

# The misuse of data protection rules in the European Union

Correspondence

**Case 713/98/(IJH)GG - Opened on 30/07/1998 - Decision on 11/12/2001**

The European Ombudsman is concerned that data protection rules, especially Regulation 45/2001, are being diverted from their proper purpose of helping to ensure respect for the individual right to privacy as laid down by Article 8 (1) of the European Convention on Human Rights: *Everyone has the right to respect for his private and family life, his home and his correspondence.*

Instead, they are being used to undermine the principle of openness in public activities.

Here are four examples of how data protection has been invoked to undermine openness. The first two concern decisions to publish information. The second two concern the right of public access.

## 1 The register of Parliamentary Assistants

The European Parliament decided to publish a register containing the names of MEPs' assistants who are paid from Community funds. This contribution to openness has been thrown into question by the argument that data protection gives assistants the right to remain anonymous even whilst being paid from European taxpayers' money.

The responsible committee of the European Parliament is still examining the issue.

## 2 Recruitment competitions

The European Ombudsman recommended the European Parliament to inform candidates in future recruitment competitions that the names of successful candidates will be made public.

The European Parliament rejected the proposal, arguing that Regulation 45/2001 gives successful candidates the right to remain anonymous.



If confirmed, this would mark a big step backward from the current situation. The European Commission decided in 1997 that it would publish the names of successful candidates in the interests of openness.

### **3 Commercial influences in the Article 226 procedure**

The European Commission gives data protection as its reason for defying a resolution of the European Parliament concerning the Commission's refusal to provide information about who influenced an Article 226 investigation.

The Commission began an investigation into a complaint about a UK law, but then closed the case. The complainant wants to find out who made submissions to the Commission about the case and the names of representatives of his commercial competitors who attended a meeting organised by the Commission. He suspects the involvement of persons linked to corruption in the UK.

The Commission maintains that data protection requires it to keep the names of the persons concerned secret, unless they consent to their identities being revealed.

The Commission could have argued that the public interest in effectiveness of the Article 226 procedure justifies promising confidentiality to people who supply information during an investigation and that such promises, once made, must be kept. The case law of the Court of Justice would support both arguments. Instead, the Commission seems to have made the complaint a test case for data protection as a new defence for secret decision-making.

### **4 External activities of Commission officials**

A newspaper applied for public access under Regulation 1049/2001 to a register of approvals given for external activities of Commission officials.

The Commission supplied the register, but deleted all the names of the officials concerned, on the grounds that the data protection Regulation 45/2001 gives them the right to remain anonymous.

#### **No fundamental right to participate anonymously in public activities**

The above examples of misuse of data protection seem to be based on the idea that there exists a fundamental right to participate anonymously in public activities.

Article 8 of the European Convention on Human Rights does not establish such a right. Furthermore, any such right would be incompatible with the principle of openness and the right of public access, because to conceal the identities of those participating in public activities would deprive the citizen of the possibility to understand and monitor those activities effectively.



International experience also shows that openness is one of the best defences against corruption.

IJH 25 September 2002