



Neutral citation number: [2024] UKFTT 1034 (GRC)

Case Reference: FT/EA/2024/0290

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Heard by determination on the papers  
Heard on: 14 November 2024  
Decision given on: 15 November 2024**

**Before**

**TRIBUNAL JUDGE SWANEY**

**Between**

**JONATHAN HALL**

Applicant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION ON STRIKE OUT APPLICATION**

1. The notice of application dated 24 July 2024 is struck out.

**REASONS**

2. The applicant made a subject access request to the National Crime Agency (the NCA). He was dissatisfied with the NCA's handling of his request and on 28 March 2024 made a complaint to the respondent (the Commissioner).
3. The Commissioner investigated and on 24 July 2024, provided the applicant with the outcome of his complaint. The outcome was that the NCA had taken reasonable steps to respond to the applicant's subject access request and that no further action was required.
4. The applicant wrote to the Commissioner on 25 July 2024 and asked if certain data he had requested (email correspondence) existed. He asked the Commissioner to explain, if the data existed, why the NCA had not disclosed it to him in response to his subject access request. The Commissioner replied on 26 July 2024, advising the applicant to

raise his query directly with the NCA, as the Commissioner was not the controller of that information and would not know if it was held by the NCA.

5. On 27 July 2024 the applicant contacted the Commissioner and raised concerns about whether the NCA had properly disclosed the information he had requested. Also on 27 July 2024 the applicant purported to lodge an appeal to this tribunal.
6. On 20 August 2024 the tribunal made case management directions. The Commissioner was directed to provide a response pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) and make any application within 28 days of the date on which the directions were sent. The applicant was directed that by no later than 14 days after the Commissioner's deadline, he may provide a reply pursuant to rule 24 of the Procedure Rules, make any application, or make representations in response to any application made by the Commissioner.
7. On 17 September 2024 the respondent (the Commissioner) provided his response to the application pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) and applied for strike out under rule 8(3)(a) and/or (c) of the Procedure Rules on the basis that the tribunal has no jurisdiction and/or the application has no reasonable prospect of success.
8. The applicant did not provide a rule 24 reply and did not respond to the Commissioner's application for strike out.
9. The applicant lodged a notice of appeal, however, there is no right of appeal against the substance of a complaint outcome. The applicant was advised of his right to request a case review, but he did not do so. In terms of a legal challenge to the outcome of a complaint, the appropriate remedy is by way of an application for judicial review. It is for this reason that the applicant's notice of appeal was treated as an application for an order under section 166(2) of the DPA.
10. The Upper Tribunal held in Killock & Veale & others v Information Commissioner [2021] UKUT 299 (AAC), that there is a strict procedural focus in section 166. The Upper Tribunal stated:

*[i]t is plain from the statutory words that, on an application under s.166, the Tribunal will not be concerned and has no power to deal with the merits of the complaint or its outcome. We reach this conclusion on the plain and ordinary meaning of the statutory language but it is supported by the Explanatory Notes to the Act which regard the s.166 remedy as reflecting the provisions of article 78(2) which are procedural. Any attempt by a party to divert a Tribunal from the procedural failings listed in s.166 towards a decision on the merits of the complaint must be firmly resisted by Tribunals. (Emphasis added)*

11. The applicant was provided with an outcome to his complaint by the Commissioner. He does not agree with the outcome, but this tribunal does not have the power to

consider an appeal against the Commissioner's substantive findings. The tribunal has no power to do what the applicant is asking because at the time he made his application, he had received all that the tribunal could order under section 166(2). There is no other remedy the tribunal could order and accordingly, I find that there is no jurisdiction to consider the application and even if there were, for the same reasons, the application would have no reasonable prospect of success.

12. The notice of application is struck out and no further action will be taken in relation to it.

Signed *J K Swaney*

Date: 14 November 2024

Judge J K Swaney  
Judge of the First-tier Tribunal