



Neutral Citation Number: [2023] UKFTT 909 (GRC)

First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2023/0349

Decided without a hearing
On: 19 October 2023

Decision given on: 31 October 2023

Before

TRIBUNAL JUDGE HEALD

Between

WILLIAM MCKINNON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION

1. The appeal is struck out.

REASONS

Procedure

2. On 2 March 2023 William McKinnon (“Mr McKinnon”) made a request for information (“the Request”) to Leeds City Council (“the Council”). On 30 March 2023 (repeated on 11 May 2023) the Council replied to say they did not have the information requested. Mr McKinnon complained to the Information Commissioner (“the Commissioner”) about the Council’s response (“the Complaint”) on 15 July 2023.

3. On 19 July 2023 the Commissioner informed Mr McKinnon that they considered there had been undue delay in making the Complaint and as a result intended to close the case. It was explained that the Commissioner would still consider the Complaint if Mr McKinnon could show that the delay had been caused by a failure of the Council to inform Mr McKinnon of the right to make a complaint or by circumstances beyond Mr McKinnon's control.

4. Mr McKinnon was given until 26 July 2023 to respond. He did so on the 20 July 2023. The Commissioner maintained the original conclusion.

The Appeal

5. On 27 July 2023 Mr McKinnon submitted an appeal ("the Appeal") to the Tribunal. Directions were issued on 11 September 2023 ("the Directions").

6. The Appellant was required, by 25 September 2023, to state the legislation which he relied on to say that the Tribunal had jurisdiction and invited to make representations as to why the Appeal should not be struck out for want of jurisdiction. The Directions at paragraph 4 provided that, if the Appellant did not provide the information required, the Tribunal may strike out the Appeal by rule 8(3)(a) Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("2009 Rules") in addition to the possible strike out by rule 8(2)(a) 2009 Rules.

7. It appears that the Appellant has not responded as required nor as invited by paragraph 3 of the Directions and has not applied to have the Directions considered afresh.

Strike out for lack of jurisdiction

8. The relevant parts of rule 8 2019 Rules state:

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal (a) does not have jurisdiction in relation to the proceedings or that part of them; and (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

9. The Directions provided the Appellant with an opportunity to make representations. He does not appear to have done so.

Decision

10. Section 57(1) FOIA provides for appeals to the Tribunal where a decision notice has been served. In this case a decision notice has not been served. Accordingly, the Tribunal does not have jurisdiction to consider the Appeal and, as required by rule

8(2)(a) 2009 Rules, the Appeal must be struck out unless the matter is transferred by Rule 5(3)(k)(i) of the 2009 Rules.

11. I do not consider rule 5(3)(k)(i) 2009 Rules applies and accordingly the Appeal is struck out.

Signed Simon Heald
Judge of the First-tier Tribunal
Date:19 October 2023