



EUROPEAN COMMISSION
Information Society and Media Directorate-General

General Affairs
External Audit
Head of Unit

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**EDPS – EUROPEAN DATA
PROTECTION SUPERVISOR**

Mr. Peter Hustinx
Rue Wiertz 60

B – 1047 Brussels

CONFIDENTIAL

Subject: Your decision regarding the complaint of Mrs.

Your ref.: PH/HK/ab/D(2009)343 C2008-0622

Dear Mr. Hustinx,

I acknowledge receipt of your decision dated on 9 March 2009 regarding the complaint of Mrs. and I would like to make the following comments.

1. REQUEST FOR A REVISION OF THE DECISION

I wish to introduce a request for a revision of your decision regarding an infringement of Article 4(1)(c) of the Regulation N° 45/2001 with respect to our transfer of the minutes of the interview which was held with the complainant during the performance of the Commission external audit at

You consider in your decision that the Commission insufficiently ascertained that this transfer was necessary for the purpose for which the Internal Audit Department of was contacted. Therefore, I will further explain the reasons why we transferred information included in the minutes, by making a distinction between personal data included in the minutes which were already contained in the contracts or already known by and further additional personal data. Finally, I will provide you with the reasons why we took the option of submitting the signed minutes themselves instead of a transcription of them.

1.1. Information already contained in the contracts or already known by

Some information included in the minutes were either already contained in the contracts we transferred (clause of 50%, amounts to be paid to Mrs. ...) or could reasonably be supposed to be already known by the recipient () in its quality of employer of the complainant's husband (married, two children...).

1.2. Additional information included in the minutes

As pointed out in your decision, the minutes contain several "information about the complainant in relation to her work for in a more detailed manner" than the contracts themselves.

In particular, the following information contained in the minutes were relevant and necessary to the Internal Audit Department of () to limit the scope of its audit in terms of period to be covered, and ii) to identify the activities where potential conflicts of interest could have been raised, in addition to the contractual situation itself:

- Although the contracts provide a general description of the potential tasks of Mrs. the minutes provide a clear and detailed summary of the exact activities performed by Mrs. : within as well as of the context of these activities. As stated in the minutes, these activities consist in the financial management and controlling of the projects. As already mentioned in our initial letter, these management and coordination activities are normally not delegated to another partner but performed by the project coordinator¹ itself, i.e. in the case at hand by (with Mr. as overall EC coordinator). However, proposed to delegate these activities to a consultancy firm and the consultant retained was where Mrs. was in charge of these activities under a service contract.
- The minutes further contain information about the existence of various contractual agreements of Mrs. , in particular the existence of another regular employment contract, the maternity leave and its renewal. This information is not included at all in the contracts. As Mrs. has not always worked as a consultant but only recently and for , and in view of the functions of her husband as EC coordinator of , the communication of this information allowed not only to understand the general factual and contractual relationships of Mrs. with respectively and but also to define the time period to analyse.
- Furthermore, the minutes provide many important details on the practical organisation of the work of Mrs. he execution of the work from home and not from premises, the absence of actual supervision by , the use of her private assets (computers...) at home, the minimal implication in travels and similar events with the consortia, no frequent visits to the offices of in] ... This information usefully complements the contractual provisions and was in our view necessary for to properly understand the execution of the

¹ Definition and role of the Project Coordinator: see articles II.1.6, II.2.4 and II.3.3 of the FP6 contract: http://ec.europa.eu/research/fp6/model-contract/pdf/annex-ii-general-conditions_en.pdf

contract by Mrs. and identify any potential direct or indirect relationship with the work performed by Mr. and the practical organisation thereof.

1.3. The reasons for submitting the signed minutes to Internal Auditor

During the first contact with the Internal Auditor of the initial information was provided orally. Nevertheless, the Internal Auditor of requested for supporting information to be provided in order to assess the situation correctly and in order to allow his department to conduct an internal audit in a professional manner.

We considered that this request was valid and pertinent and in line with the professional audit standards.

When considering which documents and information to provide to Internal Auditor we decided to only submit information which was certified (signed contracts and signed minutes of a meeting). In doing so we allowed the Internal Auditor to rely on the documentation provided.

We also concluded that it was more objective and fair to present the facts as discussed and contradictorily admitted in the minutes instead of a transcription of the minutes which could potentially have resulted in an un-precise or misrepresented transfer of the facts collected by the auditors during the interview of Mrs.

For all these reasons, I confirm that the transfer of the minutes was, in my view, pertinent, necessary and not excessive in relation to its specific purpose and that it was therefore performed in accordance with Article 4(1)(c) of the Regulation (EC) N° 45/2001.

2. CONFIDENTIALITY OF INFORMATION CONTAINED IN THIS LETTER

In order to avoid any unfavourable impact on a possible OLAF investigation or judicial follow up I would like to ask you not to mention in your final decision and/or not to communicate to the complainant, additional information contained in the present letter.

Moreover, revealing the audit hypotheses of the Commission to the complainant herself could be harmful to the Commission in case of potential legal proceedings and it is the reason why I have already asked you for the confidentiality in my letter of 29 January 2009.

3. CONCLUSION

In conclusion, I inform you that the Commission will contact you once you have taken your final decision regarding this complaint, with respect to:

- your invitation to assess any further transfers of personal data in the context of external audits to recipients, other than Community institutions and bodies, which are subject to Directive 95/46/EC in light of Regulation (EC) No 45/2001;

- your invitation to assess how data subjects involved in Framework Programmes for research, technological development and demonstration activities can be better informed about the possible transfer of personal data to other contractors in the context of the audit procedure.

Yours sincerely,

Cc: a, SG

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