

Facts: On December 28, 2020, a complaint was sent to my Office by XXXXXX (hereinafter "the Complainant"). 2. According to the complaint, the Complainant had requested a copy of her Medical File from doctor XXXXXX (hereinafter "the Complainant"). In a written communication that the Complainant had with the Defendant, the latter stated that the medical file had been delivered with everything it contained in relation to the provision of services he provided her, as well as photographic material of the operation. He also stated that he granted access both to the Complainant and to third parties, who had the opportunity to view all the electronic material. However, he invoked his rights in relation to the preservation of the surgical technique and that it is his intellectual property, and for this reason, he refused to deliver a copy to the Complainant. 2.1 The Complainant considered this refusal, an act that goes against her rights in terms of personal data, but also the rights of patients provided by Regulation (EU) 2016/679, paragraph 63, on the Protection of Natural Persons Against the Processing of Personal Data and the Free Circulation of such Data Law of 2018 (L.125(I)/2018) and Articles 18(1) and 21(4) of the 2004 Law on the Entitlement and Protection of Patients' Rights ( 1(I)/2005). 2.2 The purpose of the Complainant, as stated in her complaint, is to have the opportunity to undergo further examinations and/or medical procedures. In no way, he said, does the complaint attempt to infringe on the intellectual property of the Defendant. 3. On the basis of the Defendant's invocation of the "intellectual property" complaint, which can be raised by a data controller during the exercise of the data subject's right of access to personal data pursuant to Article 15 of Regulation 2016/ 679 and which is found in recital (63) of the Regulation, a letter was sent to the Defendant of the complaint in which he was asked to state his views both in relation to the complaint, but in particular to specify to us how the aforementioned is protected DVD based on intellectual property right, referring us to relevant Law or Jurisprudence. 4. The Complainant, responding to the request of my Office, initially assured his intention to cooperate and fully comply with any decision I make. As he stated, it was not his intention to deny his patient access to information to which she is entitled based on GDPR 2016/679, but taking into account his own rights. He is not trying to hide and/or avoid anything. It has already allowed and continues to allow the Complainant to access and view the relevant DVD alone and/or in the presence of third parties, even via the Internet, but without the right to copy. 4.1 According to the Complainant, he is the only doctor in Cyprus who applies this particular peculiar procedure/surgery and technique. He has received certification from XXXXX to perform the relevant medical procedure. According to the Regulation, he is entitled to preserve, protect and not reveal, in terms of intellectual and intellectual property, trade secret, the methodology, surgical technique and way in which he proceeds and

performs this difficult and special surgery that only he applies. It is his own property based on Article 23 of the Constitution. Making any copy of the DVD creates a visible and serious possibility that it will be leaked and/or posted on the internet, thereby revealing the specific specialized method and surgical technique he applies, for which he has spent many years, expenses and effort, until to be able to create and/or adapt and/or implement it himself, with the result that his own rights are adversely affected. Also, there is a visible possibility that his clientele will decrease as they will be able and/or will attempt, perhaps at the risk of their own patients' lives, after watching this copy or other possible copies of the DVD that will be released multiple times, other doctors , to implement and/or attempt to implement, in violation of his rights, the peculiar procedure in question. This will cause further economic damage and harm, due to the fact that now other doctors will be able to competitively offer, perhaps not with the same results, the relevant operation, which, at the moment, he himself has a monopoly on and therefore the reason was addressed to the Complainant himself. 4.2 The Complainant in the response he gave to my Office also carefully analyzed his positions, based on provisions of the Regulation and/or Jurisprudence, presenting, among other things, the following: - The weighing that one should do, between the protection of personal data and other fundamental rights (recital (4)), - The subject's right to access his personal data as opposed to the rights or freedoms of others, such as professional secrecy or the right to intellectual property ( recital (63)), - The interpretation of the "right of access" as a necessary action in order for the subject of the 2 data to have information and/or awareness and to verify the legality of the processing, but not necessarily the provision of a copy (recital (63) ), - The fact that he has already delivered to the Complainant, as stated in the Regulation, all "information" such as diagnoses, test results, values calculations, even viewing and explaining the procedure, while the Regulation does not provide for the entire procedure to be given (recital (63)), - The willingness to even provide remote access to the complainant, but without the possibility of copying (recital (63) ). of the interpretation/application on the one hand and the purposes of the legislator when creating European Regulations on the other hand, referring to the Jurisprudence of the European Court of Justice and the English Court of Appeal, considering that the copy of the DVD is unnecessary for the Complainant, since her all the information, opinions, findings and multiple photos related to the operation have been given, while on the other hand the "trade secrets" of the same, the specialized and exclusive surgical methods are affected proceedings that he acquired after a lot of effort and money, where he managed to train and subsequently create the technique in such a way that he is the only one who can carry out this operation in Cyprus, - That the right of the data subject to receive a copy of the personal data being processed (Article 15(3)), should not adversely

affect the rights and freedoms of others (Article 15(4)), stating that the provision of a copy will create a visible effect the intervention, method and procedure to circulate uncontrolled and/or to unknown and/or uncontrolled recipients with adverse consequences for the rights of the same and also for public health in the event that other doctors attempt to copy it, - The provision of Article 23 for limitation by legislative measure of the field application of the obligations and rights provided for in Articles 12 to 22, when such a limitation respects the essence of of fundamental rights and freedoms and constitutes a necessary and proportional measure in a democratic society, to ensure, among other things, the protection of the data subject or the rights and freedoms of third parties (proportionality), - That even if the right of in the exceptions of Article 15(4), still has no obligation to deliver a true copy based on the Jurisprudence of the European Court of Justice (joint cases C-141/12 and C-372/12), - That according to an interpretation contained in a report of the Competent Authority in relation to Data Protection of Hesse, Germany, of July 2019, a requested "copy" does not mean full access to all documents related to the subject, and - The view that the Complainant's request is excessive and in in such a case, the data controller may refuse to proceed with the request (Article 12(5)), also referring to relevant Jurisprudence. 3 4.3 Finally, the Complainant stated that if the Complainant wishes to exercise the right to deletion, provided that there are no other legal issues, he is ready to do so. It was also suggested that a copy be made, which would be placed under my control and custody, in the event that the Complainant wished to watch the DVD in my Office, but with the assurance that no copy would be made and subsequently his copy, will be destroyed. 5. My Office duly informed the Complainant of the Complainant's readiness to allow her further access and viewing of the relevant DVD alone and/or in the presence of third parties who may wish to see it, or even via the Internet, but without the right to copy. 5.1 He also brought to the attention of the Complainant that the Complainant still insists on handing over a copy of the DVD citing mainly: (a) The impact on his rights since he is currently the only doctor certified by XXXXXX in Cyprus, who implements and uses the technique known as XXXXX. His purpose is to preserve, protect and not disclose, in kind, intellectual and intellectual property, trade secret, the methodology, surgical technique and way in which he proceeds and performs this difficult and special surgery that only he applies and has achieved after a lot of effort, study, toil, investment in money, but also time. Any duplication risks the DVD being leaked and/or posted online, revealing the specific specialized modality and surgical technique. It is also possible that other doctors may try to copy the technique in question, as a result of which his clientele will decrease and he will suffer financial damage and harm. (b) That since the Complainant has been provided with all relevant information, opinions, findings and multiple photographs relating to the operation, it is deemed

unnecessary to deliver a copy of the DVD. He also considers that it is not mandatory since the Complainant has received this information. 5.2 The suggestion of the Defendant of the complaint that a relevant copy be created and deposited in my Office, so that the Complainant can see it if she wants, was mentioned, but which suggestion I thought could not be implemented. However, if the Complainant wanted, something similar could be arranged between them. 6. The Complainant responded, re-adopting the content of the letter dated 28/12/20. She added that the necessity of the copy of the DVD is to better inform her doctor and in no case is there any intention to intercept or copy or publicize any surgical procedure performed by the Defendant to the extent that her rights are guaranteed . It is further her position that, regardless of the allegations of the Defendant in the complaint, she has an absolute right to receive a copy of the DVD in question, particularly on the basis of Article 18 of the Copyright Act and Article 4 of the Public Protection of the Rights of Patients Law of 2004 (L.1(l)/2005), which does not in any case provide for an exception to her right to receive a copy of her medical data on the basis of invoking intellectual property. 6.1 The Complainant also referred to Jurisprudence and the regulatory framework of the agreement of the Member States of the European Union called "TRIPs", where it limits the granting of a patent and/or copyright for reasons of "protection of order or morals, including the need to protect the life or health of people..." and where there is an express reference to the refusal to grant a patent regarding "a) diagnostic, therapeutic and surgical methods, which are intended for humans or animals.". According to her position, the Complainant is invoking a right that he does not own, nor is he allowed to own, since according to the TRIPs agreement, surgical methods on humans are not patentable. Finally, the Complainant requested to receive a copy of the DVD as soon as possible. Legal aspect 7. In Article 4 of GDPR 2016/679 personal data is interpreted as "any information concerning an identified or identifiable natural person" ("data subject"); an identifiable natural person is one whose identity can ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question", the processing as "any act or series of acts carried out with or without the use of automated means, on personal data or sets of personal data, such as the collection, registration, organization, structuring, storing, adapting or changing, retrieving, searching for information, using, communicating by transmission, dissemination or any other form of disposal, association or combination, restriction, erasure or destruction" and as data controller "the natural or legal person, public authority, agency or other body which, alone or jointly with other , determine the purposes and manner of processing personal data; where the purposes and manner of such processing are

determined by Union law or the law of a Member State, the controller or the specific criteria for his appointment may be provided by the Union law or the law of a Member State'. 7.1 Article 15 par. 1 of GDPR 2016/679 provides that: "The data subject has the right to receive from the data controller confirmation as to whether or not the personal data concerning him are being processed and, if this is the case, the right to access the personal data and the following information: a) the purposes of the processing, b) the relevant categories of personal data, c) the recipients or categories of recipients to whom the personal data has been disclosed or is to be disclosed, in particular recipients in third countries or international organizations, d) if possible, the period of time for which the personal data will be stored or, when this is impossible, the criteria that determine said period, e) the existence of a right to submit request to the controller for correction or deletion of personal data or limitation of the processing of the data of a personal nature concerning the data subject or the right to object to said processing, f) the right to submit a complaint to a supervisory authority, g) when the personal data is not collected from the data subject, any available information about its origin, h) the existence of automated decision-making, including profiling, provided for in Article 22 paragraphs 1 and 4 and, at least in these cases, significant information about the logic followed, as well as the meaning and intended consequences of said processing for the data subject." 7.1.1 In par. 3 of the same Article it is stated that "The controller provides a copy of the personal data being processed. For additional copies that may be requested by the data subject, the controller may charge a reasonable fee for administrative costs. If the data subject submits the request by electronic means and unless the data subject requests otherwise, the information shall be provided in a commonly used electronic format.", while in par. 4 it states that "The right to receive a copy referred to in paragraph 3 does not adversely affect the rights and freedoms of others." . (More correctly worded in the English text of the Regulation) "The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others." . 7.2 According to Article 12 par. 3 of GDPR 2016/679 "the data controller shall provide the data subject with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt of the request . This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The controller shall inform the data subject of the said extension within one month of receiving the request, as well as of the reasons for the delay...". 7.2.1 Additionally, in par. 5 of the same Article it is stated that "The information provided in accordance with articles 13 and 14 and each announcement as well as all actions undertaken in accordance with articles 15 to 22 and article 34 are provided free of charge. If the data subject's requests are manifestly unfounded or excessive, in particular

due to their repeated nature, the controller may either: a) impose the payment of a reasonable fee, taking into account the administrative costs of providing the information or communication or execution of the requested action, or b) refuse to follow up on the request. The controller bears the burden of proof of manifestly unfounded or the excessive nature of the request."

7.3 Recital (63) clarifies that: 6 "A data subject should have the right to access personal data collected and concerning him and be able to exercise this right freely and at reasonably regular intervals, in order to be aware of and to verify the legality of the processing. This includes the right of data subjects to access their health data, for example their medical record data which contains information such as diagnoses, test results, assessments by treating doctors and any treatment or procedure provided. Therefore, each data subject should have the right to know and to be notified in particular for what purposes the personal data is being processed, if possible for how long the personal data is being processed, which recipients receive the personal data character, what logic is followed in any automatic processing of personal data and what could be the consequences of such processing, at least when it is based on profiling. The controller should be able to provide remote access to a secure system through which the data subject obtains direct access to the data concerning him. This right should not adversely affect the rights or freedoms of others, such as professional secrecy or intellectual property right and, in particular, the copyright protecting the software. However, these factors should not have the effect of refusing to provide any information to the data subject. Where the controller processes large amounts of information about the data subject, the controller should be able to ask the data subject, before the information is provided, to identify the information or processing activities related to the request.'

7.4 Article 18 on the Entitlement and Protection of Patients' Rights Law of 2004 (L.1(I)/2005), provides that: "18.-(1) The patient has the right to information, access and objection in relation to information concerning him that is included in the medical records and when exercising these rights, the provisions of articles 11 to 14 of the Processing of Personal Data (Protection of the Individual) Laws of 2001 and 2003 and of the Data Processing (Permissions and Fees) Regulations 2002. (2) Without prejudice to the provisions of subsection (1), the patient's right of access to his medical records gives him the possibility to receive, directly or indirectly through his legal representative, information recorded in such records or a copy or extract thereof. This right includes the correction of the information, its deletion and the locking of the records due to inaccuracies and deficiencies: Provided that, the right of access may be limited, rejected or suspended by the individual responsible for keeping the relevant medical records if- (a ) the information may cause serious damage to the patient's health in which case the provisions of the second reservation of subsection (1) of article 11 shall be applied proportionately, or (b) it is

possible to disclose information for third parties and it is impossible to block access to such information. or 7 (c) in the case of genetic information, may cause serious damage to the health of his blood relatives or half-siblings from the mother or to a person directly related to this genetic line." 7.5 According to the Department of Intellectual and Intellectual Property in Cyprus, intellectual property refers to the ownership by a natural or legal person of creations of the human mind, such as an invention, design, distinctive mark, artistic works and is protected by both national and European legislation as well as from international conventions. The rights that can be secured are divided into four categories. In Patents, Trademark, Industrial Design and Copyright. The latter category protects, among others, literary, audiovisual, musical, theatrical, architectural and other artistic works, films, databases, sound recordings, broadcasts, publications of previously unpublished works, and computer programs, while the first category protects, new inventions that concern e.g. innovative products, innovative processes, improvement of the way the product works or the production method. In order to be granted a patent, the relevant invention should be new, contain inventive activity and be amenable to industrial application (Article 5(1) of the Patents Law of 1998, L.16(I)/1998) . The following are not considered patentable inventions: (a) discoveries, scientific theories and mathematical methods, (b) aesthetic creations, (c) plans, designs and methods for the exercise of spiritual activities, for games, for the exercise of economics activities, electronic computer programs and (d) presentations of information (Article 5(2)). A patent is also not granted in relation to an invention the exploitation of which is contrary to public order or good morals, given that the exploitation is not considered to be contrary merely because it is prohibited by the Law or the Regulations (Article 5(3) ).

Rationale: 8. In the present case, the Complainant (data subject) requested to be given a copy of the DVD, both on the basis of Article 15 of the Regulation, and on the basis of Article 18 of the Law on the Rights of Patients, which contained a taped surgery that had been performed on her body, by the Defendant in the complaint. The Complaining Defendant, as the controller of the DVD, determines the purposes of storage, copying, destruction, etc. and refuses to give a copy to the complainant, citing the preservation of the surgical technique he applies, stating that it is his intellectual property. When asked to support his refusal, he cited other similar reasons for refusal, such as for example Article 23 of the Constitution which protects the right to property, Article 12(5) of the Regulation, citing abuse on the part of the Complainant, Article 15( 4) of the Regulation and the influence of his own rights, Article 23 of the Regulation and the limitations that can be placed on the rights of the subjects. It also referred to jurisprudence in relation mainly to the interpretation of the satisfaction of the right of access and the necessity/proportionality 8 of obtaining copies of the data, in relation to the impact on the rights of the data controller. 9. I have carefully gone through the

reasons expressed by the Defendant in the complaint. Despite his noble attempt to convince, mainly that the surgical technique in question belongs to him and owns its copyright, which will be affected in the event that a copy of the DVD is given to the Complainant, as for the other arguments he has put forward, they cannot to be accepted, for the following reasons: 9.1 In relation to the invocation of intellectual property, the Complainant did not provide any official confirmation of this right. He stated that the technique he applies constitutes "in kind" intellectual and intellectual property. Since there is no official registration of any technique he applies (which in any case he has been trained to apply and has been given relevant certification by third parties so that he can use), I cannot accept that it is his intellectual property. 9.2 In relation to the invocation of Article 23 of the Constitution, let me state that Article 23 protects movable or immovable property. Since there is currently no registered patent in the name of the Defendant, I believe that the specific Article of the Constitution cannot be invoked. 9.3 In relation to Article 12(5) of the Regulation, the Complainant's request would be abusive if it was unfounded or excessive, especially due to its repetitive nature. In the present case, the request to download a copy of the DVD has been made once and has not been granted. It is the right of the Complainant, based on article 15(3) of the Regulation, to request a copy of her personal data. In the event that the request is deemed unfounded or excessive, the controller may, in compensation, impose a fee (administrative costs) or refuse to proceed, provided that it proves the obvious unfounded or excessiveness of the request. I do not consider that the groundlessness or excessiveness of the request has been proven, even if the Complainant claims that the DVD is unnecessary for the Complainant.unnecessary or not, it is a matter for her to judge and not for the Complaint.

I also don't think it's excessive, even if he has received photos from her specific operation and has been given the right to view the DVD. THE fragmentary photography and viewing is not the same as owning a copy of the whole process which he can study as many times as needed, together with him her treating physician.

9.4 In relation to Article 15(4) of the Regulation, I do not consider that the complaint has proven that his rights have been affected. Beyond the intellectual ownership (which he has not proven) has also invoked the existence of a possible one financial damage in the event that another doctor tries to copy it



his own technique, which only he applies in Cyprus and for this reason has been preferred. This position is hypothetical, refers to future time and under conditions that have not been met, such as if and as long as the physician who will watch the DVD (a) try to copy, (b) successfully, yours his technique. I also bear in mind that he himself has invoked certification from the

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XXXXX in order to be able to apply this tactic. Therefore, it cannot any physician to apply the same practice without having been trained and to obtain the corresponding certification.

9.5 In any case, there is a *lex specialis* in relation to the provision of copies from a patient's file and in accordance with article 18 on Vesting and of the Protection of Patients' Rights Law of 2004 (L.1(I)/2005), the patient is entitled to request a copy of information that is registered in his Medical File, without the limitation invoked by the Professor complaint. Consequently, no exceptions can be invoked which do not fall under this Law.

Conclusion:

10. Bearing in mind the above data, as well as the powers it provides me Article 57(1)(a) for monitoring and enforcement of the Regulation and Article 58(2)(c) to impose corrective measures, I issue an ORDER to the Defendant on complaint, as comply with the Complainant's request and to her provide a copy of the DVD containing her surgery had been carried out, within one month of the adoption of this decision.

11. With the delivery of the copy of the DVD to the Complainant, Prof the complaint to present to my Office a copy of the acknowledgment of receipt, so as to demonstrate his practical compliance with the above Order.

Irini Loizidou Nikolaidou

Commissioner of Protection

Personal Data