



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

Appeal No: EA/2010/0155

BETWEEN:

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY
Appellant

and

THE INFORMATION COMMISSIONER
Respondent

and

ASSOCIATION OF CATHOLIC LAWYERS OF IRELAND
Second Respondent

DECISION
STRIKING OUT THE PROCEEDINGS

1. The Department of Health, Social Services and Public Safety ('DHSSPS') has appealed against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 11 August 2010. The Commissioner found that the DHSSPS wrongly withheld the information requested by the Association of Catholic Lawyers of Ireland and required it to disclose that information.
2. The appeal was lodged on 7 September 2010 but these proceedings have been stayed pending the decision of the High Court in the case of *Department of Health v Information Commissioner and Pro-Life Alliance* CO/13544/2009.

3. In Initial Directions dated 9 October 2010 the Parties were directed, within 7 days of any decision of the High Court in that case, to
 - i) notify the Tribunal of the decision, and
 - ii) indicate in writing how it wishes to proceed with regard to this Appeal.
4. The Tribunal was notified when the High Court judgment had been handed down. These proceedings remained stayed pending a decision by the Department of Health in respect of any appeal. The Department of Health did not appeal against that decision and the stay in these proceedings was lifted.
5. On 7 July 2011, the Tribunal wrote to the parties by e-mail directing that submissions in respect of the High Court case be provided by 4 August 2011.
6. Submissions were received from the Information Commissioner and from the Association of Catholic Lawyers of Ireland on 3 August 2011. Nothing further was received from the DHSSPS.
7. As the DHSSPS failed to comply with the direction to indicate in writing how it wished to proceed with regard to this Appeal, it remained uncertain whether this Appeal was to be pursued.
8. On 11 August 2011 a reminder was sent to the DHSSPS, to the representative who had lodged the Notice of Appeal dated 7 September 2010.
9. The Tribunal was informed by telephone that the representative was on leave but would be returning on 17 August 2011 and would then respond.
10. As the Tribunal had not received any further information, on 22 August 2011 the DHSSPS was directed to indicate in writing how it wished to proceed with regard to this Appeal by 4pm on Tuesday 1 September 2011. It was warned that failure to comply with this direction could lead to the striking out of the proceedings under

Rule 8(3)(a) of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the 'Rules').

11. The DHSSPS did not respond.
12. On 8 September 2011, the Tribunal made a further attempt to contact the DHSSPS's representative and was advised that he would be reminded of the need to respond. Nothing further has been forthcoming from the DHSSPS.

Striking out the Appeal

13. Rule 8(3)(a) of the Rules provides that:

"The Tribunal may strike out the whole or part of the proceedings if-

(a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them."

14. The DHSSPS has been given numerous opportunities to indicate whether it wishes to pursue the appeal that was lodged on 7 September 2010 in light of the decision in the case of *Department of Health v Information Commissioner and Pro-Life Alliance*.
15. In exercising any power under the Rules, I must seek to give effect to the overriding objective set out in Rule 2(1), to deal with cases fairly and justly. In this case, the Appellant is a public authority and is legally represented. It has been given many weeks to indicate, at the very least, whether it is pursuing this appeal or not. There has been no response. It has been afforded every opportunity to participate fully in the proceedings, despite the fact that these opportunities have led to further delay. The other parties have responded in the time directed by the Tribunal. I am satisfied that the DHSSPS understands the procedure of this Tribunal and understood the ramifications of the direction issued on 22 August

2011 warning that a failure to comply could lead to the appeal being struck out.

16. In the absence of any response from the Appellant and in light of the decision in the case of *Department of Health v Information Commissioner and Pro-Life Alliance*, I am satisfied that this Appeal is no longer pursued.
17. Taking into account the matters referred to above I strike out the whole of the proceedings under Rule 8(3)(a) of the Rules.
18. The Decision of the Information Commissioner contained in the Decision Notice of 11 August 2010 stands and the DHSSPS must now disclose the withheld information to the complainant. Failure to do so within 35 calendar days of the date of this decision may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Freedom of Information Act 2000 and may be dealt with as a contempt of court.

Signed

Annabel Pilling
Judge

27 September 2011