



NCN: [2023] UKFTT 00064 (GRC)

Case Reference: EA/2022/0292

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Heard: by determination on the papers

Heard on: 19 January 2023

Decision given on: 20 January 2023

Before:
Judge Alison McKenna

ROBIN STAINER

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

DECISION

This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success

REASONS

1. The Respondent's Strike Out Application dated 15 November 2022 is allowed.
2. The Information Commissioner published a Decision Notice on 12 September 2022 which found that the public authority did not hold information within the scope of part 1 of the request and that part 2 of the request was not a request for recorded information as it sought an assurance. The Appellant filed a Notice of Appeal on 4 October 2022.
3. The Appellant's Grounds of Appeal are that the Decision Notice was in error because considered the wrong information. He asks for factual corrections to the Decision Notice and for the public authority to confirm its position.
4. On 15 November 2022, the Information Commissioner, in filing his Response to the appeal, applied for a strike out under rule 8 (3)(c) of the Tribunal's rules on the basis that the appeal had no reasonable prospects of success. It is submitted that the Appellant's suggestion that the wrong information was considered in the Decision Notice cannot be correct because the information he refers to had not been created at the time of his request. Furthermore, that the Tribunal has no jurisdiction in respect of a request for an assurance.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 30 November 2022 the Appellant reiterated his grounds of appeal and submitted that the public authority must give him reasons for its position. He did not challenge the Information Commissioner's submission that his grounds of appeal refer to information post-dating his request.
6. I have considered the Upper Tribunal's decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), in which it is stated at [41] that

...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing...The Tribunal must avoid conducting a "mini-trial". As Lord Hope observed in Three Rivers the strike out procedure is to deal with cases that are not fit for a full hearing at all.
7. Applying this approach, I have considered both parties' representations and concluded that this is a case which may be described as 'not fit for a full hearing'. This is because the role of this Tribunal under s. 57 and s. 58 FOIA is to decide whether there is an error of law or inappropriate exercise of discretion in the Information Commissioner's Decision Notice. The grounds of appeal do not engage with that jurisdiction but rather present a challenge to the public authority's stance over an issue of concern to the Appellant. It is not this Tribunal's role to direct the disclosure of information that post-dates the request. It is not this Tribunal's role to seek assurances from public authorities; indeed, it has no power to do so.

8. It does not therefore seem to me that any Tribunal properly directed could allow this appeal. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success. I direct accordingly.

(Signed)

Dated: 19 January 2023

Judge Alison McKenna

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