IN THE FIRST-TIER TRIBUNAL Case No. EA/2011/0007

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM:

Information Commissioner's Decision Notice No: FS50301943

Dated: 21st December 2010

Appellant: Mr Yiannis Voyias

Respondent: Information Commissioner

Second Respondent: London Borough of Camden

Heard on the papers at: Field House on 9th June 2011

Date of decision: 2nd September 2011

BEFORE:

Fiona Henderson (Judge)

Darryl Stephenson

And

Mike Jones

Subject matter: FOIA – s 31 Law Enforcement

Cases:

London Borough of Bexley v England & the Information Commissioner EA/2006/0060 & 66

Office of Communications v Information Commissioner [2011] EUECJ C-71/10

Hogan v ICO and Oxford City Council EA/2005/0026

Cabinet Office v ICO and Dr Christopher Lamb EA/2008.24&29

IN THE FIRST-TIER TRIBUNAL Case No. EA/2011/0007

GENERAL REGULATORY CHAMBER

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal in part and amends the Decision Notice dated 21st December 2010 as follows for the reasons set out in main body of the Decision.

SUBSTITUTED DECISION NOTICE

Dated:	2nd September 2011
Public authority:	London Borough of Camden
Address of Public Authority:	Camden Town Hall, Judd Street, London WC1H 9JE
Name of Complainant:	Mr Yiannis Voyias

The Substituted Decision:

For the reasons set out in the Tribunal's determination, the substituted decision is that the London Borough of Camden did not deal with the complainant's request in accordance with the requirements of Part I of the Freedom of Information Act 2000 in that they failed to disclose to the complainant the following information:

(a) the list of Council managed void properties where a non individual is listed as either being the owner or as having a material interest in the property[1]; and

(b) the list of private properties confirmed by the Council as void where a non individual is listed as either being the owner or as having a material interest in the property[2].

[1] Included in Exhibit CA/4

Action Required:

The London Borough of Camden shall provide a copy of the said information to the Complainant within 28 days from today.

Dated this 2nd day of September 2011

Signed

Fiona Henderson (Judge)

REASONS FOR DECISION

Introduction

1. The Appellant has been a member of the Advisory Service for Squatters (ASS) since 2008 during which time he has come into contact with thousands of squatters, visited more than a hundred occupied squats and been involved in the process of entering and securing around 20-30 premises. He is a contributor to a number of squatting publications.

The request for information

2. The Appellant wrote to the Council on 25th August 2009 asking:

"I would like to know the address of every void property in the LB Camden, in which a non individual is listed as either being the owner or as having a material interest in the property".

3. The Council sought and received clarification from the Appellant that the request only related to residential properties, and refused the request on 22nd September 2009 relying upon s43(2) FOIA.[3] This decision was confirmed following an internal review (communicated to the Appellant by letter dated 3rd November 2009) where in

[2] The list dating from the original request was not preserved by the Council, they have provided an updated list and this has been treated as the disputed information by all parties and the Tribunal. The updated list is exhibit JA/1.
[3] Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

addition to s 43(2) the Council relied upon the exemptions under s 12(1) [4]and 21(1)[5] FOIA.

The complaint to the Information Commissioner

4. The Appellant complained to the Commissioner on 16th March 2010. During the Commissioner's investigation the Council confirmed that during their consideration of the request they had erroneously failed to take into consideration the Appellant's clarification that his request only related to residential properties. The Council withdrew their reliance upon s 43(2), 12(1) and 21(1) FOIA (which consequently were not considered by the Commissioner) and instead relied upon s 31(1)(a) [6]FOIA before the Commissioner.

5. The Appellant confirmed to the Commissioner that as a result of the interpretation of previous FOIA requests, he had used the specified words with the following contexts:
    - "void" was used to denote properties that may only be without occupants for a period of time as opposed to being without permanent occupants, such as properties that are available for re-housing applicants to bid upon.
    - "Material interest" was used to ensure that housing associations were caught in the request as they were registered as having a material interest in a property according to previous council correspondence.
    - "Non individual" had the same meaning as in *London Borough of Bexley v Mr Colin P England and the Information Commissioner EA/2006/0060 and 66.*

    These are the interpretations which have been used by all parties and the Tribunal in determining the information caught by the request.

6. The Commissioner noted that the Council provided very limited arguments to the Commissioner in support of the exemption and those that it did mainly focused on its knowledge of the requestor and his possible motivation for making the request. Consequently in coming to his Decision in this case, the Commissioner considered the

[4] Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
[5] Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
[6] 1)Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a)the prevention or detection of crime,

Findings

7. The Commissioner issued a Decision Notice dated 21st December 2010 FS 50301943 in which he found that s31(1)(a) FOIA was engaged and that the public interest in avoiding prejudice to the prevention of crime outweighed the public interest in disclosure, and that consequently there was no breach of s1(1) FOIA. The Commissioner did find that there were various procedural breaches, these are not the subject of this appeal and are not dealt with here.

The appeal to the Tribunal

8. The Appellant appealed to the Tribunal on 17th January 2011. At the telephone directions hearing of 18th March 2011 it was confirmed that the issues to be determined by the Tribunal are whether:
    a. The Commissioner erred in finding that the exemption in section 31(1)(a) was engaged because:
        i. The Commissioner erred in finding that the requested information would lead to an increase in squatting or would be of any serious use to squatters;
        ii. The Commissioner erred in finding an associative link between squatting and criminal activity – in particular, the Commissioner was wrong to rely on the facts found in the *Bexley* case and the Commissioner's own earlier decision in a case involving the *London Borough of Tower Hamlets (FS50259951)*;
        iii. The Commissioner erred in finding that the requested information would be likely to facilitate "stripping" of empty houses.

    b. Further or in the alternative, the Commissioner was wrong to find that the balance of the public interest lay in favour of non-disclosure – the Appellant emphasised the strength of the public interest in putting empty properties back into use. He indicated that the case in favour of disclosure was even stronger in the case of Council-owned properties, where disclosure would facilitate the accountability of a public body.

c. Further or in the alternative, the Commissioner was wrong to deviate from the approach used in the *Bexley* case.

9. During the preparation of the case on 9th May 2011 the Council reviewed the matters to determine whether it could safely release additional information and provided some more general information regarding Council run void residential properties in terms of their numbers broken down by ward indicating that of 530 void properties 294 have been void for 6 months and providing a breakdown of the reasons for their being void and offering to provide additional statistical information broken down by ward from the Council Tax Register and by postcode relating to privately owned residential properties owned by non-individuals. In relation to 2 large empty blocks of Council run flats which are publicly acknowledged to be empty at present the Council provided the address.

10. Although the Tribunal's original directions had set out a timetable for the submission of evidence and submissions, the Appellant served some evidence with his submissions which were served after the bundle had been agreed and served and after the Respondents had already served their legal submissions. The Second Respondent applied for the Tribunal to discount this evidence. The Tribunal has had regard to rule 2(2)(a) and (c) *The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009* (GRC Rules) and is satisfied that this would not be in the interests of justice because:

- This was a paper hearing, and in the event that the Respondent's had not had sufficient time to respond to the evidence, they could apply for the hearing to be postponed which would be a more proportionate response,

- The Respondents were able to address this material in their reply submissions,

- The Tribunal is satisfied that the Appellant did not do this to obtain any advantage, but because he is a litigant in person who, in his own words, was overwhelmed by the volume of material that the case generated.

11. The Tribunal adjourned the case part heard on 9th June 2011 as it had formed the preliminary view that some of the material which appeared in the closed bundle ought more properly to have been placed in the open bundle. The Council conceded that they no longer objected to the itemized material being disclosed to the Appellant who was then invited to make any additional representations on that material only. The disputed information remains withheld as do the addresses of some squatted Council run properties and the complaints from neighbours complaining about 2 properties. The Appellant has asked for the details of these complaints to be released with consideration given to redactions to disguise the address and names of the neighbours. The Tribunal is satisfied that this additional disclosure even in redacted form is not in the interests of justice because:
    - The nature of the complaints, and
    - the Appellant's detailed knowledge of squatting in Camden,

    would make it likely that he would recognise the properties being complained of and be able to identify the neighbours concerned.

12. The Appellant relied upon s35 Data Protection Act in support of his contention that the information should be disclosed. The Tribunal is satisfied that this is relevant to the question of whether it could disclose the information rather than whether it should. In reaching this decision the Tribunal has had regard to rule 2(2)(a) and (c) the GRC Rules and is satisfied that disclosure would not be in the interests of justice as:
    - the neighbours would have an expectation of privacy and that disclosure would be unfair,
    - the Appellant has been able to address the points raised in this evidence because the issues detailed in the closed material are raised in material in the open bundle, and
    - The Tribunal is Inquisitorial and could seek further evidence or argument if necessary having seen the closed material.

What is the withheld material?

13. The disputed information relates to:
    - lists of the Council's own records of empty Council managed, properties[7],
    - properties owned by non individuals which have been confirmed as empty by the Council (this is a current list rather than the one held at the date of the request since the list has been continually updated and unfortunately, the relevant list was not retained when the request was made)[8].

14. Additionally there is the Council tax register which records properties listed as void[9]. The Council dispute that this information falls within the terms of the request both because they argue that up to a third of these properties are not in fact void and because they may be owned by individuals which would not fall within the terms of the request. Their evidence was that the property is registered as void (unfurnished and empty qualifies for a 6 month exemption, subject to major works and empty qualifies for a 12 month exemption) when the person liable under the *Local Government and Finance Act 1992* (LGFA) registers for an exemption. S.6 LGFA, lists those liable for paying Council Tax who must either be a resident[10] or the owner. Whilst the Council argue that some forms are filled out by management companies on behalf of individuals, the companies cannot be doing this in the capacity of resident (since they are not individuals) therefore they must be giving their name in the capacity of "owner"[11]. The terms of the information request only require that the non individual is **"listed"** as the owner or as having a material interest in the property consequently those companies appearing as the person liable are caught within the terms of the request even if this is as a result of the form being filled in inaccurately.

[7] Contained in Exhibit CA/4
[8] Exhibit JA/1
[9] Exhibit Lap/1
[10] S6(5) LGFA 1992 *;"resident", in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.*

[11] S6(5) LGFA 1992—*"owner", in relation to any dwelling, means the person as regards whom the following conditions are fulfilled—(a)he has a material interest in the whole or any part of the dwelling...;*

15. Additionally after the initial form is filled in, it is the responsibility of the person liable to notify the Council if the property is no longer void. The Appellant argues that forms are sent regularly to update the position, however, the Council's evidence is that whilst this is monitored from time to time by inspectors recent Council street surveys have found that almost a third of properties recorded as void appear in fact to be occupied. The Appellant argues that just because there is no way of knowing if every single property on the list is empty at the time of disclosure does not mean a proportion of properties on the list will not be empty. However, the Tribunal is satisfied that the wording of the request should be construed as meaning "actually empty" at the date of the request, and the Council tax list is not an accurate representation of this (in this respect this differs from Council run/owned/checked properties where the Council is in a position to maintain an accurate list). That is not to suggest that the information could not be caught within the terms of a request were the request to have been worded differently e.g. "listed as empty on the Council tax register". However, on our findings of facts the information on the Council Tax lists is not caught by the terms of this request.

Is s31 engaged:

16. Section 31(1)(a) FOIA provides:

> "*(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…*"

It is a qualified exemption subject to the public interest test.

17. The Council confirmed before the Commissioner that they were relying upon the "would be likely to prejudice" limb of s31(1). This Tribunal adopts the approach identified in *Hogan v ICO and Oxford City Council EA/2005/0026* (paras 28-34) namely*:*

i. There is a need to identify the applicable interest (here it is said to be the prevention and detection of crime).

ii. The nature of the prejudice being claimed should be considered. It must be "real, actual or of substance" and not trivial or insignificant. There must be some causal relationship between the potential disclosure and the stated prejudice. (The prejudice claimed is that if the list of addresses were disclosed then these properties would become more vulnerable to potential squatters and associated crime and other crime linked to empty properties).

iii. The Tribunal must be satisfied that the disclosure would be likely to prejudice the prevention or detection of crime. There must be a "real and significant risk" of prejudice although not more probable than not.

18. The Tribunal is satisfied that what is being argued on behalf of the Council is that this information is necessary for the prevention of crime. The Tribunal agrees with the approach set out in *Bexley* that from the arguments and evidence before us there are 3 types of crime to be considered namely:
    a) Squatting related crime,
    b) Opportunistic crime,
    c) Organized crime.

19. The Appellant argues that the Commissioner ought not to have relied upon the evidence in the *Bexley* and *Tower Hamlets Cases* and that this reliance on material he has not seen is a breach of Article 6 ECHR. The Tribunal does not consider the applicability or otherwise of Article 6 here because this appeal is a complete rehearing, the Tribunal is not bound by the Commissioner's findings of fact, under s58(2) FOIA:
    "*the Tribunal may review any finding of fact on which [the Decision Notice] is based*".

20. The evidence in the *Bexley* case is detailed and the Tribunal is able to form its own view as to its relevance and the weight to give it (as are the parties), it would be a waste of time and money to have to rehear such evidence in each similar case.

However, much of the material in the *Tower Hamlets Case* was closed. Whilst there is an email before this Tribunal from Tower Hamlets dated 9th May 2011 which states that the Council has experienced:

"organised squatting which has resulted in criminal damage to Council property. Damage of sanitary fittings has led to flooding with genuine health and safety issues."

There was no detail as to the type of premises, whether it was residential, what is meant by "organised" in this context. Whilst the Commissioner was entitled to take that evidence into consideration (on the basis that he has seen it and had the opportunity to evaluate it) the same evidence was not submitted to the Tribunal at this hearing and the Tribunal does not therefore adopt any findings of fact that are based upon material it has not seen.

21. The Appellant provided evidence from different boroughs as to the number of possession orders of various types that were sought in particular years. The Tribunal did not consider this evidence determinative because it did not assist in the link between any criminality and squatting.

22. The Council has previously released lists of empty properties (commercial and domestic). They are not bound by their past behaviour, neither does it meant that they were correct to do so then. The Appellant provided evidence from different boroughs as to whether they had released lists (residential and or commercial) and whether the Council had noticed or had been notified of any crime related effects, as a result of the release of these lists. The Tribunal is not assisted by this evidence since this was not a statistic that was being collated by anyone. Similarly the evidence from Lambeth Council that disclosure of a list of long term empty residential properties led to almost double the number of squatted properties is insufficiently determinative, as it does not take account of the economic climate, or whether there were similar spikes in boroughs with no such disclosure. There is no evidence of whether the additional properties were long term empty or had even appeared on the list.

23. The Tribunal reminds itself that squatting is not a crime and has been troubled by the lack of evidence as to the prevalence of e.g. antisocial behaviour in the renting population versus the squatting population. There can be no doubt that some squatters

commit crime and are antisocial, however the Appellant argues that this type of crime is not linked to squatting in that it appears in the general population.

24. The Tribunal considered whether the disclosure of the withheld material would be of assistance to squatters. The Appellant's evidence described 2 different types of squatters: organized and opportunistic/disorganized squatters. As far as organized squatters are concerned they tend to look for:

i. neglected/derelict buildings as:

- It is more likely that they can enter without causing damage,
- If the landlord has "forgotten" about a building they are less likely to commence eviction proceedings swiftly.

ii. Many of these derelict type buildings would not appear on Council records as:

- They would be classed as derelict
- Their Landlords would not have bothered to apply for a Council tax exemption because the Landlord is not aware of this type of property.

iii. Many of the properties on the list would not be of interest to squatters:

- maisonettes (which are difficult to access),
- Flats or properties above or next to shops where the neighbours are likely to notify the owners.
- Properties on busy high streets where there is a risk of being seen and consequently arrested when effecting entry.

25. The Appellant did however, accept that such a list could be used by organized squatters:

- As a motivator to check addresses,
- To check ownership (and depending on the quality of the information to ascertain how long it has been empty for).
- He states that he has attempted to use similar lists himself (it is also cited as a method (albeit one with disadvantages) for finding empty properties in the Squatters Handbook[12]).

[12] p142 OB2

26. The Appellant's evidence is that using the list is impractical and labour intensive as:
    - It goes out of date very fast and is therefore very inaccurate,
    - a property would need to be "staked out" to make sure that there were no occupants, there was no caretaker or security and that it was not being visited.
    - The majority of the addresses are not likely to be long term empty and therefore of interest to squatters.
    - The list is not user friendly in that it is not usually presented geographically but alphabetically which makes the information difficult to organise and use. (The Tribunal notes that in other examples of disclosure, lists have been alphabetical by owner or alphabetical by street within a postcode which would require at least some cross referencing with a map).

27. The Tribunal accepts this evidence and notes that much of it was in the same vein as the evidence of Dr Tunstall, Mr Ireland and in part Chief Inspector Hafford in the *Bexley* case. Additionally many of the examples cited by the Council supported this evidence with: addresses being repeatedly squatted (suggesting word of mouth) or, squatted almost immediately upon becoming vacant (suggesting the use of local knowledge).

28. There was also the opportunistic and disorganized squatter as the Appellant accepted. These squatters he argued were likely to have problems with substance abuse and alcohol and in his argument would not have the "energy, patience, resources or soundness of mind to use the list". The Appellant relies upon the 2003 report Crack in London[13] (see para 40 et seq below) this was a lengthy and detailed report prepared for the Home Office and covered several London Boroughs including Camden, which looks into 'crack houses', the nature of the addiction to crack, and the behavioural patterns of addicts e.g.:

    "crack users get physically and mentally ill; they do not eat or sleep properly and they are liable to suffer from anxiety and paranoia"[14] and

[13] www.canadianharmreduction.com/readmore/crack+cocaine+in+London.pdf

[14] P8 paragraph 7 Crack in London

"Crack houses develop for a number of reasons: crack produces cravings and users are often in a great hurry to use; many crack users are homeless and need somewhere to be; crack is a stimulant and crack users look for social activity in a way that heroin users do not; some female crack users sell sex and a crack house provides a venue for this.[15]

29. Whilst the Tribunal does not wish to over-simplify the situation, we are persuaded by the evidence of chaotic behaviour and impulsivity detailed in the 2003 report that the list would not be of assistance to this type of squatter.

30. The Council produced examples of squatting associated with crime and anti social behaviour. Whilst it may be argued that some of these cases were committed by organized "professional" squatters, the Tribunal notes the references to drugs paraphernalia and alcohol abuse in the cases of extreme antisocial behaviour and criminal damage and is satisfied that these cases are not referring to the type of individual who would make use of the list.

31. The Tribunal considered whether this list would increase the number of squatters. The Appellant's evidence was that:

    - To a non squatter it is not the difficulty in finding a property which stops them.
    - The danger, insecurity, threat of eviction and moral objection to squatting are the main factors which deter people from squatting and the availability of a list of premises would not alter any of those factors.
    - There is already a "list" on the streets with web forums, notice boards and word of mouth identifying potentially suitable property.[16]

32. Whilst the evidence is that the number of people squatting would not increase, the Tribunal observes that it does not follow that more buildings would not be squatted (with squatters moving to more suitable/desirable premises, or choosing not to share with so many others). The Tribunal is satisfied that it is likely therefore that there

[15] P9 paragraph 12 Crack in London
[16] Supported by the print outs from web forums relied upon by the Council in the bundle.

would be an increase in the number of properties squatted (even if the number of squatters remained the same) as the list would add to the list of available premises known to a motivated and organized squatter.

33. The Tribunal has considered whether there is a link between squatting and criminality. The Tribunal is satisfied that for the purposes of s31 it is not sufficient that an example can be found of a squatter who has committed a criminal act, but there must be a link to the squatting and the crime (i.e. the crime occurs because the occupant is squatting and thus more peripatetic, less identifiable or free of the constraints and obligations of tenancy or ownership).

34. Whilst the Tribunal accepts that not every entry into a squat will involve criminal damage and the Appellant gives examples of window's already broken and screws removed to take off boards rather than forcing entry, the Tribunal notes the offers to break in as advertised on internet based squatters websites[17], and the acknowledgement in the ASS Squatters Handbook that " *Criminal damage in the strictest sense is an offence almost all squatters commit"*[18] and is satisfied that a significant proportion of entries into empty premises will involve some criminal damage.

35. Additionally in order for a squat to enjoy legal protection[19] the unauthorized occupiers must have secured and be in control of all points of entry/exit and there must be someone present in the premises at all times. The Appellant states in his grounds of appeal *"In the process of securing a property, inevitably criminal damage occurs, almost always in the form of a new lock being fitted onto the door"*. The Tribunal notes from the ASS Squatters handbook there are details on how to hacksaw or chisel out a lock.

36. The Tribunal was asked to consider an email correspondence between a Solicitor and ASS where a Defendant was acquitted of criminal damage having relied upon s5(2)(b)

[17] The fact that the web forum has been taken down in part because of these offers to commit criminal damage, does not reduce the weight we give it.
[18] P148 OB2
[19] s.6 Criminal Law Act 1977)

Criminal Law Act 1977 namely that the Defendant as a squatter had a lawful excuse having an interest in the property. The Tribunal notes that this is not a report from a Court of record and does not consider that it sets a general precedent. The Tribunal is satisfied therefore that in securing the premises criminal damage occurs and this is a direct link between all types of squatting and crime.[20]

37. Whilst the Appellant argues that organized squatters do not want to attract attention from the Police and will register to pay for utilities, the Tribunal does note the evidence from the ASS handbook that whilst they recommend registering for utilities some squatters choose to abstract electricity unlawfully. The Council also provided an example of squatters being involved in a fraudulent attempt to sell a property. The Council gave examples of vandalism, and threatening behaviour associated with squats. As noted above the majority of these were linked to drug and alcohol abuse. Other examples the Tribunal felt fell short of actual criminal behaviour e.g. (noise nuisance with an appropriate response when approached by Council officers). However, the Tribunal is satisfied that organized squatting is linked to certain types of criminal activity.

38. The Tribunal considers opportunistic crime associated with empty buildings such as arson, and vandalism. As indicated above, the Tribunal is of the view that this list would not be of use to opportunistic criminals. The Tribunal relies upon the evidence of Dr Tunstall at paragraph 37 in Bexley:

"Much crime and anti-social activity potentially associated with empty properties, such as vandalism, graffiti, dumping, is believed to be carried out in a largely opportunistic way and often by young people and others who do not travel far from their homes to the site of crime."

39. Additionally Chief Inspector Hafford at paragraph 38 in *Bexley* that:

- once properties were damaged by people locally, they were likely to be damaged again.

[20] The nature of this type of crime is considered further in the balance of the public interest test.

- When properties are seen as boarded-up, individuals are likely to go through the boards and access the buildings and at some point a fire is lit.
- The first offence is usually opportunistic and then there is the spread of knowledge that there is no resident owner and therefore individuals are less likely to get caught by the Police and this attracts further crime.
- Individuals who commit opportunistic crimes will not read lists of properties.

40. It was not disputed that drug addicts or alcoholics who enter empty properties for the purpose of living in them, usually do nothing to improve the properties, do not clear rubbish, and the house often becomes a place of instability with many transients:

> *"... crack houses often cause severe aggravation to neighbouring residents: there are constant comings and goings day and night; users are an intimidating presence on the street; there may be aggressive propositioning by sex workers; there is likely to be noise and litter, including discarded needles.*[21]

41. The Letter from Inspector Burton on behalf of Camden Police expressed the view that disclosure of the list would lead to an increase in crime and disorder and the use of Police resources to deal with squatting and the resultant criminal activity. He said that squatting contributes to high levels of crime, but did not distinguish between opportunistic or organized squatting. He also accepted that the Police do not record information linking squatters and crime therefore it only comes to notice as an emergency response.

42. One of the examples given by him (and by way of press cuttings) referred to a rave in a disused commercial building. The Tribunal does not find this helpful because the fact that this building was empty was well publicized and it was obvious to see that this depot was disused. Further, the information request only deals with residential premises.

[21] Crack in London p13.

43. Additionally Inspector Burton states that void premises could be used by those looking for crack houses and 64 have been closed by Police in Camden:

"void venues and those properties with vulnerable residents have and continue to be targeted by those who supply produce and consume illegal prohibited controlled drugs".

44. In this respect the Tribunal is satisfied that the Inspector's evidence is consistent with the situation described in the "Crack in London" report which is that although some crack houses can be squats they generally arise when:
...a crack dealer or dealers take over the premises of a 'vulnerable person' that is, someone who has physical or mental incapacities, or is dependent on drugs or alcohol.... In many instances the people who run the 'crack house' are unwanted guests of the flat's legitimate occupier... They are able to remain by using intimidation and threats of extreme violence that underpins the crack trade."

45. The definition of a crack house from the Crack In London report includes the following:

- *the 'frequenting' of the premises by identified sex workers; combined with the use of the premises or its vicinity for paid sex work*
- *premises visited by a substantial number (greater than 10) of people on a daily basis in connection with the intended supply, purchase or consumption of Class A drugs*
- *the criminal damage of surrounding property or the structure of an estate an increase in acquisitive and violent crime in the vicinity of the premises, linked to the funding of personal drug consumption*
- *requests for police to respond to firearm incidents and violent assaults either inside the premise or in its vicinity*
- *a series of complaints by local residents, detailing obscene or violent anti-social behaviour by the Tenant or the Tenant's visitors*
- *the intimidation of local residents, housing officers and local employees"*

From this the Tribunal is satisfied that the crime that the Inspector fears is that associated with Drug use and as set out above, the Tribunal finds that this list would not be of use to this type of squatter.

46. As to the issue of stripping; the removal of all things of value (such as pipes, boilers, sanitary wear and floor boards) leaving an empty and uninhabitable shell, in the *Bexley* case the Tribunal found that empty properties are associated with criminal activity from organised local gangs. The Tribunal does accept as stated in the Appellant's evidence (including the Police Officers he contacted) that stripping is usually associated with building work and refurbishment (e.g. houses with scaffolding and following skip lorries), and local knowledge. The suitability of a property for stripping will depend upon:
    - the price and demand for scrap materials and
    - whether the premises have these materials, and
    - whether the property has security, or is accessible (has scaffolding etc.)

    Although the evidence is that criminals would rather strip an empty construction site than an empty building, the Tribunal notes that this is a professional organized form of crime and is satisfied that this list would provide another method of identifying potential properties for stripping and that as such it would increase the number of target properties and consequently prejudice the prevention of crime.

47. The Tribunal is therefore satisfied that s31(1)(a) is engaged in that it is likely that disclosure of the disputed information would have a negative impact on the prevention of crime. We find that the list would be of use to organized squatters and that this type of squatting is associated with the types of criminal activity set out above. We are also satisfied that the list would be of use for the criminal purposes of organized criminals. The level of prejudice is real, actual and of substance.

Ground b The public interest test

48. S31 FOIA is a qualified exemption and pursuant to s2(1) FOIA provides that the duty to disclose does not apply where:

(b)in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information,

49. The Tribunal makes the following observations relating to the application of the public interest test. To withhold the information:
    - the public interest in non-disclosure must outweigh the public interest in disclosure.
    - Additionally the passage of time since the creation of the information may have an important bearing on the balancing exercise, but the Tribunal must go back to the time when the request was originally considered when conducting the balancing exercise.
    - As a general rule, the public interest in maintaining an exemption diminishes over time, however, on the facts of this case the information that falls within the scope of this request was current at the time of the request[22].

50. The Tribunal adopts the approach applied at para 65(f) in ***Bexley*** that in considering public interest factors in favour of maintaining the exemption, they must relate to the particular interest which the exemption is protecting. In this case the prevention of crime. The Tribunal does not consider this to be affected by the case of *Office of Communications v Information Commissioner [2011] EUECJ C-71/10*[23] as that case dealt with the amalgamation of the public interest factors relating to several exemptions, in this case only s31 is relied upon. The Tribunal does not consider that any perceived social disadvantage of living next door to squatters, or the costs of the eviction of squatters are matters that the Tribunal is entitled to take into consideration since squatting is not illegal. However, public costs e.g. the costs of repair and extra security to Council buildings to prevent criminal damage is a legitimate factor as it is attributable to the interest that the exemption is protecting.

51. The public interest factors in favour of disclosure are not so limited and can take into account the general public interests in the promotion of transparency, accountability, public understanding and involvement in the democratic process.

Factors favouring disclosure

52. The following factors favouring disclosure were advanced before us.

[22] The Tribunal notes that the list of non Council accommodation has been updated and the original has not been retained, however it was current at the relevant time.
[23] A case relating to the Environmental Information Regulations

53. Disclosure would promote openness, transparency and accountability in local government. Disclosure would rejuvenate the empty homes debate, raise awareness and bring more pressure on both central and local government to improve their policy and 'commitment'. It would assist academic and policy-orientated research. The Appellant argued that: English Heritage, the Empty Homes Agency, Urban Explorers, architects, photographers, public transparency campaigners, homelessness charities etc. would all benefit from disclosure.

54. Whilst the Council accepted that this was a legitimate and important public interest Ms Armstrong from the Council's Housing Management Section detailed:
    - the information that was already provided to Central Government which in turn is made publicly available on the DCL website.
    - The Council's internal statistical information relating to voids and re-letting.
    - Financial and policy incentives to re-let as soon as possible.
    - The Council is subject to audit.

They also point to the additional data provided to the Appellant in May 2011. Both the Council and the Commissioner argued that the release of management information and statistics was a more proportionate way of achieving a similar result.

55. It was argued by the Commissioner and accepted by the Tribunal in *Cabinet Office v ICO and Dr Christopher Lamb EA/2008.24&29* that the public interest in accountability is not reduced just because of the existence of another regulatory mechanism. The Tribunal is satisfied that there is already a lively and informed debate in this area, but, recognises that specific examples provide colour and are important in increasing public understanding and local involvement. It puts the specific empty properties into the limelight, may be an added tool to incentivize owners to reuse their properties and would enable the general public to walk up to a 'void', and see for themselves what is going on, whether it is being worked on, or has been left in limbo. Although the Tribunal recognizes the various reasons why a property may be vacant including bereavement, the Tribunal is satisfied on the

balance of probabilities that this remains a very strong public interest factor in favour of disclosure.

56. The Tribunal notes that there is a strong public interest in bringing empty properties into reuse. In the ministerial foreword[24] to "*Empty Property: Unlocking the Potential a Case for Action"* published by the office of the Deputy Prime Minister in 2003 it states:

> *"We recognise that each empty property is a wasted resource from the point of view of the owner, a wasted opportunity from the point of view of a developer and a wasted asset from the point of view of local authorities charged with bringing forward sufficient land and housing to meet projected housing needs".*

Additionally in *Bexley* Mr Ireland gave evidence of "Broken window syndrome", when areas go into decline (which in turn affects living standards and property prices) due to the proximity of empty properties. His evidence was that:

> *"the most direct and effective way of reducing the economic and social problems caused by empty properties and, in particular reducing the incidences of criminal activity associated with empty properties is to bring those properties back into use*[25].

57. The Tribunal accepts that bringing empty properties back into reuse is a priority for the Government and the Council. In the past the Council have exceeded their targets for bringing such properties back into use, and they are involved in identifying suitable empty properties, and giving advice and assistance on planning, redevelopment, and grants. They have also helped owners find tenants, buyers and developers for properties. The Council's evidence was that publication of this list would not assist in this aim.

58. The Tribunal acknowledges that there are other agencies, groups and individuals who have resources, expertise and would be able to assist in this task. The Council led initiatives are only one side of the coin and a different approach is likely to increase

[24] Quoted in Bexley at para 15
[25] *Bexley* para 71

the field of those wishing to become involved. The Council's standard letter to those who approach them asking about empty properties is somewhat pedestrian (e.g approach estate agents, put letters through doors of disused buildings etc.). The Appellant argues for more dynamic action:

- through the use of short life housing associations and cooperatives,
- providing information to stimulate developers, estate agents and investors to approach the owners of empty properties,
- considering the reuse of these dwellings for other purposes whilst they are awaiting redevelopment e.g. artists looking for places to setup installations.

59. The Appellant argues that this would be in the commercial and financial interest of the public because: in relation to Council properties it would reduce the costs associated with "empty property crime" and bring in additional revenue to the Council by way of rent for dwellings that were brought back into use earlier than they would otherwise have been. However, the Tribunal notes that this has to be balanced by the increase in costs relating additional empty property crime arising out of the publication of the disputed information, and considers therefore overall that this is not a particularly strong public interest.

60. Ms Armstrong from the Council's Housing Management Section noted that there were already incentives; both financial (subsidy linked to performance and no rent if property is void) and practical (the housing needs register has more than 22,000 on it) to re-let their properties as soon as possible and disclosure of the list would make no difference to the Council's commitment to tackling the issue of voids.

61. This predominantly relates to Council run voids. The Appellant cites examples of the Council paying people not in housing need to occupy properties as a security measure so that the property was available for redevelopment, some considerable time in the future. Additionally there can be a gap between policy and reality – lack of funding for refurbishment can build in delay, as can planning issues, consequently just because a property is earmarked for major refurbishment does not mean that the works are imminent or going to be completed promptly.

62. The argument is made that squatters "jump the queue", the Tribunal observes that this has no bearing on the prevention of crime as squatting is not a criminal offence. It is material to counter the assertion that publication of the list would bring buildings back into use sooner and that the housing needs of additional people would be met (whether through temporary tenancies, squatting or the swift re-letting of voids) as it is argued that squatting hinders redevelopment and delays the permanent reuse of buildings by those on the housing register. Whilst this may be a factor the Tribunal does accept that if there is a genuine intended occupier eviction is an expedited process and notes that many of the properties being talked about are derelict and the Council is not able to move tenants into such properties. There is evidence of some buildings remaining void for many years whilst planning and funding issues are resolved.

63. The Tribunal is satisfied that publication of this list would bring a proportion of the void properties back into use earlier than would otherwise be the case and that consequently this is a strong public interest factor in favour of disclosure. The Tribunal agrees with the Decision Notice that if the majority of properties would be likely to benefit in this way this factor would be accorded even greater weight, but considers this to be of considerable weight in any event.

In favour of withholding:

64. Disclosure would facilitate squatting and associated crime and other crime associated with empty properties, this would:
    - thereby undermine the feeling of security of people living in neighbouring houses,
    - Cost public money to prevent (increased criminal justice costs and additional private security measures).

    The Tribunal acknowledges that this is an inherently strong public interest.

65. In his Decision Notice, the Commissioner disagreed with *Bexley* which held that there was no impact upon individuals where the properties were owned by an organization. The Commissioner noted that crime in empty properties (even if they are commercially owned) impacts on neighbours and the wider community and may be worse for the neighbour than for an absentee commercial landlord. The Tribunal agrees with the Commissioner on this point and takes into consideration the impact of these crimes upon immediate neighbours as well as the wider community.

66. The Council and Commissioner identify the crime potentially attributable to disclosure of the list as arson, anti-social behaviour, drug related crime (including violent crime), criminal damage and organized stripping. As set out in paragraphs 28 et seq above, the Tribunal is satisfied that disclosure of the disputed information would not lead to the majority of the crime associated with empty properties. Consequently the impact upon neighbours of crime is limited to the type of crime we consider attributable to the use of the list rather than that involved in all empty properties.

67. The Tribunal accepts that the impact of a crime may bear no correlation to its monetary value, (and the fact that criminal damage may be of relatively low cost does not mean that the surrounding neighbours would not feel any less vulnerable) and there is a public interest in the prevention of all crime including property crime. This includes:

- avoiding personal distress to the victims of crime,
- avoiding distress to those in the wider neighbourhood who may be affected by crime,
- and a public interest in the efficient use of police resources.

However, in assessing the weight to give these factors the Tribunal takes into consideration the nature of the crimes that it considers would follow disclosure and finds that they are at the lower end of victim impact and that in some cases the presence of organized squatters itself will prevent the use of the premises for more socially disruptive crime (e.g. use as a crack house).

Balancing:

68. The Tribunal has considered each category of disputed information separately and in balancing all the public interests set out above, the Tribunal is satisfied that the balance lies in favour of disclosure in relation to all the disputed information.

69. In ground c of his appeal, the Appellant argues that the Commissioner has deviated from the approach used in the *Bexley* case and that this was wrong. The Commissioner notes that the Appellant is himself arguing against *Bexley* in that he argues that s31 is not engaged whereas *Bexley* found that it was. The Tribunal considers ground c to be an argument that the Commissioner should have come to the same decision as the Tribunal did in *Bexley*, namely that the public interest supported disclosure. The Tribunal does not consider that there was a difference in the construction of the exemption or the factors to be taken into consideration and the difference depended upon the assessment of the evidence on the facts of both cases, as such the Tribunal is satisfied that to the extent that this ground is a separate ground it is misconceived, but that the public interest considerations have been dealt with above.

Conclusion

70. For the reasons set out above, the Tribunal allows the appeal in part and finds:

a) The information derived from the Council Tax Register does not form part of the disputed information,

b) The Commissioner was right to conclude that s31 was engaged (although the Tribunal disagrees with the nature of the crime that it is likely would be attributable to disclosure of the disputed information).

c) The Balance of Public interest lies in disclosure and consequently the Commissioner was wrong to find that there was no breach of s1(1) FOIA.

Dated this 2nd day of September 2011

Fiona Henderson

Judge