



NCN:

Case Reference: EA/ 2022/0243

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

Heard: by determination on the papers

Heard on: 9 January 2023

Decision given on:

Before:  
Judge Alison McKenna

**STEVEN BURTON**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**DECISION**

**This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success**

**REASONS**

1. The Respondent's Strike Out Application dated 7 October 2022 is allowed.

## REASONS

2. The Appellant made an information request to DHSC. The Information Commissioner published a Decision Notice on 2 August 2022 which found that the burden of complying with the request would be ‘grossly oppressive’ so as to satisfy s. 14 (1) FOIA. The Appellant filed a Notice of Appeal on 2 August 2022.
3. On 7 October 2022, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) of the Tribunal’s rules on the basis that the appeal had no reasonable prospects of success.
4. The Appellant’s Grounds of Appeal are: (a) a challenge to the ‘cost of compliance’(although s. 12 FOIA is not relied on in the Decision Notice); (b) he states that he does not believe that DHSC did not hold a single summary report rather than the 166 reports which it found to fall within the scope of the request; and (c) he submits that the Information Commissioner is engaged in medical censorship. I note that he does not in his grounds challenge the Decision Notice’s findings as to the nature of the burden on the public authority.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 19 October 2022 the Appellant reiterated the importance of his request and his grounds of appeal.
6. I have considered the Upper Tribunal’s decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), in which it is stated at [41] that

*...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing...The Tribunal must avoid conducting a “mini-trial”. As Lord Hope observed in Three Rivers the strike out procedure is to deal with cases that are not fit for a full hearing at all.*
7. Applying this approach, I have considered both parties’ representations and concluded that this is a case which may be described as ‘not fit for a full hearing’. This is because the role of this Tribunal under s. 57 FOIA is to decide whether there is an error of law or inappropriate exercise of discretion in the Information Commissioner’s Decision Notice. The grounds of appeal simply do not engage with that jurisdiction. Although he takes issue with DHSC and the ICO, the Appellant has not presented an argument which engages the Tribunal’s jurisdiction.
8. It does not seem to me that any Tribunal properly directed could allow this appeal. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success.

**(Signed)**

**Dated: 9 January 2023**

**Judge Alison McKenna**

**Promulgated: 9 January 2023**

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