



Decision on a complaint against the European Commission relating to personal information (postal address) asked by the Commission in the context of access to documents requests lodged pursuant to Regulation (EC) 1049/2001

Case 2014-0615

1. Proceedings

On 5 June 2014, the EDPS received a complaint raising the issue of allegedly unnecessary information (the applicant's postal address) asked by the Commission in breach of Regulation (EC) 45/2001¹ (hereinafter "the Regulation") in the context of access to documents requests lodged pursuant to Regulation (EC) 1049/2001².

The EDPS, in the context of a complaint on the same matter (Case 2014-0458), by letter of 30 April 2014 contacted the Commission in order to ascertain the facts of the case and to ask for its view on the allegations. In this letter, the EDPS asked the Commission to provide the legal basis and the reasons demonstrating the necessity of requiring the applicant's postal address for the notification of the decision on access to documents. In addition, the EDPS noted that the privacy statement accompanying the "Register of Commission Documents question form" did not explicitly mention the applicants' postal address as personal data to be mandatorily collected and processed by the Commission for the purpose of application of Regulation 1049/2001.

By letter of 3 June 2014, the Commission, Secretariat-General, Directorate B, Unit B.4 Transparency, provided the reply to the EDPS request for information. With the same letter, the Commission informed the EDPS that it had amended the privacy statement in the meantime to include an explicit reference to applicants' postal address.

2. Facts

The complainant reports in its complaint that he made an access to documents request via the Commission web form on 2 June 2014 in relation to which the Commission asked his postal address in order to register and handle the request. The complainant also reports that "from 2001 until April 2014 the Commission processed requests for access to documents without requiring address or other personal information other than an e-mail address".

¹ Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, published on the Official Journal of the European Communities of 12.1.2001, L 8/1.

² Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, published on the Official Journal of the European Communities of 31.5.2001, L 145/43.

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The complainant reported to the EDPS that the Commission has given the following reasons for the aforesaid requirement: "required for service of a decision under Article 297 [of the Treaty on the Functioning of the European Union]"; "requests being made under 'fake' identities"; "request splitting"; "protection of personal data contained in released documents".

On the basis of our findings, it results that as of 1 April 2014 the Commission requests the postal address of the person requesting access to documents ("the applicant") pursuant to Regulation (EC) 1049/2001 in order to notify its decision on this matter.

At the moment of the EDPS letter to the Commission (30 April 2014), the specific privacy statement³ related to the "Commission documents question form" indicated as mandatory fields for the request for access to documents the following data: "First name, Last Name and E-Mail".

3. Summary of the allegations

The complainant questions the fact that the Commission requests his postal address in addition to his e-mail address in order to notify him its decision on the access to documents request pursuant to Regulation (EC) 1049/2011. This practice, in the complainant's view, is in breach of Regulation (EC) 45/2001. The complainant contests the validity of the reasons provided by the Commission and, in particular, considers that the requirement in question is "disproportionate".

4. Position of the Commission

By letter of 3 June 2014, the Commission replied to the aforesaid letter of the EDPS of 30 April 2014, specifying as follows: "The decision to ask for a postal address from applicants for access to document was triggered by the following considerations:

- The need to obtain legal certainty as regards the date of receipt of the reply by the applicant under Regulation 1049/2001. Indeed, as foreseen by Article 297 of the Treaty on the Functioning of the European Union (TFEU), [...] *decisions which specify to whom they are addressed shall be notified to those to whom they are addressed and shall take effect upon such notification*. Replies triggering the possibility for administrative or judicial redress are therefore transmitted via registered mail with acknowledgement of receipt. This requires an indication of a valid postal address by the applicant;
- The need to direct the Commission's scarce resources first of all to those requests which have been filed by "real" applicants. With only a compulsory indication of an e-mail address, applicants can easily introduce requests under an invented identity or under the identity of a third person. Asking for a postal address helps the Commission to protect the administration, as well as other citizens and legal persons, from abuse;
- For similar reasons, asking for a compulsory indication of a postal address enables the Commission services to verify whether Article 6(3) of the Regulation, on voluminous requests, is being evaded by introducing several requests under different identities. Indeed, in its Ryanair judgment, the General Court confirmed that Article 6(3) cannot be

³ The Privacy statement, in its amended version, is now available at:
<http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=privacy>.

evaded by splitting the application into a number of applications⁴. The Commission would like to point out that, in 2012/2013, it received some 57 confirmatory requests from what it suspects to be one single applicant operating under 13 different identities;

- Knowing whether the applicant is an EU resident in the sense of Article 2(1) of Regulation 1049/2001 is a precondition for the purpose of correctly applying the exception in Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual), which has to be interpreted in accordance with Data Protection Regulation 45/2001⁵. Article 9 of Regulation 45/2001 requires the adequacy of the level of protection afforded by the third country or international organisation when transmitting personal data to third-country residents or legal persons. It follows that, in case of requests for documents which include personal data, the correct application of the data protection rules cannot be ensured in the absence of a postal address enabling the Commission to ascertain that the minimum data protection standards will be respected".

According to the European Commission, all of these considerations show that the request for and the consequent processing of a postal address is not only appropriate but also strictly necessary for the performance of a task carried out in the public interest within the meaning of Article 5(a) of Data Protection Regulation 45/2001, namely providing a smooth and effective access to documents. It also pointed out that other institutions, such as the Court of Justice, already ask for the address in their respective electronic forms for access to documents requests.

5. Legal Analysis

5.1. Admissibility

According to Article 32 of the Regulation, every data subject may lodge a complaint with the EDPS if he or she considers that his or her rights under what is now Article 16 of the Treaty on the Functioning of the European Union have been infringed as a result of the processing of his or her personal data by an EU institution or body. The postal address of the natural person lodging his or her request for access to Commission documents constitutes 'personal data' as defined in Article 2(a) of the Regulation⁶.

Since the complaint relates to the processing of personal data by the Commission, the complaint meets the conditions set forth in Article 32(2) of the Regulation and is therefore admissible.

5.2. Compliance with Regulation (EC) 45/2001

The processing of personal data under scrutiny in the present case is part of the handling of the request for access to documents to which the Commission shall provide a reply pursuant to Regulation (EC) 1049/2001 and Article 15(3) of the Treaty on the Functioning of the

⁴ Judgment of the General Court in case T-494/08, *Ryanair Ltd v Commission*, paragraph 34.

⁵ Judgment of the Court of Justice of 29 June 2010 in case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56-63.

⁶ In this regard, see the Opinion 4/2007 on the concept of personal data of the Article 29 Working Party, available at:

http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/opinion_04-2007_personal_data /Opinion_04-2007_personal_data_en.pdf.

European Union, which lays down that: “any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium (...)”.

According to Article 4(1)(a) of Regulation (EC) 45/2001, “personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed”.

Following careful assessment of the reasons provided by the Commission, the EDPS would give particular weight to the objective of ensuring legal certainty as to the date of receipt of the reply by the applicant. This date is relevant for the calculation of legal deadlines (see for instance Article 7.2 of Regulation (EC) 1049/2001, or Article 263, last paragraph, of the TFEU).

Furthermore, the aim of countering the introduction of requests for access to documents under a false/invented identity or under the identity of a third person is also relevant (referring, in this regard, to cases of access to documents requests submitted not by the applicant him/herself but by an ‘impersonator’ or via websites/platforms).

The EDPS takes note that by requiring the postal address the Commission may avoid replying to fictitious requests from ‘shell’ e-mail addresses or websites. Indeed, the requirement for the postal address of the applicant -as less invasive means compared to other possible methods of identification- enables the institution to counter abusive recourse to access to documents’ requests under Regulation (EC) 1049/2001 for instance, identifying requests artificially fragmented with the aim of eluding the application of Article 6(3).

The EDPS also understands that the indication of the postal address of the recipient of the reply to the request for access to documents facilitates the Commission’s verification on whether Article 9 or Article 8 of the Regulation applies. In the context of access to documents requests, following the judgment of the Court of Justice of 29 June 2010 in case C-28/08 P, *Commission v. Bavarian Lager*, the EDPS observed⁷ that if the person requesting access to a document containing personal data is situated outside the European Economic Area (“EEA”), such access may entail a transfer of personal data subject to requirements (pursuant to Article 9 of the Regulation) which are, in principle, stricter than the ones applying to recipients subject to Directive 95/46/EC (laid down under Article 8)⁸.

Therefore, in the light of all of the above, the EDPS considers that by requiring the postal address of the applicant to access to documents pursuant to Regulation (EC) 1049/2001 -as least invasive identification requirement- the Commission does not require personal data which are excessive in relation to the purpose for which such data are collected and further processed.

⁷ EDPS Paper “Public access to documents containing personal data after the *Bavarian Lager* ruling”, page 13, available at the EDPS website at:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24_Bavarian_Lager_EN.pdf.

⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, published on the Official Journal of the European Communities of 23.11.1995, L 281/31.

It is nonetheless essential that adequate information is given by the Commission to the applicant (the data subject) about the collection of his or her postal address for the performance of this task.

Article 4(1)(a) of the Regulation provides that personal data must be “*processed fairly and lawfully*”. The concept of ‘fairness’ is notably linked to the information that must be provided by the controller to the data subject. Article 11(1)(d) states that the controller shall provide a data subject from whom data relating to himself/herself are collected with the information on “whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply”.

As regards the privacy statement accompanying the “Register of Commission documents question form”, the EDPS -in his letter to the Commission of 30 April 2014- observed that the postal address of the applicant was not mentioned by aforesaid privacy statement as mandatory field of the personal data to be collected and further processed.

The EDPS therefore welcomes the confirmation given by the Commission by letter of 3 June 2014 that the privacy statement accompanying the Register of Commission documents question form has been amended so as to include the explicit reference to the applicant’s postal address as mandatory field without which the application for access to documents will not be examined by the Commission.

Since the Commission has modified the specific privacy statement as recommended, the EDPS observes that the processing of the applicants’ postal address is no longer in breach of Article 11, nor of Article (4)(1)(a) of the Regulation.

6. Conclusion

The EDPS, in the light of the above, considers that the request for the postal address of the individual lodging the request for access to documents pursuant to Regulation (EC) 1049/2001 and Article 15(3) of the Treaty on the Functioning of the European Union is not in breach of the Regulation.

Done in Brussels, 26 November 2014

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