



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

**NCN: [2023] UKFTT 00257 (GRC)  
Appeal Reference: EA.2022.0364**

**INFORMATION RIGHTS**

**Before**

**JUDGE REBECCA WORTH**

**Between**

**LIAM HARRON**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**and**

**ROTHERHAM METROPOLITAN BOROUGH COUNCIL**

**Second Respondent**

**DECISION AND REASONS**

**Background**

1. On 19 October 2022, the Information Commissioner's Office ("ICO") issued a Decision Notice, reference IC-139592-P9T5, under Section 50 of the Freedom of Information Act 2000 ("FOIA"). The Decision was:
  - 1.1 Rotherham Metropolitan Borough Council ("the Council") had, during the ICO investigation, provided Mr Harron with the information he sought, withholding only some personal data.
  - 1.2 The Council, on the balance of probabilities, did not at the date of request (20 July 2021) hold more information in connection with the request.
2. By Notice of Appeal dated 15 November 2022 Mr Harron (who had made the FOIA request to Rotherham Metropolitan Borough Council) lodged with this Tribunal proceedings in respect of that Decision Notice. The Grounds of Appeal question whether the Council has properly addressed concerns mentioned in an Upper Tribunal

Appellant: Llam Harron  
Date: 06 March 2023

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appeal (which involved a different request by Mr Harron to the Council) and comments made by the GRC's Chamber President Mark O'Connor in other cases. The outcome he seeks is pasted below, to keep the same formatting and wording:

**6 Outcome of appeal or application or application**

Please tell us what outcome you are seeking from your appeal or application

A comprehensive and adequate scrutiny of the response by RMBC to the Right Of Access Request - Freedom Of Information Act Request (RAR-FOIAR) submitted by me on 30.7.21 for a copy of all the communications that arose as a consequence of my email to officer Christopher Burton and then my email to Corporate Comms on 31.7.20.

3. In their response dated 11 January 2023 the ICO applied for a strike out under rule 8(3)(c) of the GRC Rules<sup>1</sup>, arguing:  
  
... the Appellant has failed to advance any argument as to why the Commissioner's Decision Notice is not in accordance with the law or the Commissioner ought to have exercised his discretion differently,....
4. The Council also applied for strike out of this appeal.
5. Mr Harron has made representations about the strike out applications, submitting as follows (again, pasted to preserve formatting and precise wording:

**Submission**

- 1 The IC has failed to provide adequate evidence that that IC has adequately scrutinised RMBC's response to the Information Request I submitted to RMBC on 30 July 2021. The IC has therefore failed to adequately carry out what is required in law. The IC has erred in law.
- 2 In particular, the IC has failed to provide evidence from RMBC as to how and why the text sent from Lesley Hatton (Executive Personal Assistant to Chief Executive) to Sharon Kemp (Chief Executive) referred to in 'Sup Doc 5 FOI-433-21/22' was deleted from both mobile phones.
- 3 This is one of a number of clearly evidenced cases where the IC has erred in law.
- 4 It is a matter of dismay to many of those raped as children in Rotherham that the IC continues to persist in providing evidence of an inadequate scrutiny of RMBC's responses to Information Requests to uncover the truth about the industrial scale of the rape of children in Rotherham.
- 5 Victims and survivors of child rape in Rotherham regard the failures of the IC as a matter of scandal that will prove deeply damaging to the reputation of yet another authority that had the opportunity to help uncover the truth about matters related to the industrial scale of the rape of children in Rotherham.
- 6 It is my strong view that the IC has failed to adequately scrutinise RMBC's actions in this case and it now falls to the First-tier Tribunal to act decisively on this matter by moving to a Hearing.

The law

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2010/43) as amended

Appellant: Llam Harron  
Date: 06 March 2023

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6. So far as it is relevant, the GRC Rules provide the following about striking out an appeal:

**Striking out a party's case**

8. (1) ...
- (2) ...
- (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 appellant's case, or part of it, succeeding.

Consideration

7. As he is the appellant, and the person who says that the Decision Notice was wrong, it is for Mr Harron to persuade the Tribunal that, on the balance of probabilities, more information was, at the date of his request, held by the Council. It seems that the Grounds of Appeal could be summarised as: "In the past it has been proven that Rotherham Metropolitan Borough Council have not provided me with information when I asked for it, therefore they have done the same again now".
8. What Mr Harron has not done is to assert why he says that on this occasion the same has happened and that there is further information held. He refers to a text but seems, from his wording, to accept that it "was deleted" therefore, it is not held and not capable of disclosure. It is not in dispute that he was sent some information; he does not challenge the application of Section 40 (personal data) to the information withheld from him. He seeks to assert that, due to past findings, on this occasion there must be more held. Without some evidential basis for that assertion, it is difficult to see how Mr Harron could persuade a Tribunal that the Tribunal should allow his appeal and issue a Substituted Decision Notice.
9. I acknowledge that the Tribunal does have an "investigative" role within proceedings brought before it. However, it is not such a wide role as to usurp those of a regulator or to do what an appellant should do, which is to bring some doubt on the veracity of conclusions made by a regulator.
10. On balance, I do not consider that the Grounds of Appeal set out a proper challenge to why for this request, Mr Harron says that more information is held. So far as his grounds seem to seek some sort of general review into information rights practices,

Appellant: Llam Harron

Date: 06 March 2023

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that is outside the scope of this Tribunal's remit – Parliament only gave powers to this Tribunal to consider appeals against Decision Notices issued by the ICO.

Decision

11. For the reasons set out above, and pursuant to rule 8(3)(c) of the GRC Rules, I strike out the appeal as having no reasonable prospect of succeeding.

Signed *District Judge Worth*  
**District Judge Worth, authorised to sit as a Tribunal  
Judge in the GRC, dated 06 March 2023**