



Neutral Citation Number: [2026] UKUT 91 (AAC)
Appeal No. UA-2025-000223-GIA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Mr Peter Stead

Appellant

- v -

The Information Commissioner

Respondent

Before: Upper Tribunal Judge J. Butler

Decision date: 20 February 2026
Decided on consideration of the papers

Representation:

Appellant: Represented himself
Respondent: Hugh Whelan (counsel)

On appeal from:
Tribunal: First-tier Tribunal (General Regulatory Chamber)
Tribunal Case No: EA/2024/0350
NCN: [2024] UKFTT 01118 (GRC)
Tribunal Venue: Determined on the papers (in Chambers)
Hearing Date: 10 December 2024
Decision Date: 12 December 2024 (issued on 17 December 2024)

SUMMARY OF DECISION

FREEDOM OF INFORMATION - public authority response (93.2)

The First-tier Tribunal failed to resolve conflicts of fact or opinion adequately in the appeal and failed to make adequate factual findings to support the decision it reached.

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

As the decision of the First-tier Tribunal involved the making of an error of law, it is SET ASIDE under section 12(2)(a) and (b)(i)

) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the First-tier Tribunal for rehearing by a fresh Tribunal.

DIRECTIONS

- A. The case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.
- B. The new Tribunal should not involve any of the panel members previously involved in determining this appeal on 10 December 2024, which led to the decision dated 12 December 2024.
- C. The Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes, the new Tribunal may reach the same or a different outcome from the previous tribunal.
- D. If any party wishes to rely before the First-tier Tribunal on submissions made to the Upper Tribunal, or on evidence not previously before the First-tier Tribunal, that party is to send the First-tier Tribunal the relevant document(s) within one month of the date this Decision is issued to the parties.
- E. A copy of this Decision and the Decision Notice dated 26 August 2025 granting permission to appeal, is to be added to the First-tier Tribunal's bundle.

These Directions may be supplemented by later directions by a Tribunal Judge or Registrar in the General Regulatory Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. Mr Stead brings this appeal. He was the appellant in the First-tier Tribunal ("FTT") proceedings. He appeals against the FTT's decision dated 12 December 2024, made after Mr Stead's appeal was determined on 10 December 2024 on the basis of the documents in the appeal bundle.

Factual background

2. On 18 January 2024, Mr Stead asked the Department for Culture, Media and Sport ("DCMS") for information held about the names of individuals who had

attended DCMS Bullying and Harassment Roundtable meetings after 25 October 2022 and before 28 November 2023.

3. On 30 January 2024, DCMS replied to Mr Stead's request. DCMS stated that it did not hold the names of individual attendees at the relevant meetings during the period requested. DCMS confirmed it held some information within the scope of Mr Stead's request. DCMS refused, however, to provide that information, stating it was exempt from disclosure because of section 21(1) of the Freedom of Information Act 2000 ("FOIA"). This was on the basis that the information was reasonably accessible to Mr Stead otherwise than under section 1 of FOIA.
4. At internal review stage, DCMS maintained its position, and also relied on section 40(2) of FOIA to withhold disclosure of the name of a DCMS official.
5. On 09 February 2024, Mr Stead complained to the Information Commissioner ("ICO") about how DCMS had dealt with his information request. The ICO carried out an investigation in relation to:
 - (a) Whether DCMS was correct to say it did not hold some of the information Mr Stead had requested, namely lists of individual attendees at the meetings at the time in question; and
 - (b) Whether DCMS was entitled to withhold personal details of the DCMS official who attended meetings under section 40(2) of FOIA.
6. On 29 August 2024, the ICO issued a Decision Notice. This indicated the ICO was satisfied, on the balance of probabilities, that the information Mr Stead requested about the names of attendees at the meeting was not held and was not held at the date of his request. The Decision Notice stated that DCMS had therefore complied with the requirements of section 1(1) of FOIA in this respect.
7. In relation to DCMS relying on section 40(2) of FOIA to withhold the name of a DCMS official, the ICO's Decision Notice accepted there was a legitimate interest in disclosing the withheld information but concluded that disclosing the name was not necessary as it would not serve that legitimate interest (of transparency).

The First-tier Tribunal's decision

8. On 02 September 2024, Mr Stead appealed to the First-tier Tribunal. The only Respondent to the appeal was the ICO. On 10 December 2024, a FTT determined Mr Stead's appeal on the basis of the papers. This was on the basis that both parties had confirmed they consented to the appeal being determined on the papers.
9. Having reached a decision, the FTT issued a Decision Notice for it on 17 December 2024. The FTT refused Mr Stead's appeal and confirmed the ICO's decision that, on the balance of probabilities, DCMS did not hold the information requested (apart from the information withheld about the name of the DCMS official). The FTT stated at paragraph 25 of its Decision that Mr Stead's arguments did not come close to evidence that on the balance of probabilities DCMS did hold the specific requested information. The FTT set out its reasoning for that conclusion at paragraph 26 of its Decision Notice.

10. A FTT judge refused Mr Stead permission to appeal to the Upper Tribunal on 08 January 2025. On 10 February 2025, Mr Stead applied directly to the Upper Tribunal for permission to appeal.

Hearing before the Upper Tribunal on 11 August 2025

11. Having directed for an oral hearing to take place, I heard Mr Stead's application for permission to appeal as a video hearing on 11 August 2025.
12. On 26 August 2025, I granted Mr Stead permission to appeal on limited grounds, namely that the following appeal grounds were arguable with a realistic prospect of success.
13. The FTT may have failed to take into account and / or resolve conflicts of fact or opinion on material matters: examples are set out below.
14. The FTT had arguably not resolved the conflict about whether DCMS conducted an electronic search for information by looking up the minutes of the meeting(s) (see 10 July 2024 letter on page B218 of bundle), or whether it carried out electronic searches, which located minutes from the meetings (see ICO decision Notice dated 29 August 2024 on page A9 of bundle).
15. Mr Stead had argued, in his Response to the ICO's Response to the appeal (page A157 of bundle) that the ICO DN sign-off form dated 05 August 2024 had caused the ICO to introduce an incorrect assumption into its decision about the search(es) DCMS had carried out. The review (page A161 of bundle) referred to the draft decision suggesting DCMS only looked at the minutes and concluding it didn't hold the information because it wasn't there. The review document stated: "*However it would seem reasonable that DCMS would have asked the policy team to conduct a broader search in order to check whether relevant information was held*". The FTT had not addressed or resolved this in its Decision.
16. The FTT had concluded at paragraph 26(e) of its Decision Notice that DCMS had expressly confirmed that it did not hold, at any stage, the individual names of attendees and that this addressed one of Mr Stead's primary demands for evidence. Given the apparent conflict about the type of searches DCMS had carried out, it was arguable the FTT's Decision Notice did not explain how it had resolved that conflict to be able to reach this conclusion.
17. Paragraphs 1.1 and 1.2 of the ICO's letter to DCMS dated 29 May 2024 set out a detailed request for information including about the nature of the searches DCMS had carried out (page B202 of FTT appeal bundle). The ICO had asked DCMS to provide a detailed response. It was arguable that DCMS's response was not detailed and Mr Stead disputed what the ICO had concluded about that. In this context, the FTT may not have explained its decision sufficiently to resolve the conflict of fact or opinion on that issue.
18. The FTT may have failed to make adequate factual findings and / or provided adequate reasoning about material matters: one of the main issues between the parties was about whether DCMS held the information Mr Stead requested, at the date that he requested it. The FTT acknowledged this was one of Mr Stead's

arguments at paragraph 15(d) of its Decision Notice. However, the FTT did not make clear factual findings about what DCMS's search(es) had comprised.

19. The FTT wrote at paragraph 26(e) of its Decision that it was unclear how further keyword searches would assist when DCMS had confirmed the minutes were the only record it held of the meeting. Without having resolved the apparent conflict about what digital searches were carried out and given it appeared not to have made specific factual findings about those searches, the FTT's conclusion on this issue might have involved an error of law.
20. The FTT had directed itself by reference to ***Bromley v Information Commissioner*** (EA/2006/0072) and ***Oates v Information Commissioner*** (EA/2011/0138). Both decisions were First-tier Tribunal decisions and not ones that bound the FTT. Having, however, identified from those decisions a legal test that included considering the scope of the search the public authority decided to make, and the rigour, efficiency, motive (or reluctance) with which it carried it out, the FTT arguably failed to make adequate factual findings about the search that DCMS carried out to be able to support its conclusion the information was not held.
21. Nor had the FTT made clear factual findings about the steps the ICO took in relation to DCMS's evidence, or how the ICO had evaluated it. Despite this, the FTT had stated: "*Far from uncritically assessing DCMS's position, the evidence shows the Commissioner reasonably and proportionately critiqued DCMS's evidence*". It was arguable the FTT should have addressed the fact that the review in the DN sign-off form had indicated the reviewer considered DCMS's description of its search was narrow and it would be reasonable to assume DCMS would have carried out a broader search. This implied that a broader search might have been expected.
22. Finally, it was arguable that the FTT had failed to make adequate factual findings, or provide adequate reasoning, to address Mr Stead's argument that the July 2022 roundtable meeting minutes were anomalous. Mr Stead had argued the lack of attendee or organisation names in those minutes suggested the attendee list was missing. The FTT had acknowledged Mr Stead had described this as an accidental anomaly but concluded it represented evidence that different note or minute takers took different approaches to what to record. It was arguable that the FTT had not addressed the argument Mr Stead was actually making.
23. I did not grant Mr Stead permission to appeal on any other of the grounds he had put forward.

The parties' submissions to the Upper Tribunal

24. Mr Whelan has provided the Response on behalf of the ICO. This explains the ICO considers the FTT's Decision is correct, but that it appreciates my reasoning in respect of certain findings of fact by the FTT. The Response confirms the ICO does not oppose the appeal in relation to the grounds on which I granted Mr Stead permission to appeal.

25. Having stated that position, Mr Whelan refers to paragraph 6 of the Practice Direction from the Senior President of Tribunals: Reasons for decisions – Courts and Tribunals Judiciary (04 June 2024).
26. Mr Whelan then addresses my grant of permission to appeal in relation to taking into account and / or resolving conflicts of fact or opinion on material matters. Mr Whelan argues that Mr Stead has misinterpreted the evidence in the DN sign-off form, when putting forward his argument that there was an assumption by the ICO case officer that DCMS would have carried out a broader search, and this assumption was incorporated into the ICO's decision dated 29 August 2024 as if it were fact. Mr Whelan submits that the DN sign-off form contains neither an assumption as to whether DCMS undertook a broader search, nor a direction to make that assumption in the ICO Decision Notice. He submits that the DN sign-off form does not demonstrate evidence of wrongdoing by the ICO but evidences an exchange of views about a draft decision notice. Mr Whelan argues that paragraph 20 of the ICO Decision issued on 29 August 2024 reflects the fact that a broader search was in fact conducted, based on DCMS's correspondence dated 10 July 2024.
27. Mr Whelan submits that if I find that the FTT's Decision contains an error of law, the ICO proposes that the appeal be remitted to the First-tier Tribunal for rehearing by a differently constituted panel. He submits that the ICO considers this the appropriate outcome given the appeal to the Upper Tribunal concerns the adequacy and / or reasonableness of the FTT's factual findings and reasoning on matters of material fact. Mr Whelan also proposes that DCMS be joined to the proceedings so that it is available to answer factual enquiries posed by the FTT and the parties.
28. Mr Stead has provided written submissions in response to those on behalf of the ICO. He disputes the implication that the issues he has raised are trivial. Mr Stead argues there are major discrepancies between what the DCMS said and what the ICO said DCMS said, which are central to the case and the FTT failed to resolve them. Mr Stead addresses the detail of the arguments Mr Whelan has put forward about the DN sign-off form and what it does, or does not, contain. Mr Stead disagrees with the arguments put forward by Mr Whelan, both in terms of their internal structure and also by reference to the DCs letter dated 10 July 2024, and the ICO DN sign-off and final decisions. Mr Stead raises several arguments that relate to the substance of his appeal to the FTT, namely about the nature of the searches DCMS carried out, and what the ICO concluded about them.
29. Mr Stead states he respectfully objects to the suggestion that I should remit this matter to a freshly constituted panel of the FTT, who would have to start the case from scratch again. He argues this would cause unnecessary delay and possible confusion. Mr Stead asks for the Upper Tribunal to determine this appeal.
30. Mr Stead also objects to the suggestion that DCMS be joined as a party to the appeal. He submits that DCMS repeatedly ignored letters from the ICO and when it did reply, it gave a very incomplete response. Mr Stead also argues that DCMS were given the right to be part of the proceedings before the FTT and declined.

He argues that including them as a full party now would not be constructive or necessary.

31. Mr Stead submits that DCMS should, however, answer questions as a witness, including the questions the ICO had asked it to address in its letter dated 29 May 2024.

Why there was no oral hearing of this matter

32. The ICO did not request a hearing of this matter. Mr Stead has asked for an oral hearing. I have taken the parties' preferences into account.
33. I have decided the interests of justice do not require an oral hearing of Mr Stead's appeal to the Upper Tribunal. The Upper Tribunal's jurisdiction is to determine whether there have been errors of law on matters material to the appeal in question. Mr Stead considers the FTT made material errors of law. The ICO's position, although more equivocal, is that it appreciates the reasons I gave in the decision granting permission to appeal in respect of certain findings of fact and does not oppose any of the appeal grounds on which I granted permission to appeal. It is therefore unnecessary to have an oral hearing in order to decide *whether the FTT made material errors of law*, which is the matter the Upper Tribunal is required to determine.
34. Given I have before me everything that is required to determine Mr Stead's appeal to the Upper Tribunal, it is fair, just and proportionate, and will avoid unnecessary delay, to determine that appeal on the papers. This approach is consistent with the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Analysis

35. At the permission stage, I only needed to be persuaded that it was arguable with a realistic (as opposed to fanciful) prospect of success that the FTT had made an error of law in a way that was material.
36. At this substantive stage, I need to be satisfied on the balance of probabilities that the FTT did make an error or errors of law that were material.
37. I am satisfied the FTT made material errors of law in its decision dated 12 December 2024.
38. Failure to resolve conflicts in fact or opinion adequately: a key conflict in fact and opinion was the nature and extent of the search(es) for information carried out by DCMS. Another was whether the ICO had introduced assumptions into its decision notice dated 29 August 2024 as a result of the review and sign-off process. A third was whether the difference in the 22 July 2022 minutes was due to the attendee list being missing (since there was no organisation list either) rather than representing a different note taking style by the person recording the meeting. The FTT failed to resolve these conflicts, including because it failed to make actual findings of fact about what DCMS's search(es) for information involved or comprised.

39. Mr Whelan argues that the 10 July 2024 letter from DCMS and the DN sign-off document and decision notice dated 29 August 2024 can be interpreted in a way that confirms that DCMS carried out the breadth of search(es) that the ICO would have considered reasonable. However, this does not remove the FTT's error of law in failing to address those conflicts and to explain how it had resolved them. Nor does it indicate that the FTT's error of law was immaterial. In my assessment, Mr Whelan's arguments may be relevant for the next First-tier Tribunal dealing with the appeal before that tribunal. They do not, however, confirm that the FTT failed to make a material error of law on this issue.
40. Inadequate factual findings: as indicated by the matters set out at paragraphs 18 to 22 above, the FTT failed to make adequate findings of fact, supported by evidence, to support the conclusion it reached.
41. The FTT's Decision uses sub-headings to provide a structure. It does not include a dedicated sub-heading for its factual findings, but this is not required, as long as appropriate factual findings can be identified within it. Having read the Decision carefully, it does not, however, make specific findings of fact on matters that were material to what the FTT needed to resolve in order to determine Mr Stead's appeal.
42. The factual findings that are missing include findings about the nature and extent of the searches DCMS had made for the information Mr Stead requested. They also include the steps that the ICO took to review the searches that DCMS had carried out.
43. In the absence of those factual findings, the FTT's conclusions at paragraph 26 of its decision cannot be supported. These conclusions include, at paragraph 26(c), that DCMS conducted a reasonable and appropriate search in all the circumstances and that it was unclear how further key searches would assist. They also include the conclusion, at paragraph 26(e) that the position of DCMS had been consistent, reasonable and explicable. Factual findings were required for the FTT to be able to support these conclusions as well as its overall conclusion that DCMS did not hold the information required, and that no further searches were needed to confirm this. The failure to make those factual findings is a material error of law.
44. I also gave Mr Stead permission to appeal on these matters might also indicate the FTT had provided inadequate reasons to support its conclusions. Having considered matters further, I am satisfied that the matters summarised at paragraph 18 to 22 above each reflect the FTT's failure to make adequate factual findings and / or resolve conflicts in fact or opinion. It is therefore not necessary to consider the adequacy of the FTT's reasoning separately.
45. The errors of law addressed at paragraphs 38 to 43 above are material because they are ones capable of making a difference to the outcome of Mr Stead's appeal.

Disposal and conclusion

46. Having decided the FTT's decision involved material errors of law, it is appropriate to exercise my discretion to set aside the Tribunal's decision dated 12 December 2024 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Having done so, section 12(2)(b) of that Act provides that I must either remit the case to the First-tier Tribunal with directions for their reconsideration or remake the decision.
47. Mr Stead has argued that the Upper Tribunal should remake the FTT's decision, by holding an oral hearing to determine the issues arising in his substantive appeal. However, the grounds on which I am setting aside the FTT's decision include that it failed to make necessary factual findings based on the evidence before it. In those circumstances, new findings of fact need to be made.
48. The arguments the parties have raised in their submissions to the Upper Tribunal are about factual matters, namely how one can, and should, interpret what was said by DCMS about the search(es) it carried out, how the ICO evaluated this, and whether DCMS was likely to be holding relevant information beyond that which it had identified.
49. It is appropriate that these matters are addressed by a First-tier Tribunal, which can make appropriate findings of fact. The First-tier Tribunal is the Tribunal dedicated to making findings of fact. It is best placed to evaluate the evidence, including using its members' expertise in information rights matters, and to make appropriate findings of fact. It will have the opportunity to see all the evidence and arguments raised by the parties, and to reach conclusions about them.
50. I therefore remit Mr Stead's appeal for rehearing before a new First-tier Tribunal. It will make a fresh decision about whether the ICO's Decision Notice dated 29 August 2024 was in accordance with the law.
51. The parties have each asked for additional case management directions to be made about Mr Stead's substantive appeal. Given the First-tier Tribunal is going to determine the appeal, it is appropriate that it addresses those requests. The parties should therefore renew their requests directly to the First-tier Tribunal.
52. Although I have set aside the Tribunal's decision dated 12 December 2024, I am not making any findings, or expressing any view, about the issues that arise in Mr Stead's appeal. The next tribunal will need to hear evidence and make its own findings of fact and provide its reasoning for the decision it reaches.

Judith Butler
Judge of the Upper Tribunal

Authorised by the Judge for issue: 20 February 2026