



Neutral citation number: [2024] UKFTT 777 (GRC)

Case Reference: FT/EA/2024/0133

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

**Decided without a hearing  
Decision given on: 29 August 2024**

**Before**

**JUDGE LYNN GRIFFIN**

**Between**

**THOMAS DEACON ALSO KNOWN AS SIMON SHANNON**

Appellant

**and**

**(1) INFORMATION COMMISSIONER  
(2) CIVIL AVIATION AUTHORITY**

Respondents

**Decision:** The appeal is struck out under rule 8(2)(a) Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

## **REASONS**

1. This appeal is struck out under rule 8(2)(a) Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 on the basis that the Tribunal does not have jurisdiction to deal with an appeal in relation to a request which was made using a pseudonym. In summary, this is because such a request is not a valid request for the purposes of section 8(1)(b) of Freedom of Information Act 2000 (“the Act”).
2. Furthermore, a complaint under section 50 of the Act should be made in a person’s real name as should an appeal or application to this Tribunal
3. The background is not in dispute :

- a. On 20 December 2023 the Appellant submitted a request to be provided with information to the Civil Aviation Authority (the public authority) via the 'What do they know' website using the name Simon Shannon. At no stage did he inform the public authority that he was using a pseudonym.
  - b. On 16 January 2024 the Appellant used the same pseudonym to make his section 50 complaint to the Information Commissioner.
  - c. On 5 April 2024, the Information Commissioner issued the decision notice (reference IC-268851-X5C1) to Simon Shannon. The decision of the Information Commissioner was that the public authority had provided an answer to the question posed in the second part of the request and did not hold further information within the scope of the request.
  - d. At no stage did the Appellant inform the Information Commissioner that he was using a pseudonym.
  - e. On 9 April 2024, the Appellant filed a Notice of Appeal in which he gave his name as Simon Shannon.
  - f. At paragraph 1.2 of the Notice of Appeal, the Appellant stated that his address was the Houses of Parliament, St Margaret Street, London, SW1A 0AA.
  - g. In his Response of 21 May 2024, the Information Commissioner invited the Tribunal to direct the Appellant to provide his real residential address.
  - h. On 22 May 2024 the Appellant asked that the appeal in the name of Simon Shannon be struck out and a new, out of time, appeal be issued in his real name of Thomas Deacon. The new appeal form included the following passage  

*: "...a pseudonym name "Simon Shannon" was used at the initial request stage, and the appeal to the ICO Decision Notice...I wrongly appealed to the General Regulatory Chamber using the pseudonym name..."*

The reason provided by the Appellant for using a pseudonym was *"due to wanting to request anonymity"*. As I understand it this was because he did not want the public authority to know who was making the request. There is no application for anonymity in these proceedings.
  - i. On 1 August 2024 the Information Commissioner applied to strike out this appeal for lack of jurisdiction.
  - j. The Appellant responded to that application in emails and with a witness statement confirming that his real name is Thomas Deacon and that he used the name Simon Shannon.
4. Part 1 of the Act creates a duty and framework for public authorities to respond to a "request for information", see section 1 which reads

*Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him*

5. A person may ask a public authority a question or ask for information but the duty in Part 1 of the Act will not be triggered unless the query is a “request for information”. A requestor does not have to specify that a query is made under the Act so a public authority should consider whether questions or queries it has received are “requests for information” and thus should be dealt with under the Act.

6. Section 8 of the Act sets out the requirements for question or query to amount to a request for information. Section 8 reads as follows so far as is relevant

*8. – Request for information.*

*(1) In this Act any reference to a “request for information” is a reference to such a request which –*

*(a) is in writing,*

*(b) states the name of the applicant and an address for correspondence, and*

*(c) describes the information requested.*

7. Section 8(1)(b) defines a request for information as one which states “...*the name of the applicant...*” The particular use of the word “...*the...*” in relation to the name of the applicant requestor indicates the Act requires the Applicant’s real name. If it were otherwise then the Act would have said “a name”.

8. The Government’s Explanatory Notes say that “*An applicant will have to identify himself for the purposes of the application, but the identity of the applicant is otherwise of no concern to the authority...*”. The notes go on to point out that there are circumstances in which the applicant’s identity is relevant.

9. A requirement to provide a “real name” is consistent with the scheme of the Act. Although an applicant’s identity is usually of no relevance to the question of whether an exemption may be engaged, there are some circumstances where the applicant’s identity can be relevant; for example where a public authority is considering:

a. aggregating the cost of requests (s12);

b. refusing a request as vexatious or repeated (s14);

c. whether information is reasonably accessible to the applicant requester by other means (s21);

d. whether the applicant requester is requesting their own personal data (s40).

10. While the Information Commissioner's guidance acknowledges there will be situations where the use of a pseudonym may be acceptable these can be generally described as situations where a person is commonly known by a name that is different from their "real name". This case may be distinguished from those types of circumstances because the name "Simon Shannon" was adopted by Thomas Deacon in order to avoid being linked to the request for information.
11. When an applicant uses a pseudonym to make a request to a public authority that authority is deprived of the opportunity to consider whether those parts of the Act to which the applicant's identity is relevant apply to the request.
12. In all the circumstances of this case, applying the requirements of the Act, I have decided that the question sent by Thomas Deacon to the public authority using a deliberate pseudonym was not a "request for information" under the Act.
13. The right to complain to the Information Commissioner is found in section 50 of the Act which reads as relevant
  - 1) *Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.*
14. The Information Commissioner will then consider, inter alia, whether a "request for information" has been made and whether it has been correctly dealt with pursuant to the Act. The Information Commissioner has no jurisdiction under the Act to deal with a complaint about a question or query posed to a public authority unless it is a "request for information" within section 8 of the Act.
15. I have concluded that there was no request for information and so therefore the Information Commissioner, unknown to him, had no power to consider a complaint under section 50 of the Act, nor to issue a decision notice. Moreover the Information Commissioner was deprived of the opportunity to properly investigate and consider the complaint because he was not aware of the complainant's true identity and the fact that the public authority was also unaware of his real name.
16. Thomas Deacon has now provided his name and address and an explanation for the use of a pseudonym but in doing so he cannot retrospectively change the legal character of the question he asked of the public authority nor the complaint he made to the Information Commissioner. Nor can he imbue the Information Commissioner with jurisdiction where none was present.
17. The Tribunal draws its jurisdiction from that of the Information Commissioner. The Act provides in section 57 that an appeal may be brought from a decision notice. Such a decision is made pursuant to section 50, see above. If there is no "request for information", there can have been no decision notice within the meaning of the Act and thus there is nothing within the scope of the powers within the Act for the

Tribunal to consider. The Tribunal has no general power of supervision over the Information Commissioner or public authorities, there is no inherent jurisdiction.

18. Furthermore, section 61(1) of the Act provides that Tribunal Procedure Rules may make provision for regulating the exercise of rights of appeal conferred by sections 57(1) and (2) of the Act. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 require certain pieces of information to be provided when an appeal is lodged against a decision of the Information Commissioner. Rule 22(2) states as relevant

*22(2) The notice of appeal must include –*

*(a) the name and address of the appellant;*

*(b) the name and address of the appellant's representative (if any);*

*(c) an address where documents for the appellant may be sent or delivered...*

19. Once again there is a requirement for “*the name*” of the person who is bringing the appeal to be provided as well as the address of the appellant. In this case neither the name nor the address provided was that of the person making the appeal nor is it realistic to suggest that the provision of the address of the Houses of Parliament was an address where correspondence could be sent.
20. As this Tribunal has previously pointed out rule 22 distinguishes between “*the ...address of the appellant*” and “*an address where documents for the appellant may be sent or delivered*”. This distinction leads to the inescapable conclusion that the former requirement in rule 22(2)(a) (“*the address*”) must be the appellant’s own address, whereas the latter requirement set out in rule 22(2)(c) (“*an address*”) can be any address where the appellant is able to receive documents sent to them. It would be a strange result if there was a requirement in rule 22(2)(a) to provide the appellant’s own address but they were not obliged to provide their real name.
21. While a failure to comply with the rules may be waived pursuant to rule 7 (which is how I interpret the directions made by a fellow judge on 18 July 2024) such a waiver cannot operate to cure an absence of jurisdiction.
22. In the Appellant’s responses to the application to strike out he submits that the underlying merits of his appeal should be considered and that striking out his appeal would be a draconian step. He submits that the Tribunal has the power to proceed regardless of his use of a pseudonym.
23. The Appellant is correct that striking out an appeal is a draconian step but if the Tribunal has no jurisdiction in relation to the proceedings then I must strike out the appeal unless I decide to transfer the case to another court or Tribunal that does have jurisdiction. In this appeal the Appellant is seeking an outcome providing him with a better understanding of why certain steps were taken. It may be that the High Court would be able to entertain an application that would provide such an outcome but it is not appropriate for me to exercise my discretion to transfer this case to that court given that would make the Appellant liable for fees/costs. Furthermore I cannot advise the Appellant whether that is the correct forum to resolve his issues and he

may wish to take independent legal advice. The striking out of this appeal would not prevent him issuing proceedings elsewhere for the relief he seeks if so advised.

24. Even if I were able to allow this case to continue, whether or not the Appellant's underlying concerns have merit is not a matter for this Tribunal to decide when considering whether the Information Commissioner is in error of law in concluding that the public authority did not hold further information within the scope of his request. Such determination does not require a consideration of the public interest nor of the background to the request beyond that which is required to determine whether this public authority holds the material asked for; whether they should do is immaterial.
25. Having concluded that this Tribunal does not have jurisdiction and having decided not to exercise the power to transfer this case to another court or Tribunal I must strike out these proceedings under rule 8(2)(a).
26. This appeal is struck out.

Signed

Date:

Judge Griffin

22 August 2024