



Decision of the European Data Protection Supervisor in a complaint submitted by [REDACTED] against the [REDACTED] Medical Service (case [REDACTED])

The EDPS,

Having regard to Article 16 TFEU, Article 8 of the Charter of Fundamental Rights of the EU, and Regulation (EC) 45/2001 (the Regulation)¹,

Has issued the following decision:

**PART I
Proceedings**

The complainant submitted a complaint against the [REDACTED] Medical Service (the Medical Service) to the EDPS on 12 March 2018.

The EDPS requested written comments from the controller on the complainant's allegations via the data protection officer (DPO) on 16 October and 15 November 2018, as well as on 5 April and 24 May 2019².

The (DPO) of the [REDACTED] and the controller have provided information to the EDPS at several occasions.

The investigation of the complaint was suspended on 16 November 2018, since the complainant launched an appeal under Article 90(2) of the Staff Regulations on 18 October 2018. On 14 February 2019, the complainant informed the EDPS that the Appointing Authority had concluded that his complaint was inadmissible for being time-barred. Therefore, the EDPS pursued with the investigation of this case.

The complainant was asked to comment on the controller's replies and provided the EDPS with that information on 22 and 23 May, as well as on 13 August 2019.

¹ OJ L 8 of 12.01.2001. On 12 December 2018, Regulation (EU) 2018/1725 replaced Regulation (EC) 45/2001, but since the complainant's request was submitted prior to entry into force of the new Regulation, Regulation (EC) 45/2001 is applicable.

² In parallel with the complaint, the complainant was in contact with the data protection officer DPO. The EDPS was in copy of this correspondence and therefore only intervened when it seemed necessary.

PART II

The facts

On 22 January 2018, the complainant requested access to his medical file from [REDACTED]

On 29 January 2018, the complainant was given access on the spot to a part of his file. He subsequently requested access to more information than he had been given. Due to technical issues – the medical software [REDACTED] was not available in a printable version at the time of the request – the complainant was not immediately given a paper copy of his medical file.

On 16 April 2018, the Medical Service provided the complainant with a paper copy of his medical file, and on 20 April 2018, the doctor appointed by him received the psychiatrist/psychologist reports in accordance with Conclusion 221/04³, by registered mail with acknowledge of receipt.

The complainant sent an email to the assistant data protection coordinator (DPC) on 30 May 2018, stating that he considered his request for access to his medical file as “successfully closed”. However he later realised that there were still some documents missing.

Following the EDPS’ intervention, the Medical Service has provided the complainant with two additional documents on 2 August 2019.

On 24 September 2019, the complainant had an appointment at the Medical Service [REDACTED] where he was given a printed version of more documents.

Allegations of the complainant

The complainant alleges that the Medical Service did not allow him to exercise his right of access in violation of Article 13 of the Regulation. The complainant adds that certain documents were given to him with long delays and that there are documents in his medical file from 2002 and 2003, which still have not been disclosed to him.

Comments of the data controller

The Medical Service acknowledged that due to technical problems [REDACTED], it had not been possible to print the complainant’s medical file. However, the Medical Service explained that this had been an isolated issue and that the documents had subsequently been sent to the complainant (received on 16 April 2019). However, documents regarding psychiatric/psychological reports had only been sent to the doctor appointed by him (received on 20 April 2019).

When handling the complainant’s request, the Medical Service realised that the digitalisation of the medical certificates regarding the years 2002 and 2003 had not been correctly done [REDACTED]. Therefore, there was a complete blank for those years. Nonetheless, since the complainant provided the specific date of the medical certificate in question, it was possible for the Medical Service to retrieve two documents from the paper archives.

³ Conclusion 221/04 du Collège des Chefs d’Administration, 19.02.2004.

The Medical Service has confirmed that [REDACTED] has meanwhile digitalised [REDACTED] all medical certificates regarding the years 2002 and 2003.

PART III

Legal analysis

Admissibility of the complaint

The complainant is a staff member of an EU institution. As such, he may lodge a complaint under Article 33 of the Regulation alleging a breach of the provisions of the Regulation. The complaint is therefore admissible.

Alleged violation of Article 13 of the Regulation - right of access by the data subject

The right of access to personal data under Article 13 of the Regulation stipulates that data subjects shall have the right to obtain without constraint from the controller and within three months, communication in an intelligible form of the data undergoing processing and any available information as to their source.

Furthermore, Article 26a of the Staff Regulations provides that staff members have the right to acquaint themselves with their medical files, in accordance with arrangements laid down by the institutions.

Pursuant to Conclusion 221/04, staff members shall have the widest possible access to their medical files under certain conditions:

- the file must be consulted on the premises of the medical service of the institution, in the presence of a person designated by the medical service;
- staff members will be able to have access to psychiatric/psychological reports concerning them, through the intermediary of a doctor appointed by them;
- staff members do not have access to the personal notes of doctors where, under Article 20(1)(c) of the Regulation and on the basis of a case-by-case examination, such restriction is necessary to safeguard the protection of the data subject or of the rights and freedoms of others.

On 22 January 2018, the complainant requested access to the personal data in his medical file, according to Article 13 of the Regulation. He was given partial access to his personal data [REDACTED] at the Medical Service on 29 January 2018.

Following his on-the-spot consultation, the complainant requested to have access to additional personal information processed by the Medical Service. The complainant requested to exercise his right of access for the first time in January 2018 and the last documents that he received were given to him in September 2019, i.e. 20 months after his initial request. In addition, the complainant still alleges that he has not been given access to all the documents in his medical file.

As mentioned above, some of the documents were provided to the complainant more than three months after his request, not respecting the deadline laid down in Article 13 of the Regulation. According to the Medical Service, those delays were due to a technical problem with the digitalisation. However, the EDPS believes that the Medical Service did not adequately check

the digitalisation of the files was complete and as a result they failed to provide the information to the complainant within three months.

When investigating this complaint, the EDPS found that before 2009 the medical files were not kept in one single repository. Therefore, if a data subject worked in different locations and did medical consultations or exams in those different locations (e.g. the Medical Service [REDACTED]), the information would only be locally stored.

This was exactly the case of the complainant. The EDPS believes that the fragmentation of the complainant's medical file contributed to the delays of the Medical Service when granting him his right of access to personal data⁴.

The EDPS considers that the Medical Service did not handle the complainant's case in accordance with the rules on the right of access. The procedure was lengthy and the Medical Service did not show enough diligence in providing access to the requested documents. The fragmentation of the medical file and the fact that two sorts of technical problems occurred (printing issue [REDACTED] and insufficient digitalisation of the medical data between 2002 and 2003⁵) do not justify such a long delay in providing the complainant with access to his personal data.

According to the information we have seen, the Medical Service failed to guarantee the right of access to the complainant in a timely manner, in violation of Article 13 of the Regulation. Considering that the Medical Service handles very sensitive files, the Medical Service should put in place appropriate technical and organisational measures to ensure compliance with the applicable rules.

Please be reminded that the risks of failing to provide the right of access to data subjects have an impact on three levels: (i) risks to the data subjects, (ii) risks to the controller and (iii) broader risks to society/community. The fact that the information is not timely given to the data subject may give rise to discrimination, hinder his right to defence, etc. Regarding the risks to the controller, the possibility of court actions from data subjects, as well as the use of EDPS corrective powers should be considered. At a general level, the staff members' lack of trust on the Medical Service may have an impact on its activities, damaging the reputation of the service.

PART IV

Conclusion

In light of the above, the EDPS concludes that there was a violation of Article 13 of the Regulation by the Medical Service since the complainant was not given the right of access to his personal data in a timely manner.

Therefore, the EDPS **reprimands the Medical Service for this breach, under Article 58(2)(b) of the Regulation (EU) 2018/1725⁶.**

⁴ In addition, had those medical consultations or exams been carried out by private doctors and the data subject had not send the information to the Medical Service, there would have been no record of those medical documents [REDACTED]

⁵ The EDPS also confirmed that in 2009 all the medical files started to be digitalised. However, as the Medical Service recognised, the years of 2002 and 2003 were not duly digitalised.

⁶ OJ L 295, 21.11.2018.

Furthermore, the EDPS will provide the Medical Service with recommendations on how to improve the content of the data protection notice, so that all staff concerned are adequately informed about their data processed in the medical file and [REDACTED]. In this way, data subjects can better exercise their right of information and access.

Having into consideration all the above, the EDPS has decided to close the present case.

04 MAR 2020

Done at Brussels,



Wojciech Rafał WIEWIÓROWSKI