

Case number: NAIH / 2019/28/15

Subject: Admissibility

tax decision

DECISION

Before the National Authority for Data Protection and Freedom of Information (hereinafter referred to as the Authority) [] (. . .)

hereinafter referred to as the "Applicant") at the request of the National Health Insurance Fund Manager (hereinafter:

The following decisions will be taken in the data protection authority proceedings against the applicant:

I. The Authority will grant the applicant 's request and

a) finds that the Applicant has not granted the Applicant the right of access and thereby

has infringed Article 15 (1) and (3) of the General Data Protection Regulation, and

did not properly inform the Applicant of the processing of his personal data, in breach of which

Article 5 (1) (a) and Article 12 of the General Data Protection Regulation

the principle of fair data management.

(b) order the Applicant to do so within 15 days of the date on which this Decision becomes final

make available to the Applicant the personal data of the Applicant dated January 1, 2002 and

A copy of the "patient life" for the period from 31 January 2002.

II. The Authority shall at the same time ex officio order the identification of this Decision

disclosure on its website.

The obligor shall take the measures provided for in point I. b) from the time the measure is taken

You must certify in writing within 8 days, together with the supporting evidence, that:

Towards an authority. In the event of non-compliance, the Authority shall order the enforcement of the decision.

There is no administrative remedy against this decision, but from the date of notification

within 30 days of the action brought before the Metropolitan Court in an administrative action

can be challenged. The application must be submitted to the Authority, electronically, which is the case

forward it to the court together with his documents. The request for a hearing must be indicated in the application.

For those who do not benefit from full personal exemption, the judicial review process

its fee is HUF 30,000, the lawsuit is subject to the right to record material fees. In the proceedings before the Metropolitan Court

legal representation is mandatory.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

I.1. In its application received by the Authority on 21 December 2018, the Applicant stated that

On 12 November 2018, he applied to the Applicant through a lawyer in order for the Applicant to:

On 23 January 2002, [] in the course of his disputed care at the medical institution

publishes data on the resulting outpatient treatment sheet ('patient pathway'). The Requested

Department of Data Protection and Coordination (1139 Budapest, Váci út 73 / A.) Dated 13 December 2018

- NEAK registration number: F0221 / ... / 2018 - informed the applicant on behalf of the applicant.

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lawyer that the "Mansion Pfv.IV.20.655 / 2017/5. and the judgment given thereon

According to the policy resolution, NEAKs can currently store TAJ numbers for 10 years

related health data. (...) Based on all this, his client was made on January 23, 2002

We are unable to provide the information you have requested about your benefits '.

In a letter dated 10 December 2018 from the Applicant, the Requested Supply and Coordination Department

III. The Financing and Price Support Department turned to III.3 (4400 Nyíregyháza, Vörösmarty tér 7.).

In its application, it applied for the period from 1 January 2002 to 31 January 2002

the issuance of his or her medical history. The organizational unit of the Applicant in Nyíregyháza on December 13, 2018

- NEAK registration number: ET0302 / ... / 2018 - informed the Applicant that the

Only applied for "2008. for the period after 1 January

and pointed out that requests for data after 1 January 2008 were fully substantiated

may be submitted in the form of a private document. In view of the above, the Applicant was informed that

that, for the period from 1 January 2002 to 31 January 2002, the

data request "cannot be fulfilled".

The Applicant attached to his application the letter written to the Applicant dated 10 December 2018, and the requested ET0302 /... / 2018. and F0221 /... / 2018. dated 13 December 2018 answers.

The request is based on the 2011 Act on the Right to Self-Determination of Information and Freedom of Information CXII. Pursuant to Section 60 (1) of the Act (hereinafter: the Information Act), NAIH / 2018/1189. case number On December 22, 2018, data protection authority proceedings were initiated.

I.2. The application did not contain the natural information necessary to identify the Applicant the place and time of birth of the Applicant and the indicated violation NAIH / 2019/28/2, the Authority therefore by order dated 31 January 2019, registered the Applicant to rectify the deficiencies. THE By letter received by the Authority on 8 February 2019, the applicant complied with the missing data. communicated and requested that the Authority order the Applicant to comply with its request for access.

I.3. The Authority has issued NAIH / 2019/28/4. information on the matter in its order number requested the Applicant to clarify the facts

In its reply received on 25 March 2019, the Applicant informed the Authority that a The applicant's career path for the period from 1 January 2002 to 31 January 2002, refused to issue outpatient treatment sheets for the following reasons.

On the handling and protection of health and related personal data 1997 XLVII. Until 1 January 2007, the Act (hereinafter: Eüak) did not provide for on the handling of health data by a health insurance body. It is then in force Act LXIII of 1992 on the protection of personal data and the disclosure of data of public interest law According to Section 5 (2), "personal data shall be used only for the time necessary to achieve the purpose manageable. " 'In addition, Act C of 2000 on Accounting (' the Accounting Act ') provides:

tv.) specified that the accounting documents must be kept for 10 years, which is health data collected for funding in the case of a health insurance body applicable". "During the specified period, Act XI of 1987 on Legislation Act (hereinafter:

Jat.) Was in force, § 12 (2) of which provided that prior to promulgation it may not impose a legal obligation or declare any conduct for a period of time unlawful '.

The Mansion Pfv. ARC. 20.655 / 2017/5. Eüak. Section 22 (6) -

on the handling of health data by a health insurance body,

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provides for the duration of personalized treatment

'The relevant legal fact was the date on which the data were entered in the register

and obliged NEAK to comply with the regulations in force at the time of entry

health care funded by the Health Insurance Fund

deprive them of the possibility of personal identification. "

The "outpatient sheet" requested by the Applicant has a wider data content than the medical one

reports provided by service providers to the Applicant containing financing data, therefore

the "full handling of outpatient workshops is not authorized by NEAK by law".

Attached to the reply by the Applicant is the Applicant dated 10 December 2018

of the General Court of Szeged 23.P.20.216 / 2016/9. judgment of the Court of First Instance

amending its judgment Pf.I.20.714 / 2016/3. the judgment of the Szeged Judgment Board no

Court of Review Pfv.IV.20.655 / 2017/5. - cited above.

In addition, the Ministry of Human Resources for Health has been attached

By Secretary of State 1965-3 / 2018 / EST. registration number issued on the registered financing

anonymisation of data.

I.4. The Authority subsequently noted that the Applicant had not replied to all of the

NAIH / 2019/28/4. to the question raised in the order numbered, and therefore reiterated the order clarifying the facts

issued. A NAIH / 2019/28/7. In Order No. 1, the Authority requested the information of the Applicant

when the data requested by the Applicant was anonymised or deleted, and if

if this was not the case, he requested that they be sent to the Authority. In addition, the Authority

requested information on how to access the Applicant's health data.

I.5. The Applicant's application on May 3, 2019 for an extension of the deadline

submitted, which was accepted by the Authority and extended the deadline for compliance.

I.6. Subsequently, by letter received on 28 June 2019, the Applicant informed the Authority that

for the period requested by the Applicant, the IT system does not allow

for query. In the IT system, "users enter their queries by specifying a date

by specifying an interval from to. As a result of the program change, the

start date value is restricted so you can't enter an earlier date than

legislation allows users not to view and

for the period covered by the restriction and therefore does not know any data

forward to anyone '.

At the same time, the Applicant claimed that the database in question was subject to a legal obligation

is also part of the managed and national data assets required for health insurance duties

for the full supply. The Applicant informed the Authority that

anonymisation could not take place, anonymisation "takes longer to carry out responsibly

takes time ". He also informed the Authority that "if required to do so,

subject to their sensitive nature through a closed system Applicant

but did not send it to the Authority, ie it did not

fully complied with the repeated request.

I.7. The Applicant finally received F022 / 8-8 / 2019 by post received by the Authority on 24 July 2019.

in NAIH / 2019/28/4. order no. THE

Applicant informed the Authority about the way to access the IT system

on NEAK / 30/2017. on requesting access to IT resources

and its registration regulations. For the system concerned

the Deputy Chief Information Officer shall be the data controller, who shall ensure that only the

have access to the data stored in the system. Consequently, by the Applicant requested clerks, regional bodies could not release the requested data. The Requested in one sent the data requested by the Applicant to the Authority with a repeated remark to send them to the Applicant if the Authority is obliged.

II. Applicable legal requirements

On the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC

Article 2 (1) of Regulation (EU) 2016/679 (hereinafter referred to as the General Data Protection Regulation)

the General Data Protection Regulation applies to personal data in part or

fully automated processing of personal data

which are part of a registration system,

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

Personal data pursuant to Article 5 (1) (a) of the General Data Protection Regulation

must be handled lawfully and fairly and in a manner that is transparent to the data subject.

According to Article 12 (1) of the General Data Protection Regulation, it is appropriate for the controller

take measures to ensure that the data subject receives personal data

all the information referred to in Articles 13 and 14 and Article 34

in a concise, transparent, comprehensible and easily accessible form,

in a clear and comprehensible manner. Pursuant to Article 12 (4), if it is

If the controller does not act on the data subject's request, he shall inform the data subject

the factual and legal reasons for not taking action and the fact that he is concerned

you can lodge a complaint with a supervisory authority and have the right to a judicial remedy.

Under Article 15 (1) of the General Data Protection Regulation, the data subject has the right to:

receive feedback from the data controller on the processing of your personal data

is in progress and if such data processing is in progress, you are entitled to personal

access to data and the following information:

- (a) the purposes of the processing;
- (b) the categories of personal data concerned;
- (c) the recipients or categories of recipients with whom the personal data are held have been or will be communicated, including in particular to third country consignees, and international organizations;
- (d) where applicable, the intended period for which the personal data will be stored or, failing that possible criteria for determining this period;
- (e) the data subject's right to request personal data concerning him or her from the controller rectification, erasure or restriction on the processing of such personal data against its treatment;
- (f) the right to lodge a complaint with a supervisory authority;
- (g) if the data were not collected from the data subject, all available information on their source;
- (h) the fact of automated decision-making referred to in Article 22 (1) and (4), including: profiling and, at least in these cases, the logic used understandable information about the significance of such data processing and what it is for the data subject with expected consequences.

Article 15 (3) of the General Data Protection Regulation provides that the controller is make a copy of the personal data which are the subject of the processing available to the data subject, since in this way, effective and complete access to personal data can be achieved.

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Pursuant to Article 15 (4) of the General Data Protection Regulation, the data referred to in the right to request a copy shall not adversely affect the rights and freedoms of others.

Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein shall apply with the additions provided for in

Infotv. Pursuant to Section 60 (1), the enforcement of the right to the protection of personal data the Authority shall, at the request of the data subject, initiate a data protection authority procedure.

Infotv. Pursuant to Section 61 (2) (b), the Authority may order the decision of the data controller

disclosure of his identification data if it is in the public domain

in the context of the activities of that body.

Unless otherwise provided in the General Data Protection Regulation, data protection was initiated upon request

CL of the General Administrative Procedure Act 2016. Act (a

hereinafter referred to as the Act) shall apply with the exceptions specified in the Infotv. The Ákr.

Pursuant to Section 50 (5) (b), it does not count towards the administrative deadline - if it has a contingent effect

there is no place to make a decision - the duration of the client's omission or delay.

Act C of 2000 on Accounting (hereinafter: the Accounting Act) 1 January 2007

According to the text in force before, the accounting documents must be kept for 10 years. The

1997 on the processing and protection of human health and related personal data

year XLVII. Section 22 (6) of the Act (hereinafter: Eüak.) in force from 1 January 2007 to 25 July 2007

According to paragraph 1, the social security administrations shall be provided with the medical care provided to them

and personal data "for a period of five years from the date of their inclusion, provided that the processing is carried out

proceedings have been instituted in the case in question, the case may be dealt with until the date of its closure. This

the data shall be destroyed. " From 25 July 2007, the paragraph referred to a

amended as follows: "for a period of ten years from the date of their inclusion, if any

legal proceedings have been instituted in a case involving data processing, it may be until the date of closure of the case

to treat. Thereafter, the data shall be deprived of the possibility of personal identification. "

As of January 1, 2009, Eüak. According to Section 22 (6), the data shall be "15

years, if legal proceedings have been instituted in the case involving data processing, the case shall be closed

can be treated until Thereafter, the data must be deprived of personal identification

from 1 January 2015, the data shall be entered in the register of the health insurance body

for a period of 30 years from the date of entry, if legal proceedings have been instituted in the case involving data processing,

then it can be handled until the time the case is closed. After that, the data must be deprived of the

the possibility of personal identification. "

III. Decisions of the Authority

III.1. Ensuring the exercise of the Applicant's right of access

A partial right of access is the right to make a copy available.

By letter submitted on 10 December 2018, the Applicant requested the Applicant to the transmission of patient life data for the period from 1 January to 31 January 2002.

In its reply dated 13 December 2018, the Applicant informed the Applicant that

Eüak. Pursuant to Section 22 (6) for the period after 1 January 2008

can provide data, so your request cannot be fulfilled.

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The Applicant's lawyer acting on behalf of the Applicant is also dated 13 December 2018

In its reply, it stated that it was entitled to benefits on 23 January 2002

data cannot be sent because "NEAK can currently store TAJ for 10 years

health data relating to

The legal bases for the processing of personal data are covered by the General Data Protection Regulation exhaustively in Article 6 (1).

The scope and content of these legal bases differ from the previous Hungarian legislation in some elements. Of this on the one hand, the consequence is that the legislative option of the Member State legislator is typically mandatory data processing [6. Article 1 (1) (c) and (e)], which

Regarding the regulation (similar to the previous regulation), the Infotv. Section 5 (3) certain elements need to be included in the provisions on mandatory data processing.

A legal basis provides a legal basis for the data processing covered by the request. With the right of access the retention period of the relevant document qualifying as an accounting document at the time of their creation a Accounting tv. § 169. At the time of creation of the documents so provided that they should be kept for (at least) ten years.

In view of the above, the statutory retention period expired before 25 May 2018

therefore the Authority does not take a decision on this data processing in this Decision

findings. Namely, in the data management period prior to May 25, 2018, the general

The Data Protection Regulation was not yet applicable and Article 77 (1) of the General Data Protection Regulation and Infotv. Pursuant to Section 60 (2), the Authority shall apply in respect thereof

nor may an application for an official data protection procedure be made.

However, according to the Applicant, the database in question is a legal obligation

and is also part of the national data asset,

has not taken place by the date of the official data protection procedure, the Deputy Director-General for Information Technology and

authorized by another person to access them.

The Authority therefore found that the Applicant had not granted the Applicant access

when he was informed that he was unable to send the data in question

for. According to the Applicant, this was done because only the

Deputy Chief Information Officer and authorized by another person to access the system

otherwise, users can only query with a limited start date.

However, with regard to the data, the Applicant is considered a data controller, thus the rights of the data subject

The Applicant 's practice of a

Inadequate information is provided when responding to requests from "users".

The right of access and information enshrined in the General Data Protection Regulation

the legal basis and the lawfulness of the data processing, if any

appropriate information must be provided on the exercise of the data subject's rights,

which in the present case was not realized, therefore, the Applicant violated the general data protection

the information requirements of Article 12 of this Regulation.

The Applicant has therefore provided false information to the Applicant regarding the processing of his / her personal data,

in breach of Article 15 (1) and (3) of the General Data Protection Regulation. The

transparency must apply throughout the data management process. The principle of transparency

According to the Commission, it should be transparent to those concerned which personal data they have

how data controllers handle them. One way to make sure of this is to exercise the right of access.

By providing the Applicant with false and misleading information as set forth in Section I

provided the Applicant with the processing of his personal data - according to which he deleted them and thus them

Article 5 (1) (a) of the General Data Protection Regulation

the principle of transparent and fair data management in accordance with

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III.2. Legal consequences

The Authority grants the request of the Applicant and Article 58 (2) of the General Data Protection Regulation.

condemns the Applicant on the basis of paragraph III.1. as set out in point

infringed Article 15 (3) of the General Data Protection Regulation by not issuing him a

Personal data in the "patient path" register for the requested period and has been infringed

the principle of transparent and fair data management under Article 5 (1) (a) because it does not

duly informed about the processing of your personal data.

The Authority therefore instructed the Applicant to send the January 2002 letter to the Applicant

For the period from 1 January to 31 January 2002, the "patient life" is included in the register

personal information.

The Authority shall inform Infotv. Pursuant to Section 61 (2) (b), the decision shall order the Debtor Identifier

disclosure of his data, as the decision is a public task

in the context of the activities of that body.

ARC. Other issues

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a) defines its jurisdiction as a whole

country.

The decision is based on Ákr. 80.-81. § and Infotv. It is based on Section 61 (1). The decision is based on Ákr. § 82

Shall become final upon its communication pursuant to paragraph 1. The Ákr. § 112 and § 116 (1),

or pursuant to Section 114 (1), there is an administrative action against the decision

redress.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (2) (a) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (11)

the Metropolitan Court has exclusive jurisdiction. 2016 on Civil Procedure

CXXX. Act (hereinafter: Pp.) - the Kp. Applicable pursuant to Section 26 (1) - Section 72 provides for legal representation in a case falling within the jurisdiction of the Tribunal. Kp. Section 39 (6)

unless otherwise provided by law, the date of filing of the application

has no suspensory effect on the entry into force of an administrative act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of public administration and trust services. Act (a

hereinafter: E-Administration Act), the customer is legal in accordance with Section 9 (1) (b)

representative is required to communicate electronically.

The time and place of the submission of the application is Section 39 (1). The trial

Information on the possibility of requesting the maintenance of the It is based on § 77 (1) - (2). THE

the amount of the fee for an administrative lawsuit in accordance with Act XCIII of 1990 on Fees. Act (hereinafter:

Itv.) 44 / A. § (1). From the advance payment of the fee, the Itv. Section 59 (1)

and Section 62 (1) (h) shall release the party initiating the proceedings.

If the Applicant does not duly demonstrate the fulfillment of the required obligation, the Authority shall

considers that it has failed to fulfill its obligations within the prescribed period. The Ákr. According to § 132, if the debtor

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has not complied with an obligation contained in the final decision of the authority, it shall be enforceable. The Authority

decision of the Ákr. Pursuant to Section 82 (1), it becomes final with the communication. The Ákr. Section 133

enforcement, unless otherwise provided by law or government decree

ordering authority. The Ákr. Section 134 of the Enforcement - if law, government decree

or in the case of a municipal authority, a decree of a local government does not provide otherwise
carried out by a state tax authority. Infotv. Pursuant to Section 60 (7) in the decision of the Authority
to perform a specific act, conduct or tolerate a specific act
to stop
aimed at
obligation
with regard to
the
decision
implementation
the
Authority.

Budapest, September 2019 "

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Dr. Attila Péterfalvi

President

c. professor