



**In the First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

NCN: [2025] UKFTT 39 (GRC)

Case number: EA.2021.0144

Before: District Judge Moan

Appellant: Christopher Hart

Respondent: Information Commissioner

Order

(The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009)

It is ORDERED THAT:

1. The Appellant's request to reinstate this appeal is refused.
2. The appeal is struck out under Rule 8(2)(a) and under Rule 8(3)(c) – the Tribunal does not have jurisdiction to entrain this appeal and it has no realistic prospects of success.

Reasons

1. From his exhibits, it appears that the Appellant made a FOIA request to the public authority on 19th February 2021. The attached exhibits included a letter from the Appellant dated 19th February 2021, as posted on 20th February 2021 by special delivery to his GP practice about his transfer from the care of one GP to another. Under a subject access request, he requested his patient records and personal data as well as other information relating to his care as a patient and information that had been shared. Under a FOIA request, he also

requested the policies and practices regarding extremely vulnerable patients as well as the process of re-registration.

2. In a letter sent on his behalf, the Appellant emailed the GP Practice on 19th April 2021 acknowledging that he had received some responses but that the practice had not complied with FOIA within the statutory time limits. The letter reiterated the request for information, although not specifying what information (if any) was still outstanding. The practice replied on 19th April 2021 reiterating that they had responded on 25th February 2021 and that the decision to place him in the clinically vulnerable group had been made by NHS England and that his GP had changed due to his previous GP leaving the practice, with apologies for any distress incurred as result of that decision.
3. The Appellant wrote again to the GP practice on 20th April 2021 reiterating hat his requests had not been dealt with. The Practice responded the same day with links to the policies requested.
4. The Appellant made a complaint to the ICO on 21st April 2021. The ICO was provided with the response of the GP practice dated 20th April 2021 confirming that they had responded to the request. The ICO considered that the response was late but that there was no public interest in serving a formal decision notice noting that they had responded. This was confirmed to the Appellant on 28th May 2021. On 8th June 2021 following an email from the Appellant dated 28th May 2021 which was not exhibited, the Appellant was asked to confirm whether he had received the information, whether he considered that it answered his requests and whether he had exhausted the complaints procedure with the GP

Practice. No reply from the Appellant was exhibited to that request from the ICO.

5. The Appellant contends that he made a complaint under section 50 of FOIA. That compels the ICO to issue a decision notice and further he submitted that he was not informed of the internal complaints system with the GP practice and so could not instigate those. He appears to accept the response was given but not within the prescribed 20 working days. The letters from the ICO confirm that they had asked him to confirm whether he had asked for an internal review. The Appellant suggests that section 50(2)(a) does not apply as his complaint was brought within time.
6. The ICO has not been asked to respond to this appeal at the present time. This Order is made after the Registrar put the Appellant on notice that she considered that the Tribunal had no jurisdiction to deal with this appeal and invited the Appellant's response, which he provided. The appeal was latterly stayed due to the poor health of the Appellant and consideration is now given as to whether this appeal can proceed as part of his application to reinstate the appeal. The jurisdiction of the Tribunal to consider the issues is key to the issue of reinstatement; there is little point in reinstating an appeal than cannot be progressed.
7. The Act does not require a public authority to provide details of their complaint process for the purposes of an internal review albeit it is good practice to do so; there was a complaint procedure on the bottom of both of the letters sent by the GP Practice. It was likely that the internal review would have been conducted

in-house by the medical group, had one been requested. This could have been instigated by contacting the GP Practice directly.

8. Section 10 of the Act requires a public authority to respond to information requests “*promptly and in any event not later than the twentieth working day following the date of receipt.*” The response appears on the basis of the documents provided to have been late albeit not all documents have been provided to the Tribunal.
9. A section 50 complaint to the Commissioner can be made for a decision notice whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I. A failure to reply in accordance with section 10 comes within Part 1 of the Act.
10. The request for information was made in a letter dated 19th February 2021; the Practice said they had responded on 28th February 2021 albeit that response is not exhibited. The letters dated 19th April 2021 and 20th April 2021 clarify what information is sought and this is responded to on 20th April 2021 by the Practice with the information requested. Even at 28th May 2021 when the ICO responded, the Appellant was in time to ask for an internal review (40 working days from the response) but appeared to choose not to, despite the clear indication from the Commissioner on 28th May 2021 of the timeline for internal review requests and his indication on 8th June 2021 that an internal review was required (and noting that the Appellant was still in time to ask for an internal review as at the date of this letter) before a decision notice could be issued.

11. The obligation on the Commissioner to make a decision does not apply where any of the conditions in section 50(2)(a)-(d) apply. There was a complaint process specified in the letters from the Practice although it is likely that the Appellant would be referred to the Practice Manager in the first instance. The internal review is a pre-cursor to the Commissioner being required to issue a decision notice. The Commissioner could still issue a decision notice even without an internal review, should he chose to, but that is a matter within his discretion, and as such that exercise of his discretion not to issue a decision notice cannot be appealed to the First Tier Tribunal. That is a judicial review issue.

12. Even had an internal review taken place and the Commissioner issued a decision notice to the effect that the information was provided late, the Commissioner was not obliged to take any action on the late delivery of the information requested. There is no power for the Commissioner to fine the public authority for late provision of information. The Commissioner's role is to promote good practice and compliance. In repeated instances of failures to comply with the Act, the Commissioner could choose to issue an enforcement notice requiring compliance with the Act but that would be entirely within the Commissioner's discretion. The First Tier Tribunal would have no jurisdiction to entertain an appeal against the exercise of the Commissioner's discretion not to make an enforcement order. That is a matter for judicial review.

13. The powers of the First Tier Tribunal on appeal under section 57 of the Act are confined to circumstances where a decision notice has been served; as no notice was issued, no appeal can lie to this Tribunal. As such the Tribunal does

not have jurisdiction to entertain this appeal and it is struck out under Rule 8(2)(a) of the Rules and under Rule 8(3)(c) as having no realistic prospect of success.

14. The Appellant is on notice of this application and has responded. Where Rule 8(2)(a) applies, the Tribunal must strike out the appeal, it too has no discretion to allow it to proceed. To allow a case to proceed otherwise, wastes the valuable resources of the Tribunal.

15. Accordingly, the application to reinstate this appeal is refused as the appeal has no merit.

District Judge Moan

6th January 2025

Decision given on: 15 January 2025