

Case number: NAIH / 2020/69

History: NAIH / 2019/5746/16

Clerk: [...]

Subject: Partial termination of the procedure

decision granting the application in part

Before the National Authority for Data Protection and Freedom of Information (hereinafter referred to as the Authority) [...]

to the applicant (address: [...], hereinafter referred to as the Applicant) with [...], established in [...], hereinafter referred to as

Requested) for failure to provide information on the processing of personal data

following a request lodged on [...], the following data protection authority proceedings have been initiated

makes decisions:

I. In its decision, the Authority granted the Applicant's application in part as follows:

I.1. Notes that the Applicant did not inform the Applicant of the measures

the reason for the non-compliance and the failure to comply with your request in the absence of data processing

due to the breach of the processing of personal data by natural persons

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

Regulation (EU) No 2016/679 (hereinafter referred to as the General Data Protection Regulation)

Article 12 (3) to (4).

I.2. The request was for a copy of the reports

rejects.

II. The Authority shall initiate the data protection authority procedure

terminates

for the following parts of the application:

1. an obligation to restrict the handling of reports,

2. an examination of why the Applicant in some cases did not make an exit

report

3. the obligation to employ a data protection officer,

4. publication of data management information.

By decision of the Authority set out in point I and administrative order

There is no legal remedy on the road, but it must be lodged with the Metropolitan Court within 30 days of the communication.

may be challenged in an administrative action. The application shall be submitted to the Authority,

electronically, which forwards it to the court together with the case file. To hold a trial

the application must be indicated in the application. In an action against an order terminating proceedings only, a

court shall act in accordance with the rules of simplified proceedings. Not in full personal exemption

for the beneficiaries, the fee for the court review procedure is HUF 30,000, the right to record the material fee per lawsuit

falls below. Legal representation is mandatory in proceedings before the Metropolitan Court.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

The Applicant submitted its application to the Authority on [...].

2

The Applicant stated in the application that [...] on the processing of his personal data

requested information from the Applicant that it had taken place during his visit to the Bank

on what basis it handles the reports collected in connection with the Application in the period between 12 April 2016 and 14

May 2019 in connection with bank alerts (hereinafter: the reports);

how long it is guarded, who can access it, whether it is passed on to a third party, what its purpose is to handle, and

send a copy of them.

No reply was received from the Applicant at the request of the Applicant and he therefore asked the Authority to establish

that the Applicant did not respond to his request for access and in this way the access was violated

yoga. He also requested that the Applicant be ordered to reply to his request and

also provide a copy of the reports.

The Applicant also complained about why the Applicant did not employ a Data Protection Officer and

why you do not have a data management information, which you have also asked the Authority to look into.

At the request of the Applicant, the Authority requested information in an order clarifying the facts of the

From the application in connection with the case.

In his letter dated [...], the Applicant acknowledged that he had not requested access responded because the request was clearly unfounded, given that the reports did not contain any personal data relating to the Applicant. The purpose of the reports is not to unique identification of persons. Reports on the justification for disembarkation as well as the action taken to verify the legality of the measures and to verify the settlement with the Bank, which is issued on the basis of a framework agreement concluded between the Bank and the Applicant. The reports with regard to the data content, the data of the outgoing patrol on the part of the Applicant, the data of the contains the details of the employee taking action and a description of the incident. At the request of the Applicant only the reports made at the time he indicated could have been retrieved if they do exist), but it is not clear from the report to which person the measures may be included.

With regard to the data management prospectus, he stated that he had prospectuses, however given that the Applicant does not process the Applicant's personal data, it is not available available a privacy notice that he could have sent to him.

According to the statement of the Applicant, it does not qualify as a data controller or against the Applicant to the data processor. The Applicant attached a copy of the reports to his statement and a copy of the framework agreement with the Bank.

The Applicant made a further statement on [...] concerning the partial disclosure of the documents in which the Applicant requested the Authority to to hear [...], [...], [...] and [...] as witnesses to is considered to be your personal data and to examine the agreement between the Bank and the Applicant the retention period for reports contained in the framework contract and oblige the Applicant to to keep the reports for five years.

In relation to the reports, the Applicant further requested that the Authority investigate whether: what is the reason why in some cases no report is made at the time of withdrawal.

In addition to his repeated statement, the Applicant attached an annex in respect of which he requested the Authority to keep your data private.

Given that the Authority has completed the reports based on the list provided by the Applicant and the Applicant only partially complied with it, the Authority clarified another fact

3

sent an order to the Applicant to replace them and asked him to declare that it whether the replies he sends contain business secrets.

The Applicant has entered into an agreement with the Bank in accordance with the response sent to the second fact-finding order

the framework contract as a whole contains protected data and attached the reports available to it and stated that some of the missing reports were not available due to the fact that the patrol sent by the Applicant appears in the bank branch does not mean that an actual alarm has occurred or been reported.

II. Applicable legal provisions

Pursuant to Article 2 (1) of the General Data Protection Regulation, for the processing of data in the present case the general data protection regulation applies.

The relevant provisions of the General Data Protection Regulation in the present case are the following:

Under Article 4 (1) of the General Data Protection Regulation, "personal data" means identified or any information relating to an identifiable natural person ("data subject"); identifiable by a a natural person who, directly or indirectly, in particular by an identifier, e.g. name, number, location data, online identifier or physical, physiological, genetic, intellectual, economic, cultural or social identity identifiable by a factor.

Pursuant to Article 12 (1) of the General Data Protection Regulation, the controller is appropriate take measures to ensure the processing of personal data by the data subject all the information referred to in Articles 13 and 14 and Article 34

each piece of information in a concise, transparent, comprehensible and easily accessible form, in a clear manner and provide any information addressed to children, in particular, in plain language in the case of. The information shall be provided in writing or otherwise, including, where appropriate, by electronic means must also be provided. Oral information may be provided at the request of the data subject, provided otherwise the identity of the data subject has been established.

Article 12 (3) of the General Data Protection Regulation: Unjustified delay by the controller

but in any case within one month of receipt of the request

concerned in accordance with Articles 15 to 22. on the action taken in response to a request under Article. If necessary, take into account

given the complexity of the application and the number of applications, this deadline is an additional two months

extendable. The extension of the deadline by the data controller shall be the reasons for the delay

within one month of receipt of the request. If

the person has submitted the application electronically, the information shall be made possible, if possible, electronically

unless otherwise requested by the data subject. Pursuant to paragraph 4 of the same article

if the controller does not act on the data subject 's request without delay, but

shall inform the data subject no later than one month after receipt of the request

the reasons for not taking action and the fact that the person concerned may lodge a complaint with one of the supervisory authority and may exercise its right of judicial review.

Article 12 (4) of the General Data Protection Regulation: If the controller does not take action

at the request of the data subject, without delay, but no later than one month after receipt of the request

inform the data subject within one month of the reasons for not taking action and of the fact that

the person concerned may lodge a complaint with a supervisory authority and have recourse to the courts.

Article 12 (5) of the General Data Protection Regulation: Information pursuant to Articles 13 and 14 and

a 15–22. The information and action provided for in Articles 1 and 34 shall be provided free of charge. If concerned

The application is manifestly unfounded or, in particular because of its repetitive nature, excessive

data controller, subject to the provision of the requested information or information or the requested action

administrative costs of making:

(...)

(b) refuse to act on the application.

The burden of proving that the request is manifestly unfounded or excessive is on the controller.

Article 15 (1) of the General Data Protection Regulation: The data subject has the right to:

receive feedback from the data controller on the processing of your personal data

is in progress and if such data processing is in progress, you are entitled to personal

access to data and the following information:

(a) the purposes of the processing;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipients with whom the personal data are held

have been or will be communicated, including in particular to third country consignees, and

international organizations;

(d) where applicable, the intended period for which the personal data will be stored or, if that is not possible,

criteria for determining this period;

(e) the data subject's right to request personal data concerning him or her from the controller

rectification, erasure or restriction on the processing of such personal data

against its treatment;

(f) the right to lodge a complaint with a supervisory authority;

(g) if the data were not collected from the data subject, all available information on their source;

(h) the fact of automated decision-making referred to in Article 22 (1) and (4), including:

profiling and, at least in these cases, the logic used

understandable information about the significance of such data processing and what it is for the data subject

with expected consequences.

Article 15 (3) of the General Data Protection Regulation: The controller is the subject of the processing

provide the data subject with a copy of the personal data Additional requested by the data subject for copies, the controller may charge a reasonable fee based on administrative costs up. If the data subject submitted the application electronically, the information was widely used shall be provided in electronic format, unless otherwise requested by the data subject.

Article 15 (4) of the General Data Protection Regulation: Copy referred to in paragraph 3 the right to claim must not adversely affect the rights and freedoms of others.

Pursuant to Article 58 (2) (b) of the General Data Protection Regulation, the supervisory authority condemns the controller or processor in the exercise of its powers of rectification if breached the provisions of this Regulation.

Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein shall apply with the additions provided for in

Infotv. Pursuant to Section 22 (b), in order to enforce the rights of the data subject, the VI. Chapter may request the Authority to conduct an official data protection procedure if:

in the opinion of the data controller or the person entrusted by him / her during the processing of his / her personal data or a data processor acting on the basis of a provision violates the processing of personal data requirements laid down in law or in a binding act of the European Union.

Infotv. Pursuant to Section 60 (1), the enforcement of the right to the protection of personal data the Authority shall, at the request of the data subject, initiate a data protection authority procedure.

5

Infotv. Pursuant to Section 60 (2), the request to initiate official data protection proceedings is

Article 77 (1) and Article 22 (b) of the General Data Protection Regulation may be submitted in a specific case.

Pursuant to Section 71 (2) of the Information Act, the Authority has lawfully obtained it in the course of its proceedings use a document, data or other means of proof in another procedure.

Infotv. 75 / A. §, the Authority shall comply with Article 83 (2) to (6) of the General Data Protection Regulation shall exercise its powers in accordance with the principle of proportionality, in particular by:

legislation on the processing of personal data or binding European Union law

for the first time in the event of a breach of the rules laid down in

in accordance with Article 58 of the General Data Protection Regulation

by alerting the controller or processor.

Pursuant to Article 77 (1) of the General Data Protection Regulation, other administrative or

without prejudice to judicial remedies, any person concerned shall have the right to lodge a complaint with a

supervisory authority, in particular where he has his habitual residence, place of employment or presumption

in the Member State of the offense, if the person concerned considers that his or her personal

processing of data in breach of this Regulation.

Unless otherwise provided in the General Data Protection Regulation, data protection was initiated upon request

CL of the General Administrative Procedure Act 2016. Act (a

hereinafter referred to as the Act) shall apply with the exceptions specified in the Infotv.

The Ákr. Under Section 17, the authority has the powers and competencies at all stages of the proceedings

ex officio. If you notice any of its deficiencies and it can be established beyond doubt in the case

competent authority shall refer the matter, failing which the application shall be rejected,

or terminate the proceedings.

The Ákr. Pursuant to Section 46 (1) (a), the authority shall reject the application if the procedure

there is no statutory condition for initiating proceedings, and this law is different

has no legal effect.

The Ákr. Pursuant to Section 47 (1) (a), the authority shall terminate the proceedings if the application

should have been rejected, but the reason for that was after the initiation of the procedure

authority.

According to Section 62 (3) - (4) of the Act

(3) Facts officially known to the authority and in the public domain need not be proved.

4. The authority shall be free to choose the means of proof and the evidence available

freely believes.

III.1. Decision:

1.1.

Issue of copies of reports and statement of evidence

With regard to copies of the reports, the Applicant's request for access in [...], [...] and [...] has already requested information and a copy from the Bank by the Applicant on 12 April 2016 and 14 May 2019 its reports for the period. The Authority initiated these requests at the request of the Applicant previously examined in a data protection authority proceeding. A NAIH / 2019/1859/13. number found in its decision that the Applicant's right of access was not violated when the Bank did not inform it of the legal basis, purpose and treatment of the reports recorded by the Applicant and did not provide a copy or provide them in the original documents

6

as they do not contain the Applicant's personal data, the reports do not are intended to record personal data, they do not mention the person to whom the the Applicant's proceedings were necessary because of his conduct.

In its application of [...], the Applicant requested the Bank to provide a copy of the application submitted by the Applicant in 2018.

on reports recorded between 14 November and 11 January 2019 at its branches administrative attempts. It also requested information in connection with these reports the legal basis, purpose and duration of the processing, and requested that the originals be insight as well. In its request to the Authority for a new official data protection procedure, the Obliging the bank to fulfill your access request. The Authority closed NAIH / 2019/3990 in its decision no. NAIH / 2019/1859/13. Decision No

found that the Applicant had not been harmed under Article 15 of the General Data Protection Regulation right of access, given that the reports do not contain the Applicant's personal data.

Accordingly, the Authority rejected the Applicant 's request that the

Requested a response that includes the legal basis, purpose, and duration of the reports.

The content of the request for access which is the subject of the present proceedings has changed in so far as that the Applicant addressed and extended his application not to the Bank but to the Applicant the period for which he wished to exercise his right of access to the reports.

In the Authority's view, the assessment of the data content of the reports is not altered by the fact that from which data controller the Applicant requests access to them. The content of the reports of the Authority has been two examined and reached the same conclusion in the data protection authority proceedings, therefore the Applicant's proposed witness hearing is unnecessary and the costs of the proceedings unjustifiably aggravating procedural act, and the Applicant therefore sought evidence of this rejected his motion.

In view of the above, the Authority has concluded that the purposes for which the controller a reports are not required by the controller by the data subject therefore the data controller records the facts anonymously in the report. The Authority is present In the proceedings, Infotv. Exercising the right provided for in Section 71 (2) during its previous proceedings using the facts available to him, he concluded that the alert dates communication alone is not sufficient additional information to enable the Applicant to report identify the person concerned beyond any doubt, since at the time of the alert at the bank branch where appropriate, more than one customer is present.

In view of the above, the Authority found that the Applicant had not informed the Applicant of the the reason for not taking action, for not complying with your request because it does not handle personal data. As a result, the Applicant violated Article 12 (3) (4) of the General Data Protection Regulation by failing to reply to the Applicant's request, however, given that the reports do not contain the Applicant's personal data, the Authority will reject the Applicant request for a copy of the reports.

1.2.

Request to restrict handling of reports

According to Article 18 of the General Data Protection Regulation, the data subject may request the controller in four cases

restrictions on the processing of your personal data. For the purposes of this Article, in relation to a specific application, the Article 18 (1) (c) of the General Data Protection Regulation could be relevant.

However, the applicant did not ask the controller but the Authority to handle the reports order to keep it for five years from the date of issue.

7

However, the Authority shall stated that the reports did not constitute the Applicant's personal data or reports are made anonymously and therefore to identify other data subjects nor are they suitable.

In the event that the reports did not contain any personal data, this would apply

Article 18 (1) (c) of the General Data Protection Regulation because the Applicant is not in his own right to enforce the claim, but in general, the work of the authorities requested a review of the retention period of the reports in order to facilitate

In view of the above, the Authority concluded that there was no need to initiate proceedings

the condition specified in the law, so the Ákr. Section 46 (1) (a) and Section 47 (1)

Pursuant to paragraph 1 (a), the Authority terminated the proceedings in this part of the application.

1.3.

Investigate when the Applicant did not prepare a report

The Applicant also asked the Authority to investigate when and why the Applicant did not prepared a report on each of the withdrawals and the reason for this. Examination of this application extends beyond the exercise of the right of access as they relate to information which do not constitute the personal data of the Applicant.

When a report is generated for each alarm is not a privacy issue the Authority does not have the power and authority to investigate

The identity of the body cannot be established beyond any doubt, so the Authority Pursuant to Section 17 of the Procedure in this section.

1.4.

Publication of the Data Protection Officer application and data management information

Infotv. Pursuant to Section 60 (1) and Article 77 (1) of the General Data Protection Regulation

data subjects may request a breach of their rights under the General Data Protection Regulation

initiation of an official data protection procedure.

The Applicant requested, in general, in its capacity as an unaffected party, that the

Why does the applicant not have a data protection officer and why does he / she not have a data management information sheet, of which

due to the fact that the Authority With regard to Section 46 (1) (a), Ákr. Section 47 (1) a)

shall terminate the proceedings in this part of the application.

ARC. Legal consequence:

The Authority granted the Applicant's request in part and Article 58 of the General Data Protection Regulation

(2) (b) condemns the Applicant for violating the general

Article 12 (3) to (4) of the Data Protection Regulation by failing to inform the Applicant that

that it does not handle your personal information.

Given that the Authority has found that the reports do not contain personal information

data and the Applicant does not process the Applicant's personal data, the Authority shall

the response pursuant to Article 58 (2) (c) of the General Data Protection Regulation

considers it unnecessary to provide.

V. Other issues:

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a) determine the jurisdiction of the country

covers the whole territory.

8

The decision is based on Ákr. 80.-81. § and Infotv. It is based on Section 61 (1). The decision is based on Ákr. § 82

Shall become final upon its communication pursuant to paragraph 1.

The Ákr. § 112 and § 116 (1) and § 114 (1), respectively

there is an administrative remedy against him.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (2) (a) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (11)

the Metropolitan Court has exclusive jurisdiction. 2016 on Civil Procedure

CXXX. Act (hereinafter: Pp.) - the Kp. Applicable pursuant to Section 26 (1) - Section 72 provides for legal representation in a case falling within the jurisdiction of the Tribunal. Kp. Section 39 (6)

unless otherwise provided by law, the date of filing of the application

has no suspensory effect on the entry into force of an administrative act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of public administration and trust services. Act (a

hereinafter referred to as the Customer's legal representative pursuant to Section 9 (1) (b) of the E-Administration Act

obliged to communicate electronically.

The time and place of the submission of the application is Section 39 (1). The trial

Information on the possibility of requesting the maintenance of the It is based on § 77 (1) - (2). THE

the amount of the fee for an administrative lawsuit in accordance with Act XCIII of 1990 on Fees. Act (hereinafter:

Itv.) 45 / A. § (1). From the advance payment of the fee, the Itv. Section 59 (1)

and Section 62 (1) (h) shall release the party initiating the proceedings.

Budapest, December 20, 2019

Dr. Attila Péterfalvi

President

c. professor