



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

Appeal No: EA/2011/0181

BETWEEN:

ALLAN WISE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

RULING ON STRIKING OUT

1. On 17 September 2011 after considering the Grounds of Appeal, the Commissioner's Response, the Decision Notice and other documents submitted by the parties I issued a preliminary ruling that I was minded to strike Mr Wise's Appeal out in accordance with rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (the 2009 Rules) on the basis that it had no reasonable prospect of succeeding.
2. In accordance with rule 8(4) of the 2009 Rules Mr. Wise was given until 3rd October to submit representations to the Tribunal as to why his appeal should not be struck out.
3. Mr Wise has now submitted those representations and they have been considered.
4. The background to this matter is that Mr Wise requested from Blackpool Borough Council (BBC) a breakdown of a figure of £135000 quoted in the press as the value of a series of thefts of tram cable. Mr Wise was unhappy with the response from BBC and complained to the Information Commissioner. The Commissioner in Decision Notice FS50358805 found that there had been no breaches of the Freedom of Information Act. The Commissioner found in particular that, on the balance of probabilities, BBC did not hold the information requested by Mr Wise.
5. The reasons for my reaching the preliminary decision to strike out Mr Wise's appeal are reproduced in paragraphs 6-11 below.

6. The reason for reaching this preliminary decision is that the analysis set out in the Information Commissioner's (IC) Response to the appeal appears to be entirely correct and not amenable to challenge.
7. The issues which the Tribunal may consider are set out in s.58 FOIA and are correctly summarised in para 11 of the IC's Response.
8. Consequently the only issue that the Tribunal could consider in this matter is whether the IC was correct to determine that the information requested was not held by Blackpool Borough Council.
9. On this point the IC's analysis at para 24 of the Response is correct - **The correct test about whether information is held is the balance of probabilities rather than certainty** The Appellant's argument that there is 'no guarantee that there is no recorded information' is therefore **misconceived**.
10. Mr Wise has not provided in his Grounds of Appeal any clear or comprehensible information as to why the Tribunal might conclude that the IC was wrong to have reached, on the balance of probabilities, the decision he did.
11. Mr Wise's Appeal appears very largely to be based on a misunderstanding of the functions of the IC under the FOIA and, indeed, on the powers of the Tribunal in relation to an Appeal.
12. Mr Wise has been given an opportunity to address these issues by way of additional representations. Those representations have been carefully considered but they do not address the points of concern. Rather Mr Wise has simply restated his initial case in a more belligerent fashion and has emphasised his unhappiness about the manner in which the Commissioner investigated his complaint.
13. Consequently I conclude that Mr Wise's appeal should be struck out.

Angus Hamilton DJ(MC)

Tribunal Judge

Dated: 1 November 2011



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ALLAN WISE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

**RULING ON AN APPLICATION FOR
PERMISSION TO APPEAL BY MR WISE**

1. This ruling relates to an application dated 29 November 2011 by Mr. Wise for permission to appeal against the decision of the First Tier Tribunal (Information Rights) ("FTT") dated 31 October 2011 to strike out his appeal.
2. For reasons that are unexplained Mr Wise refers to this decision as being dated 28 November - which is incorrect. There is some argument therefore that Mr Wise has submitted his application for permission to appeal out of time. However the matter is 'borderline' and I have put this point to one side and have considered the application.
3. **The right to appeal against a decision of the FTT is restricted to those cases which raise a point of law.** The FTT accepts that in form this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended ("the Rules").
4. The FTT has considered whether to review its decision under rule 43(1) of the Rules, taking into account the overriding objective in rule 2, and has

decided not to review its decision because the grounds of the application do not raise an error of law.

5. Similarly although The Appellant in his lengthy Application for Permission to Appeal provides a commentary on his points of disagreement with the decision of the FTT he does not raise any point or error of law.

6. The Tribunal is not persuaded that its original decision was incorrect in fact or in law. It follows that the appeal has no prospect of success and that permission to appeal is refused.

7. Under rule 21(3) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended Mr. Wise has one month from the date this Ruling was sent to it to lodge the appeal with the Upper Tribunal (Administrative Appeals Chamber).

Angus Hamilton DJ(MC)
Information Rights Judge

20 December 2011