

Case number: NAIH / 2019/133 /

History: NAIH / 2018/7235 / H.

Subject: Application in part

decision granting it

## DECISION

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

hereinafter: the Applicant) with the Budapest University of Technology and Economics (1111

Budapest, University of Technology rkp. 3 .; hereinafter referred to as the "Requested")

make the following decisions in the proceedings.

I. The Applicant grants the request and finds that the Applicant has not complied with the

The applicant's request to exercise his right of access - the right of access.

II. The Applicant is obliged to do so within 8 (eight) days from the receipt of this decision

comply with the Applicant's request to exercise the right concerned, in accordance with the provisions thereof

and certify to the Authority within 8 (eight) days after the performance.

III. The Authority will protect the Applicant due to the unlawful data processing carried out by him

600,000 HUF, ie six hundred thousand forints

data protection fine

obliges to pay.

ARC. The part of the application in which the Applicant seeks a damages fee is rejected.

V. The Authority shall order the publication of the identification data of the controller in accordance with this Decision

publication on the Authority's website.

The fine shall run from the expiry of the time limit for bringing an action for judicial review

the target forint settlement account for the collection of centralized revenues of the Authority within 15 days from

(10032000-01040425-00000000 Centralized direct debit account IBAN: HU83 1003 2000 0104 0425

0000 0000). When transferring the amount, NAIH / 2019/133. JUDGE. should be

to refer to.

If the Debtor fails to meet the obligation to pay the fine within the time limit, a late payment allowance is obliged to pay. The rate of the late payment interest is the statutory interest, which is the calendar affected by the delay equal to the central bank base rate valid on the first day of the first half of the year. Fines and penalties for late payment in the event of non-payment, the Authority shall order enforcement of the decision, a fine and a penalty payment recovery of taxes. Recovery of fines and penalties for late payment in the form of taxes Performed by the National Tax and Customs Administration.

There is no administrative remedy against this decision, but it has been available since its notification Within 30 days, an action brought before the Metropolitan Court may be challenged in an administrative lawsuit. THE the application shall be submitted to the Authority, by electronic means, which shall forward it together with the file to the court. The request for a hearing must be indicated in the application. The whole personal for those who do not benefit from an exemption, the fee for the court review procedure is HUF 30,000; subject to the right to record material duty. Legal representation is mandatory in proceedings before the Metropolitan Court.

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## EXPLANATORY STATEMENT

### I. Procedure and clarification of the facts

On 5 December 2018, the Applicant submitted an application to the Authority stating that employer does not provide the part of the information he has requested about him, although he has repeatedly requested it by return receipt.

in a letter. According to the application, dated October 10, 2018, according to the return receipt a

in a letter received by the addressee on 18 October 2018, requested the Applicant to

1. send him a list, a statement of when, in what period, with what code, what

was reported to TB, NAV, the pension payer for a reason;

2. when, how much tax was paid afterwards;

3. whether there were periods of absence and, if so, when;

4. Submit valid job descriptions before and after your transfer.

The Applicant shall respond to the request dated 10 October 2018 from the Applicant within one month

did not receive a reply within the deadline, so on 11 November 2018 he again contacted the Applicant, still requesting the sending of the indicated data and documents. The Applicant thereafter Sent an e-mail to the Applicant on 20 November 2018 informing the Applicant that the Applicant has received his / her application and has been informed of the identity of the administrator, and patience until they responded.

The request submitted to the Authority did not contain the data controller who carried out the alleged infringement the data necessary to identify the infringement and the decision to remedy the alleged infringement therefore, the Authority invited the Applicant to remedy these deficiencies. The Applicant a The Authority complied with the request to rectify the deficiencies and, in its request, indicated the controller Authority to investigate and establish the infringement, the applicant's right of access. requested that his application be complied with and that a damages be awarded.

The Authority notified the Applicant of the opening of the official data protection procedure, at the same time In order to clarify the facts, it requested information from the Applicant as to why it had not complied with the The right of access to the applicant's personal data.

The Applicant did not answer the question contained in the Authority's invitation, only in response to a copy sent an undated reply letter to the Applicant dated 10 October 2018.

provided answers to his questions and requests contained in his letter. It contained the following information:

1. The employer transmits data electronically to NAV in accordance with the regulations. Insurance of the Applicant on the basis of his legal status as a civil servant 18.11.1980. and 30/04/2016 was continuous between 01.05.2016. and 16/05/2016 His insurance was suspended due to an unjustified absence between.

5/17/2016 and 17.01.2019. his insurance was again continuous in the period between. 5/17/2016 and 19.10.2017. He was absent on incapacity for work, was not entitled to sickness benefit, did not receive income, but his insurance was not suspended.

2. When asked by the Applicant when and how much tax was paid afterwards, the Applicant informed that the employer certifies with the M30 certificates that the statutory obligation deducted and paid taxes and contributions. M30 is "The employer, the payer is aggregate

Certificates for the declaration of personal income tax for the year 'and' Consolidated certificate for the annual income and deductions of contributions' were mailed to your address in January each year after the tax year and you already have this information.

3. The question regarding the indication of missing periods shall be answered by the Applicant of the insurance included in his reply for the periods.

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4. In connection with the applicant's request to send valid job descriptions before and after the transfer, the Applicant informed the Applicant that there is a one-sided job description in his / her register - only signed by the employer.

2 d, which he also sent a copy to the Applicant as an attachment. The relocation

The Applicant has the following job description dated 10 April 2018.

The Applicant informed the Authority of the reply received from the Applicant on 31 January 2019, together with also attached the subsequent letter sent to the Applicant objecting to the October 2018

The content and detail of the replies received in his letter of 10  
sending detailed answers from the Applicant.

## II. Applicable legal requirements

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

Pursuant to Article 12 (1) of Regulation 2016/679 ('the General Data Protection Regulation'),

the controller shall take appropriate measures to ensure that the data subject is provided with personal data

all information on the processing of personal data referred to in Articles 13 and 14 and Articles 15 to 22. and 34.

each information pursuant to Article 1 in a concise, transparent, comprehensible and easily accessible form,  
in a clear and comprehensible manner, in particular any address addressed to children

for information. The information shall be provided in writing or otherwise, including, as appropriate

electronic means must also be provided. Oral information may be provided at the request of the data subject, provided that it is  
different

the identity of the data subject has been verified.

Pursuant to paragraph 2, the controller shall facilitate the processing of the data subject in accordance with Articles 15 to 22. of its rights under Article

exercise. In the cases referred to in Article 11 (2), the controller shall article

You may not refuse to comply with your request to exercise your rights under this Article unless proves that the data subject cannot be identified.

Pursuant to paragraph 3, the controller shall, without undue delay, but in any case, make the request within one month of receipt of the information. application under Article

measures taken in response to If necessary, taking into account the complexity of the application and the number of applications, this time limit may be extended by a further two months. The deadline

the controller with the reasons for the delay from the receipt of the request

inform the person concerned within one month of If the person concerned has submitted the application by electronic means the information shall, as far as possible, be provided by electronic means, unless the data subject so requests asks otherwise.

Pursuant to paragraph 4, if the controller does not take action at the request of the data subject, without delay, but no later than one month after receipt of the request the reasons for not taking action and the possibility for the data subject to lodge a complaint before a supervisory authority and may exercise its right of judicial review.

Pursuant to paragraph 5, the information referred to in Articles 13 and 14 and the and Article 34 information and action shall be provided free of charge. If the request of the person concerned is clear unfounded or, in particular due to its repetitive nature, excessive, the data controller, subject to the requested the administrative process involved in providing the information or information or taking the requested action costs:

(a) charge a reasonable fee, or

(b) refuse to act on the application.

The burden of proving that the request is manifestly unfounded or excessive is on the controller.

Pursuant to Article 15 (1) of the General Data Protection Regulation, the data subject is entitled to

to receive feedback from the data controller regarding 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 to whom the personal data have been disclosed

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or will be communicated, including in particular to third country recipients or international

organizations;

(d) where applicable, the intended period for which the personal data will be stored or, if that is not 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

information on the significance of such data processing and what is expected of the data subject

consequences.

According to Article 15 (3) of the General Data Protection Regulation, the controller is the subject of the processing

provide the data subject with a copy of the personal data Additional requested by the data subject

for copies, the controller may charge a reasonable fee based on administrative costs

up. If the data subject submitted the application electronically, the information was widely used

shall be provided in electronic format, unless otherwise requested by the data subject.

Pursuant to Article 83 (2) of the General Data Protection Regulation, administrative fines are granted

the measures referred to in Article 58 (2) (a) to (h) and (j), depending on the circumstances of the case should be imposed in addition to or instead of. When deciding whether an administrative fine is necessary the amount of the administrative fine in each case

due account shall be taken of the following:

(a) the nature, gravity and duration of the breach, taking into account the nature of the processing in question; the scope or purpose of the infringement and the number of persons affected by them and by them the extent of the damage suffered;

(b) the intentional or negligent nature of the infringement;

(c) the mitigation of damage caused to the data subject by the controller or the processor any measures taken to

(d) the extent of the responsibility of the controller or processor, taking into account the Technical and organizational measures taken pursuant to Article 32;

(e) relevant infringements previously committed by the controller or processor;

(f) the supervisory authority to remedy the breach and the possible negative effects of the breach the degree of cooperation to alleviate

(g) the categories of personal data concerned by the breach;

(h) the manner in which the supervisory authority became aware of the infringement, in particular whether the controller or processor has reported the breach and, if so, in what detail;

(i) if one of the measures referred to in Article 58 (2) has previously been ordered against the controller or processor concerned

compliance with measures;

(j) whether the controller or processor has kept itself approved in accordance with Article 40 codes of conduct or approved certification mechanisms in accordance with Article 42; and

(k) other aggravating or mitigating factors relevant to the circumstances of the case, such as: financial gain or avoidance as a direct or indirect consequence of the infringement

loss.

Pursuant to Article 83 (7) of the General Data Protection Regulation, Article 58 (2)

Without prejudice to its powers of correction under paragraph 1, each Member State may determine rules on the performance of public or other public tasks by a Member State whether and to what extent an administrative fine may be imposed on the provider.

Act CXII of 2011 on the right to information self-determination and freedom of information. Act (a hereinafter: Infotv.). According to Section 61 (4) (b), the amount of the fine is from one hundred thousand to twenty million may be up to HUF if the fine imposed in a decision made in a data protection official proceeding budgetary body liable to pay.

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Infotv 75 / A. Article 83 (2) to (6) of the General Data Protection Regulation shall exercise the powers set out in paragraph 1, taking into account the principle of proportionality, in particular: whether it is mandatory under the law on the processing of personal data or the European Union in the case of a first-time breach of the requirements set out in its legal act in accordance with Article 58 of the General Data Protection Regulation by alerting the controller or processor.

Infotv. Pursuant to Section 61 (2), the Authority may order its decision - the data controller or the disclosure of the identity of the data controller, if the decision affects a wide range of persons in the context of the activities of a public body, or the gravity of the infringement justifies disclosure.

Act V of 2013 on the Civil Code (hereinafter: the Civil Code) 2:52. § (3) the amount of the damages according to the circumstances of the case, in particular the gravity of the infringement, the repetitive nature of the offense, the degree of culpability, the impact of the infringement on the victim and the environment; in a single amount. The Civil Code. 1: 6. § provided for in this Act

Enforcement of rights is subject to judicial review, unless otherwise provided by law.

### III. Decision of the Authority

III.1. By a letter dated 10 October 2018, the Applicant addressed to the Applicant the



questions and requests regarding your personal information. According to the copy of the letter of receipt, 2018.

It was mailed to the Applicant on 17 October 2018, which the Applicant stated in accordance with the copy of the return receipt in 2018.

took over on 18 October. Subsequently, on 11 November 2018, the Applicant again requested a

Submission of data recorded by the applicant. By e-mail dated 20 November 2018

In his reply, he informed the Applicant of the identity and patience of the case administrator

requested until a reply is sent, but the time available to comply with the request

did not inform the Applicant about its extension or possible reasons for it. The Requested

moreover, it did not claim that there were any obstacles to the execution of the request or that

that the Applicant's request would be unfounded or excessive or that the information requested is

providing information would entail high administrative costs for him.

At the request of the Applicant, the Applicant only sent it to the Authority during the clarification of the facts

responded to the call, the response was received by the Applicant on 31 January 2019. THE

The reply letter sent by the Applicant to the Applicant is undated, and the Applicant a

In a statement issued at the request of the Authority, exceeding the 15 days available to it

indicated when he sent the reply to the Applicant's request.

However, in the subsequent letter sent to the Applicant, the Applicant objected to the content of the reply,

In its view, the Applicant only partially complied with its request and therefore continued to request it

fulfill your data requirements.

Under Article 15 of the General Data Protection Regulation, the data subject is entitled to have access to the

personal data managed by the data controller, the data controller is the personal data subject to the data processing

provide a copy of the data to the data subject.

Pursuant to Article 12 (3) to (4) of the General Data Protection Regulation, at the request of the data subject:

the data controller must respond on the merits within one month. This deadline is a special circumstance

may be extended for a further period of up to two months before the expiry of one month

even then, the data controller is obliged to send information about what he has done so far and for what reason

it is necessary to extend the deadline.

The Applicant has not complied with the Applicant's request to exercise the right of access, and nor did it indicate the need for an extension of the deadline, nor did it justify the reason the deadline for reply was exceeded. The Applicant's order of 8 January 2019 of the Authority

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after receiving the application, on January 9, 2019, he requested the Applicant to resend the application by 2018.

application dated 10 October. The Applicant then sent his reply - undated - to the

To the Applicant, which the Applicant, according to its information, received on 31 January 2019.

On the basis of all this, it can be stated that the Applicant did not comply with the deadline for the Applicant concerned

nor did he give reasons for the delay, nor did the petitioner request the

after the initiation of the Authority's order following the initiation of the Authority's order,

even then only incompletely. The Applicant's request for access is not limited to the Applicant

should have provided the information provided by him, but at the request of the Applicant

appropriate copies of the records as well, by providing certain data earlier

continuously made available to the Applicant on the basis of the law, shall not be exempt from the

from a request for access under Article 15 of the General Data Protection Regulation.

Based on the above, the Authority found that the Applicant had violated the general data protection

Article 12 (3) to (4) and Article 15 (1) of that Regulation.

III.2. The Applicant also requested the Authority to establish a damages fee. The application concerns damages

As regards the part of the Authority, the Authority found that this was not a data protection official case because of the damages

does not fall within the competence of the Authority but within the jurisdiction of the courts.

III.3. In addition, the Authority has identified a presumably notifiable subject to clarify the facts

an incident occurred with the M30 being sent to the Applicant as an attachment by the Applicant

The M30 certificate issued for another stakeholder for 2016 was included in the forms

to send.

## ARC. Legal consequences

The Authority found that the Applicant - by failing to comply with the Applicant's access request for the exercise of the right or did not grant access requested by all Applicants - did not comply with the exercise of the Applicant's right of access to the data subject therefore obliged the Applicant to apply for the exercise of the right of the Applicant concerned to fulfill.

The Authority examined of its own motion whether it was justified to impose a data protection fine on the Applicant. In this context, the Authority complies with Article 83 (2) of the General Data Protection Regulation and Infotv. 75 / A. §-the considered all the circumstances of the case ex officio.

The Authority has taken into account that the breach committed by the Applicant is of general data protection Article 83 (5) (b) of the basic Regulation and the acted with serious negligence in complying with the request for the exercise of the right concerned.

For this reason, it is necessary to impose a fine on the Applicant specifically for further violations in the present case, despite the exercise of a single right in the present case it is a related infringement.

In view of the above, and in view of the fact that the Applicant's own revenue in 2017 is almost HUF 18 billion was, the privacy fine imposed is a token amount and does not exceed the maximum fine that may be imposed.

The amount of the fine was set by the Authority acting in accordance with its statutory discretion.

The Authority shall inform Infotv. Pursuant to Section 61 (2) (b), the publication of the decision it was ordered because it was brought in the context of the activities of a body performing a public function.

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## V. Other issues

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a) determine the jurisdiction of the country covers the whole territory.

CL of 2016 on General Administrative Procedure. Section 112 of the Act (hereinafter: the Act),

Pursuant to Section 16 (1) and Section 114 (1), the decision is subject to administrative lawsuit

there is a place for redress.

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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

legal representation is mandatory in litigation within the jurisdiction of the tribunal. Kp. Section 39 (6)

according to - unless otherwise provided by law - the filing of the application by the administrative

has no suspensory effect on the entry into force of the 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. Section 9 (1) of the Act

The client's legal representative is required to communicate electronically in accordance with paragraph 1 (b).

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) exempts the party initiating the proceedings.

If the obligated customer does not duly demonstrate compliance with the required obligations, the Authority shall:

considers that it has not fulfilled its obligations within the time allowed. The Ákr. According to § 132, if a

the obligor has not complied with the obligation contained in the final decision of the authority, it shall be enforceable. THE

Authority's decision on 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 - if enforced by law, government decree or

In the case of a municipal authority, a local government decree does not provide otherwise - the state

tax authority. Infotv. Pursuant to Section 60 (7) of the Authority,

to perform a specific act, to behave, to tolerate or to stop

the Authority shall enforce the decision as regards the obligation to

Budapest, April 5, 2019

Dr. Attila Péterfalvi

President

c. professor