



Appeal number: EA/2021/0172/GDPR

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

MOHAMED AHMED

Applicant

- and -

THE INFORMATION COMMISSIONER

Respondent

**Before:
JUDGE LYNN GRIFFIN
Sitting in Chambers on 27 July 2021**

DECISION

The application is struck out under rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, because the Tribunal does not have jurisdiction to deal with the proceedings and declines to transfer the case to another court or tribunal.

REASONS

Background to the Application

1. This application relates to a complaint made by the Applicant to the Respondent about the data handling of Greater Manchester Police [GMP].

The Notice of Application and the Response

2. By Notice of Application dated 8 July 2021 the Applicant sought the Applicant seeks the following remedies

A) I would like the ICO to write me a confirmation that:

1- GMP has breached my data protection act for not responding to my complaint within the lawful timeframe.

- 2- GMP has breached my Data protection rights for disclosing false/inaccurate/fabricated information to a third party about me.
- 3- GMP has breached my Data protection rights for disclosing my [sensitive] personal information to a third party without my consent or permission.
- B) I would like also the ICO to take the appropriate action set by the law against the GMP's data breach.

3. In directions dated 9 July 2021 Registrar Bamawo set out the Tribunal's powers to make an order under section 166(2) and 166(3) of the Data Protection Act 2018 to direct a response from the Information Commissioner's Office ("ICO") and invited the applicant to make submissions as to what power he believes this Tribunal has the to deal with this matter or make the order he seeks, by no later than 23 July 2021. Thereafter the Registrar warned the Applicant that the Tribunal may strike out the application.

4. The Tribunal has not received any submissions from the Applicant.

The Law

5. A data subject has a right to make a complaint to the Commissioner if they consider that in connection with the processing of personal data relating to them there is an infringement of the General Data Protection Regulation [GDPR], and/or Parts 3 or 4 of the Data Protection Act 2018 [DPA18]: see Article 77 GDPR, and section 165 (1) & (2) DPA18.

6. Under section 166 DPA18, a data subject has a right to make an application to the Tribunal if they consider that the Commissioner has failed to take certain procedural actions in relation to their complaint.

7. Section 166 DPA18 as relevant states:

(1) This section applies where, after a data subject makes a complaint under section 165 or Article 77 of the GDPR, the Commissioner –

(a) fails to take appropriate steps to respond to the complaint,

(b) fails to provide the complainant with information about progress on the complaint, or of the outcome of the complaint, before the end of the period of 3 months beginning when the Commissioner received the complaint, or

(c) if the Commissioner's consideration of the complaint is not concluded during that period, fails to provide the complainant with such information during a subsequent period of 3 months.

(2) The Tribunal may, on an application by the data subject, make an order requiring the Commissioner –

(a) to take appropriate steps to respond to the complaint, or

(b) to inform the complainant of progress on the complaint, or of the outcome of the complaint, within a period specified in the order.

(3) An order under subsection (2)(a) may require the Commissioner –

(a) to take steps specified in the order;

(b) to conclude an investigation, or take a specified step, within a period specified in the order.

8. The reference to taking “*appropriate steps*” in section 166(1)(a) and (2)(a), includes “*investigating the subject matter of the complaint to the extent appropriate*” and “*informing the complainant about progress on the complaints*”, as set out in sections 166(4) and 165(5) DPA18.

9. The reference to “*provide the complainant with.... the outcome of the complaint*” in s. 166(1)(b) and 2(b) is not qualified with the word *appropriate*.

10. The Tribunal can only exercise powers given to it by Parliament as set out in legislation. When considering an application under s. 166 the Tribunal is not concerned with the merits or strength of the underlying complaint. Section 166 DPA18 does not provide a right of appeal against the substantive outcome of an investigation into a complaint under s. 165 DPA18.

11. On an application under s. 166 DPA18 the Tribunal is limited to considering whether to make an order of the kinds set out in s. 166(2) requiring the Commissioner to

- a. Take appropriate steps to respond to the complaint or
- b. Inform the complainant of progress on the complaint or
- c. Inform the complainant of the outcome of the complaint.

12. Those three steps are the steps that should be taken by the Commissioner on receipt of a complaint. The second and third steps involve only the giving of information.

13. Once the Information Commissioner has sent an outcome to the complaint there is no longer an order for the Tribunal to make under s.166(2).

14. The powers of the Tribunal in determining such an appeal have been considered by the Upper Tribunal in *Leighton v Information Commissioner (No.2)* [2020] UKUT 23 (AAC) in which Upper Tribunal Judge Wikeley said at paragraph 31

“Appropriate steps” mean just that, and not an “appropriate outcome”. Likewise, the FTT’s powers include making an order that the Commissioner “take appropriate steps to respond to the complaint”, and not to “take appropriate steps to resolve the complaint”, least of all to resolve the matter to the satisfaction of the complainant.

15. In the case of *Scrannage v Information Commissioner* [2020] UKUT 196 (AAC) the Upper Tribunal went further in saying:

“... there is a widespread misunderstanding about the reach of section 166. Contrary to many data subjects’ expectations, it does not provide a right of appeal against the substantive outcome of the Information Commissioner’s investigation on its merits. Thus, section 166(1), which sets out the circumstances in which an application can be made to the Tribunal, is procedural rather than substantive in its focus. This is consistent with the terms of Article 78(2) of the GDPR (see above). The prescribed circumstances are where the Commissioner fails to take appropriate steps to respond to a complaint, or fails to update the data subject on progress with the complaint or the outcome of the complaint within three months after the submission of the complaint, or any subsequent three month period in which the Commissioner is still considering the complaint.”.

16. These decisions of the Upper Tribunal are binding on the First Tier Tribunal as to the approach that must be taken to applications such as this.

17. Mr Ahmed thought that this Tribunal had the power to consider an application about the substantive outcome of the Information Commissioner’s investigation. He is not alone in thinking that, as has been acknowledged by the Upper Tribunal in the decision in *Scrannage*, but the Tribunal is limited in its powers to those given by Parliament as interpreted by the Upper Tribunal.

18. A person who wants a data controller (or processor) to rectify personal data or otherwise properly comply with the Data Protection Act 2018 or General Data Protection Regulations in relation to holding personal data must go to the High Court or a County Court pursuant to section 180 of the Data Protection Act 2018.

19. This Tribunal does not have an oversight function in relation to the Information Commissioner’s Office and does not hold them to account for their internal processes. The Parliamentary and Health Service Ombudsman is the body which has that function.

The Facts

20. The chronology is as follows

- 23 November 2020, complaint made to the Greater Manchester Police

- 16 February 2021, GMP respond to complaint.
- 23 April 2021, the Information Commissioner's Office ('ICO') acknowledge the Applicant's complaint on the GMP's handling of his data complaint.
- 20 May 2021, the ICO inform the Applicant of the outcome of its investigation and conclude the matter.
- (No date indicated). The Applicant makes a complaint to the ICO in relation to how the ICO handled his complaint.
- 10 June 2021, the ICO informs the Applicant of the outcome of its review to his complaint against the ICO; the Applicant is advised on what further steps he may take if dissatisfied by the review.

21. The case review was completed and by letter dated 10 June 2021 the Applicant was provided with an outcome to that case review. The reviewing officer was satisfied that the previous case officer had handled the matter reasonably and in line with casework processes.

22. The Applicant disagrees with the Commissioner that there is no need for further consideration.

Analysis and Conclusions

23. Turning to s166 DPA18, the Respondent has considered the Applicant's complaint in case reference IC-78174-G4B3, taken steps as outlined above and informed him of the outcome.

24. The Applicant is not satisfied with that outcome and wishes it to be reconsidered but it is an outcome, nonetheless.

25. This Tribunal has no power to make a decision about the merits of that outcome, whether it be right or wrong, nor to compare it to any other decision of the Commissioner. Neither does the Tribunal have power to examine whether there should be further or different steps to those taken by the Commissioner.

26. Furthermore, the Tribunal does not have any power to supervise or mandate the performance of the Commissioner's functions [under schedule 13 DPA18.]

27. There is subsequently no basis for the Tribunal to make an order under section 166(2) DPA18.

28. Rule 8(2) states

8(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal – (a) does not have jurisdiction in relation to the proceedings or that part of them; and (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

29. For the reasons set out above, I have concluded that this Tribunal would not be able to provide the Applicant with the orders he seeks and that therefore the Tribunal does not have the jurisdiction (power) to deal with his application.

30. Although it may be that a civil court [High Court or County Court] has power to deal with all or part of the application I decline to exercise the power to transfer this case, as to do so would commit the Applicant to litigation that should only be embarked upon as a matter of personal choice having had the opportunity to take independent legal advice and considered all of the circumstances. This Tribunal cannot advise him whether or not he can or should make any application to a court.

31. Having taken account of all relevant considerations, I strike out this application pursuant to 8(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Tribunal Judge Lynn Griffin
27 July 2021

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