



DELPHINE HAROU
SUPERVISION AND ENFORCEMENT UNIT

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Brussels,
[REDACTED] / D(2019) 1216 C 2019-0319
Please use edps@edps.europa.eu for all
correspondence

CONFIDENTIAL

Subject: Your complaint of 23 March 2019 C-2019-0319

Dear [REDACTED],

We hereby acknowledge receipt of your complaint (Case number 2019-0319) against the European Union Agency for Fundamental Rights (FRA) of 23 March 2019 and apologise for the delay in the handling. Your complaint concerns the alleged non-respect of Regulation (EC) No 2018/1725 (the Regulation) by FRA in the context of a report sent by the Director of FRA to the disciplinary board following an administrative inquiry ([REDACTED]) conducted against you. You allege in your complaint that the processing of your personal data violates Article 4 and 5 of the Regulation.

In particular, you put forward that on page 4 of the abovementioned report, there is a quote from the judgment of the Civil Service Tribunal in [REDACTED], which you claim is misleading as that section of the judgment summarises a decision which was annulled by the Court. You state that by quoting the reasoning of a termination decision which was annulled by order of the Court in a report to the disciplinary board, FRA is actually violating the judgment and your presumption of innocence which FRA was “obliged to restore”.

You also claim that the Court granted you anonymity and that revealing your identity behind the judgment [REDACTED] constitutes processing of personal data. You state that this processing of your personal data by FRA violates “Article 7/6” of the implementing rules of FRA EB Decision 2013/01 on conduct of administrative inquiries and disciplinary procedures as the reasoning of an annulled decision is not “necessary and proportionate data to the purpose of the investigation”.

You therefore consider that the processing of your personal data as described above violates both Articles 4 and 5(1)(a) of the Regulation.

Please note that the EDPS has the task of monitoring the application of the Regulation to all processing operations carried out by institutions and bodies of the European Union (see Article 1(3) of the Regulation), subject to the conditions laid down governing the scope of his competence.

Whilst your complaint alleges a violation of your rights as a data subject in the context of the follow-up to the administrative inquiry conducted FRA, the EDPS considers that your main allegations relate to maladministration in that context.

The first point of your complaint (the alleged misleading quote of the judgement of [REDACTED] in the report sent to the disciplinary board, and the alleged violation of your presumption of innocence by quoting the reasoning of a termination decision which was annulled by the Court), concerns the conduct of the administrative inquiry/disciplinary proceedings and does not fall within the scope of the Regulation. Therefore, the EDPS has no competence to investigate it.

The resulting processing of personal data (revealing your identity by quoting the judgement in the report sent to the disciplinary board), in this case may indeed not have complied with the Regulation. However, any such infringement of the Regulation when processing your personal data would be purely incidental in the light of the actually alleged maladministration. In the light of the EDPS' task outlined above, he cannot investigate or invalidate the procedure as such.

Should you wish to pursue your complaint further, we suggest you turn to the European Ombudsman (see <https://www.ombudsman.europa.eu/en/home> for further information).

For the above reasons, your complaint (Case 2019-0319) has been declared inadmissible.

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 bring an action for annulment against this decision before the Court of Justice of the European Union, within two months¹ from the adoption of the present Decision and according to the conditions laid down in Article 263 TFEU.

Yours sincerely,

[REDACTED]
Delphine Huron
Head of Unit

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

¹ Please note that any request for revision of the present Decision lodged with the EDPS does not interrupt this deadline.

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.