

**From:** [REDACTED]  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Sent at:** 16/06/23 14:42:42  
**Subject:** Our ref.: 2022-1189 - D(2023) 1786 - Your complaint against EPSO

Dear Sir,

Please find attached a letter signed electronically on behalf of Mr T. ZERDICK for the above mentioned subject.

Kind regards,

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**SUPERVISION & ENFORCEMENT UNIT**



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EUROPEAN DATA PROTECTION SUPERVISOR

SUPERVISION and ENFORCEMENT UNIT  
Head of Unit

Mr [REDACTED]  
e-mail: [REDACTED]

Brussels, 16 June 2023

[REDACTED] D(2023) 1786 C 2022-1189  
Please use [supervision@edps.europa.eu](mailto:supervision@edps.europa.eu)  
for all correspondence

**CONFIDENTIAL**

**Subject: Your complaint against EPSO (Case 2022-1189).**

Dear Mr [REDACTED],

We are writing to you regarding your complaint against EPSO concerning access to your personal data, submitted to the EDPS on 16 November 2022 under Article 63(1) of Regulation (EU) 2018/1725 (the Regulation), Case 2022-1189.

**Background**

On 18 June 2022, you contacted EPSO to exercise your right of access for four selection procedures in your EPSO profile. You specifically asked to know:

- i) if your personal data were still being processed, and
- ii) the recipients to whom your personal data had been disclosed.

You also asked for a detailed report of when and by whom your personal data had been accessed.

On 5 August 2022, EPSO provided you with the following information:

- i) the status of the processing of your personal data regarding each of the four selection procedures, and
- ii) the categories of authorised recipients of your personal data and their function.<sup>1</sup>

EPSO did not provide you with any information about the time that the recipients had access to your personal data.

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<sup>1</sup> EPSO's reply attached to your complaint.

## Allegations

In your complaint, you requested that EPSO provide you access to your log files (with timestamp) of your EPSO profile, namely 'when and by whom your personal data were accessed' in line with Article 17(1)(c) of the Regulation<sup>2</sup>.

In your complaint, you stated that you considered the above information communicated to you by EPSO as 'insufficient and generic'.

You also asked whether the reasoning of the judgment of 12 January 2023 of the European Court of Justice (ECJ), **C-154/21**<sup>3</sup>, was applicable in your case.

## Legal analysis

### Admissibility

You requested to obtain the log files (with timestamp) of your EPSO profile. Your personal data in your EPSO profile, such as information concerning your education, employment and career (Article 3(1) of the Regulation) are being processed through consultation and assessment (Article 3(3) of the Regulation), by EPSO as controller (Article 3(8) of the Regulation). EPSO is a Union institution or body, as defined in Article 3(10) of the Regulation. Your complaint is therefore admissible under Article 63(1) of the Regulation.

### *i) Are EPSO's employees recipients of your personal data?*

You requested EPSO to inform you 'by whom your personal data were accessed' and EPSO provided you with the categories of authorised 'recipients' of your personal data and their function. You were not satisfied with this information, as you requested to obtain the identity of the recipients.

The EDPS considers that EPSO's employees are not recipients of your personal data.

According to Article 3(13) of the Regulation, 'recipient' means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, **whether a third party or not**. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing'.

Article 3(14) of the Regulation defines 'third party' as a natural or legal person, public authority, agency or body other than the data subject, controller, processor and **persons who, under the direct authority of the controller or processor, are authorised to process personal data**.

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<sup>2</sup> Article 17(1)(c) of the Regulation provides that 'the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: ... c) the recipients or categories of recipient to whom the personal data have been or will be disclosed...'

<sup>3</sup><https://curia.europa.eu/juris/document/document.jsf?text=&docid=269146&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=66061>

Article 30 of the Regulation<sup>4</sup> states that '[t]he processor and **any person acting under the authority of the controller** or of the processor, who has access to personal data, shall not process those data except on instructions from the controller, unless required to do so by Union or Member State law'.

Whereas the terms 'personal data', 'data subject', 'controller' and 'processor' are defined in the Regulation, the concept of 'persons who, under the direct authority of the controller or processor, are authorised to process personal data' is not. It is, however, generally understood as referring to persons that belong to the legal entity of the controller or processor (i.e. an employee, a case handler in charge) but only insofar as they are authorised to process personal data<sup>5</sup>.

It follows that the concept of recipient does not include employees of a controller who, when using the latter's computer system, consult the personal data of a data subject on behalf of its administrative bodies. Where such employees act under the direct authority of the controller, they do not, on that basis alone, acquire the status of 'data recipients'<sup>6</sup>. These employees are actually part of the controller.

In the case at hand, EPSO is the controller responsible for processing the personal data of candidates who participate in different selection procedures and competitions with the purpose of managing their applications and evaluating their personal data within these procedures. EPSO has authorised its employees to access and consult the personal data in your EPSO profile for the above purposes. These employees are part of the controller, EPSO, and they execute their tasks and duties under the authority and instructions of EPSO, as their employer. As a result, in the context of managing your EPSO profile, EPSO processes your personal data as controller through its employees.

In light of the above, EPSO's employees are not recipients, but they are part of the controller, EPSO.

## *ii) The judgment of 12 January 2023, C-154/21*

You asked the EDPS whether C-154/21 is applicable to your access request<sup>7</sup>, and consequently whether you are entitled to obtain the identity of the recipients to whom your data have been disclosed.

The EDPS would like to clarify that Case C-154/21 relates to a situation different from the one at hand, which concerns processing carried out by an EU body, such as EPSO. In Case

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<sup>4</sup> This provision refers to 'Processing under the authority of the controller or processor'.

<sup>5</sup> EDPB Guidelines 07/2020 on the concepts of controller and processor, paragraphs 85-92: [https://edpb.europa.eu/system/files/2021-07/eppb\\_guidelines\\_202007\\_controllerprocessor\\_final\\_en.pdf](https://edpb.europa.eu/system/files/2021-07/eppb_guidelines_202007_controllerprocessor_final_en.pdf)

<sup>6</sup> See paragraphs 62-66 in the Opinion of the Advocate General in Case C-579/21 before the ECJ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=268629&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=244965>

<sup>7</sup> In its judgment of 12 January 2023, the ECJ held that 'the data subject's right of access to the personal data concerning him or her, provided for by that provision, entails, where those data have been or will be disclosed to recipients, an obligation on the part of the controller to provide the data subject with the actual identity of those recipients, unless it is impossible to identify those recipients or the controller demonstrates that the data subject's requests for access are manifestly unfounded or excessive within the meaning of Article 12(5) of Regulation 2016/679, in which cases the controller may indicate to the data subject only the categories of recipient in question'.

C-154/21, the recipients and third parties to whom the Österreichische Post disclosed the data subject's personal data were external stakeholders, such as trading partners for marketing purposes. They were not, like in the case at hand, employees acting under the authority of the controller, the Österreichische Post.

In Case C-154/21, the Court found that the Österreichische Post had an obligation to inform its customers to which entities it transmitted their personal data. Informing the data subject about the 'actual identity' of the trading partners does not mean communicating the identity of natural persons (i.e. employees) working at these trading companies; it means informing the data subject about the identity (the name) of the *companies* (i.e. the trading partners), to which the Österreichische Post transmitted their personal data. In other words, it was not considered enough to inform customers that their data were transmitted to 'hotels' or 'marketing companies' (i.e. the categories of recipients), but the name of the actual hotels and marketing companies should be provided (i.e. identity of recipients).

The EDPS highlights that the right of access to personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in light of the data minimisation principle and the circumstances of the specific case. The EDPS stresses that the Regulation does not recognise the right to obtain the identity of the employee, who, as a subordinate of the controller acts upon the latter's instructions. Employees of an organisation are natural persons who have rights and freedoms which must be respected and their personal data must be protected. In addition, in certain cases, such as the one at hand, the identity of employees constitutes sensitive information from a security point of view, and should be protected to prevent any attempt of pressure, harassment or influence.

Consequently, the EDPS considers that EPSO did not infringe the Regulation by its reply of 5 August 2022 providing you with the categories and functions of the employees who consulted your EPSO profile.

### *iii) Do the logfiles constitute your personal data?*

The EDPB Guidelines on data subjects state: 'If appropriate, internal connection logs can be used to hold record about accesses to a file and to trace back which actions were performed in connection with accesses to a record, such as printing, copying, or deleting personal data. These logs may include the time of logging, the reason for the access to file as well as information identifying the person having had access.'

In light of the accountability principle<sup>8</sup> and in particular Article 4(1)(f)<sup>9</sup> of the Regulation, EPSO keeps logfiles of all candidates who create EPSO profiles for different competitions for security and audit trail purposes.

These logfiles are created by EPSO's employees, as a result of their consultation of the EPSO profiles, as part of their tasks and duties acting on behalf of EPSO. The logfiles make it possible to establish the justification, date and time of a consultation, as well as the identification of the EPSO's employee(s) who consulted your personal data. This means that EPSO's employees' personal data are also recorded in the logfiles.

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<sup>8</sup> Article 4(2) of the Regulation states that 'the controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability')'.

<sup>9</sup> 'Personal data shall be processed in a manner that ensures appropriate security of the personal data ... using appropriate technical or organisational measures ('integrity and confidentiality').

However, neither Article 17 of the Regulation, nor any other provision of the Regulation requires that the identity of the employees and the time they consulted your EPSO profile, should be made available to you as part of the information that you are entitled to obtain regarding the processing of your personal data<sup>10</sup>.

The reason is that the purpose of creating logfiles in a public authority is different from the purpose of exercising the right of access under Article 17 of the Regulation<sup>11</sup>. In the case of EPSO, the purpose of the logfiles is internal security and audit, namely to record and keep track the access of its employees so that checks and audit trails can be carried out if necessary.

It follows that the logfiles do not contain your personal data and you are therefore not entitled to have access to such information under Article 17(1)(c) of the Regulation.

### **Conclusion**

In light of the above, the EDPS considers that the fact that EPSO did not provide you with the log files including the identity of employees and the time they consulted your data upon the instructions of EPSO and as part of their tasks and duties, does not constitute an infringement of Article 17(1)(c) of the Regulation.

Consequently, the EDPS has decided to close the present case.

EPSO has also received a letter informing them of the present decision.

Please be informed that both you and EPSO may ask for a review by the EDPS of the present decision within one month. The request for revision should be lodged with the EDPS in writing and contain new factual elements or legal arguments which so far have not been taken into account by the EDPS.

Pursuant to Article 64 of the Regulation, any action against a decision of the EDPS can be brought before the Court of Justice of the European Union within two months<sup>12</sup> from the present Decision and according to the conditions laid down in Article 263 TFEU.

Yours sincerely,

*[e-signed]* 

Thomas ZERDICK, LL.M.

Cc:  Data Protection Officer, European Commission  
 Data Protection Coordinator, EPSO

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<sup>10</sup> See paragraph 85 in the Opinion of the Advocate General in Case C-579/21 before the ECJ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=268629&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=244965>

<sup>11</sup> See paragraphs 87 and 88 in the Opinion of the Advocate General in Case C-579/21 before the ECJ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=268629&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=244965>

<sup>12</sup> Please note that any request for revision of the present Decision lodged with the EDPS does not interrupt this deadline.

### ***Data Protection Notice***

*According to Articles 15 and 16 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, please be informed that your personal data will be processed by the EDPS, where proportionate and necessary, for the purpose of investigating your complaint. The legal basis for this processing operation is Article 57(1)(e) of Regulation (EU) 2018/1725. The data processed will have been submitted by you, or from other sources during the inquiry of your complaint, and this may include sensitive data. Your data will only be transferred to other EU institutions and bodies or to third parties when it is necessary to ensure the appropriate investigation or follow up of your complaint. Your data will be stored by the EDPS in electronic and paper files for up to ten years (five years for prima facie inadmissible complaints) after the case closure, unless legal proceedings require us to keep them for a longer period. You have the right to access your personal data held by the EDPS and to obtain the rectification thereof, if necessary. Any such request should be addressed to the EDPS at [edps@edps.europa.eu](mailto:edps@edps.europa.eu). Your data might be transferred to other EU institutions and bodies or to any third parties only where necessary to ensure the appropriate handling of your request. You may also contact the data protection officer of the EDPS ([DPO@edps.europa.eu](mailto:DPO@edps.europa.eu)), if you have any remarks or complaints regarding the way we process your personal data. You can find the full version of our data protection notice on complaint handling at: [https://edps.europa.eu/data-protection/our-role-supervisor/complaints-handling-data-protection-notice\\_en](https://edps.europa.eu/data-protection/our-role-supervisor/complaints-handling-data-protection-notice_en).*