

Litigation Chamber

Decision on the merits 85/2021 of 29 July 2021

File number: DOS-2018-05419

Subject: Decision to classify without follow-up in the absence of qualification as responsible for processing on the part of the defendant – compliance with the principle of finality in the context of sending electoral propaganda letters

The Litigation Chamber of the Data Protection Authority, made up of Mr. Hielke Hijmans, Chairman, and Messrs. Robert Robert and Dirk Van Der Kelen, members, taking over the matter in this composition;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and to the free movement of this data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter “GDPR”;

Having regard to the Law of 3 December 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:

Mrs. X (hereinafter “the complainant”);

The defendant :

Mr. Y (hereinafter “the defendant”).

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#### I. Facts and procedure□

1. On October 2, 2018, the complainant filed a complaint with the DPA.□
2. On October 26, 2018, his complaint was declared admissible.□
3. On November 21, 2018, the Litigation Chamber seized the Inspection.□
4. On March 25, 2020,□

the Inspector General sent his investigation report to□

bedroom□

Litigation.□

5. On July 3, 2020, the Litigation Chamber informed the parties of its decision to consider the□  
file as being ready for substantive processing on the basis of Article 98 LCA and□  
communicated a timetable for the exchange of conclusions. The Litigation Chamber notes in this□  
regard that neither party has entered into.□

6. The Complaint concerns the sending by the Respondent of electoral propaganda letters to senior citizens of□  
the municipality of Z, including the complainant, in the context of the municipal elections of October 2018.□

7. More specifically, the Complainant received an electoral propaganda letter with the header "La□  
list of the Mayor" notably signed by the defendant. This letter was co-signed by a□  
second person, Mr. V, against whom the complainant had also filed□

complaint. As this person died during the proceedings, the Litigation Division supported□  
of the report of the Inspection and the death notice, closes the file against him on July 3□  
2020.□

8. According to the Complaint Form, the Complainant suspects the Respondent of having used the file□  
council of seniors to send him the litigious mail, thus diverting this file from its purpose□

and using his capacity as alderman - especially seniors - in defiance of the rules of the GDPR and more

in particular, the principle of finality.

9. The letter is specifically addressed to senior citizens of the municipality in these terms:

“Dear Seniors,

In recent years, the development of activities for seniors has been the subject of

particular attention and keen interest.

It is useful to briefly recall the various initiatives, concrete actions and activities

diverse implementations.

1. Excursions in Belgium and trips abroad

2.

3.

[.....]

[.....]

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[...]

All these actions are the result of teamwork led by the Mayor [...], by Mr V,

(...) and by Y, [...].

To continue the work already undertaken, we invite you to vote for these 3 candidates and others

from the Mayor's list".

Mr V

(signature and photograph)

Y [read defendant]

[...]

(signature and photograph)

10. The complainant relies on the fact that the label affixed to the envelope in which said letter is sent is

in all respects identical to that which is affixed to the letters that she used to receive

of the municipality as a senior.□

11. Proof of this is a syntax error in her last name, as is the case on□

the label affixed to□

the letters she receives□

when□

the municipality is more□

particularly to seniors.□

12. She also notes that the disputed letter was jointly addressed to her husband (wording□

Mr and Mrs [wrong name X]), yet deceased since 2015 and who appeared in the file□

seniors during his lifetime. It points out in this regard that the list of electors available to candidates□

in the elections lists the voters individually and that, given the death of her husband□

since 2015, the latter could not be included.□

II. The investigation report of the Inspection Service of March 25, 2020□

13. According to his investigation, during which he contacted the municipality of Z, whose□

Data Protection Officer (DPO) as well as with the complainant, the Inspector General made, at□

with regard to the defendant, the following finding:□

“From the explanations provided by Mr. Y [read the defendant] and the other documents in the file, the□

Inspection service can only find that it signed the standard courier who made□

the subject of the disputed dispatch. However, the Inspection Service does not see any elements leaving□

to think that Mr. Y [read the defendant] determined the means of treatment consisting in□

use data from the list of seniors in the municipality of Z. The Inspection Service□

is therefore unable to demonstrate that Mr. Y would have processed data in□

contravention of the rules applicable to electoral propaganda”.□

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14. As part of his inspection, the Inspector General contacted the municipality of Z in his capacity as□

responsible for processing the communal file of seniors. Through the voice of its mayor, the□

municipality listed the actions it took following the disputed facts:□

- An internal disciplinary procedure was conducted against Mr. V by the College□

communal. The latter, [ ... ], was subject to a disciplinary warning for□

having used said file as a candidate for elections;□

-□

Since the beginning of 2019, the municipal administration has used the services of a delegate for□

data protection (DPO) which regularly reminds the various units of□

the administration what are the obligations to which the municipality is bound and how□

whose data processing must take place to comply with the GDPR.□

### III. PLACE□

III.1. As to the diversion of purpose by the defendant (Article 5.1.b) in combination□

with Article 5.2. GDPR)□

15. Pursuant to several decisions<sup>1</sup>, the Litigation Division has already recalled the necessary respect□

of the principle of finality in the context of sending electoral propaganda letters.□

16. The purpose principle is a cornerstone of data protection. Dedicated since 1981 to□

Article 5 b) of the Convention for the protection of individuals with regard to automatic processing□

Council of Europe Personal Data (ETS 108), it was set out in Article 6.1 b)□

of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the□

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

to the free movement of such data as well as to Article 4.1, 2° of the Law of 8 December 1992 relating□

to the protection of privacy with regard to the processing of personal data. At the time of□

the consecration of the right to data protection as a fundamental right is part of article 8 of□

the Charter of Fundamental Rights of the European Union in 2000, the principle of finality was□

stated as a key element of this right. This principle has, logically, been included in Article 5.1.b)□

of the GDPR under the Principles relating to the processing of personal data (Chapter□

II).□

17. Article 5.1 b) of the GDPR thus provides that: “1. Personal data must be: (...)□

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 the purposes of scientific or historical research or for□

1 See. decisions 10/2019, 11/2019 and 53/2020 of the Litigation Chamber.□

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statistics is not considered in accordance with Article 89 paragraph 1, as incompatible□

with the initial purposes” (limitation of purposes).□

18. In other words, this principle requires that data be collected for purposes□

determined, explicit and legitimate, and are not further processed in a manner□

incompatible with these purposes. Further processing of personal data for□

purposes other than the one(s) for which this data was initially collected□

is only permitted if such further processing is compatible with the purposes for which the□

personal data was initially collected, taking into account the link between the□

purposes for which they were collected and the purposes of the further processing envisaged, the□

framework in which the personal data was collected, the consequences□

possibilities of the further processing envisaged for the data subject and the existence of□

appropriate safeguards. A compatible purpose is, for example, a purpose that the person□

concerned may provide or which may be considered compatible by virtue of a provision□

legal (see article 6.4. of the GDPR).□

19. In its “Elections” note published in the early 2000s on its website and updated□

following the entry into force of the GDPR, the DPA mentions that: “With this in mind, it is not□

therefore not allowed to reuse the personal data stored in the files□

aforementioned [either public or professional files, for example] for the purpose of propaganda□

electoral. Such processing is incompatible with the purposes for which these data were□

initially harvested, which is punishable under Article 83.5 of the GDPR”.□

20. The note goes on to state that:□

“For example, the personal data of citizens which have been obtained in the□  
framework of the exercise of an aldermen's mandate cannot be reused for the organization of a□  
election campaign. This is then an abusive use of information obtained in a lawful manner□  
within the framework of the exercise of an aldermen's mandate. Such use of personal data□  
personal information is not only prohibited due to the principle of purpose limitation but severs□  
equality between political parties and equality between candidates. The legislation aims to address all□  
candidates on an equal footing by giving them access to the same data, namely those□  
appearing on the voters' lists.□

21. Finally, the Litigation Division recalls, as mentioned in point 19 above, that any use□  
later incompatible is prohibited with two exceptions provided for in Article 6.4. of the GDPR. When□  
the data subject has given consent to the further processing for a purpose□  
separate (1) or when the processing is based on a legal provision which constitutes a measure□  
necessary and proportionate in a democratic society, in particular for the guarantee of□  
important purposes of public interest (2), the controller still has the possibility□

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to further process this personal data for other purposes, whether□  
compatible or not with the initial purposes.□

22. This principle of finality – and the concrete consequences that flow from it in the electoral context□  
as recalled above – is binding on the data controller. Indeed, Article 5.2. from□  
GDPR clearly states that it is “the data controller [who] is responsible for compliance□  
of paragraph 1 and is able to demonstrate compliance with it (liability)”.□

23. It is therefore up to the data controller to comply with the principle of purpose set out in□  
Article 5.1.b) of the GDPR. Is defined as being responsible for processing "the natural person□  
or legal entity, public authority, service or other body which, alone or jointly with□  
others, determines the purposes and means of the processing (...)" (article 4.7. of the GDPR).□

24. According to his investigation report, as mentioned above in point 13, the Inspector  
general concludes that he does not have the elements allowing him to conclude that the defendant  
determined the means of processing consisting of using data from the listing of seniors  
of the municipality of Z and therefore, to conclude that the defendant is the data controller.

25. The Litigation Division has no evidence enabling it to invalidate this observation.

26. In the light of the foregoing and on the basis of the elements of the file of which it is aware and  
powers assigned to it by the legislator under section 100.1. ACL, the  
Litigation Chamber therefore decides to proceed with the dismissal of the complaint,  
in accordance with article 100.1., 1° LCA, on the basis of the above motivation.

27. In terms of dismissal, the Litigation Chamber must justify its decision in stages  
and:

-  
to pronounce a classification without technical continuation if the file does not contain or not  
enough element likely to lead to a sanction or if it contains an obstacle  
technique preventing him from rendering a decision;

-  
or pronounce a classification without further opportunity, if despite the presence of elements  
likely to lead to a sanction, the continuation of the examination of the file does not seem to him  
timely given its priorities.

28. If the dismissal takes place on the basis of several reasons (respectively technical or  
opportunity), the reasons for dismissal should be addressed in order of importance.

29. In the present case, the Litigation Chamber therefore pronounces a classification without technical follow-up  
to decide not to pursue further examination of the file, the defendant implicated by the  
complainant cannot, in the absence of being able to be qualified as data controller within the meaning of  
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Article 4.7 of the GDPR, to be held liable for any breach of Article 5.1.b) (principle of



purpose) read in conjunction with Article 5.2. GDPR.<sup>2</sup>

30. Without prejudice to the foregoing, the Litigation Chamber notes that the municipality of Z, as  
as responsible for processing the municipal file, has taken a number of measures aimed at  
both to punish the facts with regard to Mr. V and to prevent any recurrence. It is indeed important  
that a municipality, via its mayor, with the assistance of its DPO, raise staff awareness of the  
compliance with the fundamental principles of data protection, including the principle of finality. He him  
is also responsible for guaranteeing the security of municipal files to prevent any improper access to  
these and any possible misuse of their purpose, in particular on the occasion of elections and this,  
among other measures, through an adequate access policy. In this regard, the Litigation Chamber  
recalls that an election candidate is not authorized to use a municipal file for the purposes of  
electoral propaganda. In this respect, a copy of this decision is communicated under  
anonymized form for information to the municipality of Z.

#### IV. Publication of the decision

31. Given the importance of transparency with regard to the decision-making process and the  
decisions of the Litigation Chamber, this decision will be published on the DPA website  
by deleting the direct identification data of the parties and the persons cited,  
whether physical or moral.

<sup>2</sup> See. in this regard, the classification criteria without technical follow-up mentioned in the note "Policy of classification without f  
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3.1.  
<https://autoriteprotectiondonnees.be/publications/politique-de-classement-sans-suite-de-la-chambre-contentieuse.pdf>

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FOR THESE REASONS,□

the Litigation Chamber of the Data Protection Authority decides, after deliberation:□

- to close the present complaint without follow-up pursuant to article 100.1., 1° of the Law of 3□

December 2017 creating the Data Protection Authority (LCA) as soon as at□

At the end of the examination of the complaint and the facts it reports, the Litigation Chamber concludes□

that it does not have elements likely to lead to a finding of violation of the GDPR in□

the head of the defendant.□

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

Court of Markets within thirty days of its notification, with the Authority of□

data protection as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□