



**NCN: [2023] UKFTT 00050 (GRC)**

**Case Reference: EA/2022/0314**

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

Heard: by determination on the papers

Heard on: 18 January 2023

Decision given on: 18 January 2023

Before:  
Judge Alison McKenna

**MALCOLM REEVES**

**Appellant**

**- and –**

**THE INFORMATION COMMISSIONER**

**Respondent**

**DECISION**

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

## REASONS

1. The Respondent's Strike Out Application dated 29 November 2022 is allowed for the following reasons.
2. The Information Commissioner published a Decision Notice on 3 October 2022 which found that the public authority had provided the Appellant with the information held within the scope of his request. The Commissioner accepted that some of the information requested was not held and that other information had been lost and not found, despite searches being carried out. The Appellant filed a Notice of Appeal dated 18 November 2022, which relies on extensive grounds of appeal and supporting evidence. The Appellant submits that the public authority's employee has deliberately 'lost' the information he seeks.
3. On 29 November 2022, 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 on the basis that the appeal had no reasonable prospects of success.
4. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 7 December 2022, he made an 11-page submission which clarified his case and explained why it should proceed to a final determination. He appeared to make allegations of impropriety against the Information Commissioner's representative but apologised for this on 9 December 2022. I do not understand impropriety by the Information Commissioner's staff to be part of his case.
5. The Appellant's case rests on a serious allegation against the public authority's staff. He regards himself as having 'proven' his case, but the Tribunal cannot simply accept such an allegation. Accordingly, I must assess the Appellant's grounds of appeal on the basis that he has made an unproven allegation. The relationship of this allegation to the Tribunal's jurisdiction under s. 57 FOIA is said to be that the Information Commissioner was not entitled to accept the public authority's explanation at face value and should have carried out a full investigation into the missing documents.
6. 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.*

7. 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 grounds of appeal do not engage with the Tribunal's statutory remit to consider whether the Decision Notice was wrong in law, but rather mount an attack on the Information Commissioner's procedure and its acceptance of the public authority's explanation for missing documents, which the Appellant himself clearly does not accept.
8. It does not seem to me that any Tribunal properly directed could allow this appeal. It is not the role of the Tribunal to investigate the Appellant's allegations against the public authority but to decide whether the Decision Notice was wrong in law. 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: 18 January 2023**

**Judge Alison McKenna**

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