



NCN: [2023] UKFTT 00382 (GRC)

Case Reference: EA/ 2022/0417

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

Heard: by determination on the papers

Heard on: 19 April 2023

Decision given on: 19 April 2023

Before: Judge Alison McKenna

ANDREW ROBERT VARNEY

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 13 February 2023 is allowed.
2. The Appellant made an information request to Transport for London about its targets for fining cyclists. TfL replied that it did not hold information about such targets as fining cyclists was the responsibility of the Metropolitan Police. The Appellant complained to the Information Commissioner.

3. A Decision Notice published on 18 November 2022 found that TfL had complied with s. 1(1) (a) and (b) of the Freedom of Information Act 2000 ('FOIA') in its response and found that, on the balance of probabilities, it did not hold the requested information.
4. The Appellant filed a Notice of Appeal on 7 December 2022. His grounds were (i) that the Decision Notice was factually inaccurate and (ii) that it failed to address the fact that where a public authority provides a response to a FOIA request and the response is amended following an appeal, it is the amended response which must be published as the definitive response to the request.
5. On 13 February 2023, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (2) (a) or rule 8 (3)(c) of the Tribunal's rules on the basis that the appeal was out of jurisdiction and/or had no reasonable prospects of success. This was because, as to (i) TfL had provided an appropriate answer to the request and the grounds of appeal do not identify an error of law falling within the Tribunal's jurisdiction; as to (ii) the Tribunal has no power to direct a public authority to amend the information published on its website about a request and answer under FOIA. It is submitted that TfL subsequently confirmed to the Appellant that the answer to his question was 'zero' and the Appellant has unsuccessfully urged TfL to change the information on its website to state this.
6. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). He did so on 25 February 2023 and I have considered his submission carefully. He has also made submissions in response to some correspondence from TfL, but TfL is not a party to this appeal.
7. 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.
8. 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 and s.58 FOIA is to decide whether there is an error of law or inappropriate exercise of discretion in the Information Commissioner's Decision Notice. The first ground of appeal does not provide any basis for a Tribunal finding that no information was held, in fact it appears to accept this but require the finding to be in a different format. As to the second ground of appeal, I agree with the Respondent that the Tribunal has no power to make such a direction.

9. I acknowledge that the Appellant has strong feelings about these issues, but the Tribunal may only act within its statutory powers. It does not seem to me that any Tribunal properly directed could allow this appeal because the grounds of appeal do not clearly engage with its powers in considering an appeal against a Decision Notice, seeking instead to establish matters of principle.
10. 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: 19 April 2023

Judge Alison McKenna

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