



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS) UNDER
SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No: EA/2012/0038

BETWEEN:

KETAN PATEL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

RULING

The parties are referred to as “the Appellant” and “the Commissioner”, respectively.

INTRODUCTION

1. The purpose of this Ruling is to address the Commissioner’s application for the Appellant’s appeal against the Commissioner’s Decision Notice dated 5 January 2012, to be struck out pursuant to Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the “Rules”).
2. Rule 8(3)(c) provides that the Tribunal may strike out the whole or part of the proceedings if the Tribunal considers there is no reasonable prospect of the appellant’s case, or part of it, succeeding.
3. Pursuant to Rule 8(4), the Tribunal may not strike out the whole or part of the proceedings under Rule 8(3)(c) without first giving the Appellant an opportunity to make representations in relation to the proposed striking out.

4. Under paragraph 15 of the Practice Statement issued by the Senior President of Tribunals on 1 October 2010, a decision as to whether to strike out proceedings under Rule 8 must be made by a Judge alone.

THE REQUEST FOR INFORMATION AND THE COMMISSIONER'S FINDINGS

5. The Appellant is or has been in dispute with the University of Manchester ("UoM") and/or the University of Manchester Intellectual Property Limited ("UMIP") in connection with certain intellectual property rights. UMIP is a company set up by UoM to deal with the commercialisation of intellectual property.
6. It is not in dispute that UMIP is a public authority in its own right for the purposes of the Freedom of Information Act 2000 ("FOIA"). I am told that UMIP's name was subsequently changed to the University of Manchester Limited ("UMI"), and therefore that UMI is the public authority for the purposes of this appeal.
7. The Appellant made two requests for information to UMIP. The first request ("Request 1"), was made on 16 June 2011. The request was for information concerning "discussion points" about the Appellant and his company, DCN Corporation Ltd. The request was put forward by the Appellant as a subject access request under the Data Protection Act 1998 ("DPA") and it was dealt with as such. UMIP responded on 8 July 2011. It provided some information and withheld other information under schedule 7(7) and 7(10) of the DPA. Its response was the subject of an assessment by the Commissioner dated 14 October 2011, as a result of which further information was provided to the Appellant.
8. The second request ("Request 2"), was made on 20 June 2011 and was stated to be made under FOIA. It is this request that is the subject of the present appeal.
9. The Appellant described Request 2 as a "Company Access Request", although that is not a known term under FOIA (nor under the DPA). The request was for information "concerning discussion points" about the Appellant's company, DCN Corporation Ltd. UMIP replied on 11 July 2011. It informed the Appellant that it held no information about this company other than communication that had been received by him on behalf of that company. At the Appellant's request, it conducted an internal review, but maintained its decision.
10. The Appellant complained to the Commissioner in relation to Request 2. The Commissioner found, as set out in his Decision Notice, that all recorded information held by UMIP relevant to the request was the

complainant's own personal data and was exempt therefore, under section 40(1) of the Freedom of Information Act 2000 ("FOIA").

11. In reaching this finding, the Commissioner considered what steps had been taken to locate all relevant information. He was satisfied that UMIP had demonstrated, on a balance of probabilities, that it did not hold any further information relevant to the request.
12. The Commissioner found certain procedural failings on the part of UMIP in how it dealt with the Appellant's request, but did not require any steps to be taken in this regard.

GROUND OF APPEAL

13. The Appellant's grounds of appeal are very difficult to comprehend or to determine from them, if he has any valid grounds of appeal. This is not a criticism of the Appellant. I am aware that he is unrepresented. However, it is difficult to know, from his grounds of appeal, what issue the Appellant takes, if any, with the Commissioner's Decision Notice.
14. In addition to the grounds of appeal, the Appellant has also set out his position in various e mails to the Tribunal, in particular, in e mails dated 26 March 2012, 21 April 2012, and 18 May 2012. Unfortunately, these do not explain his grounds of appeal any more clearly. They refer extensively to the dispute between himself and the UoM/UMIP concerning certain intellectual property rights. It is not clear from these e mails how and in what respect, if any, the Appellant takes issue with the Commissioner's Decision Notice.
15. Bearing in mind that the Appellant is unrepresented, I had the matter set down for a telephone directions hearing. The Appellant was informed in advance that this would be his opportunity to explain the basis on which he considers the Commissioner's Decision Notice is wrong before I ruled on the Commissioner's application for the appeal to be struck out.
16. The Appellant said, initially, that he was not available on the dates offered for the directions hearing without giving any reason why he was not available. He requested a lengthy extension of some 14 weeks in order that he could secure legal representation. He did not say why he needed such a long extension, how it would enable him to obtain legal representation, nor indeed was there any indication that he was in the process of obtaining legal representation. In these circumstances, and bearing in mind the overriding objective in paragraph 2 of the Rules, I refused his application, but I explained to him that many appellants are unrepresented before the Tribunal and that the Tribunal does try, to the extent it can, to assist parties who are unrepresented. The Appellant subsequently renewed his request for an extension. That was again refused.

17. The directions hearing took place on 31 May 2012. I explained to the Appellant that the Tribunal only has jurisdiction over requests for information coming within the scope of FOIA, and has no jurisdiction over civil or other wrongs. The Appellant accepted that he had no valid grounds of appeal.
18. Although the Appellant was clear in stating that he accepted that he had no valid grounds of appeal, I gave him further time to inform the Tribunal if he considered that he did have any valid grounds of appeal after all, or if he wished to make any other representations in relation to the proposed striking out.
19. Following the directions hearing, further emails were received from the Appellant, in particular, dated 6 June 2012, 7 June 2012 and 11 June 2012. In his email of 6 June 2012, he appears to take issue with the Notice of Appeal form which asks parties to indicate the Act under which they are appealing. The list includes the DPA. The Appellant appeared to be querying why the Tribunal does not have jurisdiction in relation to a request which is for a person's own personal data.
20. The Appellant appears to have misunderstood the Notice of Appeal form. It refers specifically to section 48 of the DPA, which provides a right of appeal to a person on whom an enforcement notice, an information notice, or a special information notice has been served. Such a person may appeal to the Tribunal against the notice. It does not mean that the Tribunal has jurisdiction in relation to all matters coming within the scope of the DPA. Request 1 was a subject access request under the DPA. The Tribunal does not have jurisdiction in relation to a subject access request. The Appellant's remedy lies by way of proceedings in the County Court. In relation to Request 2 the Commissioner found that all information held by UMIP relevant to the request was the Appellant's own personal data and was exempt therefore, under section 40(1) FOIA. If the information requested comes within the scope of an exemption provided for under FOIA, then the public authority does not have to provide it. The Tribunal does have jurisdiction to consider whether the information does or does not come within the scope of the exemption, but the Appellant has not argued that the information falls outside the scope of section 40(1), nor is there any basis, on the papers before me, to consider that it does.
21. The Appellant's e mails also reiterate the disadvantage he feels at not being represented. However, as already noted, many appellants coming before the Tribunal are unrepresented. I am satisfied that the Appellant has been given a reasonable opportunity to put forward his grounds of appeal.
22. To clarify what appeared to be factual errors in the Decision Notice, following the directions hearing, the Commissioner was directed to provide to the Tribunal (with copies to the Appellant), certain evidence

regarding the responses received from the public authority in relation to the Appellant's request for information. The Commissioner has done so and I have taken this evidence into account.

IS THERE A REASONABLE PROSPECT OF THE APPELLANT'S CASE OR PART OF IT SUCCEEDING?

23. There is nothing in the Appellant's grounds of appeal, nor in his e mail submissions, which challenges, in any substantive way, the findings in the Decision Notice or says why he thinks the Commissioner was wrong to reach the findings that he did.
24. Although I recognise the disadvantage the Appellant feels at not being represented, he has been given ample opportunity to explain in his own way what he takes issue with as regards the Commissioner's findings, but no substantive points have emerged.
25. In any event, the Appellant has now accepted that he has no valid grounds of appeal.
26. On this basis, I find that there is no reasonable prospect of the Appellant's appeal or part of it, succeeding.

DECISION

27. For the reasons set out above, this appeal is hereby struck out under Rule 8(3)(c).

Ms A Dhanji

10 July 2012

Judge