

1/8

Litigation Chamber

Decision on the merits 63/2021 of 1 June 2021

File number: DOS-2019-05617 en DOS-2020-00458

Subject: Communication to workers of information concerning the dismissal

former workers

The Litigation Chamber of

the Data Protection Authority, made up 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 Regulation

on data protection), hereinafter "GDPR";

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

ACL

Having regard to the internal regulations as approved by the House of Representatives on 20

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

Considering the documents in the file;

.

.

.

.

.

.

made the following decision regarding:

- Mr. X1, hereinafter "complainant 1", and Mrs. X2, hereinafter "complainant 2";

Decision on the merits 63/2021 - 2/8

- Y, hereinafter "the defendant".

1. Facts and procedure

1. On November 26, 2019, Complainant 1 filed a complaint with the Data Protection Authority

data (APD) against the defendant.

The subject of the complaint concerns the communication allegedly made by the employer, to

namely the defendant, with regard to the workers in service concerning the dismissal of the plaintiff

1 and the circumstances that gave rise to this dismissal. The plaintiff also asks

financial compensation.

2. On November 29, 2019, the complaint is declared admissible on the basis of Articles 58 and 60 of the

LCA and is sent to the Litigation Division under Article 62, § 1 of the LCA.

3. On January 23, 2020, Complainant 2 files a complaint with the Data Protection Authority

against the defendant.

The subject of the complaint also concerns the communication made by the employer, namely

the defendant, with regard to the workers in service concerning the dismissal of the plaintiff 2 and

of the circumstances which gave rise to this dismissal.

4. On January 29, 2020, the complaint is declared admissible on the basis of Articles 58 and 60 of the

LCA and the complaint is forwarded to the Litigation Chamber under Article 62, § 1 of the

ACL.

5. On January 30, 2020, the Litigation Chamber joined the two complaints and decided, pursuant to

article 95, § 1, 1° and article 98 of the LCA, that the case can be dealt with on the merits.

6. On January 30, 2020, 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. The deadline for receipt of the respondent's submissions in response was

set for March 2, 2020, that for the plaintiffs' reply submissions for March 16, 2020□

and that for the Respondent's Reply to March 30, 2020.□

Decision on the merits 63/2021 - 3/8□

7. On February 28, 2020, the Litigation Chamber receives the submissions in response from the□

respondent. The defendant asserts that the emails contain a purely□

professional about the end of the collaboration with the complainants. The reason for sending□

e-mails to all employees lies, according to the defendant, in the fact that the two□

plaintiffs caused, through an accumulation of behavior, unease both within□

the entire team of collaborators, and with regard to the residents of the accommodation center□

and members of their family. The emails were aimed at restoring calm. The defendant adds□

that the dismissal of the two workers would in any case have been known to all the addressees□

of e-mail, which were limited to employees of the residential care centre.□

The latter could indeed have seen for themselves□

the absence of the complainants.□

The defendant infers from this that there was no communication of personal data□

personnel who were not already known to the recipients or at least who would have been□

quickly following their own observations. Furthermore, the Respondent submits that there was no□

communicated more data than necessary for a good personnel policy, the fact□

being that given the discomfort created, it was necessary to communicate the employer's decision to□

succinct and controlled manner.□

8. On March 10, 2020, the Litigation Chamber received the submissions in reply from the□

complainants. In these submissions, the complainants do not provide any new elements as to□

the subject of the complaint, namely the communication concerning their dismissal that the defendant□

emailed to staff. They do, however, contain many□

assertions directly related to the organization and working atmosphere within the center of□

residential care, which however fall entirely outside the scope□

of the GDPR and the LCA and therefore do not fall within the jurisdiction of the Litigation Chamber.□

The complainants also enclose a communication which admittedly concerns the dismissal□

and the period preceding it, but this communication remained limited on the one hand to□

plaintiffs and on the other hand to the defendant, without demonstrating that it was broadcast from a□

any way within the staff. The Litigation Chamber therefore does not hold□

These exhibits are not taken into account either, since they are not related to the complaint.□

9. The Respondent did not make use of the right to introduce submissions in reply.□

2. Motivation□

at)□

Interest of complainants□

Decision on the merits 63/2021 - 4/8□

10. The Litigation Chamber finds on the basis of the complaint that the complainants refer□

not only to the two emails regarding their dismissal that the defendant, their former□

employer, sent to staff, but also to an e-mail sent by this same employer□

when dismissing a third party, namely a former colleague of the complainants. Complainants□

thus declare to demonstrate that the defendant violates the RGPD with each dismissal of the center of□

residential care. On this subject, the Litigation Chamber underlines that it is seized only for□

the elements of the complaint in which there is an interest on the part of the complainants. In this regard,□

the Litigation Chamber underlines the following:□

11. Article 58 of the ACL provides: "Any person may lodge a complaint or request□

written, dated and signed with the Data Protection Authority". In accordance with□

Article 60, paragraph 2 of the LCA, "A complaint is admissible when it:□

- is written in one of the national languages;□

- contains a statement of the facts and the information necessary to identify the processing on□

which she wears;□

- falls within the competence of the Data Protection Authority".□

12. The travaux préparatoires of the LCA provide: "Any person may file a complaint or a request to the Data Protection Authority: natural persons, but also legal persons, associations or institutions wishing to report a suspected violation of the rules. A complaint or request addressed to the Data Protection Authority must be written, dated and signed by the person competent in the matter. A request should be interpreted in the broadest sense of the word (request for information or explanation, request for mediation, etc.)"¹.

13. The LCA therefore does not exclude that a person other than the data subject or the person mandated by the latter, within the meaning of article 220 of the law of July 30, 2018 relating to the protection of natural persons with regard to the processing of personal data may lodge a complaint with the Authority.

¹ Doc. parl., House of Representatives, 2016-2017, DOC 54 2648/001, p. 40 (comment on article 58 of the original bill).

Decision on the merits 63/2021 - 5/8

14. Although the GDPR considers the "complaint" from the perspective of the data subject, imposing obligations on the supervisory authorities when a person lodges a complaint (see Articles 57, 1.f) and 77 of the GDPR), the GDPR does not prevent national law from giving the possibility for persons other than the persons concerned to lodge a complaint with the national supervisory authority. The possibility of such referral corresponds moreover to the missions entrusted by the GDPR to the supervisory authorities. In this respect and in a way In general, each supervisory authority: monitors the application of the GDPR and the compliance with it (art. 57.1.a) of the GDPR) and performs any other mission relating to the protection of personal data (Art. 57.1.v) GDPR).²

15. The Litigation Chamber considers in this respect that Article 58 of the LCA gives any person the possibility of lodging a complaint, provided that he has a sufficient interest, in accordance with the aforementioned provisions of the GDPR.

16. The condition is, however, that the plaintiff demonstrates a sufficient interest. In this regard, the

Litigation Chamber notes that the plaintiffs mention - purely for information -

the e-mail sent by their former employer during the dismissal of a third party, indicating

expressly that it has nothing to do with them.

17. This is therefore not sufficient to demonstrate sufficient interest, in the absence of any element

that connects complainants with the processing of personal data

personal information concerning this third party, as set out in the e-mail sent by the defendant during the

dismissal of this third party. The fact that the plaintiffs do not demonstrate in an acceptable manner

the existence of a sufficient interest on their part, the Litigation Chamber does not take into account

of this element of the complaint.

18. Given that the Complainants demonstrate that the Respondent is processing data at

personal nature concerning them, their interest being thus indisputably established, the

Litigation Chamber defines the subject of the complaint by considering only the elements

which concern the personal data of the complainants, namely the two e-mails

concerning the dismissal of the complainants who were addressed to the staff, and

submitting to his judgment.

2 In its decision of June 8, 2020, the Litigation Chamber has already admitted, under very strict conditions, that a person

other than the data subject lodges a complaint (Substantive Decision 30/2020, published on the DPA website).

Decision on the merits 63/2021 - 6/8

b)

Lawfulness of processing (Article 6.1 of the GDPR)

19. Given that the complaint is part of the employment relationship between the complainants on the one hand

and the defendant on the other hand, the processing of the personal data of the complainants

by the defendant must be based on Article 6.1 b) of the GDPR³ and must be considered as

lawful on the part of the defendant. The processing of personal data of

complainants which is part of the termination of the employment relationship is indeed part of

performance of the employment contract⁴. The Litigation Chamber has no comment in this respect.

Principle of data minimization (article 5.1.c) of the GDPR)□

vs)□

20. Based on the principle of data minimization, which states that personal data□

personnel must be adequate, relevant and limited to what is necessary in view of□

of the purposes for which they are processed, the Litigation Chamber examines below□

the extent to which the defendant has complied with this requirement that the data to be□

personal nature can only be processed if the purpose of the processing cannot be□

reasonably achieved by other means⁵, when sending the two emails to staff□

concerning the complainants' dismissal.□

21. With regard to complainant 1, the Litigation Chamber finds that the e-mail in question□

contains the information that the cooperation with complainant 1 has been terminated and□

that he will therefore no longer be present in the workplace. On this basis, the Chamber□

Litigation concludes that this communication remains limited to factual communication□

the fact that Complainant 1 is no longer on duty at the residential care facility and will not□

3 Section 6.1. "The processing is only lawful if and insofar as at least one of the following conditions is met:□

[...]□

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

pre-contractual agreements taken at the latter's request;□

[...]□

4 See in this respect recital 155 of the GDPR: The law of the Member States or collective agreements, including□

"corporate agreements" may provide specific rules relating to the processing of personal data of□

employees in the context of employment relationships, in particular the conditions under which the personal data□

in the context of employment relationships may be processed on the basis of the employee's consent, for the purposes of recrui□

the performance of the employment contract, including compliance with the obligations established by law or by collective agree□

management, planning and organization of work, equality and diversity in the workplace, health and□

workplace safety, and for the exercise and enjoyment of employment rights and benefits, individually or□

collectively, as well as for the purpose of terminating the employment relationship.□

5 See recital 39 of the GDPR: [...]□

Personal data should only be processed if the purpose of the processing cannot reasonably be□
achieved by other means.□

[...]□

Decision on the merits 63/2021 - 7/8□

no longer part of the nursing team. As the Respondent submits, the Chamber□

Litigation believes that it is appropriate, within the framework of personnel policy, to inform□

employees simply because a worker's contract has been terminated. In this□

optics, by sending the staff the e-mail regarding Complainant 1, the Respondent did not□

provided more information than strictly necessary for the intended purpose,□

knowing how to inform staff that Complainant 1 is no longer part of the team, preventing□

to use his services now. The Litigation Chamber therefore concludes that□

Respondent did not breach GDPR Article 5.1(c) with respect to Complainant 1's complaint.□

22. With respect to Complainant 2, the Respondent mentions in the e-mail in question, in addition to□

the information that the collaboration with the latter has been terminated and that he will not be□

therefore more present in the workplace, that this decision was taken after three□

written warnings and maintenance interviews. In this regard, the Respondent asserts that it□

merely mentions that the agreed procedure for the dismissal of a□

employee has been followed. To the extent that the e-mail concerning Complainant 2 contains the□

same information as that concerning complainant 1, namely the communication to the□

personnel from the end of the collaboration, henceforth resulting in their absence from the workplace,□

this is also part of the personnel policy which requires that□

employees are informed of the departure of an employee, given the impact on the organization□

daily.□

23. On the other hand, according to the Litigation Chamber, the mention of the number of warnings and□

the organization of performance interviews is not adequate, relevant and limited to this□
which is necessary with regard to the purpose, in this case the organization of a policy of□
adequate staff. Although the Respondent argues that the reference to the warnings□
and performance interviews to which complainant 2 was subject was included in the e-mail□
in order to demonstrate that the dismissal procedure was followed, the Litigation Chamber□
considers that within the framework of personnel policy, it must be assumed that any dismissal□
is done in compliance with the dismissal procedure. Number information□
of warnings and the organization of operating interviews is therefore in no way□
necessary with regard to the purpose pursued which could reasonably be achieved without□
communicate this information. Consequently, the Litigation Chamber must note□
that the defendant has violated Article 5.1 c) of the GDPR.□

Decision on the merits 63/2021 - 8/8□

d)□

Damages□

24. The Litigation Division cannot accede to complainant 1's request to grant him□
damages given that it does not have this jurisdiction (and that no□
offense cannot be established in this regard).□

e)□

Publication of the decision□

25. Given the importance of transparency regarding the decision-making process of the Chamber□
Litigation, this decision is published on the DPA website. However, it is not□
it is not necessary for this purpose that the identification data of the parties be directly□
communicated.□

FOR THESE REASONS,□

•□

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

deliberation, to close the complaint of complainant 1 without further action, pursuant to Article 100, § 1, □

1° of the LCA, since no violation of the provisions of the GDPR can be established. □

• with regard to the complaint of plaintiff 2, the Litigation Chamber of the Authority of □

data protection decides, after deliberation and pursuant to Article 100, § 1, 5° of the □

ACL, to reprimand the defendant for breach of □

Article 5.1 c) of the GDPR. □

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

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

data as defendant. □

(Sr.) Hielke Hijmans □

President of the Litigation Chamber □