From: [redacted]

To: SUPERVISION <supervision@edps.europa.eu>; European Data Protection Supervisor <EDPS@edps.europa.eu>

Sent at: 16/05/23 13:11:28

Subject: Re: Our ref.: 2022-1189 - D(2023) 0200

Dear SUPERVISION

Any news on this matter? It's been a while since I lodged my complaint

Thanks for your time

Best regards

[redacted]

-

El vie, 21 abr 2023 a las 11:37, [redacted] escribió:

> Dear SUPERVISION
>
> The EDPB released a guideline on right of access (Guidelines 01/2022 on data subject rights - Right of access) https://edps.europa.eu/sites/default/files/publication/09-10-01_olaf_right_access_en.pdf
>
> It seems that EUIPO and the EC have inspired recital 39 with their unlawful behavior.
>
> 39. Furthermore, the controller shall not deliberately escape the obligation to provide the requested personal data by erasing or modifying personal data in response to a request for access (see 2.3.2). If, in the course of processing the access request, the controller discovers inaccurate data or unlawful processing, the controller has to assess the state of the processing and to inform the data subject accordingly before complying with its other obligations. In its own interest, to avoid the need of further communication on this as well as to be compliant with the transparency principle, the controller should add information about the subsequent rectifications or deletions.
>
> **Example 6**: On the occasion of replying to an access request a controller realises, that an application of the data subject for a vacancy in the company of the controller has been stored beyond the retention period. In this case the controller cannot delete first and then reply to the data subject that no data (concerning the application) is processed. It has to give access first and delete the data afterwards. In order to prevent a subsequent request for erasure it would then be recommended to add information about the fact and time of the deletion.
>
> In order to comply with the principle of transparency, controllers should inform the data subject as of the specific point in time of the processing to which the response of the controller refers. In some cases, for example in contexts of frequent communication activities, additional processing or modifications of the data may occur between this time reference point, at which the processing was assessed, and the response of the controller. If the controller is aware of such changes, it is recommended to include information about those changes as well as information about additional processing necessary to reply to the request.
>
> Activity logs are personal data too. Yet EUIPO and EC have decided to denied it to me
>
> 97. Thus, subject to the specific facts of the case, when assessing a specific request for access, the following types of data are, *inter alia*, to be provided by controllers without prejudice to Art. 15(4) GDPR:
>
> - Special categories of personal data as per Art. 9 GDPR;
> - Personal data relating to criminal convictions and offences as per Art. 10 GDPR;
> - Data knowingly and actively provided by the data subject (e.g. account data submitted via forms, answers to a questionnaire)[56];
> - Observed data or raw data provided by the data subject by virtue of the use of the service or the device (e.g. data processed by connected objects, transaction history, activity logs such as access logs, history of website usage, search activities, location data, clicking activity, unique aspects of a person's behaviour such as handwriting, keystrokes, particular way of walking or speaking)[57];
> - Data derived from other data, rather than directly provided by the data subject (e.g. credit ratio, classification based on common attributes of data subjects, country of residence derived from postcode)[58];
> - Data inferred from other data, rather than directly provided by the data subject (e.g. to assign a credit score or comply with anti-money laundering rules, algorithmic results, results of a health assessment or a personalization or recommendation process)[59];
> - Pseudonymised data as opposed to anonymized data (see also section 3 of these guidelines).
>
> **Example 16**: Elements that have been used to reach a decision about e.g. employee's promotion, pay rise or new job assignment (e.g. annual performance reviews, training requests, disciplinary records, ranking, career potential) are personal data relating to that employee. Thus such elements can be accessed by the data subject on request and respecting Art. 15(4) GDPR in case personal data for example, also relate to another individual (e.g. the identity or elements revealing the identity of another employee whose testimony about the professional performance is included in an annual performance review may be subject to limitations under Art. 15(4) GDPR and hence it is possible that they cannot be communicated to the data subject in order to protect the rights and freedoms of said employee). Nevertheless, national labour law provisions may apply for instance regarding the access to personnel files by employees or other national provisions such as those concerning professional secrecy. Under all circumstances, such restrictions to the exercise of the right of access of the data subject (or other rights) provided in a national law must respect the conditions of Art. 23 GDPR (see section 6.4).

108. 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. Questions related to this topic are at issue in a case currently pending before the CJEU (C-579/21). The putting in place and the supervision and revision of connection logs fall within the controller's responsibility and are liable to be checked by the supervisory authorities. The controller should thus make sure that the persons acting under its authority who have access to personal data do not process personal data except on instructions from the controller, as per Art. 29 GDPR. If the person nevertheless processes the personal data for other purposes than fulfilling the controller's instructions, it may become controller for that processing and subject to disciplinary or criminal proceedings or administrative sanctions issued by supervisory authorities. The EDPB notes that it is part of the employer's responsibility under Art. 24 GDPR to make use of appropriate measures, extending from education to disciplinary procedures, to ensure that processing is in compliance with the GDPR and that no infringement occurs.

Regarding EUIPO and EC claims on unfounded or excessive requests.

6.3 Article 12(5) GDPR

175. Art. 12(5) GDPR enables controllers to override requests for the right of access that are manifestly unfounded or excessive. These concepts have to be interpreted narrowly, as the principles of transparency and cost free data subjects rights must not be undermined.

176. Controllers must be able to demonstrate to the individual why they consider that the request is manifestly unfounded or excessive and, if asked, explain the reasons to the competent supervisory authority. Each request should be considered on a case by case basis in the context in which it is made in order to decide if it is manifestly unfounded or excessive.

6.3.1 What does manifestly unfounded mean?

177. A request for the right of access is manifestly unfounded, if the requirements of Art. 15 GDPR are clearly and obviously not met when applying an objective approach. However, as explained especially

in section 3 above, there are only very few prerequisites for requests for the right of access. Therefore, the EDPB emphasises that there is only very limited scope for relying on the "manifestly unfounded" alternative of Art. 12(5) GDPR in terms of requests for the right of access.

Summarizing it:
* EUIPO nor EC DPOs provide me with the requested data (data and logs)
* They delete my data
* They accuse me of sending unfounded or excessive request

Can you please give me any indication? Is EDPS taking any action?

Thanks for your time

Best regards

[redacted]

El sáb, 1 abr 2023 a las 7:39, [redacted] escribió:

> Errata, I started in 2022, not
>
> Btw: all the selection procedure that I wanted the logs have disappeared from my EPSO profile. How convenient...
>
> After 10 month of ignoring the undue delay, when I finally received a reply denying my request I found that all is gone
>
> All transparence and fairness

El vie, 31 mar 2023 22:06, [redacted] escribió:

> Dear EDPS
>
> Find EC's DPO reply

EC-DPO-INTERNAL@ec.europa.eu 17:42 (hace 4 horas)
para mí, EC-DPO-INTERNAL@ec.europa.eu

Dear [redacted]

I refer to your email of 18 March 2023 (reference number Ares(2023)2023676).

First, I would like to sum up your previous exchanges with the Commission DPO office. On 15 June 2022, you requested EPSO to provide you access to your personal data. EPSO replied to you on 5 August 2022 (Ares(2022)5596112). Afterwards, on 19 August 2022 you requested the DPO office to examine EPSO's reply, since you found it unsatisfactory. You also asked the DPO office to investigate with EPSO when your personal data had been accessed by the EUIPO/OHIM's personnel.

The Commission DPO replied to you on 15 November 2022 (Ares(2022)7874655). You contacted the DPO office again on 20 November 2022 on the same matter and received a reply on 7 February 2023 (Ares(2023)881648). In both replies, it was explained to you that the matter at stake falls outside the remit of the Commission DPO and that you were advised to contact the EUIPO DPO.

Moreover, following your email of 15 February 2023 (Ares(2023)2024536) and previous exchanges, my office contacted the EUIPO DPO and it was established that the EUIPO (and not the Commission) is competent to reply to your request. It is my understanding that the DPO of EUIPO replied to you and informed you accordingly.

Your most recent request concerns exactly the same as your previous requests for which the Commission DPO has informed you several times that they fall outside of the remit of the Commission. As coordinating and handling of replies to those multiple requests creates unnecessary workload and has resulted in a disproportionate administrative burden on the Commission, it is my assessment that your request falls under the scope of Article 14(5) of Regulation (EU) 2018/1725, which provides that:

Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may refuse to act on the request.

In light of the above, I conclude that your request is manifestly unfounded and excessive within the meaning of Article 14(5) of Regulation (EU) 2018/1725. As a result, please note that further requests within the same scope will be disregarded.

Finally, I draw your attention to the means of redress available against this decision. You have the right to lodge a complaint with the European Data Protection Supervisor under the conditions specified in Article 63 of Regulation (EU) 2018/1725. You also have the right to an effective judicial remedy under the conditions specified in Article 64 of Regulation (EU) 2018/1725.

Yours sincerely,

[redacted]
Acting Data Protection Officer

It seems that I don't have any right over my data.

EUIPO's DPO replied me to contact EPSO on 22/7/2022

3. **That EUIPO provides the data recipients (and also the dates) that accessed my personal data in all EUIPO's systems (Sharedox, HR's Allegro database, HR's SAP SuccessFactors, etc.) and EPSO (e.g.: Cast) as per Article 17**

As mentioned under question 2 above, the recipients of the personal data for each specific case are included in the Privacy Statements referred to in **Annex 1**. Each staff member has access to information and personal data on the need-to-know basis and in their professional capacity. Personal data of individuals is protected under the Regulation (EU) 2018/1725 also when staff members act in performance of their duties.

This is the only information we can provide you with as regards the recipients of personal data for each database/application handled by EUIPO, as any other data would adversely affect the rights and freedoms of others as provided for by Article 17 (4) EUDPR.

If you want to receive more information about how your personal data is processed and protected in relation to your EPSO account and the applications submitted via it, we advise you to get in contact with EPSO directly as EPSO is the controller of the processing of personal data.

You can either contact EPSO at https://epso.europa.eu/en/contact-us/question, or the DPO of the Commission at DATA-PROTECTION-OFFICER@ec.europa.eu. You can also find

Can you provide me with the requested logs?

Thanks for your time

Best regards

[redacted]

El jue, 23 mar 2023 a las 17:24, [redacted] escribió:

> Dear SUPERVISION,
>
> Any news on this one? I started my quest on 2021 of June and lodged my first complaint with you in 16//11/2021
>
> Thanks for your time.
>
> ---
>
> [redacted]
>
> ---

El sáb, 18 mar 2023 a las 13:43, [redacted] escribió:

> Dear SUPERVISION,
>
> Any news on this one? I started my quest on 2021 of June and lodged my first complaint with you in 16//11/2021

Thanks for your time.

Best regards

[redacted]

El lun, 23 ene 2023 a las 14:11, SUPERVISION (<supervision@edps.europa.eu>) escribió:

> Dear [redacted],
>
> Thank you for your e-mail and for the reference to Case C-154/21.
>
> We are indeed analysing your Case 2022-1189 before the EDPS and we will get back to you soon.
>
> Thank you for your understanding.
>
> Kind regards,
>
> **SUPERVISION & ENFORCEMENT UNIT**
>
> | Tel. (+32) 228 31900 | Fax +32(0)22831950 | ›
> Email Supervision@edps.europa.eu
> **European Data Protection Supervisor**
> Postal address: Rue Wiertz 60, B-1047 Brussels
> Office address: Rue Montoyer 30, B-1000 Brussels
> @EU_EDPS www.edps.europa.eu
>
>
>
> **From:** Juan Sierra Pons [redacted]
> **Sent:** 20 January 2023 22:41
> **To:** European Data Protection Supervisor <EDPS@edps.europa.eu>
> **Subject:** Re: Our ref.: 2022-1189 - D(2022) 2746
>
> Dear Supervision
>
> I would like to do point in Case C-154/21
>
> https://curia.europa.eu/juris/document/document.jsf?text=&docid=269146&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=66061
>
> "

39 Thus, in order to ensure the effectiveness of all of the rights referred to in the preceding paragraph of the present judgment, the data subject must have, in particular, the right to be informed of the identity of the specific recipients where his or her personal data have already been disclosed.

"

I know that the law that applies to my complaint is the EUDPR and not the GDPR but they are quite similar regarding the Principles and I am not even requesting the identity. The category (EUIPO Personnel could be a category) would be enough.

BTW any news on this one?

Thanks for your time

Best regards

[redacted]

El vie, 16 dic 2022 a las 14:18, [redacted] escribió:

> Dear SUPERVISION,
>
> Please relate this reference with my complaint 2022-1189 - D(2022) 2746 as both are related with EUIPO lack of EUDPR compliance.
>
> Thanks for your time
>
> Best regards
>
> ---
> Juan Sierra Pons juan@elsotanillo.net
> Linux User Registered: #257202
> Web: http://www.elsotanillo.net Git: http://www.github.com/juasiepo
> GPG key = 0xA110F4FE
> Key Fingerprint = DF53 7415 0936 244E 9B00 6E66 E934 3406 A110 F4FE
> ---

El lun, 21 nov 2022 a las 10:08, [redacted] escribió:

> Dear EDPS,
>
> Being more specifically about what I need:
>
> I would like know when my personal data was accessed by EUIPO/OHIM's personnel (OHIM is former EUIPO's name). Knowing the time window of these accesses is essential for my letter before action

Thanks for your time

Best regards

[redacted]

El lun, 21 nov 2022 a las 9:18, SUPERVISION (<supervision@edps.europa.eu>) escribió:

Dear [redacted],

The EDPS acknowledges receipt of your complaint submitted through the online complaint form on 16 November 2022.

We will analyse your complaint and keep you informed of further developments.

The file has been given the case number 2022-1189. Please refer to this number and use edps@edps.europa.eu when corresponding with the EDPS.

Yours sincerely,

SUPERVISION & ENFORCEMENT UNIT

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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. 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 (EDPS-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.