



Case Reference: EA-2023-0427-GDPR
Neutral Citation Number: [2024] UKFTT 00599 (GRC)

First-tier Tribunal
General Regulatory Chamber
Section 166 DPA 2018

Decided without a hearing
Decided on: 08 July 2024

Before

TRIBUNAL JUDGE BUCKLEY

Between

STEPHEN WILLIAMS

Applicant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Decision on rule 4(3) consideration: The application under section 166 of the Data Protection Act 1998 is struck out.

REASONS

1. By a decision dated 2 May 2024 the Registrar struck out this appeal. Under rule 4(3) I have considered the matter afresh. I agree with the Registrar's decision and the appeal is struck out.
2. In this decision, 'the Application' is a reference to the application made to the tribunal by Mr Williams, which is understood to be intended to be a complaint under

section 166 of the Data Protection Act 1998 (DPA) and ‘the Applicant’ is a reference to Mr Williams.

3. The Commissioner applies for the Application to be struck out under rule 8(3)(a) and/or (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 on the grounds that either the tribunal has no jurisdiction to consider the application or that it has no reasonable prospects of success.
4. The Commissioner submits that the remedies sought by the Applicant are not outcomes that the tribunal can grant in a section 166 application against the Commissioner. The Commissioner submits that section 166 does not provide a mechanism by which applicants can challenge the substantive outcome of a complaint.

Background

5. The Applicant complained to the Commissioner about the hacking of their electronic devices, unlawful covert surveillance, and unauthorised access to information relating to his internet search history. The Commissioner provided an outcome letter to the Applicant in December 2020, stating that the Commissioner was unable to take further action without further evidence and signposting the application to the police and/or the Investigatory Powers Tribunal.
6. The Applicant submitted further letters between June 2020 and June 2021 raising concerns about phone hacking and surveillance.
7. The Commissioner wrote again to the Applicant on 22 June 2021, noting the Applicant’s continued concern that his electronic devices were being hacked and reiterating that this was not a matter with which the Commissioner was able to assist. The Commissioner informed the Applicant again that if he was concerned that the police were conducting surveillance of him, he might be able to submit a complaint to the Investigatory Powers Tribunal. The Commissioner stated clearly in the letter that the case was now closed.
8. Between June 2021 and November 2022 the Applicant sent further letters expressing concerns with mind reading AI technology being unlawfully used in their home. The Commissioner wrote again to the Applicant on 7 November 2022 stating that it was unable to assist with the complaints. The Commissioner stated that further correspondence would not be responded to.
9. In May 2023 the Applicant wrote to the Commissioner again. In essence he stated that he had received legal advice that there was insufficient evidence to support his allegations of harassment, and that he had informed the barrister that the Commissioner would be able to assist in substantiating the allegations, because he had sent supporting evidence to the Commissioner. The Applicant wrote to the Commissioner’s case officer giving them authority to speak to the barrister in question.
10. The Commissioner wrote to the Applicant on 1 June 2023 advising the Applicant that it did not hold any additional information about his concerns about harassment other

than the correspondence the Applicant had sent to the Commissioner. The letter stated that further correspondence would not be responded to.

The application to the tribunal

11. The application that is made to the tribunal is, in essence, a complaint that the Commissioner is refusing to provide evidence to the Applicant's barrister in support of the Applicant's potential harassment claim. The Applicant has sent in numerous documents in support of this assertion.

The Applicant's response to the strike out application

12. The Applicant was given the opportunity to respond to the strike out application, and in response provided a large number of documents and several DVDs in support of his assertion that the Commissioner held but was refusing to provide evidence in support of his harassment claim.

Discussion and conclusions

13. To the extent that the Applicant made a complaint to the Commissioner about breaches of data protection legislation, an outcome was provided to that complaint.
14. On an application to the tribunal under section 166, the tribunal has no power to deal with the merits of the complaint to the Commissioner or its outcome (confirmed in **Killock & Veale & ors v Information Commissioner** [2021]UKUT 299 (AAC) and **Leighton v Information Commissioner (No.2)** [2020] UKUT 23 (AAC)).
15. I have considered whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of the Application succeeding at a full hearing. In my view, there are no reasonable prospects of any Application under section 166 succeeding.
16. However, the Application is not about the failure of the Commissioner to take appropriate steps to respond to a complaint about breaches of data protection legislation. It is a complaint that the Commissioner is falsely claiming that it holds no evidence in support of the Applicant's intended harassment claim.
17. That is a matter that the tribunal has no power to consider whether under section 166 or otherwise. The tribunal does not have a general jurisdiction to deal with any complaints about actions by the Commissioner. It has a specific jurisdiction circumscribed by statute. It has no jurisdiction to consider a complaint of this nature.
18. Given the nature of the complaint it is not appropriate to exercise the tribunal's power to transfer the Application to another Court or tribunal.
19. I have considered whether I should exercise my discretion to strike the Application out. Taking into account the overriding objective, it is a waste of the time and resources of the Applicant, the tribunal and the Commissioner for this Application to be considered at a final hearing. In my view it is appropriate to strike the Application out.

20. For the above reasons the Application is struck out.

Signed

Date:

Sophie Buckley

8 July 2024