



Appeal number: EA/2020/0167/GDPR/P

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

IONA GRANDERSON

Applicant

- and -

THE INFORMATION COMMISSIONER

Respondent

TRIBUNAL: JUDGE MOIRA MACMILLAN

**Determined on the papers
The Tribunal sitting in Chambers on 2 March 2021**

DECISION

1. The application is struck out pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

REASONS

2. On 15 November 2019 the Applicant applied to the Tribunal for an Order to progress her complaint under s. 166 of the Data Protection Act 2018.

3. The Application referred to a complaint made to the Respondent on 16 May 2019. The Applicant did not provide a copy of this complaint but provided instead an automatic acknowledgement email.

4. Having searched her records, the Respondent has concluded that the only complaint she can identify having been made by the Applicant is dated 14 August 2019. The Applicant has acknowledged in correspondence that she made a further complaint on this date and that it related to the same subject matter as her complaint of 16 May 2019 (see bundle page 60). I am therefore satisfied that it is appropriate to proceed on the basis that the Respondent has identified the correct complaint when responding to this Application.

5. The 16 May/14 August 2019 complaint relates to information recorded in a social services file held by Birmingham City Council, dated on or after 26 March 2010. The Applicant has confirmed several times during these proceedings that personal data from 2010 is the subject matter of her complaint and has explained very clearly why. She has helpfully produced documents which set out the data with which she is concerned.

6. In March 2010 the Data Protection Act 1998 was in force. Under that Act there is no right of application to this Tribunal, although a data subject may bring certain types proceedings against a data controller in the County Court. The right of application to this Tribunal was created by the Data Protection Act 2018, which came into force on 25 May 2018.

7. The Upper Tribunal has confirmed, most recently in Williams v Information Commissioner GIA/1465/2020, that s.166 of the 2018 Act does not apply to a breach of data rights that occurred under the 1998 Act. Therefore, the Applicant has no right of application to this Tribunal under s.166 in respect of her 16 May/14 August 2019 complaint, and the Tribunal has no jurisdiction to consider her Application.

8. In cases where the Tribunal has no jurisdiction to consider a matter it must be struck out under rule 8(2)(a):

8(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

*(a) does not have jurisdiction in relation to the proceedings or that part of them;
and*

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

9. I am therefore satisfied that the Tribunal has no option other than to strike out these proceedings.

10. In the course of this appeal the Applicant has produced correspondence relating to a second complaint she has made to the Respondent, this being about Birmingham City Council's response to a SAR she made. The Council responded to the SAR in April 2019. As that response was not the subject matter of the Applicant's 16 May/14 August 2019 complaint, it is not a matter currently before the Tribunal.

JUDGE MOIRA MACMILLAN

JUDGE MOIRA MACMILLAN

DATE OF DECISION: 02 March 2021

DATE PROMULGATED: 03 March 2021

Amended under Sect 40, Slip Rule Corrections on 29/03/2021