

Case number: NAIH-5397-13/2022.

Subject: decision rejecting the application and trade secret

order for private treatment

Before the National Data Protection and Freedom of Information Authority (hereinafter: Authority) [...]

(hereinafter referred to as: Applicant) - through the authorized representative of [...] lawyer (hereinafter referred to as: Lawyer).

submitted - related to the failure to respond to the request of the data subject

In relation to illegal data processing, official proceedings have been initiated with [...] (hereinafter: Respondent)

against, in which procedure the Authority makes the following decisions:

I. 1. In its decision, the Authority considers the Applicant's request

rejects.

I.2. In its decision, the Authority ex officio states that the Respondent violated the

on the protection of natural persons with regard to the management of personal data and that

on the free flow of such data and the repeal of Directive 95/46/EC

"Transparency" according to Article 5 (1) of Regulation (EU) 2016/679 (hereinafter: GDPR)

principle.

II. In its ruling, the Authority included the assignment agreement attached by the Applicant and the

approves your request to treat a cash deposit receipt as a business secret.

There is no place for administrative appeal against the decision and order, but the a

with a letter of claim addressed to the Metropolitan Court within 30 days of notification

can be challenged in an administrative lawsuit. You must submit the claim to the Authority

electronically<sup>1</sup>, which forwards it to the court together with the case documents. Holding the trial

the application must be indicated in the application. Not in the full personal tax exemption

for beneficiaries, the fee for the administrative lawsuit is HUF 30,000, subject to the right to record the fee subject to the lawsuit

it's raining Legal representation is mandatory in proceedings before the Metropolitan Court.

I N D O C O L A S

I. Procedure of the procedure

I.1. On behalf of the Applicant, the Lawyer on May 17, 2022, the informational self-determination

CXII of 2011 on law and freedom of information. Act (hereinafter: Infotv.) § 60

(1) initiated a data protection official procedure by the Respondent unlawfully

with reference to data management.

The Authority CL. 2016 on the general public administrative order. law (hereinafter:

Ákr.) with reference to paragraph (1) of § 14, the lawyer to prove his right to represent

1 The NAIH\_KO1 form is used to initiate the administrative lawsuit: NAIH KO1 form (16.09.2019) The

form can be filled out using the general form filling program (ÁNYK program).

joined on the 2nd of June

up, which the lawyer submitted to the Authority in 2022.

he called

complied with a power of attorney (No. NAIH-5397-3/2022).

I.2. The Authority accepted the Application under NAIH-5397-4/2022. the procedure was notified in order no

and invited him to make a statement for the first time in order to clarify the facts

with reference to Art. to paragraph (1) of § 62.

To the Authority's invitation, the Respondent sent its answer and its allegations within the deadline

attached a copy of the supporting documents. (Document No. NAIH-5397-5/2022).

I.3. The Authority NAIH-5397-7/2022. and NAIH-5397-8/2022. notified in its orders no

Notify the Respondent and the Applicant that the evidentiary procedure has been completed and the declaration is made

they can use their rights and their right to inspect documents.

In response to the Authority's order, the Respondent exercised its right to inspect documents, the Applicant did not

with the right to inspect documents. Neither the Respondent nor the Applicant made a statement on the completion

in connection with evidentiary proceedings.

## II. Clarification of facts

II.1. The Applicant submitted the following:

II.1.1. First access request

The Applicant requested that the Authority examine the Respondent's data management and establish that its data processing is illegal. The Applicant submitted in his application that the Respondent a Performs unauthorized data processing contrary to the provisions of the GDPR due to the following. The Lawyer as the authorized legal representative of the Applicant GDPR dated February 17, 2022 A data subject request pursuant to Article 15 (hereinafter: First access request) was submitted by To the Respondent, on behalf of the Applicant, a copy of the agreement and declarations made with the Application regarding its provision. During the time the Applicant is a minor, it is legal statements made by its representative, as well as the justification of a court order (hereinafter: Order). the Respondent entered into an agreement with the Applicant as an heir. Regarding the Applicant to the fact that he was a minor when the referred agreement was concluded, he does not know its content, therefore addressed to the Applicant through the lawyer on 17.02.2022. with his application dated in order to issue a copy of the document, the existence of which he learned from the Decree. The First Access Request was not specifically limited to a copy of this document who, but requested a copy of the following: "all such contracts or unilateral declarations, in which the declarant is a party [...], regardless of who acted on his behalf. In particular the contract in which the legal fate of property No. [...] was settled would be important. My client access to legal declarations made on behalf of is also provided by Article 15 of the GDPR. "

In response to the Applicant's request, the Applicant in its letter dated March 25, 2022 informed that he does not have any contract or unilateral declaration in which the the applicant is the declarant.

#### II.1.2. Second access request

The Applicant again submitted an access request through his lawyer to the Respondent a 04/05/2022 in his letter dated (hereinafter: Second access request), and referred to the fact that what was written in the Decree contradicts the Requested Applicant's access to those written in the reply letter sent to your request. The Applicant also referred to the fact that it is in his possession an e-mail dated March 16, 2017 (dated at 1:37 p.m.) (hereinafter: E-mail) sent by [...] lawyer

to the Respondent, in which there is a settlement agreement between the Respondent and the Applicant details are included. According to the applicant's statement in his application sent to the Authority, a Request received no response to Second Access Request.

2

To support his claims, the Lawyer attached the following in copy:

- First access request and the Respondent's response to it,
- Second access request,
- Email,
- Execution.

does not exist due to an existing contractual obligation

The parts of the Order referred to by the Applicant (points [3]-[4]), for which the Applicant submitted the access requests to the Requested, contains the following:

"[...] [3] On November 16, 2017, the requester for the execution submitted a request for the termination of the procedure submitted, citing that he had entered into an agreement with the heir of the late debtor, so his claim a against a late debtor

up. With this

in parallel, the debtor's legal representative also applied for the termination of the procedure, citing to the fact that the late debtor [...], as executor, did not have any movable or immovable assets, thus, in the absence of a legacy, the legal heir of the late debtor is not liable as a minor [...] as legal successor.

[4] At the request of the court, the outstanding costs of the executor in HUF 946,660 and HUF 475,000 indicated in HUF unbalanced cost general. At the request of the court of first instance, the execution the applicant stated that the claim was assigned on the side of the enforcement applicant for [...] on September 28, 2017, so the legal successor of the applicant for enforcement became [...], therefore the upon the court's request for the payment of enforcement costs, the legal successor requesting enforcement can to declare. [...]"

II.1.3. A definite request

In the request related to the initiation of the official data protection procedure, the Applicant is requested the following from the Authority:

- oblige the Applicant to hand over a copy of the contract concluded with the Applicant, as well as
- impose a fine for violating the rights of the stakeholders.

## II.2. Statement of the Applicant

The Respondent referred to the fact that there is no contract or unilateral declaration in which the declarant is the Applicant.

The Applicant registered as a creditor in the liquidation procedure of [...] Kft., however, a  
under liquidation

outstanding claims –

due to the failure to reach an agreement - he sold it on September 28, 2017.

The [...] property came into the ownership of the Respondent in 2013, the property was sold in 2017  
no one acted on behalf of the Applicant during the sale.

No agreement was reached between the Respondent and the Applicant, the Respondent decided  
to sell the outstanding claim, which he did on September 28, 2017. The Applicant  
attached the assignment contract to prove the fact of the sale

copy, and also referred to the fact that the "fact of sale" is also recorded in point [4] of the Decree.

The Respondent submitted that the 2017 agreement was incorrectly included in the Decree  
part.

The Applicant's statement attachments

among others

also contained an assignment contract and an extract of the internal regulations of the Applicant, a

Regarding any of the documents sent, the Respondent did not declare that the Applicant had them

whether you can get to know it during a document inspection or if some of them are treated as business secrets  
therefore against the debtor

contained in the appendix

with company

too

3

requests to be treated, therefore the Authority invited him to make a statement in this regard, to which the following response received:

The attached assignment agreement and the receipt confirming the cash payment are business secrets contains, therefore the Respondent sent the public version of them.

The Respondent also referred to [...] the lawyer's statement, a copy of which was sent by

To authority. [...] lawyer participated in the preparation of the agreement which

no agreement was finally reached between the Respondent and [...]. The statement was sent by e-mail

On June 22, 2022, to [...] lawyer [...], the Respondent's lawyer, and in this regard

informed that the settlement agreement was concluded with [...] on March 24, 2017

would have, however, due to the death of [...], this did not take place.

The Respondent further submitted that since his claim was terminated due to the assignment,

therefore, there would have been nothing to agree on with the heirs of the late debtor. If an agreement is reached

would have been established between the Respondent and [...], or between the heirs of [...] and the Respondent, then the

The respondent would not have sold the claim.

The Respondent also submitted that in view of the Applicant's Second Access

his request was directed to the same as the First access request, therefore due to the fact that later

he received a reply, he was not harmed, as the Respondent informed him of the same thing as what he was told earlier.

The Respondent sent it to the Authority as an attachment to the Applicant's Second Access Request

sent a copy of his reply, which was dated June 23, 2022, and informed the

Applicant:

“ [...]I apologize for the late reply, but I respectfully inform the [...] Sir that it is

even after reviewing my previous letter, I maintain what was previously written, according to which

My client does not have a contract or unilateral declaration in which a

declarant [...], or acting on behalf of [...], and or [...]. [...]"

### III. Applicable legal regulations

According to Article 2 (1) of the General Data Protection Regulation, the regulation must be applied a

for the processing of personal data in a partially or fully automated manner, as well as

for the non-automated handling of data that is a registration system

are part of, or are intended to be part of, a registration system.

For data management under the scope of the General Data Protection Regulation, Infotv. Paragraph (2) of § 2

according to the general data protection regulation in the provisions indicated there

is occupied

must be applied with supplements.

According to Article 4, point 1 of the General Data Protection Regulation, "personal data": you are identified

any information relating to an identifiable natural person ("data subject"); it is possible to identify the a

natural person who directly or indirectly, in particular an identifier,

for example name, number, location data, online identifier or the natural person's physical,

one concerning his physiological, genetic, intellectual, economic, cultural or social identity

or can be identified based on several factors.

Based on Article 4, point 2 of the General Data Protection Regulation, "data management": on personal data

or any operation performed on data files in an automated or non-automated manner

or a set of operations, such as collection, recording, organization, segmentation, storage, transformation

or change, query, insight, use, communication, transmission, distribution or

in other ways

accessible

by lot, alignment or connection,

restriction, deletion or destruction;

Pursuant to Article 4, point 7 of the General Data Protection Regulation, "data controller": the natural person legal entity, public authority, agency or any other body that is the personal data determines the goals and means of its management independently or together with others; if that the purposes and means of data management are determined by EU or member state law, the data manager or special considerations for the designation of the data controller are also EU or member state law you can define.

Based on Article 5 (1) of the General Data Protection Regulation, personal data:

a) must be handled legally and fairly, as well as in a transparent manner for the data subject conduct ("legality, due process and transparency");

Based on Article 5 (2) of the General Data Protection Regulation, the data controller is responsible for (1) for compliance with paragraph and must also be able to demonstrate this compliance ("accountability").

Based on paragraphs (1) to (4) of Article 12 of the General Data Protection Regulation:

(1) The data controller shall take appropriate measures in order to ensure that the data subject a all the information referred to in Articles 13 and 14 regarding the management of personal data and 15-22. and each information according to Article 34 is concise, transparent, comprehensible and easy provide it in an accessible form, clearly and comprehensibly worded, especially the for any information addressed to children. The information in writing or otherwise - including, where applicable, the electronic route - must be specified. Oral at the request of the person concerned information can also be provided, provided that the identity of the person concerned has been verified in another way.

(2) The data controller facilitates the relevant 15-22. the exercise of his rights according to art. Article 11 (2) in the cases referred to in paragraph 15-22, the data controller is the person concerned. to exercise his rights according to art may not refuse to fulfill your request, unless you prove that the person concerned cannot be identified.

(3) The data controller without undue delay, but by all means the request



within one month of its receipt, informs the person concerned of the 15-22 application according to art on measures taken as a result. If necessary, taking into account the complexity of the request and the number of applications, this is the deadline

it can be extended by another two months. The deadline

request for an extension by the data controller indicating the reasons for the delay

informs the person concerned within one month of receipt. If the data subject is electronic

submitted the application via e-mail, the information must be provided electronically if possible,

unless the data subject requests otherwise.

(4) If the data controller does not take measures following the data subject's request, without delay,

but it informs the person concerned no later than one month from the date of receipt of the request

about the reasons for the failure to take action, as well as about the fact that the person concerned can submit a complaint to a with a supervisory authority, and can exercise his right to judicial redress.

Based on Article 15 (3) of the General Data Protection Regulation, the data controller is

provides a copy of the personal data subject to data management to the data subject. The

for additional copies requested by the data subject, the data controller shall charge administrative costs based on

may charge a reasonable fee. If the person concerned submitted the application electronically, it

information must be made available in a widely used electronic format,

unless the data subject requests otherwise.

Infotv. According to Section 2 (2), personal data is the general data protection regulation

under the scope of the general data protection regulation, III-V. and VI/A. In chapter,

and § 3, 3., 4., 6., 11., 12., 13., 16., 17., 21., 23-24. point, paragraph (5) of § 4, that

Paragraphs (3)-(5), (7) and (8) of Section 5, Paragraph (2) of Section 13, Section 23, Section 25, Section 25/G.

in paragraphs (3), (4) and (6) of § 25/H. § (2), 25/M. in paragraph (2) of § 25/N.

§ 51/A. in paragraph (1) of § 52-54. §, § 55 (1)-(2), § 56-60.

§ 60/A. §§ (1)-(3) and (6), § 61 § (1) points a) and c), § 61 (2)

and paragraphs (3), paragraph (4) point b) and paragraphs (6)-(10), paragraphs 62-71. § 72.

§, § 75, paragraphs (1)-(5), § 75/A. § and defined in Annex 1

must be applied with supplements.

The Akr. Based on paragraphs (2)-(3) of § 27:

(2) The authority ensures that the secret protected by law is protected by law  
other data (hereafter referred to as: protected data) should not be made public  
to the knowledge of an unauthorized person, and the protection of this protected data as defined by law a  
should also be ensured in the procedure of the authority.

(3) The authority, in the course of its procedure, to conduct it - in the manner specified by law  
and in turn - manages the protected data that are related to its procedure and which  
its management is necessary for the successful completion of the procedure.

The Akr. Based on paragraphs (2)-(3) of § 34:

(2) It is not possible to recognize a document or a part of a document from which a conclusion can be drawn  
down to some protected data or personal data that is legally required to be known  
specified conditions are not met, unless the data - excluding classified data -  
the lack of knowledge would prevent the person entitled to inspect the documents in this Act  
in the exercise of its guaranteed rights.

(3) Based on the request, the authority provides document inspection - after the completion of the procedure  
also - or rejects it in an order.

According to Article 77 (1) of the General Data Protection Regulation, all data subjects are entitled to  
to file a complaint with a supervisory authority if, in the opinion of the data subject, it concerns him  
processing of personal data violates the general data protection regulation.

Infotv. According to § 38, paragraph (2), the Authority is responsible for the protection of personal data,  
as well as for learning data of public interest and public in the public interest  
law

control and promotion of its validity, as well as personal data within the European Union

facilitating its free flow. According to paragraph (2a) of the same §, general data protection the tasks and powers established for the supervisory authority in Hungary with regard to legal entities under its jurisdiction in the general data protection regulation and e it is exercised by the Authority as defined by law.

Infotv. According to Section 60 (1), enforcement of the right to the protection of personal data in order to do so, the Authority will initiate a data protection official procedure at the request of the data subject.

Infotv. According to § 60, paragraph (2), the request to initiate the official data protection procedure it can be provided in the case specified in Article 77 (1) of the General Data Protection Regulation in.

In the absence of a different provision of the General Data Protection Regulation, data protection initiated upon request for official procedure, the Acr. provisions shall be applied

Defined in Infotv

with differences.

LIV of 2018 on the protection of business secrets. Act (hereinafter: Trade secret law) § 1 (1) on the basis of paragraph business secret related to economic activity, secret - in its entirety, or as a total of its elements, you are not well-known or the person performing the relevant economic activity is not easily accessible to persons - and therefore has a material value, a fact information, other data and the compilation made of them, which are to be kept confidential in order to ensure that the owner of the secret exhibits behavior that is generally expected in the given situation.

6

ARC. Decision of the Authority

IV.1. Personal data, data management and the subject of the investigation

Made by and on behalf of the Applicant according to Article 4, Point 1 of the General Data Protection Regulation statement(s) are considered personal data of the Applicant, which data is stored is considered data management according to Article 4, point 2 of the General Data Protection Regulation.

In its application submitted to the Authority, the Applicant actually disputed that the Respondent

provided him with true and adequate information and thus violated his right of access,  
because the Applicant referred to point [3] of the Decree he attached, which, according to him, a  
Requested

contradicts his information, because according to this, the Respondent treats such  
an agreement that was concluded on behalf of the Applicant - while he was a minor. For this reason, the Authority  
He had to examine the fulfillment of the applicant's access request in the present procedure.

#### IV.2. Access request submitted by the Applicant to the Respondent

The Applicant - according to the attached attachments and the Applicant's and the Respondent's statement -  
first addressed to the Respondent with a stakeholder request dated February 17, 2022, which the  
The applicant received it on March 2, 2022, and to which in his letter dated March 25, 2022  
answered, so he complied with the one-month response deadline stipulated in the GDPR. The Applicant  
informed the Applicant that it does not process personal data related to the Applicant  
you want to access, so you cannot fulfill your request.

The Applicant stated in the statement sent to the Authority dated June 24, 2022,  
that the agreement in point [3] of the Decree was not reached, because the Respondent  
this part was incorrectly included in his submission. The Respondent also referred to the Decree [4]  
point, according to which the Respondent declared that his claim was for assignment  
therefore, the legal successor to the "[...] court's call for the payment of execution costs  
enforcement requester can make a statement. [...]"

According to the Respondent's statement, between the Respondent and [...], as well as its heirs  
No agreement was reached between the applicant. Due to the failure of the agreement, Applicant  
decided to sell the outstanding claim, which it did on September 28, 2017. THE

The applicant attached the transfer agreement to prove the fact of the sale  
a copy of the contract, and also referred to the fact that the "sale" is recorded in the Decree [4]  
point too. Email correspondence related to the failure of the agreement with the Requested  
he also attached a copy during the clarification of the facts.

The Applicant attached the Order to support his claim and referred to point [3] thereof, however, the Respondent denied what was written in it and referred to point [4] of the Decree, furthermore attached additional evidence to support that it does not perform data management in such a way in connection with an agreement concluded on behalf of the Applicant.

the  
fact  
not during clarification  
The Authority  
came into possession of evidence which  
would support that the Respondent deceived the Applicant during its information. THE  
The Authority accepted the argument presented by the Applicant - supported by correspondence - that  
the agreement requested by the Applicant in the access request is not  
created and that  
that is why concessions were made. The Applicant provided evidence to the contrary during the procedure  
not attached, such evidence did not arise from any other source.

came  
For the first request of the Applicant, the Respondent can be understood within the 1-month deadline stipulated in the GDPR, provided clear information about the rejection of the data subject's request, therefore Article 12 (1) of the GDPR - (3) has fulfilled its obligation, and the Applicant has not violated it  
GDPR Article 15 (3) right.

For the Applicant's second access request (April 5, 2022), only the data protection authority  
more than a month after the start of the procedure (on June 23, 2022), the Respondent responded,  
after becoming aware of the initiation of the procedure.

7

The Applicant was already aware of the lack of data management, because the Respondent had already informed the  
He also informed him in his letter dated March 25, 2022. The Applicant is actually for this

in response, he wrote his new stakeholder request, in which he disputed that the Respondent was indeed not conducts data management in connection with the referred agreement. The Petitioner in Execution based on what was written, he rightly assumed that the Respondent's answer - regarding the lack of data management is not correct, therefore according to the GDPR Article 5 (1) point a) on the basis of the principle of "transparency" the Petitioner could have been expected to explain the contradiction and substantiate the

To the applicant that, despite the provisions of the Order, there is no agreement, because to conclude did not take place, i.e. it could have been expected that the Respondent in the Decree was wrong corrects his statement and explains why there is no data management as referred to by the Applicant regarding the agreement.

During the clarification of the facts, the Authority did not find any evidence to support the data processing in possession of evidence, of which the Applicant could be given a copy to the Respondent based on your submitted access request.

Based on the above, the Authority rejects the Applicant's request to establish the Authority that the Respondent violated the right of the data subject, as well as the request to that effect refuses to instruct the Applicant to fulfill the data subject request. The Authority at the same time ex officio established the "transparency" principle of Article 5 (1) point a) of the GDPR hurt.

#### IV.3. Business Secrets

In the assignment agreement and cash deposit receipt attached by the Applicant there are data related to which the Business Secret tv. Paragraph (1) of § 1 can be applied, so since the Respondent wishes to treat them as business secrets, that is the general rule does not conflict with the provisions of the Data Protection Regulation. However, the Applicant is not the complete one wants to treat the documents as business secrets, as he also sent their public versions for the Authority.

Due to the above, the Respondent is business related to the data withheld from the public version of its request to be treated as a secret, the Authority has the Ákr. Section 27(2) and Section 34

Based on paragraphs (2) – (3), it approves.

#### IV.4. Legal consequences

The Authority rejected the Applicant's request for the imposition of a data protection fine, since the application of a legal consequence does not directly affect the rights or legitimate interests of the Applicant, for him, such a decision of the Authority does not create any right or obligation, as a result of this

- with regard to the application of legal consequences falling within the scope of enforcing the public interest in relation to the imposition of a fine, the Applicant is not considered a customer under Art. Paragraph (1) of § 10 on the basis of, and since the Art. It does not comply with paragraph (1) of § 35, a request in this regard there is no place for its submission, this part of the submission cannot be interpreted as a request.

#### A. Other questions

The competence of the Authority is set by Infotv. Paragraphs (2) and (2a) of § 38 define it, and its competence is covers the whole country.

The Akr. § 112, § 116, paragraph (1) and § 114, paragraph (1)

there is room for legal remedy against the decision and the order through a public administrative lawsuit.

\* \* \*

The rules of the administrative trial are set out in Act I of 2017 on the Administrative Procedure hereinafter: Kp.) is defined. The Kp. Based on § 12, paragraph (1), by decision of the Authority

8

the administrative lawsuit against falls within the jurisdiction of the court, the lawsuit is referred to in the Kp. § 13, subsection (3) a)

Based on point aa), the Metropolitan Court is exclusively competent. The Kp. Section 27 (1)

legal representation is mandatory in a lawsuit falling under the jurisdiction of the court based on paragraph b).

The Kp. According to paragraph (6) of § 39, the submission of a claim is an administrative act does not have the effect of postponing its entry into force.

The Kp. Paragraph (1) of § 29 and, in view of this, Pp. According to § 604, it is applicable of 2015 on the general rules of electronic administration and trust services

CCXXII. Act (hereinafter: E-Administration Act) according to Section 9 (1) point b) the customer legal representative is obliged to maintain electronic contact.

The place and time of submitting the statement of claim is set by Kp. It is defined by § 39, paragraph (1).

The amount of the fee for the administrative lawsuit is determined by Act XCIII of 1990 on fees. law (hereinafter: Itv.) 45/A. Section (1) defines. It is from the advance payment of the fee

Itv. Paragraph (1) of § 59 and point h) of § 62 (1) exempt the party initiating the procedure.

dated: Budapest, according to the electronic signature

Dr. Attila Péterfalvi

president

c. professor