



Appeal number: EA/2021/0306/GDPR

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

PAULINE STEWART

Applicant

- and -

THE INFORMATION COMMISSIONER

Respondent

Before:

JUDGE LYNN GRIFFIN

Appearances:

Applicant in person

The Respondent did not attend and was not represented

RULING ON APPLICATION FOR AN EXTENSION OF TIME

DECISION

1. The application for an extension of time in which to bring the appeal reference EA/2021/0306/GDPR is refused. The appeal (application) is not admitted.

MODE OF HEARING

2. This appeal was listed on 16 November 2021 and heard via the cloud video platform. The Applicant attended in person. The Information Commissioner was not expected and did not attend.
3. The reason for the hearing was for the Tribunal to decide whether this application was in time and if not decide whether to extend time to admit the application.
4. It had been listed for an oral hearing at my request, as Mrs Stewart is a litigant in person with health needs and an oral hearing would improve the quality of communication between the Tribunal and the Applicant.

REASONS

Background

5. This is one of the appeals this Applicant has made to the Tribunal in furtherance of her efforts to have her pension entitlement altered to reflect what she believes is her true entitlement. Mrs Stewart understands that this Tribunal cannot alter the amount of her pension or change its calculation but she hopes that her requests for information may reveal evidence to support her efforts.
6. The Notice of Appeal in this case was received on 21 October 2021 and states that the decision appealed against is dated 13 September 2021. The notice was dated 8 October 2021 but was date stamped on arrival at the Tribunal offices on 21/10/21.
7. There was no copy of the decision with the appeal but the Applicant has stated that she is seeking to bring a case under the Freedom of Information Act 2000 [FOIA]; to that extent the tribunal reference number may not be indicative of the scope of the appeal however, that does not amount to a relevant factor in my decision as that is an administrative allocation made by the Tribunal staff.
8. On 14 July 2021 Mrs Stewart reported a concern to the Information Commissioner [her page A1] about the NHS which is one of the organisations she believes have been involved in the way her pension entitlement has been calculated¹. In response, on 20 August 2021 the Information Commissioner

¹ The correspondence submitted with this appeal refers to the other organisations about which the Applicant is concerned and further details can be found in my earlier decision in QJ/2020/0022

asked for further details of the request for information that had been made and the public authority's reply [email at page A4]. Mrs Stewart's responses to the Commissioner demonstrate her concern that documents she had previously supplied had not been retained and that her complaint under FOIA was being delayed. She suggested to the Commissioner [A6, 27/9/21] that she had refused to deal with her complaint and so she would be taking her case to the tribunal.

9. In her notice of appeal the Applicant explains that she had been away from home on holiday when she received the decision [B3] and even though she had received the email she was not in a position to deal with it as her documents were at home.

The law

10. The Tribunal has a discretion whether to extend time under rule 5(3)(a). The relevant case law in deciding whether to exercise that discretion is set out in the Upper Tribunal's decisions in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) and *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC) and *BPP University College of Professional Studies v HMRC* [2014] UKUT 496 (TCC) in which the Data Select principles were applied. See also *Killock & others* where this approach was approved.
11. The proper course for a tribunal in considering an application to extend time is to follow the principles, as described by Morgan J in *Data Select* at paragraph 34

[34] ... Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.
12. A request to a public authority made under FOIA is treated as an application of disclosure of the information to the world at large and cannot be restricted simply to the requestor. The usual process is that a request under FOIA is made to the public authority, a response is sent and if the requestor is still not satisfied after an internal review has been completed they may complain to the Information Commissioner under s50 of FOIA.

13. Pursuant to s57 Freedom of Information Act 2000 an appeal to the Tribunal may be brought when a decision notice has been made by the Information Commissioner under s50. Such decision notices are published by the Information Commissioner's office² Put shortly, if there is no decision notice the Tribunal has no power to consider an appeal under s57 FOIA.
14. By rule 22 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 an appellant must start proceedings within 28 days of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant. The notice of appeal must include a copy of the decision being challenged.
15. If a person is aggrieved by a refusal of the Information Commissioner to take a decision or some other procedural failing as regards a complaint made under FOIA they may have a remedy via the civil courts, such as judicial review but that is not something which this tribunal may consider. I express no opinion one way or another about whether the Applicant can do seek such a remedy, or whether they should do so; that is a matter for the Applicant having taken independent legal advice is she so chooses.
16. This Tribunal does not have an oversight function in relation to the Information Commissioner's Office and does not hold them to account for their internal processes. The Parliamentary and Health Service Ombudsman is the body which has that function. I express no opinion one way or another about whether the Applicant can do so, or whether they should do so; that is a matter for the Applicant, about which this Tribunal cannot give advice but I note that the Applicant has considered that course and decided that she is unable to pursue it as she resides outside the UK and has no MP.

Analysis and conclusion

17. I have considered the 5 principles set out in the Data Select case and find that the purpose of the time limit in this case is to ensure that appeals are brought in a timely fashion. The delay in this case was relatively short and there is a good explanation for the delay bearing in mind the Applicant's absence from home for that short period when by chance the correspondence arrived and her health conditions which mean that it would not be reasonable to expect her to deal with the appeal when away from her documentation. In addition at least part of the delay has been caused by the posting time between the dating of her appeal and the arrival at the Tribunal offices.

² <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query>

18. However, that is not the end of the matter as the consequences for the parties of the grant or refusal of an extension of time are important in this case.
19. There is no decision notice issued by the Information Commissioner accompanying the notice of appeal in this case. On the basis of the oral and written evidence I conclude that none has been issued by the Respondent; in fact that is the heart of Mrs Stewart's appeal.
20. Without such a notice the Tribunal has no power to consider her appeal under FOIA and therefore were I to admit this case as a late appeal there would inevitably be an application to strike out the appeal for want of jurisdiction, which would be bound to succeed.
21. In those circumstances there is no advantage to Mrs Stewart of extending time to admit her appeal as this would only delay the inevitable. If I admit the appeal the Respondent will be required to spend time and resources on a case where it is plain the Tribunal is not able to progress it.
22. The Tribunal has no ability to make an order to progress a complaint under FOIA such as under the data protection legislation nor any supervisory role.
23. On balance I have concluded that the appeal is late, and for all the reasons set out above I decline to exercise the Tribunal's power to extend time. The appeal is not admitted.

Other appeals

24. In an email dated 10 November 2021 Mrs Stewart raised concerns about whether I could deal with her other appeals.
25. Since this appeal was received the Tribunal has received other appeals and these have been dealt with by the Tribunal's Registrar and each have been dismissed. They have reference numbers as follows
 - EA/2021/0308/GDPR
 - EA/2021/0309/GDPR
 - EA/2021/0310/GDPR
 - EA/2021/0311/GDPR
 - EA/2021/0312/GDPR
26. The Registrar pointed out in each that no decision notice was received. Appeals reference 309 - 312 inclusive were dismissed by the Registrar as they

did not comply with rule 22. The appeal reference EA/2021/0308/GDPR was not admitted by the Registrar as it was out of time.

27. No application has been received for those decisions to be considered afresh under rule 4(3).

28. However, I can indicate that the position with the other appeals is similar to that which was listed before me; without a decision being taken under s50 FOIA the tribunal would not be able to consider an appeal under s57 FOIA. Thus no benefit will accrue by extending time to consider those decisions afresh.

29. I conclude by indicating that should the Appellant wish to make a FOIA request of any public authority she may wish to take advice before she does so given the complex nature of the law, from a specialist advisor or an organisation such as Citizen's Advice if such an organisation is available where she lives. This is a matter for her.

Tribunal Judge Lynn Griffin
11 January 2022

Promulgated: 12 January 2022