

CASE STUDIES FOR THE WORKSHOP ON COMPLAINTS

These cases are hypothetical and have been developed purely for pedagogical and awareness raising purposes.

Case-study 1

A. is a young mother of a baby girl aged almost 6 months, just back from maternity and parental leave. She would like to be dispensed from work two hours per day in order to breastfeed her daughter until she turns one. Subject to certain conditions, Conclusion 235/04 of the Heads of Administration provides for special part time arrangements for breast-feeding (see document attached).

A. files the following medical certificate with the medical service of her institution:

"[Baby Girl] requires the continuation of breastfeeding until 12 months".

The medical service reacts as follows:

"Please note that extension of breastfeeding is only granted for medical reasons duly mentioned by the doctor".

Then, A. files a second medical certificate:

"I recommend continuing breastfeeding of [Baby Girl] until 12 months to protect her health and promote her optimal psychomotor development".

The medical service refuses again to grant a special leave:

"Sorry but the medical reasons are not specified".

A. submits the following complaint to the DPO

"In order to have breast-feeding special arrangement the medical service asked to me to specify the pathology of my daughter in order to be breast feed after six months. I already provided two certificates that they refused because they want that the doctor specify he pathology of my daughter in order to accept the certificate. I am attaching the two certificates and the answer of the medical service. The institution has to accept the certificate of a doctor that certify the need of the baby to be breastfed without asking to provide the medical reason because the doctor is stating that the baby need to be breast-fed and this should be enough. I think that asking to specify the medical reason is violating my privacy as well as my daughter's."

You are the DPO, please consider:

- 1- What would be the potential breach of Regulation 45/2001?
- 2- Is data protection the primary issue at stake here?
- 3- How would you proceed in practice to deal with this case? What first step would you take?

Relevant documentation

HEADS OF ADMINISTRATION

CONCLUSION 235/04

Special part-time arrangements for breast-feeding

An official who returns from maternity leave and wishes to breastfeed her baby may apply to the relevant appointing authority to be dispensed from work for two hours per day to do so.

Permission may be granted until the end of the sixth month following the birth on presentation of a medical certificate confirming breastfeeding.

Following that period, permission will exceptionally be granted if the official provides a medical certificate that breastfeeding is necessary for medical reasons in the specific case of the baby. Permission may not be granted after the twelfth month following the birth.

Details of the permission, which should result in time being taken around lunchtime, will be determined by agreement between the official and the relevant authority.

(...)

Case-study 2

A. is a former employee of the European Institutions who is seeking access to his work email account. After he left the Institution he could not access the information anymore, however, he wants “to have access to all his personal data” held on his email account.

A. contacts his former employer with a request for access the data pursuant to article 13 Regulation 45/2001. Further, he requests specifically "communication in an intelligible form" (Art. 13 (c)) and a copy of the emails on CD.

The former employer denies access to the data and information about the data that might be on their server. Further, he argues that no personal data should be on the work email account.

A. contacts the responsible DPO of the institution and submits a complaint against the institution alleging a breach of Article 13 of the Regulation. Lately, he decided to leave the Institutions to pursue his career as guitar player.

You are the DPO, please consider:

- 1-Which steps would you take from a formal/procedural point of view?
- 2-Is the complaint admissible?
- 3-What is the personal data at stake?
- 4-Is the data subject entitled to access? If yes, to what?
- 5-Would any restriction based on Article 20 of the Regulation be of application?
- 6-How would the access take place in practice?

Case-study 3

A. is a citizen who contributed on-line to a public consultation organised by a European Institution (open to the public in general, not mandatory for any one). He submitted his comments on-line and he signed with his name, surname, and also included his address and date of birth.

After submitting it, he thought that some of his opinions were rather controversial and might be in conflict with other activities he performed. The contributions were not automatically uploaded to the Internet, but, after the deadline to submit contributions, the institution would publish everything on the Internet. He therefore contacted the functional mailbox mentioned on the website of the public consultation requesting the non-publication of his name, surname, address and date of birth on the Internet. He mentioned that his comments could be published in an anonymised way.

He did not received any answer from the data controller in the coming weeks so he decided to submit a complaint to the DPO two days before the end of the public consultation.

You are the DPO, please consider:

- 1-Which steps would you take?
- 2-Is the data subject entitled to request the deletion of his data?
- 3-What would you have done if the data would have already been published on the Internet when you received the complaint?