

From: SUPERVISION [REDACTED]
To: [REDACTED]
Sent at: 07/03/24 15:38:21
Subject: Webform submission from: Complaint form sent on 13 February 2024 - to be linked with Case 2022-1189

Dear [REDACTED]

The EDPS acknowledges receipt of your complaint submitted through the online complaint form on 13 February 2024 against EPSO regarding your access request to your logs.

The file will be linked to your complaint case number 2022-1189.

The EDPS will assess your complaint of 13 February 2024 (below) as well as EPSO's reply sent to you on 30 November 2023 regarding the EDPS order of 31 October 2023 that EPSO provide you access to all your log data, the time and purpose of each access.

We will inform you accordingly in due time.

Yours sincerely,

SUPERVISION & ENFORCEMENT UNIT



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European Data Protection Supervisor
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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 (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->

From: European Data Protection Supervisor <edps-edps@fpfis.tech.ec.europa.eu>
Sent: 13 February 2024 12:08
To: SUPERVISION <supervision@edps.europa.eu>
Subject: Webform submission from: Complaint form

<p>Submitted on Tue, 02/13/2024 - 12:00</p>

<p>Submitted values are:</p>

1. Are you:

(a) personally affected by the issue(s) at stake in your complaint

2. Which EU institution, body, office or agency do you wish to complain about?

European Personnel Selection Office

3. Please describe your complaint and specify which personal data protection rule(s) you believe have been infringed by the EU institution, body, office, or agency concerned.

EPSO, In the context of case 2022-1189 and court case T-546/23 hasn't provided any EUDPR or Pankki compliant logs.

By email of 1/02/2023 (LetterAfterRevisedDecision-ANNEXES-signed.pdf

EDPS was in CC) I informed EPSO that the provided logs were not compliant and also informed it about a Data Breach (hereinafter 'The purge'). 'The purge' is basically two personal data protection breaches that should have been thoroughly investigated:

1. EPSO was storing applicant's data far beyond any reasonable date. Some data was from 2006 as seen on the Request for review Eg: EPSO/TA/IT/06 IT Temporary Agents IT from 2006.
2. EPSO/EUIPO instead of providing the logs and the data decided to purge applicant's data and claim compliance.

As a matter of fact I already informed the EDPS about the same very Data Breach by emails of 1/04/2023 , 21/04/2023 (Annexes 2023-04-01_Correo de [REDACTED] Our ref. 2022-1189 - D(2023) 0200.pdf and 2023-04-21_Correo de [REDACTED] - Our ref. 2022-1189 - D(2023) 0200.pdf

). It seems that the EDPS didn't understand the emails properly as no action was taken at that moment.

I also included the deletion of my personal data on my request for review but the EDPS ignored it again.

I have a certified (by a third party witness eGarante) web session from 15/05/2022 where the purged application EUIPO/CAST/1/16 - 6 - INFORMATION TECHNOLOGY/PROJECT MANAGEMENT SPECIALIST - Function Group IV (FG IV) can be seen. The log clearly state that the web session was from 15/05/2022

2022-05-15 09:49:39.820571 <https://europa.eu/epso/application/passport/login.cfm?islo=true>

2022-05-15 09:50:01.203219 <https://europa.eu/epso/application/base/index.cfm>

2022-05-15 09:50:01.203219 https://europa.eu/epso/application/cv_new/index.cfm

2022-05-15 09:50:04.413404 <https://europa.eu/epso/application/passport/index.cfm?action=pdplegal>

I cannot provide the PDF nor the video as the complaint form only allows me to upload 3 files with less than 3MB. I will provide them by email when I receive your reference number by email

4. Please explain what you would like the EU institution, body, office, or agency to do in order to remedy the alleged violation.

EPSO has ignored all my attempts to get access to the logs even after being ordered to comply with my request by the EDPS.

EPSO has ignored my request to inform me (as a data subject) and to the EDPS the two data breaches from my letter from 1/02/2023 (LetterAfterRevisedDecision-ANNEXES-signed.pdf EDPS was in CC)

5. When did you become aware of the alleged violation?

2023-04-01

6. If you have supporting documents to substantiate your claim, please upload them here.

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https://www.edps.europa.eu/system/files/webform/complaint_form/11901/screenshot_before_afterthepurge_1.pdf

• [https://www.edps.europa.eu/system/files/webform/complaint_form/11901/2023-04-21_correo_de_\[REDACTED\]-our-ref.-2022-1189---d%282023-0200_0.pdf](https://www.edps.europa.eu/system/files/webform/complaint_form/11901/2023-04-21_correo_de_[REDACTED]-our-ref.-2022-1189---d%282023-0200_0.pdf)

• [https://www.edps.europa.eu/system/files/webform/complaint_form/11901/2023-04-01_correo_de_\[REDACTED\]-our-ref.-2022-1189---d%282023-0200_0.pdf](https://www.edps.europa.eu/system/files/webform/complaint_form/11901/2023-04-01_correo_de_[REDACTED]-our-ref.-2022-1189---d%282023-0200_0.pdf)

7. Have you already contacted the EU institution, body, office or agency you want to complain about concerning the alleged violation?

Yes

Please provide details, including the reply of the EU institution, body, office or agency.
EPSO has ignored all my attempts to get the logs and has deleted my data. The EDPS has already all the supporting documents and emails shared between me and the EPSO.

8. Have you submitted the same matter to other bodies (Court of Justice, European Ombudsman, etc.)?
No

9. Your Name

Please note:

If you are a lawyer acting on behalf of a client, please enter your client's name here, not yours - please enter your details under "contact information" below and attach a power of attorney.

If you are a not-for-profit body, organisation or association, please enter your client name here, not yours - please enter your details under "contact information" below and attach a mandate from the individual.

First name(s)

[REDACTED]

F [REDACTED] me(s)

[REDACTED]

10. Contact information

[REDACTED]

11. E-mail address

[REDACTED]

The EDPS treats all complaints confidentially. However, the investigation of your complaint may require disclosing your identity and the allegations you made to the EU institution, body, office, or agency against which you complained. If necessary for the investigation, the identity of the third parties involved, including national data protection authorities may be disclosed. The EDPS will also copy the Data Protection Officer (DPO) of the EU institution, body, office or agency concerned into all correspondence between the EDPS and the EU institution, body, office or agency concerned. Any public summaries of cases (e.g. in the Annual Reports of the EDPS) will be completely anonymous.

12. Do you accept this standard confidential treatment of your complaint?

Yes

13. Do you agree that your complaint may be passed to another institution, body, office or agency (European or national), if the EDPS is not competent?

Yes

14. I acknowledge having read and understood the Data protection notice.

Yes

The following is an screenshot of my EPSO profile taken on 2022 (before the purge) where my EUIPO/CAST/1/16 can be seen as the last application on my EPSO profile :

Applicant No 4220689 - EUIPO/CAST/1/16 - 6 INFORMATION TECHNOLOGY/PROJECT MANAGEMENT SPECIALIST - Function Group IV (FG IV)

You validated your application

 **Total Nr of messages: 1**

The following is the same screenshot taken in 2023 (after the deletion) where a very old application from 2007 can be seen as the last application as all newer applications were deleted after my request for access.

ANNEX C.06

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Applicant No 700311 - EPSO/CAST27/5/07 CAST27 (RELEX) - FG III → **Access CAST27 RELEX CV**

EPSO and EUIPO

As seen before, EDPB guideline's recital 39 and Example 6 explains clearly EUIPO's wrongdoing by denying me my personal data, documents and logs.



[REDACTED]

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

21 de abril de 2023, 11:37

Para: SUPERVISION <supervision@edps.europa.eu>, edps@edps.europa.eu

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[El texto citado está oculto]



[REDACTED]

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

[REDACTED]
Para: SUPERVISION <supervision@edps.europa.eu>, edps@edps.europa.eu

1 de abril de 2023, 7:39

Errata, I started in 2022, not in 2021 as stated before

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 texto citado está oculto]