Neutral citation number: [2023] UKFTT 756 (GRC) Case Reference: EA-2023-0347

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard: on the papers

Heard on: 13 September 2023
Decision given on: 14 September 2023

Before

TRIBUNAL JUDGE BUCKLEY

Between

ALI HAJIMI

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Sitting in Chambers
on 13 SEPTEMBER 2023

DECISION

1. The appeal is struck out.

REASONS

2. The appellant made a complaint to the Commissioner on 3 April 2023. He received a letter in the following terms on 31 May 2023:

> "We will not be proceeding with your complaint any further, as required under section 50(3) FOIA.
>
> **Section 50(3)**
>
> "(3) Where the Commissioner has received an application under this section, he shall -
>
> a) notify the complainant that he has not made any decision under this section as result of the application and of his grounds for not doing so"
>
> Section 50(2) states:
>
> "On receiving an application under this section, the Commissioner shall make a decision unless it appears to him -
>
> (c) that the application is frivolous or vexatious,"
>
> The application of section 50(2)(c) has similarities to that of section 14(1) whereby a public authority is under no obligation to deal with a request which is found to be vexatious."

3. The Commissioner informed the appellant of the grounds for not making a decision and the appellant provided the following extracts in his notice of appeal:

> "The application of section 50(2)(c) has similarities to that of section 14(1) whereby a public authority is under no obligation to deal with a request which is found to be vexatious. The ICO will take into account both the complainant's apparent purpose and the effect of handling the complaint, whether or not intended. It is not necessary to demonstrate both intent and effect in order for section 50(2)(c) to be applicable; if the effect alone is unwarranted that may be sufficient reason to justify treating a complaint as frivolous or vexatious.
>
> Turning specifically to your case, I am writing to advise you that we are dismissing your complaint as frivolous, under section 50(2)(c) for the following reasons:
>
> **No obvious intent to seek information**
>
> It is apparent from the correspondence that you have had with UoL and the correspondence you have had with us that the information you requested is already in the public domain.

It is also evident from your correspondence that you are fully aware of this but made your request regardless.

In the circumstances the Commissioner considers that the request has not been made with a genuine intent to seek information, rather it has been made to annoy, harass, and otherwise burden UoL.

Serious purpose and value

Given that you are already aware that the information is in the public domain, the Commissioner considers that there is no serious purpose or value in dealing with this complaint.

In the event that your complaint had been accepted, the Commissioner w ould not require UoL to provide the information as it is already in the pu blic domain and therefore exempt under section 21 FOIA, as it is reason ably accessible to you. Therefore, investigating the complaint would ha ve no value.

Abuse of FOIA

In considering this complaint the Commissioner does not believe that investigating it would represent an effective use of his limited resources. Having dealt with a number of other complaints relating to the same matter he feels that investigating this complaint could be deemed an inappropriate use of public funds.

The Commissioner remains of the view that a thorough and robust investigation of any complaint promotes accountability and transparency of public authorities whilst hopefully ensuring that a consistent approach is applied to information requests. However, he accepts that in a limited number of cases it will be wholly inappropriate to pursue an investigation and to do so would have the effect of bringing his office, and the FOIA into disrepute."

4. The appellant disagrees strongly with the Commissioner's grounds for not making a decision on his complaint, stating that they contain 'false accusations' and are 'devoid of substance'.

5. The appellant was informed by the tribunal that it had no jurisdiction to hear an appeal because the Commissioner had not issued a decision notice under section

50(3) of the Freedom of Information Act 2010. The appellant was given the opportunity to make representations on whether the appeal should be struck out for lack of jurisdiction and he did so in a document dated 9 August 2023.

6. In his representations the appellant argues, in essence, that:

6.1. The Commissioner did make a decision that can be challenged by judicial review;
6.2. The Commissioner did not cite section 50(3)(a) and, in substance made a *decision* to refuse to deal with the complaint, which was made under under section 50(3)(b);
6.3. Section 50 is ambiguous and fairness and justice overrides a narrow interpretation;
6.4. Allegations of vexatiousness are entitled to a full hearing on an evidentiary basis;
6.5. There is no evidence in the legislative history of the Freedom of Information Act of any Parliamentary intent to grant the Respondent immunity from Tribunal review;
6.6. The 'decision' in the letter of 31 May 2023 does not have a decision notice caption or numbered paragraphs but it otherwise contains all the elements of a decision notice. It identifies itself as a decision, it disposes of the appeal and informs the appellant of judicial review.

Discussion and conclusions

7. Section 50 of the Freedom of Information Act 2000 provides as follows:

50 Application for decision by Commissioner.

(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.

(2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him—

that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45,

that there has been undue delay in making the application, (c) that the application is frivolous or vexatious, or
(d) that the application has been withdrawn or abandoned.

(3) Where the Commissioner has received an application under this section, he shall either—

notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or

serve notice of his decision (in this Act referred to as a "decision notice") on the complainant and the public authority.

8. I do not accept that section 50 is ambiguous. It is very clear. Under section 50(1) a person may apply to the Commissioner for 'a decision whether… a request for information… has been dealt with in accordance with the requirements of Part 1".

9. That is the relevant decision for the purposes of section 50. It is a decision as to whether a request for information has been dealt with in accordance with the requirements of part 1. I shall refer to a decision on whether a request for information has been dealt with in accordance with the requirements of Part 1 as a 'Decision'.

10. The Commissioner clearly has to make many decisions in the course of his role, not all of which are decisions on whether a request for information has been dealt with in accordance with the requirements of Part 1. These other decisions made by the Commissioner are not 'Decisions' within section 50. He does not have to serve notice of those decisions to the complainant and the public authority under section 50(3)(b). Those other decisions may be susceptible to Judicial Review, but they cannot be appealed to the First-tier Tribunal.

11. Under section 50(2) the Commissioner 'shall' make a Decision if he has received an application under section 50 unless certain circumstances exist, which are set out in section 50(2). So, for example, if there has been undue delay in making the application, the Commissioner does not have to make a Decision. Similarly, if the application is frivolous or vexations, the Commissioner does not have to make a Decision.

12. Section 50(2) sets out what the Commissioner has to do in practice in response to an application. If the Commissioner is not going to make a Decision, he has to notify the complainant and tell him the grounds for not doing so. If he is going to make a Decision, he has to serve notice of his Decision (referred to as a 'decision notice') on the complainant and the public authority.

13. In the appellant's case, the Commissioner decided that the application was frivolous or vexatious and that he did not need to make a Decision. In accordance with section 50(3)(a) he notified the appellant that he had not made a Decision as a result of the application and of his grounds for not doing so.

14. As he had not made a Decision, he did not need to serve a decision notice under section 50(30(b). Without a Decision and, more specifically, without a decision notice, there is no appeal to the First-tier Tribunal (section 57 FOIA).

15. I accept that the Commissioner made a decision, but it cannot be appealed to the First-tier Tribunal, because it was not a decision on whether a request for information has been dealt with in accordance with the requirements of Part 1. It therefore cannot be appealed to the First-tier Tribunal and can only be challenged by way of judicial review.

16. For the reasons set out above, the First-tier Tribunal has no jurisdiction to consider this appeal.

17. Given the costs regime in judicial review proceedings, it is not appropriate for me to exercise my power under rule 5(3)(k)(i) to transfer the proceedings to another court.

18. In the circumstances, having concluded that the tribunal does not have jurisdiction in relation to the proceedings, I must strike them out under rule 8(2).

Signed Sophie Buckley

Judge of the First-tier Tribunal
Date: 13 September 2023