on another decision notice, namely, **LB Camden**, FS 50115331, 12.11.07. The Tribunal finds that **Camden** must be distinguished from **Mid Devon** and **Braintree** in the present case. In **Camden**, the requested information was not simply a list of all Council properties. It focused on a subset of those properties which was likely to be capable of serving the purpose of allowing some action to be taken towards individuals (**Camden** at paragraph 25).

REASONS

10. The Respondent’s decision is summarised at paragraphs 13-18 of its Response.
11. The Tribunal agrees with the Respondent’s decision. In particular, the Tribunal agrees with and emphasizes the following findings made by the Respondent:
 - (i) the disputed information is the personal data of the occupants of occupied properties;
 - (ii) disclosure would be fair because: a) the Tribunal is not persuaded that there would be any harm or distress resulting from disclosure; b) the disclosure of the disputed information will not automatically identify those who are vulnerable; and 3) particularly in the context of possible stock transfer of Council-owned homes – there are legitimate public interests in the public being fully informed, and in the accountability and transparency of the decision-making process.
 - (iii) disclosure is not unlawful; and
 - (iv) condition 6 of Schedule 2 DPA is met because there is a legitimate interest in disclosure; disclosure is necessary to meet those interests and there is no unwarranted interference to the rights, freedoms or legitimate interests of the data subjects.

CONCLUSION

12. For the above reasons the Tribunal finds that s. 40(2) FOIA is not engaged. It thereby orders the Council to disclose the disputed information as ordered by the Respondent, subject to limited exclusions – for which fresh refusal notices would be required – where properties are not obviously in Appellants' ownership and are used for housing individuals in secret locations.

13. The Tribunal also upholds the Respondent's finding that the Appellant breached ss. 10 and 17 FOIA in its response to the applicant.

Brian Kennedy QC

Tribunal Judge

30th December 2011.