



NCN:

Case Reference: EA/ 2022/0212

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

Heard: by determination on the papers

Heard on: 21 December 2022

Decision given on: 22 December 2022

Before:  
Judge Alison McKenna

**PETER TILSON**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**DECISION  
on Strike Out Application**

1. The Appellant's Notice of Appeal dated 15 August 2022 is struck out as having no reasonable prospect of success.

**REASONS**

2. On 12 September 2022, the Information Commissioner, in filing his Response to this appeal, applied for a strike out on the basis that the appeal had no reasonable prospects of success.
3. The Appellant seeks to appeal the Information Commissioner's Decision Notice dated 27 July 2022, in which he found that the public authority did not hold the requested information for the purposes of regulation 12 (4) (a) of the Environmental Information Regulations 2004.

4. The Appellant's Grounds of Appeal are that the Decision Notice erred in law 'particularly regarding the statutory requirement to retain important information in a safe and adequate manner'. In other words, he submits that the requested information ought to have been held but appears to accept that it was not held.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 22 September 2022 he accepted that his grounds of appeal should be amended and asked the Tribunal to make an Enforcement Notice or an Information Notice against the public authority. His focus thus continued to be on his complaint that information was not held when it ought to have been held. He has not anywhere suggested that the information he requested was indeed held.
6. 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. Applying this approach, I have concluded that the Appellant's prospects of success in this appeal must be seen as falling into the "fanciful" rather than the "realistic" category of cases. This is because the Tribunal's role in considering an appeal against a Decision Notice which found that information was not held is to decide for itself whether the information is or is not held. It is not its role to consider whether information should have been held, or to make enforcement or information orders against a public authority. It follows that the Appellant's case, as put in his Notice of Appeal, and as set out more particularly in his response to the proposed strike out, is not one that any Tribunal would have power to uphold.
8. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success and I direct accordingly.

**(Signed)**

**Dated: 21 December 2022**

**Judge Alison McKenna**

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