

No. Fac.: 11.17.001, A/P 52/2017

Date: June 12, 2018

DECISION

COMMISSIONER FOR PROTECTION OF PERSONAL DATA

Complaint in relation to non-fulfillment of right of access

Facts

1.1. On 19/06/2017, I received a complaint from the University of Cyprus Professor Ms XX, against the University of Cyprus, for refusing to provide her with access to the content of independent reviewers' evaluations. In her letter she attached (a) a copy of the University's Service Policy in which it is stated, among other things, that every member of staff has the right to access his personal file and the information concerning it in accordance with the Processing of Personal Data (Protection of the Individual) Law of 2001, (b) a copy of the University Circular (E.D. YP. AR. 185/2017), by which the decision of the Senate is notified to the academic and administrative staff as copies of letters of recommendation and letters are not communicated to evaluated academics evaluation of independent reviewers and (c) a copy of an internal memo from the Director of Administration and Finance and Secretary of the Senate, to the complainant, informing her of the decision of the Senate not to provide copies of letters of recommendation and evaluation letters of independent reviewers, in order to ensure the anonymity of the judges and their objectivity.

1.2. On 10/07/2017, a letter was sent to the Director of Administration and Finance and Secretary of the Senate, informing him of the above complaint and the relevant provisions of Article 12 of the Processing of Personal Data (Protection of the Individual) Law of 2001, Law 138(I)/2001, as amended, hereinafter "the Law", concerning the right of access. In the same letter, we expressed the opinion that the University could satisfy the complainant's request, as it is legally obligated to do, by providing her with a copy of the independent reviewer's evaluation and by outlining/blacking out his name and other identifying information, in a way to preserve his anonymity, as the decision of the Senate.

1.3. On 21/07/2017, I received a letter from the Director of Administration and Finance, informing me that this matter would be discussed at the next session of the Senate, which was scheduled to take place on 06/09/2017. However, since I did not receive any response after this session, on 12/09/2017, a reminder was sent to the Director of Administration and Finance, with which I requested that the University expedite its response. On 09/25/2017, he replied that,

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The Senate decided to authorize the Vice Chancellor of Academic Affairs to request a legal opinion and to return the matter to its next session. On 14/11/2017, I invited the University to submit its positions on this issue by 30/11/2017 and informed it that, otherwise, I would proceed to issue a Decision based on the evidence I had before me.

1.4. On 11/30/2017, the University replied that the Senate decided to continue the discussion of the issue in subsequent sessions, beginning with its session on 12/13/2017. On 24/01/2018, because I had given the University additional time to obtain an opinion from its legal advisers, I informed it that, in my opinion, there are no grounds for further extension, to discuss the matter in subsequent sessions of the Senate and I invited it to satisfy the request of the complainant until 31/01/2018, informing it at the same time that, based on Article 26(1)(g) of the Law, a data controller who does not comply with the Commissioner's Decisions commits an offence, issued to satisfy the right of access, in accordance with Article 12(3) thereof.

1.5. On 30/01/2018, I received a letter from the University informing me that, in the event that the Senate decides to adopt my recommendations, i.e. to allow access to the independent reviewers' reports with their names hidden/shadowed, then the University's relevant legislation should be amended, which clearly prohibits access to independent reviewers' reports during the process of evaluating candidates for promotion. In the same letter it is stated that the complainant filed an Appeal before the Administrative Court against the University's decision not to promote her and that, as part of the appeal, she has the right to inspect the administrative file of the case, which also includes the reports of the independent judges and therefore, the University considers that the complaint in question becomes null and void.

1.6. On 21/05/2018 I informed the University by letter that, taking into account all of the above, its refusal to grant the complainant's request for access to the content of independent reviewers' evaluations and letters of recommendation, prima facie, violates the provisions of of article 12 of the Law, as well as for the authority granted to me by the Law to impose administrative sanctions that include a monetary penalty and I requested that, within the framework of the right to be heard, he submits his positions to my Office by 29/05/2018.

1.7. After telephone communication with the University, I gave the University an extension until 08/06/2018, to prepare its response and I had a meeting with the Rector in my Office on 07/06/2018, to discuss the above. During the meeting, I reiterated the position that the University has an obligation to comply with the Act and that if its internal regulations and procedures need to be changed, that is for the University and not my Office.

1.8. On 08/06/2018 I received the final response from the University, with which it informed me that it complies with the content of my letter dated 21/05/2018 and clarifies that it had not satisfied the request of the complainant.../3

because this had been submitted during the evaluation process for her promotion and that, assuming that the complainant offended the University's decision not to promote her, she can, whenever she wishes, inspect the administrative file of the process which includes the reports of independent judges. Finally, the University requests guidance on how to satisfy requests for access to evaluation files, ie whether to provide a copy of part or all of the file for a fee, or whether it will be satisfied by inspection.

Legal framework

2.1. The right of access is established by article 12 of the Law, which, as a harmoniser, has increased force over other national regulations. Non-compliance with the provisions of this article entails the imposition of administrative sanctions. Based on article 25(1) of the Law, I have the authority to impose on the University a fine of up to thirty thousand euros.

2.2. The right of access can be satisfied in a variety of ways, e.g. by inspection of documents relating to the applicant or by written letter. According to article 12(5) of the Law, if the applicant requests a copy of his personal data, the data controller has an obligation to provide it, where this does not entail a disproportionate effort.

2.3. Article 12(3) of the Law obliges the controller to respond to the data subject within four weeks of the submission of the access request. According to the same article, if the controller does not respond or if his response is unsatisfactory, the data subject has the right to appeal to the Commissioner.

Thinking

3.1. The right of access is the quintessence of the Law since other rights derive from it, namely the rights to object, correct and delete, under the conditions set by the Law. The right of access only applies to personal data concerning the data subject. The satisfaction of this right cannot result in the disclosure of data concerning another person. In Reference 63 of Regulation (EU) 2016/679, which came into effect on May 25 this year, it is stated, among other things, that:

"This right should not adversely affect the rights or freedoms of others, such as professional secrecy or intellectual property rights and, in particular, copyright protecting software. However, these factors should not have the effect of refusing to provide any information to the data subject."

3.2. Therefore, I suggested to the University the concealment/shadowing of the names of the independent judges. The University failed to explain the reasons why it considered my proposal inadmissible.

3.3. The University had an obligation to satisfy the complainant's access request within four weeks of submitting the request or to inform her of the reasons for its rejection. After informing her of the reasons for the rejection of the request, the complainant exercised her right of appeal before me. Despite the fact that the University was given sufficient time to comply with my instructions, the complainant's request was not met within the time limits given.

3.4. The University considered that, the complainant's request became futile when, following her appeal, it granted the complainant access to the administrative progress file, which also contained copies of her evaluations. However, the University, with this act, fulfilled its obligations arising from the administrative procedure of the appeal and not its obligations arising from article 12 of the Law. The right of access can be exercised at any time and its satisfaction has nothing to do with access to documents provided in an administrative appeals procedure.

Conclusion

4.1. Based on all of the above, I conclude that the refusal of the University to satisfy the complainant's request for access to the content of independent judges' evaluations and letters of recommendation, within the deadlines given, constitutes a violation of the provisions of article 12 of the Law.

4.2. Therefore, based on the authority granted to me by article 25 of the Law, I am issuing a strict warning to the University to adopt internal procedures that will allow the satisfaction of requests, by members of the academic staff, for their access to evaluations and letters of recommendation of independent judges, that concerns them, according to the Law.

4.3. The University is requested to inform me by June 29 of the actions it will take in compliance with my above warning.

Irini Loïzidou Nikolaidou
Commissioner for
Personal Data Protection

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