



Advice from the President

for panels and parties

on withholding evidence from a party

1. A number of Billing Authorities have raised with the Tribunal whether information they have obtained from other persons who are not party to proceedings can or should be withheld from the Appellant in order for them to comply with the General Data Protection Regulation 2016/679 (GDPR). The GDPR imposes strict law on controlling and processing personally identifiable information and came in to force on 25 May 2018.

2. A typical request to withhold evidence from the Appellant would state something along the lines of:

“A landlord has been made liable for council tax as the tenant told us they vacated but the landlord claims that the tenant is still in occupation.

The tenant actually moved within the area and we have their new Tenancy Agreement and confirmation of their ‘Change in Circumstances’ from the DWP.

If it does go to a hearing I am aware of the need to provide evidence to the landlord as well as the panel but how do I not contravene GDPR?

Would it be acceptable to provide a full copy of the evidence to the panel but redact the personal information from the landlord’s copy?

It seems to me I would have to protect the personal data of the tenant’s new address but must still be able to rely upon the panel being able to use this evidence as it is very important.”

3. The basic principle that the Tribunal follows is that all evidence on which it relies must be disclosed to all parties to the proceedings. This was set out by Lord Hodson in *Official Solicitor to the Supreme Court v. K* [1965] AC 201:

“It is said with force ...that it is contrary to natural justice that the contentions of a party in judicial proceedings may be overruled by considerations in the judicial mind which the party has no opportunity of criticising or controverting because he or she does not know what they are; moreover, the judge may (without the inestimable benefit of critical argument) arrive at a wrong conclusion on the undisclosed material. Even worse, the undisclosed evidence may, if subjected to criticism, prove to be misconceived or based on false premises.”

4. There are few exceptions. One is common law and having regard to the welfare of a child and another would be confidentiality in respect of matters such as medical records. The third is the Tribunal’s own regulations.

5. Regulation 16 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009 No 2269 states:

16 Use of documents and information

(1) The VTE may make an order prohibiting the disclosure or publication of--

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the VTE considers should not be identified.

(2) The VTE may give a direction prohibiting the disclosure of information to a person if--

- (a) the VTE is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the VTE is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

6. Invariably what Billing Authorities are seeking to do is prohibit disclosure to the Appellant under 16(2)(a). However, in order to meet the requirement the disclosure must be of a nature that would likely to cause serious harm. If the Billing Authority considers that applies then they

should seek a Direction from the Tribunal in advance of the disclosure process. In respect of all other matters no such application can be made.

7. It should also be noted that, alongside the GDPR, the new Data Protection Act (DPA) 2018 contains the same exemption to GDPR provisions as the 1998 DPA. This means that the data subject cannot object to disclosure of their personal data if that is necessary in connection with legal proceedings (including prospective legal proceedings) (DPA 2018 Sch 2 Part 1 5(3)(a)). One assumes that in all of these cases the information of concern has been provided by someone who would be the taxpayer but for that documentation. However, it is for Billing Authorities to decide whether this applies to evidence they wish to submit in proceedings in respect of someone else.

8. Finally, parties should be aware of regulation 17 on evidence and submissions as well as the Tribunal's own Directions.

A handwritten signature in black ink, appearing to read 'Amy Arland', with a long horizontal line extending to the right from the end of the signature.

28 August 2018