



European Ombudsman

3196/2007/(BEH)VL
S2011-132825

P. Nikiforos Diamandouros
European Ombudsman

Dr Chris POUNDER
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Chingford
London E4 6BZ
ANGLETERRE

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Strasbourg, 16 -02- 2011

Complaint 3196/2007/(BEH)VL

Dear Dr Pounder,

Please find enclosed the detailed opinion that I received from the Commission in reply to my draft recommendation.

If you wish to make any observations on the reply, please send them to me before 31 March 2011.

Please note that, if I do not receive any observations from you, I may close the case with a decision, based on the information you have already provided and the Commission's opinions.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure:

- Copy of the Commission's detailed opinion

Brussels, 14 FEB. 2011

Dear Mr Diamandouros,

**Subject: Complaint by Mr Chris POUNDER,
ref. 3196/2007/(BEH)VL – Draft recommendation**

Thank you for your letter of 6 October 2010 to President BARROSO requesting the Commission's opinion on your draft recommendation.

I am pleased to send you the comments of the Commission on this case.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,



Cecilia MALMSTRÖM

Enclosures

Mr Nikiforos DIAMANDOUROS
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F-67001 STRASBOURG Cedex

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**Opinion of the Commission on the European Ombudsman's draft recommendation
- Complaint by Mr Chris POUNDER, ref. 3196/2007/(BEH)VL**

I. Background/Summary of the facts/History

The Commission refers to the initial complaint and to its observations on that complaint, which the Ombudsman transferred to the complainant; the complainant's additional requests/observations formulated by the complainant; the Ombudsman's request to the Commission to address the additional requests/observations formulated by the complainant, the comments of the Commission on such request for further information, the Ombudsman's proposal for a friendly solution, and the Commission's reply to the proposal.

The Ombudsman has now conducted his analysis and made his conclusions.

II. The European Ombudsman's recommendation

The Ombudsman has recommended that the Commission provide the complainant with the summary information requested on the infringement proceedings against the United Kingdom, or put forward a convincing explanation as to why this is not possible.

III. The Commission's comments to the Ombudsman's findings and proposal

As the ECJ has confirmed in the Petrie case and as recognized by M. Joao Sant'Anna, head of the legal department of the Ombudsman office, during the meeting of 30 November 2010, second semi-annual meeting of the DG's coordinators for Ombudsman's inquiries, the Commission is subject to an obligation of confidentiality with regard to the management of infringements proceedings and related work for the purpose of the objectives of its investigations and in the interest of due process. This obligation does not preclude the provision of summary information which should not, however, detail the individual claims in the procedure.

IV. Conclusions

By letter dated 16 December 2010 (copy in annex), the Commission sent more detailed information to the complainant. Nevertheless, the Commission considers that this does not set a precedent.

Annex: Letter of 16 December 2010



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate C : Fundamental Rights and Citizenship
Unit C3 : Data Protection

Brussels, 16. 12. 2010
JLS/C/3/FS/rb Ares S(2010) 988508

Dr C.N.M. Pounder
30 Aylesbury Street
London EC1R 0ER
United Kingdom

Dear Dr Pounder,

Subject: United Kingdom – Implementation of Directive 95/46/EC

Following the decision of the European Ombudsman, please find below a summary information on the infringement proceedings against the United Kingdom.

This case concerns an alleged failure of the UK Legislation to implement various provisions of the Directive 95/46/EC on data protection. As we have already informed you, the provisions concerned are Articles 2, 3, 8, 10, 11, 12, 13, 22, 23, 25 and 28 of that Directive.

The issue regarding Article 2 concerns the definition of "filing system", and the interpretation of this definition in the judgment in the *Durant* case, which appeared to be narrower than that in the Directive.

The issue regarding Article 3 relates to the inclusion, in the UK Data Protection Act, of the expression *including recreational purposes*, which appeared to be broader than mere household activities.

The issue regarding Article 8, is whether or not the UK Data Protection Act treated data relating to criminal offences differently to other categories of sensitive data.

Articles 10 and 11 of the Directive specify the information that data controllers should provide to data subjects, depending on whether this information was initially obtained from the data subject, or collected elsewhere. The Data Protection Act appeared to exempt from this requirement data which the data controller is obliged to make public.

Article 12 of the Directive gives data subjects the right to check the accuracy of their data, ensure that the data are being kept up-to-date, and have their data rectified, erased or blocked if necessary. The Data Protection Act, however, appears to confer upon the courts a discretion to grant or refuse applications made by data subjects in this regard.

The issue regarding Article 13 relates to the exemption from the right of access of the data subject in the Data Protection Act to confidential references.

Article 22 of the Directive provides for judicial remedies, and Article 23 requires that Member States ensure compensation for any person who has suffered damage as a result of an unlawful data processing operation. The Data Protection Act appears to narrow the scope of non-material damage.

The issue regarding Article 25 concerns the extent to which UK data controllers are monitored as to their assessment of adequacy of the level of protection in third countries to which they transferred personal data.

The issue regarding Article 28 concerns the sufficiency of the investigative powers of the supervisory authority.

We hope that the information thus provided, summarising the questions at stake in this infringement case against the UK, is clear and replies to all your questions.

Yours sincerely,



Marie-Hélène BOULANGER
Head of Unit