



Neutral citation number: [2023] UKFTT 01064 (GRC)

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2023/0466

**Decided without a hearing
On 14 December 2023**

Decision given on: 04 January 2024

Before

TRIBUNAL JUDGE HEALD

Between

ROWLAND JAMES SPENCER

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

1. The Appeal is struck out.

Background

2. On 15 August 2023 Mr Spencer made a request for information to the Information Commissioner (“the ICO”) in its capacity as a public authority and as provided for by the Freedom of Information Act (“FOIA”). On 31 August 2023 the ICO provided some of the information requested but not all.
3. The 31 August 2023 letter from the ICO notified Mr Spencer of the process for him to follow if he was dissatisfied with the answer given. It said:-

“FOI review procedure

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or e-mail icoaccessinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.”

4. Additionally Mr Spencer was informed of the process if dissatisfied with the internal review:-

“If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation.”

5. Mr Spencer in his appeal notice says that *“Half an hour later, I appealed this decision.”* On 15 September 2023 the ICO wrote to Mr Spencer and maintained its position. In this letter the ICO informed Mr Spencer as follows:-

“Complaint procedure

*If you are dissatisfied with the outcome of this review you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. This can be done by visiting the same webpage at:
<https://ico.org.uk/make-a-complaint>”*

The Legal Position

6. By section 50 FOIA a person dissatisfied with a public authority’s reply to a request for information can make a complaint to the Information Commissioner (“the Commissioner”).
7. In response to a complaint the Commissioner either informs the complainant that he has not made a decision or issues a Decision Notice (section 50(3) FOIA).
8. Section 57(1) FOIA provides for appeals to the Tribunal from a Decision Notice as follows:-

“Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.”

Strike out

9. Rule 8 (2) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“2009 Rules”) provides that:-

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal (a) does not have jurisdiction in relation to the proceedings or that part of them; and (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

10. When considering the application of the 2009 Rules the Tribunal must consider the overriding objective in rule 2 to deal with cases fairly and justly.

Decision

11. In response to the outcome of the internal review Mr Spencer did not lodge a complaint by section 50 FOIA but on 30 September 2023 he appealed to the Tribunal. There has therefore not been a Decision Notice and thus the Tribunal has no jurisdiction to consider the appeal by section 57 FOIA.
12. As rule 5(3)(k)(i) 2009 Rules does not apply and having considered the overriding object in my view the Appeal must therefore be struck out by rule 8(2)(a) 2009 Rules.
13. Accordingly this Appeal is struck out.

Signed Simon Heald
Judge of the First-tier Tribunal
Date: 14 December 2023