

Litigation Chamber

Decision on the merits ANO 07/2019 of

September 17, 2019

File number: DOS-2019-01865

Subject: Complaint for incomplete response in connection with the exercise of the right of access

The Litigation Chamber of the Data Protection Authority, made up of Mr. H. Hijmans,

Chairman, and Messrs. Y. Poulet and F. De Smet, 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 the

free movement of such data, and repealing Directive 95/46/EC (general regulation on the

data protection) (hereinafter the "GDPR");

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the

ACL;

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;

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1. Facts and procedure

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On March 26, 2019, the complainant filed a complaint with the Data Protection Authority

against the defendant.

The subject of the complaint concerns the exercise of the right of access (Art. 15 GDPR). As part of

exercise of this right, the Complainant asserts that the Respondent not only provided an answer

insufficient but also deleted potentially important and essential information.

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On April 19, 2019, the complaint was declared admissible on the basis of articles 58 and 60 of the LCA, the

complainant is notified under Article 61 of the LCA and the complaint is forwarded to the Chamber

Litigation under article 62, § 1 of the LCA.

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On May 15, 2019, the Litigation Chamber decides to request an investigation from the Service

of Inspection, pursuant to articles 63, 2° and 94, 1° of the LCA.

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On May 16, 2019, in accordance with Article 96, § 1 of the LCA, the Chamber's request

Litigation to proceed with an investigation is transmitted to the Inspection Department, as well as the

complaint and the minutes of this decision.

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On June 14, 2019, the investigation by the Inspection Service is closed, the report is attached to the file and

this is forwarded by the Inspector General to the President of the Litigation Chamber (article 91,

§ 1 and § 2 of the LCA).

The report contains findings relating to the subject matter of the complaint and concludes that it cannot

establish with certainty that the defendant has not disclosed all the documents collected about

of the person concerned.

The report also contains findings that go beyond the subject matter of the complaint. Regarding

the defendant, the Inspection Service finds, in general terms, the following:

1. There are no clear rules determining what volunteers can or cannot do with

target group data.□

2. Respondent provides no evidence that adequate information in light of the GDPR has□  
been communicated to the public.□

3. The staff available to the defendant is not sufficient to legally assess the□  
processing in the light of the GDPR and make the necessary adaptations.□

4. The legal basis of the processing remains unclear.□

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5. It is unclear to what extent the defendant is already processing personal data□  
non-sensitive staff.□

6. It is not clear whether personal data is communicated or not□  
to third parties.□

7. We are still waiting to know how the privacy statement will be adapted.□

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On June 26, 2019, the Litigation Division decides, pursuant to Article 95, § 1, 1° and Article 98□  
of the ACL, that the case can be dealt with on the merits.□

The Litigation Chamber decides, on the basis of the report of the Inspection Service, to split the□  
case into two separate cases:□

1. Pursuant to Article 92, 1° of the LCA, the Litigation Chamber will make a decision as to□  
on the merits concerning the subject of the complaint□

2. Pursuant to Article 92, 3° of the LCA, the Litigation Chamber will make a decision as to□  
on the merits, following the findings made by the Inspection Service outside the framework of□  
the complaint.□

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On July 1, 2019, the parties concerned are informed by registered letter of the provisions□  
as set out in article 95, § 2 as well as in article 98 of the LCA. They are also□  
informed, pursuant to Article 99 of the LCA, of the deadlines for transmitting their conclusions.□

With regard to the findings relating to the subject of the complaint, the deadline for receipt of submissions in response from the complainant was set for July 26, 2019, that for the submissions in reply of the defendant on August 26, 2019.

For findings that go beyond the subject matter of the complaint, the deadline for the receipt of the respondent's submissions in response was set for July 26, 2019.

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On July 1, 2019, pursuant to Article 48, paragraph 2 of the internal rules, the Service of Inspection is informed of the letter sent to the defendant in the context of the findings made outside the scope of the complaint.

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On July 6, 2019, the complainant requested a copy of the file (art. 95, § 2, 3° of the LCA).

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On July 9, 2019, a copy of the file was sent to the complainant.

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On July 25, 2019, the Litigation Chamber received the defendant's submissions in response with respect to findings that go beyond the subject matter of the complaint.

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On July 26, 2019, the Litigation Chamber receives the complainant's submissions in response concerning the findings that the Inspection Service has made regarding the subject of the complaint.

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The defendant does not submit any submissions in reply to the Litigation Chamber concerning the findings of the Inspection Service regarding the subject of the complaint.

## 2. Legal basis

- Article 5 GDPR

1. Personal data must be: ☐

a) processed in a lawful, fair and transparent manner with regard to the data subject ☐

(lawfulness, fairness, transparency); ☐

b) collected for specified, explicit and legitimate purposes, and not to be processed ☐

subsequently in a manner incompatible with those purposes; further processing for the purposes ☐

archives in the public interest, for scientific or historical research purposes or for ☐

statistical purposes shall not be considered, in accordance with Article 89(1), as ☐

incompatible with the initial purposes (limitation of purposes); ☐

c) adequate, relevant and limited to what is necessary in relation to the purposes for ☐

which they are processed (data minimization); ☐

d) accurate and, where necessary, kept up to date; all reasonable steps must be taken ☐

so that personal data which is inaccurate, having regard to the purposes for ☐

which they are processed, are erased or rectified without delay (accuracy); ☐

(e) kept in a form which permits the identification of the persons concerned during ☐

a duration not exceeding that necessary with regard to the purposes for which they are ☐

processed; personal data may be kept for longer periods ☐

long insofar as they will be processed exclusively for archival purposes in ☐

public interest, for scientific or historical research purposes or for statistical purposes ☐

in accordance with Article 89(1), provided that the measures are implemented ☐

appropriate technical and organizational requirements required by this Regulation to ensure ☐

the rights and freedoms of the data subject (retention limitation); ☐

f) processed in such a way as to ensure appropriate security of personal data, including ☐

including protection against unauthorized or unlawful processing and against loss, destruction ☐

or accidental damage, using technical or organizational measures ☐

appropriate (integrity and confidentiality); ☐

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2. The controller is responsible for compliance with paragraph 1 and is able to

demonstrate that it is respected (responsibility).

- Section 6

1. Processing is only lawful if and insofar as at least one of the following conditions

is fulfilled:

a) the data subject has consented to the processing of his or her personal data for

one or more specific purposes;

b) the processing is necessary for the performance of a contract to which the data subject is a party

or the execution of pre-contractual measures taken at the latter's request;

c) processing is necessary for compliance with a legal obligation to which the data controller

treatment is submitted;

d) the processing is necessary to protect the vital interests of the data subject or

another natural person;

e) the processing is necessary for the performance of a task carried out in the public interest or relating to the exercise

the public authority vested in the controller;

f) processing is necessary for the purposes of the legitimate interests pursued by the data controller

processing or by a third party, unless the interests or freedoms and rights

fundamentals of the person concerned which require protection of personal data

personal, in particular when the person concerned is a child. Point (f) of the first paragraph

does not apply to processing carried out by public authorities in the performance of their

assignments.

2. Member States may maintain or introduce more specific provisions for

adapt the application of the rules of this Regulation with regard to processing for the purpose of

comply with paragraph 1, points c) and e), determining more precisely the requirements

applicable to the processing as well as other measures aimed at guaranteeing processing

lawful and fair, including in other specific processing situations as provided for in the

chapter IX.□

3. The basis for the processing referred to in paragraph 1, points c) and e), is defined by: a) the right to□

The union ; or (b) the law of the Member State to which the controller is subject.□

The purposes of the processing are defined in this legal basis or, with regard to the□

processing referred to in point (e) of paragraph 1 are necessary for the performance of a task of interest□

public or subject to the exercise of official authority vested in the controller.□

This legal basis may contain specific provisions to adapt the application of the rules□

of this Regulation, inter alia: the general conditions governing the lawfulness of the processing by□

the controller; the types of data that are subject to processing; the people□

concerned; the entities to which the personal data may be communicated□

and the purposes for which they may be used; purpose limitation; the durations of□

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conservation; and processing operations and procedures, including measures to□

guarantee lawful and fair processing, such as those provided for in other specific situations□

treatment as provided for in Chapter IX. Union law or the law of the Member States□

meets an objective of public interest and is proportionate to the legitimate objective pursued.□

4. When processing for a purpose other than that for which the data was collected is not□

not based on the consent of the data subject or on Union law or the right of a□

Member State which constitutes a necessary and proportionate measure in a society□

democratic to ensure the objectives referred to in Article 23(1), the person responsible for the□

processing, in order to determine whether processing for another purpose is compatible with the purpose for□

which the personal data was originally collected, takes into account, among□

others :□

a) the possible existence of a link between the purposes for which the personal data□

data have been collected and the purposes of the further processing envisaged;□

b) the context in which the personal data was collected, in particular in□

regarding the relationship between data subjects and the controller;□

c) the nature of the personal data, in particular if the processing relates to□

special categories of personal data, pursuant to Article 9, or if data□

personal data relating to criminal convictions and offenses are processed, in□

under section 10;□

d) the possible consequences of the envisaged further processing for data subjects;□

(e) the existence of appropriate safeguards, which may include encryption or□

pseudonymization".□

- Section 13□

1. When personal data relating to a data subject is collected□

with this person, the data controller provides him, at the time when the data in question□

question are obtained, all of the following information:□

a) the identity and contact details of the controller and, where applicable, of the representative□

the controller;□

b) where applicable, the contact details of the data protection officer;□

c) the purposes of the processing for which the personal data are intended as well as the□

legal basis for the processing;□

d) where the processing is based on Article 6(1)(f), the legitimate interests□

sued by the controller or by a third party;□

e) the recipients or categories of recipients of the personal data, if they□

exist; and□

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f) where applicable, the fact that the data controller intends to carry out a transfer of□

personal data to a recipient in a third country or an organization□

international community, and the existence or absence of an adequacy decision issued by the Commission□

or, in the case of transfers referred to in Article 46 or 47, or Article 49(1),□



second paragraph, the reference to the appropriate or adapted guarantees and the means of obtaining them  
a copy or the place where they were made available.

2. In addition to the information referred to in paragraph 1, the controller shall provide the

data subject, at the time the personal data is obtained, the

following additional information that is necessary to ensure fair treatment

and clear:

a) the retention period of the personal data or, where this is not possible,

the criteria used to determine this duration;

b) the existence of the right to request from the controller access to personal data

personal information, rectification or erasure thereof, or limitation of processing relating to the

data subject, or the right to object to processing and the right to portability of

data;

c) where the processing is based on point (a) of Article 6(1) or on Article 9,

paragraph 2(a), the existence of the right to withdraw consent at any time, without

infringement of the lawfulness of processing based on consent given before its withdrawal;

d) the right to lodge a complaint with a supervisory authority;

(e) information on whether the requirement to provide personal data

personnel is of a regulatory or contractual nature or if it conditions the conclusion of a

contract and whether the data subject is obliged to provide the personal data, as well as

only on the possible consequences of the non-provision of these data;

f) the existence of automated decision-making, including profiling, referred to in Article 22,

paragraphs 1 and 4, and, at least in such cases, useful information concerning the logic

underlying, as well as the significance and expected consequences of such processing for the person

concerned.

3. When he intends to carry out further processing of personal data for

a purpose other than that for which the personal data was collected, the

controller provides the data subject with information in advance about

of that other purpose and any other relevant information referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 do not apply where and to the extent that the person

concerned already has this information.

- Section 14

1. When the personal data was not collected from the person

concerned, the controller shall provide the latter with all of the following information:

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a) the identity and contact details of the controller and, where applicable, of the representative

the controller;

b) where applicable, the contact details of the data protection officer;

c) the purposes of the processing for which the personal data are intended as well as the

legal basis for the processing;

d) the categories of personal data concerned;

e) where applicable, the recipients or categories of recipients of the personal data

staff ;

f) where applicable, the fact that the data controller intends to carry out a transfer of

personal data to a recipient in a third country or an organization

international community, and the existence or absence of an adequacy decision issued by the Commission

or, in the case of transfers referred to in Article 46 or 47, or Article 49(1),

second paragraph, the reference to the appropriate or adapted guarantees and the means of obtaining them

a copy or the place where it was made available;

2. In addition to the information referred to in paragraph 1, the controller shall provide the

data subject the following information necessary to ensure fair processing

and transparent with regard to the data subject:

a) the period for which the personal data will be stored or, where this

is not possible, the criteria used to determine this duration;□

b) where the processing is based on Article 6(1)(f), the legitimate interests□

sued by the controller or by a third party;□

c) the existence of the right to request from the controller access to personal data□

personal information, rectification or erasure thereof, or limitation of processing relating to the□

data subject, as well as the right to object to processing and the right to data portability.□

data;□

d) where the processing is based on point (a) of Article 6(1) or on Article 9,□

paragraph 2(a), the existence of the right to withdraw consent at any time, without□

undermine the lawfulness of processing based on consent made before the withdrawal of□

this one ;□

e) the right to lodge a complaint with a supervisory authority;□

f) the source from which the personal data originated and, where appropriate, a statement□

indicating whether or not they are from publicly available sources;□

g) the existence of automated decision-making, including profiling, referred to in Article 22,□

paragraphs 1 and 4, and, at least in such cases, useful information concerning the logic□

underlying data, as well as the significance and anticipated consequences of such processing for the□

concerned person.□

3. The controller shall provide the information referred to in paragraphs 1 and 2:□

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(a) within a reasonable time after obtaining the personal data, but not□

not exceeding one month, taking into account the particular circumstances in which the data to be□

personal character are processed;□

b) whether the personal data is to be used for the purposes of communication with□

the data subject, at the latest at the time of the first communication to said person;□

Where□

(c) if it is intended to communicate the information to another recipient, at the latest when ☐  
the personal data is communicated for the first time. ☐

4. When he intends to carry out further processing of personal data for ☐  
a purpose other than that for which the personal data was obtained, the ☐  
controller provides the data subject with information in advance about ☐  
of that other purpose and any other relevant information referred to in paragraph 2. ☐

5. Paragraphs 1 to 4 do not apply when and insofar as: ☐

a) the data subject already has this information; ☐

b) the provision of such information proves impossible or would require efforts ☐  
disproportionate, in particular for processing for archival purposes in the public interest, to ☐  
for scientific or historical research purposes or for statistical purposes subject to the ☐  
conditions and guarantees referred to in Article 89(1), or insofar as the obligation referred to ☐  
in paragraph 1 of this article is likely to render impossible or impair ☐

seriously the achievement of the objectives of that processing. In such cases, the controller ☐  
takes appropriate measures to protect the rights and freedoms as well as the legitimate interests ☐  
of the data subject, including by making the information publicly available; ☐

c) the obtaining or communication of the information is expressly provided for by the law of ☐  
Union or Member State law to which the controller is subject and which provides ☐  
appropriate measures to protect the legitimate interests of the data subject; Where ☐

d) the personal data must be kept confidential under an obligation to ☐  
professional secrecy regulated by Union law or the law of the Member States, including ☐  
a legal obligation of professional secrecy. ☐

3. Motivation ☐

A. With respect to the subject matter of the Complaint, the Complainant makes numerous allegations against the Respondent ☐  
that are based on assertions and assumptions that cannot be proven. This is a ☐  
amalgamation of assertions that are not conclusively substantiated. ☐

On the other hand, the report of the Inspection Service explicitly states that given the change in staff of the defendant and the short retention period of three years, there is no conclusive indication that the defendant had not made sufficient efforts to respond adequately to the plaintiff's request.

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Since neither the inspection report nor the documents in the file make it possible to establish with certainty that the Respondent did not respond conclusively to the Plaintiff's request to exercise its right of access and its right to information, the Litigation Chamber cannot impose any sanction to the defendant. As a result, the Litigation Chamber must close the complaint without further action.

B. For each of the findings of the Inspection Service which goes beyond the subject-matter of the complaint, the Chamber Contentious examined to what extent this was a violation of the provisions of the GDPR by question. In this regard, the Litigation Division refers to the outstanding points of attention and objections as described on pages 3 and 4 of the inspection report, appended to this decision.

The respondent clearly states that it is aware that the current mode of data processing has shortcomings in terms of compliance with the GDPR and undertakes to implement the necessary adaptations by the end of 2019. To this end, the respondent attaches an action plan.

The defendant thus confirms that the current data processing does not meet the requirements of the GDPR, as noted by the Inspection Service. The Litigation Division therefore considers that the processing of data needs to be adapted in order to comply with Articles 5.1.b), 6, 13 and 14 of the GDPR.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation, to dismiss the complaint, pursuant to Article 100, § 1, 1° of the LCA, given that a finding objective violation is not possible. On the basis of the information available to the Chamber Litigation at the present time, it does not currently consider it appropriate to take further action on the complaint. If new elements are added later, the Litigation Division may however, reconsider the decision to close the case without further action; and the Litigation Chamber decides to impose sanctions related to the violation of Articles 5.1.b), 6,

13 and 14 GDPR:□

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pursuant to Article 100, § 1, 9° of the LCA, order the defendant to□

compliance of the processing with articles 5.1.b), 6, 13 and 14 of the GDPR. For this purpose, the□

Litigation Division grants the defendant a period of three months and expects the defendant□

that he submit a report to it by 27 December 2019 at the latest concerning the implementation□

compliance of the processing with the aforementioned provisions. The Litigation Chamber□

invokes in this regard Article 31 of the GDPR which provides that the controller, in□

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case the defendant, is obliged to cooperate with the supervisory authority, at the request of□

the latter, in the execution of its missions.□

Although the Litigation Chamber understands that for a non-profit organization with a limited number of□

members of staff, this means a commitment and an investment of time□

considerable to process the personal data available to it in accordance with□

to the obligations of the GDPR, this does not prevent the provisions of the GDPR from having to be□

respected by any person who is subject to it,□

- publish this decision on the website of the Data Protection Authority□

data, pursuant to Article 100, § 1, 16° of the LCA, admittedly after anonymization.□

Under article 108, § 1 of the LCA, this decision may be appealed within a period of□

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of□

given as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□