

Dispute room

Decision on the merits 41/2022 of 18 March 2022

File number : DOS-2020-03145 / DOS-2020-3155 / DOS-2020-03156

Subject : Improper use of email addresses

The Disputes Chamber of the Data Protection Authority, composed of Mr Hielke Hijmans,

chairman and Messrs Dirk Van Der Kelen and Christophe Boeraeve, 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

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

Data Protection Regulation), hereinafter GDPR;

In view of the law of 3 December 2017 establishing the Data Protection Authority, hereinafter WOG;

Having regard to the internal rules of procedure, as approved by the House of Representatives

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

Having regard to the documents in the file;

has made the following decision regarding:

The complainants:

Mr X2, hereinafter referred to as “complainant 2”;

Mrs. X1, hereinafter referred to as “complainant 1”;

Mr X3, hereinafter “complainant 3”;

The Defendant: Ms. Y, hereinafter “the Defendant”

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I. Facts and procedure□

Decision on the merits 41/2022 - 2/6□

1. At 29□

June 2020, the complainants each filed a separate complaint□

in at the□

Data protection authority against the defendant.□

The subject of the complaint concerns the use by the defendant, aldermen of the municipality (...),□

from e-mail addresses obtained via the general e-mail address of the municipality (...) in the context of□

a call for volunteers for the distribution of mouth masks, to personally meet the volunteers□

via her own professional email address (...).□

2. On 6 July 2020, the complaint will be declared admissible by the Frontline Service on the basis of the□

Articles 58 and 60 of the WOG and the complaint pursuant to Article 62, §1 of the WOG is forwarded to the□

Dispute room.□

3. On September 23, 2020, the Disputes Chamber decides to join the three complaints, since it□

subject of the complaint is the same. Pursuant to Article 95, §1, 1° and Article 98 WOG,□

also decides that the file is ready for treatment on the merits and the parties involved are□

parties have been notified of the provisions referred to in Article 95, §2, as well as those in Article□

98 WOG. They are also informed, pursuant to Article 99 of the WOG, of the time limits to□

to submit their defences.□

The deadline for receipt of the defendant's statement of defense was thereby set□

laid down on November 3, 2020, this for the conclusion of the complainants' reply on 24□

November 2020 and those for the defendant's statement of reply on December 15, 2020.□

4. On September 23, 2020, complainant 3 requests a copy of the file (art. 95, §2, 3° WOG), which□

it was transferred on October 21, 2020.□

5. On October 29, 2020, the defendant states that defenses will be filed and states□

know that they wish to make use of the opportunity to be heard, in accordance with

article 98 WOG.

6. On November 2, 2020, the Disputes Chamber will receive the statement of defense from the

defendant. She states that as ships of communication she received permission on May 19, 2020

of the College of Mayor and Aldermen to coordinate and communicate

the distribution of the mouth masks in consultation with an official. The data that the

volunteers, were, according to the defendant, only used for the purpose

for which they were intended, namely the organization of the distribution of mouth masks. She has

addressed the volunteers as aldermen of communication through her municipal e-mail address and

solely for the intended purpose. The recipients of the email were placed in "bcc" and

the email addresses were deleted after the invitation was sent.

Decision on the merits 41/2022 - 3/6

7. On November 23, 2020, the Disputes Chamber will receive the statement of reply from complainants 1 and 2

stating that there is as yet no evidence that the defendant had the consent

obtained from the College of Mayor and Aldermen and the general director. Complainants 1

and 2 add that a decision of the College of Mayor and Aldermen is not in conflict

may be in accordance with applicable law. On the same day, the Disputes Chamber also receives the

conclusion of the complainant's reply 3. This contains,

broadly speaking, the proposition that the

mouth mask distribution was officially assigned and not to a mandatary. The defendant is

not a processor or controller. According to complainant 3, there would be an incompatible

further processing has taken place and he refers to Article 75, 2° of the law

of 30 July 2018¹. With regard to the legal basis, complainant 3 also relies on the law of 30 July

2018, in particular Article 74, 4°.

8. The defendant has not made use of the opportunity to submit another statement of reply

to submit.

9. On January 13, 2022, the parties will be notified that the hearing will take place

on March 10, 2022.

10. On March 10, 2022, complainant 3 and the defendant will be heard by the Disputes Chamber. Complainants 1 and 2 have not appeared.

11. The minutes of the hearing will be submitted to the parties on 11 March 2022.

12. On March 11, 2022, the Disputes Chamber receives the response from the defendant that it does not have any comments with regard to the summary of what is at the hearing forward brought.

13. On March 17, 2022, the Disputes Chamber receives a notification from the complainant that he does not have comments on the report. He does, however, specify which the Disputes Chamber decides to include in its deliberations.

II. Justification

14. The complainants argue that their e-mail addresses from which they had addressed the general e-mail address of the municipality (...) in order to register as a candidate volunteer for the distribution of mouth masks, were used by the defendant to personally protect them contact us. The complainants argue that the defendant does not have access to the relevant e-mail receive e-mail addresses and thus not be allowed to process this personal data, since the the defendant did not need this information for the performance of its function. Support the complainants

1 Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data

Decision on the merits 41/2022 - 4/6

their argument on the absence of any decision by the college of aldermen in which the the defendant would have been assigned a task in the context of the organization of voluntary activities in the distribution of face masks.

15. The Disputes Chamber establishes that the e-mail addresses of the complainants have been provided by themselves on the movement were provided as volunteers within the framework of the municipality organized distribution of mouth masks. The municipality must be regarded as the

controller within the meaning of Article 4. 7) GDPR², as she is the body that
purpose and means of processing the personal data, in this case the relevant e-mail
email addresses. The legal basis³ for the municipality to collect the personal data of the
volunteers – including their e-mail addresses – is the need to perform a task of
public interest (Article 6.1 e) GDPR⁴), in particular the need to take measures
take with a view to preventing the further spread among the citizens of
infection with the coronavirus. The factual elements of the file do not show that the
defendant uses the email addresses of the volunteers for any purpose other than that for which
the data was collected, has used. There is no indication that the defendant
has appropriated the personal data of the volunteers who registered by email
for any purpose other than that for which they were collected, in particular the organization of the
mouth mask distribution. The defendant brought in the volunteers, including the complainants
this framework and therefore with respect for the purpose limitation principle (Article 5.1 b) GDPR⁵) contacted in
connection with the practical organization of the mouth mask distribution. She also did this from
2 Article 4.

For the purposes of this Regulation:

[...]

7) “controller” means any natural or legal person, public authority, agency or other body
which, alone or jointly with others, determines the purposes and means of the processing of personal data; when the
the purposes and means of such processing may be established in Union or Member State law,
determine who the controller is or according to which criteria it is designated;
33 In this regard, complainant 3 relies for the legal basis on Article 74 of the Law of 30 July 2018 on the protection of
natural persons with regard to the processing of personal data. The Disputes Chamber points out that this provision only
applies to the protection of natural persons with regard to the processing of personal data by the
intelligence and security services (see Subtitle I of Title 3 of the law of 30 July 2018). However, the present file has no
relating to data processing by intelligence and security services. This also applies to Articles 75, 2° and 84 of

the law of 30 July 2018 on which complainant 3 relies, so that the provisions cited by complainant 3 do not apply.□

4 Article 6.□

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

[...]□

e) the processing is necessary for the performance of a task carried out in the public interest or of a task in the course of the performance of the public authority entrusted to the controller;□

[...]□

5 Article 5□

1. Personal data must:□

[...]□

b) collected for specified, explicit and legitimate purposes and may not be further□

are processed in a manner incompatible with those purposes; further processing with a view to archiving in general□

interest, scientific or historical research or statistical purposes shall not be considered as□

considered incompatible with the original purposes ("purpose limitation");□

Decision on the merits 41/2022 - 5/6□

her professional email address in her capacity as ships, so by no means from her□

personal private email address.□

16. The defendant acted fully within the original purpose for which the□

data were obtained by the municipality as controller and the data subject□

volunteers contacted from her position as aldermen on behalf of the municipality, as also□

appears from the session report of the College of Mayor and Aldermen dated 19 May 2020□

which explicitly states that the coordination of the mouth mask distribution will be□

entrusted to one official "in association with ships Y" (being the defendant).□

17. In addition, when the defendant sent the e-mail that is the subject of the□

complaint made use of the "bcc" function which allows the intended recipients of the email□

can be reached in a single movement without the e-mail addresses of everyone being visible. The□

data processing was therefore by no means excessive and was carried out in full accordance with

the principle of data minimum processing (Article 5.1 c) GDPR6).

18. The principle of storage limitation (Article 5.1 e) GDPR7) was also complied with. After all, as soon as it

purpose - the distribution of mouth masks - was reached, the e-mail addresses were destroyed. The

the defendant has stated that this destruction took place, which the complainant does not

is thus disputed. In addition, there is no document showing that the defendant

would have used email addresses after the mouth mask distribution, so that there is no doubt about it

the fact that the data was indeed destroyed after the purpose was achieved.

19. Thus, the Disputes Chamber concludes that the defendant has not committed any infringement of

the AVG.

6 Article 5

1. Personal data must:

[...]

c) be adequate, relevant and limited to what is necessary for the purposes for which they are processed ("minimum" data processing);

7 Article 5

1. Personal data must:

e) be kept in a form that makes it possible to identify the data subjects for no longer than for the purposes for which

the personal data are processed is necessary; personal data may be stored for longer periods for

insofar as the personal data is solely for the purpose of archiving in the public interest, scientific or historical research or

statistical purposes shall be processed in accordance with Article 89(1) provided that the appropriate technical requirements req

and organizational measures are taken to protect the rights and freedoms of the data subject

("storage limitation");

Decision on the merits 41/2022 - 6/6

III. Publication of the decision

20. In view of the importance of transparency with regard to the decision-making of the

Dispute room, becomes□

this one□

decision□

published□

on□

the website□

from□

the□

Data Protection Authority. However, it is not necessary that the identification data□

of the parties be published directly.□

FOR THESE REASONS,□

the Disputes Chamber of the Data Protection Authority decides, after deliberation, to□

of Article 100, §1, 1° WOG, to dismiss the complaint in view of the fact that there is no infringement in this regard□

can be determined on the basis of the GDPR.□

Against this decision, pursuant to art. 108, §1 WOG, appeals must be lodged within a□

period of thirty days, from the notification, to the Marktenhof, with the□

Data Protection Authority as Defendant.□

(Sé). Hielke Hijmans□

Chairman of the Disputes Chamber□