



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

Before: **District Judge Moan**

Applicant: **Mark Baker**

Respondent: **Information Commissioner**

ORDER

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

It is recorded that:

1. The chronology of the proceedings is recorded in the Order dated 13th December 2024

It is ORDERED THAT:

2. **The application is struck out under Rule 8(2)(a) and Rule 8(3)(c).**

Reasons

The notice of appeal dated 15th May 2023 referred to an appeal against the decision of the Respondent dated 20th April 2023 and the grounds referred to the failure of the Respondent to deal with data protection and FOIA offences. The attached letter dated 20th April 2023 from the Commissioner was not an outcome letter following a data protection complaint but a reply to an “enquiry” dated 17th March 2023. The letter dated 17th March 2023 was not supplied by the Applicant but it is apparent from the reply dated 20th April 2023 that the letter was a complaint about the service from the Respondent. The grounds of appeal referred to Applicant’s dissatisfaction with the Respondent’s investigation into his complaint and referred to a failure to investigate.

The letter dated 17th March 2023 was latterly supplied by the Respondent with his response. The 17th March 2023 letter was not a section 165 Data Protection Act 2018 complaint, i.e. it did not complain about a data infringement, but rather the letter made accusations of a cover up regarding a previous complaint.

The response of the Respondent gave further insight into the chronology. The Applicant had made a data processing complaint in 2017. A case review had taken place in 2018. The Applicant had been given a clear outcome to his complaint on 12th March 2019. The Applicant continued to write to the Respondent about his complaint even after an outcome and the Respondent replied to his concerns.

What is clear from the correspondence provided by the Respondent is that the complaint had received an outcome and the letter dated 20th April 2023 was not an outcome letter but a response to further correspondence post-investigation. There was no ongoing complaint or investigation.

The Respondent made an application to strike out the application under Rule 8(2(a) and 8(3)(c) of the Rules on 13th September 2024. The Applicant responded on 17th September 2024 repeating his criticism of the Respondent and his case workers. He was critical of the Respondent's refusal to take action against the data processor and sought for the Tribunal to compel the Respondent to act in a specified way. He restated his case but did not address the application to strike out namely that the Tribunal had no power to make the order sought and that his application had no realistic prospects of success as contended by the Respondent.

The application made by the Applicant is misconceived and made more cumbersome to consider due to the way in which the Applicant has presented his case. Regardless of whether he may legitimately have concerns or criticisms about the way in which his data was handled or concerns about the way in which the investigation into his complaint was dealt with by the Respondent, the Tribunal has no power to look into either of those concerns. The remit of the Tribunal in data processing complaints is to compel the Respondent to progress an existing investigation. In this case the investigation has concluded. There is no decision made on 20th April 2024 to appeal against and no power for the Tribunal to overturn/re-evaluate the outcome decision of the Respondent in any event.

I note that considerable resources have already been expended on this application with numerous orders being made and additional work on the part of the Respondent to address the application. Where the Tribunal has no jurisdiction to deal with an application, it must strike the application out. The Tribunal has not discretion. An application that cannot be made cannot be successful either. It is appropriate to make this Order immediately and without a hearing to prevent further resources being expended on an application that cannot lawfully be made. The Applicant may have remedies elsewhere but not before this Tribunal. The application is struck out under both Rule 8(2)(a) and Rule 8(3)(c).

Signed: District Judge Moan sitting as First-Tier Tribunal Judge Moan

Date: 10th February 2025