



NCN:

Case Reference: EA/2022/0263

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

Heard: by determination on the papers

Heard on: 18 January 2023

Decision given on: 19 January 2023

Before:  
Judge Alison McKenna

**VICKY-JANE GOODING**

**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 1 November 2022 is allowed.
2. The Information Commissioner published a Decision Notice on 24 August 2022 which found that the Cabinet Office did not hold any further information within the scope of the request. The Appellant filed a Notice of Appeal on 21 September 2022.
3. On 1 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 are (i) that a request made to one Government Department is a request to all the Government as a whole so it should not be necessary to make a further request to another Government Department; and (ii) that further information is held by the Government.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 4 and 6 November 2022 the Appellant reiterated their grounds of appeal.
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 do not engage with the Tribunal's jurisdiction as to the Decision Notice but rather seek to advance an argument about public authorities under FOIA. I observe that this argument is, in my view, inconsistent with schedule 1 to FOIA.
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: 18 January 2023**

**Judge Alison McKenna**

