



EUROPEAN DATA PROTECTION SUPERVISOR

LEONARDO CERVERA NAVAS
HEAD OF EDPS SECRETARIAT

Mr Florian ALLERS

by email only: ask+request-13898-61cb4bc8@asktheeu.org

Brussels, 19 January 2024
LCN/tt/vd/D(2024) 0138 C 2023-1242
Please use edps@edps.europa.eu for all correspondence

Subject: Your request for access to documents under Regulation (EC) 1049/2001¹

Dear Mr Allers,

On 25.11.2023, you sent an access to documents request to the European Data Protection Supervisor (“EDPS”) based on Regulation (EC) No 1049/2001. On 27.11.2023, we sent you an acknowledgement of receipt for your request also mentioning the deadline in accordance with Article 7(1) of Regulation (EC) 1049/2001.

Your request for access to documents concerns “*all documents related to the work on the Memorandum of Understanding signed between the ICO and the EDPS on 8 November 2023*”.

By letter of 15.12.2023, we informed you that the EDPS has identified 10 documents² falling within the scope of your request. You have been granted full access to all documents falling within the scope of your request, with the exception of the personal data of the staff involved in the correspondence, in accordance with Article 4(1)(b) of Regulation (EC) 1049/2001.

On 27.12.2023, you submitted a confirmatory application claiming:

1. “*...I received access only to e-mails, without attachments.*”
2. “*...in particular regarding document "2023 1242 009" which is a .pdf and from which EDPS removed letters "i" and "l". For this reasons I claim that I did not receive access to document "2023 1242 009" and*”

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L145/43

² COO.6515.100.2.493141, COO.6515.100.3.502958, COO.6515.100.4.502959, COO.6515.100.2.502961, COO.6515.100.2.502962, COO.6515.100.4.502965, COO.6515.100.3.502963, COO.6515.100.3.502964, COO.6515.100.2.502969 and COO.6515.100.2.495553.

3. *..that the EDPS did not grant me access to all relevant documents, in particular attachments to the e-mails.*”

The EDPS has re-examined specifically all documents in order to assess if you were provided access to incorrect or incomplete documents. Our assessment concluded that (i) all documents disclosed fall within the scope of the request and (ii) in all cases the attachment(s) to the e-mail(s) are integral part of the documents.

In order to address your claim “*that I did not receive access to document "2023 1242 009"*”, the EDPS has re-examined specifically the document in question³. Our assessment concluded that the described problem is technical in nature and is due to issues within the editing applications and the original file. We have addressed these issues and repaired the document to which, we granted you full access, with the exception of the personal data of the staff involved, in accordance with Article 4(1)(b) of Regulation (EC) 1049/2001. The repaired document is joined to this letter.

Concerning your claim “*the EDPS did not grant me access to all relevant documents, in particular attachments to the e-mails.*” we would like to inform you that the EDPS has carried out a second thorough search of our database. We did not find any additional document that falls within the scope of your original request⁴. Please note that in accordance with settled case law of the Court of Justice of the European Union, Regulation No 1049/2001 applies only to existing documents in the institution and that the EDPS is not under the obligation to create a document, which does not exist, even if that document is based on information already appearing in existing documents⁵.

Remedies

Please note that under Article 8(1) of Regulation (EC) No 1049/2001 you have the right, under certain conditions, to lodge a complaint with the European Ombudsman or to initiate proceedings before the Court of Justice of the European Union against the EDPS pursuant to Article 228 or 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,

Leonardo CERVERA NAVAS

³ COO.6515.100.2.502969

⁴ Please, refer to Judgment of the General Court of 23 April 2018 in case T-468/16, Verein Deutsche Sprache v Commission

⁵ Judgment of the Court of 11 January 2017 in case C-491/15 P, Typke v Commission

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 (the Regulation) 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, we are processing your personal data, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Article 52(4) of the Regulation (EU) 2018/1725. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request as well as personal data that might be collected while processing your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. All access to case files is logged. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to relevant information concerning how we use it. You have the right to rectify your personal data. Under certain conditions, you have the right to ask that we delete your personal data or restrict its use. We will consider your request, take a decision and communicate it to you. For more information, please see Articles 14 to 21, 23 and 24 of the Regulation. Please note that in some cases restrictions under Article 25 of the Regulation may apply. Any request to exercise your rights should be addressed to the EDPS at edps@edps.europa.eu. You may 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 have the right to lodge a complaint with the EDPS, as supervisory authority. Any such request should be addressed to the EDPS at edps@edps.europa.eu. You can reach the EDPS in the following ways: E-mail: edps@edps.europa.eu; EDPS postal address: European Data Protection Supervisor, Rue Wiertz 60, B-1047 Brussels, Belgium. For more information, please refer to the extended version of the data protection notice available on the EDPS website: https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents_en.