

From: SUPERVISION [REDACTED]
To: [REDACTED]
Sent at: 14/05/24 18:05:06
Subject: Our ref.: 2022-1189 - D(2024) 1540 - Webform submission from:
Complaint form sent on 13 February 2024 - to be linked with Case
2022-1189

Dear [REDACTED],

Thank you for your e-mail of 6 May 2024, informing us of the EPSO's reply of 3 May 2024, which follows up on the EDPS order of 31 October 2023 (Case 2022-1189).

EPSO's reply suggests that there might be additional potential infringements under Regulation (EU) 2018/1725.

The EDPS will therefore **open a new complaint case** and investigate the new elements and potential violations brought to our attention.

In case you disagree, please inform us accordingly by 21 May 2024.

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

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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.

From: [REDACTED]
Sent: 06 May 2024 10:32
To: SUPERVISION <supervision@edps.europa.eu>; European Data Protection Supervisor <EDPS@edps.europa.eu>
Cc: ZERDICK Thomas <thomas.zerdick@edps.europa.eu>; ROSSIGNOL Olivier <olivier.rossignol@edps.europa.eu>; CERVERA NAVAS Leonardo <leonardo.cerveranavas@edps.europa.eu>; WIEWIOROWSKI Wojciech <wojciech.wiewiorowski@edps.europa.eu>
Subject: Re: Our ref.: 2022-1189 - D(2024) 1094 - Webform submission from: Complaint form sent on 13 February 2024 - to be linked with Case 2022-1189
Importance: High

Dear SUPERVISION and EDPS,

Please find attached EPSO's reply. Not a single one of my requests have been fulfilled

From your Monitoring and enforcing compliance with Regulation (EU) 2018/1725[1]:

Example: a person complains that an EUI unlawfully withheld personal data it held about her when replying to a request for access to one's own personal data under Article 17 of the Regulation. Following an on-site check, the EDPS decision establishes that the EUI indeed unlawfully withheld the data and orders it to provide a complete reply to the complainant by a specified deadline. **The EUI fails to comply with the order by that deadline. This is a situation in which the EDPS may decide to impose a fine.**

From EDPB's guideline on right of access[2]:

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.

Can you please schedule a video conference to assess EPSO's reply? Not a single one of my requests have been fulfilled

Thanks for your time

Best regards

[1] https://www.edps.europa.eu/sites/edp/files/publication/20-05-08_monitoring_and_ensuring_compliance_en.pdf

[2] https://edpb.europa.eu/system/files/2023-04/edpb_guidelines_202201_data_subject_rights_access_v2_en.pdf

[REDACTED]

El vie, 3 may 2024 a las 16:27, [REDACTED] escribió:

Dear Supervision, EDPS,

Thank you for your email of 03/4/2024:

"[...]The EDPS has contacted EPSO seeking clarifications on your allegations and on their reply to you of 30 November 2023 regarding Case 2022-1189.

We will inform you accordingly.[...]"

The deadline to reply to my DSR (after two holding replies) expired yesterday 2/5/2023.

Can you please inform me accordingly about your findings? My complaint is from 13/2/2024

Thanks for your time

Best regards

[REDACTED]

El mié, 3 abr 2024 a las 17:33, SUPERVISION (<supervision@edps.europa.eu>) escribió:

Dear [REDACTED]

Thank you for your email of 26 March 2024 regarding your complaint against EPSO submitted on 13 February 2024 concerning your access request and alleged data breaches (linked to Case 2022-1189).

The EDPS has contacted EPSO seeking clarifications on your allegations and on their reply to you of 30 November 2023 regarding Case 2022-1189.

We will inform you accordingly.

Kind regards,

S&E Secretariat on behalf of Thomas Zerdick, Head of Unit

SUPERVISION & ENFORCEMENT UNIT	
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Email Supervision@edps.europa.eu	
	European Data Protection Supervisor Postal address: Rue Wiertz 60, B-1047 Brussels

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 [@EU_EDPS](https://twitter.com/EU_EDPS)  www.edps.europa.eu

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From: [REDACTED]

Sent: 26 March 2024 11:35

To: SUPERVISION <supervision@edps.europa.eu>

Subject: Re: Webform submission from: Complaint form sent on 13 February 2024 - to be linked with Case 2022-1189

Importance: High

Dear SUPERVISION,

I provided you with the video (certified by a third party digital witness) by emails of 15/3/2023

I lodged this complaint on 13/2/2024 and I haven't received any meaningful information in accordance with Article 67, and investigate, to the extent appropriate, the subject matter of the complaint **and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;**"

I have been trying to get access to my logs since 20/06/2022 without success and EPSO has deleted my data (hereinafter, 'The purge') instead of providing me with the logs.

'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.

*** Has EPSO informed the EDPS about the two data breaches?**

*** Has the EDPS informed already other competent EU bodies? eg: EUROPOL, EPPO, OLAF, ENISA, CJEU, etc.**

*** Is the EDPS investigating this data protection mess?** Please note that I haven't brought EPSO to court (yet) to allow the EDPS enough time to investigate the matter without triggering the Article 16(6) of the EDPS Rules of Procedure provides that the EDPS 'shall suspend the investigation of a complaint pending a ruling by a court or a decision of another judicial or administrative body on the same matter'.

*** Is the EDPS ordering EPSO to comply with all my requests as a data subject?** specially the restore of my deleted data and the object and restriction rights that are on my Letter sent by email of 1/02/2023 (LetterAfterRevisedDecision-ANNEXES-signed.pdf) to EPSO with the EDPS in CC and attached to the complaint. form.

*** As per Mr Zerdick comment on his LinkedIn** "Note that the [#EUDPR](#) does not allow the EDPS to immediately impose an administrative fine, but only when an EU institution, body, office, or agency fails to comply with an EDPS order." **Is EDPS fining EPSO for not complying with its order to comply with my request and providing me the logs?**

I requested the logs on 20/06/2022 to be used in my (future at that time) court applications against EUIPO. I have gone to court without any single line of logs:

*** Case T-221/23**

*** Case T-1138/23**

Please see Article 22a and 22b of the [Staff Regulations](#):
"Article 22

1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the ► M128 Union ◀ , or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the ► M128 Union ◀ , shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct.[...]" (bold added by me).

I would like to remind you of https://anti-fraud.ec.europa.eu/olaf-and-you/report-fraud_en

"

[...] **EU staff members reporting fraud**

If you are an EU staff member you have an obligation to report possible cases of fraud, corruption, other illegal activity, or professional conduct which may constitute a serious failure to comply with the obligations of EU staff members.

You can either inform a member of management in your institution or OLAF about your suspicions. If you want to inform OLAF directly, please follow the steps described above, under the heading [How to report to OLAF](#).

[...]

Deleting personal data needed for two court cases (future at that time) is quite a possible case of **fraud, corruption, other illegal activity, or professional conduct which may constitute a serious failure to comply with the obligations of EU staff members.**

I have provided evidence of the manipulation of my personal data (certified by a third party digital witness) while EPSO has claimed compliance.

I will gladly have a video conference with the EDPS to provide more evidence of EUIPO's many wrongdoing

Thanks for your time.

Best regards

[Redacted signature block]

El jue, 7 mar 2024 a las 16:30, [Redacted] escribió:

Dear SUPERVISION,

Please do not forget the two data breaches and the video certified by a third party witnessI provided by email of 21/02/2024

Thanks for your time.

Best regards

[Redacted signature block]

El jue, 7 mar 2024 a las 15:38, SUPERVISION (<supervision@edps.europa.eu>) escribió:

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 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
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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-protection/our-role-supervisor/complaints-handling-data-protection-notice_en

From: European Data Protection Supervisor <edps-edps@fpis.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.

•

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-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-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]

Family name(s)

[REDACTED]

10. Contact information

[REDACTED]

[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

Brussels, 03/05/2024

EPSO.001/[REDACTED] ARES (2024)s. 3759372



Subject: Request for access to personal data ref. Case 2022-1189

Ref.: Your message of 01/02/2024

Dear [REDACTED]

I refer to your message of 01/02/2024 in which you make comments on EPSO's reply ARES(2023)s. 12304180 of 30/11/2023, following up on the EDPS decision in Case 2022-1189.

I would like to provide you with the following additional clarifications in reply to the issues you raise.

You complain about the fact that EPSO deleted your data related to your applications EUIPO/CAST/1/16-6, OIHM/CAST/10/2014 FG III, and EPSO/TA/IT/06 IT, after you had made an access request to said data on 18 June 2022. You argue that this deletion of data constitutes a personal data breach. You also raise the assumption that the data might have been deleted by a "dishonest employee that unlawfully deleted [your] data as due his/her unlawful behaviour has become a recipient (Case C-579/21)".

In reply to these allegations EPSO wishes to clarify that it did indeed delete your personal data related to the three abovementioned selection procedures after receiving your request of 18 June 2022, due to the fact that it has interpreted the request as a request for access and erasure, rather than a pure access request.

To put the above in context, we would like to explain EPSO's current practice for implementing data retention periods, and the erasure of personal data at the expiry of these periods.

EPSO stores candidates' personal data related to applications for selection procedures in a database called Talent, which is used to configure the selection process, manage applications, communication with candidates, and manage tests. Talent is a legacy IT tool that was not built in line with the "data protection by design and default" requirements valid today. The legacy nature of Talent means, among other things, that it does not have a feature allowing the automatic deletion of data at the expiry of the applicable retention periods.

For this reason, the identification and erasure of personal data for which the retention periods have passed needs to be performed by means of a manual operation. This manual “data cleaning” is carried out periodically, several times a year. Unfortunately, the non-automatic and periodical nature of this method means that in some cases data may be stored past the applicable legal retention periods, until the next “cleaning” operation is performed. This was, indeed, the case of your personal data related to your applications EUIPO/CAST/1/16-6, OIHM/CAST/10/2014 FG III, and EPSO/TA/IT/06 IT.

Your request of 18 June 2022 was phrased as follows:

“I would like to exercise my right of access by the data subject (under article 17) for the following application numbers in their correspondent selection procedure:

- 4220689;
- 3921833;
- 700311;
- 539001.

Specifically I would like to know:

- If my personal data is still being processed;
- The recipients to whom my personal data have been disclosed.”

Upon receipt of the request, EPSO checked your file and discovered that the data related to your applications EUIPO/CAST/1/16-6, OIHM/CAST/10/2014 FG III, and EPSO/TA/IT/06 IT had been stored beyond the applicable retention periods. EPSO interpreted the lines “I would like to exercise my right of access” and “Specifically I would like to know [...] If my personal data is still being processed” as a request for access to the data where retention periods were still running and for erasure of the data where the retention periods had expired. Accordingly, it proceeded to the manual deletion of your data related to your applications EUIPO/CAST/1/16-6, OIHM/CAST/10/2014 FG III, and EPSO/TA/IT/06 IT.

EPSO acknowledges that its above approach was not in line with the European Data Protection Board’s “Guidelines 01/2022 on data subject rights - Right of access”, quoted in your correspondence. However, it is important to underline that the said EDPB Guidelines were adopted on 28 March 2023, nearly a year after your request of 18 June 2022 and EPSO’s reply of 5 August 2022 (ref. Ares(2022)5596112). Consequently, EPSO was not in a position to take the (not yet adopted) Guidelines into account when assessing and replying to your request.

EPSO furthermore confirms that your case was managed exclusively by authorised staff and the reply Ares(2022)5596112 was duly approved by hierarchy. Contrary to your assumptions, there was no question of “a dishonest employee acting in breach of the procedures established by the controller”.

EPSO also considers that its handling of your request as described above does not constitute a data breach, which is defined in Regulation (EU) 2018/1725 as “a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed”.

EPSO is of the opinion that deleting personal data stored past its retention period is not in breach of Regulation (EU) 2018/1725 or any other relevant rule laid down by an act of law.

Finally, as regards any further log data beyond that already provided in our earlier replies, I regret that I can only confirm that no such data exists, due to the legacy nature and limited logging capabilities of the data management systems in which your data was stored.

I trust that you will find the above clarifications useful and sufficient.

Yours sincerely,

