



EUROPEAN DATA PROTECTION SUPERVISOR

LEONARDO CERVERA NAVAS
DIRECTOR

Heiko Roth
e-mail: [ask+request-10621-
bf70db64@asktheeu.org](mailto:ask+request-10621-bf70db64@asktheeu.org)

Brussels, 8 September 2022
LCN/tt/vd D(2022)2096 C 2022-0093
Please use edps@edps.europa.eu for all
correspondence

Subject: Your request for access to documents under Regulation (EC) 1049/2001

Dear Mr Roth,

On 23.01.2022, you sent an access to documents request to the European Data Protection Supervisor (“EDPS”) based on Regulation (EC) No 1049/2001, which we registered on the next day. On 26.01.2022, 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. On 11.02.2022, the EDPS informed you that your current request will be handled in a queue together with the five requests you had submitted on previous dates and will be answered one after the other.

Your request for access to documents concerns documents relating to:

- “Documents regarding the above mentioned “mapping” [as per EDPS order from 05.10.2020], received from the EUIs [European Union institutions, agencies and bodies].
- “Transfer Impact Assessments”, received from the EUIs.
- c) “Joint Assessments”, received from the EUIs.”.

On 11.03.2022, we sent you a Request for Clarification letter asking for “more detailed information about the documents that you seek to obtain, such as references, dates or periods during which the documents would have been produced, etc.” On 31.03.2022, you replied that you “can only specify [our] request if [we] provide [you] with a list of the titles of the documents”. By letter of 06.04.2022, we requested further clarifications. We did not receive an answer to that request.



Our analysis showed that the 90 documents falling within the scope of your request (see Annex I) belong to EDPS' open investigation case 2020-0766 "EDPS strategy for the enforcement of Schrems II judgement for EUIs". We identified that all documents are the same type (i.e. reports). Based on that, we concluded that the particular circumstances of the individual case represent an exception to the EDPS' obligation to examine specifically and individually the documents to which access has been requested.¹

Furthermore, we concluded that more than one of the exceptions of Article 4 of Regulation (EC) 1049/2001 apply to all documents identified as explained hereafter.

First, the EDPS has determined that Article 4(1) (a), first indent, of Regulation (EC) 1049/2001 ("protection of the public interest as regards of public security"), applies to the documents concerned as they contain description of (i) processes, (ii) security controls and (iii) information security protocols, related to EUIs' data and information exchange, the disclosure of which may seriously threaten the day-to-day work and proper functioning of the organisations².

Furthermore, the EDPS has determined that Article 4(2) third indent, of Regulation (EC) 1049/2001 ("protection of the purpose of inspections, investigations and audits") applies to all documents identified as they are currently part of an open EDPS investigations, and thus any disclosure of the documents at this stage of the investigation will seriously undermine its outcome.

In particular, disclosure at this point in time of the mapping exercises, Transfer Impact Assessments or/and Joint Assessments conducted by EUIs, relating to the implementation of the Schrems II judgment may endanger the completion of the exercise by hindering cooperation on the part of the supervised European Institutions and bodies subject to it. We note that the Court of Justice of the European Union has clarified that the concept of "investigation" is likely to also cover the activity aimed at ascertaining facts in order to assess a given situation³. In that context, the EDPS, using his investigatory powers may gather and analyse information relating to the implementation of data protection requirements by the supervised EUIs.

Finally, we have concluded that Article 4 (3) of Regulation (EC) 1049/2001 ("documents related to matter where the decision has not been taken by the institution disclosure of which would seriously undermine the institution's decision-making process") of Regulation (EC) 1049/2001 apply to all documents concerned as any disclosure of the documents at this stage of the decision-making process will seriously undermine the ability of the organisation to conduct internal discussions and form an independent decision.

Following these conclusions, and in line with Regulation (EC) 1049/2001, we have examined whether there could be an overriding public interest in disclosing the documents, but have not been able to identify such an interest.

Therefore, we regret to inform you that we cannot provide you with access to the above-referred requested documents.

¹ See Judgment of the General Court of 13 September 2013 in case T-111/11, ClientEarth v Commission.

² See judgement in case T-174/95, Svenska Journalistförbundet v Council

³ Judgment of the General Court of 4 October 2018 in case T-128/14, Daimler v Commission.

Please note that pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may submit 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 submitted within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu .

Yours sincerely,



Leonardo CERMEVA NAVAS

Annex: 1 file

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.

ANNEX I

	DOC ID	DATE	NAME	SUBJECT
1	COO.6515.100.4.411632	30/11/2020	A(2020) 3853	FW: Our ref.: 2020-0766 -D(2020) 2477
2	COO.6515.100.3.411631	30/11/2020	A(2020) 3852	ref.: 2020-0766 -D(2020) 2477 - Follow up on the order of the EDPS of 5 October 2020 addressed to all Union institutions, bodies and agencies - Report templates
3	COO.6515.100.2.411624	30/11/2020	A(2020) 3849	RE: Our ref.: 2020-0766 -D(2020) 2477
4	COO.6515.100.3.411607	30/11/2020	A(2020) 3845	RE: Our ref.: 2020-0766 -D(2020) 2477
5	COO.6515.100.3.411638	30/11/2020	A(2020) 3855	Follow up on the order of the EDPS of 5 October 2020
6	COO.6515.100.3.411629	30/11/2020	A(2020) 3851	RE: Our ref.: 2020-0766 -D(2020) 2477
7	COO.6515.100.4.411661	30/11/2020	20-11-30 Letter Mr Wiewiórowski 2020-0766 & 2020-0940 D-2744	
8	COO.6515.100.3.411627	30/11/2020	A(2020) 3850	Ares(2020)7198649 - ERCEA reply to Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information
9	COO.6515.100.4.411598	30/11/2020	A(2020) 3842	RE: Our ref.: 2020-0766 - D(2020) 2169
10	COO.6515.100.4.411585	30/11/2020	A(2020) 3840	Reply to the request for information (reference C 2020-0766)
11	COO.6515.100.3.411546	27/11/2020	A(2020) 3831	C 2020-0766 - EMA reports
12	COO.6515.100.4.411544	27/11/2020	A(2020) 3830	C 2020-0766 - EMA reports submitted to EDPS in response to the Enforcement Order of 5 October 2020
13	COO.6515.100.3.411539	27/11/2020	A(2020) 3828	RE: Our ref.: 2020-0766 - D(2020) 2169
14	COO.6515.100.3.411535	27/11/2020	A(2020) 3826	C 2020-0766 Reporting exercise
15	COO.6515.100.2.411566	30/11/2020	A(2020) 3832	RE: Our ref.: 2020-0766 -D(2020) 2477
16	COO.6515.100.4.411671	30/11/2020	Our ref 2020-0766 & 2020-0940 D-2744 -- PART III	Our ref 2020-0766 & 2020-0940 D-2744 -- PART III
17	COO.6515.100.2.411673	30/11/2020	Our ref 2020-0766 & 2020-0940 D-2744 -- PART II	Our ref 2020-0766 & 2020-0940 D-2744 -- PART II
18	COO.6515.100.3.411672	30/11/2020	Our ref 2020-0766 & 2020-0940 D-2744 -- PART I	Our ref 2020-0766 & 2020-0940 D-2744 -- PART I

19	COO.6515.100.2.411577	30/11/2020	A(2020) 3837	RE: Our ref.: 2020-0766 -D(2020) 2477
20	COO.6515.100.2.411437	26/11/2020	A(2020) 3807	Re: Our ref.: 2020-0766 - D(2020) 2169
21	COO.6515.100.2.411424	26/11/2020	A(2020) 3803	RE: Our ref.: 2020-0766 - D(2020) 2169
22	COO.6515.100.4.411693	30/11/2020	A(2020) 3859	Reply to the Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information
23	COO.6515.100.4.411697	30/11/2020	A(2020) 3860	RE: Our ref.: 2020-0766 -D(2020) 2477
24	COO.6515.100.3.411703	30/11/2020	A(2020) 3863	RE: Our ref.: 2020-0766
25	COO.6515.100.4.411701	30/11/2020	A(2020) 3862	Your ref.: 2020-0766 - D(2020) 2169 - Reply from F4E
26	COO.6515.100.4.411706	30/11/2020	A(2020) 3864	FW: Our ref.: 2020-0766 - D(2020) 2169 [Decrypted TLS]
27	COO.6515.100.3.411713	30/11/2020	A(2020) 3866	[EDPS Case 2020-0766] - EDPS Order to provide information - EDPB reply [OUT2020-0130]
28	COO.6515.100.3.411711	30/11/2020	A(2020) 3865	RE: Our ref.: 2020-0766 - D(2020) 2169
29	COO.6515.100.2.411717	30/11/2020	A(2020) 3867	Our ref. 2020-0766 & 2020-0940 D-2744 -- [PART III]... [3]
30	COO.6515.100.3.411718	30/11/2020	A(2020) 3868	Information concerning data transfers to third countries. - RE: Our ref.: 2020-0766 - D(2020) 2169
31	COO.6515.100.4.411724	30/11/2020	A(2020) 3871	Your Ref C 2020-0766 – EIOPA Reply
32	COO.6515.100.4.411721	30/11/2020	A(2020) 3870	Ares(2020)7213074 - Reply to your letter of 2nd October 2020 “order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information Ref. C2020-0766”
33	COO.6515.100.3.411726	30/11/2020	A(2020) 3872	Ares(2020)7214009 - [Re] Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information
34	COO.6515.100.2.410907	20/11/2020	A(2020) 3717	RE: Our ref.: 2020-0766 -D(2020) 2477
35	COO.6515.100.2.410904	20/11/2020	A(2020) 3716	GUE/NGL template on processing operations leading to transfer of personal data to non-EU countries.
36	COO.6515.100.2.410032	12/11/2020	A(2020) 3538	RE: Our ref.: 2020-0766 - D(2020) 2169
37	COO.6515.100.3.410221	13/11/2020	A(2020) 3576	Transfers of personal data to third countries
38	COO.6515.100.4.410415	17/11/2020	A(2020) 3619	RE: Our ref.: 2020-0766 - D(2020) 2169
39	COO.6515.100.2.411732	01/12/2020	A(2020) 3874	EDPS order- EUIs mapping data transfers- C 2020-0766

40	COO.6515.100.4.411100	23/11/2020	A(2020) 3745	RE: Our ref.: 2020-0766 - D(2020) 2169
41	COO.6515.100.3.411146	24/11/2020	A(2020) 3753	RE: Our ref.: 2020-0766 - D(2020) 2169
42	COO.6515.100.4.411183	24/11/2020	A(2020) 3759	FW: Our ref.: 2020-0766 - D(2020) 2169
43	COO.6515.100.2.411930	02/12/2020	A(2020) 3905	RE: EFSA reply EDPS case 2020-0766 - contracts (3) (last message)
44	COO.6515.100.3.411898	01/12/2020	A(2020) 3901	RE: EFSA reply EDPS case 2020-0766 - contracts (1)
45	COO.6515.100.2.411895	01/12/2020	A(2020) 3900	EFSA reply to order pursuant to Art. 58(1)(a) EDPR - EDPS case 2020-0766 (1)
46	COO.6515.100.2.411892	01/12/2020	A(2020) 3899	RE: Our ref.: 2020-0766 - D(2020) 2169
47	COO.6515.100.4.411848	01/12/2020	A(2020) 3897	Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information
48	COO.6515.100.3.411818	01/12/2020	D(2020) 2750	RE: Our ref.: 2020-0766 - D(2020) 2169
49	COO.6515.100.4.411812	01/12/2020	A(2020) 3891	RE: Our ref.: 2020-0766 - D(2020) 2169
50	COO.6515.100.3.411807	01/12/2020	A(2020) 3889	[Report on international transfers]
51	COO.6515.100.3.411802	01/12/2020	A(2020) 3888	EEAS Reporting on Mapping exercise - International Transfers RE: Our ref.: 2020-0766 -D(2020) 2477
52	COO.6515.100.3.411785	01/12/2020	A(2020) 3887	RE: Our ref.: 2020-0766 - D(2020) 2169
53	COO.6515.100.3.411784	01/12/2020	A(2020) 3886	RE: Our ref.: 2020-0766 - D(2020) 2169
54	COO.6515.100.2.411784	01/12/2020	A(2020) 3885	Ref. EUIPO - C 2020-0766 Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1728 to provide information
55	COO.6515.100.2.411780	01/12/2020	A(2020) 3884	RE: Our ref.: 2020-0766 -D(2020) 2477
56	COO.6515.100.2.411778	01/12/2020	A(2020) 3883	RE: Our ref.: 2020-0766 - D(2020) 2169
57	COO.6515.100.3.411775	01/12/2020	A(2020) 3882	RE: Our ref.: 2020-0766 -D(2020) 2477
58	COO.6515.100.3.411770	01/12/2020	A(2020) 3881	Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725
59	COO.6515.100.4.411765	01/12/2020	A(2020) 3880	RE: Our ref.: 2020-0766 - D(2020) 2169
60	COO.6515.100.4.411760	01/12/2020	A(2020) 3879	RE: Our ref.: 2020-0766 -D(2020) 2477
61	COO.6515.100.4.411757	01/12/2020	A(2020) 3878	2020-0766 -D(2020) 2477
62	COO.6515.100.4.411734	01/12/2020	A(2020) 3875	Your ref.: 2020-0766 - D(2020) 2169

63	COO.6515.100.4.411751	01/12/2020	A(2020) 3876	RE: Our ref.: 2020-0766 -D(2020) 2477 - EFCA Answer
64	COO.6515.100.4.411752	01/12/2020	A(2020) 3877	RE: Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 (EDPS ref.: 2020-0766 - D(2020)2169) [RMIncoming-2020-000737]
65	COO.6515.100.2.411935	02/12/2020	A(2020) 3906	RE: EFSA reply EDPS case 2020-0766 - contracts (3) (last message)
66	COO.6515.100.4.411939	02/12/2020	A(2020) 3908	RE: Our ref.: 2020-0766 - D(2020) 2169
67	COO.6515.100.2.411946	02/12/2020	A(2020) 3911	Order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information, dated 2 October 2020
68	COO.6515.100.4.411951	02/12/2020	ECB reports	ECB reports
69	COO.6515.100.2.412144	03/12/2020	EDPS Synthesis of information	EDPS Synthesis of information
70	COO.6515.100.4.411994	02/12/2020	D(2020) 2780	RE: RE: Our ref.: 2020-0766 - D(2020) 2169
71	COO.6515.100.3.412332	07/12/2020	A(2020) 3974	Ares(2020)7356643 - 2020-0766 - D(2020) 2477 - your information order regarding international transfers of data
72	COO.6515.100.4.413067	10/12/2020	A(2020) 4041	your request of 2 October 2020 - Order of the European Data Protection Supervisor (EDPS) pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725 to provide information on transfers of personal data to third countries
73	COO.6515.100.4.413343	11/12/2020	A(2020) 4062	Reporting on international transfers (case C 2020-766) - OLAF / Ares(2020)7532543
74	COO.6515.100.3.413364	11/12/2020	A(2020) 4076	Reply to the order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725
75	COO.6515.100.3.413437	14/12/2020	A(2020) 4085	FW: [EXTERNAL] Our ref.: 2020-0766 -D(2020) 2477
76	COO.6515.100.4.412262	04/12/2020	A(2020) 3959	Reply to the order of the EDPS pursuant to Article 58(1)(a) of Regulation (EU) 2018/1725
77	COO.6515.100.3.411998	02/12/2020	A(2020) 3914	RE: Our ref.: 2020-0766 -D(2020) 2477
78	COO.6515.100.2.412945	09/12/2020	A(2020) 4012	Upcoming reporting from OLAF case 2020 766
79	COO.6515.100.4.415726	04/01/2021	A(2021) 0002	RE: Our ref.: 2020-0766 -D(2020) 2477
80	COO.6515.100.2.420808	09/02/2021	A(2021) 0482	PD: GEDA D(2020)34146 - EDPS CASE C2020_0766 - EDPS order on personal data transfers cases to third countries

81	COO.6515.100.3.421722	17/02/2021	Copy of EUI_replies_over view	
82	COO.6515.100.2.421798	18/02/2021	Reminders	Reminders
83	COO.6515.100.4.421816	18/02/2021	A(2021) 0619	RE: Case 2020-0766
84	COO.6515.100.3.421969	22/02/2021	A(2021) 0640	RE: Case 2020-0766
85	COO.6515.100.2.422084	23/02/2021	A(2021) 0667	RE: RE: RE: Our ref.: 2020-0766 - D(2020) 2169
86	COO.6515.100.4.422199	24/02/2021	A(2021) 0696	RE: Case 2020-0766
87	COO.6515.100.2.422498	01/03/2021	A(2021) 0759	RE: Case 2020-0766
88	COO.6515.100.3.422989	05/03/2021	A(2021) 0857	RE: Case 2020-0766
89	COO.6515.100.2.423123	08/03/2021	A(2021) 0879	Provision of information regarding data transfers to third countries (ref. C 2020-0766)
90	COO.6515.100.4.423225	09/03/2021	A(2021) 0901	@EXT: RE: Case 2020-0766 (compliance with Schrems II guidance)