Access under Article 13 and its restriction under Article 20

DPO meeting
Alicante, 27 October 2016
Right to access (1)

Article 13

= access to personal data

Reg.1049/2001

= access to documents
Right to access (2)

Article 13

Right of access

The data subject shall have the right to obtain, without constraint, at any time within three months from the receipt of the request and free of charge from the controller:

(a) confirmation as to **whether or not** data related to him or her are being processed;

(b) information at least as to the **purposes** of the processing operation, the **categories of data** concerned, and the **recipients** or categories of recipients to whom the data are disclosed;

(c) communication in an intelligible form of **the data undergoing processing** and of any available information as to their **source**;

(d) knowledge of the logic involved in any automated decision process concerning him or her.
• **Format of the data:** *Usually* access is granted by providing paper copies or electronic copies. But that’s not obligatory (this is *not* Reg. 1049/2001)! Sometimes, need to adapt to the data subject, e.g. for blind person, who needs electronic copies.

• **Intelligible form:** The right to access is meant to enable data subjects to control the quality of their personal data and the lawfulness of the processing.
**Example: How to...**

<table>
<thead>
<tr>
<th>Date</th>
<th>Description of document / recipient(s)</th>
<th>Category of personal data</th>
<th>Personal data of data subject under processing by institution</th>
<th>Source of personal data</th>
</tr>
</thead>
<tbody>
<tr>
<td>DD/MM/YYYY</td>
<td>Email from DS (A) to X</td>
<td>Name, contact details, professional status + involvement in project XYZ,</td>
<td>A is official working for EU institution, involvement in project XYZ, allegation of fraud brought forward by A</td>
<td>Source: Data subject (A) him/herself</td>
</tr>
<tr>
<td>DD/MM/YYYY</td>
<td>Assessment of initial info, email X to Y</td>
<td>Name, contact details, assessment of credibility (whistle-blower)</td>
<td>A is official working for EU institution, involvement in project XYZ, allegation of fraud brought forward by A, no reason to doubt reliability of source</td>
<td>Data subject (A) him/herself, X</td>
</tr>
</tbody>
</table>

NB: The right to access is meant to enable data subjects to control the quality of their personal data and the lawfulness of the processing.
Right to access (5)

• Access granted **to the fullest extent**, as it helps data subjects to
  ✓ understand which of their data are processed;
  ✓ verify the quality of their own data;
  ✓ verify the lawfulness of the processing;
  ✓ exercise their other data protection rights.

• **Unless** an exemption under Article 20(1) applies:
  - narrow interpretation, on a case-by-case basis;
  - must not be restricted more broadly than necessary.
Article 20

Exemptions and restrictions

1. The Community institutions and bodies may restrict where such restriction constitutes a necessary measure to safeguard:
   (a) the prevention, investigation, detection and prosecution of criminal offences;
   (b) an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters;
   (c) the protection of the data subject or of the rights and freedoms of others;
   (d) the national security, public security or defence of the Member States;
   (e) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in (a) and (b).
OLAF investigations

- Providing information to the data subject while the investigation is still ongoing could jeopardise the success of the investigation, which is why a deferral of access might be justified under Article 20(1)(a).
- However, any deferral must be decided on a case-by-case basis. These provisions may not be used to deny access systematically.
- Information must to be supplied to the data subject as soon as exemptions no longer apply.
Article 20(3)

Article 20
Exemptions and restrictions

3. If a restriction provided for by paragraph 1 is imposed, the data subject shall be informed, in accordance with Community law, of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the European Data Protection Supervisor.

4. If a restriction provided for by paragraph 1 is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

5. Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect.
“…your personal data are covered by the exemptions and restrictions of Article 20(1), in particular as regards:
(1) the prevention, investigation, detection and prosecution of criminal offences;
(2) an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters;
(3) the protection of the data subject or of the rights and freedoms of others;
(4) the national security, public security or defence of the Member States.
Hence, I am not at liberty to transmit these data to you. You have the right to have recourse the EDPS.”
Article 20(3): How *not* to…

- The mere citation of an exception does not **inform** the data subject of the principal reasons on which the application of the restriction is based;
- The mere citation (or the ticking of a check-box) also does nothing to **document** that you have properly **examined** the application of the exception on a **case-by-case** basis.
“…your personal data are covered by an exemption and restriction under Article 20(1). Your personal data at stake consist of a witness statement regarding your behaviour in dealing with project XYZ, which is currently under investigation (ref. no. …).

Given the particular content of the statement, giving you access to these personal data would allow you to identify the witness, which, in turn, might jeopardize the ongoing investigation. In order to protect the ongoing investigation as well as the rights and freedoms of the witness, I have decided to deny your request for access under Article 20 (1)(a) + (c). You have the right to have recourse the EDPS….\n"
Case study: Access under Article 13 and its restriction under Article 20
Content of case file

For the purpose of this exercise, you have received the following extracts from the investigation file (in chronological order):

1. Email Mickey Mouse to NEUI;
2. Handwritten contact details Mickey Mouse;
3. Email Donald Duck to Huey Duck;
4. Internal NEUI decision to open investigation;
5. Letter to suspect by NEUI;
6. Letter to Mickey Mouse by NEUI;
7. Minutes of interview conducted by NEUI with Mickey Mouse.
Scene setter

You are DPO advising colleagues on Art. 13 request by MM: “all personal data” in “Duckburg” investigation (still ongoing). MM is whistle-blower.

**Option 1:**
- Simply copy extracts of the file and send them to MM as they are. Is that OK?
- If not, what parts would need to be blackened out? Why and on which legal basis?

**Option 2:** Table containing all elements Art. 13
What we thought you may have come across...

Please note that this is not a “solutions” section – examination under Art. 13 is case-by-case and this is a summarized and entirely fictional case study – with all the resulting limitations for generalising its outcome.
1. Email MM to NEUI

**DUCK Donald**

**To:** functional mailbox @ NEUI.europa.eu  
**Subject:** A case of fraud

Dear Nameless EU Institution,

My name is Mickey Mouse, I am employed at Yarvard University as scientist contributing to project “Duckburg”. As you will know, this project is financed by you, the Nameless EU Institution (NEUI).

In this context, I would like to inform you that Mr Gyro Gearloose, fellow scientist contributing to project “Duckburg”, is constantly committing fraud regarding the financial aspects of his contribution to the project. I have always had suspicions (I won't go into detail here), but the other day, I overheard a conversation he had in the cafeteria with Professor Ludwig Von Drake, in which he bragged about his fraudulent activity.

You need to do something about the matter!

Mickey Mouse

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**Email of DD/MM/YYYY from DS (MM) to X**

**Name, contact details, professional status + involvement in project Duckburg**

**MM = employee Yarvard, involved in project Duckburg, allegation of fraud brought forward by A**

**Source:** Data subject (MM) himself/herself

+ purpose: investigation (true for all elements investigation file)

because it’s MM asking, revealing this vis-à-vis MM cannot harm investigation
2. Handwritten contacts MM

Contacts:

Mickey House
Yale Medical Univ.
New Haven

mickey.mouse@yalemed.yale.edu
3. Email DD to HD

To:  
Cc: @NEU.leuropa.eu
Subject: Whistleblower

Hi

FYI / follow-up: We have received an email from Mickey Mouse, scientist at Yarvard University, alleging fraud in the context of our "Duckburg" project. You'll find the email in the case folder on your desk. I am putting [redacted] and [redacted] in cc for info.

I know the guy from my work on project "Duckburg" and in terms of credibility, I would take such allegations coming from him very seriously.

His contacts are Mickey Mouse, Yarvard University, Duckburg; email: mickey.mouse@yarvard.university.

Best regards,
4. Internal NEUI decision

MM being the whistle-blower, this will most likely not harm the investigation (but depends...)

She will most likely be identifiable anyway (Decision by President; who is President NEUI is publically available info)
5. Letter to GG by NEUI

Great Town, date

Investigation XYX regarding project “Duckburg”

This is to inform you that the Nameless EU Institution (NEUI) has decided to open investigations regarding project “Duckburg”, in particular with a view to clarifying allegations of financial wrongdoings that were brought to our attention by a whistleblower.

Signed

Brianna MacBridge
President NEUI

Annex: Privacy Statement for personal data MM regarding investigations by NEUI

cc:
6. Letter to MM by NEUI

Mr Mickey Mouse
Yarvard University
Duckburg

Great Town, date

Investigation XYX regarding project “Duckburg”

This is to inform you that following your email, the Nameless EU Institution (NEUI) has decided to open investigations regarding project “Duckburg”, in particular with a view to clarify your allegations of financial wrongdoings by Gyro Gearloose.

As witness, NEUI will invite you for an interview...

Signed

[Signature]

President NEUI

Annex: Privacy Statement for witnesses regarding investigations by NEUI

cc:
Donald Duck
Huey Duck
Dewey Duck
Louie Duck

MM knows anyway... - ?!
7. Minutes of interview MM

Following allegations made by Mickey Mouse, the Nameless EU Institution (NEUI) decided to open investigations regarding project “Duckburg”, in particular with a view to clarify allegations of financial wrongdoings by Gyro Gearloose.

MM claims to have heard Gyro Gearloose “brag about” committing fraud vis-à-vis Professor Ludwig Von Drake. During his interview, MM confirmed these allegations initially made by email.

Does not à priori exclude communication of his personal data to MM (but only that!)

This is not MM’s personal data – and might harm ongoing investigation...
Thank you for your cooperation and contributions!