



Sophie LOUVEAUX
HEAD OF UNIT

Mr Kurt Weiss
e-mail: 'ask+request-459-fda4f8a3@asktheeu.org'

Brussels, 4 June 2013
SLx/ABu/et/D(2013)1131 C 2013-0489

Subject: Your requests for access to documents of 14 May 2013 (our ref. 2013-0489)

Dear Mr Weiss,

I refer to your access to documents request (and a subsequent clarification) based on Regulation (EC) No 1049/2001 addressed to the EDPS via the www.asktheeu.org website.

The request concerns "all and any documents related to EDPS investigation launched in 2009 and invoked by European Parliament (Committee on Civil Liberties, Justice and Home Affairs) in 23.1.2013:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-504.051%2B01%2BDOC%2BPDF%2BV0%2F%2FEN>" and "the outcome & decision of this EDPS investigation".

You further clarified that you request relevant documents and the decision reached by the EDPS in a "case opened by EDPS following a complaint filed by one of the Team of Internal Audit of FRA (2008/2009)".

We have determined that your request refers to a case registered with a case number 2008-0643. We identified the following documents pertaining to that case:

- 1) A complaint dated 24 October 2008 with attachments (ref. 2008-0643 A-1985);
- 2) A letter to the complainant dated 3 November 2008 (ref. 2008-0643 D-1560);
- 3) A letter to the Fundamental Rights Agency dated 19 November 2008 (ref. 2008-0643 D-1700);
- 4) A letter from the Fundamental Rights Agency dated 18 December 2008 (ref. 2008-0643 A-08);
- 5) Comments from the complainant on the letter from the Fundamental Rights Agency listed under 4) above, dated 6 February 2009 (ref. 2008-0643 A-374);

- 6) The EDPS decision on the complaint dated 17 February 2009 (ref. 2008-0643 D-275), as well as accompanying letters sent to the complainant and to the Fundamental Rights Agency.

We have decided to grant access to documents listed under 2, 3 and 6 above which you will find attached to this note (with personal data redacted, as per your request).

We have decided to refuse access to the complaint dated 24 October 2008 listed under 1) above, as well as to the complainant's comments on the letter from FRA dated 6 February 2008 listed under 5) above. The refusal is based on Article 4(1)(b) of Regulation (EC) No 1049/2001 in conjunction with Article 8(b) of Regulation (EC) No 45/2001 which governs the processing of personal data by Union institutions and bodies, including the EDPS. According to this provision access to a document is refused where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. Article 4(1)(b) requires that any undermining of privacy and integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with the Regulation No 45/2001¹. Pursuant to Article 8(b) of Regulation (EC) No 45/2001, personal data may only be transferred if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. We have concluded that these cumulative conditions are not fulfilled in the present case.

Indeed, the complaint and the comments include a substantial amount of personal data relating to the complainant (as well as to other natural persons) which go far beyond the mere names, addresses or professional affiliation. In our view, access to those personal data does not appear to be the object of your request (on the contrary, you explicitly mentioned that "names can be made anonymous, if necessary"). At the same time, removing those personal data would, in our view, deprive those documents of most of their contents.

Should you wish to request access to the personal data included in the complaint, please provide an express and legitimate justification or convincing argument to demonstrate the necessity for those personal data to be disclosed.

As regards the letter from the Fundamental Rights Agency dated 18 December 2008 listed under 4) above, we have consulted FRA in accordance with Article 4(4) of Regulation (EC) No 1049/2001. This was done with a view to assess whether any of the exceptions in Article 4(1) or (2) would be applicable. This consultation is still ongoing. We will get back to you as soon as its results are available.

Please also note that, contrary to the statement made in the EP document you refer to, the EDPS does not investigate, or decide on, alleged instances of "harassment", but only deals with matters covered by Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

In addition, you requested "relevant documents and a list of cases opened by EDPS for every EU institution/body/agency". This part of your request is not sufficiently precise and does not

¹ See Court of Justice judgment of 29 June 2010 in Case C-28/08 P *Bavarian Lager*, available at: <http://curia.europa.eu/>

allow us to identify the documents you request. We therefore invite you to clarify this element. You may find helpful the information available on our website www.edps.europa.eu, and in particular the public register of processing operations which have been notified to the EDPS for prior checking, available at: <http://www.edps.europa.eu/EDPSWEB/edps/site/mySite/Register>.

Please note that pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may make a confirmatory application asking the EDPS to reconsider his position as regards the total or partial refusal of your request. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'S. Louveaux', written in dark ink.

Sophie LOUVEAUX
Head of Unit Supervision and Enforcement