



Appeal Number: EA/2012/0192

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

Dated: 17 January 2013

BETWEEN:

Appellant:	Mr Tony Wise
Respondent:	The Information Commissioner
Decision by:	Robin Callender Smith (Tribunal Judge)

RULING

On consideration to strike out the Appellant's grounds of appeal pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (The Tribunal Rules).

DECISION

The Appellant's appeal is struck out under the provisions of rule 8 (3) (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASON FOR DECISION

Background

1. The background to this matter – and the Information Commissioner's Decision Notice dated 9 August 2012 – relates to a request by the Appellant made to the Information Commissioner's Office on 29 November 2011.

2. He asked the Information Commissioner (IC):

Please supply any example or instance of any complaint, evidence or complaint that has been ignored in the last 6 months (since 1 June 2011) in relation to complaints and the evidence under the Fraud Response Plan, alleged breaches in Standards in Public Life or its corporate governance arrangements covering integrity, honesty, impropriety, misconduct and criminal issues.
3. Because the IC believed that a response to the request in this form would be above the relevant cost limit, on 12 December 2011 he invited the Appellant to refine his request.
4. As a result, the Appellant wrote on 15 December 2011:

Please now only supply internal information relevant to decision notices published in May 2011 and July 2011 that determined 'no information held' on the balance of probabilities under section 1 and any relevant complaint referred....base on alleged misconduct surrounding such 'not upheld' decision notices. I don't require any information of a personal nature and any required redactions will be welcomed.
5. On 9 January 2012 the IC responded, disclosing a copy of an internal email to the Appellant stating that was the only internal information that was held that fell under the scope of his request.
6. The Appellant, on 20 January 2012, asked for an internal review. He stated he was aware that a number of complaints that would fall within the parameters of his request. He questioned the adequacy of the searches and asked the IC to provide all information "pursuant" to his request "as regards all other complaints made pursuant to the parameters provided with the request".
7. He stated that the information with which he had been provided was inadequate as it did not show the precise time and date that the internal email had been sent and to whom it had been sent. The disclosed information did not show how the complaint associated with it had been dealt with.
8. On 8 February 2012 the IC told the Appellant that an internal review had concluded that no further internal information was held that would fall under the scope of his request. This result came from the IC's consideration of section 1 (1) FOIA.

9. The Appellant maintained his belief that the IC held further information within the scope of the request. He maintains:

....it is proven beyond all reasonable doubt that at least five conduct complaints were made in regard to the IC relevant to decision notices published in May 2011 and July 2011 that determined 'no information held'....I refer you to the email sent to [a named employee at the ICO] dated 13 December 2012. However the [ICO] only provided very, very limited and unconvincing material in relation to one of these that was dated 3 November 2011. No information at all has been provided about the nature of the [IC's] response to this or any of the other complaints, about what happened with the complaints, about who dealt with them and when or anything else. Certainly if information, no matter how scant was provided in relation to the 3 November 2011, information related to the other complaints should be provided if held.

The facts appear to show that either:

A/ The [IC] disregarded and ignored a series of serious and well evidenced conduct complaints and generated no internal information in relation to these (I am not interested in personal data and will accept all reasonable redactions). Or

B/ The [IC] did investigate the complaints and has not disclosed the required information (I am not interested in personal data and will accept all reasonable redactions).

10. In his response to the IC in this appeal, dated 16 October 2012, the Appellant concentrated his 4 ½ pages of argument on seeking to show two points: (1) that the five complaints made were too serious in nature to disregard, ignore or in any way treat improperly and (2) that the evidence he had provided in support of these complaints was of a "high probative value and compelling in nature" and "demonstrated at least reasonable suspicion of misconduct" from a named local authority and the ICO.

Additional Background

11. I have read the material in respect of the allegations. The additional background is that complaints had been made to the IC by the Appellant's brother – Alan Wise – in relation to Blackpool Borough Council in

connection with the theft of tram cable. The IC had found that the public authority did not hold the information requested.

12. Both Decision Notices were appealed to the First Tier Tribunal: one was struck out (EA/2011/0181) and is presently the subject of an appeal to the Upper Tribunal (GIA366/2012) and the other appeal was ruled out of time and that FTT decision is being appealed to the Upper Tribunal (GIA/1444/2012).
13. The Appellant's brother has made complaints to the IC about the way in which his office handed those cases alleging "corruption" and "misconduct".
14. The IC has examined whether, on the balance of probabilities, his office held any further information within the scope of the Appellant's request and what searches had been carried out (Paragraph 29 and 30 of the Decision Notice).

Conclusion

15. I am satisfied that the IC's consideration of this issue and area has been thorough, cogent and credible.
16. I am also satisfied that all of the information held by the IC has been provided to the Appellant and that no relevant information had been deleted or destroyed before or after processing the Appellant's request.
17. I am assisted in that conclusion by the fact that the IC accepts that he should have engaged with the Appellant "to explain to him how it had interpreted the request" and provided advice and assistance to enable him to make a new request that would have encompassed "all" of the information that it held.
18. To that end the IC has ordered his office to provide the Appellant with advice and assistance to enable him to make a new request.
19. I have concluded that there is no reason (or duty) for the IC to hold the information requested by the Appellant beyond what has been provided to the Appellant in the terms of *that* request.
20. I have set out earlier the background arguments in relation to this matter offered by the Appellant because – in fairness to him and in the interests

of justice - the process of striking out any appeal requires careful scrutiny and a full consideration of all the relevant elements.

21. The procedure and test adopted by the Tribunal in such situations is set out in the Tribunal's decision in *Tanner v Information Commissioner EA/2007/0106*.
22. In that appeal, the Tribunal concluded there that the appropriate test was analogous to the test under Part 24 of the Civil Procedure Rules 1998. This makes provision for a claim which has no real prospect of success to be summarily dismissed. Guidance on the meaning of this test was provided in *Swain v Hillman [2001] 1 All ER (CA)* by Lord Woolf MR.
23. Lord Woolf said that the words "no real prospect of succeeding" did not need any amplification as they spoke for themselves. The court must decide whether there is a "realistic", as opposed to "fanciful", prospect of success.
24. For all these reasons I am satisfied that there is no realistic prospect of this appeal succeeding in respect of the request and that this appeal should be struck out.
25. The appeal is struck out on that basis.

Signed:

Robin Callender Smith

Tribunal Judge

17 January 2013