



**In the First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Before: **Judge Scherbel-Ball**

Appellant: **Kausar Parveen**

Respondent(s): **Information Commissioner**

Case Management Directions

(The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009)
(the "GRC Rules")

It is ordered:-

1. The appeal is struck out pursuant to r.8(3)(c) of the GRC Rules.

REASONS

Background

1. This is an appeal against a decision of the Information Commissioner (the "Commissioner") set out in a Decision Notice dated 12 November 2024 under reference IC-322455-C8C7 (the "Decision").
2. The Decision concerned a request for information under the Freedom of Information Act 2000 ("FOIA") made by the Appellant of West Yorkshire Police ("WYP"). The request was made on 10 July 2024 for:

"Between January 2024 to July 2024:

Total number of motoring offences in Halifax and Wakefield:

Total number of people who were stopped for using a mobile phone?

Total number of people who accepted 6 points and a fine?

List other outcomes from the above offence such as people who challenged this penalty?

List the ethnic make up of the motorist.

Total number of people who challenged the 6 points and a fine and outcome?

From the above data how many of these people were White male?

From the above data how many of these people were White female?

From the above data how many of these people were Asian male?

From the above data how many of these people were Asian female?

From the above data how many of these people were Black male?

From the above data how many of these people were Black female?

How many White males were put/placed in the back of a Police van/car?

How many White females were put/placed in the back of a Police van/car?

How many White females were put/placed in the back of a Police van/car?

How many Asian males were put/placed in the back of a Police van/car?

How many Asian females were put/placed in the back of a Police van/car?

How many Black males were put/placed in the back of a Police van/car?

How many Black females were put/placed in the back of a Police van/car?

During these offences how many Police officers were present?

During these offences how many Police officers were male?

During these offences how many Police officers were female?

During these offences how many Police officers identified as they?

How many of the above were stopped by or had involvement from/with PC 2593?"

3. WYP refused the request on 23 July 2024 relying on s.12 FOIA.
4. WYP's reliance on s.12 FOIA was on the basis that the costs of complying with the request would exceed the "appropriate limit" set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fee Regulations"). For WYP, the appropriate limit is £450. Under the Fee Regulations, this equates to 18 hours.
5. WYP's decision to rely on s.12 FOIA was upheld on internal review.

The Decision

6. The Appellant challenged WYP's reliance on s.12 FOIA before the Commissioner. Paragraph 16 of the Decision records that the Appellant did not

accept that complying with the request would exceed the cost limit in s.12 FOIA. No further details are provided of the basis for this challenge.

7. Paragraphs 17 to 21 of the Decision records the following key facts set out by WYP in responding to the Appellant's complaint to the Commissioner:
 - a. WYP had carried out a search of all records during the period in scope of the request for the offence of a *"use of a handheld mobile phone/device while driving a motor vehicle on a road"* in Halifax and Wakefield which revealed 188 records for that offence.
 - b. WYP considered that a manual search of each of these 188 records would be required to determine (i) the number of people who challenged the penalty and/or 6 point fine, (ii) breakdown of people by gender and ethnicity, and (iii) details surrounding attending officers.
 - c. Since the request also referred to *"Total number of motoring offences in Halifax and Wakefield"* the search would have to be extended beyond the above search. This would reveal a great many more offences which would need to be manually searched for all of the information requested.
 - d. WYP considered that to manually search 188 records for all the information requested in respect of the offence *"use of a handheld mobile phone/device while driving a motor vehicle on a road"* would take just over 31 hours of work, and to search for all of the information requested in respect of all motoring offences would take considerably longer.
8. The Commissioner accepted WYP's estimate of the time involved to comply with the request. The Decision concluded that even if WYP had over-estimated the work involved, if the estimate were reduced by half, this would *"still exceed the 18-hour limit in section 12(1) FOIA by some way"*. The Decision therefore upheld WYP's reliance on s.12(1) FOIA.
9. The Commissioner also held that there had not been any breach of the duty on WYP to provide advice and assistance under s.16 FOIA. This was because WYP had explained to the Appellant in its initial response, and again in its internal review response, that it may be able to provide information relating to the offence of *"use of a handheld mobile phone/device while driving a motor vehicle on a road"* in Halifax and Wakefield broken down by district, notice status and ethnicity. WYP's internal review response also confirmed that additional information concerning gender, or individuals placed in a vehicle and which police officers were present would necessarily entail a manual review of each offence.

The Appeal

10. The Appellant appealed the Decision on 18 November 2024. The Grounds of Appeal were that:

"I understand the information request is a generic request for statistics.

WYP have provided a number but not how they have arrived at the number or how meaningful it is.

It does not provide context or the meaningful data of any challenges or anomalies to WYP decision making process.

Purpose of request for information is to ascertain data to see if there is a racial or gender disparity, a number of the time taken for the organization should process the information.

There is also a public interest story should the data reveal themes or trends."

11. The Commissioner served his Response on 7 January 2025. At the same time as serving his Response, the Commissioner also made an application to strike out the appeal pursuant to r.8(3)(c) of the GRC Rules on the basis that it has no reasonable prospect of success. The basis for the Commissioner's strike-out application was set out in the Response and duplicated his substantive opposition to the appeal. In summary, the Commissioner contended that:

- a. WYP had provided "*clear and informative reasoning*" for the application of s.12 FOIA. The Commissioner therefore disagrees that WYP has not explained how they had arrived at the conclusion that the costs threshold under s.12 FOIA had been reached.
- b. The Request concerned "*the total number of motoring offences in Halifax and Wakefield*" and that for each of those motoring offences, the Appellant had presented 23 further requestions.
- c. It was entirely reasonable to expect that it would take 10 minutes for each of the 188 records to obtain and collate the list of requested information for each record and that further granular detail was not necessary.
- d. In addition to the motoring offence of "*use of a handheld mobile phone/device while driving a motor vehicle on a road*" that there would also be a "*plethora of other types of motoring offences that can be committed*" and that accordingly it is clear that the final cost which would be accumulated trying to comply with the request would be substantially more than the limit set out in s.12 FOIA.
- e. The reason for the Appellant's request is not relevant to the application of s.12 FOIA.

- f. The public interest is not relevant to s.12 FOIA. It is an “*absolute exemption*” under FOIA.
 - g. The Appeal contains no argument of substance or provides evidence to challenge the Commissioner’s finding that WYP is entitled to refuse this request. Accordingly, the appeal should be struck out or dismissed.
12. On 10 February 2025, Judge Mornington directed the Appellant to file a response to the Commissioner’s strike-out application by 4pm on 10 March 2025. The Judge warned the Appellant that a failure to do so could lead to the Tribunal striking out the appeal.
 13. The Appellant has not served either (i) any response to the Commissioner’s Strike-Out Application or (ii) any Reply to the Commissioner’s Response.

Relevant Legal Principles

14. R.8(3)(a) of the GRC Rules provides that a Tribunal may strike out the whole or part of the proceedings if an appellant has “*failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them*”.
15. R.8(3)(c) of the GRC Rules provides that a Tribunal may strike out the whole or part of the proceedings if it “*considers there is no reasonable prospect of the appellant’s case, or part of it, succeeding*”.
16. R.8(4) of the GRC Rules provides that the Tribunal may not strike out part or whole of an appeal under r.8(3)(c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.
17. The main legal principles applicable to the striking out of an appeal under r.8.3(3)(c) of the GRC Rules in the context of an appeal against a decision of the Commissioner under FOIA are conveniently summarized by the Upper Tribunal in *AW v Information Commissioner* [2013] UKUT 30 (AAC). The principles are as follows:
 - a. The power to strike out a case should only be exercised in plain and obvious cases.
 - b. In considering whether to strike out a case, there is a need to look at the interests of justice as a whole.
 - c. The power to strike out a case is a draconian power of last resort.
 - d. A decision to strike out a case involves a “*balancing exercise and the exercise of a judicial discretion, taking into account, in particular the requirements of rule 2 of the GRC Rules*”.

- e. The threshold for striking out a case, namely that there is “no reasonable prospect of the appellant’s case, or part of it, succeeding” is only appropriate “if the outcome of the case is, realistically and for practical purposes, clear and incontestable. It is not usually appropriate if facts relevant to the outcome of the case are disputed”.
 - f. There is no significant difference in meaning between “reasonable prospect of the appeal being successful” and “realistic prospect of success”; in a different context, the latter has been taken to mean the same as “clearly unfounded”.
18. R.4(3) of the Fee Regulations specify that in assessing the costs which may be incurred in responding to a request, the public authority may “only” take account of the costs which it will incur in (a) determining whether it holds the information, (b) locating the information, or a document which may contain the information, (c) retrieving the information, or a documentation which may contain the information and (d) extracting the information from a document containing it.”
19. The application of s.12 FOIA was considered by the Upper Tribunal in *Commissioner of Police for the Metropolis v Information Commissioner and Donnie Mackenzie* [2014] UKUT 0479 (AAC). That case also concerned requests for police statistics. At paragraph 33, Judge Nicholas Wikeley held:

“There is no dispute that the combined effect of section 12 of FOIA and regulations 3(3) and 4(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) is that the cost limit is £450 in this case, or 18 hours’ work. Further, a public authority’s time and cost estimate must be “reasonable”, in the sense of being “sensible, realistic and supported by cogent evidence”: Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency, EA/2007/0004, at [12] and see also Roberts v Information Commissioner, EA/2008/0050 at [10], as approved by the Upper Tribunal in APPGER v Information Commissioner and Ministry of Defence [2011] 2 Info LR 75 at paragraph 27.”

Conclusions

- 20. Applying the legal principles set out above to the grounds of appeal and the facts of this case, I consider that the appeal has no reasonable prospect of success and should be struck out pursuant to r.8(3)(c) of the GRC Rules.
- 21. I have reached this conclusion because:
 - a. While the Commissioner is wrong to state that s.12 FOIA is an “absolute exemption”, the Commissioner is correct in asserting that both (i) the Appellant’s rationale in seeking this information and (ii) the public interest in the information requested are not relevant to the application of s.12 FOIA. S.12 FOIA simply concerns the cost (and hence notional time) which it will take a public authority to comply

with a request. These two issues are therefore irrelevant as a matter of law.

- b. The Appellant is plainly wrong to assert that WYP has not explained *"how they have arrived at the number or how meaningful it [is]"*. WYP have clearly set out the basis for their estimate of the time it would take to comply with the request. This ground of appeal therefore has no realistic prospect of success.
- c. Paragraphs (a) and (b) above address the points raised grounds of appeal. Even adopting the most generous of interpretations to the Grounds of Appeal, and assessing them in the round, I do not consider that the grounds of appeal actually mount an evidential challenge to the factual underpinning of WYP's time estimate. If there was a substantive evidential challenge to the time estimate, I consider it unlikely that it would be appropriate to strike-out the appeal because that evidence would need to be tested, even if the appeal might appear not to be a strong one. However, there is no such evidential challenge in the Grounds of Appeal.
- d. The Appellant has had ample time to mount an evidential challenge to WYP's time estimate in (a) his Grounds of Appeal and/or (b) in response to the strike-out application and the Commissioner's Response. He has not done so. I am mindful that in his Grounds of Appeal, the Appellant identifies reasons for the appeal not to appeal unduly speedily. I have borne those in mind. Nevertheless, the Appellant has not requested any extension of time to comply with Judge Mornington's direction which was made three months ago. Two months have elapsed since the deadline for compliance. Over four months have elapsed since the Commissioner filed his Response and the strike-out application. Absent genuinely exceptional explanation, this is more than sufficient time for the Appellant to have engaged with the Commissioner's arguments. Judge Mornington's direction warned the Appellant that his appeal may be struck out if he did not provide a response. Therefore, the Appellant is aware that his appeal may be struck out, and the requirement of r.8(4) of the GRC Rules is satisfied.
- e. While I bear in mind that the threshold for strike out is a high bar, and that a weak case is not one which has no realistic prospect of success, in this case, I also consider that this is a case with a clear and incontestable outcome in respect of the engagement of s.12 FOIA. First, there is no dispute, let alone an arguable one, that the matters which WYP have considered in reaching their time estimate can be taken into account under the Fee Regulations in assessing the cost of complying with the request. Second, on its face and in the context of the number of requests for statistics which are contained in the request, the estimate appears plainly sensible, realistic and supported by cogent evidence. Indeed, as a matter of common sense, the scope of the request is such

that unless that unless all of the fields of information which are the subject of the request could be determined automatically by using electronic filters, it would seem clear that s.12 FOIA would be engaged. There is no evidential challenge to WYP's case that all the information cannot be electronically filtered to answer the requests and that this will require manual review.

- f. I must and do bear in mind the overriding objective. In addition to requiring the parties to cooperate with the Tribunal, it requires the case to be dealt with fairly and justly, including proportionality and avoiding delay, so far as compatible with proper consideration of the issues. While I recognize that strike-out is an exceptional and draconian measure of last resort, I consider it is appropriate in these circumstances. There is no benefit in the continuation of this appeal, which has no realistic prospect of success. Strike-out under r.8.3(c) of the GRC Rules is therefore the appropriate remedy.

Signed: *Judge Scherbel-Ball*

Dated: 18 May 2025