

From: European Data Protection Supervisor
To: 'pilargarces@hotmail.com' <pilargarces@hotmail.com>
CC: 'Angela.Bardenhewer-Rating@f4e.europa.eu'
<Angela.Bardenhewer-Rating@f4e.europa.eu>
Sent at: 03/06/20 17:40:32
Subject: Our ref.: 2019-0374 - D 1364

Dear Madam,

Please find attached a letter and its annex signed electronically by Mr WIEWIÓROWSKI for the above mentioned subject.

Kind regards,

EDPS Secretariat



| Tel. (+32) 228 31900 | Fax +32(0)22831950 |
Email edps@edps.europa.eu

European Data Protection Supervisor

Postal address: Rue Wiertz 60, B-1047 Brussels
Office address: Rue Montoyer 30, B-1000 Brussels
[@EU_EDPS](https://twitter.com/EU_EDPS) www.edps.europa.eu

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WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

Ms Pilar GARCÉS
pilargarces@hotmail.com

Brussels, 3rd June 2020

WW/GC/vm/ D(2020) 1364 C 2019-0374
Please use edps@edps.europa.eu for all
correspondence

**Subject: Your complaint submitted to the European Data Protection Supervisor
(Case 2019-0374)**

Dear Ms Garcés,

We are writing to you with reference to the complaint you submitted to the European Data Protection Supervisor (the EDPS) on 7 April 2019, which concerns the right of access and the right to obtain the blocking of data.

Please find attached the EDPS decision with regard to the complaint against the Fusion for Energy (F4E) referred to in the subject line (Case 2019-0374).

Both you and F4E 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.

Both you and F4E 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,

[signed]

Wojciech Rafał WIEWIÓROWSKI

Cc: Angela BARDENHEWER-RATING, Data Protection Officer of F4E

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.

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

Decision of the European Data Protection Supervisor in complaint case 2019-0374 submitted by Ms Pilar Garcés against Fusion For Energy

The EDPS,

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

Has issued the following decision:

PART I Proceedings

On 7 April 2019, the EDPS received a complaint under Article 33 of Regulation (EC) 45/2001 (the Regulation) from Ms Pilar Garcés (the complainant) against Fusion For Energy (F4E) – Case 2019-0374.

The EDPS repeatedly invited the complainant to fill in the online complaints form to better structure the complaint, but she decided not to do so.²

The EDPS requested written comments from the controller on the complainant's allegations on 21 January 2020. The controller replied on 2 March 2020.

The complainant was asked to comment on the controller's reply, but has not provided any comments to the EDPS within the set deadline.

PART II The facts

1. Allegations of the complainant

The complainant alleges that on 24 October 2018, she requested from F4E a '... list of documents, a copy of them and a list of all accesses to [her] personal information, with the indication of the personal information to which access was given and the individuals that had access to [her] data, as well as the reason justifying it'.

The complainant added that she has not yet been given access to her requested personal data.

¹ OJ L 8 of 12.01.2001. In the meantime, the new Regulation has entered into force: 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) 45/2001 and Decision No 1247/2002/EC, OJ L 295 of 21.11.2018. Nevertheless, case 2019-0374 was examined in the light of Regulation (EC) 45/2001, which was applicable when the facts occurred.

² The complainant was slow to react on these invitations and the EDPS therefore also asked her whether she wanted to pursue her complaint, which she confirmed.

In addition, the complainant also expressed concerns that some sensitive information was sent to her via email, which she does not consider a safe means of communication.

2. Comments of the data controller

In their reply, the controller stated that the complainant's allegations were incorrect, since they had given the complainant access to her personal data.

In particular, the controller explained that:

‘- On 30 January 2019, DPO informed the complainant on all aspects of her request and in particular on the different Human Resources (HR) fields where F4E was processing her personal data (...). In later emails of 12/02/2019, the DPO completed the information related to information and Communication Technologies Unit (ICT) and Corporate Service Unit (CSU) respectively.

- On 5/04/2019 the complainant received her personal data from the CSU. The HR Unit sent her the personal data previously announced in the above email of 30 January 2019, with emails dated from 11/04/2019, and 13/06/2019 (2 emails that same day).

On 7 April 2019, the DPO (...):

- summarised the situation regarding the personal data she had received (from CSU) and the possibility she had been given to receive her medical data directly from the F4E Medical Service. The Medical Service had sent the complainant all her personal medical data back in 2014 and was no longer in the possession of any further medical data related to her (...).
- confirmed that no ICT related data were available anymore, as they had been deleted after she left and according to the retention period.
- regarding the HR personal data, the DPO explained the categories of data she had already received and announced that further personal data will be sent to her directly from the responsible HR Unit.’

The controller added that ‘[o]n 11 April 2019, the DPO had also replied to her alleged “breach of security”, and explained the technical security measures F4E used to provide her with personal data in a secure and confidential way (...). Furthermore, the complainant did not react to the DPO's question to know whether she was still willing to receive the missing personal data processed by F4E (...) Therefore and complying with the data protection access requirements, the HR Unit, in its two e-mails of 13/06/2019 sent her the remaining personal data in an encrypted form and password protected’.

PART III

Legal analysis

1. Admissibility of the complaint

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

2. 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.

On 24 October 2018, the complainant requested F4E to have access to her personal data, including to her medical file, processed by them.

F4E has provided the complainant with access to her personal data in several instances via the DPO and the HR Unit, as proven by the emails sent on 31 October 2018, 19 and 26 November 2018, 30 January 2019, 12 and 26 February 2019, 2 and 7 April 2019, and 13 June 2019.³

However, F4E sent the last email to the complainant with her personal data almost eight months after the initial request, thus exceeding the initial three months deadline.

The EDPS considers that F4E promptly replied in part to the complainant's access request, but that the delay in providing full access exceeded by almost five months the legal deadline stated in Article 13 of the Regulation. Even when taking into account the complexity of the request, involving the coordination of several F4E units, the EDPS believes that the final reply to the complainant should not have been sent almost five months after the established three-month deadline⁴. The controller should at least have informed the complainant regularly of any potential delay in complying with her request.

The EDPS takes note of the fact that the controller repeatedly requested clarifications from the complainant on her access request and that complainant showed a certain lack of cooperation. She therefore contributed to the delay. However, the complainant's request dated 24 October 2018, and the subsequent interaction with the DPO, show that the controller had the necessary elements to handle the complainant's access request to her personal data in a more timely manner.

In light of the above, the EDPS considers that the complainant has not been given timely access to her personal data in accordance with Article 13 of the Regulation, since the last personal data were sent to her more than three months after her initial request.

³ Moreover, the complainant had already requested to have access to her personal data in 2014 and F4E had provided her with access to her personal data, including health data (according to a letter dated of 27 January 2014).

⁴ As a term of reference, Article 14(3) of Regulation (EU) 2018/1725 establishes three months as a maximum deadline to provide the right of access, one month being the standard. As stated above this regulation is not applicable in this case, but it illustrates the short deadlines envisaged by the legislator in both legal documents regarding the provision of rights to data subjects.

3. Alleged violation of Article 22 of the Regulation - security of the data processing

Article 22 of the Regulation regarding the security of the personal data processing, states that, having regard to the state of the art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

The EDPS notes that the HR Unit sent emails to the complainant on 13 June 2019 in a zip file protected by password. The password was then sent via text message. Based on the available information, this seems to be appropriate given the requirements of Article 22 of the Regulation.

The EDPS also notes that the complainant made at least some of her access requests by email and could therefore reasonably expect to receive a reply by the same means of communication. Furthermore, she never explicitly requested to receive the information by other means, such as by postal mail.

However, F4E should ensure that they comply with the requirements of security laid down in Article 33 of Regulation (EU) 2018/1725⁵ when providing access to data subjects.

PART IV Conclusion

In light of the above, the EDPS concludes that there was a violation of Article 13 of the Regulation by the F4E, since the complainant was not given timely access to her personal data within three months from the date of her initial request.

Therefore, the **EDPS admonishes F4E for this breach, under Article 47(1)(d) of the Regulation and orders F4E to implement measures within three months to ensure compliance with the deadlines set out in Article 14(3) of Regulation (EU) 2018/1725, under Article 58(2)(e) of this Regulation.**

Regarding the alleged violation of Article 22 of the Regulation, the EDPS found no breach, since the complainant's personal data were transmitted to her with appropriate security measures.

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

Done at Brussels, 3rd June 2020

[signed]

Wojciech Rafał WIEWIÓROWSKI

⁵ Provision replacing Article 22 of Regulation (EC) 45/2001.