



EUROPEAN DATA PROTECTION SUPERVISOR

Transparency v. privacy (and personal data protection)

*Access to and Reuse of
EU Legal Information*

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Legal framework

Article 7 CFREU

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8 CFREU

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Definition of personal data in CJEU case law

- Information published in a press release which allowed the data subject to be easily identifiable under the circumstances, even though she was not named (*Nikolau*, §222)
- Information about which expert is the author of each comment made on a draft document (the fact that both the comments and the identities of experts were published before does not change that). Professional context does not change the classification; **the concepts of personal data and data relating to private life must not be confused** (*ClientEarth/PAN Europe*, §§29-33)

Legal framework for EU institutions

- Regulation (EC) No 45/2001 on data protection
 - Data quality (Article 4): purpose limitation; retention not longer than necessary for the purpose
 - Lawfulness of processing (Article 5): a task carried out in the public interest; legal obligation...
 - Transfers to recipients subject to general data protection law (Article 8): necessity test + no prejudice to legitimate interests
- Regulation (EC) No 1049/2001 on public access to official documents
 - “Absolute” exception in Article 4(1)(b): privacy and integrity of the individual

The balancing act

- **Bavarian Lager (C-28/08 P): both regulations must be applied simultaneously and in full**
 - Conditions for disclosure of personal data:
 - (1) express and legitimate justification, convincing argument to demonstrate necessity;
 - (2) the institution must determine whether there is reason to assume that data subjects legitimate interests might be prejudiced; if there is no such reason, the transfer must be made;
 - (3) if there is a reason to assume that legitimate interests of the individual concerned might be prejudiced, the institution must weigh up the various competing interests in order to decide on the request for access.
- **Schecke (Joined Cases C-92/09 and C-93/09): "in general, no automatic priority can be conferred on the objective of transparency over the right to protection of personal data" (§ 85)**

The balancing act (2)

- **Google Spain (C-131/12)**

- **publication on the internet**, search engines add a new dimension: interconnection, profiling...
- economic interests (of s. e.) cannot justify the potential seriousness of the interference with data subjects' rights
- data subjects' rights generally override those of internet users, but the balance may shift depending on the nature of information, role of the individual in public life etc.

- **Dennekamp II (T-115/13):**

- high threshold for necessity test: disclosure must be the most appropriate of the possible measures and proportionate; express and legitimate reasons needed (e.g. conflict of interest)

Thank you for your attention!

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