



Case Reference: EA/2023/0159

First-tier Tribunal
General Regulatory Chamber
[Information Rights]

Heard by: Determination on the papers.

Heard on: 10 July 2023
Decision given on: 13 July 2023

Before

TRIBUNAL JUDGE ALISON McKENNA

Between

ROBERT MOSS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: This appeal is struck out pursuant to rule 8 (3)(c) as having no reasonable prospects of success.

REASONS

1. The Respondent's Strike Out Application dated 25 May 2023 is allowed.
2. The Information Commissioner's Decision Notice dated 20 February 2023 concluded that the public authority was entitled to rely on s. 14 (1) of the Freedom of Information Act 2000 ('FOIA') in declining to answer the Appellant's request. In his Notice of Appeal dated 17 March 2023, the Appellant relied on grounds which sought to demonstrate the strength of his application for disclosure.

3. On 25 May 2023, the Information Commissioner, in filing its Response to the appeal, applied for it to be struck out under rule 8 (3)(c) of the Tribunal's rules on the basis that it had no reasonable prospects of success.
4. The Appellant was invited to make submissions in response to the proposed strike out, as required by rule 8 (4). On 8 June 2023, the Appellant submitted that he wished his appeal to proceed to a hearing and, again, emphasised the importance of the requested disclosure. He did not, however, explain why the Decision Notice was wrong in law in reaching the conclusion that it did.
5. 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.*

6. Applying this approach, I have considered both parties' representations and concluded that this is an appeal which may be described as 'not fit for a full hearing'. This is because the role of this Tribunal under s. 57 and s. 58 of 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 that jurisdiction as they raise no argument in relation to the material legal conclusion of the Decision Notice, which is that s. 14(1) FOIA was engaged by the request.
7. It therefore does not seem to me that any Tribunal properly directed could allow this appeal because it does not raise a triable issue in respect of the conclusion of the Decision Notice.
8. I have accordingly concluded that this appeal should be struck out as having no reasonable prospects of success. I direct accordingly.

Signed: *Alison McKenna*

Date: 10 July 2023