



Neutral citation number: [2025] UKFTT 01060 (GRC)

Case Reference: FT/EA/2025/0254

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

**Decided without a hearing
Decision given on: 5 September 2025**

Before

JUDGE SAWARD

Between

SONG OF THE WILD SWAN LTD

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is struck out under Rule 8(2)(a) because the Tribunal does not have jurisdiction to hear it and Rule 8(3)(c) because there is no reasonable prospect of it succeeding.

REASONS

1. On 4 June 2025 the Appellant submitted a Notice of Appeal to the Tribunal which was expressed to be an appeal against a decision of the Information Commissioner ("the Commissioner") dated 19 June 2025 made under the Freedom of Information Act 2000 ("FOIA"). It emerges that the appeal concerns the Commissioner's letter dated 18 June 2025 declining to consider the Appellant's complaint about Oxford City Council on the grounds that the complaint is frivolous under section 50(2)(c) FOIA.
2. By application dated 12 August 2025, the Commissioner applied to strike out the appeal. Accompanying the application was a combined statement of grounds and response under Rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the 2009 Rules"). This prompted the Appellant to

make a counter application on 22 August 2025 to strike out the Commissioner's response.

3. In essence, the Commissioner maintains that he has not made a Decision and so there can be no appeal, and the Tribunal has no jurisdiction.
4. The Appellant requested an extension of time to reply. In Case Management Directions dated 26 August 2025, the Appellant was given 21 days from the date of service of the Directions to file any representations in response to the strike out application. On that same day, the Appellant submitted a 26-page reply plus supporting witness statement.
5. The Appellant has requested a hearing of the strike out application in reliance on Rule 32 of the 2009 Rules. However, under Rule 32(3) the Tribunal may dispose of proceedings striking out a party's case without a hearing. Having regard to the overriding objective within Rule 2 to deal with cases fairly and justly, the Tribunal is satisfied that it has sufficient information to decide the application without a hearing and that it would be proportionate to do so. In reaching this view, the Tribunal bears well in mind that strike out is a draconian measure.
6. Logically, the Commissioner's application should be considered first. If that application succeeds and the appeal is struck out, then the appeal proceedings are brought to an end. There would be no response to the appeal capable of being considered.

Background

7. The original request made to the Council on 23 August 2024 concerned a liability order against the Appellant. The request stated: *"They have refused to provide a copy of the liability order they obtained circa November last year and have refused to indicate the exact date they applied to the magistrates court for the liability order and copies of the evidence they provided to the magistrate. Can you please ensure that if they are willing to provide all this to you by return so you can provide it to me by next Thursday then there is no need for me to apply for this under the FOI act. If they are not willing and or I do not get it by next Thursday please take this as a request for information under the FOI act."*
8. The reasons given in the Commissioner's letter of response for concluding that the complaint was frivolous were in summary: (i) the Council has confirmed that the requester already had the information; (ii) evidence from the Council that a copy of the liability order was posted to the requester on 1 August 2023; (iii) the Council had stated that it believed the requester's correspondence indicated awareness of the contents of the order; (iv) within the request, the reference number for the liability order appeared to have been provided, which seemed to show that the requester had a copy of the order; (v) the requester will be aware of the date the order from correspondence to the requester about it; (vi) the requester will already hold the information requested from letters regarding payment of business rates; and (vii) due to re-evaluation of the property in question, the unpaid charges in the liability order

were cancelled. The Commissioner concluded that the complaint was an attempt to pursue matters already addressed by the Council. Furthermore, the Commissioner considered that the request does not have value or purpose in terms of public interest in the information sought.

9. The outcome sought by the Appellant is to allow the appeal and issue a substituted notice, dependant on the response of the Commissioner, guidance on section 50(2)(c), or alternatively transfer to the Commissioner for review decision or transfer to another court if the Tribunal lacks jurisdiction.

Discussion and conclusions

10. Under Rule 8(2) the Tribunal *must* strike out the proceedings if it does not have jurisdiction to deal with them. Rule 8(3)(c) provides that the Tribunal *may* strike out the whole or a part of the proceedings if the Tribunal considers there is no reasonable prospect of the appellant's case or part of it, succeeding. The application for strike out is made pursuant to both provisions.
11. Rule 8(4) provides that the Appellant must be given an opportunity to respond to such an application. The Appellant queried the period of time given to reply to the strike out application. The period of 28 days is to file a response to a notice of appeal. I consider that the Appellant has been given reasonable opportunity to reply and has taken the opportunity to do so in filing their detailed reply to the strike out application.
12. Under section 50(1) of FOIA, any person (referred to as "the complainant") may apply to the Commissioner for a decision on whether a request for information.... has been dealt with in accordance with the requirements of Part I. On receiving an application under section 50(1) the Commissioner *shall* make a decision unless it appears to him that certain listed circumstances exist. For instance, the Commissioner does not have to make a Decision if it appears to him "that the application is frivolous or vexatious" (section 50(1)(c)).
13. Section 50(2) sets out what the Commissioner must do in practice in response to an application. If the Commissioner is not going to make a Decision, he has to notify the complainant and tell them the grounds for not doing so. If he is going to make a Decision, he has to serve notice of his Decision (referred to as a 'decision notice') on the complainant and the public authority.
14. In this case, the Commissioner decided that the application was frivolous and that he did not need to make a Decision. In accordance with section 50(3)(a) he notified the Appellant that he had not made a Decision as a result of the application and of his grounds for not doing so. As the Commissioner did not make a Decision, he did not need to serve a decision notice under section 50(3)(b).
15. The main thrust of the Appellant's case against the strike out application alleges an abuse of process by the Commissioner. The Appellant argues that the Commissioner's brief facts in the strike out application are fake, false and frivolous

and solely an attempt to try and evade and block the release of information. It is submitted that recent evidence obtained shows that the case officer only used section 50(2)(c) to defeat issuing a decision notice. By law and their own admission, the Commissioner did not have an option not to use a decision notice because the public authority had breached sections 10 and 16 of FOIA. It is submitted that the strike out is made in bad faith and perpetuates the abuse of process.

16. The Appellant's witness statement insists that a copy of the requested liability order and other evidence has never been received. This seeks to contradict the reasons given in the Commissioner's letter of 18 June 2025.
17. However, the right of appeal to the Tribunal set out in section 57(1) of FOIA states "*Where a decision notice has been served, the complainant...may appeal to the Tribunal against the notice*". Section 58 concerns the Tribunal's powers "on appeal under section 57". It can only be used where there is an appeal under section 57, which cannot be circumvented. Without a Decision, or more specifically, a decision notice issued in relation to the public authority's response to the complainant's request, there is no right of appeal to this Tribunal.
18. That position is supported by *Dransfield v Information Commissioner* [2020] UKUT 356 (AAC) where the Upper Tribunal said at paragraphs [5-6]: "5 ..at the root of this appeal is a single and relatively simple question. *If the Information Commissioner states to a FOIA requester that she is not going to make a decision on his complaint because it is vexatious, does that complainant have the right of appeal to the First-tier Tribunal to challenge that refusal?* 6. The short answer to that question is No."
19. In conclusion, the Tribunal only has jurisdiction to consider an appeal where a decision notice has been served. No decision notice has been served however much the Appellant considers there should have been. The grounds of appeal in this case do not engage the Tribunal's statutory jurisdiction under section 57 and 58 FOIA. As such, there is no jurisdiction for the Tribunal to consider the proceedings (Rule 8(2)(a)).
20. In line with Rule 8(2)(b), I have considered whether the appeal should be transferred to another court of tribunal. I have concluded that it is not appropriate to exercise the Tribunal's power under Rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings, given the costs regime applicable in judicial review proceedings.
21. Accordingly, the appeal is struck out under Rule 8(2)(a) because the Tribunal does not have jurisdiction to hear it and Rule 8(3)(c) because there is no reasonable prospect of it succeeding. It follows that the Appellant's application to strike out the Commissioner's response does not fall to be considered.

Signed: Judge Saward

Date: 4 September 2025