



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

BETWEEN:

MR X

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Ruling on an application for permission for an extension of time within which to lodge a Notice of Appeal

1. I have been asked to consider whether to grant an extension of time in which to file a Notice of Appeal in this case. This matter concerns Mr X's wish to appeal against a decision of the Information Commissioner dated 4 March 2010, determining Mr X's application under the Environmental Information Regulations 2004 regarding certain information held by Leeds City Council.

Background

2. As stated above, the Information Commissioner's Decision Notice was dated 4 March 2010. By virtue of rule 22 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended, Mr X had 28 days to lodge a Notice of Appeal with the First-tier Tribunal (Information Rights).
3. The Notice of Appeal was received by the Tribunal administration on 7 July 2010 by fax, and included a reference to accompanying documents which were being posted. These were stamped as received by the Tribunal administration on 9 July. The Notice of Appeal includes an application for an extension of time for lodging the appeal which states "*(Following a diagnosis of cancer) the side effects of radiotherapy*" and referring to previous correspondence between Mr X and the Tribunal.
4. I note that there had been considerable previous correspondence between Mr X and the Tribunal as follows:
 - 16 April – Letter from Mr X to the Tribunal, enclosing his correspondence with the Information Commissioner's Office, from which it is clear that he had originally (erroneously) asked the ICO for an extension of time in which to appeal. This correspondence refers to his medical condition. (I note he wrote to the ICO on 7 April, so was already outside of the time limit by a few days).
 - 19 April – Letter from Tribunal administration to Mr X, stating that the Principal Judge has granted him an extension to 14 May.

- 11 May letter from Mr X to the Tribunal, acknowledging receipt of the relevant form for filing his Notice of Appeal and of accompanying guidance notes. He thanks the Tribunal for the extension of time to 14 May but states “*I do not expect to meet the deadline of 14 May [but] do not wish to lose my right of appeal*”.
- 12 May – letter from the Tribunal administration to Mr X, asking for medical evidence of ill health, plus requesting him to “*provide a date by which you expect to be able to lodge your notice of appeal*”. The letter states that “*All that is needed in the notice of appeal is for you to set out briefly the reasons why you consider the Information Commissioner’s decision is wrong. There will then be further opportunities to prepare your case before the hearing*”.
- 13 May – two letters from Mr X to the Tribunal. In the first, he seeks an extension “*beyond tomorrow*” but without specifying a date, and supplies medical evidence regarding his diagnosis, radiotherapy and some general information about fatigue. In the second letter, he says he cannot give a precise date for lodging appeal due to his medical condition.
- 14 May – Letter from Tribunal administration to Mr X explaining that it is not prepared to grant him an open ended extension of time. Advises of the need to request the extension in his Notice of Appeal and states that whilst the Tribunal is sympathetic to his situation, the longer he leaves it the less likely it is that the Tribunal Judge will allow the extension.
- 28 May – Letter from Mr X to the Tribunal saying he is not seeking an open ended extension of time – and that he will send his Notice of Appeal “*in the next few weeks*”.
- 30 June – Letter from Mr X to the Tribunal administration stating that he is working on the appeal but has been distracted by a further planning application regarding a neighbouring property.
- 7 and 9 July – Notice of Appeal received. The form requests and extension of time, as above. It is accompanied by a 7 page Grounds of Appeal document, together with some 60 pages of supporting evidence divided into 25 separate appendices.

The Rules

5. I have considered Mr X’s application for an extension of time in the context of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.¹ I have, in particular considered rule 5(3)(a) which states that the Tribunal may

“extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit...”

6. Rule 5 is itself subject to rule 2, which I set out in full below:

¹ Available on <http://www.tribunals.gov.uk/Tribunals/Firsttier/generalregulatory.htm>

“Overriding objective and parties’ obligation to co-operate with the tribunal

2.—(1) *The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

7. Rule 2 therefore imposes an express obligation on the Tribunal to seek to give effect to the overriding objective in exercising any power under the Rules (including the power to extend the time for making an application under rule 5) and on the parties to help the Tribunal to do so and to co-operate with the Tribunal generally.

Decision

8. In common with the Principal Judge and the Tribunal administration, I express my sympathy to Mr X regarding his medical condition and the debilitating effects of his treatment. I note, however, that he was already out of time when he first approached the Tribunal for an extension of time; that he was given a generous extension of time by the Principal Judge but that he stated in advance of that date that he did not expect to comply with the new time limit. I further note that he did not then provide the Tribunal, despite being requested to do so, with a date by which he did expect to be able to lodge the Notice of Appeal and that he was expressly warned (a) that he could not have an open ended extension and (b) that the longer he left it, the less likely the Tribunal would be to grant his request.
9. I also note that Mr X was expressly informed by the Tribunal administration on 12 May that he needed only to provide brief details of why he considered the Information Commissioner’s decision was wrong in order to lodge the appeal, and that he could provide further details later on. Mr X was able to respond to that letter with his two letters sent on 13 May, but nevertheless waited a further eight weeks to provide a fully-documented set of Grounds and enclosures. During those eight weeks he was able to correspond with the Tribunal administration several times and, apparently, to make objections to another planning application.
10. I have taken into consideration Mr X’s illness and treatment, and I have made allowances for the fact that he is unrepresented and must be assumed to be

unfamiliar with Tribunal procedures. Nevertheless, I have concluded that he has not co-operated with the Tribunal to the extent required by the overriding objective. In particular, I find that he did not take heed of the Tribunal's advice to lodge brief grounds of appeal as soon as possible, preferring to delay in order to provide it with a full argument. I find that he did not comply with the earlier extension of time granted by the Principal Judge and did not, when asked to do so, provide the Tribunal with a further date by which he did feel able to send in his Notice of Appeal. I find that he failed to take heed of the Tribunal's warnings that it could not grant him an open ended extension of time and that the longer the delay, the less likely the chance of a further extension being granted. The result of Mr X's failure to accept the advice given to him was that his application was eventually received some thirteen weeks after the date required by the Rules. I have considered the Tribunal's duty to further the overriding objective and in particular to avoid delay. I have also taken into account the inconvenience and drain on resources which would be caused to the Information Commissioner in having to respond to an appeal made so long after his decision.

Ruling

11. In all the circumstances, I rule that Mr X's Notice to Appeal dated 7 July does not comply with the requirements of rule 22, and that I am unable to allow, under rule 5, the extension of time that he seeks in these circumstances. It follows that Mr X's appeal may not proceed.

Signed:

**Alison McKenna
Tribunal Judge**

Dated: 23 July 2010



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

RULING on an APPLICATION for PERMISSION to APPEAL

**By
Mr X**

1. This is a ruling concerning an application for permission to appeal against a decision of the First Tier Tribunal (Information Rights) dated 23 July 2010. That decision was that the Tribunal would not consider Mr X's Notice of Appeal dated 7 July 2010 because it was out of time.

Background

2. This matter concerns a decision of the Information Commissioner dated 4 March 2010, involving an application by Mr X under the Environmental Information Regulations 2004.
3. Mr X's appeal was due to be lodged within 28 days of 4 March, however the Tribunal was first approached by Mr X on 16 April. It transpired that he had erroneously sent an application for permission to appeal to the Information Commissioner dated 7 April and explained that he was receiving radiotherapy which affected his ability to prepare his appeal. The Principal Judge (Information Rights) granted him an extension of time to file his Notice of Appeal until 14 May, however his Notice of Appeal was not in fact received until 7 July, with enclosures following on 9 July 2010. It was therefore some thirteen weeks out of time.
4. The matter was referred to me and I issued a ruling on 23 July, refusing permission for an extension of time in which to file the Notice of Appeal. The reasons are set out in that ruling. Mr X has now sent a letter dated 5 August, addressed to the Principal Judge (Information Rights) asking him to review my decision of 23 July. The Principal Judge has asked me to deal with this further application. For the reasons that appear at paragraph 5 below, I have treated the letter of 5 August as an application by Mr X for permission to appeal to the Upper Tribunal against the ruling of 23 July.

The Rules

5. Under rule 44 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) ("the Rules"), the

Tribunal may only undertake a review of a decision if (a) it has received an application for permission to appeal and (b) it is satisfied there is an error of law in the original decision. I cannot therefore even consider reviewing the 23 July decision unless Mr X makes an application for permission to appeal to the Upper Tribunal.

6. Rule 45 of the Rules provides that the Tribunal may treat an application for a decision to be set aside, corrected or reviewed, or for permission to appeal, as an application for any other one of those things. In the circumstances, I have treated the letter of 5 August asking for a review as an application for permission to appeal to the Upper Tribunal. This is so as to avoid requiring Mr X to submit a further letter formally making an application for permission to appeal.
7. As stated at paragraph 5 above, there is power to review a decision once there is an application for permission to appeal and if there is an error of law in it. Mr X has not pointed to any error of law in the decision of 23 July, but from his letter of 5 August I note that he considers that my decision gave insufficient weight to the effects of his illness and treatment. The decision of 23 July does explain that due consideration had been given to these factors (amongst others) but that in all the circumstances the Notice of Appeal was too late fairly to be allowed to proceed. In the circumstances I do not consider that there was an error of law in that decision and I am not therefore able to change it.
8. It remains for me to consider whether permission to appeal to the Upper Tribunal should be granted in this case. Having considered the grounds of appeal (i.e. the letter of 5 August) carefully, I have come to the conclusion that they do not identify an error of law in the decision of 23 July 2010, as required by rule 42(5)(g) of the Rules. In the circumstances, permission to appeal is also refused.

Next Steps

9. Mr X cannot make any further applications to the First-tier Tribunal (Information Rights) about this matter as the processes have now been exhausted. He does, however, have a right to renew his application for permission to appeal to the Upper Tribunal itself. Under rule 21(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended, he has one month from the date this ruling was sent to him to lodge an appeal with the Upper Tribunal (Administrative Appeals Chamber), 5th Floor, Chichester Rents, 81 Chancery Lane, London, WD2A 1DD. Further information about the appeal process is available on the Upper Tribunal's website at <http://www.osspsc.gov.uk/index.htm>.

Alison McKenna
Tribunal Judge
First-tier Tribunal (Information Rights)
23 August 2010