Case Reference: EA-2023-0080-GDPR
NCN: [2023] UKFTT 633 (GRC)
Decision given on: 28 July 2023

First-tier Tribunal
General Regulatory Chamber
Section 166 DPA 1998

Before

TRIBUNAL JUDGE BUCKLEY

Between

GORDON MURRAY

Applicant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Sitting in Chambers
on 27 JULY 2023

DECISION

1. The application under section 166 of the Data Protection Act 1998 is struck out.

REASONS

2. In this decision, 'the Application' is a reference to the application made to the tribunal by Mr Murray under section 166 of the Data Protection Act 1998 (DPA) and 'the Applicant' is a reference to Mr Murray.

Application and response

3. The Commissioner applies for the Application to be struck out under rule 8(3)(c) (no reasonable prospects of success) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

4. The Commissioner submits that the Applicant simply disagrees with the conclusions reached by the Commissioner on his complaint. An application under section 166 is not concerned with the merits of the underlying complaint or intended to provide a right of challenge to the substantive outcome of the Commissioner's investigation into that complaint.

5. The Applicant was given the opportunity to respond and stated that he had nothing to add to his original submission.

Discussion and conclusions

6. I have read the grounds of the Application in detail. The Applicant's complaint relates purely to how Comhairle nan Eilean Siar (CnES) responded to the Applicant's Subject Access Request (SAR). In the Applicant's view, there are very important reasons for the information requested to be released to him.

7. On an application to the tribunal under section 166, the tribunal has no power to deal with the merits of the complaint to the Commissioner or its outcome (confirmed in **Killock & Veale & ors v Information Commissioner** [2021]UKUT 299 (AAC) and **Leighton v Information Commissioner (No.2)** [2020] UKUT 23 (AAC)).

8. I have considered whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of the Application succeeding at a full hearing. In my view, there are no reasonable prospects of the Application under section 166 succeeding, given that the Application is based entirely on whether or not the information should have been provided by CnES, which is a matter that the Tribunal has no power to deal with.

9. I have considered whether I should exercise my discretion to strike the Application out. Taking into account the overriding objective, it is a waste of the time and resources of the Applicant, the tribunal and the Commissioner for this Application to be considered at a final hearing. In my view it is appropriate to strike the Application out.

10. As the Commissioner correctly states at paragraph 29 of his response, if the Applicant wishes to seek an order of compliance against the Controller for breach of their data rights, the correct route for them to do so is by way of separate civil proceedings in the County Court or High Court under section 167 of the DPA18.

11. For the above reasons the Application is struck out under rule 8(3)(c).

Signed Sophie Buckley

Judge of the First-tier Tribunal
Date: 27 July 2023