

Decision on how the European Centre for the Development of Vocational Training (Cedefop) dealt with a request for public access to ‘conflict of interest’ declarations (case 379/2022/SF)

Decision

Case 379/2022/SF - Opened on 04/03/2022 - Decision on 27/06/2022 - Institution concerned European Centre for the Development of Vocational Training (No maladministration found) |

The complainant sought public access to conflict of interest declarations signed by the members of the selection boards for ten selection procedures carried out by the European Centre for the Development of Vocational Training (Cedefop) between 2013 and 2021. The complainant was a candidate in four of the ten selection procedures.

The Cedefop refused access stating that, in accordance with its policy, it provided the names of the selection board members to candidates only and could therefore not grant access to signed conflict of interest forms for selection procedures, in which the complainant did not participate. As regards the selection procedures in which the complainant participated, the Cedefop considered that it had already sufficiently replied to the complainant's related requests and complaints.

The Ombudsman inquiry team inspected the documents at issue and asked the Cedefop for clarifications on its refusal to provide access. She found that the Cedefop was justified in refusing public access, as disclosure was likely to harm the privacy and integrity of the candidates and selection board members involved in the respective selection procedures.

The Ombudsman thus closed the inquiry finding no maladministration.

However, she suggested as an improvement that the Cedefop should ensure that it provides detailed reasons for refusing access to documents, explaining how the disclosure of the requested documents may undermine the interest(s) protected by the EU legislation on public access to documents.

Background to the complaint



1. On 11 November 2021, the complainant made a request to the Cedefop for public access [1] to the conflict of interest declarations of selection board members in ten selection procedures carried out by the Cedefop [2] .

2. The Cedefop refused access to the requested documents. It said that, in accordance with its policy, it provides the names of selection board members to the candidates in the respective selection procedures only. [3] Thus, it could not grant access to the requested documents for selection procedures, in which the complainant did not participate. Concerning a 2016 selection procedure, in which the complainant had participated, the Cedefop argued that it had already replied to her numerous requests. Concerning the two selection procedures in 2020, from which the complainant had been excluded, the Cedefop considered the complainant's request *"pointless"* as it had already replied to her concerns during the complainant's administrative complaint under the EU Staff Regulations. [4]

3. The complainant then requested the Cedefop to review its position (by submitting what is known as a 'confirmatory application') [5] .

4. On 29 November 2021, the Cedefop adopted its final decision. It maintained its refusal to grant access to the requested documents. It reiterated that it had already replied to the complainant's numerous requests and complaints and that it shares the names of selection board members with candidates in the respective selection procedure only.

5. Dissatisfied with this decision, the complainant turned to the Ombudsman in November 2021, arguing the Cedefop was wrong to refuse access to the requested documents for the selection procedures carried out in 2020.

The inquiry

6. The Ombudsman opened an inquiry into the Cedefop's refusal to grant public access to the conflict of interest declarations filled in by selection board members for the two selection procedures carried out in 2020.

7. She asked the Cedefop for a written reply setting out the reasons under the EU legislation on access to documents justifying its refusal to grant public access to the requested documents.

8. In the course of the inquiry, the Ombudsman received the written reply of the Cedefop and, subsequently, the comments of the complainant in response to the Cedefop's reply. The Ombudsman inquiry team also inspected the documents at issue in this case.

Arguments presented to the Ombudsman

Arguments presented by the Cedefop

9. In its reply to the Ombudsman, the Cedefop stated that, in line with its policy, it had provided the names of the selection board members for the two 2020 selection procedures to the complainant in July 2020.



10. The Cedefop reiterated that its policy does not provide for sharing the signed conflict of interest forms with the candidates or the public. It explained that these forms are internal documents. The selection board members fill in the necessary details and sign them. Then, the head of human resources assesses the filled-in forms and issues an opinion. The Cedefop's Executive Director validates these forms and takes the final decision on the composition of the selection board. Where potential conflicts of interests are reported, an internal control coordinator is consulted.

11. The Cedefop argued that the requested documents contain personal data, such as names and details of the professional and/or personal relationships between candidates and members of the selection board. As such, disclosure would undermine the protection of privacy and the integrity of the individual [6] , in particular in accordance with EU legislation regarding the protection of personal data [7] .

12. The Cedefop also considered that, if the Ombudsman were to recommend disclosure, it would have to redact all the personal data, thereby removing information that is already known to the complainant, such as the composition of the selection board and the fact that some candidates may have been known as current or former staff.

Arguments presented by the complainant

13. The complainant stated that she needed access to the signed conflict of interest declarations to prepare a claim for damages against the Cedefop.

14. She considered that she had a right to obtain these documents for the 2020 selection procedures in which she participated, as the selection board members assessed, graded and subsequently deemed her applications unsuccessful.

15. In her comments to the Cedefop's reply, the complainant alleged that the Cedefop has failed for years to organise "*regular and lawful*" selection procedures to the detriment of candidates and EU citizens. In this context, the complainant referred to the European Court of Auditors (ECA), who critically remarked, in the past, that the Cedefop's procedure to identify and manage conflict of interest situations was not effective [8] . Thus, she argued that the requested documents should be disclosed to reassure EU citizens in a transparent manner that the Cedefop has followed up with the findings of the European Court of Auditors [9] and the European Ombudsman [10] .

The Ombudsman's assessment

16. The inspection by the Ombudsman inquiry team confirmed that the documents requested contain personal data throughout.

17. The concept of 'personal data' is very broad under the EU legislation on data protection. Personal data comprises "*any information relating to an identified or identifiable natural person*" [11] and encompasses information related to both, an individual's private and professional life. [12] As such, the names of the selection board members and the candidates,



as well as their professional or occupational activities are personal data. [13]

18. In accordance with the EU legislation on data protection, the Cedefop should follow a three-stage analysis before it can grant a request to make personal data public. [14]

19. As a first step, the complainant must demonstrate a need for the transfer of the personal data for a specific purpose in the *public* interest.

20. The complainant said she needed the conflict of interest declarations to prepare a claim for damages against the Cedefop. In accordance with EU case-law [15] , this is, however, a purely *private* interest.

21. The complainant further claimed that the Cedefop has failed for years to organise “*regular and lawful*” selection procedures. In support of her allegations, the complainant refers to the Ombudsman’s own inquiries [16] into the Cedefop’s recruitment procedures, and to the ECA’s past observations concerning the Cedefop’s conflict of interest procedures. In her comments on the Cedefop’s reply, the complainant argued that it was in the public interest to reassure EU citizens in a transparent manner that the Cedefop has made progress in its procedures following the ECA’s findings in 2018.

22. The Ombudsman notes that, in accordance with EU case-law [17] , a general reference to ‘transparency’ does not, in itself, represent a necessity for disclosing personal data. Furthermore, while potential conflicts of interest can constitute such a necessity [18] , they must be substantiated. Purely abstract references to past instances of wrongdoing are not sufficient. [19]

23. The complainant refers to several instances in the past, in which the ECA found that the Cedefop’s procedures for handling conflict of interest situations in two selection procedures carried out in 2015 and in 2016 were not effective. Following this finding, the Cedefop revised its conflict of interest procedure [20] . The complainant has not put forward any arguments that would suggest that the Cedefop’s current procedure for handling conflicts of interest is not effective. Thus, the Ombudsman takes the view that the complainant has not sufficiently demonstrated that there are **concrete suspicions** with regard to the conflict of interest procedures in the 2020 selection process that could constitute a necessity in the public interest to transfer the personal data.

24. The Ombudsman therefore concludes that the Cedefop’s refusal to grant public access to the signed conflict of interest forms was reasonable.

25. However, the Ombudsman notes that the Cedefop did not provide reasons for its refusal to disclose the requested documents in accordance with the EU legislation on public access. Furthermore, the Cedefop did not provide the complainant with clear explanations on the need to indicate a necessity of having the personal data transferred. She will therefore make a corresponding suggestion below.



Conclusion

Based on the inquiry, the Ombudsman closes this case with the following finding [21] :

There was no maladministration by the European Centre for the Development of Vocational Training in refusing to disclose the signed conflict of interest forms of members of the selection boards.

The complainant and the Cedefop will be informed of this decision .

Suggestion for improvement

The Cedefop should ensure that it provides detailed reasons when refusing (full) access to documents, explaining how the disclosure of the requested documents may undermine the interest(s) protected by Regulation 1049/2001.

Emily O'Reilly

European Ombudsman

Strasbourg, 27/06/2022

[1] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

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

[2] Selection procedures Cedefop/2021/01/AD, Cedefop/2020/05/AD, Cedefop/2020/02/AD, Cedefop/2017/06/AD, Cedefop/2017/04/AD, Cedefop/2016/04/AD, Cedefop/2015/02/CA, Cedefop/2014/04/AD, Cedefop/2014/01/AD, Cedefop/2013/03/AD.

[3] In this context, the Cedefop referred to the Ombudsman's conclusions in case [49/2018/NF](#) [Link]. Following the Ombudsman's inquiry in this case, the Cedefop has updated its disclosure policy in staff selection procedures to give applicants information on their scores and the names of selection board members.

[4] Under Article 90(2) of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy



Community:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link]

[5] Article 7 of Regulation 1049/2001.

[6] Article 4(1)(b) of Regulation 1049/2001.

[7] Regulation 2018/1725 on the protection of natural person with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> [Link]

[8] See European Court of Auditor's (ECA) Annual Report for the financial year 2018, available at https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2018/AGENCIES_2018_EN.pdf [Link]

[9] The complainant refers to the ECA's observation in a 2005 report that the Cedefop needed to "*tighten up its recruitment procedures*". This related to an internal selection procedure where there was only one candidate. The ECA considered that the Cedefop should have used an external procedure to provide a wider range of suitable candidates; available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006TA1219\(11\)&rid=6](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006TA1219(11)&rid=6) [Link]

[10] The complainant refers to the Ombudsman's inquiry **49/2018/NF** into Cedefop's refusal to provide unsuccessful candidates with their scores and the names of the selection board members. The Ombudsman closed this case as settled after the Cedefop had changed its policy to disclose the names of the selection board members to all applicants and to provide applicants with their scores on request; available at: <https://www.ombudsman.europa.eu/en/decision/en/94398> [Link]; and to the Ombudsman's finding of maladministration in case **756/2018/PB** concerning the failure of the selection board to apply the assessment criteria set out in the Cedefop's vacancy notice: available at <https://www.ombudsman.europa.eu/en/decision/en/121786> [Link]

[11] Article 3(1) of Regulation 2018/1725.

[12] Judgment of the General Court of 27 November 2018, *VG v Commission*, joined cases T-314/16 and T-435/16, paragraph 74: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016TA0314> [Link]

[13] Ibid, paragraphs 62 - 64.

[14] In line with Article 9(1)(b) of Regulation 2018/1725, first, the complainant needs to demonstrate the need for their transfer of the personal data 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 (the Cedefop) must establish that it is proportionate to transmit the personal data for that specific purpose, after having weighed the various competing interests.

[15] Judgment of the General Court (First Chamber) of 9 October 2018, *Anik ó Pint v European Commission* , T-634/17, para 59.

[16] See footnote 11 above.

[17] Judgment of the General Court (Fifth Chamber, Extended Composition) of 25 September 2018, *Psara v European Parliament* , T-639/15, para 74:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=206663&pageIndex=0&doclang=EN&mode=lst&d>
[Link]

[18] Judgment of the General Court (Fifth Chamber) of 15 July 2015, *Dennekamp v European Parliament* , T-115/13 para 112:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=165829&pageIndex=0&doclang=EN&mode=lst&d>
[Link]

[19] T-639/15 to T-666/15 and T-94/16, *Psara et al. v European Parliament* , para 84.

[20] See the Cedefop's reply to the ECA finding, available at:

https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2018/AGENCIES_2018_EN.pdf
[Link]

[21] This complaint has been dealt with under delegated case handling, in accordance with [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]