

MEMO

To: Facebook Oversight Board

From: Schillings International LLP

Date: 9 July 2021

Re: Submissions on the sharing of residential information

1. Executive Summary

- 1.1 The Facebook Oversight Board has requested submissions on Facebook's policy on *"the sharing of residential information and when that information should be considered private and therefore removed."* Based on the request for submissions, we understand that Facebook considers "private residential information" to include *"imagery that display(s) the external view of private residences"* and residential/personal address information. For the purposes of this submission, when we refer to "private residential information", we mean an individual's home address or information which easily enables someone to work out where they live.
- 1.2 It is clear that the disclosure of such information will rarely, if ever, be lawful, save for where an individual voluntarily publicises such information, and even then, only in the manner and to the extent that they choose to do so.
- 1.3 The request for submission states: *"According to Facebook, this is a difficult question because residential addresses can be relevant to journalism and civic activism."* With respect, this is not a difficult question, and the suggestion that the "doxing" can be a legitimate tool for furthering journalistic purposes and civic activism is highly problematic. It is difficult to envisage any situation where journalistic purposes and civic activism cannot be furthered through other lawful means which do not compromise an individual's enjoyment of a peaceful home life, or their physical safety.
- 1.4 This submission sets out:
 - An overview of the legal position of the disclosure of private residential information.
 - Freedom of expression and the disclosure of private residential information.
 - What residential information should be considered "publicly available."
 - How Facebook should treat private information about public figures.

2. Private residential information: Legal overview

The unauthorised disclosure of private residential information is unlawful under:

2.1 The European Convention on Human Rights. Article 8 of the European Convention on Human Rights (“the Convention”) provides:

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

2. 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 wellbeing 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.”

2.1.1 The European Court of Human Rights, and domestic Courts in England and Wales, have made it clear that private residential information is protected under Article 8 of the Convention. In particular, we refer you to the following key cases:

1. *Alkaya v Turkey*, in which the European Court of Human Rights held that the disclosure by the press of the home address of a Turkish actress whose apartment had been burgled infringed her rights under Article 8.¹
2. *Green Corns Ltd v Claverley Group Ltd*, in which the High Court held: “*There is no doubt that the home address of an individual is information the disclosure and use of which that individual has a right to control in accordance with Article 8.*”²

2.2 Data protection law

Under UK and EU data protection law, personal data must be processed lawfully.³ As set out above, the unauthorised disclosure of private residential information is as a general rule unlawful under human rights, and as such it will also breach data protection law.

¹ Application no. 42811/06

² [2005] EWHC 958 (QB), paragraph 53

³ Article 5(1) GDPR

3. Freedom of expression and the disclosure of private residential information

- 3.1** Freedom of expression would not be unduly restricted if Facebook prohibits users from sharing private residential information.
- 3.2** The competing rights of freedom of expression under Article 10 of the Convention and privacy under Article 8 of the Convention have been balanced by the Courts in a number of cases involving the unauthorised disclosure of residential information. The Courts have come down firmly in favour of protecting the right to privacy under Article 8 of the Convention.
- 3.3** In our experience, individuals generally wish to disclose private residential information about high profile or high net worth individuals in order to:
1. Satisfy curiosity about that person's home life; or
 2. Stalk, harass or intimidate that person.
- 3.4** We cannot anticipate any situations in which the right to share private residential information for these purposes would outweigh an individual's right to privacy.
- 3.5** The posting of information for the purpose of satisfying public curiosity about how high profile and high net worth individuals live does not outweigh their right to privacy. The fact that information interests the public does not mean that its publication is in the public interest. We refer you to the former President of the Supreme Court's commentary that it is *"very different from saying that it is information that interests the public-the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it."*⁴
- 3.6** Further, even content posted out of well-intentioned curiosity can be harmful when it is misused by stalkers and potential perpetrators of violence. Public curiosity about how the rich and famous live does not outweigh their right to safety and security.
- 3.7** The submission suggests that Facebook's position is that posting private residential information may be *"relevant to journalism and civic activism"*. It is possible to further both of these purposes without posting private residential information. Doxing is not a legitimate threat to use against individuals.

⁴ Jameel v Wall Street Journal [2006] 2 AC 465[147]

4. What residential information should be considered “publicly available”

- 4.1** The fact that information is in the public domain to a limited extent does not mean that its wider disclosure to the general public, for example on social media, is lawful.
- 4.2** The English courts have expressly rejected the argument that information which is available in public records is “publicly available” and therefore not protected under Article 8 of the Convention. In *Green Corns Ltd v Claverley Group Ltd*, the Court held that address information in public records “is not in the public domain to the extent, or in the sense, that republication could have no significant effect, or that the information is not eligible for protection at all.”⁵
- 4.3** This was reiterated in *HRH The Prince of Luxembourg v HRH The Princess of Luxembourg and the Telegraph Media Group Ltd*, in which the Court held: “Whilst [residential] information is available on HM Land Registry, and whilst a person who has the address of the matrimonial home may search for that information, the address of, and title information with respect to the matrimonial home are not matters currently widely known to the public. Publication of the information concerning the family home would fundamentally change that position...”⁶

5. How Facebook should treat private information about public figures

- 5.1** Public figures should be afforded the same privacy rights as private figures. It is clear that public figures do not waive their right to privacy. We refer you to *Alkaya v Turkey*, in which the European Court of Human Rights made it clear that the fact that the applicant was a well-known personality did not mean that her choice of residence was a public matter. Likewise, in *McKennitt v Ash*, the fact that the Claimant was a well-known musician did not mean that information about her residence was “fair game”⁷.

6. Next steps

- 6.1** We have focused our submission on our core expertise of privacy protection and reputation defence to ensure that it fits within the parameters for submissions, but we are happy to assist the Board should it have any follow-up questions or require further assistance.

⁵ [2005] EWHC 958 (QB) at Paragraph 81

⁶ [2017] EWHC 3095 (Fam) at paragraph 97

⁷ [2005] EWHC 3003 (QB)

7. Our credentials

- 7.1** Schillings is a leading reputation and privacy law firm. We fight passionately against breaches of privacy, attacks on reputation and threats to security.
- 7.2** We have worked at the heart of defamation and privacy law over the last four decades. Most recently our work has entailed focus on social media and how better to protect children's digital rights. Activities have included acting as legal adviser for children's charity 5Rights, co-authoring a report on [Persuasive Design Strategies](#), submitting oral and written evidence to [The House of Lords Select Committee](#) on internet regulation, sitting on the Children's Commissioner Digital Task Force and producing the report '[Growing Up Digital: A report of the Growing Up Digital Taskforce](#).' Also with the Children's Commissioner, we drafted a [model law](#) imposing a duty of care on online service providers in regards to their interactions with children.
- 7.3** We have also frequently taken legal action against Facebook and other social media companies on behalf of our clients.