



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS) UNDER
SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No: EA/2012/0055

BETWEEN:

KETAN PATEL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

RULING

The parties are referred to as “the Appellant” and “the Commissioner”, respectively.

INTRODUCTION

1. The purpose of this Ruling is to address the Commissioner’s application for the Appellant’s appeal against the Commissioner’s Decision Notice dated 21 February 2012, to be struck out pursuant to Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the “Rules”).
2. Rule 8(3)(c) provides that the Tribunal may strike out the whole or part of the proceedings if the Tribunal considers there is no reasonable prospect of the appellant’s case, or part of it, succeeding.
3. Pursuant to Rule 8(4), the Tribunal may not strike out the whole or part of the proceedings under Rule 8(3)(c) without first giving the Appellant an opportunity to make representations in relation to the proposed striking out.

4. Under paragraph 15 of the Practice Statement issued by the Senior President of Tribunals on 1 October 2010, a decision as to whether to strike out proceedings under Rule 8 must be made by a Judge alone.

THE REQUEST FOR INFORMATION AND THE COMMISSIONER'S FINDINGS

5. The Appellant is or has been in dispute with the University of Manchester ("UoM") and the University of Manchester Intellectual Property Limited ("UMIP") in connection with certain intellectual property rights. UMIP is a company set up by UoM to deal with the commercialisation of intellectual property.
6. This appeal concerns a request for information made by the Appellant to UoM on 13 June 2011. The Appellant also made a request for information to UMIP which was the subject of a separate appeal under EA/2012/0038. That appeal was struck out on 10 July 2012.
7. The Appellant's request to UoM was for information held by it or its subsidiary companies about him or his company, DCN Corporation Ltd.
8. UoM replied on 15 June 2011. It explained that the subsidiary companies were separate organisations and that the Appellant should make his request to them directly. As regards information held by UoM, it requested further particulars from him to identify the information requested.
9. Following telephone discussions with the Appellant, UoM wrote to him on 8 July 2011 informing him that they did not hold any information relevant to his request, except for information that the Appellant had himself sent to UoM.
10. The Appellant complained to the Commissioner. The Commissioner found that UoM held more information than it had identified. In particular, it held two types of information coming within the scope of the Appellant's request:
 - Information contained in communications relating to the Appellant's thesis while he was a PhD student at UoM; and
 - Information relating to UoM's defence of an industrial injury claim made by the Appellant.
11. In respect of the first category of information, the Commissioner found that the information was the complainant's own personal data and was exempt, therefore, under section 40(1) of the Freedom of Information Act 2000 ("FOIA"). However, the

information had been provided to the Appellant under the Data Protection Act 1998 (“DPA”) (and has been the subject of a separate assessment by the Commissioner under section 42 of the DPA).

12. In relation to the second category of information, the Commissioner found that the information was exempt under section 42 of FOIA (legal professional privilege), and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. He also found that in part, the information was also exempt under section 40(1) of FOIA (personal data of the Appellant). To the extent that the information constituted emails sent by the Appellant to the UoM, the Commissioner considered that this would be exempt under section 21 of FOIA (information accessible to the applicant by other means), although he noted that the Appellant had said that he did not in fact want this information.

GROUNDS OF APPEAL

13. The Appellant’s grounds of appeal are very difficult to comprehend. I have not found it possible to deduce from them what issue the Appellant takes, if any, with the Commissioner’s Decision Notice. This is not a criticism of the Appellant. I am aware that he is unrepresented.
14. In addition to the grounds of appeal, the Appellant has also set out his position in various e mails to the Tribunal. Unfortunately, these do not explain his grounds of appeal any more clearly. They refer extensively to the dispute between himself and UoM concerning the ownership of certain intellectual property rights. They do not explain in what respect the Commissioner’s Decision Notice is wrong.
15. Bearing in mind that the Appellant is unrepresented, a telephone directions hearing was fixed in relation both to this appeal and EA/2012/0038 (in respect of which there had been similar difficulties). The Appellant was informed in advance that he would have an opportunity, at that hearing, to explain the basis on which he considers the Commissioner’s Decision Notice was wrong before the Tribunal ruled on the Commissioner’s application for the appeal to be struck out.
16. The Appellant said, initially, that he was not available on the dates offered for the directions hearing, without giving any reason why he was not available. He requested a lengthy extension of some 14 weeks in order that he could secure legal representation. He did not say why he needed such a long extension, how it would enable him to obtain legal representation, nor indeed was there any

indication that he was in the process of obtaining legal representation. In these circumstances, and bearing in mind the overriding objective in paragraph 2 of the Rules, I refused his application. However, I explained to him that many appellants are unrepresented before the Tribunal and that the Tribunal does try, to the extent it can, to assist parties who are unrepresented.

17. The directions hearing took place on 31 May 2012. I explained to the Appellant that the Tribunal only has jurisdiction over requests for information coming within the scope of FOIA. It has no jurisdiction over civil or other wrongs, and therefore cannot assist him with his intellectual property dispute. I further explained that to the extent that the information he had requested comprised his own personal data and was exempt, therefore, under FOIA, he could request the information by way of a subject access request under section 7 of the DPA (and indeed that part of his request had been dealt with on that basis), although the Tribunal had no jurisdiction in relation to that process. I also explained to the Appellant the basis on which the Commissioner had reached his findings as set out in the Decision Notice, and invited him to say which findings he considered were wrong. Regrettably, this did not lead to any real clarification of his grounds of appeal.
18. One point that did emerge, however, had to do with the information which the Commissioner considered was exempt under section 42(1) of FOIA. The Commissioner explained that the information withheld under this exemption related to the industrial injuries claim referred to in paragraph 10 above. The Appellant made it clear that he was not interested in that information. However, there seemed to be some doubt in his mind as to whether other information had also been withheld under this exemption. I directed the Commissioner to provide to the Tribunal, on a closed basis, the material which he had found was exempt under section 42(1). While the information could not of course be disclosed to the Appellant without defeating the purpose of the appeal, I explained to the Appellant that the Tribunal would review the information to ascertain whether it does in fact relate only to the industrial injuries claim. Having reviewed the material, I am satisfied that it does relate only to the Appellant's industrial injuries claim against UoM.
19. Bearing in mind that the Appellant is unrepresented, I gave him a further opportunity, after the directions hearing, to put forward any other grounds of appeal. Further emails were received from the Appellant. However, these did not explain how and in what respect, if any, the Appellant takes issue with the Commissioner's Decision Notice.
20. They did, however, include a renewed application for an extension of time. The application was refused. The Appellant submitted evidence that he had been unsuccessful in obtaining

representation from two firms of Solicitors in relation to his intellectual property rights dispute with UoM. However, there has been no indication that he is in the process of obtaining representation in relation to his information rights request and on that basis, I was not satisfied that an extension of time would make any difference to his ability to present his appeal.

IS THERE A REASONABLE PROSPECT OF THE APPELLANT'S CASE OR PART OF IT SUCCEEDING?

21. There is nothing in the Appellant's grounds of appeal, nor in his e mail submissions, which challenge, in any substantive way, the findings in the Decision Notice, or says why he thinks the Commissioner was wrong to reach the findings that he did.
22. Although I recognise the disadvantage the Appellant feels at not being represented, he has been given ample opportunity to explain in his own way, what he takes issue with as regards the Commissioner's findings, but no substantive points have emerged.
23. On this basis, I find that there is no reasonable prospect of the Appellant's appeal or part of it, succeeding.

DECISION

24. For the reasons set out above, this appeal is hereby struck out under Rule 8(3)(c).

Ms A Dhanji

19 July 2012

Judge