

Decision in case 2252/2019/DL on the European Food Safety Authority's refusal to grant access to documents related to the approval of a reasoned opinion on maximum residue limits for pesticides in food

Decision

Case 2252/2019/DL - Opened on 14/01/2020 - Decision on 30/10/2020 - Institution concerned European Food Safety Authority (Solution achieved) |

The complainant sought public access to two emails regarding what the complainant considered to be modifications to a scientific opinion on maximum residue limits for pesticides in food.

The European Food Safety Authority (EFSA) refused access to the emails, arguing that they constitute personal data.

The Ombudsman found that one email constituted personal data and that EFSA was justified in refusing access, in line with the EU law on data protection and public access to documents. The other email, however, could not be considered sensitive as its substantive content did not include any private views or personal data. The Ombudsman therefore made a proposal for a solution, asking EFSA to disclose this email, with appropriate redactions of personal data only.

EFSA accepted the Ombudsman's proposal for a solution and granted the complainant partial access to the email, only redacting personal data.

While acknowledging that the complainant remains dissatisfied, the Ombudsman is of the view that EFSA has given a satisfactory response to her proposal for a solution and closes the inquiry.

Background to the complaint

1. EFSA is a European agency set up in 2002 [1] with the objective of providing scientific advice on risks associated with the food chain. EFSA has a duty to communicate its scientific findings to the public.

2. One of the scientific outputs for EFSA to produce is a Reasoned Opinion. Such an Opinion describes the comprehensive scientific evaluation of, and subsequent conclusions from, the



consumer exposure assessment and the risk assessment of pesticide residues resulting from the use of pesticides.

3. In July 2019, the complainant asked EFSA for public access to two emails (of 7 and 13 December 2018) regarding what the complainant considers to be modifications to an EFSA Reasoned Opinion. [2]

4. EFSA refused public access to the emails in October 2019, arguing that the emails constituted 'personal data' [3] .

5. The complainant then asked EFSA to review its decision by submitting a so-called 'confirmatory application'.

6. In November 2019, EFSA confirmed its initial decision to refuse public access to the emails.

7. Dissatisfied with this decision, the complainant turned to the Ombudsman in December 2019.

The Ombudsman's proposal for a solution

8. The Ombudsman examined the documents and noted that the two emails were different in nature.

9. The email of 13 December 2018 contained views on the professional ability of identified EFSA staff members. Given that the concept of 'personal data' encompasses any information relating to an identified or identifiable person, the email constituted personal data. [4]

10. From the complaint and information available, it appeared that the complainant was aware of the identity of the persons corresponding via email. The information could therefore not be anonymised in light of disclosure to the complainant.

11. The Ombudsman noted that the complainant did not bring forward any reasons as to why there was a necessity in the public interest to have access to the personal data at issue. [5] In addition, the Ombudsman considered that the disclosure of the personal data at issue could be perceived as negatively affecting the legitimate interests of the staff members in question.

12. Consequently, the Ombudsman found that EFSA's refusal to grant access to this email was justified and in line with the EU law on data protection and public access to documents.

13. The email of 7 December 2018 was however of a different nature. It concerned internal communication, sent in the normal course of business of EFSA. The email did not entail any private views or personal data. Moreover, the full text of the scientific opinion cited in the email was already publicly available on EFSA's website. [6]

14. The Ombudsman therefore proposed [7] that EFSA should grant partial access to the



email dated 7 December 2018, with appropriate redactions of personal data only.

The Ombudsman's assessment after the proposal for a solution

15. EFSA has accepted the Ombudsman's proposal for a solution and granted the complainant access to the email of 7 December 2018, redacting only personal data, that is, the names of its staff who had exchanged the email.

16. The Ombudsman sent the complainant her proposal for a solution together with EFSA's reply and asked the complainant to comment.

17. While the complainant was satisfied that the email of 7 December 2018 had been released, she noted that the email appeared to be part of an email exchange, given that the email contained "RE" in the subject. The complainant stated that she also wished to have access to the complete email thread.

18. Moreover, the complainant was dissatisfied that the email of 13 December 2018 had not been disclosed. Concerning EFSA's argument that the entire email constituted 'personal data', the complainant said that, in July 2019, the recipient of the email had given EFSA his consent to allow the transfer of his personal data to the complainant. The complainant therefore considered that EFSA should provide access to the recipient's personal data.

19. Concerning possible previous or further correspondence relating to the first email, the Ombudsman notes that the complainant's request for access concerned only the "email of 7 December 2018 at 20:07". Therefore, any other emails in the email exchange do not fall within the scope of her request for public access to documents.

20. Concerning the second email of 13 December 2018, the Ombudsman notes that the recipient gave EFSA his consent to the transfer of *his* personal data to the complainant. The email in question, however, contains personal data of *other* persons also, namely the personal data of other EFSA staff members. Moreover, the consent given by the recipient concerned the transfer of his data to *the complainant*. The consent is, however, irrelevant in the context of an access to documents requests, which concerns *public* access to the data.

21. In light of the above, while acknowledging that the complainant remains dissatisfied, the Ombudsman considers that EFSA has accepted her proposal for a solution. She therefore closes the case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:



The European Food Safety Authority has accepted the Ombudsman's solution proposal to grant partial public access to one of the requested emails.

The complainant and EFSA will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 30/10/2020

[1] EFSA was legally established by Regulation 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, available at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002R0178#> [Link].

[2] EFSA (European Food Safety Authority), 2019. Reasoned Opinion on the modification of the existing

maximum residue levels for tetraconazole in kaki/Japanese persimmon, linseeds and poppy seeds. EFSA

Journal 2019;17(1):5577, 34 pp, <https://doi.org/10.2903/j.efsa.2019.5577> [Link].

[3] In accordance with Article 4(1)(b) of Regulation 1049/2001 regarding public access to European

Parliament, Council and Commission documents, available at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> [Link].

[4] In accordance with Article 3(1) of Regulation 2018/1725 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, available at:

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725#:~:text=Regulation%20\(EU\)%202018](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725#:~:text=Regulation%20(EU)%202018) [Link].

[5] Under EU data protection law, EFSA must follow a three-stage analysis to decide whether it can grant a request to make personal data public. First, the recipient needs to demonstrate the need for their transfer for a specific purpose in the public interest. Second, there must be no



reason to believe that such

transfer might undermine the legitimate interests of the data subject. Third, the controller needs to establish that it is proportionate to transmit the personal data for that specific purpose, having weighed up the various competing interests.

[6] EFSA (European Food Safety Authority), 2019. Reasoned Opinion on the modification of the existing

maximum residue levels for tetraconazole in kaki/Japanese persimmon, linseeds and poppy seeds. EFSA

Journal 2019;17(1):5577, 34 pp, <https://doi.org/10.2903/j.efsa.2019.5577> [Link].

[7] The full text of the Ombudsman's Solution proposal is available at:
<https://www.ombudsman.europa.eu/en/solution/en/133992> [Link].