

Dr. Chris Pounder
16 Victoria Road
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05 May 2011

Dear Dr Pounder

Subject: FS50290504

I am writing further to the Information Commissioner's Decision Notice of 31 March 2011. I enclose a copy of the ICO Decision Notice for your information.

The Information Commissioner required the Ministry of Justice to take the following steps:

- disclose to the complainant the list and summaries specified in requests (i) and (ii)

(i) A list of which Article(s) in Directive 95/46/EC (the Data Protection Directive) the European Commission have alleged have not been implemented properly by the UK Government.

(ii) In relation to each Article, summary information as to why the European Commission has made this claim.

The Information Commissioner upheld the Ministry of Justice's decision to withhold information in relation to parts (iii) and (iv) of your request.

(iii) In relation to each Article, summary information as to why the UK Government thinks that the European Commission is wrong in its claim.

(iv) Summary information as to whether or not any differences in opinion about implementation have now been resolved.

We are firmly of the view that pre-action infraction correspondence is still considered to be confidential, but we accept that it is appropriate on this occasion to provide a list and summaries of the Articles of the Data Protection Directive which the European Commission alleged had not been implemented properly by the UK Government, bearing in mind that the relevant information has for the most part already been disclosed to you by the Commission.

The list and summaries in Annex A set out the information that the Ministry of Justice held at the time you made your request for this information, in accordance with the Decision Notice.

Yours sincerely,

xxxxx
xxxxxx International Data Protection Policy

Annex A

(i) A list of which Article(s) in Directive 95/46/EC (the Data Protection Directive) the European Commission have alleged have not been implemented properly by the UK Government.

(ii) In relation to each Article, summary information as to why the European Commission has made this claim.

Articles 2 and 3 – the definitions of “personal data” and “filing system” and the interpretation in the *Durant* judgment, which the Commission considered were narrower than required by the Directive.

Articles 2 and 7 – the absence of a definition of “consent” in the Data Protection Act, which the Commission considered was required by the Directive.

Article 3 – the inclusion of “recreational purposes” in the Data Protection Act which, in the Commission's view appeared to be broader than household activities.

Articles 6 and 28 – the Commission claimed that the ICO failed to take proper regulatory action against employers who sought health information from job applicants.

Article 8 – the Commission raised the issue of whether the Data Protection Act treated data relating to criminal offences differently to other categories of sensitive personal data.

Article 8 - the Commission considered that the Data Protection Act appeared to broaden the circumstances in which sensitive personal data could be processed when necessary to protect the vital interests of the data subject

Articles 10 and 11 – concerns the provisions in the Data Protection Act in relation to information to be given to the data subject in cases of both data collection from the data subject and from third parties which appeared to the Commission to fall short of that required by the Directive. The Commission also considered that the Data Protection Act appeared to exempt from this requirement data which the data controller is obliged to make public.

Article 12 - the Commission considered that the DPA appeared to confer upon the courts a discretion to grant or refuse applications made by data subjects to rectify, or erase inaccurate personal data.

Article 13 – the issue the Commission raised concerns the exemption in the DPA from the right of subject access of the data subject to confidential references.

Article 16 – the Commission considered that the range of exemptions in the Data Protection Act was broader than those permitted under Article 16.

Article 17 – in the view of the Commission the obligation on data controllers to implement appropriate technical and organisational measures to protect personal data as set out in the Data Protection Act appeared to be weaker than in the Directive.

Article 22 and 23 – the Commission considered that the Data Protection Act appeared to narrow the scope of non-material damage.

Article 25 and 26 – the Commission raised the issue of the extent to which UK data controllers are monitored by the ICO as to their assessment of adequacy of the level of protection in third countries to which they transferred data and the extent to which the ICO grants authorisations for the transfer of personal data to third countries not providing an adequate level of data protection when the data controller can adduce the existence of data protection safeguards.

Article 28 – the Commission raised the issue of the sufficiency of the investigative powers of the data protection supervisory authority.