

Decision of the European Ombudsman on complaint No 755/2014/BEH against the European Data Protection Supervisor (EDPS)

Decision

Case 755/2014/BEH - Opened on 29/04/2014 - Decision on 12/06/2014 - Institution concerned European Data Protection Supervisor (No further inquiries justified) |

Dear Mr S.,

On 1 April 2014 you submitted a complaint about the EDPS to the European Ombudsman in which you stated (1) that the EDPS had not provided sufficient justification for its decision not to allow you access to the documents you requested. You also complained (2) that the decision of the EDPS not to allow you access to the requested documents did not comply with Regulation 1049/2001.

I contacted the relevant department of the EDPS regarding the first part of your complaint. The EDPS gave me its opinion on 26 May 2014. I asked you to send me any comments you might have on the EDPS's response, which you did on 27 May 2014.

Regarding the first part of your complaint, the EDPS's response examined your point that you were in agreement with the procedure files concerning your case being disclosed. The EDPS argued that (a) the EDPS's procedure for dealing with on-going complaints did not provide for disclosure at this stage, meaning that (b) your argument concerning public access was not convincing. The EDPS went on to say that (c) there was no overriding interest in disclosure of the procedure files.

In your confirmatory application you acknowledged that, under the third indent of Article 4(2) of Regulation 1049/2001, the EDPS might be authorised to safeguard the confidentiality of on-going complaints. You also stated that, in view of your agreement to disclosure, there could in your case be no question of invoking the provision referred to.

At first sight, your interpretation could be supported by Article 33(3) of the EDPS's rules of procedure, as this appears to provide for the possibility of granting access even in ongoing cases if the person concerned is in agreement.

However, in its reply, the EDPS stated that its procedure for dealing with complaints did not



allow for public access in on-going cases. At the same time, it underlined the possibility of granting private access and its willingness to provide such access in your case. I think this is a plausible position for the EDPS to take. In addition, its view that there is no overriding public interest in disclosure is a convincing one.

For the reasons set out above, I consider that no further inquiries are necessary in your case.

I also find that the EDPS's position stipulating that no public access in on-going cases can be guaranteed does not follow sufficiently clearly from Article 33(3) of the EDPS's procedural rules. I therefore made the following further remark to the EDPS:

The EDPS could consider clarifying its rules on public access in the case of on-going complaints in its rules of procedure.

In conclusion, I would point out that the case in question concerns an application for access to the procedure files for an on-going complaint before the EDPS. Therefore, other considerations would probably come into play if you were to make another application for access after the EDPS's investigation has been completed. I would also stress that the case in question concerns an application for public access and not an application for access to your own files.

With regard to your right to access your personal data, you are at liberty to submit another complaint to me if you consider that the EDPS is not enabling you sufficiently to exercise this right.

Yours sincerely,

Emily O'Reilly