JOAQUIN BAYO DELGADO
ASSISTANT SUPERVISOR

Ms Laraine LAUDATI
Data Protection Officer
European Commission
European Anti-Fraud Office (OLAF)
B - 1049 BRUXELLES

Brussels, 21 May 2007
JBD/EDK/ktl D(2007)726   **C 2007-0213**

Dear Mrs Laudati,

I am referring to the prior checking notification concerning the processing of complaints received from the European Ombudsman at the European Anti-Fraud Office (OLAF) (case 2007-213).

After examining the content of the notification, we have come to the conclusion that even though the case includes the processing of personal data, **it is not subject to prior checking** under Article 27 of Regulation (EC) No 45/2001 ("the Regulation").

The activities of OLAF with regard to the correspondence with the European Ombudsman in cases of complaints concern preparing and sending OLAF's opinion and replies on any further requests for information, follow up on proposals for friendly solutions and draft recommendations, and maintaining files of complaints and related documentation.

Article 27(1) of the Regulation submits for prior checking by the European Data Protection Supervisor, 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. .

Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks in the above sense. The prior checking notification has been submitted under Article 27(2)(a) and 27(2)(b) of the Regulation.

Article 27(2)(a) of the Regulation concerns cases where the processing of data typically involves data relating to health, suspected offences, offences, criminal convictions or security measures. In his consistent practice the EDPS recognised the specific risk in processing data related to suspected offences, offences or criminal convictions, both in view of the special character of these data and due to the possible consequences of the relevant processing operations. Maladministration however is a much broader concept and thus falls out of the scope of Article 27(2)(a) of the Regulation.

Postal address: rue Wiertz 60 - B-1047 Brussels
Offices: rue Montoyer 63
E-mail : edps@edps.europa.eu - Website : www.edps.europa.eu
Tel.: 02-283 19 00 - Fax : 02-283 19 50

Article 27(2)(b) of the Regulation states that the specific risk is present in processing operations which intend to evaluate personal aspects related to the data subject, including his or her ability, efficiency and conduct. Thus, the data processing operation itself should aim at evaluating individual aspects. This is not the case here, because the cooperation with the Ombudsman and the follow up activities regarding a complaint aim at helping him to enquire about administrative practices at OLAF, but in this framework OLAF does not aim at assessing individual behaviour.

Finally, we have found no reason to think that Article 27(1) of the Regulation might be applicable on other grounds.

In conclusion we believe that the processing operation does not qualify for a prior checking and the EDPS decided to close the case, unless you can give us specific grounds to reconsider.

In the course of our analysis, we have spotted one issue to which the EDPS would like to draw the attention of the controller.

● There seems to be some inconsistency as to data storage period: The Privacy Statement for complaints received from the European Ombudsman states that the electronic and paper files of OLAF are stored for a maximum period of 10 years to allow OLAF to ensure an appropriate treatment of such correspondence. Section 13 of the notification form states that files related to complaints to the Ombudsman are retained for a period of two years after the decision of the Ombudsman is issued. We would appreciate if the controller, after reconsidering the reasons which justify personal data to be stored, fixes a consistent data storage period, so we are able to assess whether it is appropriate for the purposes of the processing operation.

I would appreciate if you could share these considerations with the controller and inform us of the follow-up. We, of course, remain available for any further consultation on the matter.

Yours sincerely,

Joaquín BAYO DELGADO