



NCN: [2022] UKFTT 00349 (GRC)
Case Reference: EA/2021/0348

First-tier Tribunal
General Regulatory Chamber
Information Rights

Determined on the papers: 15 September 2022
Decision given on: 28 September 2022

Before

JUDGE O'CONNOR CP

Between

BARBARA ROGERS

Applicant

and

INFORMATION COMMISSIONER

Respondent

DECISION

These proceedings are struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS

Introduction

1. Although the applicant has requested that she would “like a court on it”, for which I read she would like an oral hearing in relation to the instant matter, I have considered this matter on the papers having concluded that it does not defeat the interests of justice to do so. Both parties have had ample opportunity to make written submissions in support of their respective positions and they have each taken that opportunity. Pursuant to rule 32(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the 2009 Rules”), I have a discretion to dispose of proceedings under rule 8 of those Rules without a hearing.
2. By way of a Notice of Application received by the Tribunal on 23 November 2021, the applicant states that she believes that her “sensitive data...has been infringed” as have her human rights (in particular, the rights encompassed in ECHR articles 8 and 10), because, amongst other things, her “correspondence [is] being spied on”. The applicant seeks “redress, possible compensation, the right to go to court to address it, and a re-furnishing of a more favourable decision ...”.
3. The appellant states that she seeks for these issues to be considered by the Tribunal pursuant to section 166 of the Data Protection Act 2018 (“2018 Act”).

Legal Background

4. Article 77(1) of the GDPR gives every data subject the right to complain to a supervisory authority (in the domestic context, the Information Commissioner) if they consider that the processing of their personal data infringes their GDPR rights. The relevant provisions of section 165 of the 2018 Act accordingly provide as follows:

“165 Complaints by data subjects

(1) Articles 57(1)(f) and (2) and 77 of the GDPR (data subject's right to lodge a complaint) confer rights on data subjects to complain to the Commissioner if the data subject considers that, in connection with personal data relating to him or her, there is an infringement of the GDPR.

(2) A data subject may make a complaint to the Commissioner if the data subject considers that, in connection with personal data relating to him or her, there is an infringement of Part 3 or 4 of this Act.

(3) The Commissioner must facilitate the making of complaints under subsection (2) by taking steps such as providing a complaint form which can be completed electronically and by other means.

(4) If the Commissioner receives a complaint under subsection (2), the Commissioner must –

(a) take appropriate steps to respond to the complaint,

(b) inform the complainant of the outcome of the complaint,

- (c) inform the complainant of the rights under section 166, and
 - (d) if asked to do so by the complainant, provide the complainant with further information about how to pursue the complaint.
- (5) The reference in subsection (4)(a) to taking appropriate steps in response to a complaint includes –
- (a) investigating the subject matter of the complaint, to the extent appropriate, and
 - (b) informing the complainant about progress on the complaint, including about whether further investigation or co-ordination with another supervisory authority or foreign designated authority is necessary.”

5. Section 166 of the 2018 Act reads:

“166 Orders to progress complaints

- (1) This section applies where, after a data subject makes a complaint under section 165 or Article 77 of the UK 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).”

Factual Background

6. The underlying factual matrix is accurately set out at [15] to [17] of the Information Commissioner’s Response, dated 3 March 2022, in the following terms:

“15. On 25 May 2021 the Applicant copied the Commissioner into an email sent to various organisations raising a number of human rights concerns.

The Applicant also provided an annotated copy of a letter she had received from the Home Office dated 19 May 2021.

16. This complaint was allocated case reference IC-109492-S8H7.

17. On 8 June 2021 an ICO case officer wrote to the Applicant. The case officer confirmed that, amongst others, discrimination, human rights matters and sexual harassment or abuse were matters that fell outside the remit of the ICO. The case officer advised the Applicant to complete a complaint form if she wished to raise a data protection complain. The case officer confirmed that any further correspondence on matters that fall outside the remit of the ICO would not be responded to."

The proceedings so far

7. Within the Response the Information Commissioner submits that the applicant has not made a complaint under section 165 of the 2018 Act to the Commissioner because the complaint that has been made does not concern the infringement of data protection legislation in respect of the processing of personal data. The Commissioner requests that the application to the Tribunal be struck out as having no reasonable prospects of success.
8. In a decision of 1 September 2022, the Tribunal's Registrar, exercising his delegated judicial powers, struck out the applicant's application for the reasons identified in the Commissioner's Response.
9. By way of an email of 5 September 2022, and pursuant to rule 4(3) of the 2009 Rules, the applicant requests that a judge consider the matter afresh, and provides the following additional submissions:

"I do not like the decision to strike out my application, and I have commented in May of this year 2022, and was asked for no further comment than that. Have I been asked recently over further application when I've sent indeed enough to yourselves and also the GRC as well, and cheekily asked to send you information when you should be checking ICO files. Judge 154890598 also past Judge reference also put 895493 Judge Refernce seek me in the V. I have been your secret judge I want these files closed noit. Lucy Punch Heiress, house of Antrimm and Custodial Lord and also your Meiter. The ICO should be punished by hjer Majesty the Queen and I am the true Queen of the Ocramas and Princess Crown of Himalajas and Himalayan Queen or Princess Queen when I was little. I am Baube. Barbara Antrimm Batch, Lady Cogan Coogan (Ex Mrs) Lady Lord Batch Kingdom Moore Batch Antrimm Cogan Coogan, I am the one who funds our Targeted Individual and you have egressed me in the law, I noiw wish to fight it under court case, because I have not seen your latest where you have not sent other emails unless I check. I have also allowed you to know about papers of medicine, which I find something you should be thankful for as you have forgotten I am from a family of batch eh? Barbara Roberts - Spy for our country and Barbara Rogers (Queen of the Ocramas Daughter and

also King of Nochte wife (ex Costima) Queen of Nuchte and also Queen of Nachte and ex costima of King (which also a Dymas More - and a Cumber Moore) Goto house of Cumberbatch Benus - he's my Lord Chamcellor. I am duchess of Averham and also Duchess of Raiks Morcham's. I am Duchess and shouldn't be treated this way. 159457890 -Court Case Known with House of Sudeley (a d less for divorce of law from me not) I will know I am angry with you."

10. In an email of 8 September 2022 (and later covering letter of 10 September 2022), the applicant added to her submissions as follows:

"I have 10-15 working days under Lister Law to reply to you and under regular GRC laws. I want to appeal the decision in writing treat this as letter post. Sec (5) (8) (9) + Lisster as it's me 159458590 Judge Number with a double S in entirety. This is the right to appeal decisions again and again until made available to a Duchess or Organ person if truth and also the warring opposition side and also be made aware until corrective - where I am the least happiest never 159950859 - 457812458 Duchess of Woe signalling. Judges number has been supplied. I have also been Utrium Queen of the Himalajas (Utra Queen) in correction if misunderstood, and my mother also, her Majesty Queen Elizabeth II is to be told. Queen Elizabeth is my secret Godmother.

This is the postal letter and I have right to say this under laws with covid conditions.

Letter or email to the GCQ or GHC or GRC General quarter of Quotient with the other GCQ. Babus Law 839498. In general Law under 839495. Re-appeal will be under 459 on the end (Law 839459) - if reappeal needed. These are never laws seek guidance above."

Conclusions

11. The Upper Tribunal has also provided guidance on the approach to be taken by this Tribunal when considering whether to strike out a case as having no reasonable prospect of success. In HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation) [2014] UKUT 0329 (TCC), the Upper Tribunal stated that:

"...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing...The Tribunal must avoid conducting a "mini-trial". As Lord Hope observed in *Three Rivers* the strike out procedure is to deal with cases that are not fit for a full hearing at all."

12. The statutory scheme allows the Tribunal to address procedural failings by the Commissioner in responding to a complaint made pursuant to section 165 of the

2018 Act. A complaint under section 165 is a complaint made to the Commissioner that there is an infringement of the GDPR in connection with personal data relating to the complainant.

13. I have carefully considered, *inter alia*, the email sent by the applicant to the Commissioner on 25 May 2021 as well as the email chain of which it formed a part and the applicant's written submissions to this Tribunal. Having done so, I cannot identify any complaint to the Commissioner that there has been an infringement of the GDPR in connection with personal data relating to the applicant. I conclude that there is no reasonable prospect of the applicant demonstrating that the contrary is the case. Consequently, I conclude that the Commissioner's obligations under section 165 of the 2018 Act have not been triggered and the Tribunal cannot therefore intervene pursuant to section 166 of the 2018 Act.
14. If I am wrong about this, and the email chain does constitute a section 165 complaint, then the Commissioner has provided an outcome to that complaint by way of a letter of the 8 June 2021. Contrary to many data subjects' expectations, section 166 does not provide a right of appeal against the substantive outcome of the Commissioner's investigation on its merits: Scranage v Information Commissioner [2020] UKUT 196 (AAC). While the Tribunal does have the final say in considering the appropriateness of investigative steps, the Tribunal will be bound to take into consideration and give weight to the views of the Commissioner as an expert regulator. In the sphere of complaints, the Commissioner has the institutional competence and is in the best position to decide what investigations he should undertake into any particular issue, and how he should conduct those investigations. This will be informed not only by the nature of the complaint itself but also by a range of other factors such as his own registry priorities, other investigations in the same subject area and his judgement on how to deploy his limited resources most effectively: Killock & Ors v Information Commissioner [2021] UKUT 299. The obligation of the Commissioner is to take appropriate steps to respond to the complaint.
15. The information set out by the Commissioner in the letter of 8 June provides a response to the emails sent to the Commissioner by the applicant. If those emails do constitute a relevant complaint, then in my conclusion the letter of 8 June provides a response thereto required by the 2018 Act. There is no basis in the present case for the Tribunal to interfere that can withstand the principles set out in Killock.
16. For all these reasons, I conclude the applicant's application to the First-tier Tribunal has no prospect of success and must be dismissed and I consequently strike it out.

Signed
Judge O'Connor

Chamber President

Date: 16 September 2022