



Neutral citation number: [2022] UKFTT 00520 (GRC)

Case Reference: EA/2023/0261

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

Heard: on the papers in Chambers

**Heard on: 11 August 2023
Decision given on: 17 August 2023**

Before

TRIBUNAL JUDGE HAZEL OLIVER

Between

KARL HARRISON

Appellant

and

INFORMATION COMMISSIONER

Respondent

Decision:

The proceedings are struck out under Rule 8(3)(c) because there is no reasonable prospect of the Appellant's case, or part of it, succeeding.

REASONS

1. This is an appeal under the Freedom of Information Act 2000 ("FOIA") against a decision notice from the Information Commissioner (the "Commissioner") of 21 April 2023 (the "DN").
2. Under Rule 8(3)(c) of the *Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009*, the Tribunal may strike out the whole or part of the proceedings if the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

3. In his response to the appeal, the Commissioner submits that the Appellant's grounds of appeal have no reasonable prospects of success, and accordingly the appeal should be struck out. The Appellant has been given an opportunity to respond to this application but the Tribunal has not received any representations from him.
4. The Appellant has asked Northern Trains Limited ("NTL") for the segmented voice data used for their KeTech Public Address System. The Commissioner found that NTL were entitled to refuse this request under section 14(1) FOIA (vexatiousness) because of the excessive cost burden of facilitating this request for some 14,000 files and the lack of objective public interest in the information.
5. The Appellant's appeal makes two points. Firstly, he says he is not asking for all 14,000 segments, and he lists the ones he requires. Secondly, he says that ScotRail released 2,440 converted files at a cost to them of £1 per file.
6. The Commissioner says that the Appellant's grounds of appeal do not have any reasonable prospect of success. Firstly, the DN was based on the original request for all files, and the Appellant cannot refine his request as part of the appeal process. Secondly, the Commissioner cannot comment on ScotRail's response and considered this request on its own merits.
7. Under section 58 FOIA, the Tribunal can allow an appeal against a decision notice if it considers - (a) that the notice against which the appeal is brought is not in accordance with the law, or (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently.
8. I agree with the Commissioner that the Appellant's grounds of appeal do not have any reasonable prospect of success.
 - a. The original request for information was not limited to the specific list of files set out in the appeal. The Commissioner made his decision based on the original request, which was not limited in this way and would involve some 14,000 files. This Tribunal is considering whether that decision was in accordance with the law. As noted by the Commissioner, the Appellant could make a new refined request to NTL, but he cannot refine his request at this stage in the proceedings.
 - b. I note the Appellant's point that ScotRail has chosen to respond to a similar request. However, it appears that this involved a much smaller number of files. In any event, the fact that one public authority has chosen to reply to a similar request does not prevent the request to NTL from being vexatious. I do not see that this argument has any reasonable prospect of success.
9. I therefore find that there is no reasonable prospect of the Appellant's case, or any part of it, succeeding. The proceedings are struck out.

Signed: *Judge Hazel Oliver*

Date: 11 August 2023