



**First-tier Tribunal
(General Regulatory Chamber)**

Appeal Reference: EA.2021.0325.GDPR

INFORMATION RIGHTS

Before

JUDGE REBECCA WORTH

Between

SALLY-ANN DESOUZA

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

Background

1. On 25 May 2021 Ms DeSouza complained to the Information Commissioner's Office about how her data had been used by NEL CSU (Part of NHS England) and Waltham Forest Council. The Information Commissioner's Office assessed the matter and, by letter dated 13 October 2021, provided their "view".
2. Ms DeSouza lodged proceedings with this Tribunal; she did not complete a Notice of Appeal form, but the only way in which this Tribunal would have jurisdiction is if she were applying for an Order under section 166 of the Data Protection Act 2018.
3. The Information Commissioner's Office was sent the documents and email provided by Ms DeSouza and asked to respond to the application. By document dated 2 December 2021, the Information Commissioner's Office responded to the application and applied for the appeal to be struck out.
4. Ms DeSouza was given the opportunity to make representations about the strike out and did so in an email sent on 02 December 2021 at 4:59:58 PM, where she submitted: "I asked ICO to investigate why a reference was given and received without my consent. This led to a job offer being withdrawn. My data was mishandled. ICO thought I was a disgruntled person who was disappointed that I did not get a job. This is not the case. They misunderstood that i did not give

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consent for a reference to be requested and I did not give consent for a reference to be given. This needs to be investigated.”.

The law

5. A person who wants the data controller (or processor) to rectify personal data or otherwise properly comply with the Data Protection Act 2018 or General Data Protection Regulations (“GDPR”) about holding personal data must go to the High Court or a county court – per section 180 of the Data Protection Act 2018.
6. This Tribunal has power to order the Information Commissioner’s Office to progress a complaint (section 166 of the Data Protection Act 2018) but cannot tell the Information Commissioner’s Office what they should say in their overall assessment. As Upper Tribunal Judge Wikeley said in paragraph 31 of Leighton v Information Commissioner (No. 2) [2020] UKUT 23 (AAC): “... if the [First-tier Tribunal] had the jurisdiction to determine the substantive merits of the outcome of the Commissioner’s investigation, the consequence would be jurisdictional confusion, given the data subject’s rights to bring a civil claim in the courts under sections 167-169 [of the Data Protection Act 2018]...”.

Consideration of Ms DeSouza’s application

7. Any issue that she has with what the data controllers / processors did with her personal data is not a matter for this Tribunal. The Information Commissioner’s representative, at paragraph 24 of the response clearly identifies how Ms DeSouza may challenge that use.
8. Ms DeSouza asked the Information Commissioner’s Office for their assessment; they gave that to her, namely that there was a “vetting check” but no “reference request” made and that there was no breach of the Data Protection Act 2018. She is clearly dissatisfied with the outcome; however, that is not a matter for this Tribunal as the Upper Tribunal has made it clear that the Tribunal cannot tell the Information Commissioner’s Office what their outcome should be (see paragraph 6 above).

Decision

9. Ms DeSouza has received all that this Tribunal can order: the Information Commissioner’s Office assessment of her complaint. This Tribunal cannot order the Information Commissioner’s Office to do more than that and, therefore, there is no order which this Tribunal could make.
10. For the above reasons, the application is struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Signed

Deputy District Judge Worth, authorised to sit as a Tribunal Judge in the GRC, dated 09 December 2021