



Neutral citation number: [2025] UKFTT 00356 (GRC)

Case Reference: EA/2023/0296

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

Heard Remotely

Heard on: 10 March 2025

Decision given on: 27 March 2025

Before

DISTRICT JUDGE WATKIN

Between

JOHN MITCHELL

Appellant

and

**THE INFORMATION COMMISSIONER (1)
THE PARTNERS OF ST NEOTS SURGERY**

Respondents

Representation:

For the Appellant: In person (by telephone)

For the First Respondent: No attendance

For the Second Respondent: Ms Wilsdon of counsel

Decision: The Appeal is dismissed

REASONS

The following terms will be abbreviated:

The Freedom of Information Act 2000	FOIA
The Information Commissioner	IC

Where this decision refers to section numbers, the reference is to sections within FOIA (unless otherwise stated).

BACKGROUND

1. This Appeal dated 13 June 2023 by Mr John Mitchell (the “**Appellant**”) arises following a request for information (the “**Request**”) made by the Appellant to the Partners of St Neots Surgery (“the **Public Authority**”) in a lengthy email dated 25 January 2023 requesting information which has been summarised by the Information Commissioner (the “**IC**”):

*“...[1] supply a copy of the information to which you refer, dated 24-06./2020 and 22/07/2020...[2] Please provide a copy of the unauthorised autopsy report....
[3] Please provide the surgery's annual Cancer statistics from 2014 to 2021 To include the number of patients that have suffered from a similar diagnosis.*

[4] Please provide the surgeries annual statistics from 2014 to 2021 for

Asthma.

COPD

RSV

Stillbirths

Stroke

Heart disease plus conditions.

COVID 19”

2. The matter was referred to the IC's Office and, in a decision notice dated 9 June 2023 (the "**Decision Notice**"), the IC held that:

- "2. Commissioner finds that St Neots Surgery ('the Surgery') doesn't hold the requested autopsy report and complied with section 1(1) of FOIA in respect of that report and two other reports the complainant requested. However, the Surgery disclosed some of the requested statistical information for the period 2018 to 2021 and advised it didn't hold earlier information. It has now identified it holds further relevant statistical information for the period from 2013/2014.*
- 3. The Commissioner's final decision is therefore that the Surgery has breached section 1(1) of FOIA as it hasn't communicated all the relevant information it holds. The Surgery responded to the request outside the 20-working day requirement and so also breached section 10(1).*
- 4. The Commissioner requires the Surgery to take the following step to ensure compliance with the legislation:*
 - Provide the complainant with the further relevant statistical information it has identified it holds for the period from 2013/2014*
- 5. The Surgery must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of Court."*

3. The Appeal was listed for final hearing on 13 February 2024 when it was adjourned due to the Appellant not having been able to download an electronic bundle of the papers prepared for the appeal, nor could he visually access the CVP hearing. It is noted that the Appellant also had some material queries which the Tribunal was not able to address.
4. Following the hearing, case management directions dated 16 February were made at the request of the IC. The directions required the Second Respondent to confirm whether it had complied with the Decision Notice. The Second Respondent subsequently confirmed in emails dated 5 March 2024, 14 May 2024 and 3 June 2024 that all the information required from them by the CMDs was sent to the Appellant by 12 June 2023.

5. The Appeal was reviewed by the Tribunal on 28 October 2024. The Tribunal and noted that the Appellant continued to complain that he had not received “*the full annual statistical information*” but he did not provide any reasons explaining why this information was necessary for the final hearing, neither did he provide any reasons to explain how he considered the Second Respondent was in breach of the directions dated 16 February 2024. The Appellant was, therefore, directed to provide an application setting out the basis on which he required this information for the determination of the Appeal.
6. A further application was made by the Appellant on 3 November 2024 but it was not the application that the Tribunal had specified should be made under paragraph 1 of the CMDs dated 28 October 2024 and the Tribunal issued CMDs dated 12 November 2024 stipulating that the Appellant may be debarred from requesting further disclosure if he does not make the application stipulated by a revised date of 20 November 2024.
7. On 14 November 2021, a further application in form GRC5 was made by the Appellant and the Second Respondent provided correspondence dated 15 November 2024. However, the Appellant’s Application did not indicate whether there had been compliance with the directions dated 16 February 2024.
8. The Appeal was considered by the Tribunal on 26 November 2024. The Tribunal considered that the application of 14 November 2024 did not comply with the requirements of the direction at paragraph 1 of the CMDs dated 28 October 2024, and decided that the application should be considered at a hearing. Prior to the hearing, the Tribunal ordered the Appellant to provide the Tribunal with a list of the documents requested by him within the Request and an indication of whether he had received them. The Tribunal considered that this was necessary to establish the nature of the Appellant’s concern in relation to the Decision Notice.

9. The application dated 14 November 2024 was listed for hearing on 4 February 2025. However, the hearing was adjourned following an application from the Appellant and was relisted on 10 March 2025.

THE RELEVANT LEGAL FRAMEWORK

Jurisdiction

10. The Tribunal's jurisdiction is set out at section 58(1) of FOIA which provides that if the Tribunal considers that the notice against which an appeal is brought is not in accordance with the law, or to the extent that the notice involved an exercise of discretion by the IC that he ought to have exercised his discretion differently, then the Tribunal shall allow the appeal or substitute such other notice as could have been served by the IC; and in any other case the Tribunal shall dismiss the appeal.
11. Rule 8(b) of The Tribunal (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provides:
 - “(2) *The Tribunal may strike out the whole or 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.*
 - (3) *The Tribunal may strike out the whole or part of the proceedings if –*
 - (a) *...*
 - (b) *...*
 - (c) *The Tribunal considers there is no reasonable prospect of the appellants case, or part of it, succeeding.*
 - (4) *The tribunal may not strike out the whole or part of the proceedings under paragraph (2) or (3). (be) or (See) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.*

- (5) *If the proceedings, or part of them, have been struck out under paragraph (1) or (3) (a),”*

CASE MANAGEMENT HEARING

12. The hearing was listed as a Case Management hearing due to the Tribunal not having been able to establish from the documents:
 - a. The basis on which the Decision Notice was challenged.
 - b. Whether the Appellant considered that further documentation was required for the purposes of the final hearing and, if so, why this was considered necessary.
13. At the hearing, Ms Wilsdon confirmed that she considered that the Decision Notice had been complied with.
14. The Tribunal explained the jurisdiction of the Tribunal to the Appellant and that the Tribunal only has jurisdiction if he is contending that the Decision Notice is either incorrect or that the IC had exercised its discretion incorrectly.
15. The Appellant was informed that the Tribunal may consider striking out the Appeal if it considers that the Appeal does not have any reasonable prospect of success.
16. On being asked to set out the basis on which he challenges the Decision Notice, the Appellant repeatedly indicated that he should not have to set out his submissions as they have already been provided. When pressed, he complained that the Second Respondent had failed to comply with the Decision Notice. It was explained to the Appellant that if he considers that the Second Respondent has not complied, he should take enforcement action and that his present application is to challenge the Decision Notice.

17. Eventually, after encouragement, the Appellant indicated that he considered that the Decision Notice was incorrect for the following reasons:
- a. Paragraph 2 was wrong because he had never requested information from 2013, only information from 2014.
 - b. Paragraph 5 is wrong because the IC has not certified the non-compliance by the Second Respondent to the High Court pursuant to section 54.
 - c. Paragraph 6 is wrong because it does not set out the Request in full.
 - d. Paragraph 7 is wrong because the Second Respondent did not provide all of the information but has provide financial information within the reports disclosed which was not requested.
 - e. The information provided has been grouped together and not allocated per year as requested.

ANALYSIS

18. The Tribunal has carefully considered each of the reasons provided by the Appellant in support of the Appeal.
19. It is apparent from the contents of the Decision Notice and information provided by the Second Respondent that it holds information in relation to annual periods which span from 1 April of one year to 31 March of the next. This is a method of storing information in yearly batches. During the hearing, Ms Wilsdon refers to these periods as financial years, as opposed to calendar years (which would run from 1 January to 31 December).
20. Within the Decision Notice, the IC held that the Second Respondent must provide information for the period from 2013/2014. As the Second Respondent holds information in yearly batches from 1 April to 31 March, the Tribunal interprets the IC to be requiring that information is produced by the Second

Respondent from 1 April 2013 onwards. Whilst the Tribunal acknowledges that this would result in more information being provided than that from 2014 onwards, as the information will contain the information required by the Request. The Tribunal finds that the Decision Notice is sufficient to meet the requirements of the Request.

21. The Tribunal does not accept that the IC is wrong for not setting out the Request in full. The IC is entitled, in the interests of proportionality, to summarise the Request, provided it does so accurately. As the Appellant was not able to say that the summary was inaccurate and as the Tribunal considered, from cross-referencing the Request with the summary, that the summary was accurate, the Tribunal does not consider that the Appellant has any reasonable prospect of satisfying the Tribunal that the Decision Notice was incorrect in relation to the summary.
22. In relation to the Second Respondent's failure to provide the information required by the Decision Notice, this is not a matter over which the Tribunal has jurisdiction under the Appeal. If it is the case that the Second Respondent has not complied, the Appellant must request that the IC exercises its powers under section 54.
23. The Appellant complains that the statistics provided contain financial information. The Appellant appears to raise this as a compliance issue. As stated above, the Tribunal has no jurisdiction in relation to issues of compliance. In any event, Ms Wilsdon points out that providing additional information does not detract from compliance.
24. The Request specified that the Second Respondent provided "*annual...statistics from 2014 to 2021*". The Appellant did not request that the information be provided in calendar years. The Decision Notice requires that the information is provide from the period from 2013/14. The Decision Notice does not specify that the annual information must be set out in a certain manner, provided that

the information is in yearly batches. As the Request does not specify that the information should be set out in calendar year batches, the Tribunal does not consider that the IC erred. Furthermore, the Second Respondent may not hold the information in other formats. Therefore, if the information is required in certain formats, the Appellant should specifically request that in order that the Second Respondent can respond in the full knowledge of what is required.

DECISION

25. At the hearing, the Tribunal clearly informed the Appellant of the nature of its jurisdiction and that, if the Appellant was unable to persuade it that the Appeal had a reasonable prospect of success, the Tribunal may strike it out.
26. The Appellant was given a full opportunity to set out the basis of his Appeal and was unable to satisfy that the Tribunal that the Appeal had any reasonable prospect of success.
27. Therefore, the Appeal is struck out pursuant to rule 8(3)(c).

APPEAL

If either party is dissatisfied with this decision, an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Administrative Appeals Chamber, against decisions of the First-tier Tribunal in Information Rights Cases (General Regulatory Chamber). Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Judge R Watkin