



Neutral citation number: [2024] UKFTT 1035 (GRC)

Case Reference: FT/EA/2024/0293/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**

**TIMOTHY JAMES MORELY**

Applicant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION ON STRIKE OUT APPLICATION**

1. The notice of application is struck out and the application to join the London Borough of Lambeth as a second respondent is refused.

**REASONS**

2. The applicant requested information from the London Borough of Lambeth (Lambeth) concerning its decision to commence and serve enforcement notices under the Town and Country Planning Act 1990. On 23 October 2023 the applicant made a complaint to the respondent (the Commissioner) about Lambeth's handling of his request.
3. The Commissioner assigned a case officer was to investigate the applicant's complaint and allocated the matter a reference number. The case officer wrote to the applicant and advised that although he had identified that his request to Lambeth was made under the Freedom of Information Act 2000 (FOIA), the requested information was likely to include his personal data, which he would not be entitled to obtain under either FOIA or the Environmental Information Regulations 2004 (the EIR). The case officer proposed to write to Lambeth and ask them to reconsider the applicant's

request under the Data Protection Act 2018 (the DPA) and under the UK General Data Protection Regulation (UKGDPR) and to respond directly to the applicant. The applicant agreed to that approach.

4. The case officer duly contacted Lambeth on 19 February 2024 and asked them to treat the applicant's request as a subject access request made under the DPA and to update the Commissioner when they responded to the applicant. Lambeth confirmed to the Commissioner on 12 March 2024 that they had responded to the applicant's request.
5. On 12 March 2024 the applicant contacted the case officer to express concern about Lambeth's response to his subject access request. The case officer responded stating that data protection casework colleagues would consider his concerns.
6. The applicant's case was allocated a new case reference and was allocated to a new case officer. That case officer contacted Lambeth and raised the applicant's concerns about the handling of his subject access request and requested a response within 14 days. The case officer informed the applicant of the action taken and advised that an outcome to his complaint would be provided once a response had been received from Lambeth.
7. There was then further correspondence between the applicant and the case officer regarding a request the applicant had made to Lambeth for the erasure of his data. The applicant was advised to allow Lambeth a month to respond and then if he was dissatisfied, he could refer the matter to the Commissioner for consideration. He was also advised that the right to erasure was not absolute.
8. On 28 May 2024 Lambeth provided a response to the Commissioner, following which the Commissioner provided the applicant with an outcome to his complaint on 6 June 2024. The Commissioner explained that he did not require Lambeth to take any further action and advised the applicant that he could pursue a remedy through the courts if he was not satisfied and recommended that he seek legal advice.
9. The applicant contacted the Commissioner on 6 June 2024 and raised concerns about how Lambeth had dealt with his erasure request. The Commissioner responded on 12 June 2024 and asked the applicant for copies of any correspondence with Lambeth regarding the erasure request. He was concerned with Lambeth's failure to respond to emails sent by him on 16 May 2024.
10. The Commissioner contacted Lambeth on 28 June 2024 raising the applicant's concerns. He also contacted the appellant on the same date and explained that Lambeth had provided a satisfactory response to his erasure request. He was advised of his right to seek a case review if he was dissatisfied with the handling of his complaint and the outcome reached.
11. The applicant asked the Commissioner whether he should ask the tribunal to look at the Council's responses. The Commissioner replied and advised that as the applicant's request was one considered under the DPA, there were only limited circumstances

under which the tribunal could consider an application. He was reminded of his right to pursue the matter through the courts and to seek a case review.

12. On 23 August 2024 the applicant requested a case review. A reviewing officer upheld the case officer's handing of the complaint on 17 September 2024. The applicant was advised of his right to complain to the Parliamentary and Health Service Ombudsman and of his right to pursue court proceedings.
13. On 31 July 2024 the appellant lodged a notice of appeal. He stated that he is seeking the following outcome:
  - (i) That Lambeth is instructed to reply to his FOIA request with 14 days.
  - (ii) That Lambeth is officially reprimanded for its persistent non-compliance with FOIA.
14. Although the applicant lodged a notice of appeal, there is no right of appeal against the substance of a complaint outcome in relation to matters under the DPA. The fact that the applicant may have made his request pursuant to FOIA does not mean that FOIA is the regime under which his request falls to be considered. As is set out above, the appellant's request to which the complaint underlying this appeal relates was considered under the DPA.
15. If there is a challenge to the outcome of a complaint in these circumstances, the appropriate remedy is by way of an application for judicial review. It is for this reason that the applicant's notice of appeal was treated as an application for an order under section 166(2) of the DPA.
16. The Upper Tribunal held in Killock & Veale & others v Information Commissioner [2021] UKUT 299 (AAC), that there is a strict procedural focus in section 166. The Upper Tribunal stated:

[i]t is plain from the statutory words that, on an application under s.166, *the Tribunal will not be concerned and has no power to deal with the merits of the complaint or its outcome.* We reach this conclusion on the plain and ordinary meaning of the statutory language but it is supported by the Explanatory Notes to the Act which regard the s.166 remedy as reflecting the provisions of article 78(2) which are procedural. Any attempt by a party to divert a Tribunal from the procedural failings listed in s.166 towards a decision on the merits of the complaint must be firmly resisted by Tribunals. (Emphasis added)
17. The applicant was provided with an outcome to his complaint by the Commissioner. He does not agree with the outcome, but this tribunal does not have the power to consider an appeal against the Commissioner's substantive findings. The tribunal has no power to do what the applicant is asking because at the time he made his application, he had received all that the tribunal could order under section 166(2) in relation to the applicant's complaint about Lambeth's handling of his subject access

request. There is no remedy the tribunal could order and accordingly, I find that there is no jurisdiction to consider the application and even if there were, the application would have no reasonable prospect of success for the same reasons.

18. The notice of application is struck out and no further action will be taken in relation to it. The application to join Lambeth as a second respondent is academic, but for the sake of completeness, it is refused.

Signed

Date: 14 November 2024

Judge J K Swaney  
Judge of the First-tier Tribunal