



Case Reference: EA/ 2022/0290

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

Heard: by determination on the papers

Heard on: 18 January 2023

Decision given on: 19 January 2023

Before:
Judge Alison McKenna

LIAM HARRON

Appellant

- and -

THE INFORMATION COMMISSIONER

**First
Respondent**

-and-

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

**Second
Respondent**

DECISION

This appeal is struck out under rule 8 (2) (a) as the Tribunal has no jurisdiction to determine it.

REASONS

1. The Second Respondent's Strike Out Application dated 28 December 2022 is allowed.
2. The Appellant made an information request for information about a response previously sent to him. He also asked for the name of an external expert consulted by the Second Respondent ('the Council'). The Information Commissioner published his Decision Notice on 8 September 2022, in which he found that the Council was entitled to rely on s. 40 (2) FOIA to refuse to disclose the name of the expert and that no further information within the scope of the request was held.
3. The Appellant filed a Notice of Appeal on 4 October 2022. The Appellant's Grounds of Appeal are that he hopes the Information Commissioner will review the Decision Notice with minimal involvement of the Tribunal.
4. On 17 November 2022, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) of the Tribunal's rules on the basis that the appeal had no reasonable prospects of success.
5. On 28 December 2022, the Council, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) or under rule 8 (2) (a) for want of jurisdiction. It submitted that the grounds of appeal failed to engage the statutory jurisdiction of the Tribunal. The Council also submitted a witness statement from Luke Sayers dated 9 November 2022.
6. The Appellant was invited to make submissions in response to the proposed strike out, as required by rule 8 (4). On 2 and 28 December 2022, the Appellant reiterated his grounds of appeal and submitted that the Tribunal should investigate whether it is true, as the Council states, that the expert provided advice on conditions of anonymity. He also referred the Tribunal to case law about the anonymity of expert witnesses in court proceedings.
7. I have considered all parties' representations and concluded that the grounds of appeal in this case do not engage the Tribunal's statutory jurisdiction under s. 57 and 58 FOIA. They do not allege that the Decision Notice is wrong in law in any respect or that it involved an inappropriate exercise of jurisdiction. Indeed, they ask the Information Commissioner to review the Decision Notice rather than asking the Tribunal to set it aside and make a substituted decision. Having regard to the Tribunal's powers under s. 58 FOIA, I note that the most recent submissions appear to ask for a remedy which the Tribunal may not provide.
8. It does not therefore seem to me that the Tribunal has jurisdiction to determine this appeal. In such circumstances, a strike out is mandatory. I now direct a strike out accordingly.

(Signed)

Dated: 18 January 2023

Judge Alison McKenna

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