

Case number: NAIH-2487-23/2022.

Administrator: [...]

Subject: Order terminating proceedings

FINAL

Before the National Data Protection and Freedom of Information Authority (hereinafter: Authority) [...] applicant (a hereinafter: Applicant) at the request of the Applicant's personal data to [...] (headquarters: [...]; a hereinafter referred to as: Applicant) submitted to the Authority in 2021.

A data protection official procedure was initiated following your request received on December 9 full holiday.

* * *

There is no place for administrative appeal against this order, but 30 within days, it can be challenged in an administrative lawsuit with a letter of claim addressed to the Metropolitan Court. THE a statement of claim¹ must be submitted to the Authority, electronically, together with the case documents forward to the court. In the case against the order, the court will conduct a simplified trial, a hearing acts outside. For those who do not receive the full personal tax exemption, the administrative lawsuit the fee is HUF 30,000, the lawsuit is subject to the right to record fees. In the proceedings before the Metropolitan Court a legal representation is mandatory.

I. Facts

I N D O C O L A S

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The Requester for the data protection official procedure received by the Authority on December 9, 2021 submitted in his application that on December 7, 2021 at 9:40 a.m. for [x]

received a call from phone number to the phone number of [y]. During the call, they were looking for him by name. THE

the calling party presented himself on behalf of the Applicant, and for the Applicant "it is not desirable
tried to conduct "agent activity" against him, i.e. for the purpose of acquiring business
they were looking for
phone. The Applicant made the call from his call list
verified with a screen save.

unknown

The Applicant objected that the Respondent was illegally keeping his telephone number on record. THE

The applicant also stated that during the call he asked the caller for his personal data
deletion.

In his request for the official data protection procedure, the Applicant requested that the personal
impose a fine for the misuse of your data, and let the Authority do everything
possible measures to ensure that the violation of the law and the misuse of your personal data do not occur
be repeated.

1 The NAIH_K01 claim form is used to submit a claim initiating an administrative lawsuit:

<https://naih.hu/kozig-hatarozat-birosagi-felulvizsgalata>

..... 1055 Budapest Tel.: +36 1

391-1400 ugyfelszolgalat@naih.hu Falk Miksa utca 9-11 Fax: +36 1 391-1410 www.naih.hu

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The Authority NAIH-2487-2/2022. notified the Applicant in order no official data protection proceedings were initiated against him. The applicant informed the Authority that a Applicant data in connection with various active and terminated insurance contracts including your phone number.

However, the Respondent does not manage the Applicant's phone number for marketing purposes, or the phone number is listed exclusively as the Applicant's phone number in its systems, the third was not recorded for a person.

The Respondent also informed the Authority that the telephone number [x] is not the Respondent phone number, it's not dependent

it is not included in the records kept in relation to insurance brokers. Requested according to his statement, he had already received a notification with this with phone number

connection, but during the investigation of this report, he also failed to reveal who is using the phone number, his records did not contain any relevant information.

does not belong to any organizational unit, and the

The Respondent also informed the Authority that it had contracted with dependent insurance brokers the condition for entering into a contract is the provision of the agent's address and telephone number, and that notification of related changes within 3 days of the change, which is an obligation in case of violation, the intermediary is obliged to pay a fine.

At the same time as the Authority notifies the Applicant by the NMHH, the phone numbers verified his state of pregnancy from the publicly available register

that the provider of the phone number [x] displayed during the call is [...] (hereinafter:

Company), and requested information about the identity of the subscriber of the telephone number

The Company informed the Authority that the subscriber of the telephone number [x] [...] (address:

[...]), and to support this, a copy of the subscriber contract is also available to the Authority

he forgave

The Authority dated 19 April 2022, NAIH-2487-5/2022. notified [...] (a

hereinafter: Client), that he was granted client legal status in the procedure, and the facts

invited him to make a statement in order to clarify.

The Customer informed the Authority that he is indeed the subscriber of the telephone number [x],

which he bought years earlier in a top-up card package for his daughter. His statement

according to him, unknown persons regularly called his daughter's number claiming to be from this number

their received calls, despite the fact that checking the call list did not find any outgoing calls from her daughter

from his phone, which is why he suspected that they were in some way unknown persons

they misuse the number.

In accordance with this, the Customer declared that he does not manage the

Applicant's phone number, and does not have any legal relationship with the Application. The last one

his statement is also supported by the MNB's register of insurance brokers, as it is in the name of the Client

does not give results.

Based on the Customer's statement, the Authority repeatedly contacted the Company, which

informed the Authority that, according to its records, no phone number [x] was received

initiate a call to the Applicant's [y] phone number on December 7, 2021, between 9:00 a.m. and 10:00 a.m., at

call using the number [x], abusing it to a person unknown to the Company,

initiated by a third party.

The Company also - as the Applicant's telephone service provider - informed the Authority that

that on December 7, 2021 at 09:41:01 a 30

second call from [x] number. The investigation carried out in relation to the specific call

established that the call came from the network of [x] (hereinafter: Company 2).

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into its network on the circuit-switched interconnect trunk built between the Company and Company 2

via, i.e. the call was not received by the Company from an IP network.

In connection with the above, he informed the Authority that there is a web service

with the help of which some persons planning abuse can even do so from abroad

to register for a specific phone number - choosing which phone number

completely

also randomly— and after registration, they can typically mass in this way

make calls as if the caller was the given number. In the specific case

it is assumed that the abusers used the number [x] for the unsolicited call

to start. In the first round of the call, which was originally presumably initiated from abroad, the Company 2

could have arrived in his network, because although the provider of the Applicant's telephone number is the Company, a

those who initiated the call identified it to Company 2 based on the call-sign number [...]. Since the

the service provider of the number is not Company 2, therefore Company 2 forwarded the call to the Company

network, where it was "terminated" on the Applicant's phone number, in a form as if

the initiator of the call would have been a subscriber of [x] number. The Society with the call

had no further information in this regard.

can happen

Based on the Company's information, the Authority contacted Company 2 with an inquiry that

provide information about the information available on the call. Company 2

according to his statement, his registration system was not registered at the specified time

no transfer between the Company and Company 2 systems, with information about the call

has

II. Legal provisions applicable in the case

On the protection of natural persons regarding the management of personal data and such

on the free flow of data and repealing Directive 95/46/EC (EU)

for data management under the scope of Regulation 2016/679 (hereinafter: general data protection regulation).

CXII of 2011 on the right to information self-determination and freedom of information. law (a

hereinafter: Infotv.) according to Section 2 (2), the general data protection regulation is indicated there

shall be applied with additions in provisions.

In the absence of a different provision of the General Data Protection Regulation, data protection initiated upon request

for official procedure CL of 2016 on the general administrative procedure. law (hereinafter:

Ákr.) shall be applied with the deviations specified in Infotv.

Infotv. According to Section 60 (1), enforcement of the right to the protection of personal data

In order to do so, the Authority shall initiate a data protection official procedure at the request of the data subject

may initiate official data protection proceedings ex officio.

The Akr. Section 47, subsection (1), point c) states that the authority terminates the procedure if the procedure

has become redundant.

The Akr. Based on Section 85 (3), the authority makes the decision official in case of written communication

delivered as a document or by electronic means specified in the Eüsztv.

The Akr. Based on point a) of paragraph (5) of § 85, unless otherwise provided by law or government decree

provides, the day of communication of the decision is the day on which it was communicated in writing or orally.

III. Decision:

(17)

During the procedure - based on the facts described - it could not be proven that a

The call objected to by the Applicant was initiated by the Respondent, the calling number is not the Respondent

is in your subscription. Based on the Company's information and according to the Customer's statement, a

number displayed by the Applicant's phone during the call, although it is in the Customer's subscription,

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but the unsolicited call was not initiated from there, the number was presumably misused. From this as a result, neither the Applicant nor the Client is responsible for the infringement indicated in the application.

During the procedure, the Authority was unable to establish the identity of the data controller despite the fact that he used and recorded all the methods and means of proof available to him

the relationship with the Application, as well as with the electronic communication service providers so that the identity of the data controller can be established

be. The Authority is evidentiary

however, its obligation is not absolute, it does not have investigative powers during the procedure has exhausted the means of proof available to identify the data controller.

The Akr. According to § 47, subsection (1), point c), the procedure becomes moot if it is meritorious

no legal effect is expected. The Authority knows the person of the data controller

without it, you cannot proceed with the procedure or investigate the application and the objectionable data processing.

As a result, the Authority decided according to the provisions of the statutory part and the Ákr. Section 47 (1)

terminates the procedure based on point c) of paragraph

ARC. Other questions

The competence of the Authority is set by Infotv. Article 38, Paragraphs (2) and (2a) defines it, the jurisdiction of the country covers its entire territory.

The Akr. Paragraphs (1) and (2) of § 112, point d), and Ákr. Based on § 114, paragraph (1) a

There is an independent legal remedy against the order by means of a public administrative lawsuit.

The rules of the administrative trial are set out in Act I of 2017 on the Administrative Procedure

hereinafter: Kp.) is defined. The Kp. Against the decision of the Authority based on Section 12 (1).

administrative proceedings fall within the competence of the courts, the proceedings are governed by the Kp. Section 13 (3)

point a) point aa)

on the basis of subsection, the Metropolitan Court is exclusively competent.

The Kp. According to Section 27 (1), legal representation is mandatory in administrative proceedings before the tribunal.

The Kp. According to paragraph (6) of § 39, the submission of a claim is an administrative act

does not have the effect of postponing its entry into force.

The Kp. Paragraph (1) of Section 29 and, in view of this, CXXX of 2016 on the Code of Civil Procedure. law

According to § 604 of the applicable E-Administration Act. According to Section 9 (1) point b), the customer is a legal entity representative is obliged to maintain electronic contact.

The time and place of submitting the statement of claim is set by Kp. It is defined by § 39, paragraph (1). The court proceedings outside of a trial in a simplified trial in the Kp. § 124, paragraph (2) point c) and Kp.

It is based on § 124, paragraph (5).

The amount of the fee for the administrative lawsuit is determined by Act XCIII of 1990 on fees. law (hereinafter: Itv.) 45/A. Section (1) defines. Regarding the advance payment of the fee, the Itv. Section 59 (1) paragraph and § 62 paragraph (1) point h) exempts the party initiating the procedure.

Budapest, October 3, 2022.

Dr. Attila Péterfalvi

c. professor

president