



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2012/0069
Appellant: Ivan Ivanov
Respondent: The Information Commissioner
Judge: NJ Warren
Member: R Tatam
Member: S Shaw
Hearing Date: 11 April 2013
Decision Date: 03 May 2013

DECISION NOTICE

1. This appeal fails.
2. Mr Ivanov has appealed to the Tribunal against a decision of the Information Commissioner (ICO) dated 29 February 2012. The grounds of appeal are to be found at page 20 of the Tribunal bundle. The first five grounds have been struck out and the decision to do so has been confirmed by the Upper Tribunal. We are therefore concerned only with ground 6.
3. In December 2009 (page 106) Mr Ivanov made a number of requests for information to the Tenant Services Authority (TSA). One of them was for copies of the correspondence of a named officer with rating agencies and valuers in connection with a £250 million bond issued by Genfinance II PLC. In March 2010 (page 61) he modified this request to include, instead of correspondence, the minutes of meetings between the TSA and the rating agencies to discuss the bond and any additional documents used during the meetings.

4. The response of the TSA was that they did not hold any such correspondence or minutes. The TSA did indeed hold regular meetings with ratings agencies but these were to discuss “sector wide” issues and did not extend to the affairs of individual providers of social housing. The TSA did hold minutes of meetings but not of any meetings which discussed the bond.
5. Mr Ivanov complained to the ICO. He said he wanted to see minutes of the meetings even if they did not refer to the particular bond (page 131). This was of course correspondence with the ICO, not with the TSA to whom any request for information under the Freedom of Information Act (FOIA) should have been directed. The ICO rejected Mr Ivanov’s complaint.
6. We agree with the reasoning in the ICO decision notice especially at para 23. The later request for the minutes of any meeting between the TSA and the rating agencies went outside the scope of the original request.
7. We have no reason to doubt the assertion made by the TSA that the minutes they hold do not refer to the bond and that the named public servant had no correspondence with the rating agencies and valuers in connection with the bond. Mr Ivanov, in his notice of appeal, really goes no further than expressing suspicion. Mr Ivanov did not respond to an invitation to express his arguments on ground 6 in a separate statement of case.
8. For these reasons, we accept the response of the ICO on appeal ground number 6 and dismiss the appeal.
9. This appeal was listed for hearing but neither Mr Ivanov nor the ICO attended. We were satisfied that both had been informed of the hearing and considered that it was in the interests of justice to proceed to a decision.
10. The previous day Mr Ivanov had made a request for the appeal to be stayed pending an application for permission to appeal against a refusal by the Upper Tribunal to give him permission to appeal against its ruling. Having regard to Rule 2 we decided that it was in the interests of justice to proceed with the hearing. It seemed unlikely that the success or otherwise of Mr Ivanov’s application could have any effect on the single issue which we had to determine.

11. We venture one further comment about the request for information in this case. Largely it takes the form of naming a number of public servants and asking for the contents of their correspondence files inboxes and outboxes about certain issues. It might be considered doubtful that parliament intended public servants to have the pressure of such personal scrutiny. It may be, if a similar case arises, that the ICO or the Tribunal may have to consider whether such a request is truly “a request for information to a public authority” so as to engage Section 1 FOIA; or whether, whilst it describes the waters in which the applicant hopes to fish, it fails to describe the information requested as required by Section 8 of the Act.

[Signed on original]

NJ Warren
Chamber President

03 May 2013



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2012/0069

BETWEEN:

IVAN IVANOV

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Decision on Application to Strike Out

Introduction

1. The Appellant requested information under the Freedom of Information Act 2000 (the 'FOIA') from the Tenant Services Authority (the 'TSA') relating to the TSA's investigation of his allegations concerning a Housing Association and its parent company.
2. The TSA corresponded with the Appellant throughout 2009 and 2010 regarding these matters. Its position is that it has provided all the information that it holds falling within the scope of the request.
3. As the request for information is extensive, there had been lengthy correspondence within which the Appellant amended or clarified his requests, and as the TSA had provided some of the information requested, the Commissioner sought clarification from the Appellant in respect of which parts of the request remained in issue for the

Commissioner to investigate. This is set out in Annex 2 to the Decision Notice.

4. The Commissioner concluded that, on the balance of probabilities, the TSA has provided the Appellant with all the information it held relevant to his request as clarified to the Commissioner.

Appeal to the Tribunal

5. The Appellant appeals to this Tribunal. In his Notice of Appeal, the Appellant advanced six grounds of appeal:

Ground 1 – the Commissioner failed to mention the TSA’s delay in disclosing the KPMG investigation report;

Ground 2 – that the Appellant’s list of the documents that he had not been provided with as produced in Annex 2 to the Decision Notice had been distorted by the removal of parts of sentences and *“the removal of these passages is not accidental”*;

Ground 3 – that the Appellant’s FOIA request of 22 December 2009 as reproduced in Annex 1 to the Decision Notice was a misrepresentation, about half a page of background had been removed;

Ground 4 – that the Decision Notice misrepresented the Commissioner’s assessment in respect of the TSA’s compliance with the Data Protection Act 1998;

Ground 5 – that *“omissions and misrepresentations in connection with my request under FOIA dated 7 November 2008, expressed in my letters to TSA and ICO, are ignored”*, and that there is nothing in the Decision Notice dealing with this request;

Ground 6 – that the matter of the minutes between the TSA and credit ratings agencies is “a very serious breach of FOIA” and that the ICO refused to provide the Appellant with an email of the document supporting the TSA’s position in this regard, or the date of the document.

Application to Strike Out

6. The Commissioner, in his Response to the Appellant’s Notice of Appeal, invited the Tribunal to strike out Grounds 1 to 5 of the Appellant’s appeal under Rule 8(3)(c) of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the “Rules”) on the basis that:
 - i) Grounds 1 and 5 were not part of the Appellant’s complaint to the Commissioner and therefore are beyond the remit of the Tribunal; and
 - ii) Grounds 2, 3 and 4 do not raise complaints about the application of the FOIA but relate to the drafting of the Decision Notice and are therefore beyond the scope of an appeal to the Tribunal.

7. Under Rule 8(4) of the Rules, the Tribunal may not strike out the whole or part of the proceedings under Rule 8(3)(c) without first giving the Appellant an opportunity to make representations in relation to the proposed striking out.

8. The Appellant was therefore directed to provide written representations to the Tribunal and the Commissioner in relation to the proposed striking out by 1 June 2012. The Commissioner was directed to serve any response to those representations by 15 June 2012.

The Powers of the Tribunal

9. The Tribunal's powers in relation to appeals under section 57 of FOIA are set out in section 58 of FOIA, as follows:

(1) If on an appeal under section 57 the Tribunal considers-

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

The Legal Framework

10. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

The Issues for the Tribunal

11. Rule 8(3)(c) provides as follows:

8. (3) The Tribunal may strike out the whole or part of the proceedings if-

(a)

(b)

(c) *the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.*

12. In *Southworth v Information Commissioner (EA/2010/0050)*, I considered that the tests developed by the Tribunal under the previous set of rules applicable prior to 18 January 2010, that is The Information Tribunal (Enforcement Appeals) Rules 2005, to be a useful starting point. Under Rule 9 of those Rules, an application for an appeal to be struck out could be made by the Commissioner on the basis that the notice of appeal disclosed no reasonable grounds of appeal. A reasonable ground of appeal has been defined as one that is readily identifiable from the Notice of Appeal, relates to an issue the Tribunal has jurisdiction to decide and is realistic not fanciful: *Bennett v IC (EA/2008/0033)*.

13. Under Rule 10 of those Rules, an appeal could be disposed of summarily. The test used by the Tribunal to decide whether an appeal should be dismissed summarily is akin to that found in Part 24 of the Civil Procedure Rules; it must be decided whether there is a "realistic" as opposed to "fanciful" prospect of success: *Tanner v ICO and HMRC (EA/2007/0106)*. In that case, the Appellant did not challenge the substance of the Commissioner's Decision Notice but effectively asked the Tribunal to review all the administrative acts by various public bodies about which he complained.

14. The Appellant is a litigant in person, not legally qualified or trained, and has put forward what he believes to be relevant grounds of appeal. It appears to me that the Appellant, who has a long held grievance with the way his requests for information from the TSA have been handled, may have misunderstood the role and remit of this Tribunal.

15. I have seen a correspondence between the Commissioner and the Appellant clarifying the scope of the Appellant's complaint to the Commissioner. I am therefore satisfied that Grounds 1 and 5 were not

raised as matters of complaint to the Commissioner and therefore formed no part of the Decision Notice. These grounds of appeal do not amount to grounds of challenging whether the Decision Notice was wrong in law and do not amount to reasonable grounds of appeal.

16. In respect of Grounds 2 and 3, the Appellant complains about the way in which the Decision Notice has been drafted and the reasons why he believes certain passages have not omitted rather than repeated in full. The Commissioner submits that there are no material inaccuracies in Annexes 1 and 2 to the Decision Notice and the passages removed concern the Appellant's reasons for making his requests for information or an introduction to the request. Again, I am not satisfied that the matters about which the Appellant complains amounts to a submission that the Decision Notice was wrong in law. These grounds of appeal therefore have no realistic prospect of success.

17. Ground 4 relates to an allegation that in paragraph 14 of the Decision Notice the Commissioner has distorted his findings in respect of the TSA's compliance with the Data Protection Act 1998. This does not amount to a ground of appeal that the Decision Notice is wrong in law, rather a criticism of the Commissioner's drafting. Again, this ground of appeal has no realistic prospect of success.

18. I am satisfied that there is no a reasonable prospect of the Appellant's case succeeding in respect of Grounds 1, 2, 3, 4 or 5 and I therefore strike out these parts of the Appeal under Rule 8(3)(c).

19. The Commissioner conceded that ground 6 is a valid ground of appeal and the parties have commenced preparation for an oral hearing which has been fixed for 3 October 2012. At that hearing, the Tribunal will consider submissions solely in respect of Ground 6.

Signed:

Annabel Pilling
Judge

Dated: 4 July 2012