

Corruption at the SECO – Swiss Federal Data Protection and Information Commissioner Insists On Transparency

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A corruption scandal involving the Swiss Secretariat for Economic Affairs (SECO) and its process of attribution of public procurements is affecting Switzerland since its publication in local newspapers earlier this year. This matter raised the concerns of the Swiss Federal Data Protection and Information Commissioner (the Commissioner), who had previously criticized the practice of the Swiss Federal administration for only disclosing to the public the 40 most important government procurements to the exclusion of all other supply arrangements awarded by the federal administration.

According to the Commissioner, this limited disclosure contradicted the Swiss principle of freedom of information under the Federal Act on Freedom of Information in the Administration (Freedom of Information Act or FoIA). Indeed, the Commissioner has gone on record to criticize a 2013 resolution of the Swiss Federal Council to not publish names of companies supplying goods to the federal government. The Commissioner clarified that pursuant to FoIA, “any person has the right to inspect official documents and to obtain information about the content of official documents” unless the information falls within one of the listed exceptions (e.g. protection of Switzerland’s security, foreign policy, international relationship, inter-cantonal relationship, economic and monetary interests, professional, business or manufacturing secrets, third party privacy, etc.). The principle of freedom of information thus offers an enforceable right of access to all citizens to information about projects and contracts of the administration with outside vendors. Such information cannot be redacted or limited. Anonymous lists disclosing only the larger suppliers violate federal law and are not admissible. This freedom of information also prevails over the duty of professional secrecy covering the trade and manufacturing secrets of suppliers.

TIP: This recent issue emphasizes the Swiss Data Protection Commissioner’s belief that government transparency is a fundamental part of Swiss law. Companies doing business with the Swiss government should keep this in mind and anticipate that their dealings may be subject to FoIA requests (sensitive personal information would of course continue to be protected under privacy laws).

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