



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

Appeal No: EA/2011/0305

BETWEEN:

MIKE DAWSON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

RULING

1. By way of a Preliminary Ruling dated 24 February 2012 Mr Dawson was notified that the Information Rights Tribunal was minded to strike out his appeal under rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (the 2009 Rules) on the basis that it had no reasonable prospect of succeeding. In accordance with the 2009 Rules Mr Dawson was given time to submit representations as to why his appeal should not be struck out. Those representations were submitted in a letter dated 21 March 2012 and have been considered.
2. The essential part of the Preliminary Ruling read as follows:
 - a. In his response to my request for clarification Mr Dawson has stated that: **'The remedy I seek is for the Information Commissioner to issue a Decision Notice against Essex County Council (ECC) identifying that ECC breached FOIA and requiring that ECC deposit the map under LATOR'**
 - b. I am now minded to strike out this appeal in accordance with rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (the 2009 Rules) on the basis that it has no reasonable prospect of succeeding.

- c. In accordance with rule 8(4) of the 2009 Rules Mr Dawson is given until 8th March to submit representations to the Tribunal as to why his appeal should not be struck out.
 - d. The principal reason for reaching this preliminary decision is that Mr Dawson now has in his possession the map that he has been seeking disclosure of.
 - e. S21(1) FOIA provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information. s21(1) FOIA is an absolute exemption – there being no public interest test to consider. Information (in this case the map) which is actually in Mr Dawson's possession is clearly 'reasonably accessible' to him. There is therefore no question of the public authority being directed by way of a new Decision Notice to disclose the map to Mr Dawson.
 - f. Mr Dawson has stated that an ancillary purpose of appealing is to require that ECC deposit the map under LATOR. The Tribunal has no power to direct such a deposit.
 - g. An appeal to the Information Rights Tribunal should have as its purpose either the disclosure of information to a particular applicant that has been wrongfully withheld by the authority or, conversely, confirmation that a public authority is entitled to rely on an appropriate exemption. An appeal should not have the sole purpose of seeking a mere declaration that a party has behaved incorrectly in the past. This appears to be the principal purpose of Mr Dawson's appeal.
 - h. The appeal in this particular case therefore appears to be without merit and stands no reasonable prospect of succeeding.
3. In his submissions of 21 March 2012 Mr Dawson writes:
- i. The local authority failed in its statutory duty to ensure that the map (as part of the notice of proposals) was deposited as required by LATOR; thus the local authority could not subsequently issue the map in response to an FOI request.
 - ii. Where the local authority has failed to meet the requirements of the legislation, the ICO can take action.
 - iii. The ICO failed to take action to require the local authority to deposit

the map as required by LATOR to ensure that the map would be readily available in response to an FOI request.

iv. The ICO has the power to issue undertakings, serve enforcement notices and serve practice recommendations to require the local authority to deposit the map as required by LATOR, thus ensuring that the map will be readily available in response to an FOI request.

v. The Information Tribunal has the power to substitute a decision by the ICO. I therefore appeal to the Information Tribunal to issue a substitute decision to require the local authority to deposit the map as required by LATOR, thus ensuring that the map will be readily available if subject to an FOI request. If required, the ICO can subsequently enforce this decision under section 54 of the FOI Act 2000.

4. As can be seen rather than addressing the points in the Preliminary Ruling Mr Dawson has ignored them and in particular has ignored the points made at 2e and 2f above.
5. Consequently my ruling is that the preliminary striking out decision made should stand and I now confirm that decision to strike out.

Angus Hamilton DJ(MC)
FTT Judge

23 April 2012