



5 **NCN: [2023] UKFTT 00209 (GRC)**

**Case Reference: EA/ 2022/0408**

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

Heard: by determination on the papers

Heard on: 22 February 2023

15 Decision given on: 22 February 2023

20

Before:  
Judge Alison McKenna

**VALERIE MINGLE**

**Appellant**

**- and -**

**Respondent**

**THE INFORMATION COMMISSIONER**

25

**DECISION**

**This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success.**

30

## REASONS

1. The Respondent's Strike Out Application dated 16 January 2023 is allowed.
2. The Appellant made an information request about local authority files for her late mother. The Information Commissioner published a Decision Notice on 14 November 2022 which found that the local authority was entitled to rely on s. 41 (2) of the Freedom of Information Act 2000<sup>1</sup> ('FOIA'), to neither confirm nor deny whether any information was held.
3. The Appellant filed a Notice of Appeal on 28 November 2022. Her grounds of appeal are that the local authority had refused to confirm or deny whether information was held and that she believed a cover up was in place. It is clear that the Appellant wishes to obtain information with which to complain about her late mother's care.
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) of the Tribunal's rules<sup>2</sup> on the basis that the appeal had no reasonable prospects of success.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 21 January 2023 the Appellant submitted that no harm could come from the disclosure and that there was a public interest in obtaining the requested information.
6. I am sorry to read of the Appellant's bereavement and her concerns about her late mother's care. However, I must consider this appeal in the light of the legal framework which governs the work of this Tribunal.
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 grounds of appeal do not engage with that jurisdiction but only challenge the behaviour of the relevant local authority.

---

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

<sup>2</sup> [The Tribunal Procedure \(First-tier Tribunal\) \(General Regulatory Chamber\) Rules 2009 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

That is not a matter within the jurisdiction of this Tribunal, which must focus on the Decision Notice. The Information Commissioner suggests that the appeal may be based upon on an implicit challenge to the public interest conclusion of the Decision Notice. If that is the case, then the Appellant has nevertheless failed to challenge the application of s. 41(2) FOIA or respond to the Decision Notice's observation that the disclosure of any personal records (if held) would involve the disclosure of her late mother's personal details to the world. This seems to me to be a very strong counterargument to the Appellant's submission that no harm would flow from the disclosure she seeks.

9. It does not seem to me that any Tribunal properly directed could allow this appeal. 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: 22 February 2023**

**Judge Alison McKenna**

**© CROWN COPYRIGHT 2023**

