



PRESS RELEASE

Brussels, Thursday 24 March 2011

Data protection and transparency: EDPS updates guidance for good practice in the EU administration

On 24 March 2011, the European Data Protection Supervisor (EDPS) published a background paper on public access to documents containing personal data, to serve as guidance for EU institutions.

The paper explains the updated EDPS position on the matter following the ruling of the European Court of Justice in the *Bavarian Lager* case on the reconciliation of the fundamental rights to privacy and data protection with the fundamental right to public access to documents and transparency ^(*).

The EDPS paper provides further guidance to the EU institutions as to how to **ensure that both rights are equally respected** in their daily practice. As a matter of good practice, the EDPS recommends the EU institutions to follow a proactive approach by **making clear in advance** to the persons concerned **which personal data may be subject to public disclosure**.

Peter Hustinx, EDPS, says: "*Reconciling data protection, privacy and public access to documents is a challenge at EU as well as Member State level. Whilst the fundamental right to data protection must be respected by the institutions, care should be taken that data protection is not used as a pretext for not being transparent. This is detrimental to good governance and not in the interest of data protection either. The EU administration should therefore give the right example. Our analysis has shown that a proactive approach serves all interests best.*"

In case of public disclosure of personal data by the EU institutions, such a proactive approach would ensure that the persons concerned are well-informed and able to invoke their data protection rights. It would also be beneficial to the institutions as it would reduce future administrative burdens for those responsible for the data processing and those who deal with public access requests.

The EDPS encourages the EU administration to develop **clear internal policies**, creating a presumption of openness for certain personal data in specified cases. Such a presumption could be established, for example, for documents which contain personal data relating to a public figure acting in his or her public capacity, or data relating solely to the professional activities of the person concerned.

The EDPS will regularly update this paper in the light of developments in the Court's case law and based on the lessons learned from good practices in the EU institutions. The EDPS, however, still emphasises that a change of the rules on public access is needed and he encourages Council and Parliament to accelerate the pending revision process ^(**).

(*) ECJ 29 June 2010, *Bavarian Lager* / Commission, C-28/08 P.

(**) See [EDPS press release](#) of 30 June 2010