



**Appeal number: EA/2020/0168/GDPR/V**

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

**DANIEL OSULA**

**Applicant**

**- and -**

**INFORMATION COMMISSIONER**

**Respondent**

**Before:  
JUDGE MOIRA MACMILLAN**

**Appearances:  
The Applicant represented himself.  
The Respondent was not represented.**

**Determined at a remote hearing via video on 17 July 2020**

## DECISION

1. The Application is refused.
- 2.

## MODE OF HEARING

3. The proceedings were held by video. The Applicant joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.
4. The hearing was conducted by a Judge, sitting alone. The Tribunal was satisfied that it was appropriate to conduct the hearing in this way.
5. The Tribunal directed that the proceedings would be conducted in private in accordance with rule 35(2) of the Chamber's Procedure Rules<sup>1</sup>. A recording of the proceedings is available on application.
6. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 38.

## REASONS

### *Background to the Application*

7. The Application relates to a complaint made by the Applicant to the Respondent on 17 April 2020. The complaint relates to the Metropolitan Police Service ('MPS'). The chronology of events is as follows:

- (a) 2 July 2019: The Applicant makes a subject access request ('SAR') to the MPS;
- (b) 26 July 2019: The Applicant's wife dies.
- (c) 22 August 2019: The MPS sends the Applicant a holding response to his request.
- (d) 17 April 2020: The Applicant complains to the Respondent about the MPS's lack of a response to his SAR.
- (e) 23 April 2020: The Respondent informs the Applicant that she does not intend to consider his complaint as too much time has passed since he received a response from the MPS.
- (f) 1 May 2020: The Applicant applies to the Tribunal for an Order under s. 166 of the Data Protection Act 2018 ('the DPA').

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<sup>1</sup><https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

- (g) 26 May 2020: The Respondent applies for the Application to be struck out under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.
- (h) 9 June 2020: The Tribunal refuses to strike out the case.
- (i) 16 June 2020: The Respondent reviews the Applicant's complaint and decides to consider it further. She requests more information from the Applicant.

*The Law*

8. The Applicant's right of application is contained in s. 166 DPA:

*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—*

*(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).*

9. The reference in s. 166(4) to s. 165(5) means that the “appropriate steps” which must be taken by the Respondent includes investigating the subject matter of the complaint “to the extent appropriate” and keeping the complainant updated as to the progress of inquiries. The extent to which it is appropriate to investigate any complaint is a matter for the Respondent, as regulator, to determine.

10. S.166, when read together with s. 165, requires the Respondent to (i) consider a complaint once made, and (ii) provide the person who made the complaint with a response, both within 3 months. Thereafter, if the Respondent has not sent a final response to the complainant, she must update them on the progress of her consideration of their complaint at least every 3 months.

11. This requirement is reflected in the Orders available to the Tribunal under s. 166(2). The Tribunal can make an Order requiring the Respondent to investigate or conclude an investigation of a complaint (the ‘appropriate steps’ referred to in s. 166(2)(a)), or to provide the complainant with an update (s. 166(2)(b)).

### *The Evidence*

12. There is no dispute between the parties as to the facts of this case, which are as set out above.

### *Submissions*

13. The Applicant has explained that his complaint to the Respondent was delayed by the after effects of his wife’s death. He submits that the ICO made an error in not finding out why his complaint was made late. He describes the outcomes he is seeking from this Application as an investigation of his complaint by the Respondent and an award of compensation for any violation of his personal data rights.

14. At the date of hearing, the Applicant was unaware that the Respondent had decided to investigate his complaint further. The Respondent’s submissions were read to the Applicant and a copy was sent by email at the conclusion of the hearing.

15. The Respondent’s view is that she has responded to the complaint as required under the DPA. However, on review, she has decided to investigate the Applicant’s complaint further.

### *Conclusion*

16. I note that, in response to this Application, the Respondent has reanimated her investigation of the Applicant’s complaint and is seeking further information from him.

17. I have considered whether in these circumstances there is any Order for the Tribunal to make. I have concluded that there is not and that, providing the Respondent takes steps to inform the Applicant of the progress of his complaint, there will continue to be no requirement for an Order to be made pursuant to s. 166(2).

18. The Application for an Order is therefore refused.

**(Signed)**

**Date: 17 July 2020**

**Judge Moira Macmillan**

**Date Promulgated: 20 July 2020**

