Litigation Chamber

Decision on the merits 40/2023 of 3 April 2023

File number: DOS-2022-01387

Subject: Refusal of access to personal data after the end of the occupation

The Litigation Chamber of

the Data Protection Authority, composed of

Mr Hielke Hijmans, chairman, and Messrs Dirk Van Der Kelen and Jelle Stassijns, members;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the

protection of natural persons with regard to the processing of personal data and

to the free movement of such data, and repealing Directive 95/46/EC (General Regulation on the

data protection), hereinafter "GDPR";

Considering the law of December 3, 2017 establishing the Data Protection Authority, hereinafter

"LCA";

Having regard to the internal regulations as approved by the House of Representatives on

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The complainant :

Mr. X, represented by Maître Maarten Verhaghe, whose office is located

at 546, Kortrijksesteenweg in 9000 Ghent, hereinafter "the plaintiff";

The defendant: Y, represented by Maître Sara Torrekes, whose firm is located at 112,

Jozef Duthoystraat at 8790 Waregem, hereinafter “the defendant”.

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I. Facts and procedure

1.

On February 22, 2022, the complainant filed a complaint with the Authority for the Protection of

given against the defendant.

The plaintiff was employed for 13 years in the services of the defendant, a

independent association whose activity is the support and accompaniment of people

disabled adults. The plaintiff was (jointly) responsible for the defendant's workshop.

In carrying out this function, the complainant used the e-mail address [...]

for (at least) 8 years. On September 15, 2020, the plaintiff's occupation ended.

On May 25, 2021,

the complainant made an access/information request

complementary to the defendant. Given the complexity and magnitude of the request, the

defendant informed the plaintiff on June 10, 2022 of the 2-month extension of the deadline

for the communication of information on the suite reserved on request. On August 24, 2022,

the defendant sent its response to the request to exercise the right of access.

2.

On March 30, 2022, the complaint was declared admissible by the Front Line Service on the

basis of Articles 58 and 60 of the LCA and the complaint is forwarded to the Litigation Chamber

under article 62, § 1 of the LCA.

3.

On May 4, 2022, pursuant to Article 58.2, point c) of the GDPR and Article 95, § 1, 5° of the LCA,

the Litigation Chamber takes decision 67/2022 with regard to the defendant and

orders, before taking a decision on the merits, to comply with the request of the

complainant to exercise his right of access within one month (Article 15.1 of the GDPR).

The follow-up given to this decision must be notified, with supporting documents, to

the Litigation Division within one month of notification of the decision.

4.

On May 24, 2022, the defendant requests that the case be dealt with on the merits as well

a copy of the file (art. 95, § 2, 3° of the LCA), which was sent to him on June 1, 2022

5.

On June 1, 2022, the parties concerned are informed by registered mail of the provisions as set out in article 95, § 2 as well as in article 98 of the LCA. The parts concerned are also informed, pursuant to Article 99 of the LCA, of the deadlines for report their findings.

The deadline for receipt of the defendant's submissions in response has been set to July 13, 2022, that for the complainant's reply submissions to August 3, 2022 and that for the defendant's reply conclusions on August 24, 2022.

6.

On June 13, 2022, the defendant agrees to receive all communications relating to the case electronically, expresses its intention to make use of the possibility of being heard, in accordance with Article 98 of the LCA, and requests an extension of the deadline to report findings.

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7.

On June 13, 2022, the complainant agrees to receive all communications relating to the case electronically, expresses its intention to make use of the possibility of being of course, this in accordance with article 98 of the LCA, and confirms the request of the defendant for an extension of the deadlines for transmitting the conclusions. The deadlines for introduce the conclusions are set as follows:

The deadline for receipt of the defendant's submissions in response is fixed at July 24, 2022, that for the complainant's reply submissions on August 24, 2022 and finally that for the conclusions in reply of the defendant on September 24, 2022.

8.

On July 18, 2022, the Litigation Chamber receives the submissions in response from

the defendant. Mainly, the defendant argues that the letter of May 25, 2021
of the complainant does not constitute a request for access to personal data
relating to (the mailbox associated with) the e-mail address in question. Alternatively, the
defendant argues that the e-mail address in question does not contain any data
personal character of the complainant. In the further alternative, the defendant asserts that the
refusal of access is justified, having regard to the excessive nature of the request and the protection
rights and freedoms of others.

9.
On August 24, 2022, the Litigation Chamber receives the request from both parties to adapt the
deadlines for the submission of conclusions, so that the deadline for receipt of the
conclusions in the complainant's reply is set for August 31, 2022 and that for the conclusions
in reply of the defendant on September 29, 2022. The Litigation Chamber confirms
this extension on August 26, 2022.

10. On August 31, 2022, the Litigation Chamber receives the request from both parties to extend
once again the deadlines for the submission of conclusions, so that the deadline
for receipt of the complainant's reply submissions is set for September 5, 2022 and
the one for
the rejoinder submissions of
the defendant on October 4, 2022.
On August 31, 2022, the Litigation Chamber confirms these extended deadlines and emphasizes that
no more extensions will be allowed.

11. On September 5, 2022, the Litigation Chamber receives the submissions in reply from
of the complainant. The complainant maintains that the letter of May 25, 2021 does indeed constitute a
request for access in accordance with Article 15 of the GDPR and that, contrary to this
asserted by the defendant, the e-mail address does indeed constitute data for
personal character concerning him. The complainant also states that the request for access

does not only concern the e-mail address itself but also other data to

personal character. Finally, the complainant argues that the denial of access is not justified.

12. On October 4, 2022, the Litigation Chamber receives the submissions in rejoinder from

the defendant. In these conclusions, the defendant repeats the arguments of its

submissions in response, adding that the complainant's letter of May 25, 2021 did not

not on several personal data other than the e-mail address and the mailbox

associated.

13. On January 26, 2023, the parties are informed that the hearing will take place on March 13, 2023.

14. On March 13, 2023, the parties are heard by the Litigation Chamber.

15. On March 15, 2023, the minutes of the hearing are submitted to the parties.

16. On March 20, 2023, the Litigation Division received a few remarks from the defendant

relating to the minutes that it decides to include in its deliberation.

17. The Litigation Chamber does not receive any comments from the complainant concerning the

minutes.

II. Motivation

II.1. Object of the procedure

18. Based on the findings and the hearing, the Litigation Chamber finds that the

parties do not agree on the scope of the subject matter of these proceedings. The complainant

submits that the complaint and, therefore, the procedure concerns the request for access

relating to all personal data and all requested documents, such as

as formulated in the letter of May 25, 2021. The defendant asserts that the complaint

concerns only the e-mail address and the associated mailbox. Both parties have

explained their position on this subject during the hearing.

19. The Litigation Chamber declares that the letter of May 25, 2021 is worded in a manner

broad, asking on the one hand to obtain access to all personal data

and mentioning on the other hand various concrete documents to which the complainant wishes to access. The defendant formulated a response to this letter and transmitted various requested documents available to it. The complainant considered this answer insufficient and lodged a complaint with the DPA. In this complaint, the defendant refers only to the e-mail address and the associated mailbox. There is no reference even to for example, to other documents that the complainant wishes to obtain but has not received after the defendant's reply letter. The Litigation Chamber finds as soon as when the complaint therefore focuses on obtaining personal data contained in the mailbox.

20. The Litigation Division therefore concludes that the present proceedings concern only the right of access with regard to the e-mail address [...] and the associated mailbox.

II.2. Definition of "personal data"

II.2.1. Complainant's position

21. In his submissions, the Complainant argues that he was employed by the Respondent as head of the workshop for a period of 13 years. During and with a view to performance of his duties, the complainant has always used the e-mail address [...], both for both professional and private. The complainant claims that this email address was used solely by him for a period of 8 years until the end of his occupation.

Complainant further states that Respondent's general email address is [...] and not [...].

22. Consequently, the complainant concludes that the e-mail address constitutes personal data personal concerning him and that the mailbox also contains various data to be personal about him.

23. The complainant also refers to Recommendation 08/2012 of 2 May 2012 of the Privacy Commission (predecessor in law of the Privacy Authority)

data protection, hereinafter: CPVP) as well as to the decisions of September 29, 2020 and
of December 2, 2021 of the Litigation Chamber concerning the management of the mailbox of a
employee who leaves the company and the application, by the employer, of the essential principles of
GDPR such as purpose limitation, lawfulness, data minimization and limitation
conservation. The complainant never gave his consent to
subsequent use of the mailbox after his departure. According to the plaintiff, the defendant
failed to act in accordance with this Recommendation and previous decisions of the
Litigation Chamber.

II.2.2. Defendant's position

24. The defendant contests this assertion by the complainant. She claims that the email address
[...] does not constitute personal data of the complainant and that the mailbox
associated does not contain any personal data concerning the complainant.
The use of the mailbox does not imply the processing of personal data either.
staff relating to the complainant. The e-mail address is indeed a purely e-mail address
functional which belongs exclusively to it and that its employees, including the complainant,
may only use for professional purposes.

25. In its conclusions, the defendant points out that, contrary to what the
complainant asserts in his conclusions, at the time when the latter was employed with her,
this e-mail address was used by several collaborators, such as the
colleague Z. This appears from communications which the complainant himself sent when he
was employed, in which he insisted on the use of general e-mail addresses rather

on the one hand, and where he asked to grant this colleague access to
the e-mail address in question on the other hand. In this context, the defendant sends a
email dated January 4, 2018 in which the complainant asks to divert a colleague's emails
to the mailbox so that they can share the same mailbox as quickly as possible.

26. The Respondent submits that the Complainant in no way demonstrates or makes plausible
that (the mailbox associated with) the e-mail address would actually contain data to
personal character concerning him. The defendant submits testimonies asserting
that the e-mail address was a shared professional e-mail address, accessible to
several accompanying persons and which was not used for private purposes. These testimonials
also state that if after the departure of the complainant, a personal e-mail sent to him
addressed had been received, quod non, it would have been transferred to him.
27. Furthermore, it should be noted that one obviously cannot simply
deduce from the absence of an ICT policy and/or a written ban on the use of an e-mail address
for private purposes that the e-mail address in question may be used in practice both for
both professional and private purposes. According to the defendant, the dismissal of the complainant to the
Recommendation 08/2012 and previous decisions of the Litigation Chamber is not
not relevant. This Recommendation and these decisions concern the use of a
e-mail address mentioning the name and surname of the person concerned. The defendant
therefore concludes that the e-mail address associated with the mailbox did not contain data to
personal character of the complainant.
II.2.3. Assessment by the Litigation Chamber
28. The Litigation Chamber will first analyze whether the e-mail address [...] constitutes data to be
complainant's personal character and will then comment on the personal data
personal in the mailbox.
II.2.3.1.
Email address as personal data
29. Article 4(1) of the GDPR defines "personal data" as follows:
any information relating to an identified or identifiable natural person (hereinafter
referred to as the "data subject"); is deemed to be an "identifiable natural person"
a natural person who can be identified, directly or indirectly, in particular

by reference to an identifier, such as a name, an identification number, data of

location, an online identifier, or to one or more specific elements specific to

to their physical, physiological, genetic, psychological, economic, cultural or

social.

30. The definition of personal data comprises 4 elements which should be

distinguish :

1) pertaining to

2) identified or

3) identifiable

4) natural person.

31. In order to qualify as personal data, the data must in principle

relate to a natural person. The data does not relate to a person

physical only when the latter is identified or identifiable. A person is

identified when it can be uniquely distinguished from all other people

within a group. A person is identifiable when he has not yet been identified,

but that this is possible without disproportionate effort.

32. The Litigation Chamber has confirmed on several occasions that an e-mail address containing

the first and last name of the data subject, i.e. identifiers

direct, constitutes personal data within the meaning of Article 4(1) of the GDPR1.

In this case, however, it is a functional e-mail address, namely [...].

The e-mail address is therefore associated with a service, in this case the workshop, and not with a

person. The question that arises is whether such a functional e-mail address can

also constitute personal data on the basis of indirect identifiers.

The extent to which certain (indirect) identifiers are sufficient to arrive at a

identification depends on the context of the specific situation. The Litigation Chamber

notes that a distinction should be made between the e-mail address in the period between the first use and January 4, 2018 and thereafter.

Period prior to January 4, 2018

33. In his submissions, the complainant maintains that he was the sole user of the e-mail address. Since the defendant does not put forward any evidence that other people used the e-mail address in the period prior to January 4, 2018, the Litigation Chamber finds that the e-mail address was exclusively used and managed by the complainant, as that (co)responsible for the workshop. At the time of the performance of his duties, the complainant has systematically sent e-mails in signing them with his name as (co)head of the workshop. People who have exchanged e-mails with the address e-mail in question could, after some time, identify the complainant as email address manager. The complainant was therefore indirectly identifiable for third parties using the email address as described above.

34. In view of the foregoing, the Litigation Chamber therefore concludes that the address functional e-mail has not been put into service in order to associate it with the person of the complainant but that is nevertheless what resulted, due to its exclusive use

1 See also Decision 133/2021 of December 2, 2021 and Decision 64/2020 of September 20, 2020.

by the complainant. Consequently, the e-mail address constitutes personal data personnel concerning him, for this period.

Period from January 4, 2018

35. In the period from January 4, 2018, the defendant demonstrates, however, that the address

e-mail was also used (at least) by the other co-leader of the workshop, depending

service needs. The purpose of a functional e-mail address is indeed to ensure the

continuity of service, for example when an employee no longer works within the service

concerned. As soon as the co-leader and other accompanying persons have used

of the e-mail address and have also signed e-mails in their own name as

workshop employees, the complainant was no longer indirectly identifiable. In effect,

the sender of an e-mail could not know which of the employees would process his e-mail,

even if he addressed the complainant personally in his e-mail. Bedroom

Contentious therefore considers that from January 4, 2018, the e-mail address no longer constitutes

personal data of the complainant.

II.2.3.2.

Personal data in the mailbox

36. The defendant asserts that there was no personal data in the box

mail because the e-mail address could not be used for non-professional purposes. this is

disputed by the plaintiff. The complainant asserts that the mailbox does indeed contain

personal data and points out that there is no policy relating to the

the use of the professional e-mail address.

37. The Litigation Chamber recalls in this respect that the concept of "personal data

personal" encompasses any type of information: private (intimate) information,

public, professional or commercial, objective or subjective information.

In the Nowak judgment2, the Court of Justice of the European Union (hereinafter CJEU) stated

clearly that the notion of "personal data" covers both data which

result from objective, verifiable and questionable elements than from subjective data which

contain an evaluation or

judgment on

the person concerned.

Consequently, the Litigation Chamber concludes that the fact that an e-mail address
functional does not constitute personal data within the meaning of Article 4.1) of the
GDPR does not prevent any personal data of the complainant
may be present in the mailbox.

38. The Litigation Chamber specifies that in this case, a distinction should be made between
on the one hand the personal data of the complainant which have been processed in the
professional context and on the other hand the personal data that have been processed

2 CJEU, 20 December 2017, C-434/16, Nowak, ECLI:EU:C:2017:994.

outside the professional context, in his capacity at the time of an employee of the defendant
(private emails).

39. On the basis of the foregoing, the Litigation Division concludes that there can be no
doubt that the complainant's mailbox contains personal data
personal, such as registration for a training course.

40. With respect to private emails, the parties acknowledge that no written prohibition
explicit only applied to the use of the professional e-mail address for private purposes.
However, the parties do not agree on the consequences that flow from this.
The complainant argues that it was therefore permissible to send and receive private e-mails with
work email address. The defendant points out, on the contrary, that the absence
of such a prohibition or of an ICT policy to that effect does not purely and
simply that the e-mail address in question can be used both for the purposes
professional and private purposes.

41. In this context, the Litigation Division refers to the case law of the European Court
human rights (hereafter: ECHR). The ECHR has held that the notion of "private life" must
be understood in a broad sense. It encompasses, for example, the right to establish and develop
relationships with other people as well as the right to identity and development

staff. Specifically, the ECHR ruled that emails sent from work

prima facie fall within the notions of private life and correspondence within the meaning of Article 8,

paragraph 1 of the European Convention on Human Rights, by analogy with its

previously adopted position that this is also the case for calls

calls made from business premises. This broad interpretation

does not mean, however, that any activity that a person would like to engage in with other

people in order to build relationships is protected. The Litigation Chamber considers as soon as

when, given the right to privacy, the complainant could send and receive

occasionally private e-mails via the professional e-mail address, in particular because

that he did not have a personal professional e-mail address and given the fact

that no (written) policy on the subject had been communicated. This private use must

however, be limited to occasional use. The Litigation Chamber reads

however, in the plaintiff's conclusions that for 8 years, he would have sent and received from

numerous private e-mails, while also noting that he does not submit any proof of them.

The Litigation Division cannot therefore establish that such private e-mails dating from the

period of employment of the complainant would appear in the mailbox.

42. The defendant submits that no private e-mail was sent to the plaintiff after the end of

her occupation, which she supports with several testimonies. During the hearing, the Chamber

Litigation asked the plaintiff's counsel what type of private emails it would be

in that case. The latter said that these were private e-mails from friends and

knowledge. Neither the submissions nor the hearing, however, allow the Chamber

Disputed to note the existence of indications suggesting that private e-mails have

actually received at the e-mail address in question after the end of the occupation with

the defendant.

II.3. Right of access (Article 15 GDPR)

43. Pursuant to Article 58.2, point c) of the GDPR and Article 95, § 1, 5° of the LCA, the Chambre Litigation took decision 67/2022 with regard to the defendant and ordered it, before to take a decision on the merits, to respond to the complainant's request to exercise his right of access within one month (article 15.1 of the GDPR). Considering the request of the defendant to deal with the case on the merits and the arguments put forward by the parties, the Litigation Chamber takes a new decision on the matter.

44. Pursuant to Article 15.1 of the GDPR, the data subject has the right to obtain controller confirmation that personal data the concerning are or are not processed. When this is the case, the person concerned has the right to obtain access to said personal data as well as to a series information listed in Article 15.1 a) - h) of the GDPR, such as the purpose of the processing of its data, the possible recipients of his data as well as information relating to the existence of his rights, including the right to request the rectification or erasure of his data or that of filing a complaint with the DPA.

45. Pursuant to Article 15.3 of the GDPR, the data subject also has the right to obtain copy of the personal data which is the subject of the processing.

46. Article 12 of the GDPR relating to the procedures for exercising their rights by persons concerned provides in particular that the controller must facilitate the exercise of their rights by the data subject (article 12.2 of the GDPR) and provide them with information on the measures taken following his request as soon as possible and at the latest the period of one month from its request (article 12.3 of the GDPR). When the manager of the treatment does not intend to satisfy the request, he must notify his refusal within a period of one month by informing the person concerned of the possibility of lodging an appeal against this refusal with the supervisory authority for data protection (12.4 of the GDPR).

47. The Litigation Chamber finds that the plaintiff requested the communication and/or

access via the letter below on May 25, 2021.

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48. The Complainant also requested a copy of various documents from his file of the

personal adding that he would also have liked to know what happened to his mailbox

professional [...] after the end of his employment contract.

49. On June 10, 2021, the defendant informed the plaintiff, by registered mail, of the

two-month extension of the deadline for providing follow-up information

given on request, in accordance with Article 12.3 of the GDPR. On August 24, 2021, the

defendant communicates various requested documents and explains to the plaintiff

why other documents cannot be transmitted, either because they do not exist,

or because the defendant is not the data controller.

50. In his complaint to the DPA, the complainant alleges the fact that he did not obtain access to

e-mails contained in his professional mailbox.

51. In its conclusions, the defendant submits that this initial request of May 25, 2021

does not include a request for access to personal data relating to (the

mailbox associated with) the e-mail address [...] within the meaning of Article 15 of the GDPR. According to

defendant, the plaintiff only asks, with regard to the e-mail address, what he

came from his work mailbox. The defendant replied that the rights

access to the e-mail address had been modified as well as the password. The defendant

also replied that the e-mail address was not personal and did not constitute

therefore not personal data and rejected the complainant's request. As

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subsidiary, the defendant asserts that even if it constituted personal data

personnel, the rejection of the request for access would still be justified, having regard to the principle of

proportionality on the one hand and the protection of the rights and freedoms of others on the other.

II.3.1. Request for access to the e-mail address and the mailbox

52. The Litigation Chamber considers that the complainant's question about what happened to his mailbox cannot be qualified as a request for access/communication of its data to personal character. However, the request for access stems from the first part of the letter dated May 25, 2021 as set out above (see point 47 above). GDPR does not in fact provides for no formal requirement for the request for access and, unless otherwise stated contrary, a request for access relates to all of the personal data of the person concerned. The above request is therefore made in accordance with the GDPR and covers all personal data, including those that may be find in the mailbox.

53. In this regard, the Litigation Chamber also draws attention to the fact that the right of access constitutes one of the essential elements of the right to data protection, such as referred to in Article 8 of the Charter of Fundamental Rights of the European Union and that, as reflected in the EDPB guidelines on the right of access, the limitations of the exercise of this right are only permitted to a limited extent. Furthermore, the reason for which a data subject requests access is irrelevant.3

II.3.2. Refusal of the right of access with regard to the mailbox

54. The complainant countered that the right of access encompasses several elements such as obtaining a definitive answer to the question whether personal data of the complainant are processed or not, for example personal data located in the mailbox. In its pleadings, the defendant sets out the reasons why she denied the right to access the mailbox. Primarily, the defendant asserts that the mailbox does not contain personal data (see section II.2.3.2).

The defendant therefore first replied to the request for access by stating that the box mail did not contain any personal data.

55. In view of the foregoing (see section II.2.3.2), the Litigation Division finds

that it is unavoidable that personal data of the complainant will appear in the

business emails from mailbox.

EDPB, Guidelines 01/2022

3

https://edpb.europa.eu/system/files/2022-01/edpb_guidelines_012022_right-of-access_0.pdf.

-Right

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56. In the alternative, the defendant argues that the refusal of the request for access remains

justified, having regard to the principle of proportionality on the one hand and to the protection of the rights and

freedoms of others, on the other hand.

57. The Litigation Chamber recalls that the right of access is not absolute. In this context, the

Litigation Chamber refers to Article 12.5.b) of the GDPR, worded as follows:

“No payment is required for providing information under Articles 13 and 14 and

to make any communication and take any action under Articles 15 to 22

and Article 34. Where a data subject's requests are manifestly

unfounded or excessive, in particular because of their repetitive nature, the person responsible for the

treatment can:

[…]

(b) refuse to comply with such requests.

It is the responsibility of the data controller to demonstrate the manifestly unfounded nature

or excessive demand."

58. The CJEU ruled in its Rijkeboer judgment on the balance to be struck between the right of access

data subjects and the extent of the burden that the obligation to satisfy this right

takes away for the data controller. Specifically, the questions were

know "from when the exercise of the right of access to information concerning the past

can legitimately be paralyzed by the erasure of this information. And for how long

of time the persons holding data are required to keep traces of the

past actions performed on such data". Although in this case the question posed

was that of knowing how long a data controller must keep the

personal data, the reasoning of the CJEU can be transposed to the case

in this case, given the scope of the complainant's request, extending to all e-mails

concerning him. The Litigation Chamber emphasizes the importance of finding "[...] a fair

balance between, on the one hand, the interest of the data subject to protect his private life [...] and,

on the other hand, the burden that the obligation to keep this information represents for the

controller". The parameters establishing this balance must, of course,

obviously, take care not to impose disproportionate obligations and burdens

excessive, to the data controller.

59. The Litigation Chamber notes, however, that Article 12.5 of the GDPR requires that the

controller demonstrates the manifestly unfounded and excessive nature of the

asked. In its letter of August 24, 2021, the defendant did not do so. In his

submissions in response and in rejoinder, the defendant has, however, put forward elements which

demonstrate excessiveness, but this should have already been done in the letter

aforementioned to the complainant.

60. In the present case, the Litigation Chamber finds that the search for all the e-mails concerning the plaintiff, for a period of at least 8 years, after the end of the occupation, would represent a disproportionate workload for the defendant. The mailbox has also been used by different people for several years.

Nor did the complainant produce any document indicating that private e-mails would be in the mailbox, nor provided specific email addresses or other settings for performing targeted searches in the mailbox. In his conclusions, the complainant further asserts that there are no internal directives indicating that he was required to label personal emails or file them in a separate folder.

Any private e-mails cannot therefore be found by the defendant. with reasonable efforts. In addition, the mailbox contains many sensitive information, such as data relating to the health of users of the defendant's services, in particular handicapped adults, so that it is not possible to simply grant access to all work emails containing personal data of the complainant. Considering the above elements, the Litigation Chamber concludes that the complainant's request for access is excessive and that the defendant legitimately refused to act on it.

61. In view of the foregoing, the Litigation Chamber concludes that there is no violation of Articles 12, paragraphs 1 to 4 and Article 15 of the GDPR, but that on the other hand there is violation of Article 12, paragraph 5 of the GDPR for not having sufficiently demonstrated in a timely manner the manifestly excessive or unfounded nature of the request for access of the complainant. This violation is not, however, of a seriousness which requires the imposition a fine or corrective sanction. The Litigation Chamber considers that a reprimand may suffice.

III. Access to and use of the e-mail address after the end of the occupation

62. In his conclusions, the Complainant asserts that the Respondent unilaterally refused him access to the mailbox. His permissions as a mailbox user have indeed been deleted and the password was then changed. The complainant submits that the defendant could only invoke the legal basis of consent to continue to use the mailbox after his departure. Since the plaintiff did not give his consent, the processing of his personal data would not have a legal basis of Article 6(1) GDPR. In this context, the complainant refers to the Recommendation 08/2012 already mentioned by the CPP as well as to the aforementioned decisions of the Litigation Chamber of September 29, 2020 and December 2, 2021 relating to the use for private purposes of professional tools such as an e-mail address.

63. The defendant maintains in its submissions that the use of the mailbox did not involve the processing of any personal data of the complainant. It is indeed a

functional email address and not a personal email address. According to there respondent, the complainant's reference to Recommendation 02/2012 and to the decisions previous decisions of the Litigation Chamber is not relevant. This Recommendation and these decisions concern the use of an e-mail address mentioning the surname and first name of the person concerned. Therefore, the defendant can legitimately continue to use email address and mailbox.

III.1. Assessment by the Litigation Chamber

64. The Litigation Chamber affirms that the e-mail address is indeed an e-mail address functional at the time when the plaintiff's occupation is terminated and it does not constitute therefore not a personal data of the latter, with the consequence that the GDPR does not apply. The reference to Recommendation 08/2012 of the CPP and to the aforementioned decisions of the Litigation Chamber is therefore not relevant in

the species. During the hearing, the defendant explained that it had meanwhile begun

to use another email address for the workshop, which caused some problems account

given its target audience, adults with disabilities. The Litigation Chamber considers that the

defendant could have legitimately continued to use the functional e-mail address.

The purpose of such an e-mail address is indeed to ensure the continuity of the service. Finally, the

Litigation Chamber recalls that the plaintiff did not make plausible the fact that

personal data concerning him still arrived in the mailbox after

the end of his occupation.

IV. Publication of the decision

65. Given the importance of transparency regarding the decision-making process of the Chamber

Litigation, this decision is published on the website of the Protection Authority

Datas. However, it is not necessary for this purpose that the identification data

of the parties are communicated directly.

FOR THESE REASONS,

the Litigation Chamber of

the Data Protection Authority decides, after

deliberation:

- to formulate a reprimand with regard to the defendant, under article 100,

§ 1, 5° of the LCA, for not having sufficiently demonstrated in a timely manner the

manifestly excessive or unfounded nature of the complainant's request for access,

which constitutes a violation of Article 12, paragraph 5 of the GDPR;

- to close all the other grievances without further action, pursuant to Article 100, § 1, 1° of the

ACL.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets (Brussels Court of Appeal) within thirty days of its

notification, with the Data Protection Authority as defendant.

Such an appeal may be lodged by means of a contradictory request which must include the particulars listed in article 1034ter of the Judicial Code4. The contradictory request must be filed with the registry of the Markets Court in accordance with article 1034quinquies of the Judicial Code5, or via the e-Deposit computer system of Justice (article 32ter of the judicial).

(Sr.) Hielke HIJMANS

President of the Litigation Chamber

4 "The request contains on pain of nullity:

the indication of the day, month and year;

1°

2° the surname, first name, domicile of the applicant, as well as, where applicable, his qualities and his national register number or

Business Number ;

3° the surname, first name, domicile and, where applicable, the capacity of the person to be summoned;

4° the object and the summary statement of the means of the request;

5° the indication of the judge who is seized of the application;

6° the signature of the applicant or his lawyer."

5 "The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter recommended to the clerk of the court or filed with the registry."