

Dear ICO,

Please find attached a data protection complaint from the London Borough of Barnet. We look forward to hearing from you in relation to this matter.

Kind Regards,



**Corporate Governance Directorate**

London Borough of Barnet, North London Business Park, Oakleigh Road South, London N11 1NP

Tel: 

Barnet Online: [www.barnet.gov.uk](http://www.barnet.gov.uk)



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# The Data Protection Act 1998 Complaint form

You should only use this form to report complaints about possible breaches of the Data Protection Act 1998. Do not fill in this form until you have read the booklet 'Data Protection Act 1998 – when and how to complain'.

If you need help to fill in this form, please contact our Helpline on 0303 123 1113.

## 1. Your details

Title:

**Standards and Information Rights Team**

First name:

[REDACTED]

Other names:

[REDACTED]

Last name:

[REDACTED]

Address:

**North London Business Park, Oakleigh Road South, London**

Postcode:

**N11 1NP**

Daytime telephone:

[REDACTED]

Fax:

**n/a**

Email:

**foi@barnet.gov.uk / data.protection@barnet.gov.uk**

## 2. Previous contact with the ICO

Please provide any reference number we have already given you.

**n/a**

This will help us to process your complaint.

I do not have a reference number. This is the first time I have contacted you. ☐

**3. Have you given anyone else permission to speak to us about your complaint? If so, please give details.**

Title:

**Standards and Information Rights Team**

First name:

[REDACTED]

Other names:

[REDACTED]

Last name:

[REDACTED]

Address:

**North London Business Park, Oakleigh Road South, London**

Postcode:

**N11 1NP**

Telephone:

[REDACTED]

Fax:

**n/a**

Email:

**foi@barnet.gov.uk / data.protection@barnet.gov.uk**

What is their relationship to you?

**Colleagues**

**4. Who do you want to complain about? (Usually an organisation.)**

Name:

**Mr Mustard**

Address:

**<http://lbbspending.blogspot.com/>**

Postcode:

**n/a**

Telephone:

**n/a**

Email:

**n/a**

Website:

**<http://lbbspending.blogspot.com/>**

## **5. Your relationship with the organisation**

Please describe this relationship, for example, employee, customer, account holder.

**The Council has responded to various FOI requests from Mr Derek Dishman who we understand to be the blogger 'Mr Mustard' who blogs at [lbbspending.blogspot.com](http://lbbspending.blogspot.com).**

Please give any relevant reference numbers they have given you, for example, patient number, account number.

**n/a**

## **6. Details of the problem**

Please give details of your complaint, explaining what you think the organisation has done wrong, attaching extra sheets if necessary. Do not just refer us to your supporting documents.

**In response to FOI requests, the Council has disclosed the job descriptions of various posts including** [REDACTED].

**The Council understands that the FOI requestor, Mr Derek Dishman, is also a blogger 'Mr Mustard' who blogs at <http://lbbspending.blogspot.com>.**

**Since disclosing the job descriptions, extracts have been uploaded by 'Mr Mustard' onto his blog and he has identified the individuals in the relevant posts (this information was not provided by the Council).**

**In addition to identifying the individuals sitting in the posts, 'Mr Mustard' has provided links to their personal websites and blogs. He has also used his blog to publish and comment on extracts from their personal websites and blogs.**

**The Council is of the view that in publishing and commenting on these extracts 'Mr Mustard' is processing personal data and should be registered as a data controller in accordance with the DPA 1998.**

**It is the Council's view that the domestic purposes exemption in section 36 of the DPA 1998 is not applicable to 'Mr Mustard'. The blog is clearly intended to be viewed by a wide audience and is quasi-journalistic in tone.**

**view that he has breached the DPA 1998 by processing personal data when not registered and by processing personal data unfairly.**

**Personal data includes any expression of opinion about the individual and this is what has occurred here.**

**The individuals involved do not refer to their employment with the Council on their personal websites or blogs and we do not consider it reasonable for them to expect a connection between their personal websites and blogs and their employment to be made.**

**It is our view that the exemption in section 32 of the DPA 1998 for journalism, literature and art is not applicable in these circumstances as publication of 'Mr Mustard's' views on the merits of their personal websites and blogs is not in the public interest.**

**We would like the ICO's view on whether 'Mr Mustard' should be registered as a data controller and, if yes, whether he has breached the DPA 1998 by unfairly processing personal data.**

## **7. When did you first become aware of the problem?**

We will not normally contact the organisation if there has been a delay of more than one year.

**24 April 2011**

## **8. Supporting documents**

We will not be able to investigate your complaint unless you provide us with:

- copies of documents describing what has happened; and
- copies of correspondence between you and the organisation or individual concerned trying to solve the problem. If you only have paper copies of this correspondence you will need to print this form and post it to us along with your supporting documents.

- If you send us too many or irrelevant documents we may send them back and ask you to return only the relevant ones.
- In the unlikely event that you need to send a large amount of documents, please clearly mark the relevant parts. If you do not, we may return them and ask you to do this.
- You should also send us copies of relevant correspondence between you and any other organisation (for example, Citizens Advice, an industry regulator or ombudsman) trying to solve the problem.

## **9. Important information about your supporting documents**

Any paper documents will be scanned and held as electronic records. In most cases, we will destroy the paper documents you send us after six months. You should only send us copies of these documents and make sure you keep the originals in case we need these later on.

If you cannot provide us with copies and you would like us to return your documents, please check this box ☐

You will need to make it clear each time you send us something if you would like us to return it to you.

## **10. Please list the supporting documents you are sending to support your complaint.**

This will help us check we have all the information you sent us. Do not just write 'see attached'.

**Screenshots of [lbbspending.blogspot.com](http://lbbspending.blogspot.com)**

## **11. Declaration**

By sending this form I confirm that;

- I understand that during any necessary investigations, you may need to disclose the details I have provided to the subject of my complaint to allow them to make a proper response.
- I have clearly indicated any information which I do not want you to pass on.
- To the best of my knowledge I have given you accurate information relating to this complaint.
- I understand that your policy is to destroy documents relating to complaints after six months. I have clearly indicated those documents that you should not destroy and should return to me.

- I have read 'The Data Protection Act 1998 - When and how to complain' leaflet and understand that you cannot award compensation.

Please check to confirm ☒

Are you the person named in section one of this form? Yes

If no, please make sure your details are provided in section three of this form and check this box to confirm you have the permission of the complainant to act on their behalf ☐

## **12. Sending your complaint to us:**

### **By email**

If all your supporting documents are available electronically please attach them to your email along with this form and send to [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

### **By post**

If you only have paper copies of some of the supporting documents you need to send us, please print this complaint form and post it, along with all your supporting documents to:

Customer Services Team  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF.

7th June 2011

**Case Reference Number ENQ0391446**

Dear [REDACTED]

Thank you for your email of 16 May 2011, regarding a complaint that London Borough of Barnet (the "Council") wishes to make against Mr Derek Dishman (aka Mr Mustard).

As you will be aware, the Information Commissioner's Office (the "ICO") is the UK's independent authority tasked with overseeing and enforcing the Data Protection Act 1998 (the "DPA") and the Freedom of Information Act 2000 (the "FOIA"). The DPA covers the processing of personal data (i.e. any data which relates to a living individual who can be identified from that data) within the UK, whilst the FOIA provides a right of access to recorded information held by public authorities within England, Wales and Northern Ireland.

I note the Council's view that the blogger "Mr Mustard" is a data controller under the DPA. However, it is this office's view that personal data posted by an individual on a blog falls under section 36 of the DPA. As you may be aware, section 36 states;

*"Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) are exempt from the data protection principles and the provisions of Parts II and III" (of the DPA).*

This essentially means that any processing of personal data for domestic purposes (which we consider the creation and running of a blog by an individual to be) is exempt from virtually all of the requirements of the DPA. This would not be affected by the fact that an individual may be blogging under a pseudonym, or the fact that a blog is intended to reach a wide audience. Ultimately, it is not the function of the DPA to determine what individuals can and cannot say about other individuals on the internet.

If any individual mentioned on Mr Mustard's blog believes the information posted to be defamatory, this is something that they may wish to pursue under defamation laws. The ICO cannot advise on such matters; individuals should therefore seek independent legal advice if this is a course of action they wish to take.



I am sorry that we cannot be of more assistance on this occasion. If you have any further queries, please let me know. Alternatively, you can contact our helpline on 0303 123 1113 or visit [www.ico.gov.uk](http://www.ico.gov.uk) for further information.

Yours sincerely

Rick Syers Case Officer (First Contact)

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. 01625 545816 F. 01625 524510 [www.ico.gov.uk](http://www.ico.gov.uk)

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Dear Mr Syers,

Thank you for your email of 7 June 2011 responding to the Council's request for the ICO's view on whether the blogger 'Mr Mustard' should be registered as a data controller.

Your response is that the exemption in section 36 of the DPA applies to bloggers and accordingly 'Mr Mustard' is not required to notify the ICO that he is a data controller and does not need to comply with the data protection principles.

For the reasons set out below, the Council respectfully requests that you reconsider this response.

The Council considers that the response relies on too wide an interpretation of the section 36 exemption. Section 36 provides that:

*"Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) are exempt from the data protection principles and the provisions of Parts II and III"*

In the absence of legislative definitions the Council refers to the dictionary definitions of 'personal', 'family' and 'household' extracted below:

*Personal:* belonging to or affecting a particular person rather than anyone else.

*Family:* a group of people related by blood or marriage.

*Household:* a house and its occupants regarded as a unit.

It is the Council's view that the assertion that the section 36 exemption applies to bloggers despite the fact that they intend to reach a wide audience is inconsistent with these definitions.

The Council is also concerned that this response is inconsistent with the European Court of Justice (ECJ) judgment in *Lindqvist*.

In this matter the ECJ stated that identifying persons on an internet page, by name or other means (including by providing information about their working conditions and hobbies) constitutes 'the processing of personal data wholly or partly by automatic means' within the meaning of Directive 95/46/EC (the Directive). The ECJ went on to state that such processing is not covered by any of the exceptions in Article 3(2) of the Directive which includes an exemption for the processing of personal data by a natural person in the course of a purely personal or household activity from which section 36 of the DPA is derived.

The Council is grateful for your attention to this matter and looks forward to hearing from you.

Kind Regards,


[Redacted Signature]

Corporate Governance Directorate

London Borough of Barnet - 10 North Colindale Avenue, Palm Court, Oakleigh Road South, Uxbridge, Middlesex, UK

Tel: [Redacted]

Barnet Online: [www.barnet.gov.uk](http://www.barnet.gov.uk)

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**From:** casework@ico.gsi.gov.uk [mailto:casework@ico.gsi.gov.uk]  
**Sent:** 07 June 2011 17:59  
**To:** [REDACTED]  
**Subject:** RE: Complaint to the ICO[Ref. ENQ0391446]

7th June 2011

**Case Reference Number ENQ0391446**

Dear [REDACTED]

Thank you for your email of 16 May 2011, regarding a complaint that London Borough of Barnet (the "Council") wishes to make against Mr Derek Dishman (aka Mr Mustard).

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If any individual mentioned on Mr Mustard's blog believes the information posted to be defamatory, this is something that they may wish to pursue under defamation laws. The ICO cannot advise on such matters; individuals should therefore seek independent legal advice if this is a course of action they wish to take.

I am sorry that we cannot be of more assistance on this occasion. If you have any further queries, please let me know. Alternatively, you can contact our

helpline on 0303 123 1113 or visit [www.ico.gov.uk](http://www.ico.gov.uk) for further information.

Yours sincerely

Rick Syers Case Officer (First Contact)

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11th July 2011

**Case Reference Number ENQ0391446**

Dear [REDACTED]

Thank you for your further correspondence regarding the above referenced case.

I note your comments regarding the definitions of "personal, "family and household" affairs, and the judgment of the European Court of Justice (the "ECJ") in the Lindqvist case, and have discussed these comments with our policy delivery team.

With regards to the definition of "personal, family and household" affairs for the purposes of section 36 of the Data Protection Act, section 36 states that "personal", family and household" affairs includes "recreational purposes". In this case, it would seem that "Mr Mustard" is essentially running his blog as a hobby. The fact that the blog is "quasi-journalistic" does not change this; it is our view that where an individual is running a blog in this manner, that person is doing so for their own recreational purposes and therefore satisfies section 36.

With regards to the Lindqvist case, I note that you do not consider the Information Commissioner's Office (the "ICO")'s stance to be consistent with the ECJ's ruling. As you may already be aware, this case concerned Mrs Bodil Lindqvist, a catechist in the parish of Alseda, Sweden. Mrs Linqvist set up internet pages at home on her personal computer in order to allow parishioners preparing for their confirmation to obtain information they might need. The administrator of the Swedish Church's website set up a link between those pages and that site.

The internet pages set up by Mrs Linqvist contained information about herself and 18 colleagues in the parish, including details in some cases of their names, hobbies, family circumstances, telephone numbers and other matters (including information that one colleague had injured her foot and was on half-time on medical grounds). Her colleagues had not been consulted about the site and some were unhappy and complained.

As you have referred to in your email, the second indent of Article 3(2) of Directive 95/46/EC (the "Directive") states that the Directive shall

not apply to the processing of personal data by a natural person in the course of a purely personal or household activity. In this particular case, it was clear that Mrs Lindqvist was not processing personal data in the course of a purely personal or household activity. Instead, Mrs Lindqvist was essentially acting in her role as a catechist for the Church of Sweden when she posted the information about her colleagues online. We would therefore agree with the ECJ's decision that this provision within Article 3(2) of the Directive does not apply to the processing carried out by Mrs Lindqvist in this particular case.

However, the ECJ also found that rights of data protection under the Directive and are to be balanced with the rights and freedoms under Article 10 of the European Convention on Human Rights (the right to freedom of expression). The ECJ identified that the mechanisms allowing those different rights and interests to be balanced are contained first in the Directive and secondly in the legislation adopted by member states to implement the Directive.

The ECJ recognised that the provisions of the Directive are "necessarily relatively general since it has to be applied to a large number of very different situations", and that it is rather "at the stage of the application at national level of legislation implementing the Directive in individual cases that a balance must be found".

The ICO must therefore ensure that its interpretation of the DPA properly considers the right to freedom of expression under Article 10 of the European Convention on Human Rights. If the ICO were to take the approach of requiring all individuals running a blog to notify as a data controller and comply with the provisions of the DPA otherwise exempt under section 36, it would lead to a situation where the ICO is expected to rule on what it is acceptable for one individual to say about another. The balance of privacy versus freedom of expression relies on taking a proportionate approach. Requiring all bloggers to register with this office and comply with the parts of the DPA exempted under section 36 would, in our view, have a hugely disproportionate impact on freedom of expression.

In the particular case of "Mr Mustard's" blog, the information he is using appears to be information which is in the public domain (and, in some cases, was put in the public domain by the people that he is writing about). It is clear that he has a low opinion of the Council employees that he is blogging about, but he is ultimately entitled to express these opinions without breaching the DPA. Of course, if the published statements constitute libel or harassment then the individual

affected is entitled to take action along these lines. The DPA would not be the appropriate piece of legislation to use in these circumstances.

Again, I am sorry that we cannot be of more assistance on this occasion; however I hope that I have now clarified the ICO's stance on this matter. Any individuals affected do of course have the right to independently pursue the matter through the Courts under the DPA if they disagree with our interpretation of the Act.

If you would like to discuss any aspect of this case or any other queries you may have, please contact me on 01625 545 816.

Yours sincerely

Rick Syers Case Officer (First Contact)

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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**From:** Thomas Oppe  
**Sent:** 15 November 2011 10:20  
**To:** Richard Syers  
**Subject:** barnet council blog complaints

Hi Rick

Not sure if you remember the enquiry we did a few months back from Barnet Council, where they wanted us to make bloggers notify? Anyway, some journalists found out what the council has been up to and it has received BLOG OUTRAGE here:  
<http://liberalconspiracy.org/2011/11/14/how-barnet-council-tried-to-criminalise-all-bloggers/>. 150 retweets and 45 facebook likes for that article.

Thought you might be interested...that warm glow of doing something helpful for people. A couple of the linked blogs have got your casework letters scanned in, but fortunately the council redacted your name before they sent them out.

Cheers

Tom

Thomas Oppé Lead Policy Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,  
Cheshire, SK9 5AF  
T. 01625 545 887 E. [thomas.oppe@ico.gsi.gov.uk](mailto:thomas.oppe@ico.gsi.gov.uk)  
[www.ico.gov.uk](http://www.ico.gov.uk)