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From: Caspar Bowden [REDACTED]
Sent: 05 June 2014 14:13
To: Euro-Ombudsman
Subject: [EOWEB] Inquiry into EU Commission "Expert Groups"

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Your data

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Language you would like to receive an answer in en - English

Part 2 - Data

Subject Inquiry into EU Commission "Expert Groups"

Dear EU Ombudsman

I am writing because I understand you are conducting an inquiry into the functioning of EU Commission "Expert Groups"

I was appointed to the first Expert Group on Data Retention in an **individual** capacity (although employed by Microsoft at the time) by the Commission, and participated over the next three years, contributing an independent perspective across the range of technical, human rights, and Data Protection subjects engaged. My views were not otherwise reflected amongst the member-state law enforcement representatives, or necessarily Data Protection Authorities, and I interpreted my role as the voice of the well-informed data subject. I was often informed that criticizing the Fundamental Rights viability of the DRD was outside the scope of this "technical" committee (but I am author of the first paper unambiguously asserting the incompatibility of blanket retention with ECHR in 2002, and was appointed nevertheless for my expertise by the chairing official).

Content

The Committee was reformed after the expiry of its term, under new officials and a procedure of open application (rather than appointment), but with the added condition of a "loyalty oath" to the Data Retention Directive. I complained informally in an extensive email thread with the officials, remonstrating with them that it was improper to impose this stipulation, which was absent from the legal text.

No one holding a sincere and honest belief that the Directive was always unlawful (as confirmed by the CJEU recently), therefore could apply in good conscience. I applied under emphatic protest - and was not accepted. [REDACTED]

[REDACTED] The measure seemed expressly designed to exclude applications by genuine experts from civil society and NGOs, who would of course hold the (now vindicated) view the DRD was

unlawful.

After the CJEU decision, I wrote again to the officials, asking whether they now accepted the "loyalty oath" was improper, and that the critiques I had made throughout my term had been upheld in express detail by the CJEU, and whether the new committee was now dissolved. I received the reply that the Committee was dissolved, but no assurance that the "loyalty oath" tactic would not be repeated.

This case seems to suggest a broad principle that the Commission must not exclude Expert (on merit) opinion merely because that Expert holds critical views of Commission law and policy (indeed that is a special reason to ensure they are represented).

That is the gist of the affair, and I have all the email correspondence if you would like to investigate further, but it would be helpful to know in what form this could be best provided, as I cannot spare the time to draft a comprehensive submission.

Yours sincerely

Caspar Bowden