



Neutral citation number: [2024] UKFTT 1037 (GRC)

Case Reference: FT/EA/2024/0328/GDPR

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard by determination on the papers
Heard on: 14 November 2024
Decision given on: 15 November 2024**

Before

TRIBUNAL JUDGE SWANEY

Between

MICHAEL BROOKER

Applicant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION ON STRIKE OUT APPLICATION

1. The notice of application dated 22 August 2024 is struck out.

REASONS

2. On 27 March 2024 the applicant made a subject access request to the respondent (the Commissioner). The Commissioner failed to respond to that request within the one month statutory timeframe and on 13 May 2024 the applicant made a complaint to the Commissioner.
3. The applicant applied for an order to progress a complaint made to the Commissioner on 22 August 2024 on the basis that his complaint had gone unanswered for more than three months.
4. On 28 August 2024 the tribunal made case management directions. The Commissioner was directed to provide a response pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) and make any application within 28 days of the date on which the directions were sent. The applicant was directed that by no later than 14 days after the Commissioner's

deadline, he may provide a reply pursuant to rule 24 of the Procedure Rules, make any application, or make representations in response to any application made by the Commissioner.

5. On 20 September 2024 the respondent (the Commissioner) provided his response to the application pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) and applied for strike out under rule 8(3)(a) and/or (c) of the Procedure Rules on the basis that the tribunal has no jurisdiction and/or the application has no reasonable prospect of success.
6. The applicant did not provide a rule 24 reply and did not respond to the Commissioner's application for strike out.
7. In his rule 23 response, the Commissioner asserts that he provided a response to the applicant's subject access request on 24 May 2024, but accepts that he did not respond to the applicant's complaint within three months as required and apologises for his delay. The Commissioner states however that the applicant was notified of the outcome of his complaint on 29 August 2024.
8. The Commissioner submits that having provided an outcome to the applicant's complaint, the tribunal has no jurisdiction to consider the application made on 22 August 2024. The Commissioner relies on R (Delo) v ICO [2022] EWHC 3046 (Admin) per Mostyn J at paragraph 128:

Section 166(2) thus provides the 'effective judicial remedy' for dilatoriness referred to in Article 78.2. Sections 166(2) and (3) allow the Tribunal to order the Commissioner to take steps specified in the order to respond to the complaint. In my judgment, this would not extend to telling the Commissioner that he had to reach a conclusive determination on a complaint where the Commissioner had rendered an outcome of no further action without reaching a conclusive determination. *This is because s. 166 by its terms applies only where the claim is pending and has not reached the outcome stage. It applies only to alleged deficiencies in procedural steps along the way and clearly does not apply to a merits-based outcome decision.* (Emphasis added)

9. Although it is accepted that he delayed in doing so, the Commissioner has progressed the complaint and informed the applicant of the outcome. The Commissioner notified the applicant of the outcome of his complaint on 29 August 2024. The applicant made the current application on 22 August 2024 and so at the date of application, his complaint was pending for the purposes of section 166 of the Data Protection Act 2018 (the DPA). However, the complaint is no longer pending and the tribunal has no power to make an order pursuant to section 166 because all procedural issues have been resolved. Accordingly, I find the tribunal no longer has jurisdiction in relation to the application.

10. If I am wrong on that point, I find that the application has no reasonable prospect of success for the same reasons. The Commissioner has informed the applicant of the outcome of his complaint and there is no remedy tribunal could order.
11. This application is truck out and accordingly no further action will be taken in relation to it.

Signed

Date: 14 November 2024

Judge J K Swaney
Judge of the First-tier Tribunal