

Secretariat of the European Data Protection Board (EDPB Secretariat)
Specific Privacy Statement (SPS)

**Redress mechanism for national security purposes –
Recital 177 of the EU-U.S. Data Privacy Framework (“DPF”)¹**

Last updated: March 2026

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1. Introduction

This privacy statement explains how the Secretariat of the European Data Protection Board (“**EDPB Secretariat**”/“**we**”/“**us**”/“**our**”) processes your personal data for the purpose of the redress mechanism for national security purposes. Under this mechanism, the EDPB Secretariat facilitates the communication between the competent EU/EEA Data Protection Authorities (“**DPAs**”) and the U.S. authorities by acting as an intermediary in their exchanges of information.

More specifically, Recitals 176–194 DPF provide that, in line with the U.S. Executive Order 14086, individuals from the EU/EEA can submit a complaint on alleged violations of U.S. law with respect to their personal data collected and used by U.S. authorities competent for national security. According to this redress mechanism, data subjects submit such complaints to their competent DPA in the EU/EEA. As stipulated in Recital 177 DPF, the DPAs send such complaints to the EDPB Secretariat, which transmits them to the competent U.S. authorities. In case a data subject lodges a

¹ Commission Implementing Decision EU 2023/1795 of 10 July 2023 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate level of protection of personal data under the EU-US Data Privacy Framework (notified under document C(2023)4745).

complaint, this entails transmitting it to the U.S. Office of the Director of National Intelligence's Civil Liberties Privacy Officer ("**ODNI CLPO**"). In case a data subject lodges, via its competent DPA, an appeal against the ODNI CLPO's determinations, we will forward this appeal to the U.S. Department of Justice's Office of Privacy and Civil Liberties (the "**OPCL**"), which further transmits it to the U.S. Data Protection Review Court (the "**DPRC**"), the latter being responsible for treating it.

We are also responsible for transmitting to the competent DPA any reply received from the ODNI CLPO or the DPRC (in the latter case, received via the OPCL). Further, we transmit to the competent DPA any communication we receive from the U.S. Department of Commerce (the "**DoC**") which identifies declassified information pertaining to the review of a complaint by the ODNI CLPO or the DPRC, as appropriate, which may be available to the data subjects under applicable U.S. law².

2. Who is responsible for the processing of your personal data and under which legal grounds are they processed?

The EDPB Secretariat is the controller for the processing of personal data for the purposes of the redress mechanism for national security purposes, as this is provided for in Recital 177 of the DPF and as further specified in the EDPB Rules of Procedure on the DPF redress mechanism for national security purposes³.

The legal basis for the processing of personal data is Article 5(1)(a) and Article 5(2) ("Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body") of Regulation (EU) 2018/1725⁴. In particular, as explained above, this task is provided for in Recital 177 DPF and has been further specified in the EDPB Rules of Procedure on the DPF redress mechanism for national security purposes. The task in question is the responsibility of the EDPB Secretariat. For the processing of any special categories of personal data which you might refer to in your complaint, we rely on Article 10(2)(g) Regulation (EU) 2018/1725.

We may also be required to process your personal data to comply with a legal obligation to which we are subject under Article 5(1)(b) and (2) of Regulation (EU) 2018/1725. This could be the case, for instance, when a relevant EU body such as the European Court of Auditors, carries out an audit or investigation or for the purposes of

² More detailed information on the redress mechanism under the DPF for national security purposes can be found at: https://www.edpb.europa.eu/our-work-tools/our-documents/other-guidance/information-note-data-protection-framework-redress_en, and a template complaint form is available at: https://www.edpb.europa.eu/our-work-tools/our-documents/other-guidance/eu-us-data-privacy-framework-template-complaint-form_pt.

³ EDPB Rules of Procedure on the DPF redress mechanism for national security purposes³ of 17 April 2024, available at: https://www.edpb.europa.eu/our-work-tools/our-documents/other-guidance/rules-procedure-data-protection-framework-redress_pt

⁴ 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.

requests for access to documents under Regulation (EC) 1049/2001⁵. Where any special categories of data that you have shared are processed, depending on the purpose, Article 10(2)(f) and (g) Regulation (EU) 2018/1725 may apply.

3. What personal data do we collect and for what purposes?

3.1 Processed personal data

For the purpose of the redress mechanism, we process personal data of:

- a) Individuals submitting their complaint or appeal;
- b) DPAs' staff members responsible for handling files of complaints and appeals;
- c) U.S. authorities' staff members responsible for handling said complaints, appeals and transmitting information on declassification of files;
- d) EDPB Secretariat staff members in charge of channelling said complaints, appeals and information on declassification of files; and
- e) any other person mentioned in the documents that we have to transmit in the context of the redress mechanism for national security purposes.

For personal data relating to a complainant or appellant, this includes:

- Names;
- Place and date of birth;
- Title (where relevant);
- Contact details such as email address, telephone number and residential address;
- Signature;
- Any information relating to the complaint or appeal, including any special categories of personal data that as a complainant you might include in your complaint; and
- The replies of the competent U.S. authorities in relation to the complaint, the appeal (where relevant) or the declassification of a case (where relevant).

For personal data of competent DPAs' and U.S. authorities' staff members, this includes:

- Names and contact details; and
- Opinions expressed in relation to the submitted complaints or appeals.

For personal data of EDPB Secretariat staff members, this includes:

- Names and contact details; and
- Opinions expressed in relation to the verification checks that the EDPB Secretariat has to carry out.

⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

For other individuals referred to in (e), this includes any personal data of other individuals than the above which might be included in the documents that we have to transmit in the context of the redress mechanism for national security purposes.

3.2 Purposes of the processing

According to Recital 177 DPF, as further specified in the EDPB Rules of Procedure on the DPF redress mechanism for national security purposes, the purposes for which we process personal data are to:

- verify that complaints have been submitted to and sent by a competent DPA in the EEA;
- check whether the complaint was based on the EU Common Complaint Form⁶. In view of ensuring consistency, we might have to exchange on procedural matters with the DPA that forwarded to us the complaint or appeal;
- forward such complaints to the ODNI CLPO, as well as then forwarding the reply of the latter to the DPA;
- communicate to the ODNI CLPO the date of the notification, by the DPA, of the ODNI CLPO's reply to the complainant;
- where an appeal is lodged with the DPRC, send such appeal to the OPCL, which will further transmit it to the DPRC, as well as forward to the DPA the reply of the DPRC including the DPRC's statement that it has concluded its review (both of which are sent to us by the OPCL);
- send any communication from the DoC to the competent DPA that information pertaining to the review of a complaint by the ODNI CLPO or DPRC, as appropriate, may be available to the data subject under applicable U.S. law; and
- bring to the attention of all members of the EDPB any matters of general interest that would occur from this process relating to all the above-mentioned tasks.

4. Are your personal data subject to any international transfers?

In line with Recital 177 DPF providing for a redress mechanism for national security purposes, we will forward to the competent U.S. authorities the complaints or appeals submitted to the EU/EEA DPAs. More specifically:

- We will transfer any complaints to the CLPO; and
- We will transfer to the OPCL any appeals against the CLPO's determinations. The OPCL will further forward such appeals to the DPRC, to which it provides administrative support.

As the above recipients of the personal data have not adhered to the adequacy decision for the EU-U.S. Data Privacy Framework, the EDPB Secretariat relies for the above transfers on Article 50(1)(d) and (3) Regulation (EU) 2018/1725 ("The transfer is necessary for important reasons of public interest"). In particular, this task is

⁶ The form is available here: https://www.edpb.europa.eu/our-work-tools/our-documents/other-guidance/template-complaint-form-us-office-director-national_pt

provided in Recital 177 DPF in line with the provisions of Article 47 EU Charter (“Right to an effective remedy and fair trial”) and Article 79 GDPR (“Right to an effective judicial remedy against a controller or processor”).

The application of Article 50(1)(d) and (3) Regulation (EU) 2018/1725 is justified by the current very low number of submitted complaints and the fact that this processing represents only a highly marginal portion of the tasks of the EDPB Secretariat. Nevertheless, the EDPB Secretariat will establish a more stable system for transfers in the future given the possibility for a future increase of submitted complaints.

5. Who has access to your personal data and to whom are they disclosed?

- The EDPB Secretariat staff members, on a need-to-do and need-to-know basis;
- The ODNI CLPO;
- Where an appeal is lodged with the DPRC, the OPCL which provides administrative support to the DPRC. The OPCL will transmit your appeal to the DPRC;
- The DPA which received the complaint; and
- Members of the public in the context of requests for access to documents, where necessary, in accordance with the provisions of Regulation (EC) 1049/2001 or Council Regulation (EEC, Euratom) 354/83⁷.

6. How do we protect your personal data?

Any personal data we collect is encrypted and is stored on servers with restricted access that are available only to authorised staff through adequate IT security measures. In general, technical measures include appropriate actions to address online security, protect server hardware, software and the network from accidental or malicious manipulations and risk of data loss, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed. Further, all exchanges of information we make with the competent DPAs and U.S. authorities are made via appropriate electronic means and in encrypted form.

Physical access to our premises is restricted to authorised staff and EDPB members. Only a limited number of EDPB Secretariat staff members are authorised to channel complaints and appeals and they have access to the dedicated and encrypted tools.

7. For how long do we keep your personal data?

According to EO 14086 (Section 3(d)(v)(B)), the U.S. Secretary of Commerce must perform a check at least once every five years to see if any information pertaining to

⁷ Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (“Regulation on historical archives”).

complaints or appeals has been declassified. If the U.S. Secretary of Commerce identifies any such information, they will send it to the EDPB Secretariat, which will then transmit that information to the competent DPA, who will in turn transmit it to the relevant complainant/appellant. According to Section 1.5 of the EO 13526 “Classified National Security Information”,⁸ information can remain as classified for a maximum period of 50 years.

Therefore, to ensure that the EDPB Secretariat is able to transmit any declassified information received by the U.S. authorities to your competent DPA, it must also keep your personal data until:

- a) such information is declassified – being, at the longest, 50 years following the transmission of the response from ODNI CLPO or the DPRC to your competent DPA;
- b) the U.S. Secretary of Commerce has performed their check for declassified information, discovered that the information is declassified, and transmitted the relevant information to the EDPB – being, at the longest, five years following the declassification of the information; and
- c) the EDPB has had sufficient time to process this information and transmit it to the competent DPA – being, at the longest, one year.

In practice, this means that the EDPB Secretariat will keep your personal data for a maximum of 56 years following the relevant transmission.

If the personal data are contained in documents with historical or administrative value which at the end of the retention period specified above, are selected for preservation in the EDPB records, the selected personal data will be kept indefinitely and – unless an exemption applies – will be made public in accordance with Regulation (EEC, EURATOM) 354/83 on the opening to the public of historical archives after 30 years.

8. How can you verify, modify or delete your personal data?

As the individual to whom the personal data relate, you can exercise the following rights:

1. access to your personal data under Article 17 of Regulation (EU) 2018/1725;
2. rectify your personal data under Article 18 of Regulation (EU) 2018/1725;
3. erase your personal data under Article 19 of Regulation (EU) 2018/1725;
4. restrict the processing concerning yourself under Article 20 of Regulation (EU) 2018/1725; or
5. exercise the right to data portability under Article 22 of Regulation (EU) 2018/1725.

Please note that these rights are not absolute rights, which means that some exceptions may apply. Please also note that, in certain cases, as provided for in Article

⁸ <https://obamawhitehouse.archives.gov/the-press-office/executive-order-classified-national-security-information>

25 of Regulation (EU) 2018/1725, restrictions of data subjects' rights may apply. These rights are applied on a case-by-case basis.

In addition, you can object to the processing of your personal data under Article 23 of Regulation (EU) 2018/1725 for reasons relating to your particular situation. When you contact us to exercise this right, please explain these reasons. We will remove your personal data, unless we can demonstrate compelling legitimate grounds for the processing that override your interests, rights and freedoms.

We do not use your personal data for automated decision-making.

To exercise your rights as a data subject, please see sections 9 and 10 below.

9. How long do you have to wait to receive our reply to your data subject rights' request?

After receiving your request, we have one month to provide information on action taken on your request. We may extend this period by a further two months, taking into account the complexity and number of requests. In such cases, we will inform you of the extension and the reasons for it within one month of receiving your request.

10. Who can you contact to ask questions or exercise your rights?

If you have any questions, or wish to exercise your rights as a data subject, please contact us at edpb@edpb.europa.eu or via our [website's](#) contact page (selecting the option "Requests for the EDPB DPO").

11. Who can you contact to complain about the processing of your personal data?

We encourage you to always contact us first to raise your questions or concerns.

In any case, you remain entitled to send a complaint to the EDPS, as a supervisory authority, using the following contact information:

European Data Protection Supervisor (EDPS)
Rue Wiertz 60
B-1047 Brussels, Belgium
edps@edps.europa.eu
<https://edps.europa.eu/>