

## The refusal by the European Data Protection Board to grant full public access to draft versions of its statement on international agreements including transfers

Case opened

**Case** 1698/2022/FA - **Opened on** 23/09/2022 - **Recommendation on** 29/03/2023 - **Decision on** 31/10/2023 - **Institution concerned** European Data Protection Board ( Recommendation agreed by the institution ) |

Director of the EDPB Secretariat

Rue Wiertz 60

B-1047 Brussels

Dear Ms X,

The Ombudsman has received a complaint against the EDPB concerning its refusal to grant public access to draft versions of the statement on international agreements including transfers [1] . We have decided to open an inquiry into this complaint.

The EDPB has argued that disclosure of the documents in question would seriously undermine its decision making process. [2]

In its confirmatory decision of 27 June 2022, the EDPB relied on similar arguments to those being examined in the Ombudsman's inquiry into case 509/2022/JK. The EDPB stated that these draft documents *"contain discussions, views and/or opinions of the EDPB members and/or its Secretariat that are part of internal deliberations and positions"*. Therefore, access to these documents would *"create confusion with regard to the EDPB members' views, and would curtail the Members "space to think" and "have consequences in forthcoming discussions, since specific discussions/opinions/views of the EDPB are subject to updates and revisions"*. The EDPB also stated that it has not identified an overriding public interest in the disclosure of the documents. Finally, the EDPB considers that the Ombudsman's findings in case 386/2022/AMF do not set a precedent for the handling of public access requests by the EDPB. It always



assesses such requests on a case-by-case basis.

Regulation 1049/2001 states that applications for access should be handled promptly. It is in line with this principle that the Ombudsman also seeks to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review the documents at issue in the complainant's request. I would be grateful if the EDPB could provide us with a copy of all the documents to which public access was denied, whether partially or in full, preferably in electronic format through encrypted e-mail, [3] by **29 September 2022**.

The documents subject to the public access request will be treated confidentially, along with any other material that the EDPB chooses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the Ombudsman's files shortly after the inquiry has ended.

The EDPB's position has been set out in its confirmatory decision. However, should the EDPB wish to provide additional views, to be taken into account by the Ombudsman's Office during this inquiry, we would be grateful if they could be provided to us within fifteen working days from the receipt of this letter, that is, **13 October 2022**.

The inquiries officer responsible for the case is Ms Francesca Abbo. Once we have reviewed all the documentation in this case, we may propose a meeting with your services.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 23/09/2022

[1] These documents were not assessed by the EDPB in the context of the complainant's public access request 2021-37-C, which is the subject of a separate complaint to the Ombudsman (509/2022/JK). The EDPB therefore registered a new public access request 2022-37 and it is the confirmatory decision on that request that is the subject of this complaint.

[2] Article 4(3) second paragraph of Regulation 1049/2001

[3] Encrypted emails can be sent to our dedicated mailbox.