Neutral Citation Number: [2025] UKUT 285 (AAC)

Appeal No. UA-2024-001646-GIA

IN THE UPPER tribunal
ADMINISTRATIVE APPEALS CHAMBER

Between:

Chris Spiropoulos

Appellant

- v -

Information Commissioner

Respondent

Before:	**Upper Tribunal Judge Citron**
Hearing date:	20 June 2025
Place of hearing:	Field House, Breams Buildings, London EC4 (with remote attendance on the Cloud Video Platform)
Representation:	
Appellant:	by himself
Respondent:	by Oliver Jackson of counsel, instructed by ICO Legal Service

On appeal from:

Tribunal:	First-Tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No:	EA/2021/0354
NCN:	[2024] UKFTT 00814 (GRC)
Hearing date:	20 August 2024
Hearing Venue:	Field House, London
Decision date:	11 September 2024

SUMMARY OF DECISION

INFORMATION RIGHTS (93)
93.2 Freedom of information - public authority response

The First-tier Tribunal dismissed the appellant's appeal because it agreed with the Information Commissioner that the public authority did not hold the requested information. That was based on evidence in correspondence from the public authority to the Information Commissioner. The appellant himself (who, unlike the public authority, gave oral evidence at the First-tier Tribunal hearing) provided evidence that the requested information was in a record held by the public authority. The First-tier Tribunal did not explain, in terms, why it preferred the public authority's evidence (on the central point in the case) over the appellant's. The Upper Tribunal decides that the reasons could be inferred from the First-tier Tribunal decision as a whole (as the First-tier Tribunal decision was critical of the appellant's evidence), and so there was no material error of law. It would have been good practice, however, for the First-tier Tribunal decision to have identified the conflict in the evidence before it (on the central point in the case) and to have expressly given reasons, no doubt brief, for preferring one piece of evidence over another. The appeal was dismissed as there was no material error of law.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the First-tier Tribunal in question did not involve the making of an error on a point of law.

REASONS FOR DECISION

1. References in what follows to

    a. the "**FTT**" are to the First-tier Tribunal

    b. the "**FTT decision**" are to the FTT decision cited above

    c. numbers in square brackets are (unless the context indicates otherwise) to paragraphs of the FTT decision

    d. section numbers are to sections of Freedom of Information Act 2000 (the "**Act**")

    e. the "**Ministry**" are to the Ministry of Justice.

The FTT's decision

2. The FTT decision, in summary, said this:

    a. the appeal was brought under s57, against a decision of the Respondent ("**IC**") of 3 November 2021;

b. Mr Spiropoulos had, back in 2020, made a request for information from the Central London County Court, as follows:

> I would like to receive a copy of your GoldFax logs (08707394144) showing transmissions received between 23/9/2020 and 25/9/2020 and relating to claim D97YM323. A copy of the actual document transmitted will do, as well as any other document providing the same information as the logs. This is a request for the information on the logs rather than the logs themselves.

c. after substantial delay, the Ministry responded that it did not hold the requested information;

d. IC's decision was that, on the balance of probabilities, the Ministry did not hold the requested information as at the time of their response. Searches had been made but no information had been found. IC noted that the Ministry had not communicated within the statutory timescales. The Ministry was not required to take any steps as a result of IC's decision;

e. IC's decision notice noted from the Ministry's response that their policy was to delete electronic data for faxes sent and received after 30 days. Also, 'Goldfax' was decommissioned in early 2019. The Ministry had stated that an email (in)box search had been undertaken;

f. the FTT decision referred to related prior litigation, which, in summary, it presented as follows:

    i. FTT appeal reference EA/2019/0102: concerned a request by Mr Spiropoulos for 'Goldfax' logs (specifically) between dates in July 2016 and October 2016; the FTT heard evidence from the Ministry about 'Goldfax' system and electronic data; the FTT found that the Ministry did not hold the requested information; Mr Spiropoulos was refused permission to appeal by the Upper Tribunal;

    ii. FTT appeal reference EA/2020/0347: concerned a request by Mr Spiropoulos for 'Goldfax' logs between (eight) dates in 2016 and 2018; the FTT had witness statements and oral evidence from two witnesses from the Ministry, as well as submissions from a representative on the Ministry's behalf. The FTT found that the scope of the request was limited to 'Goldfax' logs. The FTT was satisfied that the Ministry did not hold that data; Mr Spiropoulos was refused permission to appeal by the Upper Tribunal;

g. under the heading *What information was actually requested*, the FTT decision observed that there had been unnecessary confusion about the information that was being requested: 'Goldfax' had been decommissioned in 2019; it was the meta data of the fax software (whatever called) that was requested; and such data was retained (by the Ministry) for (only) thirty days;

h. the FTT heard evidence and submissions from Mr Spiropoulos. The FTT decision noted (at [49]) Mr Spiropoulos' "disappointment" that neither IC nor the Ministry were represented at the hearing (as he wanted to ask them questions). The FTT decision observed

   i. that those representing IC would be unlikely to be able to assist with giving evidence as they had no direct dealings with Mr Spiropoulos' complaint;

   ii. that, from the Ministry's perspective, the issues in the appeal had already been "ventilated" twice before and the Ministry had produced witness statements and oral witness evidence to assist the FTT. Noting the issues that had been ventilated in the previous appeals, the FTT decision said it was not satisfied that the Ministry's attendance at the appeal would have assisted;

i. continuing under the heading *Evidence and submissions of the Appellant at the appeal hearing*, the FTT decision noted that Mr Spiropoulos made a witness statement dated 4 December 2023; he said he went to London Central County Court on 27 September 2023 to inspect the relevant court file; he said he identified at least 10 documents containing information within the scope of his request; he did not identify what the documents were. At [55], the FTT decision made this observation on Mr Spiropoulos' evidence at the hearing:

> When asked directly what information was on the court file that would assist him, the Appellant initially launched into a narrative rather than answer the question. This was a feature of how he presented at the hearing. He was evasive in answering direct questions. He said he wanted the meta data but later, he wanted the court bundle. The fact that he had seen documents on his court file that fulfilled his information request was not consistent with his submission that [the Ministry] were covering up

j. at [60] (in the section headed *Analysis of the evidence and findings on appeal*), the FTT decision found that there were no 'Goldfax' logs for the period of time specified in Mr Spiropoulos' request; at [61], the FTT decision found that, as at 16 February 2021 (the date of the Ministry's response to Mr Spiropoulos' request), there were no logs of fax transmissions or retained emails for that period; at [64], the FTT decision noted that the court file was examined (by the Ministry) for information, and that the Ministry "confirmed there was no such information on the court file";

k. at [66], the final substantive paragraph of the FTT decision, the FTT decision said this:

> It is the view of the Tribunal that the [Ministry] did not hold the information sought by the Appellant and therefore [IC]'s decision was correct. [The Ministry] had

> looked beyond the narrow terms of the request into the court file, where the information may have been held and it was not held. …. The most reliable source was the court file and this had been examined by [the Ministry] and by the Appellant. The Tribunal had no power to order the production of documents from the court file or to order that copy documents are provided without payment of the prescribed fee. The Appellant has the remedy that he seeks under the Civil Procedure Rules available to him.

The grant of permission to appeal

3. I gave permission to appeal, in a decision issued by the Upper Tribunal on 9 January 2025, for the reasons, and on the grounds, explained as follows:

> **The "section 1 question" and the arguable error of law in the FTT decision**
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> 3. The essence of the FTT decision was whether the information requested by Mr Spiropoulos was held by the public authority (the Ministry) at the relevant time (being, under s1(4), the time when the request was received, with account being taken of any amendment or deletion made between that time and the time when the requested information was to be communicated to Mr Spiropoulos under s1(1)(b)). I shall refer to this, the core issue in the FTT decision, in what follows as the "**section 1 question**".
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> 4. The FTT decision answered the section 1 question in the negative: it decided that the Ministry did not hold the information requested by Mr Spiropoulos: see [66]. In its reasoning on the way to reaching this conclusion, the FTT decision found:
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> a. that it was right to read Mr Spiropoulos' information request (as set out at [2]) broadly rather than narrowly: see [60], seventh sentence ("*The request was not about Goldfax*, *it was about whatever system was used to transmit faxes and emails to the court*"); and
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> b. that the "case files" in the court were included amongst things that the Ministry "held" for the purposes of the Act: see [61], last sentence, [62] and [64];
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> these findings are both expressed in the second sentence of [66] ("*MOJ had looked beyond the narrow terms of the request into the court file, where the information may have been held and it was not held*"), explaining the critical prior sentence ("*It is the view of the Tribunal that the Ministry of Justice did not hold the information sought by the Appellant and therefore the Commissioner's decision was correct*").
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> 5. It was thus key to the FTT decision's reasoning that the information requested, interpreted broadly, was not in the court file.
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> 6. The arguable legal error in the FTT decision, in my view, was that it did not adequately explain how it came to this conclusion in the light of Mr Spiropoulos' evidence to the FTT that, as at 27 September 2023, when he visited the court office (and just under three years after he made the information request), the information he requested *was* in the court file: see page 70 of the FTT bundle, and [48]. At [53], the FTT decision records questions that were asked of Mr Spiropoulos at the FTT hearing about his visit to the

court office, and his answers; however, arguably, the FTT decision does not address the key questions of

a. whether or not the FTT accepted Mr Spiropoulos' evidence, to the effect that the information, or some of it, was on the court file (and so, by implication from the rest of the FTT decision's reasoning, "held" by the Ministry for the purposes of the Act) as at September 2023, and if so

b. whether the FTT accepted that, by inference, that information was also "held" by the Ministry at the relevant date for Mr Spiropoulos' information request under s1, per the provisions of s1(4) cited above.

7. The implication of [66], second sentence (quoted above – in particular "… *and it was not held*") is that the FTT decision preferred the documentary evidence of the Respondent on this point (being correspondence between the Respondent and the Ministry in January 2022, referred to at [10], and set out at page 40 of the FTT bundle) to Mr Spiropoulos' evidence; but it arguably erred in law in failing to explain (to the standard of adequacy) why, given that this point went to the heart of the section 1 question. On the other hand, it is arguable that [66], fifth sentence ("*The most reliable source was the court file and this had been examined by MOJ and by the Appellant*" (my emphasis)), shows a failure of the FTT to resolve the conflicting evidence (about the contents of the court file) of the Ministry and of Mr Spiropoulos. This was, arguably, an error of law, in that, arguably, that was a factual matter on which the FTT decision was required to make a clear finding, in order to answer the section 1 question.

4. Permission to appeal was refused on any other ground advanced; and it was determined that rule 22(4A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 applied to that part of the decision, meaning that Mr Spiropoulos could not request that that part of the decision be reconsidered at a hearing.

The Upper Tribunal proceedings

5. I had before me both the Upper Tribunal bundle and the FTT bundle.

6. I am grateful to both Mr Spiropoulos and Mr Jackson for attending the Upper Tribunal hearing and explaining their arguments.

7. The powers of the Upper Tribunal in an appeal such as this are limited to deciding whether there was an error of law the decision of the tribunal. If there is such an error, the Upper Tribunal may set the tribunal decision decide, and then either remake the decision or remit the case back to the tribunal for rehearing.

8. Mr Spiropoulos' submissions tended to go beyond the terms of the ground on which permission to appeal had been given. He did, however, submit that the FTT decision had erred on that ground.

9. Mr Spiropoulos was of the view that the judiciary as a whole was "biased" in this case, because of the relationship between the Ministry and the judiciary. I saw no merit in this submission, given the robust constitutional and institutional

safeguards involved (in which any impartial and informed observer would have complete confidence). Mr Spiropoulos' suggested (for the first time, orally, at the hearing of the appeal) alternative dispute resolution; unsurprisingly in the circumstances, IC did not agree to this suggestion.

10. IC's core submission was that, *considered in context*, it was clear that the FTT did not accept Mr Spiropoulos' evidence that he had seen information in scope of his request on documents from the court file on his visit to the court office on 27 September 2023; the FTT preferred the documentary evidence of IC on this point (set out at [10]), as it was entitled to do.

Adequacy of the FTT's reasons

11. The Upper Tribunal said this about "adequacy of reasons" in *Information Commissioner v Experian Ltd* [2024] UKUT 105 (AAC), a decision of a "Presidential" panel of this chamber:

> ***Adequacy of reasons***
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> 63. There are many appellate authorities on the adequacy of reasons in a judicial decision. In this chamber of the Upper Tribunal, the principles were summarised in, for example, *Oxford Phoenix Innovation Ltd v Information Commissioner & Medicines and Healthcare Regulatory Agency* [2018] UKUT 192 (AAC) at [50-54]. At its most succinct, the duty to give reasons was encapsulated at [22] in *Re F (Children*) [2016] EWCA Civ 546 (one of the authorities cited there), as follows:
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> > "Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable."
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> 64. As is well-known, the authorities counsel judicial "restraint" when the reasons that a tribunal gives for its decision are being examined. In *R (Jones) v FTT (Social Entitlement Chamber)* [2013] UKSC 19 at [25] Lord Hope observed that the appellate court should not assume too readily that the tribunal below misdirected itself just because it had not fully set out every step in its reasoning. Similarly, "the concern of the court ought to be substance not semantics": per Sir James Munby P in *Re F (Children)* at [23]. Lord Hope said this of an industrial tribunal's reasoning in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 at [59]:
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> > " … It has also been recognised that a generous interpretation ought to be given to a tribunal's reasoning. It is to be expected, of course, that the decision will set out the facts. That is the raw material on which any review of its decision must be based. But the quality which is to be expected of its reasoning is not that to be expected of a High Court judge. Its reasoning ought to be explained, but the circumstances in which a tribunal works should be respected. The reasoning ought not to be subjected to an unduly critical analysis."
>
> 65. The reasons of the tribunal below must be considered as a whole. Furthermore, the appellate court should not limit itself to what is explicitly shown on the face of the decision; it should also have regard to that which is implicit in the decision. *R v Immigration Appeal Tribunal, ex parte Khan* [1983] QB 790 (per Lord Lane CJ at page 794) was cited by Floyd LJ in *UT (Sri Lanka) v SSHD* [2019] EWCA Civ 1095 at [27] as explaining that the issues

> which a tribunal decides and the basis on which the tribunal reaches its decision may be set out directly or by inference.
>
> 66. ….”

Why I have decided that the permitted ground of appeal has not been made out

12. The issue before the FTT was whether the Ministry held the requested information at the relevant time (referred to in my permission decision as the “section 1 question”).

13. The FTT decision came to the conclusion that the one place where the requested information might, realistically, have been held, was on the “court file”; and at [62] and [64], the FTT decision referred to the evidence (correspondence from the Ministry to IC in January 2022, described at [10]) that the Ministry had checked the court file but not found the requested information there.

14. That evidence from the Ministry supported the FTT’s finding in the first sentence of [66] (the last paragraph of the FTT decision and the core of its reasoning), that that the Ministry did not hold the requested information.

15. The FTT decision did not explain, in terms, why it preferred the evidence from the Ministry over that of Mr Spiropoulos, based on his visit to the court and inspection of the court file in September 2023, to the effect that the requested information *was* on the court file. The FTT did not have any oral evidence before it as regards the evidence from the Ministry; whereas Mr Spiropoulos did give oral evidence to the FTT about his visit to the court in September 2023. The FTT decision was critical of Mr Spiropoulos’ evidence (see [2.i] above) but did not say, in terms, that it disbelieved him as regards what he said he saw on the court file during that visit. As regards the evidence from the Ministry, the FTT decision had made the earlier observation (see [2.h.ii] above) that the Ministry had joined, and given evidence in relation to, the related earlier litigation (in which it and IC had been successful); this does not, however, appear to take into account that a difference between the prior litigation, and the present appeal, was that the information requested in the present appeal spanned more broadly than just the ‘Goldfax’ records (and so, most relevantly, included information on the court file, which did not appear to be within the scope of the information requests in the earlier litigation).

16. It would have been good practice for the FTT decision, in these circumstances, to have expressly identified the conflict in the evidence before it (as the evidence spoke to the single central point in the appeal), and to have explained, no doubt briefly, why it preferred one piece of evidence over the other, taking into account that one party (Mr Spiropoulos) had provided oral evidence at the hearing, but the other (IC) had not.

17. In the absence of such best practice, however, I am satisfied that the FTT’s reasons for preferring the evidence of the Ministry over that of Mr Spiropoulos, can be *inferred* from the FTT decision as a whole: in particular, the FTT’s findings at [55] that Mr Spiropoulos was evasive in answering direct questions, and that

his testimony about seeing the requested information on the court file was inconsistent with his submission that the Ministry were covering up, imply that the FTT did not find him credible as regards what he said he saw on the court file (and see [65] of *IC v Experian*, cited at [11] above, for authority for giving of reasons *by inference* being adequate).

18. I am also satisfied that, having provided (by inference) adequate reasons for its not believing Mr Spiropoulos' evidence, it was not necessary for the FTT decision to explain, expressly, why it found the evidence from the Ministry credible; I am fortified on this view by dicta from one of the classic expositions in case law on adequacy of reasons, *English v Emery Reimbold & Strick Ltd* [2002] 1 WLR 2409 at [19] (emphasis added by me):

> If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts *or the other gave answers which demonstrated that his recollection could not be relied upon*.

19. It follows that the arguable error of law identified at the permission stage has not been made out; whilst I find that it would have been good practice for the FTT to have explained its reasons for preferring one piece of evidence over another, on the key point in the case, *expressly*, it was not a material legal error for it to have instead done so by implication from the rest of the decision.

20. The appeal must therefore be dismissed.

Zachary Citron
Judge of the Upper Tribunal

Authorised by the Judge for issue on 18 August 2025