

Privately Owned Empty Property List

We are unable to provide a list of privately owned empty properties as this constitutes personal data and by doing so would breach the Data Protection Act 1998. Please find a detailed explanation below:

Personal Data:

“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,”

As the individual owners and their addresses can be identified from the property address, by simply obtaining a land registry search, this means that the vacant property address falls under the remit of personal data. The result of this is that any disclosure of the vacant property addresses, without the consent of the owner, would be a breach of the Data Protection Act in respect of those individuals.

A similar request was made, and eventually was referred to the information tribunal, the Court which deals with cases relating to Freedom of Information / Environmental Information Regulations disputes, and further information as to the outcome of that case is set out below. However, the tribunal agreed that properties owned by private individuals are exempt from disclosure.

Without the express consent of the owners to share their information, Birmingham City Council would be breaching the Data Protection Act if it was to disclose the owner's Personal Data without their consent or where permitted by the Data Protection Act. Due to the large number of properties, it is not possible to contact each of the owners of the 9000 plus properties on our list, to obtain their express consent to disclose their personal data.

The issue of requests for lists of vacant homes has been considered by the information tribunal, the court set up to deal with Freedom of Information / Environmental Information Regulations decisions. In the case of Mr Colin P England and the London Borough of Bexley, the information tribunal ordered that the local authority provided the following information in response to a request for a list of vacant or empty properties:-

addresses of “long term empty” and “uninhabitable empty properties” that are not owned by individuals; and

(b) the names of the owners of those properties referred to in (a).

“Individuals” means natural persons, or the beneficiaries of deceased individuals, if they are also natural persons.

This case originally treated the request as a request under the Freedom of Information Act. However, subsequent cases regarding properties have concluded that such information should have been treated under the Environmental information regulations. In any event, as both pieces of legislation have exemptions preventing the disclosure of personal data, the decision is still valid.

The judgment is located at the following web site address:-

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

As stated above, the Data Protection Act places a statutory obligation on any organisation holding personal data not to disclose it without lawful authority. There are specific exemptions set out in both the Freedom of Information Act and the Environmental Information Regulations excluding personal data from disclosure.

We agree that local authorities should work towards bringing vacant properties into occupation, as per the legal obligation imposed on us. However, that obligation does not mean that we can breach either the human rights of the owners of the vacant properties, or even the Data Protection Act to comply with that obligation.

The following human rights that would be infringed by the disclosure would be:-

“Article 8 Right to respect for private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”

This enshrines a right to privacy, and is supported by such provisions as the non-disclosure provisions of the Data Protection Act 1998 which prohibits the unauthorised disclosure of personal data.

and

***“Part II The First Protocol
Article 1 Protection of property***

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The disclosure of the lists of vacant properties owned by private individuals to the public at large, would be seen by the Courts as an attempt to interfere with the peaceful enjoyment of his possessions. This is the reason why a Local Authority has to either get the consent of an individual (by purchasing the property) or a Court Order (e.g. a Compulsory Purchase Order) to take possession of a property.

Birmingham City Council accepts that there is a legal obligation imposed on the local authority to minimise the number of vacant or empty properties. However, it considers

that the public interest factors in withholding the information outweigh public interest in disclosure.

These factors are:-

The public interest in a public authority complying with the law, i.e. not acting illegally (the non disclosure provisions of the Data Protection Act 1998); and

Not infringing the human rights of owners of the properties concerned, both under Article 8 (respect of right to privacy) and Article 1 of the first protocol, Protection of Property.

As stated above, this issue has been considered by the Information Tribunal in a previous case, who accepted that the addresses of vacant or empty properties owned by private individuals was exempt from disclosure.

Should you wish to receive a list of Birmingham City Council owned properties, please email donna.mcmullan@birmingham.gov.uk stating that your request is a Freedom of Information request.