



**Appeal number: EA/2019/ 0131**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**FRANCESCA JONES**

**Applicant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL: JUDGE MOIRA MACMILLAN  
Mr JOHN RANDALL  
MR NIGEL WATSON**

**Determined on the papers, the Tribunal sitting in Chambers on 28 August 2019**

## DECISION

1. The application is refused.

## REASONS

2. The Applicant applied to the Tribunal for an Order to Progress her Complaint under s. 166 of the Data Protection Act 2018 (“DPA 2018”).
3. In her Notice of Appeal form dated 4 April 2019, the Applicant relies on grounds that she disagrees with the Commissioner’s response to a complaint she made on 11 November 2018.
4. The Information Commissioner’s Response dated 28 May 2019 accepts that she failed to provide information about the progress of the Applicant’s complaint within 3 months of having received it. The Commissioner has since responded to the Applicant’s complaint and relies on grounds of opposition that there is no basis for making the Order sought.
5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising 70 pages, including submissions made by both parties.

### *The Law*

6. Section 166 of the DPA 2018 creates a new right of application to the Tribunal as follows:

#### *Orders to progress complaints*

*(1) This section applies where, after a data subject makes a complaint under section 165 or Article 77 of the GDPR, the Commissioner—*

*(a) fails to take appropriate steps to respond to the complaint,*

*(b) fails to provide the complainant with information about progress on the complaint, or of the outcome of the complaint, before the end of the period of 3 months beginning when the Commissioner received the complaint, or*

*(c) if the Commissioner's consideration of the complaint is not concluded during that period, fails to provide the complainant with such information during a subsequent period of 3 months.*

*(2) The Tribunal may, on an application by the data subject, make an order requiring the Commissioner—*

*(a) to take appropriate steps to respond to the complaint, or*

*(b) to inform the complainant of progress on the complaint, or of the outcome of the complaint, within a period specified in the order.*

*(3) An order under subsection (2)(a) may require the Commissioner—*

*(a) to take steps specified in the order;*

*(b) to conclude an investigation, or take a specified step, within a period specified in the order.*

*(4) Section 165(5) applies for the purposes of subsections (1)(a) and (2)(a) as it applies for the purposes of section 165(4)(a).*

7. The “*appropriate steps*” which must be taken by the Information Commissioner is further defined by s. 165 (5) DPA 2018 as investigating the subject matter of the complaint “*to the extent appropriate*” and keeping the complainant updated as to the progress of inquiries.

8. The powers of the Tribunal in determining a s. 166 application are limited to those set out in s. 166 (2). In order to exercise them, the Tribunal must be satisfied that the Commissioner has failed to progress a complaint made to her under s. 165 DPA 2018. The jurisdiction to make an Order is limited to circumstances in which there has been a failure of the type set out in s. 166 (1) (a), (b) and (c).

#### *The Evidence*

9. We have considered carefully the agreed bundle of evidence. This shows that the Applicant made a complaint to the Commissioner on 11 November 2018 about Solihull Metropolitan Borough Council (‘SMBC’). This related to a subject access request she had made on 12 October 2018.

10. The Commissioner acknowledged Applicant’s complaint on 6 February 2019 and wrote again on 15 February to begin her formal enquiries. This was outside the 3-month time limit specified in s. 166 (1) (b).

11. On 4 April 2019 the Commissioner wrote to the Applicant to inform her that in her view the actions of SMBC has breached its obligations in respect of the time taken to respond to the Applicant’ request but had otherwise complied with its legal obligations.

12. The Applicant requested a review of this decision on 10 April 2019. The findings of the Respondent’s review were communicated to the Applicant on 2 May 2019.

### *Submissions*

13. The Applicant clearly disagrees with the Commissioner's conclusion. She submits that her personal data is being used without her consent and that her rights have been wrongly balanced against the rights of others, including SMBC. The Applicant seeks an Order from the Tribunal overruling the Information Commissioner.

The Commissioner accepts that her substantive response to the Applicant's complaint fell outside the 3-month timeframe stipulated by s. 166 DPA 2018. However, she submits that she has since taken appropriate steps to respond to the Applicant's complaint and that, while the Applicant disagrees with the outcome, this is not a proper basis for the Tribunal to make an Order under s. 166 DPA 2018 because the Tribunal's jurisdiction is limited to procedural failings.

### *Conclusion*

14. We conclude that the Information Commissioner took appropriate steps to respond to the Applicant's complaint on 15 February 2019. Although this first substantive response was outside the 3-month statutory timeframe, we are not persuaded that there has been a failure on the Commissioner's part to address the matters in s. 166 (1) (a) and (c). We agree with the Commissioner that s. 166 DPA 2018 does not provide the Tribunal with the power remake the Commissioner's decision.

15. We conclude that there is no basis for making an Order under s. 166 (2) DPA 2018 on the facts of this case.

16. For these reasons, the application is refused.

**(Signed)**

**JUDGE MOIRA MACMILLAN**

**DATE: 8 October 2019**