



**IN THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)**

RULING on an APPLICATION for PERMISSION to APPEAL

By

Dr Gary Duke

1. This is an application dated 22 August 2011 by Dr Gary Duke for permission to appeal the decision of the First Tier Tribunal (Information Rights) (“FTT”) dated 26 July 2011. That decision dismissed the appeal of Dr Duke and upheld the Information Commissioner’s (IC’s) Decision Notice dated 7 February 2011.
2. The right to appeal against a decision of the FTT is restricted to those cases which raise a point of law. The FTT accepts that this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (“the Rules”).
3. The FTT has considered whether to review its decision under rule 43(1) of the Rules, taking into account the overriding objective in rule 2, and has decided not to review its decision because the grounds of the application do not raise an error of law for the reasons stated below.
4. Dr Duke summarises his grounds of appeals as follows:

“(i) Both the IC and FTT made findings of fact through analogy – namely that of a DDoS attack upon a website having equivalence with a supposed campaign to disrupt the workings of the University.

(ii) This analogy was dysfunctional as it falsely attributed motivations to my request for information and made wild presumptions about the motivations of other requesters whose identities neither the University, IC nor FTT took any investigative attempts to establish (for instance, through a disclosure order).

(iii) It also relied heavily, but inexplicably, upon separate civil litigation which post-dates my requests for information, in one case by several years.

(iv) It ultimately relied upon two conclusions which I deem to have an insufficient basis in evidence: that the volume, similarity and rapidity of requests constituted a campaign (I have argued above that it did not); and that my actions were a causative factor in the mounting of this campaign. It paid insufficient attention to other possible causative factors that motivated other requesters and undertook no judgement of whether on balance of probabilities, a small-scale website or national press coverage motivated the other requesters.”

5. The grounds of appeal challenge findings of fact by the Tribunal and by the IC, findings which were reasonable and sustainable on the evidence presented and do not disclose errors of law.
6. It follows that the appeal has no prospect of success and that permission to appeal is refused.
7. Under rule 21(3) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended Dr Duke has one month from the date this Ruling was sent to it to lodge the appeal with:

Upper Tribunal (Administrative Appeals Chamber)
5th Floor, Chichester Rents
81 Chancery Lane
London
WC2A 1DD

Robin Callender Smith
Judge
First-tier Tribunal (Information Rights)
24 August 2011