



Neutral citation number: [2024] UKFTT 1033 (GRC)

Case Reference: FT/EA/2024/0140

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard by determination on the papers
Heard on: 14 November 2024
Decision given on: 15 November 2024**

Before

TRIBUNAL JUDGE SWANEY

Between

BRISTOL CITY COUNCIL

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION ON STRIKE OUT APPLICATION

1. The respondent's application for the notice of appeal dated 12 March 2024 to be struck out is refused.

REASONS

2. On 19 July 2024 the respondent (the Commissioner) applied for a strike out under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) on the basis that the appeal has no reasonable prospect of success.
3. The Commissioner had received multiple complaints about the appellant's (the Council) failure to comply with the statutory timescale for responding to requests for information made under the Freedom of Information Act 2000 (FOIA). The Commissioner engaged with the Council informally before issuing a practice recommendation on 30 August 2023.
4. The Commissioner considered that the Council had failed to comply with the terms of the practice recommendation and on 14 March 2024, issued an enforcement notice. The Council appeals the Commissioner's decision to issue enforcement notice ENF0988354.

5. In his response to the appeal, the Commissioner requested that the appeal be struck out on the basis that the Enforcement Notice was in accordance with the law and the appeal therefore had no reasonable prospect of success. The Council opposed the application, stating that it did not rely on section 58(1)(a) of FOIA, but instead relied on section 58(1)(b), i.e. that the Commissioner ought to have exercised discretion differently and accordingly, it could not be said that the appeal had no reasonable prospect of success. The Commissioner's application was refused on the basis that the decision as to whether or not the Commissioner ought to have exercised his discretion differently should be taken on the basis of a full consideration of the evidence, without which it was not possible to determine that the appeal had no reasonable prospect of success.
6. The judge who refused to strike the appeal out issued case management directions on 5 October 2024 for the future management of the appeal.
7. On 31 October 2024 the Commissioner made a further application for strike out, this time on the basis that the Council had failed to comply with directions made on 5 October 2024, specifically the requirement to provide a draft index, and because the appeal had no reasonable prospect of success. The basis on which the Commissioner now contends that the appeal had no reasonable prospect of success is that the Council has provided a copy of its action plan as required by the enforcement notice, which includes details as to how the Council will reduce its backlog, and the appeal is therefore academic.
8. The Council opposed the application for strike out, providing evidence that a draft index was in fact served on 18 October 2024 in accordance with directions, together with copies of the relevant documents. The Council advised that pagination would be added once the Commissioner had confirmed whether he had any documents to add to the bundle and the index would also be revised accordingly. I find that the Council complied with the direction to provide a draft index. I therefore decline to strike out the appeal pursuant to rule 8(3)(a) of the Procedure Rules.
9. As to the Commissioner's second ground for seeking strike out, I note that the judge who previously refused to strike out the appeal was aware that the Council had provided a copy of its action plan and refused strike out in that knowledge. The Council's case is that the Commissioner ought to have exercised discretion differently and that the enforcement notice ought not to have been issued at all. Nothing in the Commissioner's application of 31 October 2024 demonstrates that the appeal has no reasonable prospect of success. I refuse to strike the appeal out pursuant to rule 8(3)(c).

CASE MANAGEMENT DIRECTION

1. The appeal will be decided without a hearing on a date after 26 November 2024.

Signed

Date: 14 November 2024

Judge J K Swaney
Judge of the First-tier Tribunal