

Athens, 20-12-2022. Prot. No.: 3358. DECISION 65/2022 (Department) The Personal Data Protection Authority met as a Department via teleconference on 12-14-2022 at the invitation of its President, in order to examine the cases referred to in the history of this . Georgios Batzalexis, Deputy President, due to the disability of the President of the Authority, Constantinos Menoudakou, was present, the deputy member, Maria Psalla as rapporteur, in place of the regular member, Grigorio Tsolia, who, although he had been legally invited in writing, was absent due to disability and also alternate member, Dimosthenis Vougioukas, to replace the regular member, Konstantinos Lambrinoudakis, who, although he had been legally invited in writing, was absent due to disability. The meeting was attended by order of the President, Kyriaki Karakasi, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Two separate complaints were submitted to the Data Protection Authority for violation of the right to access recorded conversations against the same single-person limited liability company with the name "Opinion Poll Surveys", which were considered together due to relevance . The said right was exercised by the complainants, as participants in a survey carried out by the aforementioned company. In particular, it was about 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr with no. prot. G/EIS/8359/23-12-2021 of the first complaint and of the no. prot. G/EIS/5804/11-04-2022 of the second. In the context of examining the first of these, the Authority with no. prot. C/EX/726/18-03-2022 her document, forwarded the contested complaint to the complained polling company, asking for clarifications. Following this, the complainant sent the number prot. G/EIS/5393/31-03-2022 memorandum. Subsequently, the Authority called with numbers no. Prot. C/EXE/2408/28-09-2022 as well as C/EXE/2407 & 2406/28-09-2022 calls both the complainant and the two complainants respectively, to a hearing, so that they can be heard from 05- 10-2022 meeting of the competent Department. In the context of the above meeting, the complained company submitted, through the lawyer, Nikolaos Nikolakopoulos (with AM ...), a request for postponement, as well as the second of the complainants, which the Authority, after hearing the interested parties, in particular the attorneys of attorney of the submitter as above with no. prot. C/EIS/8359/23-12-2021 complaint, Emmanuel Chalkiadakis (with AM ...) and Emmanouil Dimogerontakis (with AM ...), accepted, postponing the discussion of both cases for the meeting of the Department on 12-10- 2022 at 10:00 am, at the headquarters of the Authority without further summons of the parties. The last meeting mentioned above was postponed to 19-10-2022, due to the absence of the President of the Department, so it took place online. In the context of the above meeting, the complained-about company was present through its attorney, Ilias Sideris (with AM ...), while the

company's Data Protection Officer, A, was also present, in case there was a need to provide an explanation. The above-mentioned complainant appeared after his above-mentioned lawyer, Emmanuel Chalkiadakis, and stated that his principal has resolved his dispute with the complained-about company and therefore withdraws the relevant above-mentioned complaint of violation of the right of access pending before the Department of the Authority . Following this, at the aforementioned meeting of the Department, the second complaint related to the first submitted, namely the one with no. prot. C/EIS/5804/11-04-2022 that of B. The latter, in the context of the complaint in question, states that on 19-02-2022 she requested from the complained-of company, via email address info@opinionpoll. gr, he sent a copy of the recorded conversation he had with a representative of the post office electronically to the said 2 company on ... and time ..., following a phone call he received, as he states, from the phone number 2155605100 to her mobile phone However, this request, according to the complainant's claims, was not granted. The Authority, in the context of examining the above complaint, with no. prot. C/EX/1236/24-05-2022 her document, forwarded the aforementioned complaint to the polling company in question, requesting clarification on whether the complainant submitted a right of access to data concerning her and to which specific ones, as and if and in what way the complainant responded to the above request of the complainant and/or if she justified to the latter any delay regarding the response to the above request by requesting, moreover, that the complainant clarify the reasons why she did not respond to the relevant access request, providing relevant documentation. The complained company sent the Authority with no. prot. C/EIS/7838/09- 06-2022 Her memorandum, in which she claimed, among other things, the following: She first stated that at the start of the phone calls, the competent representative of the company asks the randomly selected citizen if he wishes to participate in the poll, while referring to the "Personal Data" section of its website, where it is stated, among other things, that the personal data collected is destroyed in any case three months after the completion of the survey. After the end of the above period and the destruction of the data, it is not possible to exercise the relevant rights of the data subjects. Following this, the Authority called with no. Prot. C/EXE/2408/28-09-2022 as well as C/EXE/2406/28-09-2022 summons both the accused and the complainant, as detailed above, to a hearing, in which case also to the adjourned as above meeting of 19-10-2022, B attended in person and verbally developed her allegations stating that she suffered a lot of inconvenience and emphasizing the fact that she was never informed by the complained company even about the fact that they do not have any audio file with the conversation that concerns her. Furthermore, after said hearing, both parties were given a deadline to submit any memoranda to further support their claims until 10-31-2022. 3 Subsequently, the complainant

did not submit any memorandum, while the complained-of submitted timely the no. prot. C/EIS/11415/31-10-2022 its memorandum, in which it briefly states, among other things, the following: First of all, it states that it is not a commercial sales company and therefore does not record conversations or collect personal data in any way, nor does it promote products, and it also does not conduct distance sales. The complainant states that they do not know the invitees nor can they identify them, while she assures that the legal procedure regarding the conduct of polls is followed. It further notes that the phone numbers that are called are generated randomly from their information system and in the event that the individual called accepts to participate in the poll, his answer is recorded as an electronic note, so that later scientific conclusions can be drawn on behalf of the person in charge of the survey. The complainant insists that in the context of the investigation in question, all the relevant rules were observed and no provision related to the protection of personal data was violated. With regard to the complainant's disputed message, it is likely that the latter would have ended up in the corporate junk mail folder, while he disputes the complainant's claims of inconvenience. The Authority, after accepting the request to withdraw the first co-examined complaint, kept and examined the second one, at which point and after examining the elements of the file, after listening to the rapporteur and the clarifications of the assistant rapporteur, and after a thorough discussion, HE DECIDED IN ACCORDANCE WITH THE LAW 1. Because it follows from the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation (EU) 2016/679 – hereinafter, GDPR) and article 9 of Law 4624/2019 (Government Gazette A' 137) that the Authority has competence to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. Article 5 paragraph 1 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data (hereinafter GDPR) sets out the principles that must govern a processing. According to the principle of accountability introduced by the said article, it is expressly defined in the second paragraph thereof, that the data controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")". This principle, which is a cornerstone of the GDPR, entails the obligation of the data controller to be able to demonstrate compliance. In addition, it enables the data controller to be able to control and legally document a processing carried out in accordance with the legal bases provided by the GDPR and national data protection law. 2. Because according to article 15 par. 1, 3 and 4 of the GDPR "1. The data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him is being processed and, if this is the case, the right to access the personal data and the following information: a) the purposes of the processing, b) the relevant

categories of personal data, c) the recipients or categories of recipients to whom the personal data have been disclosed or are to be disclosed, in particular recipients in third countries or international organizations, d) if possible, the period for which the personal data will be stored or, when this is impossible, the criteria that determine the period in question, e) the existence of the right to submit a request to the data controller for the correction or deletion of personal data or to limit the processing of the data of a personal nature concerning the data subject or the right to object to said processing, f) the right to submit a complaint to a supervisory authority, g) when the personal data is not collected from the data subject, any available information about its origin, h) the existence of automated decision-making, including profiling, provided for in Article 22 paragraphs 1 and 4 and, at least in these cases, significant information about the logic followed, as well as the meaning and intended consequences of said processing for the data subject. 2. [...] 3. The controller shall provide a copy of the personal data being processed. [...] If the data subject submits the request by electronic means and unless the data subject requests otherwise, the information shall be provided in a commonly used electronic format. 4. The right to receive a copy referred to in paragraph 3 does not adversely affect the rights and freedoms of others." In the context of the above right, it is pointed out that the data subject should have the right to access personal data collected and concerning him and be able to exercise this right easily and at reasonable regular intervals, in order to be aware and verifies the legality of the processing¹. In addition, the Authority firmly accepts that the data subject has the right to know whether personal data concerning him is being processed, as well as to be aware of them, without the need to invoke a legitimate interest². Therefore, in view of the above, it follows that the right of access of the subject to the personal data concerning him is established with the main purpose of ensuring the subject of the accuracy and legality of the processing of his data³. Therefore, in order to satisfy the right of access, it is not necessary, as mentioned above, to invoke a legitimate interest, since this exists and forms the basis of the subject's right of access to obtain knowledge of information concerning him and which has been registered in a file kept by the person in charge processing, so that the basic principle of the law for the protection of personal data is carried out, which consists in the transparency of the processing as a condition for any further control of its legality by the data subject⁴. Similarly, it is not required to invoke the reasons why the data subject wishes to exercise the right of access. Besides, it should be pointed out that the satisfaction of the right of access is universal, i.e. it concerns all the information concerning the data subject and furthermore, it does not only require invoking the reasons for which the subject

1 See recital 63 of the GDPR and Decision of the Authority 23/2020, sc. 5. 2 Bl. in particular, Authority decisions 32/2019, 144/2017 195/2014 193/2014 and 75/2011, available on the Authority's website.

3 See also recital 63 of the GDPR. 4 See indicative APD 2/2020, 23/2020, 16/2017, 98/2014, 149/2014, 72/2013 and 71/2013.

6 of the data wishes to exercise the right in question, according to the above, but neither mediation⁵. 3. Because according to article 12 GDPR "1. The data controller shall take appropriate measures to provide the data subject with any information referred to in Articles 13 and 14 and any communication under Articles 15 [...] regarding the processing in a concise, transparent, comprehensible and easily accessible form, using clear and simple wording [...]. 2. The controller shall facilitate the exercise of the rights of the data subjects provided for in Articles 15 [...] 3. The controller shall provide the data subject with information on the action taken upon request pursuant to Articles 15 to 22 without delay and in any case within one month of receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. [...] 4. If the data controller does not act on the data subject's request, the data controller shall inform the data subject, without delay and at the latest within one month of receipt of the request, of the reasons for not acting and for the possibility of submitting a complaint to a supervisory authority and taking legal action." 4. Because according to article 13 of the GDPR the following are provided for: "1. Where personal data concerning a data subject is collected from the data subject, the controller shall, upon receiving the personal data, provide the data subject with all of the following information: a) the identity and contact details of the controller and, as the case may be, of the controller's representative, b) the contact details of the data protection officer, as the case may be, c) the processing purposes for which the personal data are intended, as well as the legal basis for the processing, d) if the processing is based on Article 6 paragraph 1 letter f), the legitimate interests pursued by the controller 5 See APD 16/2017. 7 processing or by a third party, e) the recipients or categories of recipients of the personal data, if any, f) as the case may be, the intention of the controller to transmit personal data to a third country or international organization and the existence or absence of a decision competence of the Commission or, in the case of the transmissions referred to in article 46 or 47 or in the second subparagraph of article 49 paragraph 1, a reference to the appropriate or suitable guarantees and the means to obtain a copy of them or where they were made available. 2. In addition to the information referred to in paragraph 1, the controller, when receiving the personal data, provides the data subject with the following additional information that is necessary to ensure legitimate and transparent processing: a) the time period for which the personal data will be stored or, when this is impossible, the criteria that determine the period in question, b) the existence of the right to submit a request to the data controller for access and correction or

deletion of the personal data or limitation of the processing concerning the data subject or the right to object to processing, as well as the right to data portability [...]'.

5. Since the first complaint examined above was withdrawn, according to the detailed above, there is no reason for its further examination.

6. Because in the second case considered together above, the complainant filed on 19-

02-2022 the right of access to a recorded conversation he had with a representative of the complained company by addressing the last relevant e-mail message. However, from the above with no. first C/EIS/7838/09-06-2022 initial memorandum of the complained company does not appear on the one hand if the recording of the disputed conversation concerning the complainant took place, on the other hand if and in what way the complained responded to the above exercised right of access. Indeed, the as above, the complainant's response is based on the claim that it is not possible to satisfy the right of access in question due to the expiry of the quarter for which she only keeps personal data in her files according to its policy. It is further noted that the first complainant

time during the hearing as well as in the hearing submitted with no. first C/EIS/11415/31-10-2022 its memorandum states that it does not record the conversations of its representatives with citizens during poll surveys.

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Following the above, it is noted that since the disputed right of access was expressly exercised by the complainant, the complained company should have respond. It is noted in this regard that the relevant International Code of Ethics (ESOMAR/International Chamber of Commerce), which binds the complained-about company polls as such, expressly states the obligation of researchers to accept access requests, among others, of data subjects⁶. Furthermore, it is pointed out that according to the correct interpretation and application of par. 1 of article 15 GDPR a controller is not released from his notification obligation against the data subject for the sole reason that the respective dispute data does not exist in a file kept by him⁷. Therefore, the complainant company should have responded by informing the complainant or even only about

the fact that it no longer has a copy of the requested recording on file
conversation that concerned her, as well as, as she mentions in her first memorandum and
according to the policy invoked by it, "personal data
are destroyed in any case three months after the completion of the investigation', i.e
after 2021-10-06, or for not recording any conversations in the context
polling surveys, as mentioned by the former in its above-heard memorandum.
And the allegation of the accused, with which its outcome is merely presumed
e-mail of the complainant, with which she exercised the disputed right
access, to the corporate spam folder, as the reason for which
they never became aware of this, does not release her from her above obligation to
respond to the complainant on her above request, with which she exercised the
right of access. It is also noted that from the available on its website
reported its policy on the safe processing of personal data
data, it is not clear to the data subjects in what way
they can exercise their rights as such before the complainant, while not
it appears in an analytical and precise manner which personal data is collected by the
data subjects and in which cases. In this particular case, no

6 See ESOMAR/International Chamber of Commerce, International Code on Market, Opinion and Social Research
and Data Analytics, article 4 (b), available: [https://iccwbo.org/content/uploads/sites/3/2016/12/ICC-ESOMAR-
International-Code-on-Market-Opinion-Social-Research-and-Data-Analytics.pdf](https://iccwbo.org/content/uploads/sites/3/2016/12/ICC-ESOMAR-International-Code-on-Market-Opinion-Social-Research-and-Data-Analytics.pdf)) .

7 See SC 2627/2017, sk. 7. See in this regard and those with no. 61/2021, 2/2020, sc. 1 and 43/2019 Decisions of
Principle.

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it appears that the complainant responded in any way to the above
exercised right of access and especially within the period provided for in article 12 paragraph 3
of the GDPR deadline, while it does not seem to have given reasons to the complainant within it

deadline of article 12 par. 4 of the GDPR, i.e. within one month of its receipt of the relevant request, for the reasons why it did not act. Moreover, no it appears that he has taken the appropriate measures to process and satisfy them relevant requests of the data subjects in the appropriate manner and within the deadlines provided for in article 12 par. 3 GDPR. Therefore, it is elementalized violation of the provisions of articles 15 and 12 par. 1, 3 and 4 of the GDPR, especially in view of that it does not appear from the information in the file that the exceptions from satisfaction of the right of access, as referred to in article 33 of the law 4624/2019.

7. Because it is established that the right of access has not been satisfied, and in any case it is not there is a justified non-satisfaction thereof, according to the pre-selected conditions, or late fulfillment of this and especially within the GDPR provisions time limits, and it is therefore alleged that Article 15 of the GDPR has been violated in combined with the provision of article 12 par. 1, 3 and 4 GDPR. Despite her intervention Authority that received the complaint in question and specifically about five months later, the the complained-about company did not take care to inform the complainant in this regard, even after the first transmission of the complaint in question to it with no. prot. C/EXE/1236/24-05-2022 document of the Authority⁸. Furthermore, it is established that complained company has not established in a clear way for the subjects of given some specific procedure for how to exercise their rights, nor, however, a specific procedure for it on behalf of the company itself effective and timely management of the rights of data subjects by taking appropriate organizational and technical security measures, where applicable essential.

8. In accordance with the GDPR (Ref. Sk. 148) in order to strengthen the enforcement of its rules of this Regulation, sanctions, including administrative fines, shall

must be imposed for each violation of this Regulation, additionally or instead

8 Compare APD 37/2015 and 71/2015, especially sc. 5. See and APD 26/2021.

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of the appropriate measures imposed by the supervisory authority hereunder

Regulation.

9. Based on the above, the Authority considers that there is a case to exercise the following

article 58 para. 2 of the GDPR and 15 para. 4 of Law 4624/2019 its corrective powers in relation

with the violations found.

10. The Authority takes into account that the consequences of the violation of the above provisions

of articles 12 and 15 of the GDPR is of minor importance, that the complained company does not

derived some benefit from it, that it was not established that a relevant previous one had been carried out

violation by her being reported as a data controller.

11. Based on the above, the Authority unanimously judges that, in accordance with article 15 in combination

with article 12 par. 1, 3 and 4 of the GDPR, the conditions for exercising the

controller of the corrective powers of article 58 par. 2 b' of the GDPR and

of article 15 par. 4 para. b of Law 4624/2019, which are considered proportional to the gravity

of the violation.

FOR THOSE REASONS

The beginning

1) He files the first complaint due to its revocation by

complainant.

2) In the context of investigating the second complaint, it finds that the

denounced single-person limited liability company under the name

"Opinion Poll Surveys - Polls" violated her right of access

complainant and reprimands her for the above finding

violation of articles 15 in combination with article 12 par. 1, 3 and 4 of the GDPR.

3) It directs the company complained against to act on the formation, within two (2) months from the receipt of this, procedures, in order to the stipulated rights of the subjects are duly satisfied data and to inform the Authority accordingly.

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The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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