

Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission regarding the "Administration of JRC Ispra Childcare Facilities (Crèche/Garderie)"

Brussels, 21 April 2008 (Case 2007-544)

1. Procedure

On 3 September 2007, the European Data Protection Supervisor (**EDPS**) received a notification for prior checking from the Data Protection Officer (**DPO**) of the European Commission concerning the Administration of Childcare Facilities in the Ispra Site Directorate (**ISD**) of the Directorate-General Joint Research Centre (**JRC**).

The notification was accompanied by the following documents:

- JRC Ispra Childcare Rules (Crèche/Garderie) dated 14 May 2007 (C/03-SS-D (2007)11705);
- Halte-Garderie Regulations;
- Privacy statement - Protection of personal data in the processing of the childcare facilities dated of 6 September 2007.

On 8 October 2007, the EDPS sent a request for additional information to the Commission's DPO and the DG JRC Data Protection Coordinator (**DPC**). The reply was provided on 21 February 2008 following a meeting with the delegated controller and the Commission's Assistant DPO on 12 February 2008. It was accompanied by the following documents:

- Enrolment forms for Crèche, Garderie and Halte-Garderie;
- Note for the attention of the parents using the "Special-Holidays" Garderie during Carnival holidays dated 22 January 2008 (C/03-SS-BN/gv);
- template of an "Agreement Form";
- template of a "Statement in Case of Accident";
- list of vaccinations.

The draft opinion was sent to the Commission's DPO and the DG JRC DPC for comments on 14 March 2008. The comments were received directly from the delegated controller on 14 April 2008 and were accompanied by a revised privacy statement.

2. Facts

2.1. Introduction

The purpose of the processing: The primary purpose is to admit children to the JRC Ispra Childcare Facilities, i.e. to the Crèche, the Garderie, the "Special Holidays" Garderie and the Halte-Garderie. The secondary purposes of the processing include the verification of the presence of the children, their medical surveillance, as well as the verification of the identity of persons authorised to collect the children.

The controller: The processing is under the responsibility of the Director of the Ispra Site Directorate of the DG JRC who acts as controller for this processing.

The processor: The processing of certain data of children attending the Crèche on behalf of the controller is carried out by an external consultant ("paediatrician attached to the Crèche").

2.2. Data subjects

Data subjects can be divided into the following three categories:

- children who attend the Crèche/Garderie;
- officials and other servants of the Communities and external staff (seconded national experts, grant holders, trainees, employees of the Italian National Agency for New Technologies, Energy and Environment (**ENEA**) whose children attend the Crèche/Garderie;
- other persons authorised by the parents to collect the children from the Crèche/Garderie.

2.3. Description of the processing

2.3.1. Admission criteria

The JRC Ispra Childcare Facilities are reserved for children of officials and other servants of the European Communities, as well as external members of the staff who have a direct contractual link with the European Communities in the form of a full-time employment contract of not less than six months' duration.

Subject to availability of places and the applicable priority criteria,

- the **Crèche** is admitting children from the age of fourteen weeks until September of the calendar year in which they reach four years, provided that they comply with the mandatory medical requirements;
- the **Garderie** is admitting children from the age of four until the age of eleven and until the moment they have finished the 5th elementary class;
- the "**Special Holidays**" **Garderie** is admitting children during all European School holidays announced in the annual calendar of holidays notified by the European School of Varese which are not holidays for the JRC (summer, Christmas, half-terms, Easter etc.).

In addition, the **Halte-Garderie** accepts occasionally and for a limited period of time children from the age of three months to the age of four years.

The admission to the Crèche, to the Garderie, as well as to the "Special Holidays" Garderie takes place according to the following **priorities**:

1. single parent is an official or other servant in active employment who assumes the sole responsibility and custody for the child,
2. both parents are officials or other servants in active employment and assume a shared responsibility for the child,
3. one parent is an official or other servant, the other one is either in employment or "following a full-time course of study" more than 70 km away from the JRC Ispra site,
4. one parent is an official or other servant, the other is either in employment or "following a full-time course of study",
5. one parent is an official or other servant, the other is actively seeking a job and both assume a shared responsibility for the child,

6. one parent is an official or other servant, the other is not in employment and both assume a shared responsibility for the child,
7. one parent is a seconded national expert, a grant holder or a trainee,
8. one parent is an ENEA employee.

In addition, children inside the Crèche/Garderie have priority to advance to the next section over any external request; children who attend the Crèche and will be attending the European School of Varese, Nursery Section, are entitled to priority in the admission procedures to the Garderie; and children who attend the Garderie have priority to attend the Garderie on "Special Holidays".

2.3.2. Admission to the Crèche/Garderie

Applications for enrolment to the Crèche/Garderie must be submitted the Social Services Unit C3 of the JRC ISD at least to six months in advance and must be accompanied by the following documents:

- Enrolment form containing useful information on the child's family (as outlined in point 2.4. below);
- parents' salary slips and/or tax assessments in case of self-employed parent;
- child's birth certificate or auto-declaration attesting the pregnancy (Crèche only);
- any other document necessary for the priority group classification.

Prior to the physical admission of the child to the Crèche/Garderie, the following documents must be also submitted:

- signed "Statement in Case of Accident" authorising the Management of the Crèche/Garderie to take appropriate steps;
- signed Agreement ascertaining the parents' knowledge of the binding JRC Ispra Childcare Facilities Rules that they are required to comply with;
- medical certificate declaring that the child can be admitted to the Crèche issued not earlier than 48 hours before admission; list of vaccinations already given and all other relevant information on the child's health and diet (Crèche only, unless a child attending a Garderie has to follow a special diet on medical grounds¹).

2.3.3. Admission to the Halte-Garderie

Applications for enrolment to the Halte-Garderie must be accompanied by the contract of employment of the parent working at the JRC or by a copy of the last salary sheet. In addition, at the time of enrolment, a vaccination certificate needs to be provided as well.

2.3.4. Admission to the "Special Holidays" Garderie

Requests for enrolment for special holidays are subject to separate enrolment requests on an *ad hoc* basis. Parents are requested to confirm the inscription for the respective special holidays in time.

2.3.5. Waiting list management

Separate waiting lists are kept for the individual sections of the Crèche, as well as for the Garderie. Every year on 30 April, the waiting lists are closed to determine the children who

¹ The medical files of children attending the Garderie are already kept in the respective European School.

will be admitted at the beginning of September. Non-accepted requests remain on the waiting list. Places becoming available during the year are allocated on the basis of the waiting list.

2.3.6. Medical issues at the Crèche

Examination by the paediatrician attached to the Crèche: The paediatrician attached to the Crèche carries out **regular** medical check-ups on the children attending the Crèche. Parents are informed in advance of the dates of the check-ups.

In addition, a **special** examination may be carried out by the paediatrician at the request of the childcare nurse.

Second opinion on admissibility to the Crèche: The Management of the Crèche has the right to ask for a second opinion on the medical opinion declaring that the child can be admitted to the Crèche. This opinion may be obtained from the paediatrician attached to the Crèche.

Medical certificate after sick leave: After a sick leave of more than three days, a child is readmitted only when presenting a medical certificate stating the child's good health. This certificate must be issued not earlier than 24 hours before the readmission.

2.3.7. Verification of the persons authorised to pick-up the child

According to the information provided on 21 February 2008, the JRC Ispra Childcare Facilities are temporarily located in several buildings. At the entrance of each of these buildings, there is a video-phone used by the childcare nurses to verify who is entering the building. No recording takes place².

2.4. The data processed

The following categories of data are being processed in connection with the administration of the JRC Ispra Childcare Facilities:

- for the children: first name, surname, date and place of birth, nationality, date of requested admission/date of start, attended school (Garderie), additional activities (Garderie), languages spoken (Halte-Garderie), medical certificate (Crèche), lists of vaccinations, information on the child's health and diet, attendance arrangements, daily presences and absences;
- for the parents: first name, surname, occupation, employment status, beginning and end of the contract, nationality, office telephone number, office address and TP, home telephone number, mobile telephone number, private address, person to contact in case of parents' absence. According to the comments submitted on 14 April 2008, information about civil status of the parents are no longer processed;
- for other authorised persons: first name, name, telephone number, office and personal addresses, type and period of authorisation.

2.5. Data retention

Admitted children: Three separate files are kept for each admitted child:

- "Individual files" consisting of all documents submitted at the time of application and the actual admission and also including the correspondence between the parents and the

² The conditions for the use of video-phones will be discussed in the upcoming EDPS guidelines on video-surveillance.

administration. The Individual files are stored for five years after the child has left the Crèche/Garderie and are destroyed afterwards;

- "Financial files" consisting of parental salary slips and/or tax assessment in case of a self-employed parent once the child has been admitted to the structure, as well as other supporting documents necessary for the calculation of the parental income; sheets of the presence of the children in the structure and information whether the child was absent due to illness or annual leave (for the purpose of eventual billing at half-rate). The Financial files are also stored for five years after the child has left the Crèche/Garderie and are destroyed afterwards;
- "Medical file" consisting of certificates of vaccination, medical certificates and fiches established by the paediatricians. According to the comments submitted on 14 April 2008, the Medical files are handed over to the parents as soon as the child leaves the Crèche/Garderie.

Non-admitted children: The storage period of data relating to non-admitted children is determined in terms of the validity of the respective waiting lists. In fact, these separate files are kept for a year after

- the child is removed from the respective Crèche waiting list because
 - (i) he/she has reached an age that it can no longer attend the Crèche,
 - (ii) he/she is withdrawn from the list by its parents or
 - (iii) his/her parents no longer comply with the admission criteria);
- new enrolment round starts for the new school year in the Garderie.

This storage period is considered reasonable and necessary in case a parent presents reclamation for not having been offered a place for the child.

No further storage for historical, statistical or scientific purposes is envisaged.

2.6. Data transfers

Medical data collected in connection with the administration of JRC Ispra Childcare Facilities may be transmitted to the following recipients:

- co-ordinator childcare nurse and other childcare nurses (information on particular health issues such as special diets, asthma etc.);
- JRC Medical Service (if requested/in case of emergencies);
- external consultant (paediatrician attached to the Crèche).

In addition, administrative data processed in this context may be disclosed to the staff of the Social Services Unit C3 of the JRC ISD, as well as to the Office for Administration and Payments of the Individual Entitlements (**PMO**) Ispra.

2.7. Rights of the data subjects

According to the information provided in the Privacy Statement submitted for review, data subjects may send a request to verify, modify or delete their personal data processed in connection with administration of JRC Ispra Childcare Facilities to the following functional mailbox: ispra-creche-garderie@ec.europa.eu. Upon a justified and legitimate request by the data subject, the personal data are modified within one month.

2.8. Information provided to the data subjects

Privacy statement is given to parents of children frequenting the JRC Ispra Childcare Facilities and/or to parents who requested the enrolment of their children to these facilities. In

fact, it is attached to the request for the Enrolment form or - in case the form is being dispatched in paper version - to the Enrolment form itself.

2.9. Security measures

(...)

3. Legal aspects

3.1. Prior checking

Applicability of Regulation 45/2001³: The notification deals with processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2(a) of Regulation 45/2001) in connection with administration of the JRC Ispra Childcare Facilities. The processing is carried out in the exercise of activities falling within the scope of Community law (Article 3(1) of Regulation 45/2001). The data processed in this context form a part of a filing system (Article 3(2) of Regulation 45/2001). Therefore, Regulation 45/2001 is applicable.

Grounds for prior checking: Article 27(1) of Regulation 45/2001 subjects to prior checking by the EDPS all "*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 Regulation 45/2001 contains a list of processing operations that are likely to present such risks. This list includes "*processing of data relating to health*" (Article 27(2)(a) of Regulation 45/2001), as well as "*processing operations intended to evaluate personal aspects relating to the data subjects*" (Article 27 (2)(b) of Regulation 45/2001).

The processing in question consists of evaluation of the personal and familial situation of the data subjects on a basis of the pre-defined admission criteria (priorities) outlined in point 2.3.1 above. In addition, certain health related data are concerned as well. Therefore, the present case needs to be subjected to prior checking on the basis of Article 27(2)(a) and (b) of Regulation 45/2001.

Ex-post prior checking: Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. In this case however the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

Deadlines: The notification of the DPO was received on 3 September 2007. According to Article 27(4) of Regulation 45/2001, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 167 days (136 + 31). Consequently, the present opinion must be delivered no later than on 21 April 2008 (20 April 2008 being a Sunday).

3.2. Lawfulness of the processing

³ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on protection of individuals with regard to processing of personal data by Community institutions and bodies and on the free movement of such data, OJ 2001 L 8/1

The lawfulness of the processing operation has to be examined in light of Article 5 of Regulation 45/2001.

Pursuant to Article 5(a) of Regulation 45/2001, the processing is lawful if it is *"necessary for 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 institutions or body"*. The processing of personal data for performance of tasks carried out in the public interest includes *"the processing necessary for the management and functioning of those institutions and bodies"* (recital 27).

The administration of the JRC Ispra Childcare Facilities represents a measure of social nature adopted on the basis of Article 1e of the Staff Regulations, Articles 10 and 80 (4) of the Conditions of employment of other servants of the European Communities (CEOS), as well as the JRC Ispra Childcare Rules (Crèche/Garderie) dated 14 May 2007 (C/03-SS-D (2007)11705). The processing of the related data is necessary for the performance of this public interest task.

In addition, the processing is lawful in terms of Article 5(d) and (e) of Regulation 45/2001 considering that by duly completing the Enrolment form, the parents have *"unambiguously given their consent"* to the processing and that *"the processing is necessary in order to protect the vital interest"* of the children.

3.3. Processing of special categories of data

Pursuant to Article 10(1) of Regulation 45/2001, *"the processing of personal data concerning health is prohibited"* unless in specific predefined circumstances.

Article 10(3) of Regulation 45/2001 allows for *"processing of health related data for the purpose of preventive medicine, medical diagnosis, the provision of care or treatment by a person subject to an obligation of secrecy equivalent to the one imposed on health professionals"*. As indicated above, medical data collected in connection with the administration of the JRC Ispra Childcare Facilities can be transmitted to the paediatrician attached to the Crèche, the co-ordinator childcare nurse, the other childcare nurses, the JRC Medical Service. The EDPS notes that all these health professionals are bound by an obligation of secrecy by virtue of their respective profession.

Furthermore, the processing of the health related data can be considered as *"necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof"* (Article 10(2)(b) of Regulation 45/2001). As explained above, the processing can be considered as necessary for the administration of the JRC Ispra Childcare Facilities in accordance with the relevant provisions of the Staff Regulations, the CEOS and the JRC Ispra Childcare Rules.

Finally, the processing can be considered as *"necessary to protect the vital interest of the data subjects where they are legally incapable of giving his/her consent"* in terms of Article 10(2)(c) of Regulation 45/2001. In particular, the processing of personal data of children attending the Crèche or Garderie by the JRC Medical Service in case of emergencies may be justified on this basis.

3.4. Data Quality

Adequacy, relevance and proportionality: According to Article 4(1)(c) of Regulation 45/2001, personal data must be *"adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed"*. The data processed in connection with the administration of the JRC Ispra Childcare Facilities are of administrative and medical nature. The EDPS welcomes the fact that information about civil status of the parents are no longer processed since they are not relevant in this context. In fact, the admission priorities are referring only to the (sole or shared) legal responsibility / custody for the child, as well as to the professional activities of the parents.

Accuracy: Article 4 (1)(d) of Regulation 45/2001 provides that personal data must be *"accurate and, where necessary, kept up to date"* and that *"every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified"*. The data processed in connection with the administration of the JRC Ispra Childcare Facilities are provided by the staff member (parent) who can also make use of his rights of access and rectification to ensure the accuracy of personal data processed (see point 3.7 below). Therefore, the EDPS considers that Article 4(1)(d) of Regulation 45/2001 is complied with.

Fairness and lawfulness: Article 4(1)(a) of Regulation 45/2001 also provides that personal data must be *"processed fairly and lawfully"*. Lawfulness has already been discussed (see point 3.2) and fairness will be dealt with in relation to information provided to data subjects (see point 3.8).

3.5. Data retention

Article 4 (1)(e) of Regulation 45/2001 states that personal 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"*.

The EDPS welcomes the fact that the Medical files of admitted children are handed over to the parents as soon as the child leaves the Crèche/Garderie.

In addition, the EDPS recognises the need to keep the Financial files of admitted children for at least five years after the budgetary discharge. Nevertheless, he would like to point the attention of the DG JRC to the recently added last paragraph of Article 49 of the Implementing Rules to the Financial Regulation⁴ stating that *"personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes"*.

As to the storage of Individual files and data not strictly necessary for budgetary discharge, control and audit purposes relating to admitted children, the EDPS invites the DG JRC to reconsider the current storage period. In a similar case, the EDPS considered a data storage period of one year as reasonable⁵.

The one year storage period of data relating to non-admitted children should be also reconsidered unless the necessity of this further processing can be reasonably explained.

⁴ Commission Regulation 2342/2002 laying down detailed rules for the implementation of Council Regulation 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities as amended by Commission Regulations 1261/2005, 1248/2006 and 478/2007

⁵ EDPS opinions 2006-267 and 2006-268 of 8 December 2006 ("Medical files - Parliament Crèche" and "Medical files - private Crèche")

3.6. Transfer of data

Internal transfers: The data transfers within the Ispra Site Directorate of the DG JRC, as well as to the PMO Ispra must be examined in light of Article 7 of Regulation 45/2001. This provision allows for transfers of personal data within Community institutions *"if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient"* (paragraph 1). The recipient can process the data *"only for the purposes for which they were transmitted"* (paragraph 3).

The EDPS considers that the transfers of medical data to the co-ordination childcare nurse, other childcare nurses, as well as to the JRC Medical Service is necessary in order to ensure appropriate medical surveillance of the children in the respective childcare facility. In addition, the transfers of administrative data to the JRC ISD Social Service Unit, as well as to the PMO Ispra are necessary for the management of the respective facility. Therefore, Article 7(1) of Regulation 45/2001 is being complied with.

In order to ensure full compliance with Article 7 (3) of Regulation 45/2001, the EDPS recommends that all recipients are reminded of their obligation not to use the data received for any further purposes than the one for which they were transmitted.

External transfers: The data transfers to the "paediatricians attached to the Crèche" should be examined in light of Article 8(a) of Regulation 45/2001. This Article allows for transfers to recipients subject to (the national law adopted for the implementation of) Directive 95/46/EC *"if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority"*.

The EDPS considers that the transfer of the medical data to the external paediatrician is necessary for the performance of a task carried out in the public interest since it occurs on behalf and upon instructions of the controller. As indicated above, the paediatrician has to carry out regular and special check-ups in the Crèche. Article 8(a) of Regulation 45/2001 is therefore duly complied with.

3.7. Rights of access and rectification

Article 13 of Regulation 45/2001 establishes a right of access upon request by the data subject. In particular, the data subject has a right to obtain *"a communication in an intelligible form of the data undergoing processing and of any available information as to their source"* (Article 13(c) of Regulation 45/2001). Article 14 of Regulation 45/2001 provides the data subject with *"the right to rectify inaccurate or incomplete data"*.

As indicated above, personal data processed in connection with the administration of JRC Ispra Childcare Facilities can be accessed and rectified upon request sent to the controller's functional mailbox. The modification takes place within one month. Articles 13 and 14 of Regulation 45/2001 are therefore complied with.

3.8. Information to the person concerned

Articles 11 and 12 of the Regulation 45/2001 provide for certain information to be supplied to the data subjects in order to ensure the transparency and fairness of the processing of the personal data. The provision of Article 11 is applicable in case *"the data have been obtained from the data subject"*, the provision of Article 12 in case the data have been obtained from another source. In the present case, both Articles 11 and 12 of the Regulation are applicable.

As indicated above, Privacy statement is given to parents of children frequenting the JRC Ispra Childcare Facilities and/or to parents who have requested the enrolment of their children to these facilities. The Privacy statement submitted for review contains the following information:

- identity of the controller;
- purpose of the processing;
- data recipients;
- existence of rights of access and rectification;
- time limits for storing of data of admitted and non-admitted children (the revised version submitted on 14 April 2008);
- right to have recourse to the EDPS.

In order to ensure full compliance with Articles 11 and 12 of Regulation 45/2001, the EDPS recommends that information about the legal basis is added to the Privacy statement. In addition, the EDPS recommends that the parents are instructed to inform the other persons authorised to collect the child about their rights under Article 12 of Regulation 45/2001.

3.9. Processing data on behalf of controllers

Determination of the controller and the processor: As indicated above, certain data of children attending the Crèche are processed by an external paediatrician. This processing is carried out on behalf of the ISD Director of the DG JRC who determines the purpose and the means of the actual processing (Article 2(d) and (e) of Regulation 45/2001).

Contract concluded between the controller and the processor: Article 23 of Regulation 45/2001 requires that the controller must "*choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by Article 22 of the Regulation*" (paragraph 1) and that "*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*" providing, in particular, that the processor has also to comply with **obligations of confidentiality and security** as set out in the national law transposing Articles 16 and 17(3) of Directive 95/46⁶ (paragraph 2) .

Pursuant to Article 16 of Directive 95/46, the processor "*shall not process personal data except on instructions from the controller, unless required to do so by law*" (confidentiality of processing).

Article 17(3) of Directive 95/46 specifies that appropriate technical and organisational measures must be adopted by the controller and the processor "*to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. Such measures shall be taken in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing*".

(...)

3.10. Security measures

⁶ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281/31

(...)

4. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 provided that the above considerations are fully taken into account. In particular,

- the current storage periods applicable to data contained in the Individual files not strictly necessary for budgetary discharge, control and audit purposes, as well as to data relating to non-admitted children should be reconsidered (Article 4(1)(e) of Regulation 45/2001);
- data recipients should be reminded of their obligation not to use the data received for purposes other than those for which they were transmitted (Article 7(3) of Regulation 45/2001);
- the Privacy statement should be modified to provide information about the legal basis of the processing (Articles 11 and 12 of Regulation 45/2001);
- the parents should be instructed to inform the other persons authorised to collect the child about their rights under Article 12 of Regulation 45/2001;
- (...)

Done at Brussels, 21 April 2008

(signed)

Peter HUSTINX
European Data Protection Supervisor