



NCN: [2023] UKFTT 00669 (GRC)

Case Reference: EA/2023/0078

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

Heard: Determined on the papers

**Heard on: 7 August 2023
Decision given on: 10 August 2023**

Before

TRIBUNAL JUDGE FINDLAY

Between

MARK BILL

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

DECISION ON STRIKE OUT APPLICATION

Decision: The appeal is struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 (the Rules) on the grounds that there is no reasonable prospect of the appeal succeeding.

REASONS

1. I have considered this matter on the papers and am satisfied that it does not defeat the interests of justice to do so pursuant to rule 32(3) of the Rules.
2. The Appellant appeals under s. 57 of the Freedom of Information Act 2000 (FOIA) against the Respondent's decision notice (DN) dated 10 February 2023 with the reference IC-207629-X4N3
3. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds information (s. 1(1)(a) FOIA) and to

have that information communicated to him if the public authority holds it (s. 1(1)(b) FOIA). S. 10(1) of the FOIA provides that a public authority must comply with s. 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

4. The Respondent submits that the Appellant's grounds of appeal fail to set out in the grounds of appeal why the DN is not in accordance with the law. The Respondent submits that the Appellant's sole ground of appeal is 'public interest' and he does not provide any argument as to why the Respondent's findings are wrong. The Appellant does not challenge the DN or put forward any arguments as to why the DN is wrong in law or that the Respondent should have used his discretion differently.
5. The Appellant was invited to make submissions in response to the proposed strike out, as required by rule 8(4) of the Rules. The Appellant submitted the following points:

"i) The time taken to request that the appeals be struck.

ii) The dismissive approach by the ICO to the public interest element.

iii) The significance of the information - I refer the Tribunal to the issues with the NHS, I also refer the Tribunal

to the importance of the Trust in relation to the local community and by extension the importance of people

having access to the information on how the Trust is run and context of the appalling history of the Trust and its predecessors.

iv) The commitment of the Trust and the NHS to providing information beyond the limits and restrictions of FOI and EIR legislation.

v) The Trusts failure to be open and provide transparency etc. in relation to information generated by the Trust.

vi) The ICO is correct that I have requested a lot of information - the Trust is a very large organisation and it and its precursor organisations therefore generate a lot of information - all of which I believe should be released as a standard practice to fulfil its commitments to openness and transparency.

vii) Had the ICO deigned to meet one of the many missed deadlines to provide bundles to connected appeals then the ICO may have already withdrawn the DNs in these cases anyway and the information would had already been provided and had reduced substantially the workload of the ICO and the GRC and required relatively little additional work for the Trust.

viii) The ICO falsely states that I have not commented or engaged in relation to the DN and the fact that the ICO asserts that my requests are "vexatious" - the Trust provided some of the information in relation to some of the meetings when I reduced my scope - but I would like the residual information to be released and the GRC to make a ruling on the appropriateness of the information being release as a matter of standard operating procedure.

ix) It should be noted that the Trust has repeatedly delayed information, provided information that has proven to be inaccurate or mis-leading, that the ICO has also upheld elements of my requests for information that the Trust has previously refused to disclose so that the ICO understands the relevance of my requests for information and that they are not in any way vexatious."

6. In reaching my decision 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. In reaching my decision I have borne in mind that the power to strike out must be exercised in accordance with all aspects of the overriding objective set out in rule 2 of the Rules to deal with cases fairly and justly. Striking out will be the correct course of action, and support the overriding objective, where an appeal raises an unwinnable case and continuance of the proceedings would be without any possible benefit to the parties and a waste of resources.
8. Applying this approach, I have considered the 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 the FOIA is to decide whether there is an error of law or inappropriate exercise of discretion in the DN. The grounds of appeal do not engage with that jurisdiction as they raise no argument in relation to the material legal conclusion of the DN.
9. I conclude that this appeal should be struck out as having no reasonable prospects of success.

Signed: *Judge J Findlay*

Date: 7 August 2023