

Dispute room

Decision on the merits 106/2022 of 27 June 2022

File number : DOS-2020-00262

Subject: Complaint about the

data protection

information obligation and the

officer

in front of

The Dispute Chamber of the Data Protection Authority, composed of Mr Hielke

Hijmans, chairman, and Messrs Dirk Van Der Kelen and Jelle Stassijns, 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 revocation of

Directive 95/46/EC (General Data Protection Regulation), hereinafter GDPR;

In view of the law of 3 December 2017 establishing the Data Protection Authority,

hereinafter WOG;

In view of the regulations of

internal order, as approved by the Chamber of

Representatives on 20 December 2018 and published in the Belgian Official Gazette on

January 15, 2019;

Having regard to the documents in the file;

Has made the following decision regarding:

The complainant:

Mr X, hereinafter referred to as “the complainant”

The defendant:

Y, having as counsel Mr. Matthias Vierstraete, lawyer, Mr. Julie Van

Com, attorney and Mr. Géraldine Demaré, lawyer, all with office at

1930 Zaventem, Gateway Building Brussels National Airport

1J,

hereinafter referred to as “the defendant”.

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I. Facts and procedure

1.

On January 16, 2020, the complainant submits a complaint to the Data Protection Authority

against the defendant.

The subject of the complaint concerns an alleged infringement of the right to transparent

information and a violation related to the data protection officer

by the defendant. The complaint contains the following objections regarding the

privacy policy of the defendant:

a. The complainant states that the defendant's privacy policy is only available in

Dutch while the defendant may also process personal data of

patients who do not understand Dutch.

b. According to the complainant, the defendant's privacy regulations use a structure

and legal language that is not transparent and understandable to patients. er

does not work with various layers of information from which the most

practical information. There is no table of contents and some sentences are very long.

c. The privacy regulations still refer to the abolished law of December 8, 1992.

d. It is not clarified how data subjects are informed about the

changes to the defendant's privacy policy.

e. According to the complainant, the information about the legal grounds is not clear (Article 5

of the defendant's privacy policy). There is no link between

purposes (processing) and a concrete legal basis under Article 6 GDPR. The words “among other things” create further ambiguity, and imply that there is there could be a dual legal basis for same processing, which cannot be considered fair processing.

f. The contact details of the officer are not in the privacy regulations of the defendant (Article 37.7 GDPR), but on a web page that can only be found under the heading “patients” > Liability, rights and regulations > Protection of privacy. This also raises the question of whether

ensured the consistency between the privacy regulations of the defendant and the other documents of the defendant.

g. The rights of the data subject must be exercised with the ombudsman service (Article 16, § 9 of the Defendant's Privacy Regulations), while Article 38, paragraph 4 GDPR states: “Data subjects can contact the data protection officer to contact you on any matter related to the processing their data and exercising their rights under of this Regulation.”.

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h.

If there is an intention / possibility of international transfer of personal data to a third country or international organization, then state whether work will be carried out on the basis of an adequacy decision of the European Commission or appropriate or suitable safeguards of which the data subject can obtain a copy and where the data subject can consult it (cf. Articles 13.1 f) and 14.1 f) GDPR vs. the limited content of article 9 paragraph 2 of the privacy regulations of the defendant “then the patient will receive additional information receive”).

2.□

On January 17, 2020, the complaint will be declared admissible by the Frontline Service on the basis of□
of Articles 58 and 60 of the WOG and the complaint under Article 62, § 1 of the WOG□
submitted to the Disputes Chamber.□

3.□

On February 7, 2020, in accordance with Article 96, § 1 WOG, the request of the□
Disputes Chamber to conduct an investigation submitted to the Inspectorate,□
together with the complaint and the inventory of the documents.□

4.□

The inspection will be completed by the Inspectorate on January 17, 2022, the report will be□
attached to the file and the file is sent by the Inspector General to□
the Chairman of the Disputes Chamber (Article 91, § 1 and § 2 WOG).□

The report contains findings with regard to the subject matter of the complaint and comes to□
the following decision:□

a. With regard to the infringement of Article 12(1) and 13 GDPR:□

“On the basis of the specific elements in this specific file, the Inspectorate□

a violation of Articles 12 and 13 GDPR. At the end of the□

inspection investigation, the defendant was in conformity with Article 12 of the GDPR. Given the□

willingness of the defendant and given the situation was regularized for Article 12□

and partly already before Article 13 GDPR, the Inspectorate believes that this irregularity□

could be partially closed.”□

For Article 13 GDPR, the following shortcomings can be seen as a□

non-conformity:□

- The processing operations based on the legal basis 6.1.c) AVG were not complete with□

lack of concrete□

information about all processing purposes of□

personal data (Wi-Fi, CCTV cameras, recording of conversations) were provided

(cf. Article 13.1.c) GDPR);

- No clear information about which appropriate or suitable safeguards taken

be transferred to a third country or international organisation. There will not be

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state how a copy of these appropriate or appropriate safeguards can be obtained

obtained or where they can be consulted (cf. Article 13.1.f) GDPR);

- The specific retention periods of all processing purposes (cf. Article 13.2.a)

GDPR).

b. With regard to the infringement of Article 13.1.b), Article 14.1.b), Article 37.7 and Article 38.4

GDPR:

“Based on the specific elements

in this specific file, the

Inspection Service has established a violation of Articles 13.1.b), 14.1.b), 37.7 and 38.4 GDPR.

Given the willingness of the defendant and given the situation was regularized,

does the Inspectorate believe that this irregularity could be closed

become.”

The report also contains findings outside the subject matter of the complaint and concludes that

there is an infringement of Article 30 GDPR (the register of processing activities).

In this regard, the Inspectorate establishes that:

- the controller about a register of the processing activities

(with procedure for its use). This register has been drawn up in a

electronic – written form via a Microsoft application (SharePoint);

- the controller has the will of the Inspectorate if desired

access to their internal Microsoft application (SharePoint), but that the

controller is unable to simply update the registry through a

to make a copy or extract available: “to be provided” to the Inspectorate.□

- the current register of processing activities is not clear;□

- the register of processing activities is a software application that does not□

can provide a global list of information and based on the information obtained,□

which can be described as a puzzle of several loose copies of lists and□

screenshots, the register of the processing activities is not unique and on□

this way difficult to interpret;□

- the obtained screenshots and lists were delivered as attachments without the□

explain the underlying relationship between the files. So it's hard to□

understand how these different screenshots and lists would form a whole□

to shape. There is also a difference in layout between the screenshots and lists as□

answer to question 5 and question 9c of the writing of March 25, 2020 but also□

between the information in the register of processing activities for the□

security cameras cf. question 12 of the writing of March 25, 2020 of the□

inspection service;□

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- the information provided from the register of the processing activities of the□

defendant except for the processing activity of the security cameras□

is incomplete. The following information in the register of processing activities□

is not visible:□

o the following processing purposes, cf. Art. 30 (1) b) GDPR, are not included in the□

full overview list of “appendix 5b5: Overview of processing activities□

with regard to personal data of patients” of the writing of the□

data controller from April 23, 2020:□

▪ use of the website – processing based on cookies and□

tracing technology;□

(security) camera images in the defendant's buildings□

what the patient is exposed to;□

- the WIFI/telecom/telephony/internet infrastructure and the logging of□

the “use” of the patient;□

- recorded patient telephone conversations;□

- o a description of the categories of recipients to whom the□

personal data have been or will be provided, cf. Art. 30 (1) d) GDPR;□

- o an indication if applicable and the description for the transfers□

of personal data to a third country or an international organisation,□

including an indication of that third country or international□

organization and, in the case of the second subparagraph of Article 49(1) GDPR□

the transfers referred to, the documents regarding the appropriate guarantees, cf.□

Article 30 (1) e) GDPR;□

- o a description of the envisaged periods within which the various□

categories of data must be deleted cf. Art. 30 (1) f) GDPR.□

The Inspectorate nuances this obligation by stating that the□

words “if possible” indicate the “non-mandatory” character to this□

information in the register of processing activities.□

However, this information was not fully included in the information to be provided□

to provide;□

oh one□

description□

from□

the□

technical□

and□

organizational□

security measures cf. Art. 30 (1) g) GDPR. The Inspection Service□

nuances the obligation here by stating that the words “if”□

possible” indicate the “non-mandatory” nature to assign this information□

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in the register of processing activities. However, this one□

information is not fully included with the information to be provided.□

5.□

On February 7, 2022, the Disputes Chamber will decide on the basis of Article 95, § 1, 1° and Article 98□

WOG that the file is ready for treatment on the merits.□

6.□

On February 7, 2022, the concerned parties will be notified by email of the□

provisions as stated in Article 95, § 2, as well as of these in Article 98 WOG. Also,□

they have been informed of the time limits to submit their defences, pursuant to Article 99 WOG□

to submit.□

The deadline for receipt of the defendant's response was□

laid down on March 21, 2022, this for the statement of the complainant's reply on April 11□

2022 and finally those for the defendant's rejoinder on 2 May 2022.□

7.□

On February 7, 2022, the defendant accepts the electronic communication regarding the□

case and indicates that he wishes to make use of the opportunity to become□

heard, in accordance with article 98 WOG.□

8.□

9.□

On February 8, 2022, the complainant accepts the electronic communication regarding the case.□

On February 10, 2022, the defendant requests a copy of the file (Article 95, §2, 3° WOG),□

which was transferred on February 16, 2022□

10. On March 21, 2022, the Disputes Chamber will receive the statement of defense from the□
defendant with regard to the findings with regard to the subject-matter of the□
complaint.□

First of all, the defendant argues that the complainant does not prove that his personal data has been□
the defendant have been processed or that he has not received a certain benefit or a certain service□
has obtained by refusing his consent to the processing of his□

personal data by the defendant. There is therefore no interest on the part of the complainant,□
said the defendant. With regard to the content of the Inspection Report, the defendant□

have always been productive, referring to the□

Inspection report which also indicates that several of the objections have already been□
were resolved before the conclusion of the inspection investigation. The defendant is limited□
in its conclusions, therefore, to the objections retained in the inspection report.□

With regard to the processing purposes, the defendant has information about the□
provides legal grounds if they are made under applicable law and□

regulations. In addition, the category of personal data 'identity of the caller' is□
further elaborated. It will also be explicitly stipulated that telephone conversations can be□
be included if this is necessary in the context of criminal proceedings.□

A distinction is now also made in the privacy statement between the□

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retention periods based on the personal data. As for the distinction in□
retention periods between medical data and nursing data, the□

defendant that this distinction is not easy to make in practice, as this□
data are very closely related. Finally, the defendant refers to the□

privacy statement where the concrete information and the processing purposes of the□
camera images are provided.□

With regard to the data protection officer, the defendant argues that the

Inspectorate found in the Privacy Statement of January 25, 2021 that the

contact details of the data protection officer were provided.

As regards the infringement of Article 13.1.f) GDPR, the defendant argues that it is unclear

how this article should be interpreted. The defendant emphasizes the assumed

constructive attitude and is willing to adjust the privacy statement if this

deemed expedient by the Disputes Chamber. This is demonstrated with a design

of clause in this regard that still has to be passed by the Executive Committee and the Board Committee

being approved.

11. On March 23, 2022, the Disputes Chamber will receive confirmation from the complainant that he does not

will submit conclusions and agree with the findings of the Inspection Report.

12. On April 25, 2022, the Disputes Chamber will receive notification from the defendant no

to submit statements of rejoinder, in view of the fact that the complainant does not submit any conclusions of reply

has submitted.

13. On March 21, 2022, the Disputes Chamber will receive the statement of defense from the

defendant with regard to the findings outside the subject matter of the complaint.

In the main order, the defendant argues that the Inspection Report is inadmissible and from the

procedure should be avoided. The defendant argues that the pleas raised

used by the Inspectorate, disregarding what is appropriate and necessary in

in the context of such an investigation (cf. Article 64, §2 WOG). The questions that arise during the

investigations were too far-reaching and disproportionate what the rights

of defense, according to the defendant. In addition, the defendant also argues that

investigation and the findings outside the subject matter of the complaint were not allowed to be shared

with the complainant, given the secrecy of the investigation.

Secondly, the defendant argues that the complaint is unfounded and therefore dismissed

must be. First, the defendant claims to have complied with the obligation to

providing the registry. Although the Inspection Report states that the defendant does not
is able to provide a complete extract or copy, the defendant believes
that the GDPR does not prescribe anywhere how a register of processing activities is
must be made available to a supervisory authority. In the text of the
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GDPR, there is talk of 'making accessible', not 'handing over' the register
of processing activities. The defendant alleges that several times
proposed to the Inspectorate to grant access to the complete register of
processing activities via Sharepoint, to provide additional information about
certain processing activities or third party processors and to inform the defendant
to ask random questions about processing activities in the register of
processing activities. In addition, the Inspectorate was also able to visit the site to
to conduct investigations in accordance with Article 66, 4° WOG. Second, the
defendant that the Inspectorate decides that the above-mentioned elements are not
visible in the register of processing activities. The existence of the information
is not disputed, but that this information per processing activity in the provided
extracts was not visible. The defendant emphasizes that it attaches great importance to the
register of processing activities which is particularly extensive and detailed. every
processing activity from the register of processing activities is further detailed
elaborated in different tabs that all contain the elements of Article 30, 1 GDPR
mention. Third, the defendant puts forward arguments to support the findings of the
Inspection report that no information could be found about different
refute specific processing operations. With the help of some concrete examples
the defendant illustrates how with the current software application all
information
can be consulted. Finally, the defendant submits to the software application

Share point□

have chosen because this is a good□

internal management of all□

processing activities of and for the defendant on a□

user-friendly manner. The defendant has since switched to another□

software application, namely Coach2Lead, which specifically takes into account□

the wishes of the Inspectorate to easily access the entire register□

to hand over to the supervisory authority.□

14. On June 2, 2022, the parties will be notified that the hearing will take place□

on June 9, 2022.□

15. On June 9, 2022, the party appearing will be heard by the Disputes Chamber. During the□

At the hearing, the defendant explained which steps it has already taken in□

of data protection since the filing of the complaint and the Inspection Investigation. So□

the Disputes Chamber can determine during the hearing that virtually all grievances from the□

complaint and working points from the Inspection Report were addressed by the defendant.□

16. The minutes of the hearing will be sent to the parties on June 10, 2022.□

17. On June 15, 2022, the Disputes Chamber will receive some comments from the defendant□

with regard to the official report, which it decides to include in its deliberations.□

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II. Justification□

18. With regard to the interest of the complainant, the Disputes Chamber refers to Article 58□

WOG, which reads as follows: “Anyone may submit a complaint or complaint in writing, dated and signed□

submit a request to the Data Protection Authority”. In accordance with Article 60, paragraph 2□

WOG a complaint is admissible if it:□

- is drawn up in one of the national languages;□

- contains a statement of the facts, as well as the necessary indications for the identification of□

the processing to which it relates;□

- it falls under the competence of the Data Protection Authority.□

19. Pursuant to Article 4.1 GDPR□

is the person involved□

is in the processing of□

personal data, the person on whom the data is the subject of the processing□

relate to.□

20. The Disputes Chamber has considered as follows in previous decisions¹ regarding this□

matter :□

“Although the GDPR approaches the 'complaint' from the point of view of the data subject, by the□

impose obligations on supervisory authorities when a person makes a complaint (see□

Articles 57, 1., f) and 77 of the GDPR), the GDPR does not prevent national law from□

persons than the data subjects the opportunity to file a complaint with the□

national supervisory authority. The possibility of such referral is□

moreover, corresponds to the tasks given to the supervisory authorities by the GDPR□

promised. In that regard and in general terms, each control authority shall ensure: the□

monitoring and enforcement of the application of the GDPR (Article 57, 1., a) GDPR), and the□

performance of all other duties related to the protection of□

personal data (Article 57, 1., v) GDPR).”□

In short, the WOG does not exclude that a person other than the data subject or the person who□

is authorized by the person concerned, as referred to in Article 220 of the Act of 30 July 2018□

on the protection of individuals with regard to the processing of□

personal data, can submit a complaint to the GBA.□

21. More specifically, the Disputes Chamber rules that Article 58 WOG gives every person the opportunity to□

offers to lodge a complaint, provided that the complainant demonstrates that he/she has sufficient□

has an interest in.² In this regard, the Disputes Chamber must establish that the complainant in□

this case merely refers to a public interest consisting in the protection of the

1 See inter alia decision 117/2021 dated. October 22, 2021, 80/2020 dd. December 17, 2020 and decision 30/2020 dated. June 2020, to be consulted via <https://www.dataprotectionauthority.be/burger/publicaties/besluiten>

2 See in this sense also Marktenhof, 2022/AR/42 dd. June 8, 2022.

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rights with regard to the data protection of every person who uses

of the defendant's website and services, which cannot be considered conclusive

considered. After all, the mere pursuit of a public interest is not sufficient to do so

prove of a sufficient interest, this in the absence of any concrete element that the complainant in

relates to the data processing by the defendant.³

22. The Disputes Chamber establishes that the complainant does not demonstrate in his complaint how he would have the required interest.

23. In addition, the Disputes Chamber has established that the Inspectorate also has no interest in of the complainant.

24. Despite a legally valid summons, the complainant did not appear at the hearing

as a result of which the Disputes Chamber was unable to obtain a further explanation from the complainant. On

based on the description of the complaint by the complainant and the submitted documents,

the Disputes Chamber to determine that the complainant, when submitting the complaint, has a general

public interest consisting of the protection of rights relating to

the protection of personal data of each patient of the defendant. The complainant has

has not been shown to have any personal interest. At the hearing

the defendant has expressly stated that the complainant is not known to the Y.

25. It has thus become apparent after examination of the complaint in the substantive proceedings that the complainant did not demonstrates that he has an interest that is sufficiently concrete to be able to lodge a complaint

Submit. In addition, the Disputes Chamber establishes that the complainant does not

capacity to lodge a complaint and that the entire procedure

Consequently□

is not affected by the absence□

purely of importance, but also of□

capacity on the part of the complainant.□

26. Consequently, the Disputes Chamber withholds the complaint and subsequent findings of□

the Inspection Service within and outside the scope of the complaint. The Disputes Chamber decides□

therefore to proceed with a technical dismissal in accordance with its dismissal policy.⁴□

III. Publication of the decision□

27. Given the importance of transparency in the decision-making of the□

Litigation Chamber, this decision is published on the website of the□

from□

3 See, inter alia, Decision 88/2021 of 30 June 2021 and chapter A.5 of its dismissal policy as set out in detail on the□

website□

<https://www.dataprotectionauthority.be/publications/sepotbeleid-van-de->□

litigation room.pdf.□

4 See also decision 117/2020 dated. October 22, 2021 and the Dispute Resolution Policy of June 18, 2021 under 3.1.A , te□

can be consulted via <https://www.dataprotectionauthority.be/publications/sepotbeleid-van-de-geschillenkamer.pdf>.□

GBA:□

the□

Data Protection Authority. It□

however, it is not necessary that the□

identifiers of the parties are disclosed directly.□

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FOR THESE REASONS,□

the Disputes Chamber of the Data Protection Authority decides, after deliberation, to:□

- To dismiss the present complaint pursuant to Article 100, §1, 1° WOG.□

Against this decision, pursuant to art. 108, § 1 WOG, appeal to be lodged

within a period of thirty days, from the notification, to the Marktenhof, with the

Data Protection Authority as Defendant.

(get). Hielke HIJMANS

Chairman of the Disputes Chamber