

Opinion on the notification for prior checking received from the Data Protection Officer of the European Parliament regarding the "*Medical files – Parliament crèche*" and "*Medical files – private crèches*" dossiers

Brussels, 8 December 2006 (Cases 2006-267 and 2006-268)

1. Procedure

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 regarding the "Medical files – Parliament crèche" dossier (case 2006-0267), together with notification regarding the "Medical files – private crèches" dossier (case 2006-0268), was given by the Data Protection Officer of the European Parliament by letter received on 1 June 2006.

Since the data collected, the data subjects and the purposes of the processing are identical, the two notifications set out the same facts and relate to the same processing operations. Accordingly, for practical reasons, the EDPS decided that these two cases should be dealt with together.

Questions concerning both cases (hereinafter referred to as "the processing operations") were put to the controller concerned via the Council's Data Protection Officer in an e-mail dated 20 June 2006, and replies were received on 24 October 2006. Additional questions were sent on 15 November 2006; the replies were received on 16 November 2006. Further clarification was requested on 27 November 2006 and was received on 28 November 2006. Additional information was supplied on 6 December 2006.

2. Facts

The Early Childhood Centre (CPE) comprises a crèche, a garderie and a supervised study centre; its purpose is to provide parents from the various European Union Member States, who are far from their place of origin, with easy access to childcare facilities for their young children as soon as they arrive in Luxembourg¹. In the case in point, the processing concerns the administrative and medical files relating both to the Parliament crèche and to the six private crèches with which the Parliament has a contract further to an invitation to tender (the most recent contract was concluded in 2004). The processing is managed by the Parliament's Crèche Service. That department collects all the administrative data, which are stored within the department. Medical data are sent directly to the relevant crèche by the parents.

¹ In the case in point, the processing involves only the Parliament's management of the crèches in Luxembourg. The processing system relating to the crèche in Brussels is different (the controller, data collected and regulations applied are not the same); an EDPS opinion will therefore be issued as soon as a notification relating to that processing operation is received. As for the Parliament in Strasbourg, there is a small crèche inside the Parliament which does not collect any medical data.

The purposes of the processing operations are the children's admission to the crèche, the sharing-out of places, the measures to be taken for children whose health is fragile, the medical follow-up of children and the identification of any problems. The legal basis for both processing operations is the fourth subparagraph of Article 9(3) of the Staff Regulations of Officials of the European Communities (hereinafter "the Staff Regulations") and the Rules on admission to and operation of the CPE establishments (hereinafter "the CPE Rules"). The CPE Rules also apply to the six private crèches. In addition, pursuant to the contracts concluded by the Parliament with the six private crèches, a number of places – depending on the crèche in question – is reserved for children of the staff of the other Community institutions in Luxembourg.

The data subjects of the processing operations can be grouped into three categories:

- the children of officials, other staff and the teaching staff of the CPE and European School;
- officials, other staff and the teaching staff of the CPE and European School; and
- trusted persons who should be contacted in the event of an accident to the child and/or the absence of the parents, and who are authorised to collect the child if necessary.

Article 4(1) of the CPE Rules further specify that "*parents should note that it is helpful if they list all the people who may collect their children*". These persons are other family members (except the parents) and other people with responsibility for the children (such as the nanny); they can also be colleagues, secretaries or family doctors. The data required are their name, first name and telephone numbers (home, office and mobile). Applicants are encouraged to provide as many such details as possible since the more the telephone numbers, the easier it is to find the trusted person if he or she is not at home or in the office.

The processing operations provide for priorities for admission which are applicable to all data subjects and crèches (Parliament crèche and the six private crèches). In particular, Article 3 of the CPE Rules stipulates that "*for the children of officials and other staff and the teaching staff of the CPE and European School, the priorities for admission are as follows:*

Priority 1: A single parent having sole responsibility for the child's upbringing and education.

Priority 2: Parents who both work full-time.

Priority 3: One parent working full-time and the other at least half-time.

Priority 4: One parent working full-time as an official or other staff member or teaching staff member at the CPE or European School and one parent who works less than half-time or is unemployed."

The date the administrative department receives the application is also taken into consideration where family circumstances are equal².

The application for admission must be submitted by the parent who is an official, other staff member or member of the teaching staff of the CPE or European School.

Administrative data are collected by the Parliament's Crèche Service both for the Parliament crèche and the private crèches. The application must be accompanied by the following documents in particular:

- (i) a form entitled "Interinstitutional crèches – application for admission under the CPE Rules and parental authorisation";
- (ii) a data sheet;
- (iii) the child's birth certificate;
- (iv) a certificate from the institution employing the parent making the application and, if applicable, the other parent, specifying their status (official or other staff), the number

² Article 3(3) of the CPE Rules.

- of dependent children, their working-time arrangements and their monthly salary (including all allowances for dependent children);
- (v) a certificate of the composition of the household and the place of residence of the parent(s);
 - (vi) the parents' salary statements.

The data requested in the application for admission form signed by the parent³ include the home address, home telephone number, mobile telephone number, institution, grade, step, office telephone number, personnel number and marital status of the parent who is an official or other staff member. The name of the child to be admitted to the crèche, his or her date of birth, the language(s) spoken with the child, the name of the family doctor and the sickness fund to which the child belongs must also be given.

The data sheets contain details relating to the father and mother: name, first name, home address, home telephone number, mobile telephone number, occupation, name and address of employer, number of children in their care, marital status and list of children of whom they have legal custody and for whom they have financial responsibility (containing the children's name and first name, date of birth and pre-school establishment or school).

As regards medical data, the parents must complete a health notes form and submit it directly to the crèche involved. These health notes contain the following data: year, desired admission date, name and first name of the child, gender, date and place of birth, parents' address, home telephone number, father's employer, mother's employer, their telephone numbers, sickness fund registration number, name of the child's regular paediatrician and person to be contacted in an emergency, together with additional information provided by parents such as weight at birth, size at birth, cranial girth at birth, complications during labour, whether the child has had diseases such as mumps, rubella, scarlet fever, etc., and whether the child has had any vaccinations; a medical certificate is also required prior to admission.

Each crèche has its own medical service. The Parliament crèche has two in-house nurses (contract staff members) as well as external consultant paediatricians. In the private crèches, the nurses and paediatricians are all external staff. Under Article 12 of the CPE Rules on medical provisions, the crèches must provide for a paediatrician to visit at least once a week and examine children at the nurse's request. Children who have a temperature, are ill or have parasites are not admitted to the establishments. Children with an infectious or contagious disease are readmitted only on presentation of a medical certificate stating that they have recovered. Parents must authorise the medical department, director of the establishment or nurses to take all medical or surgical measures that might be required by the condition of the child owing to illness or an accident while they are in the crèche and, in particular, to have the child transported immediately to the nearest hospital in case of emergency and to ensure that the child receives any necessary treatment in other cases.

The recipients of the medical data and data sheets are the crèche's nurses on admission of the child and the directors and nursery attendants, who are routinely informed about the children's illnesses (allergies, epilepsy, etc.). The medical files remain in the crèches, so there is no transfer to the Parliament or to other institutions.

Processing is manual within a structured system of data which are accessible via specific criteria. Each child's file contains all the data set out above and is stored in an index cupboard;

³ Under Article 3 of the CPE Rules, "parent" means "the father, mother or any other person having legal custody of the child".

files can be searched by the initial of the child's name, then by name in alphabetical order so that they can easily be located.

The data are kept for a year after the child leaves the crèche. According to the information supplied by the Parliament, administrative data have to be kept for a year in order to be able to calculate contributions and the reimbursements to be made by the Parliament since six months can elapse between provision of the service and reimbursement of the contributions. The Parliament also stressed the fact that some parents, for tax or private reasons, ask the Parliament's Crèche Service for receipts for the amounts they have paid. The files of children who are not admitted are destroyed, except if the parents want their child to be put on a waiting list. Under Article 2(2) of the CPE Rules, children can be admitted to the crèche three times a year, in September, January and April. However, admissions can also be arranged at other times of the year. Where an application is turned down in September, the child is put on a waiting list for January and the application is turned down again, the data of the child in question are immediately destroyed in January. The possibility of the data being stored for historical, statistical or scientific purposes is ruled out.

Administrative data are updated by the staff of the Crèche Service, while medical data – i.e. the health notes – are managed by the crèche's nurses or paediatricians. The children's parents have indirect access to certain data in certain circumstances. Direct access to children's information files is deemed to be undesirable in particular because in the case of divorced parents, for example, parents may not wish their former spouse to have access to personal data such as their mobile telephone number, nanny details, etc. Furthermore, the blocking and erasure rights of data subjects are provided for, although it was pointed out that it would usually be inconceivable for someone to request a child's active file to be blocked or erased since the crèche would no longer be able to contact the child's family or guardian in case of accident or illness. However, information in the file can be rectified by sending a request by post or e-mail. Those rules are not detailed anywhere, but it is stressed that it would certainly be desirable to include them in future application documents.

Regarding information for data subjects, none of the information set out in Articles 11 and 12 of Regulation (EC) No 45/2001 is supplied with a view to complying with these articles. The notification specifies that it will be suggested to mention that information by including it in the new 2007 contract or by sending a note to parents and including it in future application documents.

No identification number or personal number of parents is used for children's applications for admission. Only the parent's surname is used.

Security measures have been taken. Access to medical data is restricted to authorised staff, i.e. the paediatricians and nurses of the various crèches. Access to administrative data is restricted for the purposes of processing and control to two officials: the Head of Service and Head of Unit of the Parliament's Crèche Service.

3. Legal aspects

3.1 Prior checking

Regulation (EC) No 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1)). In the case in point,

the data processing is carried out by the European Parliament and falls within the scope of Community law since it is part of activities under the first pillar.

The processing is both manual and automated, since the data being processed are contained in files – in this case administrative and medical files. Furthermore, the processing operation forms part of a filing system or is intended to form part of a filing system. Article 3(2) is therefore applicable in the case in point.

Accordingly, the processing falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation No 45/2001 makes "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes" subject to prior checking by the European Data Protection Supervisor.

The processing is also subject to the provisions of Article 27(2)(a): "The following processing operations are likely to present such risks: processing of data relating to health (...)"; that is the case here since the data undoubtedly fall within the scope of "data relating to health"⁴.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this case, as the EDPS was appointed after the system was set up, the check necessarily has to be performed *ex post*. This does not alter the fact that the recommendations issued by the EDPS should be implemented. However, the check should be regarded as a genuine prior check as regards aspects relating to the follow-up database being set up.

The two notifications from the European Parliament's DPO were received by post on 1 June 2006. Under Article 27(4) of the Regulation, the EDPS had to deliver his opinion within two months. Taking into account the 128-day suspension, the EDPS had to deliver his opinion by 8 December 2006 at the latest (1 June plus 128 days of suspension) under Article 27(4) of the Regulation.

3.2. Lawfulness of the processing operations

The lawfulness of the processing operations must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which stipulates that the processing must be "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution*".

In the case in point, the processing operations involve collecting administrative and medical data for the purposes of admitting children to the Parliament's crèche and to the six private crèches with which the Parliament has a contract. The processing operations are managed by the Parliament's Crèche Service. The procedure relates to a task of the European Parliament carried out in the public interest in the field of employment law. Where the private crèches reserve places for children of the staff of other Community institutions, the task must be regarded as coming within the framework of the Parliament's cooperation with other institutions. The processing operation is therefore lawful.

The legal basis for the processing operations is the fourth subparagraph of Article 9(3) of the Staff Regulations, the CPE Rules and the contracts concluded between the European Parliament and each of the six crèches.

⁴ Judgment of the Court of Justice of the European Communities of 6 November 2003, Lindqvist, C-101/01, [2003] ECR p. I-12973.

In particular, the fourth subparagraph of Article 9(3) of the Staff Regulations stipulates that *"the Committee shall participate in the management and supervision of social welfare bodies set up by the institution in the interests of its staff. It may, with the consent of the institution, set up such welfare services."*

Likewise, Article 2(1) of the CPE Rules provides that admission to the crèches is open to the children of officials and other staff of the European institutions and bodies in Luxembourg as well as the children of the educational staff of the CPE and the European School.

Furthermore, Article 1 of the contracts concluded between the European Parliament and the private crèches provides that each private crèche *"shall undertake (...) to reserve until completion of the contract x crèche places for children under four years of age of staff of the European institutions in Luxembourg who are enrolled by the Parliament's administration (...)"*.

The legal basis is therefore valid and supports the lawfulness of the processing operations.

3.3. Processing of special categories of data

Under Article 10 of Regulation (EC) No 45/2001, the processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) and (3) of that Regulation. The present case very clearly relates to the processing of personal data on health.

Processing of medical data is justified in the case in point, because it is needed to ensure that the European Parliament complies with its specific obligations and rights in the field of employment law as provided for in Article 10(2)(b).

Since some of the data subjects – the children – are minors, Article 10(2)(c) applies in this case. That point covers cases where *"processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent"*. In this case, the children are legally incapable of consenting to processing of their data. Accordingly, the parents' consent must be taken into consideration for processing which is necessary to protect the vital interests of the children.

Lastly, in the case in point, the Parliament crèche and the private crèches each have their own medical department. The data relating to health are therefore processed by the paediatricians and nurses (who work on call), when the child is admitted. The directors and nursery attendants are also informed about the children's illnesses and allergies.

Owing to the nature of the data involved, which concern health, Article 10(3) (special categories of data) of Regulation (EC) No 45/2001 applies in this instance. It provides that *"Paragraph 1 [prohibition of the processing of data concerning health] shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy"*. On account of their duties, the paediatricians, nurses, directors and nursery attendants of the medical service of each crèche are subject to an equivalent obligation of secrecy.

Since the directors and nursery attendants are also recipients of the data, the EDPS recommends that they should be reminded of the fact that they are subject to an obligation

equivalent to the obligation of professional secrecy, in order to ensure that Article 10(3) of the Regulation is duly complied with.

3.4. The controller and the processor

Pursuant to Article 2(d) of the Regulation, the controller is "*the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data*". The controller is responsible for ensuring that the obligations laid down in the Regulation are met (information to be given to the data subject, ensuring the rights of the data subject, choice of processor, notification of the data protection officer, etc.). The processor is the "*natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller*" (Article 2(e)).

In the case in point, the European Parliament has concluded contracts with the six private crèches and the CPE Rules are applicable.

Accordingly, as the six private crèches are subject to the CPE Rules, the European Parliament should be considered to be the controller since it determines the purposes and means of collecting data relating to the data subjects in accordance with the CPE Rules. Each private crèche is a processor, since – on the basis of the contract concluded with the Parliament and of the CPE Rules – it processes the data subjects' medical data collected on behalf of the Parliament, provided the collection and subsequent processing of the data are necessary to comply with the Parliament's specific obligations and rights in the field of employment law as set out in Article 10(2)(b).

3.5 Data quality

Article 4(1)(c) of the Regulation provides that personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.

Even though children's files will always contain certain standard data, such as name and date of birth, the precise content of a file relating to health will quite obviously vary according to the case. However, there must be some guarantee that the principle of data quality is complied with. This could take the form of a general recommendation addressed to the persons handling the files, asking them to ensure that this rule is observed.

The data described in paragraph 2 appear to be relevant and not excessive in relation to the purposes for which they are collected, including those relating to the priorities set out in the CPE Rules. The sole purpose of the questions relating to the child's health (allergies, illnesses, vaccinations and medical certificate relating to contagious diseases) must be to establish whether or not the child is in a delicate physical or mental state. That is important to enable the data recipients – i.e. the persons in charge of the Parliament crèche and the six private crèches – to monitor the child's health and take appropriate measures in the case of fragile health or a health problem, in accordance with the purposes of the processing in the case in point. That will make it possible to safeguard the child's safety, as provided for in the CPE Rules.

The EDPS therefore considers that Article 4(1)(c) of the Regulation is complied with.

Moreover, the data must be "*processed fairly and lawfully*" (Article 4(1)(a)). The lawfulness of the processing operation has already been discussed in section 3.2 of this opinion. As for fairness, this relates to the information to be given to the data subject (see section 3.9 below).

Article 4(1)(d) of the Regulation stipulates that "*data must be (...) accurate and, where necessary, kept up to date*". Furthermore, under that Article, "*every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*". In this case, the data are either administrative (name, date of birth, address, etc.) or medical (notes taken by a paediatrician or nurse, results of medical examinations, etc.).

It is not easy to ensure or assess the accuracy of medical data. Nonetheless, the EDPS would emphasise that every reasonable step must be taken to ensure that data are up to date and relevant. It is important to ensure that medical and administrative data are classified separately. In the case in point, each crèche keeps the medical data it is responsible for (i.e. the health notes), while all administrative data are managed by the Parliament's Crèche Service in its capacity as controller. Consequently, the EDPS welcomes the fact that purely medical data are updated only by the relevant nurses and paediatricians in the Parliament crèche and six private crèches, while the staff of the Parliament's Crèche Service is responsible for the accuracy of administrative data.

Data subjects' right to access and rectify their data is a second means of ensuring that their data are accurate and up-to-date (see section 3.8 on the right of access).

3.6 Data retention

The general principle set out in Regulation (EC) No 45/2001 is that data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*" (Article 4(1)(e) of the Regulation).

The EDPS considers that a distinction should be made between administrative and medical data for the purposes of data retention.

In the case in point, both the administrative and the medical data are kept for a year after the child in question has left the crèche.

In the case of administrative data, that time-limit, according to the European Parliament, is needed firstly to calculate contributions and any reimbursements to be paid by the Parliament (six months can elapse between provision of the service and its reimbursement), and secondly for tax requirements which are specific to the parents. Accordingly, the EDPS considers that the time-limit is not excessive, having regard to the purposes for which the data are collected (admission of children to the crèche) and subsequently processed (calculation of reimbursements and tax requirements).

In the case of medical data, the EDPS feels that the one-year period could be justified by the possibility that medical data could in certain cases contribute to the discovery of information relating to the cause of an illness or allergy.

The EDPS would stress that the data must absolutely be deleted at the end of the one-year retention period.

3.7 Transfer of data

The processing should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data between or within Community institutions or bodies.

Article 7(1) does not apply in the case in point, since administrative data are collected within the Parliament's Crèche Service and kept within that department and medical data are collected directly by the Parliament crèche and kept by that crèche.

As regards the six private crèches, medical data are collected directly by each private crèche so there is no transfer within the meaning of Article 8 of the Regulation.

3.8 Right of access and rectification

Article 13 of Regulation No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. Under Article 13 of the Regulation, the data subject has in particular the right to obtain, without constraint, from the controller, communication in an intelligible form of the data undergoing processing and any available information as to their source. In the case in point, children's parents are given indirect access in certain circumstances. Direct access to children's information files is deemed to be undesirable in particular because in the case of divorced parents, for example, parents may not wish their former spouse to have access to personal data such as their mobile telephone number, nanny details, etc.

Quite obviously, the matter is rather complex in this instance because it concerns minors who do not have the legal capacity to exercise their rights as data subjects directly. Accordingly, the reasons put forward by the Parliament for granting an indirect right of access to parents in certain circumstances, in particular in the case of divorced parents, can be regarded as justified in the light of Article 20(1)(c) of the Regulation. In particular, as provided for in Article 20(1)(c), application of the right of access can be restricted by a Community institution or body in order to safeguard "*the protection (...) of the rights and freedoms of others*" – i.e. the rights of divorced spouses and in that particular case of any nanny or other trusted person selected by each parent. However, the EDPS considers it essential that data subjects be informed of the principal reasons for this restriction and of their right to have recourse to the EDPS, in accordance with Article 20(3) of the Regulation.

Article 14 of the Regulation allows the data subject a right to rectification. In the case in point, data in the file can be rectified by sending a request by post or e-mail. The EDPS therefore considers that the data subjects' rights of access and rectification under Regulation (EC) No 45/2001 are ensured.

The blocking and erasure rights of data subjects are also provided for in accordance with Articles 15 and 16, respectively, of the Regulation. However, it was pointed out that it would usually be inconceivable for someone to request a child's active file to be blocked or erased since the crèche would no longer be able to contact the child's family or guardian in case of accident or illness. The EDPS would observe that, in the light of Articles 15 and 16 of the Regulation, blocking and erasure rights are exercised as part of a verification procedure. The EDPS accordingly feels that in the case in point, blocking and erasure cannot put children at risk since parents must justify their request and the controller must verify it.

The EDPS recommends that data subjects be informed of the main reasons for limiting their right of access and of their right to have recourse to the EDPS;

3.9 Information to be given to the data subject

Articles 11 and 12 of Regulation (EC) No 45/2001 relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. These articles list a series of compulsory and optional items. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject. In the present case, some of the data are collected directly from the data subject and others from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on the information to be given to the data subject applies in this case insofar as data subjects provide the information themselves in the various documents to be submitted as part of the procedure for admission to the crèche.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also applies in this case because the data relating to trusted persons who may be contacted in the event of an emergency are supplied to the crèches by the children's parents.

As has been stated above, none of the information set out in Articles 11 and 12 of Regulation (EC) No 45/2001 is supplied with a view to complying with these articles. The notification states that it will be suggested to provide this information in the new 2007 contract or in a note sent to parents.

Accordingly, the EDPS recommends that all the information set out in Articles 11 and 12 of Regulation (EC) No 45/2001, both compulsory and optional (for the latter guarantees fair processing and requires no extra effort on the part of the controller), should be mentioned in an internal note or statement in time for the next applications for admission; this note or statement should make specific reference to the relevant processing operation and be supplied to the data subjects. Furthermore, the EDPS considers that once parents have been informed about their rights, it is for them to inform any other trusted persons (nanny, neighbour, family doctor, secretary, etc.) about their own rights under Articles 11 and 12.

3.10 Processing by a processor

Where a processing operation is carried out on its behalf, Article 23 of Regulation No 45/2001 stipulates that the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. The carrying out of a processing operation by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor must act only on instructions from the controller and that the obligations with regard to confidentiality and security of personal data are also incumbent on the processor.

By way of reminder, the contract concluded between the Parliament and each private crèche does not include any specific provision on data protection.

The EDPS therefore recommends that the contract between the processors (the private crèches) and the controller (the Parliament) should contain all the terms used in Article 23(2) of the

Regulation, namely stating that the processor can act only on instructions from the controller and is also bound by the obligations set out in Articles 21 and 22 on security.

3.11 Security measures

Under Article 22 of Regulation (EC) No 45/2001 on security of processing, the controller must implement "*appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected*".

The EDPS considers that the full set of security measures taken to ensure maximum processing security are such that they can be regarded as adequate within the meaning of Article 22 of the Regulation.

Conclusion

The proposed processing operations do not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. This implies, in particular, that the Parliament should:

- remind the persons responsible for managing medical data that they are subject to an obligation equivalent to the professional secrecy obligation under Article 10(3) of the Regulation;
- adopt a general recommendation addressed to the persons handling the files, requesting them to safeguard the quality of the data;
- inform data subjects of the main reasons for limiting their right of access and of their right to have recourse to the EDPS;
- ensure that all the information set out in Articles 11 and 12 of Regulation (EC) No 45/2007, both compulsory and optional, is mentioned in an internal note or statement in time for the next applications for admission; this note or statement should make specific reference to the relevant processing operation and be sent to the data subjects. Parents must be informed that it is for them to notify trusted persons of their rights under Articles 11 and 12;
- ensure that the contracts between the processors (the private crèches) and the controller (the Parliament) contain all the terms used in Article 23(2) of the Regulation, namely stating that the processor can act only on instructions from the controller and that the obligations set out in Articles 21 and 22 on security are also incumbent on the processor.

Done at Brussels, 8 December 2006

Peter HUSTINX
European Data Protection Supervisor