



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**EA/2012/0066**

**BETWEEN:**

**CHRISTOPHER FLYNN**

**Appellant**

**-and-**

**THE INFORMATION COMMISSIONER**

**Respondent**

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**RULING**

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**RULING in relation to...**

**The Information Commissioner's**

**Decision Notice No: FS50413915**

**Dated: 7 March 2012**

1. Mr Flynn made a request for information to the Department for Work and Pensions ('DWP') under FOIA on 1 July 2011. He received no response and referred the case to the Information Commissioner ('IC').
2. After the Commissioner's intervention the DWP issued a full response on 19 October 2011. Mr Flynn requested that a decision notice be issued. The IC did so and found that there was a breach of section 10(1) of FOIA but required no remedial steps to be taken in this case.
3. Mr Flynn appealed to the Tribunal on 17 April 2012. His grounds largely centred around the difficulties he had experienced in getting the information from the DWP and the way the IC had handled his complaint. However he accepted that DWP had

eventually provided the information requested with certain redactions (which he has not challenged), albeit very late and only after the intervention of the IC.

4. Mr Flynn is principally unhappy about the way Decision Notice dated 7 March 2012 described the events which took place and that although, in effect, his complaint was upheld, the IC did not require the DWP take any further steps.
5. On receiving the appeal the Tribunal wrote to Mr Flynn on 3 May 2012 explaining that the Tribunal did not appear to have jurisdiction and that he might be better served by taking up his complaint with the IC direct. The Tribunal wrote as follows:

“Your grounds of appeal have been shown to a judge. As he understands it you have now received the information requested, albeit very late and after the intervention of the Information Commissioner. He considers that the remedies you are seeking seem to relate to the way the Commissioner handled your complaint and the format of the decision notice, rather than whether or not you are entitled to have the information disclosed to you. He understands your concerns but considers it may be more appropriate to make a formal complaint to the Commissioner as to these matters as the Tribunal has only limited powers once the requested information has been disclosed. For example the Tribunal has no power to direct the way the Commissioner should handle a complaint.”

6. As a result Mr Flynn withdrew his appeal. However he was dissatisfied with the IC's response and applied for his appeal to be reinstated under rule 17(3) which the Tribunal accepted.
7. The notice of appeal was subsequently served on the IC who responded to the grounds of appeal on 19 July 2012. The key paragraphs in the response are as follows:

12. The Commissioner would agree with the view expressed by the Tribunal Judge in the Tribunal's letter dated 3 May 2012; namely that the issues raised by the Appellant relate to the way the Commissioner handled the Appellant's complaint and the format of the decision notice and are not therefore within the Tribunal's jurisdiction. Whilst the Appellant may be dissatisfied with the response he received from Mr Laing [of the ICO], it remains the case that the issues he complains of are simply not within the Tribunal's jurisdiction. If he wishes to take

these matters further, then he is at liberty to make a complaint to the Parliamentary and Health Service Ombudsman as advised in Mr Laing's letter.

13. In so far as the Appellant complains about the level of detail in the Decision Notice or the way in which certain parts are expressed, these are not matters within the Tribunal's jurisdiction (see *Billings v The Information Commissioner* EA/2007/0076, in which the Tribunal said at paragraph 9: "The Appellant makes no challenge to the conclusion reached by the Information Commissioner, but simply expresses the view that the reasons for that decision recorded in the Decision Notice should have been expressed differently. For the same reasons that are set out above in respect of the First Ground of Appeal this does not form any basis for an appeal from the decision. The Appeal process is not intended to develop into a joint drafting session, but only to provide relief if the Decision Notice is found not to be in accordance with the law").

14. Further, in the case of *Stuart v Information Commissioner & DWP* EA/2008/0040 the Tribunal said, at paragraphs 20-21, that "the history does not constitute a finding of fact neither is it the Decision, as such of itself, it cannot form the basis of a ground of appeal ... the Commissioner's choice of what to include in the synopsis of the history of the case is not within the remit of the tribunal under section 58 FOIA."

15. In so far as the Appellant complains about the conduct or manner of the investigation carried out by the Commissioner, then this also is not within the Tribunal's jurisdiction (see *Stuart v Information Commissioner & DWP* EA/2008/0040, paragraphs 25 and 38).

16. The Commissioner submits that no valid grounds of appeal have been advanced by the Appellant and the Tribunal is therefore required to strike out the appeal under rule 8(2)(a) of the 2009 Rules on the basis that it has no jurisdiction in relation to the matters complained of.

8. The IC having applied for the appeal to be struck out the Tribunal gave Mr Flynn the opportunity to make representations as to why the case should be allowed to proceed.

9. He did so in a detailed response dated 24 August 2012. Firstly he pointed the Tribunal to what he considered was the correct case law. In relation to this point I wish to make it clear to both parties that I am not bound by the decisions of other First-tier Tribunals. I may take note of what they say but am not required to follow them particularly when applying the Tribunal's rules of procedure which is what I am required to do in this case. So although I am grateful to Mr Flynn and the IC for bringing my attention to such cases I am only required to consider the application to strike out in this case under the provisions of rule 8(2)(a), namely whether I have jurisdiction in relation to the proceedings or part of them and where I do not exercise any powers under rule 5(3)(k)(i).
10. I do not have any powers in the circumstances of this case under rule 5(3)(k)(i) so I only need to consider rule 8(2)(a). In this respect I largely agree with the submissions made by the IC set out above, which reflected what the judge considered as set out in the email of 3 May 2012.
11. Mr Flynn then repeats his previous grounds of appeal which have been summarised in paragraph 3 above, although in much greater detail. He makes serious allegations against the IC (and DWP) which are not something that this Tribunal has jurisdiction to consider. The IC has provided a route forward for Mr Flynn to follow, namely making his complaint to the Parliamentary and Health Service Ombudsman who may be in a better position to deal with his concerns.
12. I can understand Mr Flynn's frustration in the circumstances of this case, but this Tribunal is bound by statute and has limited jurisdiction. The Tribunal is unable to hear the complaint he has made and I have no alternative but to strike out his appeal for want of jurisdiction.

[Signed on the original]

**Professor John Angel**  
Judge

6 September 2012