

DECISION 1/2022 (Department) Athens, 05-01-2022 Prot. No.: 26 The Personal Data Protection Authority met in the composition of the Department via video conference on 06-10-2021 at 13:00, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in opposition to the President of the Authority Konstantinos Menoudakos, members Spyridon Vlachopoulos, Charalambos Anthopoulos and Konstantinos Lambrinoudakis were present as rapporteur. The meeting was attended, by order of the President, by George Roussopoulos, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. Complaint No. C/EIS/1289/15-02-2019 of A was submitted to the Authority, according to which, on ...2018, he requested from "Egnatia Odos S.A." (hereinafter "Egnatia Odos"), in writing, to provide him with photographic material and a copy of the incident book in relation to an allegation of non-payment of a toll fee that concerns him. As can be seen from the complaint, in its reply to the complainant from ...2018 (with document code ...) the company states that his passage has been recorded by the passage system Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E : contact@dpa.gr www.dpa.gr 1 of the toll station, but cannot give information to third parties except by order of the Prosecutor and after the relevant permission of the Authority. The Authority, with its letter C/EX/1289-1/04-03-2019, informed Egnatia Odos that according to article 15 of Regulation (EU) 2016/679 (General Data Protection Regulation - hereinafter GDPR), the data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him is being processed and, if this is the case, the right to access the personal data and a set of information, as referred to in said article. Therefore, as Egnatia Odos has imposed a fine on the complainant, the evidence of the fine concerns him and he is considered as the subject of the data and not as a third party, in accordance with the definitions of article 4 par. 1 and 10. In sequence it is, in principle, obliged to provide him with a complete copy of them (with the reservation of par. 4 of article 15 of the GDPR, in the event that the provision of a copy may adversely affect the rights and freedoms of others, in which case upon satisfying the right of access must consider whether measures to protect the rights of third parties are required). Also, it was recalled that with its document number C/EX/6554/12-09-2017, the Authority had pointed out to Egnatia Odos that a request of a depicted person for access to videotaped material must be treated as a request for the right of access and be satisfied within the deadline set by law. Egnatia Odos with its document No. ... sent to the complainant with notification to the Authority (Authority No. C/EIS/4402/21-06-

2019), a handwritten page from the incident book of toll station X from which, according to the company, the infringement is

presumed. Furthermore, it states that there is no photographic material of the passage of the vehicle in its files. In continuation of this document, the Authority with No. Prot. No. C/EX/4402-

1/10-09-2021, pointed out that the company's views were not submitted to the Authority, 2 in relation to the complained of and that in its reply from ...2018 to the complainant (with document code ...) it had told him that the transit of the complainant had been recorded by the crossing system of toll station X. Given that a video surveillance system operates at the said station, which is used to control the non-payment of toll fees, it was requested to clarify whether the passage of the complainant's vehicle had been recorded or of another vehicle at ... and time ... by that system or if the company's claim was based only on the handwritten incident book. It was also pointed out that the Authority is awaiting the company's views on the procedure for satisfying the complainant's right of access, including the company's response time. With its document no.

2020) Egnatia Odos reports that it has installed a violation recording system at all toll stations. The complainant's passage on ... was not recorded due to a technical problem. When an infringing crossing is not recorded from the details are recorded by the Collector in the "Infringement Record Form" and in the station's Incident Book. Egnatia Odos, following the instructions of the Authority, sends the visual material to the offenders upon their own request. the violation registration system, Following the above, the Authority proceeded to summon the company for the department meeting, with its document No.

C/EX/1491/14-06-2021 for 06-30-2021 and after being postponed to 15/09/2021. The company attended the meeting via video conference, represented by Konstantinos Koutsoukos, Managing Director, Despina Vezakidou, lawyer with A.M.D.S.Th. ..., B, Director of Tolls, Petros Georgiadis with A.M.D.S.Th. ..., Head of Legal Service, C, Deputy Director of Tolls, D, Head of Toll Equipment Department while E, Data Protection Officer was also present. After the company expressed its views, it received a deadline and filed it with no. prot. G/EIS/6293/30-09-2021 memorandum. In this he points out that the company, respecting the protection of personal data and while it had already started the process of compliance 3 with the provisions of the GDPR, which had just started to be applied, by announcing the relevant Tender (22/5/2018), communicated by telephone with the complainant throughout the critical period, expressing the intention to serve and solve his problem by providing him with the necessary clarifications. The communication was carried out in a friendly atmosphere of mutual respect and exceptionally with the executives of the Legal Service of Egnatia Odos, given that the service in question does not communicate with third parties, since it has an exclusively advisory and advisory role in the company - so it was considered reasonable that all information was provided to the complainant. In the end, Egnatia Odos, with its letter dated ..., communicated to the

complainant the extract from the Book of Events with the specific details of the passage of his owned vehicle, which is kept at Toll Station X, having previously taken care to delete the data of third parties, thus satisfying his right of access. At the same time he informed him that the passage in question was not recorded in the video surveillance system, as it was later found out. This failure may be due to various parameters such as the position of the vehicle on the road surface or the inclination of the sun depending on the time of day, etc. It should also be taken into account that the volume of data from the recordings reaches millions of Mb. It is indicated that in 2015 the volume of data amounted to 41,282,363 Mb, in 2018 to 61,725,770 Mb and in 2020 to 63,708,554 Mb. It is also pointed out that, to prove the violation of tolls, only the handwritten entry in the Incident Book is sufficient, without the camera recording material being a condition for proving the violation, while the verification of the liable person is done by cross-checking the details of the vehicle's registration number and the driver's license, as provided for in the provision of article 3 of No. D17a/011/109/F.N393/12.07.2012 (B' 2125) /K.Y.A., which was issued based on the authorization of of article 17 of Law 3212/2003. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without 4 voting rights and left after the discussion of the case and before the conference and the decision-making, after a thorough discussion, **CONSIDERED IN ACCORDANCE WITH THE LAW** 1. Article 15 para. 1 of the GDPR stipulates that the data subject has the right to receive from the controller confirmation of whether or not the personal data concerning him is being processed and, if so, he has the right to access the personal data and a range of information. According to request. 63 of the GDPR "A data subject should have the right to access personal data collected and concerning him and be able to exercise this right fluently and at reasonably regular intervals, in order to be aware and to verify the lawfulness of the processing." 2. For the implementation of the right of access, the provisions of article 12 of the GDPR are crucial. The controller must provide the data subject with information on the action taken without delay and in any case within one month of receiving 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 for said extension within one month of receipt of the request, as well as the reasons for the delay.

3. From the case file it appears that the processing of his data complainant started before the implementation of the GDPR. The right of access however, it was exercised on ..., i.e. after the start of application of the Regulation.

Therefore, the controller should have granted his request

complainant within the period of Article 12. The initial response of

Egnatia Road, that the crossing has been recorded by its crossing system

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toll station but cannot give details to third parties except with

order of the Prosecutor and after the relevant permission of the Authority, was contrary to the

provision of article 15 of the GDPR. Egnatia Odos was clearly informed by

the Authority in relation to its obligations in similar incidents in writing

establishment within 2017, about one year from the exercise of the right

access of the complainant. Although at that time it had not yet been put into effect

GDPR, the provisions for the exercise of the right of access do not have

materially changed after 5/25/2018. After the intervention of the Authority

Egnatia Odos provided the information it maintains in its files in relation to

complainants, which turn out not to include a record from

the passage system and photographic material, but a handwritten record

of a line from the event book of toll station X. Therefore

it appears that the company's previous response was not only negative,

but also misleading. Further, it does not matter for what purpose

subject exercises the right of access. The GDPR does not set conditions for

its exercise, which is linked to the possibility of the subject to have

awareness of the processing and to verify the legality of the processing¹.

From the above, there is a violation of the provision of article 12 paragraph 3 thereof

GDPR, due to delayed response to right of access.

4. As it appears from the case file, the complainant disputes that the

his vehicle passed through toll booth X on the specified day and time. Is not

competence of the Authority to examine whether the data held by Egnatia

Street are sufficient to certify the violation.

5. The argument of Egnatia Odus that the passage in question was not recorded in the video surveillance system, due to a failure that may be due to various parameters cannot be evaluated. Egnatia Odos does not determine what exactly happened in this particular case while, now, with based on the principle of accountability, the controller must investigate sufficiently an incident, especially in so far as it is connected with an exercise

1 See recital number 63 GDPR

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GDPR right. As the images are stored in the system video surveillance of the toll station include personal data, h loss of these constitutes a blow to the availability of personal data, h which is a parameter of the security of the processing. Given her date of recording of the incident (in the year ...) is not clear if at the time of the loss of availability the provision was in force of Article 33 of the GDPR on personal data breaches, but in any case, the person in charge should have investigated the exact one cause of the incident and to have given a specific answer to the Authority, without vague reference to failure.

6. Furthermore, the Authority took into account the criteria for measuring the fine which are defined in article 83 par. 2 of the GDPR, paragraph 5 item a' and b' of of the same article that apply to the present case and the guidelines for implementing and setting administrative of fines for the purposes of GDPR², as well as its actual data case under consideration and in particular:

a) The nature of the violation concerning a GDPR right.

b) The fact that the controller had been informed by the Authority about the his obligations in relation to the satisfaction of the right of access to context of examining a similar case, while it was already known that the GDPR would it started to be applied from 25/5/2018.

c) That the data subject was unable to claim them his rights against the company, with possible future financial charge.

d) That the purpose of the processing concerns an activity assigned to controller by law and concerns a large number of non-violations payment of toll fees.

e) That it is not personal data of articles 9 and 10 of the GDPR.

2 <https://ec.europa.eu/newsroom/article29/items/611237/en> - wp253

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f) That no administrative sanction has been imposed in the past by the Authority on controller.

g) That the aforementioned violation of the GDPR is attributable to negligence of the controller who satisfied the right after the intervention of the Authority.

h) From the data available on its website³ it appears that the company has a turnover for the year 2019 of €82,356,924.01.

FOR THOSE REASONS

The beginning

It imposes on the data controller "Egnatia Odos S.A." the effective, proportionate and dissuasive administrative fine appropriate to specific case, according to its special circumstances, amount

one thousand (1,000) euros for violation of article 12 par. 3 of the GDPR in relation to referred to in paragraph 3 hereof, in accordance with articles 58 par. 2 item. i and 83 par. 5 item. a' and b' GDPR.

3 <https://egnatia.eu/wp-content/uploads/2021/10/isologismos-2019.pdf>

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The president

The Secretary

George Batzalexis

Irini Papageorgopoulou