



Neutral citation number: [2023] UKFTT 00689 (GRC)

Case Reference: EA/2023/0271

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard: on the papers

**Heard on: 24 August 2023
Decision given on: 30 August 2023**

Before

TRIBUNAL JUDGE PENROSE FOSS

Between

WILLIAM STEVENSON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Tribunal Rules) on the grounds that there is no reasonable prospect of the appeal succeeding.

REASONS

1. The Appellant appeals against a Decision Notice of the Information Commissioner (“the Commissioner”) dated 3 May 2023. The Commissioner submits that there is no reasonable prospect of the Appellant’s appeal succeeding and requests that the Tribunal strike out the appeal under rule 8(3)(c) of the Tribunal Rules.

The Request

2. By request dated 20 January 2023, the Appellant sought information from Lancashire police (“the Police”) concerning an alleged traffic offence, involving a bus and the Appellant as a cyclist, which took place on 21 February 2022. Specifically, the request was for “*the information held about the action actually taken over this offence against the driver of what was then registered as [VRM], using the information above to identify the offence.*” The information described as appearing above seems to have consisted of a number of photographs of what the Appellant said was the bus in question. The Police responded on 9 February 2023, stating that they could neither confirm nor deny that they held the information requested, relying upon the exemption under section 40 (5) FOIA. The Appellant sought an internal review on 27 February 2023. The Police confirmed their internal review on 20 March 2023, maintaining their position. The Appellant complained to the Commissioner on 4 April 2023.

The Decision Notice

3. By his Decision Notice, the Commissioner reasoned that: pursuant to section 40 (5B) (a) (i) FOIA the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK GDPR to provide that confirmation or denial; that for 40 (5B) (a) (i) FOIA to apply, the following criteria must be met - (1) confirming or denying whether the requested information is held would constitute the disclosure of a third party’s personal data, and (2) providing this confirmation or denial would contravene one of the data protection principles. The Commissioner reasoned that “*Although the request does not identify any party by name, clearly the VRM of the bus, coupled with dates and times would allow for the bus company, and other members of the public familiar with the bus drivers’ patterns of work such as friends and family, to identify the driver in question. Therefore, the request relates to a living person who will be identifiable to some people. The information is therefore the driver’s personal data.*”. The Commissioner was satisfied that if the Police confirmed whether or not it held the requested data, this would result in disclosure of a third party’s personal data.
4. Although not argued by the Police, the Commissioner additionally reasoned that for the Police to confirm whether or not it held the information would result in the disclosure of information relating to allegations of a criminal offence committed by the bus driver; and that such constituted criminal offence data for which none of the conditions permitting the processing of such data pertained (Schedule 1, Parts 1 to 3 of the DPA 2018).

The Appeal

5. The Appellant’s appeal, by Notice of Appeal dated 24 May 2023, proceeds on the basis that the Police and other forces regularly give out the type of information he sought, and that the reason the Police have refused to provide the information requested in this case is because it took either no or insufficient action against the bus driver.

The Commissioner’s Response

6. By his Response dated 7 July 2023, the Commissioner submits that: none of the Appellant’s grounds of appeal indicate that the Commissioner’s Decision Notice is wrong in law; and the Appellant does not dispute that confirming or denying that the requested information was held would itself disclose third party personal data or criminal offence data.

The Appellant's Reply

7. By his Reply dated 1 August 2023, the Appellant continues to focus on his perception of the action or inaction of the Police, and says that “*The DN is wrong for the simple reason that Lancashire Constabulary, the Metropolitan Police, South Yorkshire and other forces regularly give out the information as to the exact penalty meted out to an offender who is ‘identifiable’ in exactly the same way as the Commissioner claims that the driver of [number] on 21.2.22 is ‘identifiable’: by the registration of the vehicle involved in the offence.*”

Discussion and Conclusion

8. In reaching my decision 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 judgment 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.

9. I have borne in mind that the power to strike out must be exercised in accordance with all aspects of the overriding objective set out in rule 2 of the Tribunal Rules to deal with cases fairly and justly. Striking out will be the correct course of action, and support the overriding objective, where an appeal raises an unwinnable case and continuance of the proceedings would be without any possible benefit to the parties and a waste of resources.
10. The role of this Tribunal under s.57 and s58 of FOIA is to decide whether there is an error of law or inappropriate exercise of discretion in the Decision Notice. The grounds of appeal do not engage with that jurisdiction; they do not identify any error of law or inappropriate exercise of discretion. Whatever the practices of the Police and other police forces may have been, in the Appellant’s experience, for giving out information in other cases of the type identified by the Appellant, those do not demonstrate any error of law or inappropriate exercise of discretion by the Commissioner in this case.
11. I conclude that this appeal should be struck out as having no reasonable prospects of success.

Signed: *Penrose Foss*

Date: 24 August 2023.