



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT**

Appeal No: EA/2011/0088 and 0089

RULING ON APPLICATION FOR PERMISSION TO APPEAL

Introduction

1. This is an application by Mr Efifiom Edem (the “Appellant”), made under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the “Rules”), for permission to appeal against a decision of the First-tier Tribunal (Information Rights), dated 28 October 2011.
2. The decision concerned several requests made by the Appellant on 4 February 2010 and 30 March 2010, respectively, to the Commissioner in his capacity as a public authority.
3. The Tribunal upheld the Commissioner’s two Decision Notices dated 1 March 2011, except as regards three requests in respect of which the Tribunal issued a Substituted Decision Notice. The Tribunal found, in relation to those three requests, that the Commissioner had failed to provide the information requested within 20 working days and was therefore in breach of section 10(1) of the Freedom of Information Act 2000 (“FOIA”). However, on the basis that the information had now been provided to the Appellant, the Tribunal did not require any steps to be taken.

The Scope of the Tribunal’s Consideration of an Application for Permission to Appeal

4. Rule 43 provides that on receiving an application for permission to appeal, the Tribunal must first consider, taking into account the overriding objective in Rule 2, whether to review the decision in accordance with Rule 44. Rule 44(1) provides that the Tribunal may

only undertake a review if it is satisfied that there was an error of law in the decision.

5. If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action, the Tribunal must consider whether to give permission to appeal to the Upper Tribunal. An appeal to the Upper Tribunal lies only on a point of law.
6. The first question therefore, is whether any of the grounds raised by the Appellant disclose an error of law in the Tribunal's decision.
7. In approaching this question, I have kept in mind that the distinction between an error of law and an error of fact is not always clear cut. Certain factual findings can result in an error of law. For instance, making a perverse or irrational finding on a factual point which has a material bearing on the outcome, giving weight to immaterial facts, or making a mistake as to a material fact, can all amount to errors of law.

The Grounds of Appeal

8. The Appellant's grounds of appeal are not easy to understand. What is clear, however, is that he does not identify (nor does he seek to identify) any error of law. The issues he has raised have to do either with factual findings made by the Tribunal, or matters of fact about which the Tribunal made no findings because they were not relevant to the issues in the appeal.
9. The only issue in the appeal was whether the Commissioner had provided the Appellant with the information he had requested to the extent that the Commissioner held that information. No exemptions were relied on. It was and is not relevant:
 - (a) whether the information held by the Commissioner is accurate and whether it accords with information held at Companies House or information known to the Appellant;
 - (b) whether the Commissioner maintains, on the register of notifications, all the information it is required to, or maintains information it is not required to maintain; and
 - (c) whether the Commissioner made any factual errors in his Decision Notices.
10. A number of points made by the Appellant amount to no more than a disagreement with the Tribunal's factual findings or seek to repeat assertions made during the course of the appeal. He reiterates, for example, his belief that the Commissioner has fabricated information or committed an offence under section 77 of FOIA. Tribunal found no evidence to support such a finding (see paragraphs 22, 50 and 51 of the determination).

Decision

11. I am not satisfied that the Appellant's grounds of appeal identify any error of law. Permission to appeal is therefore refused.
12. Under Rule 23(2), as amended, the Appellant has one month from the date this Ruling is sent to him to lodge an application for permission to appeal directly with the Upper Tribunal by sending it to:

The Upper Tribunal (Administrative Appeals Chamber)
5th Floor Rolls Building,
7 Rolls Buildings, Fetter Lane,
London, EC4A 1NL

Signed:

**Ms A Dhanji
Judge**

9 December 2011