



Case Reference: EA/ 2022/0319

**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

ROBERT CARR

Appellant

- and -

Respondent

THE INFORMATION COMMISSIONER

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 1 December 2022 is allowed.
2. The Information Commissioner published a Decision Notice on 12 October 2022 which found that the public authority had correctly relied on s. 42 FOIA in refusing to provide the requested information. The Appellant filed a Notice of Appeal on 30 November 2022.
3. On 1 December 2022, the Information Commissioner, in filing its 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 his request was for historical and administrative information about the handling of the relevant file and not for its contents. He accepts that there has been some confusion between himself and the Information Commissioner's Office and that the Information Commissioner understood his request to be for the contents of the file. He submits that there is no engagement of s. 42 FOIA by the information he requested.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 3 December 2022 the Appellant reiterated his grounds of appeal and stated that there had been a failure to supply the information he had requested because he had requested administrative information rather than the contents of the file.
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'. The Information Commissioner's understanding of the request made is, in my view, objectively reasonable and the Decision Notice reached a conclusion on that basis. That conclusion has not properly been challenged within the scope of s. 57 FOIA as the grounds of appeal allege an error of law based on the Appellant's own interpretation of the request rather than the Decision Notice's interpretation. I note that a fresh request can still be made which is clearly for the administrative information.
8. It does not 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: 18 January 2023

Judge Alison McKenna

Promulgated: 18 January 2023

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