



Appeal number: EA/2020/0160

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

SARAH LINTON

Appellant

- and -

INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE MOIRA MACMILLAN
Sitting in Chambers on 2 July 2020**

**RULING ON APPLICATION FOR RECONSIDERATION BY
A JUDGE OF THE REGISTRAR'S DECISION
OF 10 JUNE 2020**

DECISION

1. Having considered the matter afresh pursuant to rule 4 (3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, I have decided that the Registrar's Decision of 10 June 2020 should stand.

REASONS

2. On 10 June 2020 the Registrar struck out this appeal under rule 8(3)(c) of the Tribunal's Procedure Rules, on the grounds that it has no reasonable prospect of success.
3. On 17 June 2020 Ms Linton asked for that decision to be reconsidered by a Judge under rule 4 (3). This I now do.
4. The appeal relates to a request for information that Ms Linton made to South Hams District Council ("the Council") on 13 March 2019. The Council provided Ms Linton with some information in response to her request, but withheld other information pursuant to regulation 12(4)(e) of the Environmental Information Regulations 2004. Following Ms Linton's complaint to the Information Commissioner, the Council provided her with the remainder of the information, which is reflected in the Decision Notice issued on 7 April 2020.
5. The Registrar decided that Ms Linton's appeal has no reasonable prospect of success because she has already received the requested information, and because there is no reasonable prospect of the Tribunal concluding that the Decision Notice involved an error of law, or that the Commissioner should have made findings about an issue that was, by the date of the Decision Notice, academic.
6. Ms Linton has objected to the Registrar's Decision on the basis that the Decision Notice remains unacceptable for two reasons:
 - (a) The approach taken in the Decision Notice means that there are no adverse consequences for the Council, having delayed providing the requested information.
 - (b) The Decision Notice does not reach a conclusion as to whether the Council was entitled to initially rely on regulation 12(4)(e). Ms Linton submits that the Information Commissioner stated this would be a specific focus of her investigation and that therefore the Decision Notice is not in accordance with the law.
7. It is not uncommon for public authorities to review and amend their response to a request for information during the course of an investigation by the Information Commissioner. This is a natural consequence of the exercise of the Commissioner's role as regulator. The Decision Notice is an accurate reflection of the Council's response to Ms Linton's request at the time the investigation was concluded. It records that the Council breached the requirements of regulation 5(2) EIR because of the delay in providing Ms Linton with the requested information. It does not comment on regulation 12(4)(e) because this was no longer in issue at the time the Decision Notice was issued.

8. Ms Linton agrees with the conclusion of the Information Commissioner's investigation but would like the Decision Notice to have gone further. While that may be understandable, this does not amount to an error of law, or to the incorrect exercise of discretion by the Commissioner.
9. I agree with the Registrar's conclusion that this appeal has no reasonable prospect of success and should be struck out under rule 8(3)(c). That is my Decision.

(Signed)

DATE: 2 July 2020

**Moira Macmillan
Tribunal Judge**

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