



GIOVANNI BUTTARELLI
THE ASSISTANT DATA PROTECTION SUPERVISOR

Mr Pierre-Antoine BARTHELEMY
Head of Unit
Recruitment and Transfers Unit
Traineeships Office
DG-Personnel
European Parliament
Plateau du Kirchberg
B.P. 1601 L-2929 Luxembourg

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GB/XK/mk D(2014)1549 C2013-0607
Please use edps@edps.europa.eu for all
correspondence

Re: Opinion of the European Data Protection Supervisor on the notification received from the European Parliament on the selection and recruitment of trainees with a disability within the Secretariat of the Parliament (Case 2013-0607)

Dear Mr Barthélémy,

Thank you for the notification on the selection and recruitment of trainees with a disability by the European Parliament ('the Parliament') under Article 27(2)(a) and (b) of Regulation (EC) No 45/2001 ('the Regulation').

The EDPS notes that processing connected with the recruitment of trainees in general has already undergone prior checking, following which the EDPS issued his Opinion of 31 July 2007¹.

On 10 October 2008, the EDPS adopted the Guidelines concerning the processing operations in the field of staff recruitment by the EU institutions ('the Guidelines'). Since those Guidelines cover the processing of data relating to health, including disabilities, the notification will be analysed in the light of those Guidelines. In his analysis, the EDPS will highlight those practices which do not appear to conform with the Guidelines and make appropriate recommendations to the Parliament regarding those matters.

As this is an *ex post* notification, the two-month deadline within which the EDPS is required to give his opinion does not apply.

¹ Case 2007-0208.

1) Data storage

According to the notification, the Parliament has not specified the length of time for which the data needed to issue trainee certificates will be stored. On the basis of the Guidelines, the EDPS recommends that the Parliament should store the data in question for the five-year period following budgetary discharge. To cover the eventuality that the data subjects might require a trainee certificate to be reissued, the EDPS considers that the period of 50 years adopted for that purpose by certain institutions is acceptable.

The notification does not state clearly whether the various data relating to a disability, for example, the application form for reasonable accommodation, the diagnosis of the disability and other medical reports, are stored by the Parliament's medical service. The EDPS recommends that the Parliament should clarify that point. In any event, all the data relating to the disability should be erased when they have ceased to be necessary for the period of the traineeship or the reimbursement of expenses and budgetary discharge. The EDPS recommends that the Parliament should establish a maximum storage period deemed necessary in the light of the purpose for which the data were collected (selection) or subsequent purposes (reimbursement/budgetary requirements).

In addition, the Parliament stores the following data anonymously in an Excel spreadsheet for an indeterminate period for statistical purposes: the trainee's category of disability, the reasonable accommodation requested by the trainee and accepted by the Parliament, age, sex, nationality/country, language knowledge, level of education, the nature of the traineeship (title, duties/tasks), the traineeship site, the DG and the preferred DGs indicated by the trainee. The EDPS wonders whether the information concerning the trainee's nationality or country, for example, might make the data subject directly or indirectly identifiable, in view of the small number of trainees with a disability within the Parliament. The EDPS therefore asks the Parliament to reconsider the need to store the aforementioned data in the light of Article 4(1)(e) of the Regulation and to inform us of its views on the matter.

2) Right of access

The EDPS has always insisted that data subjects must have access to the results of their assessment at every stage in the selection process (pre-selection, interview and written examinations, where appropriate, unless the exemption under Article 20(1)(c) of the Regulation is applicable (as stated in Article 6 of Annex III of the Staff Regulations). The Parliament should therefore guarantee such access for trainees with a disability. Of course, access may be refused both to comparative data concerning other candidates (comparative results) and to the opinions of the members of the Selection Committee if that access infringes their rights and freedoms. Data subjects should nevertheless receive the overall results.

3) Right of rectification

Data subjects may also exercise their right to rectify data relating to their disability. They may, for example, demand that the data contained in their file are complete, i.e. that medical information or contradictory opinions from other doctors be added to their medical file. The EDPS recommends that the Parliament guarantee that data subjects are able to exercise that right.

4) Right to information

A Privacy Statement will be published on the EUROPARL website.

Since the processing is already in place, the EDPS recommends that the statement be published on this website as soon as possible and also attached to the application form for reasonable accommodation, so that the Parliament is able to guarantee fair and transparent data processing for the data subjects, in accordance with Articles 11 and 12 of the Regulation.

As regards the information listed in the Statement, the EDPS recommends that the Parliament:

- explains the procedures for exercising the right of access and the right of rectification (as examined in paragraphs 2 and 3 above) in conformity with Article 11(1)(e) and Article 12(1)(e) of the Regulation;
- specifies the time-limits for storing the data for the purpose of issuing trainee certificates and also the data relating to disabilities, in accordance with Article 11(1)(f)(ii) and Article 12(1)(f)(ii) of the Regulation.

5) Security

In view of the sensitive nature of data relating to disabilities, the EDPS recommends that the various staff handling the files of candidates with a disability for traineeships (the Administration Unit, the Equality and Diversity Unit, the Reasonable Accommodation Committee) should sign a confidentiality clause making them subject to an obligation of professional secrecy equivalent to that applicable to a health professional. This is an organisational measure within the meaning of Article 22 of the Regulation, designed to protect the confidentiality of the data processed and to prevent unauthorised access to those data.

In the light of the foregoing, the proposed processing operation does not appear to involve infringements of the provisions of the Regulation, provided that the above recommendations are taken into account. The EDPS requests the Parliament to send him, within three months of receipt of this letter, (i) the updated notification, with the adjustments relating to the time-limits for data storage, (ii) the updated Privacy Statement adopted and (iii) a model confidentiality clause showing that his recommendations have been implemented.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Secondo SABBIONI, Data Protection Officer