

From: European Data Protection Supervisor
To: [REDACTED]
CC: [REDACTED]
Sent at: 10/02/21 10:28:36
Subject: Our ref.: 2020-1097 - D(2021) 0281

Dear Sir,

Please find attached a letter signed electronically by [REDACTED] for the above mentioned subject.

Kind regards,

EDPS Secretariat



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European Data Protection Supervisor
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[REDACTED]
[REDACTED] UNIT SUPERVISION AND ENFORCEMENT

[REDACTED]
[REDACTED]

Brussels, 10 February 2021

[REDACTED] D(2021) 0281 C 2020-1097
Please use edps@edps.europa.eu for all
correspondence

CONFIDENTIAL

Subject: Complaint to the EDPS against the European Anti-Fraud Office regarding your request for access to your personal data (Case 2020-1097)

Dear [REDACTED],

We are writing to you with reference to the complaint that you submitted to the European Data Protection Supervisor (“EDPS”) on 19 November 2020, under Article 63(1) of Regulation (EU) 2018/1725¹ (“the Regulation”) against the European Anti-Fraud Office (“OLAF”) (Case 2020-1097). Your complaint concerned the compliance with the data protection legal framework of OLAF’s reply of 11 November 2020 to your request for access to your personal data.

On 21 October 2020, you requested access to all your personal data “*processed as part of, or in connection with, OLAF’s investigation [REDACTED]*”, in which OLAF informed you that you are a person concerned. OLAF replied to your request for access on 11 November 2020.

In your complaint, you state that OLAF failed to give you access to all your personal data in their reply, and that they should have given you “*clear, unequivocal, comprehensive and complete information*” in reply to your request for access. You state that you were not able to understand OLAF’s allegations against you from the information received and therefore could not effectively defend yourself against them. You therefore asked to receive full copies of the documents in which your personal data appear, even if personal data about others must be redacted.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, *OJL 295, 21.11.2018, p. 39.*

We have analysed OLAF's reply to your request of access and found that all relevant information referred to in Article 17(1) (a) to (h) of the Regulation are included in the reply itself or the attached Privacy Notice. Concerning your personal data, OLAF rightly explained that *"Article 17 of Regulation (EU) 2018/1725 does not establish a right of access to any document or file in which personal data are listed or used, thus OLAF does not provide access to documents or to information, other than your own personal data, to which you are not entitled and/or which OLAF has a duty to protect"*. There is no indication that OLAF is processing more data than those that are included in their reply to your request - except those covered by the restriction as explained below. The EDPS notes that you have also not provided any evidence suggesting otherwise.

Furthermore, we verified OLAF's use of restriction of your right of access under Article 25(1)(h) of the Regulation, which they informed you of as well as the main reasons for using such restrictions. In this regard, we checked that OLAF duly documented the reasons for applying such a restriction, in line with Article 3(3) of Commission Decision 2018/1962² that stipulates that *"Where the Office restricts, wholly or partly, the provision of information to the data subjects (...), it shall record the reasons for the restriction, including an assessment of the necessity and proportionality of the restriction"*. We asked OLAF for the record in question and found that OLAF complied with their obligation to document the restriction.

In view of the above, we conclude that there has been no breach of Article 17 of the Regulation.

You may ask for a review by the EDPS of the present Decision within one month of receiving this letter. The request for revision should be lodged with the EDPS in writing and contain new factual elements or legal arguments which so far have not been taken into account by the EDPS.

You may also bring an action for annulment against this Decision before the Court of Justice of the European Union, within two months³ from the adoption of the present Decision and according to the conditions laid down in Article 263 TFEU.

Yours sincerely,

(e-signed)

[Redacted signature]

Cc:

[Redacted recipient list]

² Commission Decision of 11 December 2018 laying down internal rules concerning the processing of personal data by the European Anti-Fraud Office (OLAF) in relation to the provision of information to data subjects and the restriction of certain of their rights in accordance with Article 25 of Regulation (EU) 2018/1725 of the European Parliament and of the Council, OJ L 315, 12.12.2018, p. 41.

³ Please note that any request for revision of the present Decision lodged with the EDPS does not interrupt this deadline.

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, please be informed that your personal data will be processed by the EDPS, where proportionate and necessary, for the purpose of investigating your complaint. The legal basis for this processing operation is Article 57(1)(e) of Regulation (EU) 2018/1725. The data processed will have been submitted by you, or from other sources during the inquiry of your complaint, and this may include sensitive data. Your data will only be transferred to other EU institutions and bodies or to third parties when it is necessary to ensure the appropriate investigation or follow up of your complaint. Your data will be stored by the EDPS in electronic and paper files for up to ten years (five years for prima facie inadmissible complaints) after the case closure, unless legal proceedings require us to keep them for a longer period. You have the right to access your personal data held by the EDPS and to obtain the rectification thereof, if necessary. Any such request should be addressed to the EDPS at edps@edps.europa.eu. Your data might be transferred to other EU institutions and bodies or to any third parties only where necessary to ensure the appropriate handling of your request. You may also contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data. You can find the full version of our data protection notice on complaint handling at: https://edps.europa.eu/data-protection/our-role-supervisor/complaints-handling-data-protection-notice_en.