



NCN: [2023] UKFTT 00352 (GRC)

Case Reference: EA/ 2022/0407

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Heard: by determination on the papers
Heard on: 6 April 2023
Decision given on: 6 April 2023
Before: Judge Alison McKenna

ROBERT CONSTANT

Appellant

- and –

THE INFORMATION COMMISSIONER

**First
Respondent**

-and-

THE HOUSE OF COMMONS

**Second
Respondent**

STRIKE OUT RULING:

This appeal is struck out under rule 8 (2) (a).

1. The Information Commissioner's Decision Notice in this case found that the Second Respondent was entitled to rely on s. 34 (1) FOIA. In filing its response to the appeal, the Second Respondent provided a certificate, issued by Sir Lindsay Hoyle on 25 January 2023, pursuant to s. 34 (3) FOIA. The statute provides that such a certificate is conclusive evidence that an exemption from s. 1(1) (b) FOIA is required to avoid infringing the privileges of either House of Parliament.
2. Judge Griffin issued Case Management Directions on 2 February 2023, in which she invited the Appellant's submissions pursuant to rule 8 (4) of the Tribunal's Rules, in respect of a proposed strike out of the Notice of Appeal. She explained that she would later consider whether a strike out under rule 8 (2) (a) or rule 8(3) (c) of the Tribunal's Rules would be appropriate in view of the issue of the certificate.
3. In his submissions dated 23 February 2023, the Appellant submitted that Sir Lindsay Hoyle's certificate did not in fact relate to the subject matter of his information request, because it concerned a decision to prohibit an organisation from holding events on the Parliamentary Estate, whereas the Appellant's information request (as recited at paragraph 5 of the Decision Notice dated 8 November 2022) was for information regarding the banning of an individual. He submitted that the certificate was therefore ineffective.
4. On 28 February 2023, I invited both Respondents to make further submissions on this new point. I am grateful to them both for pointing out in their submissions dated 15 March 2023 that the redacted word in paragraph 5 of the Decision Notice, which quotes the Appellant's information request is 'Society'. They both submit that the certificate is therefore relevant to the subject-matter of the request, as it relates to the organisational ban.
5. The Appellant's Reply dated 29 March 2023 raises a number of new issues which do not concern me in making this ruling. He continues to dispute the engagement of the certificate and submits that he will be denied justice if this appeal is struck out. He has not confirmed (as Judge Griffin requested) whether he intends to take Judicial Review proceedings in relation to issue of the certificate. I note he is still within the three-month time limit for issuing proceedings in the Administrative Court.
6. Having considered all the parties' representations carefully, I am now satisfied that this Tribunal lacks jurisdiction to determine the Appellant's Notice of Appeal. This is because the only issue in dispute is the engagement of s. 34(1) FOIA by the information request and I find that the certificate is valid to provide conclusive evidence of that engagement. I am now satisfied that the information request recited in the Decision Notice is one for information about an organisation and not an individual, contrary to the Appellant's submission. I therefore conclude that the certificate places the engagement of s. 34 FOIA beyond the discretion of this Tribunal because, as there is conclusive evidence of the issue in dispute, the Tribunal has no jurisdiction to find otherwise, allow the appeal, or make a substituted Decision Notice.
7. In all the circumstances I have concluded that the Notice of Appeal is subject to the mandatory strike out procedure pursuant to rule 8 (2) (a) of the Tribunal's Rules. I direct accordingly.

(Signed)

Dated: 6 April 2023

Judge Alison McKenna

