



**Case Reference: EA/ 2022/0285**

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

Heard: by determination on the papers

Heard on: 18 January 2023

Decision given on: 18 January 2023

Before:  
Judge Alison McKenna

**JAMES ROBERTSON**

**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 3 November 2022 is allowed.
2. The Information Commissioner published a Decision Notice on 14 September 2022 which he found that the public authority had complied with the Appellant's request under the Environmental Information Regulations 2004 and that no further steps were required. The Appellant filed a Notice of Appeal on 30 September 2022.
3. On 3 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.
4. The Appellant's Grounds of Appeal are that the Information Commissioner should have investigated whether the public authority had committed a criminal offence under regulation 19 (1) EIRs. This is because the information was initially supplied in an illegible form and, whilst later it was supplied in a legible form, the Appellant requested to know why this had happened. The Decision Notice concludes at [23] that the narrative explanation supplied to the Commissioner by the public authority was sufficient to conclude the case.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 14 November 2022 the Appellant explained that he regarded the failure to conduct an investigation as falling within the Tribunal's jurisdiction under s. 57 FOIA 2000 in that there was an inappropriate exercise of jurisdiction by the Information Commissioner in reaching the conclusion that an adequate explanation had been offered.
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 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, in my view, engage the Tribunal's jurisdiction as to the Decision Notice as they are concerned with making a procedural attack on the Information Commissioner's investigation rather than challenging his conclusions. I note that the information requested has, in any event, been provided.

8. It does not therefore seem to me that any Tribunal properly directed could allow this appeal. The Tribunal has no power to direct the Information Commissioner to conduct an investigation into an alleged criminal offence. 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: 18 January 2023**

**Judge Alison McKenna**

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