



NCN:

Case Reference: EA/ 2022/0305

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

Heard: by determination on the papers

Heard on: 12 January 2023

Decision given on: 13 January 2023

Before:
Judge Alison McKenna

HWAN C. LIN

Appellant

- and -

Respondent

THE INFORMATION COMMISSIONER

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 15 November 2022 is allowed.
2. The Information Commissioner published a Decision Notice on 13 September 2022 which found that the public authority was entitled to rely on s. 17 (6) of the Freedom of Information Act 2000 ('FOIA') in refusing to answer the Appellant's information request. The Appellant filed a Notice of Appeal on 10 October 2022.
3. On 15 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's Grounds of Appeal take issue with the Decision Notice on many levels and ask the Tribunal to direct that the request was no vexatious. However, they do not clearly engage the jurisdiction of this Tribunal under s. 57 FOIA by identifying an error of law or wrongful exercise of discretion in the Decision Notice.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 13 December and 15 December 2022, the Appellant reiterated his grounds of appeal and provided the Tribunal with exhibits A to G.
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 role of this Tribunal under s. 57 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 simply do not engage with that jurisdiction.
8. It does not therefore 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: 12 January 2023

Judge Alison McKenna

