



NCN:

Case Reference: EA/ 2022/0313

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

Heard: by determination on the papers

Heard on: 22 February 2023

Decision given on: 24 February 2023

Before:
Judge Alison McKenna

ROY CLARKE

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

DECISION on strike out application:

This appeal is struck out under rule 8 (2) (a) as the Tribunal has no jurisdiction to determine it.

REASONS

1. The Respondent's application for strike out dated 16 January 2023 is allowed.
2. The Information Commissioner published a Decision Notice dated 4 October 2022 in which he found that the public authority was entitled to rely on s. 40 (5) (B) of the Freedom of Information Act 2000 in refusing to confirm or deny whether it held the requested information.
3. The Appellant filed a Notice of Appeal 20 October 2022. The Appellant's Grounds of Appeal quote three paragraphs of the Decision Notice and submit that the public authority's refusal to neither confirm nor deny whether it hold the information he seeks merely confirms his suspicions that it does hold that information. He asks what the appropriate sanction is for criminalising a neighbour dispute.
4. On 16 January 2023, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) or rule 8 (2) (a) of the Tribunal's rules on the basis that the appeal had no reasonable prospects of success or that the Tribunal had no jurisdiction to determine it.
5. The Appellant was invited to make submissions in response to the proposed strike out, as required by rule 8 (4). On 12 January 2023, he sent the Tribunal a press report about Michael Gove having criticised the public authority about an unrelated matter.
6. It seems to me that the Applicant may have misunderstood the role of the Tribunal. This is to determine appeals within the statutory framework created by Parliament. As such, an appeal may only proceed if it alleges that the Decision Notice itself was wrong in law or involved an inappropriate exercise of discretion by the Information Commissioner. In this case, the Appellant's focus is on the behaviour of the public authority and not the Decision Notice's conclusions as to the law. A public authority's response to neighbour disputes is not a matter within the jurisdiction of this Tribunal.
7. I have concluded that the grounds of appeal do not engage the Tribunal's statutory jurisdiction under s. 57 and 58 FOIA¹. They do not allege that the Decision Notice is wrong in law in any respect or that it involved an inappropriate exercise of discretion.
8. It does not therefore seem to me that the Tribunal has jurisdiction to determine this appeal. In such circumstances, a strike out is mandatory. I now direct a strike out of this appeal.
9. In view of my conclusion above, it is not necessary for me to decide afresh the Appellant's application for the public authority to be joined as a party to these proceedings, as they will proceed no further.

(Signed)
Judge Alison McKenna

Dated: 22 February 2023

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¹ [Freedom of Information Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk)

