



NCN: [2024] UKFTT 1057 (GRC)

Case Reference: FT-EA-2024-0357-GDPR

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

Before

JUDGE MOAN

Between

STEVEN ARMSTRONG

Applicant

And

THE INFORMATION COMMISSIONER

Respondent

Decision made on the papers.

Decision: The Respondent's application to strike out the application of the Applicant is granted. The appeal is struck out under Rule 8(2)(a) as an application that cannot be made to this Tribunal and under Rule 8(3)(c) on the basis that there is no prospect of the application being successful.

REASONS

1. The Applicant lodged a notice of appeal to the Tribunal dated 1st September 2024. The appeal form stated that the Applicant was appealing the decision of the Information Commissioner dated 8th

August 2024. He said that the application was not appeal but another application. It was clear from the form and the attached complaint that the matter concerned a complaint regarding data processing.

2. The Appellant said he had not been provided with medical records relating to his mother whilst solicitors in a litigation had; he had complained to the Commissioner. He said he did not know what the Tribunal could do or what remedies were available to him.
3. It became apparent from the Respondent's response that the decision complaint attached by the Applicant was not the subject-complaint and that the Commissioner had advised that complaints under the Access to Health Records Act 1990 could not be made to the Commissioner. There was a statutory scheme that provided for complaints.
4. The Commissioner applied to strike out the Appellant's application on 8th November 2024. The Applicant responded to that application on 8th November 2024 but has not responded substantively since.
5. It is correct that the Commissioner had not undertaken an investigation of the complaint but that was on the basis that he was not able to do so.
6. I considered it appropriate to conduct the review on the papers and without a hearing noting the nature of the strike out application made and having regard that the applicant has had the opportunity to respond to the issues. The Tribunal must strike out an application where it does not have jurisdiction. There is no room for discretion on that point.

Analysis and conclusions

7. The disclosure and handling of medical records is governed by the Access to Health Records Act 1990. The act provides for complaints to

the record holders and by virtue of section 8 of that Act, an application can be made to the County Court in regard to the handling those records. The Respondent in such proceedings would be the health records holder.

8. The disclosure of medical records is specifically excluded from the remit of the Information Commissioner. He has no basis for considering a complaint under the Data Protection Act. Even where an Information Commissioner does consider data processing complaints and provides an outcome, there is no appeal to the First Tier tribunal against the decision of the Information Commissioner in those circumstances.
9. The Tribunal cannot exercise its powers unless it is given the power to do so by statute. Statute directs that this power is given to the County Court and not to the Tribunal. The Tribunal has no jurisdiction to consider this application/appeal.
10. There is no realistic prospect of the application succeeding in the circumstances and it would be a misuse of the resources of the Tribunal and the parties to allow that application to continue any further. Time spent on a meritless application reduces those resources available to consider other applications. There are remedies available to the Applicant, just not before this Tribunal. The applicant is misconceived and will be struck out.

District Judge Moan sitting as a First Tier Tribunal Judge

26th November 2024