

No. Fax: 11.17.001.010.220, 11.17.002.002.021 Decision Denial of Access Request by the Consumer Protection Service I refer to a complaint submitted to my Office on November 1, 2022, by Law Chambers Nicos Papacleovoulou LLC, on behalf of of XXX (hereinafter the "Complainant"), against the Consumer Protection Service (hereinafter the "YPC"), pursuant to article 42 of the Right of Access to Public Sector Information Law of 2017 (L. 184(I)/2017) , as amended, (hereinafter the "Law"), and of Article 77 of Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free movement of such data (hereinafter the "Regulation "). After examining the complaint, based on the duties and powers conferred on me by Articles 43 and 44 of the Law and Articles 57 and 58 of the Regulation, I note the following: Incidents of the Case 2. According to the complaint and the correspondence attached to it (electronic messages dated 11/3/2021, 24/03/2021, 24/05/2022, 15/06/2022, 03/08/2022, 13/09/2022): I. On January 29, 2020, the Complainant filed a complaint against the insurance company Eurolife Ltd (hereinafter the "insurance company"), at the YPK. On October 27, 2020, the Complainant received a letter from the YPK, informing him of the outcome of the YPK's investigation in relation to his submitted complaint. II. On March 11, 2021, the law firm representing the Complainant requested to receive copies of the documents exchanged by the YPK with the insurance company, for the investigation of his complaint. In particular, he requested: 1. a copy of the letter sent by the YPK regarding the unfair practices applied by the insurance company, 2. the conditions communicated by the insurance company and their documentation, by the YPK and concerning the Complainant. 3. copies of all documents and/or information available III. On March 24, 2021, the YPK denied the access request, stating, among other things, that its role is to protect the collective interests of consumers and not to resolve individual disputes. Therefore, the YPK does not have the authority to handle any case on an individual level and therefore cannot satisfy the access request that was submitted. In order to resolve the Complainant's individual disputes with the insurance company, the YPK informed the former that he could appeal either to the Administrative Court or to the Body for Alternative Resolution of Consumer Disputes. IV. On May 24, 2022, the law firm representing the Complainant again exercised a right of access based on the Law, to all electronic and physical documents related to the complaint file, held by the Ministry of Internal Affairs. V. On June 15, 2022, the YPK informed the Complainant, among others, of the following: 1. the control carried out at the YPK is not limited to any complaint, but concerns the provision of general protection to the consumer public, the YPK does not handle complaints on an individual level, 2. communication with the consumer is limited to receiving all the required information in relation to his complaint and informing him of the result of his investigation, 3. complaints registered in files and/or in the electronic system of the Ministry of Health ,

are not considered a public record to which the public can have access, 4. the right deriving from Article 15 of the Regulation concerns only the applicant's own data and does not provide access to documents related to the investigation of the Public Prosecutor's Office or the latter's correspondence with the insurance company, 5. the YPK, on the occasion of the complaints, expands its investigation ex officio and examines the respective contract in its entirety, as a consumer contract, in accordance with the applicable legislation. VI. On August 3, 2022, the law firm representing the Complainant stated, among other things: 1. the files and/or electronic systems of the agency are considered a public record, since the YPK is a department and/or agency of the State according to article 4 of Law, 2 2. excerpt from a relevant announcement by the Commissioner for Personal Data Protection dated July 24, 2019 for the data subjects' right of access, which derives from Article 15 of the Regulation. VII. The YPK, in an email dated September 13, 2022, did not grant the Complainant's access request and referred him to submit a relevant complaint to my Office. 3. According to what has been brought to my attention, the Complainant's request to the YPK was made on the basis of - - Article 15 of the Regulation, i.e. the Complainant's right of access to his personal data, which were processed by the YPK, for the examination of his complaint, - article 3 of the Law, i.e. the Complainant's right of access to the documents held by the YPK, which are related to his complaint but do not fall within his right of access based on the Regulation. 4. On January 3 and 30, 2023, I received the positions of the YPK, based on which, among others, the following were brought to my attention: The legal framework applied by the YPK gives it the power to exercise I. general control of legality in the field of consumer protection and considered in the light of collective consumer protection. The legal framework in question does not transform private disputes of any kind between consumers and traders into disputes of public interest in which the state intervenes or can intervene. Consequently, the role of the PCA is to protect the collective interests of consumers and not to resolve individual disputes. From the above, the control carried out by the Director of the YPK is not limited to the complaint of a specific consumer, but also concerns the provision of general protection to the consumer public, always within the framework defined by the Law and, therefore, does not take into account the details of individual circumstances, as long as they are not generalizable and therefore useful for the collective protection of consumers. II. YPK is not under any obligation to continuously inform consumers/complainants in relation to the progress of each investigation, but neither is it under any obligation to provide information and/or send any documents in relation to the progress and outcome of the case under consideration. Any communication with the consumer/complainant is limited to obtaining all required information and/or documents in relation to 3 VI. In the requested information, in most complaints, the development and

outcome of the case under consideration. YPK is not under any obligation to justify and/or provide further clarifications regarding its findings, because it does not handle any complaint on an individual level. III. Based on article 67 of the Consumer Protection Law of 2021 (112(I)/2021), "The Authorized Service ensures the dissemination of such information and recommendations, including the decisions of the Director, regarding the implementation of the provisions of this Law , with the exception of information deemed confidential, which it considers useful for serving or informing consumers, as well as all persons who may be affected by the provisions of this Law." IV. Complaints registered in the files and/or in the electronic system of the YPK are not considered a public record to which the public can be given access. V. With regard to the right of access based on Article 15 of the Regulation, access is permitted when requested by the data subject himself to data/information concerning only the data subject himself and not to documents related to the conduct of the investigation by the YPK. of the cases, includes information provided by traders in the context of conducting an administrative investigation, under the condition of confidentiality and secrecy or professional secrecy and concerning commercial interests, since among them, various sales invoices, purchase invoices, data relating to the annual turnover and other financial statements, various items, including confidential contracts and/or data and/or information, in accordance with the provisions of article 34 of the Law. VII. Most of the laws applied by the Consumer Protection Service provide that in the event that a person intentionally obstructs the Authorized Service in the exercise of its powers, provides false or misleading or inaccurate data, information or documents, the person without reasonable cause refuses or fails to provide the Authorized Service with assistance or information commits a criminal offense which entails criminal penalties. Therefore, the requested information may also fall under the exception of Article 27 regarding investigations and proceedings 4 carried out by public authorities. (see article 64 of the Consumer Protection Law of 2021 (N.112(I)/2021). VIII. The Explanatory Guide to the Legislation of the Unfair Commercial Practices of Businesses to Consumers Law of 2007 was attached to the YPK's response. Legal Framework 5. Below I list the legal framework on which I based the Rationale and the Conclusion of this Decision. 6. Based on article 2 of the Law, "In this Law, unless a different meaning emerges from the text - (...) "public record" has the meaning attributed to this term by the State Archives Law;" 7. of article 19 of the Law: "(1) The following information falls under the absolute exceptions for the purposes of this Law and is not provided in any way: (a) Information to which the requester has access through other methods, as provided in article 20; (b) information relating to or provided by security forces as provided in section 22; (c) information contained in court records as provided in section 29; (d) parliamentary information as provided in section 31; and (e))

information given under the condition of confidentiality and secrecy, as provided in article 34. (2) For the purposes of this Law, information that does not fall under the absolute exceptions referred to in subsection (1) is considered to fall under the non-absolute exceptions. (3) In the event that any exception provided for in this Part states that the obligation to confirm or deny possession of information does not exist in relation to any information, then the said obligation shall not apply, provided that – (a) The said exception is absolute, or (b) if such exemption is not absolute, the public interest in not confirming or denying possession of the requested information outweighs the public interest in disclosing the possession or non-possession of such information. (4) The provision of information provided for in paragraph (b) of subsection (1) of article 8 does not apply, provided that – (a) The information is exempt by virtue of an absolute exemption, or (b) if the exemption is not absolute, the public interest in maintaining the exemption of the requested information outweighs the public interest in its disclosure." 8.

Pursuant to article 27 of the Law "(1) Information which a public authority possesses or has possessed for any period of time and which arose in the context of - (a) Any inquiry or investigation that the public authority has a duty or obligation to conduct with the aim of specify whether - (i) a person is to be charged with a particular criminal offence; or (ii) a person who has been charged with a criminal offense is guilty of the commission of that offence, (b) any investigation or inquiry conducted by public authority in circumstances which may lead to a decision by the public authority to institute criminal proceedings which the said authority has power to conduct; or (c) of any criminal proceedings which the public authority has power to conduct, is exempt information." 9. Pursuant to article 34 of the Law, "(1) Information is exempt information, if - a third party, (a) Obtained from another public authority, subject to the observance of confidentiality and/or confidentiality or professional secrecy by the public authority who receives it, and (b) the disclosure of this information to the public, outside the framework of the provisions of this Law, by the public authority that holds it would constitute a breach of a condition of confidentiality and/or confidentiality or professional secrecy. (2) Information, the disclosure of which infringes or is likely to infringe a trade secret or commercial interests of any person, including the public authority that has it in its possession, is excluded information. (3) The obligation to confirm or deny possession of information does not arise if, and to the extent that, this confirmation or denial of possession of information would constitute a violation of the condition of confidentiality and/or confidentiality and/or 6 public authority by the professional privacy and/or trade secret or commercial interests." 10. Based on Article 43 and 44 of the Law, "43. Examination of complaints or ex officio investigation by the Commissioner: (1) The Commissioner, in the context of examination of a complaint submitted under the provisions of section 42 or ex officio under the provisions of section 37, may – (a) Summon the

public authority to present its views of and to take a position on specific issues, (b) order the taking of temporary measures regarding the assurance of access to information, (c) exercise the powers granted to him by virtue of the provisions of article 41. (2) For the purpose referred to in subsection (1), the Commissioner may serve on the public authority an information notice requiring the public authority to notify the Commissioner, in the manner and form specified in the notice, within the time limit specified in the notice, of any information, to ascertain compliance by the public authority with the provisions of Part II or with the codes of practice issued under the provisions of section 39, as the case may be: Provided that the Commissioner may revoke a notice to provide information by notice in writing to the public authority to which the information notice was served. 44.

Issuance of the Commissioner's decision (1) The Commissioner, after examining the complaint submitted pursuant to the provisions of article 42, issues a decision which is binding. (2) The Commissioner's decision may be negative where - (a) The complainant has not exhausted the complaints procedures offered by the public authority in accordance with the code of practice issued pursuant to the provisions of subsection (1) of section 39 · or (b) there has been unreasonable delay in making the complaint, or (c) the request is abusive or manifestly unreasonable; or (d) it appears from the facts of the case that the request has subsequently been withdrawn or abandoned. (3) Where the Commissioner decides that a public authority- (a) Has not provided information or has not provided confirmation or denial of possession of information when it should have done so under the provisions of subsection (1) of section 8; or (b) has not 7 complied with any of the conditions of the provisions of articles 9, 13 and 19, in its decision it shall determine the measures that the public authority must take to comply with the above requirements and the time period within which they must be taken these measures as well as details on the right of objection provided for in subsection (2) of article 45. (4) In the event that the Commissioner, in the exercise of his powers pursuant to the provisions of article 37, judges that a public authority has not complied with any provision of Part II, may issue a decision setting out the measures that the public authority must take to comply and the time period within which those measures must be taken, as well as details of the right of appeal provided in the provisions of subsection (2) of article 45." 11.

According to the APPENDIX of the State Archives (Amendment) Law of 2017, "Article 2 Definition of public records 1. The provisions of this Appendix apply to the definition of public records for the purposes of this Law. 2.-(1) Public records are all legislative, administrative and judicial records owned by the Republic of Cyprus and, in particular, (a) records owned or held by any Government Department Office or Service, or (b) records of legislative , administrative and judicial body, authority, committee or office, or records of a public benefit organization or other legal entity under public law, or records of a public

company whose main shareholder is the Government of the Republic, whether they are located in Cyprus or located elsewhere. (2) The provisions of this paragraph also extend to any similar body or institution that ceased to exist or will cease to exist before or after the passing of this Law, including the Chief Secretariat. 3. Without affecting the generality of subsection (1) of the preceding paragraph, the legislative, administrative and judicial records of the bodies appearing in the Table following paragraph 4 below are public records: Provided that the Council of Ministers may, if at its discretion it is necessary for him to bring about changes or amendments to the said Table by a decree published in the Official Gazette of the Republic. 8 4. The Superintendent takes over the possession and safekeeping of the records of any of the bodies appearing in the Table as soon as it ceases to exist or operate." 12. According to Article 4 of the Regulation, personal data is "any information concerning an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference an identifier such as a name, an identity number, location data, an online identifier or one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person.' 13. Pursuant to Article 15 of the Regulation, "1. The data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him is being processed and, if this is the case, the right of access to the personal data and the following information: a) the purposes of the processing, b) the relevant categories of personal data, c) the recipients or categories of recipients to whom the personal data have been disclosed or are to be disclosed, in particular recipients in third countries or international organizations, d) if possible, the time period for which the personal data will be stored or, when this is impossible, the criteria that determine the period in question, e) the existence of the right to submit a request to the data controller for the correction or deletion of personal data or to limit the processing of the personal data concerning the data subject or right to object to said processing, f) the right to submit a complaint to a supervisory authority, g) when the personal data is not collected from the data subject, any available information about its origin, h) the existence automated decision-making, including profiling, provided for in Article 22 paragraphs 1 and 4 and, at least in these cases, significant information about the logic followed, as well as the importance and intended consequences of said processing for the data subject data. 9 2. When personal data are transferred to a third country or an international organization, the data subject has the right to be informed of the appropriate guarantees in accordance with Article 46 regarding the transfer. 3. The controller provides a copy of the personal data being processed. For additional copies that may be requested by the data subject, the controller may charge a reasonable fee for administrative costs. If the data

subject submits the request by electronic means, and unless the data subject requests otherwise, the information shall be provided in a commonly used electronic format. 4. The right to receive a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others." 14. According to Article 57 of the Regulation, "1. Without prejudice to the other tasks set out in this regulation, each supervisory authority in its territory: (...) f) handle the complaints submitted by the data subject or by a body or organization or association in accordance with Article 80 and investigate, in appropriate measure, the subject of the complaint and informs the complainant of the progress and outcome of the investigation within a reasonable period of time, especially if further investigation or coordination with another supervisory authority is required" 15. Based on paragraph 2 of Article 58 of the Regulation, the Personal Data Protection Commissioner may: "(...) c) instruct the data controller or processor to comply with the data subject's requests for the exercise of his rights in accordance with this regulation" 16. Based on the Decision of the Court of Justice of the European Union, case C-434/16 Peter Nowak v. Data Protection Commissioner, 2017, paragraph 58 "Finally, it is established, on the one hand, that the rights of access and rectification, pursuant to Article 12, elements a' and b', of Directive 95/46, do not extend to exam questions, which do not constitute personal data of the candidate as such." 17. In the Announcement of the Commissioner for Personal Data Protection dated July 24, 2019 regarding the satisfaction of the right of access states: "The right of access is a strong right granted by the GDPR to individuals, which allows the data subject to 10 the data evaluations that reports, processing minutes copies of the personal data concerning him, in paper and/or electronic form, and which the same or another person gave to the data controller. The data subject also has the right to receive from the responsible person. According to previous Opinions and Decisions of the Commissioner, the data subject may, in addition, request and receive his information, concerning opinions/opinions/reports/recommendations, meetings, given that these concern his person. Relevant to the issue is, for example, the Commissioner's Decision dated 09.07.2018 against a university institution in relation to non-satisfaction of the right of access, which is posted on the website of the Office. If the requested information contains third party data (eg a family member, colleague, etc.) it must not be shared without the third party's consent. If it is not possible to obtain consent, the information is given without the third party data. If copies are provided, the third party data is masked and/or removed. It is good practice to consult the Data Protection Officer on what can and cannot be shared." Rationale 18. First, I would like to state that I fully understand the powers, role and duties of the YPK, which are regulated by the Consumer Protection Law of 2021 (112(I)/2021) and do not oblige it to protect individual consumer interests, consumer/complainant resolution, but to

protect their collective interests. 19. The correspondence exchanged between the insurance company and the YPK, which served the administrative duties and is held/owned by the latter, is based on article 2 of the Law, article 2 of the State Archives (Amendment) Law of 2017 and Annex thereof, public record. I point out that article 3 of the Law gives the right to any natural or legal person to request access to information in the possession of a public authority (i.e. public records). 20. According to what has been put before me, the information that has been requested does not fall under the provisions of article 27 of the Law, since no notification of disputes, individual continuous 11 arose in the context of an interrogation or investigation of a criminal offense, nor did they lead to a decision of the YPK to initiate any criminal procedure. 21. With regard to the confidential content of the information, I initially acknowledge that the insurance company submitted all the requested information concerning it, responding, as it should, to the investigation process carried out by the Public Prosecutor's Office. By submitting its information, the insurance company expected the maintenance of due confidentiality and secrecy by the YPK, as this is determined in the latter's powers, based on article 67 of the Consumer Protection Law of 2021 (112(I)/2021), according to which the YPK is responsible for excluding the information it deems confidential from any dissemination. 22. In assessing the information and whether it is confidential, I take into account the quality of the information and whether its disclosure could cause harm to the person concerned. As stated by the Ministry of Finance, the requested information "may" include various sales invoices, purchase invoices, annual turnover data and other financial statements including confidential contracts and/or data and/or information. This type of information, which directly and/or indirectly reveals confidential financial data of the insurance company, which may cause damage to it, may not be shared with the Complainant and is excluded from the right of access, in accordance with article 34 of the Law. 23. Subsequently, in accordance with the provisions of article 34 of the Law, information, the disclosure of which damages or may damage the commercial interests of any person, is excluded from the right of access to public sector information. Commercial interest relates to a person's ability to competitively engage in a commercial activity, usually with profit as the primary objective. The commercial interest also covers the ability of the person to remain solvent. The YPK, in the context of the execution of its responsibilities, collects and maintains information of commercial content, for the examination and investigation of the submitted complaints. Activities which have been notified by the insurance company to the YPK and are related to its income fall within the scope of this exception. Information, which may indirectly be linked to the commercial activities of the insurance company, is again excluded from the right of access. 12 24. According to article 19 of the Law, information that falls within the scope of the exception of article 34 of the Law, falls under

the absolute exceptions and is not provided in any way. Pursuant to the same article, the competent authorities are under no obligation to confirm or deny possession of information, as long as it falls under absolute exceptions. 25. Pursuant to Article 4 of the Regulation, personal data are data relating to natural persons, from the processing of which these persons can be identified. Based on Article 15 of the Regulation, the right of access concerns only the personal data of the data subjects. Any request for access to information on other subjects, including information that not related to personal data, it cannot be examined, but neither

to be satisfied based on Article 15 of the Regulation. Therefore, data that they do not concern the applicant, they do not fall within the scope of the right access pursuant to the Regulation.

26. Therefore, taking into account all the above, as well as of the role of the YPK based on the legal framework it applies, information the which are general, concern the insurance company and do not identify with in no way the Complainant, do not constitute his personal data. The Article 15 of the Regulation does not provide access to the Complainant to letters and information submitted by the insurance company in the YPK and do not contain his personal data. The decision is relevant Court of Justice of the European Union, case C-434/16 Peter Nowak v. Data Protection Commissioner, 2017, but also the Commissioner's Announcement dated 24 July 2019, based on which it follows that the right of access does not it extends to data which do not constitute data as such of a personal nature and that the right allows the subject of data to obtain knowledge and copies of the personal data that the only concern

Conclusion

27. Considering the existing legislative basis -
- regarding my prescribed duties and powers pursuant to

Articles 57 and 58 of the Regulation, I judge that the Complainant is entitled access based on Article 15 of the Regulation, only to the data that they concern him, according to what I have described above and not in everything the documents included in the complaint examination file of,

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- regarding my prescribed powers according to the article 37 of the Law, I judge that the Complainant is entitled to access based on of articles 3 and 8 of the Law on information contained in the file of his complaint and do not fall within the exception provided by Article 34 of the Law.

28. Based on the powers granted to me by Article 58 of the Regulation and the article 44 of the Law, I call the Ministry of Internal Affairs, within one month of its receipt present, such as:

A. Provides access to the Complainant, to:

☐ documents contained in his complaint file, the which concern him and fall under his personal data character, based on Article 15 of the Regulation,

☐ documents contained in his complaint file, the which fall within his right of access to his information

Public Sector, based on articles 3 and 8 of the Law, and no fall under the absolute exclusion of information given under the condition of confidentiality and secrecy, as provided in article 34.

B. Inform the Complainant in writing, in accordance with Article 18 thereof Law, for the reasons why documents that are in the file

of his complaint fall under the absolute exception of information that were given under the condition of confidentiality and secrecy as provided for in article 34 of the Law.

C. Inform my Office accordingly, for its provision access and satisfaction of the Complainant's rights.

29. In compliance with the provisions of article 45 of the Law, within 14 days from notification of this notice, it is possible to file an objection against it Decision.

30. Based on Article 146 of the Constitution and on the Establishment and Administrative Court Operation Law of 2015, within seventy five days from the notification of this notice, it is possible to appeal against it Decision, in the Administrative Court.

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Irini Loizidou Nikolaidou Nicosia, March 9, 2023

Data Protection Commissioner

Personal Character

and

Information Commissioner

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