

Litigation Chamber

Decision on the merits ANO 01/2019 of April 2, 2019

File number: DOS-2018-05541

Subject: Complaint for use for another purpose of identity data, number

telephone number and e-mail address provided in order to be included in a WhatsApp group

The Litigation Chamber of the Data Protection Authority, made up of Mr. D. Van Der

Kelen, Chairman, and Messrs. S. Vandermeersch and F. De Smet, 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 the

free movement of such data, and repealing Directive 95/46/EC (general regulation on the

Data protection) ;

Considering the law of December 3, 2017 creating the Data Protection Authority;

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

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

Considering the documents in the file;

1. Facts and procedure

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On October 4, 2018, the complainant filed a complaint with the Data Protection Authority.

given against the defendant.

The subject of the complaint concerned the use, for another purpose, of his identity data,

his telephone number and e-mail address that the complainant had communicated

as part of its membership of the local prevention network in order to be included in

WhatsApp group. The exhibits reveal that she received from the network coordinator of

proximity prevention, namely the defendant, in his capacity as a candidate on the lists

elections, an e-mail in the context of the elections. In this e-mail, the defendant states that he

intends to commit over the next 6 years to improving the local prevention network and
to extend it to neighboring municipalities. To this end, he asks to vote for him during the
municipal elections and it indicates where it appears on the electoral lists.

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On October 15, 2018, the complaint was declared admissible on the basis of articles 58 and 60 of the law
of December 3, 2017, the complainant is informed by virtue of article 61 of the law of
December 3, 2017 and the complaint is forwarded to the Litigation Chamber under Article 62,
§ 1 of the law of December 3, 2017.

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On October 23, 2018, the Litigation Division decided, pursuant to Article 95, § 1, 1° and

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article 98 of the law of December 3, 2017, that the case can be dealt with on the merits.

On October 30, 2018, the parties concerned are informed by registered letter of the
provisions referred to in Article 95, § 2 as well as in Article 98 of the law of 3 December 2017.

On October 31, 2018, the defendant informed the Litigation Chamber that he became aware
of the complaint, he requests a copy of the file (art. 95, § 2, 3° of the law of December 3, 2017)
and he accepts all communications relating to the case by electronic means (art. 98, 1°
of the law of December 3, 2017).

On November 6, 2018, a copy of the file was sent to the defendant.

On November 8, 2018, the Litigation Chamber receives the submissions in response from
of the defendant. He indicates that he wishes to make use of the possibility of transmitting conclusions
but that he waives the possibility of being heard (art. 98, 2° of the law of December 3, 2017).

He also claims to have created the local prevention network with the mayor of

municipality x with the aim of reducing crime and raising awareness. He adds
that he organized in several places in the municipality x information evenings to make
know the local prevention network in an optimal way and not to get rich
personally in view of the elections, but also to involve a maximum of
people in this network in order to achieve a safe neighbourhood. It was without a second thought that he
wanted to thank the members for their participation and ask for their support. He assures
that he absolutely did not mean to commit any violation and that he acted in good faith, that he
This was an isolated event and that it would not happen again. He adds that the complainant was
a political adversary and wonders how wronged she feels in her life
private or if it wants to reach a political adversary.

On November 27, 2018, pursuant to article 99 of the law of December 3, 2017, the parties
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concerned were informed of the deadlines for transmitting their conclusions. The final date
to receive the complainant's submissions in reply was thus set at
December 27, 2018 and January 28, 2019 for the defendant.

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On December 27, 2018, the Litigation Chamber received the conclusions in reply of the
plaintiff in which it states that it is important in all circumstances to respect the
legislation in force, especially as a candidate for public administrative office
alderman or member of the municipal council. The fact that she was also a candidate on a
municipal list does not change anything. She joined the local prevention network as
any other citizen. As a candidate, you must be exemplary in all your actions
and the party has certainly been informed of the do's and don'ts with regard to the
privacy protection for each individual.

2. Legal basis

- Article 5.1.b) of the General Data Protection Regulation

"Personal data are: [...] b) collected for specific purposes, □

explicit and legitimate, and not further processed in a manner inconsistent with □

these purposes; further processing for archival purposes in the public interest, for the purposes of □

scientific or historical research or for statistical purposes is not considered, □

pursuant to Article 89(1) as incompatible with the original purposes □

(limitation of purposes);" □

- Section 6.4 of □

general regulations □

on □

data protection □

"When processing for a purpose other than that for which the data was collected □

is not based on the consent of the data subject or on Union law or the □

law of a Member State which constitutes a necessary and proportionate measure in a society □

democratic to ensure the objectives referred to in Article 23(1), the person responsible for the □

processing, in order to determine whether processing for another purpose is compatible with the purpose □

for which the personal data was originally collected, takes into account, □

among others: a) the possible existence of a link between the purposes for which the □

personal data was collected and the purposes of further processing □

considered; b) the context in which the personal data was collected, □

in particular with regard to the relationship between the data subjects and the controller □

treatment; c) the nature of the personal data, in particular if the □

processing relates to special categories of personal data, pursuant to □

of Article 9, or if personal data relating to criminal convictions □

and offenses are dealt with, under Article 10; d) the possible consequences of □

further processing envisaged for data subjects; e) the existence of guarantees □

appropriate, which may include encryption or pseudonymization. " □

3. Motivation ☐

Since the defendant himself declares that this is an isolated fact which will not happen again ☐
not in the future, indicating that he realizes that he has committed a data processing violation ☐
personal nature of the complainant, the Litigation Chamber considers that the violation of ☐
Article 5.1.b) and Article 6.4 of the General Data Protection Regulation has been ☐
proven and that the sanction mentioned below is sufficient. ☐

FOR THESE REASONS, ☐

the Litigation Chamber of the Data Protection Authority decides, after deliberation, ☐
issue a reprimand to the defendant on the basis of Article 100, § 1, 5° of ☐
the law of December 3, 2017. ☐

Pursuant to article 108, § 1 of the law of December 3, 2017, this decision may be subject to ☐
an appeal within thirty days of notification to the Court of Markets. ☐

President ☐

(Sr.) Dirk Van der Kelen ☐