



NCN: [2023] UKFTT 00117 (GRC)

Case Reference: EA/ 2023/0004

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

Heard: by determination on the papers
Heard on: 13 February 2023
Decision given on: 13 February 2023
Before: Judge Alison McKenna

JANNA LINDE

Appellant

- and -

THE INFORMATION COMMISSIONER

**First
Respondent**

DECISION on RULE 4 (3) APPLICATION

**This appeal is struck out under rule 8 (2) (a) as the Tribunal has no
jurisdiction to determine it.**

REASONS

1. The Appellant filed a Notice of Appeal dated 30 December 2022. The Appellant's Grounds of Appeal are that "*the ICO did not provide me with a decision...for more than 90 days*". It was clear from the supporting information that the appeal concerned a request to Hackney Council under the Freedom of Information Act 2000 or the Environmental Protection Regulations 2004.
2. On 13 January, the Registrar struck out the Notice of Appeal under rule 8 (2) (a) as the Tribunal had no power to determine it. He explained that this was because the Information Commissioner had not issued a Decision Notice.
3. In response, the Appellant explained that they had been told by the Tribunal to submit a Notice of Appeal as they had not had a response. On 14 January 2023, the Appellant asked the Tribunal to direct a response. This has been treated as an application under rule 4 (3) of the Tribunal's Rules for a fresh consideration of the matter by a Judge.
4. It is immediately clear to me that the Appellant and the Tribunal have been communicating at cross-purposes in this case. If that is the fault of the Tribunal then I apologise. The confusion has arisen because, under the Data Protection Act 2018 the Tribunal can direct the Information Commissioner to direct a response, but under the Freedom of Information Act the Tribunal cannot direct a response and can only consider whether a final Decision Notice is wrong in law. In this case, it is clear from the supporting papers and the Notice of Appeal that the Appellant's complaint concerns the Freedom of Information Act, but they are asking the Tribunal to exercise its powers under the Data Protection Act. I'm afraid this is simply not possible because the Tribunal can only exercise the powers given to it by Parliament and there are different powers available for different types of complaint.
5. It does not therefore seem to me that the Tribunal has jurisdiction to determine this appeal because it cannot direct a response in a Freedom of Information case. In such circumstances, a strike out is mandatory, and so I have no discretion to take a different decision from the Registrar. I now direct a strike out accordingly.

(Signed)

Dated: 13 February 2023

Judge Alison McKenna

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