

Litigation Chamber

Decision on the merits 125/2021 of 10 November 2021

File number: DOS-2020-00292

Subject: transmission of personal data from a member of a sports club to a third party

The Litigation Chamber of the Data Protection Authority, made up of Mr. Hielke Hijmans,

Chairman, and Messrs. Jelle Stassijns and Frank De Smet;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 relating to the protection of natural persons with regard to the processing of personal data and to the free movement

of this data, and repealing Directive 95/46/EC (General Data Protection Regulation),

hereinafter "GDPR";

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority, hereinafter "LCA";

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;

made the following decision regarding:

the complainant:

Madame X, hereinafter "the complainant";

the defendant: the sports club Y, hereinafter "the defendant"

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I. Facts and procedure

1. On December 29, 2019, the complainant lodged a complaint with the Data Protection Authority given against the defendant.

The subject of the complaint concerns the transmission by the defendant to a third party of personal data complainant's personnel, including her name, address, date of birth, e-mail address and dates of his last visits to the defendant's fitness club. The complainant is a member of the club fitness of the defendant. At some point, the complainant was contacted by someone who indicated that he was in possession of his personal data. This third party, which is also member of the fitness club, had then reported having received this personal data regarding the plaintiff from the defendant. The personal data of the plaintiff were provided by the defendant to this third party after this third party received a remains and it has been established that his wife wrongly paid the plaintiff's subscription fees (instead of his). On January 23, 2020, the complaint was declared admissible by the Service de Première Line on the basis of Articles 58 and 60 of the ACL and the complaint is transmitted to the Chamber Litigation under article 62, § 1 of the LCA.

2. On August 12, 2020, the Litigation Division decides, pursuant to Article 95, § 1, 1° and Article 98 of the ACL, that the case can be dealt with on the merits.

3. On August 12, 2020, 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 LCA. They are also informed, by virtue of Article 99 of the LCA, deadlines for transmitting their conclusions.

4. The deadline for receipt of the Respondent's submissions in response has been set for 9 September 2020, that for the complainant's reply submissions on September 23, 2020 and that for the defendant's reply submissions on October 7, 2020.

5. The parties did not request to be heard at a hearing.

6. On September 8, 2020, the Litigation Chamber received the defendant's submissions in response.

The defendant acknowledges that personal data of the complainant was transmitted

to a third party by one of his employees at Y's fitness club. This employee could not be questioned by the defendant as he is not currently working due to circumstances personal.

7. The Respondent expresses his regret at this situation and points out that the internal directives do not authorize under no circumstances will employees provide personal data to third parties.

The defendant adds that the role of the club's collaborators is increasingly reduced because the members are encouraged to use the principle of "self service" thanks to which they can always control certain data and, if necessary, modify them. In addition, the following measures have been taken: if they wish, members can obtain assistance from customer service; regional managers and

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the team leaders have been informed of this incident and have been asked to discuss it with all their collaborators; new flyers have been distributed to employees with the obligations of the GDPR with which they are required to comply; these flyers will be constantly updated and redistributed to maintain privacy awareness; the club employee who forwarded the personal data will be queried upon return; the internal procedure is in progress improvement in order to avoid this kind of situation in the event of errors in account numbers.

8. On December 17, 2020, the Litigation Chamber receives the submissions in reply from the complainant. It indicates that it finds positive the measures proposed to prevent such events do not recur. It stresses, however, that the processing of personal data staff from December 2019 clearly violated the GDPR. The complainant asks the Litigation Chamber to impose an adequate sanction on the defendant.

II. Motivation

9. Any processing of personal data must be based on a legal basis within the meaning of GDPR Article 6. The plaintiff was a member of the defendant's fitness club and therefore had him transmitted his personal data in the context of the execution of the contract. The defendant was therefore authorized, under this same contract, to process this data (Article 6.1 b) of the GDPR).

10. As already explained above, an employee of the defendant provided a third party with the data to□
personal character of the complainant, including her name, address, date of birth, mobile phone number,□
e-mail address as well as the dates of his last visits to the fitness club, because this third party was paying -□
admittedly by mistake - the costs of the subscription for the plaintiff. According to the e-mails exchanged between□
an employee of the defendant and the third party, it appears that the employee advised the third party to□
a statement of theft to the police against the complainant and provide proof of the statement□
to the defendant. This advice was followed by the third party who made a statement against the complainant.□

11. Article 5.1.b) of the GDPR defines the purpose limitation principle according to which the data to be□
personal character must be collected for specified, explicit and legitimate purposes□

and may not be further processed in a manner incompatible with those purposes.¹□

The complainant provided her personal data in the context of a contractual relationship,□
confident that such data would only be processed as part of□

necessary for this relationship. The Litigation Chamber considers that by transmitting this data to□
personal character of the plaintiff to a third party, the defendant acted in violation of the principles of the□
data processing. He has indeed transmitted the personal data to a third party without any basis□

Article 5, paragraph 1, b) of the GDPR: Personal data must be: collected for specific purposes,□
explicit and legitimate, and not further processed in a manner incompatible with those purposes; further processing at□
archival purposes in the public interest, for scientific or historical research purposes or for statistical purposes is not□
considered, in accordance with Article 89(1), to be incompatible with the initial purposes (limitation of purposes);□

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legal basis for this purpose. The fact that the third party has mistakenly paid the subscription fees for the□
complainant does not in any way justify the transmission to this third party of personal data□

regarding the complainant. The complainant provided her personal data in order to□

to execute the contract between itself and the fitness club, for the sole purpose of being able to use the□
sports infrastructure. It was the defendant who should have repaired the administrative error by taking□

first contact with the complainant himself and not by transmitting his personal data□

third-party staff.□

12. By acting as described above, the defendant transmitted and therefore processed the data to□
personal character that he has obtained in the context of the performance of the contract for the purposes□
contrary to the initial purpose for which he had obtained this personal data,□
know for the execution of the contract. Pursuant to Article 6(4) of the GDPR, however, it is□
allowed in certain cases that personal data that was initially collected□
for a specific purpose are processed for other compatible purposes (without a basis□
separate legal document is required for this purpose). To determine this, account is taken of: a link between the□
purposes for which the personal data was collected and the purposes of the□
planned further treatment; the context in which the personal data was□
collected and the relationship between the data subjects and the controller; of the□
nature of the personal data; the consequences of the further processing for the□
concerned person ; and the existence of appropriate safeguards. The Litigation Chamber considers□
that the test against the above elements does not allow to suppose that in this case, it□
was a matter of further and compatible processing, in accordance with Article 6(4) of the□
GDPR. Nor can any link be established between the purposes for which the data were□
collected and the purposes of further processing, just like any other point of attachment□
cannot be found that could justify further processing. Since this is therefore a□
processing not compatible with the initial purposes, the Litigation Division will examine below□
whether there is possibly a separate legal basis under which the further processing□
could still have been allowed. The only legal basis that could still be taken into□
consideration here for this purpose is the legitimate interest. Indeed, it is established that the person□
concerned has not given his consent.□

13. Article 6(1)(f) GDPR establishes legitimate interest as the legal basis. Bedroom□
Litigation will therefore check whether the subsequent processing of the personal data of the□
plaintiff were possibly legitimate in this case under the aforementioned provision.2□

2 Article 6(1)(f) GDPR Processing is only lawful if and insofar as at least one of the following conditions is met

fulfilled: the processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, unless

than the interests or fundamental rights and freedoms of the data subject which require data protection

of a personal nature, in particular when the person concerned is a child.

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In order to be able to determine this, the controller must demonstrate, in accordance with the

case law of the Court of Justice, that:

1)

the interests it pursues with the processing can be recognized as legitimate

(the "finality test")

2)

the envisaged processing is necessary to achieve those interests (the "necessity test")

3)

the weighing of these interests against the interests, freedoms and fundamental rights of

data subjects weighs in favor of the controllers or a third party (the "test

weighting").

14. First of all, it is necessary to consider the interest and the purpose pursued by the person responsible for the

processing with further processing of personal data (purpose test).

By transmitting the personal data of the complainant to a third party, the person responsible for the

processing responded to the request of the third party who wished to know in whose place he had paid the

subscription fee to ensure that this error can then be rectified. The interest of

controller was to be able to modify the member's affiliation in the system in order to

that from now on, the payment can be made in the name of the right person and that the customer can

be kept. Customer retention can be qualified as a legitimate interest.

15. In order to fulfill the second condition, it must be demonstrated that the processing was necessary for the

achievement of the aims pursued (necessity test). This means asking whether the

same result cannot be achieved with other means, without data processing to

personal nature or without unnecessary substantial processing for the data subjects.

The personal data of the complainant which was transmitted to the third party by the defendant

concern, as already specified, the name, mobile phone number, e-mail address, date of birth

as well as the dates of the last visits to the defendant's facilities. The purpose which was

pursued was the identification of the person in whose name the subscription fees were

paid instead of own subscription fees. The Litigation Chamber finds that it was not

not necessary to transmit the personal data of the complainant

(including in particular the dates on which the complainant had visited the facilities) to a third party, given

that the defendant could have contacted the complainant himself. The second requirement

is therefore not fulfilled.

16. The third condition concerns the "weighing test" between the interests of the controller

processing on the one hand and the fundamental rights and freedoms of the data subject on the other hand.

According to recital 47 of the GDPR, in order to determine this, it is necessary to assess whether "the person

data subject can reasonably expect, at the time and in the context of the collection of the data

of a personal nature, that they are processed for a given purpose".

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17. The above is also emphasized by the Court in its judgment "TK v. Asociația de Proprietari

block M5A-ScaraA" of December 11, 2019, which specifies the following:

"Also relevant for the purposes of this balancing are the reasonable expectations of the

data subject that his or her personal data will not be processed when,

in the circumstances of the case, that person cannot reasonably expect a

further processing thereof.

18. The Litigation Chamber finds that the complainant could not have expected that her

personal data, including his movements, may be transmitted to a third party.

The third condition is therefore not fulfilled. In view of the foregoing, the Chamber

Litigation notes that the legitimate interest did not constitute a valid legal basis for the
further processing of the complainant's data. The Litigation Chamber therefore managed
to the finding that there is a violation of Articles 5, paragraph 1, b) and 6 of the GDPR.

19. Taking into account the fact that this is a single unlawful processing operation, which is even probably
attributable to human error, and taking into account that in the meantime measures have been taken
which appear appropriate in order to avoid a recurrence, the Litigation Chamber decides that it is not
necessary in this case to impose a fine and that a simple reprimand is sufficient.

III. Publication of the decision

20. Seen

the importance of

transparency regarding

the decision-making process of

bedroom

Litigation, this decision is published on the website of the Authority for the protection of
data. However, it is not necessary for this purpose that the identification data of the parties
are communicated directly.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation:

- to formulate a reprimand on the basis of Article 100, § 1, 5° of the LCA.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets within thirty days of its notification, with the Authority of
data protection as defendant.

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(Sr.) Hielke Hijmans

President of the Litigation Chamber