



EUROPEAN DATA
PROTECTION SUPERVISOR

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SUPERVISOR

Germany

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PH/HK/ab D(2009)684 C2008-0622

Dear

I hereby wish to inform you that the Commission has requested the EDPS for a revision of his decision of 9 March 2009 in the complaint you filed to the EDPS on behalf of your client, Mrs. (case number 2008-622).

In answer to this request, the EDPS has on 13 May 2009 confirmed his decision of 9 March 2009, with inclusion of some additional considerations. The relevant parts of the letter sent to the Commission are the following:

Request for revision

In your letter you challenge the part of the conclusion in which the EDPS establishes that the transfer of the minutes of the interview held with Mrs. in the context of an on-the-spot audit performed on from 2008 to 2008, to the Internal Audit Department of was not in conformity with Article 4(1)(c) of Regulation (EC) No 45/2001.

You indicate that some information included in the minutes was either already contained in the two contracts, which were also sent to the Internal Audit Department of , or could reasonably be supposed to be already known by the recipient in its quality of employer of the complainant's husband. You furthermore argue that other information in the minutes was relevant and necessary for the Internal Audit Department of to limit the scope of its audit in terms of period to be covered and to identify the activities where potential conflicts of interest could have been raised, in addition to the contractual situation itself, because the minutes (1) provided a clear and detailed summary of the exact activities performed by Mrs. well as of the context of these activities, (2) contained information about the existence of various contractual agreements of

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Mrs. [redacted] in particular the existence of another regular employment contract, the maternity leave and its renewal and (3) provided many important details on the practical organisation of the work of Mrs. [redacted]. You finally pointed out that the Internal Audit Department of [redacted] had requested for supporting information and that it only concerned certified information.

Analysis of the request

As becomes clear from the letter you sent to us on 29 January 2009, the purpose of the transfer of the information to the Internal Audit Department of [redacted] was to validate the audit hypothesis that Mr. [redacted] intervened in the name of [redacted] to maintain the contract flow from the Commission to [redacted] at a 100% funding rate in exchange of payments for a fictitious contract in the name of his wife, thereby prejudicing the financial interests of the Community.

The Internal Audit Department of [redacted] was therefore basically asked to start an internal investigation to control whether Mr. [redacted] had a conflict of interests. The object of that internal investigation was therefore Mr. [redacted] and not Mrs. [redacted]. The minutes of the phone call between the Commission and the Internal Audit Department of [redacted] of 4 November 2008 show that the internal investigation of [redacted] had as a starting point for discussion with Mr. [redacted], the sole fact that Mrs. [redacted] was working for [redacted]. The contracts between Mrs. [redacted] and [redacted] were evidence of that fact. The minutes of the phone call of 4 November 2008 do not show that further information has been necessary for commencing or performing the internal investigation. The EDPS therefore is not convinced that there was a need to provide the Internal Audit Department of [redacted] with further details relating to Mrs. [redacted].

The minutes of the phone call between the Commission and the Internal Audit Department of [redacted] of 25 June 2008 furthermore do not indicate that the Internal Audit Department requested for supporting information, such as the minutes of the interview which the Commission held with Mrs. [redacted]. The only information asked for was the list of audited contracts concerned by the issue. The Commission agreed to send that information.

On the basis of these considerations, the EDPS upholds his conclusion that the transfer of the minutes to the Internal Audit Department of [redacted] was excessive and therefore in breach of Article 4(1)(c) of Regulation (EC) No 45/2001. The decision of 9 March 2009 must therefore be confirmed, with inclusion of the preceding additional considerations.

The European Ombudsman has also been informed about the matter.

Yours sincerely,



Peter HUSTINX