



**First-Tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal reference: EA.2022.0378.GDPR

Between

Mrs J S Hughes

Appellant

and

Information Commissioner

Respondent

RULE 4(3) DECISION

Background

1. By Notice of Appeal dated 17 November 2022, Mrs Hughes lodged with this Tribunal proceedings concerning the Information Commissioner's Office decision dated 09 November 2022, concerning their reference number IC-199283-C7Z3. In a document titled "Pleadings, Evidence and Skeleton Argument by the Claimant" (which I take to be her "grounds of appeal" under GRC Rules¹ 22(2)(g)), Mrs Hughes sets out the following:
 - 1.1 That AB is a person who rented property from Mrs Hughes, was evicted and is the subject of several County Court Judgments in Mrs Hughes' favour.
 - 1.2 That she made Freedom of Information Act 2000 ("FOIA") requests to HMCTS and/or the Ministry of Justice (seeking to have information available to the public about the proceedings which she and AB were involved in) about information which she believes HMCTS hold in connection with her claim.
 - 1.3 That a Decision Notice was issued on 09 November 2022 by the ICO.
 - 1.4 That she seeks an order from this Tribunal requiring disclosure of the documents she requested under FOIA.
 - 1.5 That she "requests the HMCTS General Regulatory Chamber (GRC) to determine that HMCTS / MoJ and the ICO pay ... costs to the Claimant to reflect the grief, anguish and time, not to mention the costs and gross mal-administration, by the way of the following ex-gratia payments" – setting out

¹ The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2010/43), as amended

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various time period and seeking an overall sum from the taxpayer funded organisations of £2,200.

2. Mrs Hughes sent with her documents various County Court documents, including AB's application to the County Court and County Court decisions. Of note (as they record decisions of a County Court Judge are:

2.1 Order made by Deputy District Judge D. Jones on 13 August 2021 in Claim Number D7QZ78NG.

2.2 Order made by Deputy District Judge DL Jones on 01 October 2021 in Claim Number D7QZ78NG.

3. She also sent:

3.1 Letter dated 19 July 2022 from the Information Commissioner's Office ("ICO") to HMCTS requiring them to comply with their FOIA obligations.

3.2 Letter dated 12 August 2022 from HMCTS to Mrs Hughes responding to her FOIA request (neither confirming nor denying whether information is held).

3.3 Letter dated 03 September 2022 from Mrs Hughes to HMCTS.

4. Mrs Hughes also sent to the Tribunal letters written by the Information Commissioner's Office ("ICO"), including:

4.1 Letter dated 19 July 2022 sent to HMCTS.

4.2 Letter dated 09 November 2022 sent to Mrs Hughes:

...

This complaint has been identified as a duplicate of your complaint referenced IC-162525-S5V6 which was concluded by way of a Decision Notice. We will therefore be closing this matter.

4.3 Letter dated 17 November 2022 sent to Mrs Hughes commencing "I am dealing with your service complaint in relation to case reference IC-199283-C7Z3". This dismissed her complaint saying that it was a duplicate of IC-162525-S5V6 and cited Section 50(2)(c) of FOIA.

5. The Notice of Appeal and its accompanying documents were sent to the ICO on 28 November 2022.

6. The ICO emailed the Tribunal on 05 December 2022 (copying Mrs Hughes into their email) setting out various reference numbers and, in respect of IC-199283-C7Z3 stated that they did not know the Tribunal's Reference number and "No decision notice issued". The ICO went on to invite the Tribunal to strike out any proceedings about IC-199283-C7Z3 for lack of jurisdiction.

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7. The Tribunal wrote to Mrs Hughes by email sent on 17 January 2023 inviting her to make representations about the request for a strike out. Included in her representations was the following submission (with silent amendments):

8. This Appeal to the GRC is specifically regarding the operational practices of the ICO up to the date of the Appeal i.e. to 9/11/22 and hence does refer to any correspondence received from the ICO under reference IC 199283-C7Z3 after the appeal was submitted.

9. It is factually incorrect to state that the ICO did not issue a Decision Notice under reference 199283-C7Z3 as this was dated 9/11/22 and is included in the Appeal submitted to the GRC dated 17/11/22.

8. By email sent on 30 January 2023, Mrs Hughes made representations about the strike out. She included documents about her County Court claim

9. The case was referred to a Registrar and, on 20 January 2022, a Registrar struck out Mrs Hughes' case concerning ICO reference IC-199283-C7Z3.

10. By letter dated 30 January 2023, Mrs Hughes sought to "Appeal" against the Registrar's decision. This is being treated as an application, under rule 4(3) for a Judge to consider afresh the Registrar's decision.

Law

11. Rule 4 of the GRC Rules, as relevant, provides:

(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.

12. Rule 4(3) is a provision which allows a Judge to make a decision "afresh", it is not an analysis of the original decision.

Consideration

13. In her letter dated 30 January 2023, Mrs Hughes used various sub-headings, I will deal with each in turn.

14. Sub-heading "Section 50 of The FOIA 2000" – paragraphs 1.0 to 1.7. Sections 50 and 57 of FOIA provides (as relevant with my emphasis added):

Section 50

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- (1) Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.
- (2) On receiving an application under this section, the Commissioner shall make a decision **unless it appears to him**—
 - (a) ...
 - (b) ...
 - (c) that the application is frivolous or vexatious, or
 - (d) ...

.....

Section 57

- (1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.
15. The ICO has clearly told Mrs Hughes that the Commissioner has invoked section 50(2)(c) and found her complaint to be frivolous. Therefore, the Commissioner has not issued a Decision Notice and there is no right of appeal to this Tribunal.
 16. Sub-heading “ICO Complaint” – paragraphs 2.0 to 2.4. This Tribunal does not have jurisdiction to deal with general complaints about ICO procedures and processes.
 17. Sub-heading “Section 50 of the FOIA – Compliance by the ICO” – paragraphs 3.0 to 3.2. If Mrs Hughes wishes to litigate about the ICO’s refusal to issue a decision notice under Section 50, then she needs to lodge proceedings in the appropriate forum. This Tribunal does not have jurisdiction – its jurisdiction is found in Section 57(1) of FOIA – it may be that she would be able to challenge the refusal using public law proceedings.
 18. Sub-heading “Section 51 & 52 of the FOIA” – paragraphs 4.0 and 4.1. As above, this Tribunal has jurisdiction in relation to appeals against Information Notices issued under Section 51 and has jurisdiction in relation to appeals against Enforcement Notices issued under Section 52. The Tribunal has no power when no decision notice has been issued.
 19. Sub-heading “GRC Decision to “strike out” Application dated 17/11/22” – paragraphs 5.0 to 5.2 (with sub- and sub-sub- paragraphs). This Tribunal has no power to interfere in any Order made by a Judge of the County Court. The Tribunal cannot use case management powers to Order the ICO to issue a decision notice

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(see above for the potential route by which Mrs Hughes may obtain such an order from a Court).

20. Sub-heading “Interest of Natural Justice” – paragraphs 6.0 to 6.1 (including sub-paragraphs). The Tribunal is a creature of statute, it can do what Parliament has given it power to do, no more or less than that. Parliament has not given this Tribunal power to consider matters of “natural justice”.
21. Sub-heading “Public Interest” – paragraphs 7.0 to 7.1 (including sub-paragraphs). Rule 4(3) permitted Mrs Hughes to apply for the Registrar’s decision of 20 January 2023 to be considered afresh. This decision, therefore, replaces that decision.

Decision

22. I consider afresh whether Mrs Hughes’ appeal about ICO reference IC-199283-C7Z3 should, or should not, be struck out.
23. Rule 8(2)(a) of the GRC Rules provides that “The Tribunal must strike out the whole or part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them”.
24. As set out above, the Tribunal does not have jurisdiction as the ICO did not issue a “decision notice” as defined by Section 50 of FOIA.
25. For all the reasons set out above, the Tribunal does not have jurisdiction in this matter. Therefore, the Rules require me to strike out the appeal. Pursuant to rule 8(2)(a) of the GRC Rules, I strike out Mrs Hughes’ appeal concerning ICO reference IC-199283-C7Z3.

DJ Worth

**District Judge Worth, authorised to sit as a Tribunal Judge
in the GRC, dated 06 March 2023**