



Appeal number: EA/2019/0029GDPR

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

ANDREW QUIGLEY

Applicant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Dr HENRY FITZHUGH
Mr ANDREW WHETNALL**

Determined on the papers, the Tribunal sitting in Chambers on 16 May 2019

DECISION

1. The application is refused.

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REASONS

2. The Applicant applied to the Tribunal for an Order to Progress his Complaint under s. 166 of the Data Protection Act 2018 (“DPA 2018”).

3. In his Notice of Appeal form dated 5 February 2019, the Applicant relies on grounds that the Commissioner had not fully completed her assessment of his complaint against a data controller and that she is in breach of her statutory duties.

4. The Information Commissioner’s Response dated 5 March 2019 relies on grounds of opposition that the Commissioner has responded appropriately to the Applicant’s complaint and in a timely fashion so there is no basis for making the Order sought.

5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising 176 pages, including the submissions made by both parties. We are grateful to both parties for their helpful written submissions.

The Law

6. Section 166 of the DPA 2018 creates a new right of application to the Tribunal as follows:

Orders to progress complaints

- (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—

5 (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.

(4) Section 165(5) applies for the purposes of subsections (1)(a) and (2)(a) as it applies for the purposes of section 165(4)(a).

10 7. The “appropriate steps” which must be taken by the Information Commissioner is further defined by s. 165(5) DPA 2018 as investigating the subject matter of the complaint “to the extent appropriate” and keeping the complainant updated as to the progress of inquiries.

15 8. The powers of the Tribunal in determining a s. 166 application are limited to those set out in s. 166 (2). In Order to exercise them, the Tribunal must be satisfied that the Commissioner has failed to take appropriate steps to respond to or progress a complaint made to her under s. 165 DPA 2018. The jurisdiction to make an Order is limited to circumstances in which there has been a failure of the type set out in s. 166 (1) (a), (b) and (c).

20 *The Evidence*

9. We have considered carefully the agreed bundle of evidence. This shows that the Applicant made a complaint to the Commissioner on 13 August 2018. The Commissioner wrote to the Applicant on 7 November 2018 to clarify the terms of his complaint. She then made various inquiries of the data controller and wrote to the Applicant on 9 January 2019 to inform him of her conclusions.

Submissions

10. The Applicant clearly disagrees with the Commissioner’s conclusion. He submits that her inquiries should have considered additional issues which he raised in correspondence with her office.

30 11. The Commissioner submits that she took appropriate steps to respond to the Applicant’s complaint and that, whilst he disagrees with the outcome, this is not a proper basis for the Tribunal to make an Order under s. 166 DPA 2018 because the Tribunal’s jurisdiction is limited to procedural failings and is not intended to serve as an appeal against outcome. She has advised him that he may seek a remedy against
35 the data controller in the County Court.

Conclusion

12. We conclude that the Information Commissioner took appropriate steps to respond to the Applicant's complaint and in a timely manner. We are not persuaded that she failed to address the matters in s. 166 (1) (a) (b) and (c).

5 13. We understand that the Applicant is not satisfied with the Commissioner's conclusions, but we agree with the Commissioner that s. 166 DPA 2018 does not provide a right of appeal against the substantive outcome of an investigation into a complaint under s. 165 DPA 2018. We endorse her advice that the County Court would be the correct forum for seeking a substantive remedy.

10 14. We conclude that there is no basis for making an Order under s. 166 (2) DPA 2018 on the facts of this case.

15. For these reasons, the application is refused.

(Signed)

15 **ALISON MCKENNA**

DATE: 5 June 2019

CHAMBER PRESIDENT

PROMULGATED DATE: 7 June 2019