



5 NCN: [2023] UKFTT 00380 (GRC)

Case Reference: EA/ 2022/0392

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

Heard: by determination on the papers

Heard on: 19 April 2023

15 Decision given on: 19 April 2023

Before: Judge Alison McKenna

BRENDAN McFERRAN

Appellant

- and -

THE INFORMATION COMMISSIONER

And

Respondents

**DEPARTMENT FOR THE ECONOMY
(NORTHERN IRELAND)**

**DECISION
on Strike Out Application**

20

1. The Respondent's Strike Out Application dated 27 January 2023 is refused.

REASONS

2. The Information Commissioner published a Decision Notice on 31 October 2022 which upheld the public authority's reliance on s. 14(1) FOIA 2000 and required no steps to be taken.
3. The Appellant filed a Notice of Appeal dated 23 November 2022, together with supporting documentation. His grounds are that that the Decision Notice reached an erroneous conclusion that his request was vexatious, in particular because he did not accept that answering his request was disproportionately burdensome for the public authority.
4. On 27 January 2023 the Information Commissioner, in filing his Response to the appeal, applied for a strike out under rule 8 (3)(c) on the basis that the appeal had no reasonable prospects of success. The public authority has been joined as the Second Respondent to these proceedings and, whilst not having made an application of its own, supports the Information Commissioner's strike out application. The Appellant was invited to, and did provide, his submissions in response to the proposed strike out in the usual way.
5. This is a complicated case involving the Appellant's dispute with the public authority which has played out in a number of fora and has lasted nearly seventeen years. The particular request which has been adjudged vexatious was for an internal document setting out the public authority's assessment of the complaint and evidence provided. It may be that such a document would be covered by legal professional privilege as I note that there have already been legal proceedings between the parties in the Industrial Tribunal, but the public authority declined the request on the basis that it was vexatious.
6. There is clearly a great deal of evidence to be considered relating to the correspondence between the parties and, indeed, I note there has been one previous Decision Notice which upheld a s. 14(1) FOIA finding and another that did not. This is because the question of whether any particular request is vexatious is fact-specific and so the long and unfortunate history of this matter is not the only consideration for me in considering a strike out application.
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 all the parties' representations and concluded that this is not a case which may be described as 'not fit for a full hearing'. On the contrary, I find that the Appellant's grounds of appeal clearly establish a triable issue between the parties, which is that he challenges the Decision Notice's conclusions as to the engagement of s. 14 (1) FOIA.
9. I should explain to the Appellant that the question of whether the Industrial Tribunal Judge who ruled against the Appellant and awarded costs against him had a conflict of interest is not a matter that this Tribunal can rule upon. The hearing in this case will decide only whether the burden of complying with this particular request rendered it vexatious within the meaning of s. 14 (1) FOIA and so whether the Decision Notice erred in law or did not err in law. I make no comment about the strength or otherwise of the Appellant's case but I do find that it is fit for a full hearing and so I refuse the application to strike it out. This matter should proceed to determination as soon as practicable.

(Signed)

Dated: 19 April 2023

Judge Alison McKenna

5

© CROWN COPYRIGHT 2023

