



Neutral Citation Number: [2023] UKFTT 834 (GRC)

Case Reference: EA-2023-0286-GDPR

First-tier Tribunal
General Regulatory Chamber
Section 166 DPA 1998

Date Given on: 12 October 2023

Before

TRIBUNAL JUDGE BUCKLEY

Between

PAUL WATSON

Applicant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Sitting in Chambers
on 6 October 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 Watson under section 166 of the Data Protection Act 1998 (DPA) and 'the Applicant' is a reference to Mr Watson.

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 DPA18 permits a Tribunal to make an order against the Commissioner only if he has failed in some procedural respect. The Commissioner has taken steps to respond to this complaint and provided an outcome to the Applicant's complaint on 31 October 2022 and a case review on 29 November 2022.
5. The Applicant was given the opportunity to respond but provided no response.

Discussion and conclusions

6. I have read the grounds of the Application in detail. The Applicant's main concern is that a solicitor's firm, Wilkin Chapman LLP were data controllers rather than, as they had claimed, data processors.
7. Wilkin Chapman had forwarded the Applicant's subject access request (SAR) to their client, Milton Keynes Council, ('the Council') who they asserted were the data controllers for the requested data. The Council had then responded to the SAR.
8. I note that the Commissioner did not determine whether Wilkin Chapman were data processors or data controllers. It concluded instead, in the outcome letter and in the review, that it made no practical difference in the particular circumstances of the case. This was so because all the information in Wilkin Chapman's file had been sent to the Council and had been released to the Applicant in the Council's response to his SAR.
9. I also note that the Commissioner has undertaken a further review since the Tribunal proceedings were commenced. As a result of that review the Commissioner wrote to the Applicant as follows:

"Your initial complaint specified that you had not received a response to your subject access request from Wilkins Chapman LLP.

Reviewing the case, I find that we, the ICO do not have sufficient evidence to formally find whether or not a response to your request was received within the one month period set by data protection law.

Please may you provide us with a copy of the covering letter enclosing the subject access request response that you received from Milton Keynes Council, which included in its content the personal data that you had been held by Wilkin Chapman LLP that you were considered entitled to receive.

We look forward to receiving this information from you so that we may form an opinion on this point from your complaint.”

10. 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 (**Killock & Veale & ors v Information Commissioner** [2021] UKUT 299 (AAC) and **R (on the application of Delo) v Information Commissioner and Wise Payments Ltd** [2022] EWHC 3046 (Admin)).
11. 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 on whether or not Wilkin Chapman LLP should be categorised as a data controller or a data processor, which is a matter that the Tribunal has no power to deal with.
12. Although this is not a matter raised by the Applicant in the Application, I note that the Commissioner has identified on review that he had not formed an opinion on whether the SAR had been responded to within the appropriate time limit, and has requested the evidence which will enable him to form that opinion.
13. 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.
14. For the above reasons the Application is struck out under rule 8(3)(c).

Signed Sophie Buckley

Judge of the First-tier Tribunal
Date: 6 October 2023