



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

Appeal Reference: QJ.2019.0289.INFO

INFORMATION RIGHTS

Before

REGISTRAR REBECCA WORTH

Between

ALAN DRANSFIELD

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

Background

1. After 5 p.m. on 14 August 2019 the Tribunal received a notice of appeal from Mr Dransfield in which he seeks to appeal against the contents of an email sent on 19 July 2019 by the Information Commissioner's Office.
2. By Case Management Directions (dates amended under rule 4(3)) the Information Commissioner's Office and Mr Dransfield have each been given the opportunity to make submissions about whether the Tribunal does, or does not, have jurisdiction. I thank them both for their submissions, which I have considered in making this decision.

The law

3. The Freedom of Information Act 2000 provides the following:

57 Appeal against notices served under Part IV

Appellant: Alan Dransfield

Date: 01 October 2019

- (1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.

.....

4. Therefore, for this Tribunal to have jurisdiction a "decision notice" must have been issued by the Information Commissioner's Office. The next legal issue to consider is what is meant, in the Freedom of Information Act 2000, by "decision notice". That is found in section 50 of the Freedom of Information Act 2000:

50 Application for decision by Commissioner

- (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) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45,
 - (b) that there has been undue delay in making the application,
 - (c) that the application is frivolous or vexatious, or
 - (d) that the application has been withdrawn or abandoned.

.....

Parties' positions

5. Mr Dransfield says that the Information Commissioner's Office email sent on 19 July 2019 at 05:43:25 GMT-4 about case reference FS50852952 is a decision notice which can be appealed to this Tribunal. The email reads:

....

Please see our letter of 15/03/2018, in which we refer to section 50(2)(c) of the Freedom of Information Act. In this letter, we have outlined how the office will be dealing with your complaints going forward, unless circumstances have severely changed.

As of today's date (19/07/2019) the circumstances have not changed and our letter of 15/03/2019 still stands. The above case will now be closed.

Appellant: Alan Dransfield

Date: 01 October 2019

....

6. Mr Dransfield argues that the effect of the 15 March 2018 letter is to remove his constitutional rights under the Freedom of Information Act 2000; he argues that the 19 July 2019 email is a “decision” of the Information Commissioner’s Office which he can appeal to this Tribunal. He gives an alternative position stating: “even if the email from the Commissioner was not a decision notice, then the Commissioner’s conduct in subjecting Mr Dransfield to a ‘home-made’ extrajudicial civil restraint order is a Contempt of Court The Tribunal can direct the Commissioner to perfect her notice, with the sanction of Contempt of Court (enforced by the Upper Tribunal) if they fail to do this.”.
7. The Information Commissioner’s position is that the 19 July 2019 email was the Commissioner refusing to deal with Mr Dransfield’s section 50 complaint because, the Commissioner says, the complaint is frivolous or vexatious under section 50(2)(c) and, as it was not a “decision notice” issued under section 50, this Tribunal has no jurisdiction.

Consideration and findings

8. Mr Dransfield can only access this Tribunal if he is the complainant in a decision notice issued under section 50(3)(b) of the Freedom of Information Act 2000. I find that he is the recipient of 2 communications by the Information Commissioner’s Office under section 50(3)(a) of the Freedom of Information Act 2000 (only one of which is within the time limit and appealed against) where the Information Commissioner’s Office told him they will not be making a decision about his complaint and, therefore, cannot also be a “decision” which could be appealed under section 57 to this Tribunal.
9. Mr Dransfield’s position that the combination of the 15 March 2018 and 19 July 2019 are decisions which mean he is prevented from accessing this Tribunal and that this Tribunal can require the Commissioner to perfect her notice seem to overlook the statutory nature of this Tribunal. This Tribunal can only do what Parliament has given it power to do. The Freedom of Information Act 2000 permits this Tribunal to “allow the appeal or substitute such other notice as could have been served by the Commissioner” (see section 58(1)); there is no power for this Tribunal to require the Commissioner to investigate a complaint and/or to or to issue or perfect a decision notice.
10. The 15 March 2018 letter states “Should you wish to challenge the Commissioner’s decisions in any of these cases, it is open to you to seek judicial review in the Administrative Court.” – that would also be the position for the 19 July 2019 email. It may be possible for Mr Dransfield to challenge in the Administrative Court, by use of public law principles, the Commissioner’s use of section 50(2)(c).

Appellant: Alan Dransfield

Date: 01 October 2019

11. This Tribunal has power, in rule 5(3)(k) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, to transfer matters to a different court or tribunal; that power only exists if the Tribunal “no longer has jurisdiction” (see rule 5(3)(k)(i)).

Conclusion

12. I conclude that this Tribunal does not have jurisdiction to consider Mr Dransfield’s matter because his appeal is not against a decision notice issued by the Information Commissioner’s Office and, therefore, Parliament has not given this Tribunal power to consider it.
13. The Tribunal cannot transfer the proceedings as this Tribunal has never had jurisdiction for them.
14. Pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, I strike out Mr Dransfield’s appeal.

Signed *Mrs R Worth*

Registrar of the First-tier Tribunal General
Regulatory Chamber

Date: 01 October 2019

This decision was made by the Tribunal Registrar. A party is entitled to apply in writing within 14 calendar days of the date this document is sent for this decision to be considered afresh. If you apply later than 14 days you must explain why you are late.