

Litigation Chamber

Decision on the merits 09/2019 of

December 17, 2019

File number: DOS-2018-05395

Subject: Complaint for use of an "undesirable people list" and non-deletion

of personal data from this list

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

Hijmans, chairman, and Messrs. Dirk Van Der Kelen and Frank 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) (hereinafter the "GDPR");

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the

ACL;

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;

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made the following decision regarding:

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the plaintiff: Mr. X□

the defendant: Y□

1. Facts and procedure□

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On September 8, 2018, the complainant filed a complaint with the Data Protection Authority□

against the defendant.□

The subject of the complaint concerned the processing by Y (hereinafter: **the non-profit organization**) of personal data□

personnel in a "**list of undesirable persons**" and **the absence of any follow-up** from the non-profit organization□

to request the deletion of personal data from this list.□

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On October 15, 2018, the complaint was declared admissible on the basis of articles 58 and 60 of the LCA, the□

complainant is notified under Article 61 of the LCA and the complaint is forwarded to the Chamber□

Litigation under article 62, § 1 of the LCA.□

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On October 23, 2018, the Litigation Chamber decides to request an investigation from the Service□

of Inspection, pursuant to articles 63, 2° and 94, 1° of the LCA.□

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On October 26, 2018, in accordance with Article 96, § 1 of the LCA, the Chamber's request□

Litigation to proceed with an investigation is transmitted to the Inspection Department, as well as the□

complaint and the minutes of this decision.□

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On May 7, 2019, the investigation by the Inspection Service was closed, the report was attached to the file and□

this is forwarded by the Inspector General to the President of the Litigation Chamber (art. 91,□

§ 1 and § 2 of the LCA).□

The Inspection Service notes, broadly speaking, that the complainant has a dispute with the defendant since at least 2016 regarding his (ex-)membership. Data recording identification of the complainant in the "list of undesirable persons", for internal management of the defendant's litigation, took place following a decision of the general meeting of the defendant. The complainant was informed of this by means of a notification by bailiff on May 9, 2018. Such processing is mentioned in Article 12 "Disputes and sanctions", § 5, point h.5 of the amendment of the defendant's statutes of May 15, 2017. The report establishes that there is no indication or evidence any other treatment on the part of the defendant. There is no indication that the personal data from the management of disputes are published or communicated to third parties, so that there is, for example, no indication for the qualification of the processing as

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as "blacklist" (multisectoral) implying negative consequences for the complainant.

Referring to Article 40.2. k) of the GDPR, the Inspection Service considers that the management of disputes specific to members constitutes a legitimate purpose. The conditions for the exercise of right to erasure (Art. 17.1 GDPR) do not seem to be fulfilled. Data processing of a personal nature finds its basis in the legitimate interest of the defendant, seems limited to strictly necessary identification data and organized in a transparent manner for the complainant and third parties. Personal data therefore does not appear to be processed in an illicit manner.

The inspection report concludes that there is no sufficient serious indication or evidence allowing to substantiate the merits of the complaint.

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On May 28, 2019, 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.

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On June 3, 2019, the parties concerned are informed by registered letter of the provisions such as

as set out in article 95, § 2 as well as in article 98 of the LCA. They are also informed, □
under Article 99 of the LCA, time limits for transmitting their conclusions. The deadline for the □
receipt of the respondent's submissions in response was set for June 28, 2019, that for the □
submissions in reply of the complainant on July 29, 2019 and that for the submissions in reply of the □
defendant as of August 29, 2019. □

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On June 11, 2019, the complainant requested a copy of the file (art. 95, § 2, 3° of the LCA), which provided him with □
was transmitted on June 13, 2019. □

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On June 17, 2019, the defendant requests a copy of the file (art. 95, § 2, 3° of the LCA), which □
was transmitted on June 26, 2019. □

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On June 28, 2019, the Litigation Chamber received the submissions in response from the defendant, □
where the latter specifies that he wishes to be heard only if the complainant himself asks to be heard. □
be heard. □

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On August 2, 2019, the Litigation Chamber receives the submissions in reply from the complainant. □
The latter expresses his wish to have recourse to the possibility of being heard (art. 98, 2° of the LCA). □

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On August 5, 2019, the respondent requests that the plaintiff's reply submissions be excluded □
debates given that they were tabled outside the deadline set for the conclusions. □

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On August 5, 2019, the complainant specified that he had assumed that the deadline for submissions was a □
time of order and that the defendant certainly still had sufficient time to □
provide additional conclusions. □

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On August 29, 2019, the Litigation Chamber receives the submissions in reply from the □
respondent.□

These repeat the position that the complainant's submissions which were filed in □
as long as "written explanation of the complaint with Mr. X's file of exhibits" have not been □
received within the stipulated time and must be excluded from the proceedings.□

In terms of content, the submissions in reply fully reproduce the submissions in □
answer and respond to the complainant's conclusions, they can be summarized as follows:□

(a) The Respondent refutes, by means of an addendum, the Complainant's assertion that he □
is still a direct member of Y International Ltd. However, the complainant was registered □
as a Direct International Member (DIM) for the last time in 2014.□

b) The Complainant may create an alternative association but not under the auspices of Y International, □
nor by using the name or logo of Y.□

c) The Complainant cannot specify which people would have a personal grudge against him. □
against, on which alternative forums of former members are found, which members of the □
defendant still want him as a member or which members would have complained □
with Y International.□

d) The defendant denies having transmitted personal data of the complainant to his bank □
as well as in Y Portugal.□

The Litigation Division decides, in this case, not to exclude from the proceedings the □
submissions in reply of the complainant, submitted on August 2, 2019, although the deadline for the □
conclusions had been set for July 29, 2019, given that the defendant reacted to it himself from □
detailed manner and has also sent additional documents. The rights of defense of □
defendant have not been violated, so that the Litigation Chamber takes up the arguments of the □
complainant, as set out in its submissions, with a view to effectively guaranteeing contradiction □
in this file.□

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On December 10, 2019, the parties are informed that the hearing will take place on□

December 17, 2019.□

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On December 17, 2019, the parties are heard by the Litigation Chamber.□

2. Legal basis□

Article 6.1.f) GDPR□

1. Processing is only lawful if and insofar as at least one of the following conditions is□

filled:□

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[...]□

f) processing is necessary for the purposes of the legitimate interests pursued by the data controller□

processing or by a third party, unless the interests or fundamental rights and freedoms prevail□

of the data subject who require protection of personal data, in particular□

when the data subject is a child.□

Article 12.4 GDPR□

4. If the data controller does not comply with the request made by the person□

concerned, he informs the latter without delay and at the latest within 1 month from the□

receipt of the request for the reasons for its inaction and the possibility of lodging a complaint with□

of a supervisory authority and to lodge a judicial appeal.□

Article 17.1 GDPR□

1. The data subject has the right to obtain from the controller the erasure, within the□

as soon as possible, of personal data concerning him and the controller has□

the obligation to erase this personal data as soon as possible, when one of the□

following reasons apply:□

a) the personal data are no longer necessary in relation to the purposes for which□

it has been collected or otherwise processed;□

b) the data subject withdraws the consent on which the processing is based, in accordance with□

Article 6(1)(a) or Article 9(2)(a) and there is no other□

legal basis for processing;□

c) the data subject objects to the processing pursuant to Article 21(1) and there is no□

no overriding legitimate grounds for the processing, or the data subject objects to the processing□

pursuant to Article 21, paragraph 2;□

d) the personal data has been unlawfully processed;□

e) the personal data must be erased to comply with a legal obligation which□

is provided for by Union law or by the law of the Member State to which the controller□

is submitted;□

f) the personal data was collected in the context of the company's service offer□

information referred to in Article 8(1).□

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3. Motivation□

The Litigation Chamber took cognizance of the history of the dispute in which the plaintiff and the□
defendant have been involved since 2010 and the numerous legal proceedings and decisions that have□
followed. In this regard, the Litigation Chamber emphasizes that it is not within its jurisdiction to rule□
on this subject.□

On the other hand, it is indeed up to the Litigation Chamber to decide on the measure in□
whether or not the respondent respects the complainant's right to data protection, in accordance□
GDPR requirements. The analysis at the origin of the decision that will be taken by the Litigation Chamber□
concerns only the subject of the complaint, more particularly the registration of the complainant in the□
"undesirable persons list". Insofar as the complaint concerns other (non-)members than□
the plaintiff himself, - the plaintiff asserts: "It has already been years since the association Y□
uses data without member consent. Thus, it uses for example a "list of□

undesirable people" both for non-members and for members. It does not access

requests for deletion." - it is clear that the Litigation Chamber cannot follow up

since only the complaint of an interested party can be processed (Art. 77 GDPR). Since then,

only the plaintiff's own request for erasure is processed by the Litigation Chamber.

On the basis of the documents added, the Litigation Division was able to establish that the plaintiff exercised his

right to erasure (Art. 17 of the GDPR) with regard to the defendant on August 14, 2018. The defendant reacted

to this request within the period of one month set by the GDPR, not only mentioning that it was not

not possible to accede to this request but also by explicitly specifying the reasons for this

inaction (Art. 12.4 GDPR), namely that the data processing is based on the legitimate interest of the

defendant who must respect the statutes and execute the decisions of the general meeting, plus

specifically the decision of the General Assembly of March 10, 2018 to include the complainant on the list

undesirable persons, in accordance with the defendant's statutes which provide that a member

excluded can be placed on this list.

In this context, the Litigation Chamber also points out that Article 12.4 of the GDPR requires

that the data controller informs the data subject of the possibility of introducing a

complaint to a supervisory authority and to lodge a judicial appeal. In his response to the

request for erasure, the defendant certainly did not include this information but this is explained by

the fact that in his actual request for erasure, the complainant already mentioned that if the

defendant did not grant his request, he would lodge a complaint with the supervisory authorities.

The Respondent could therefore assume that the Complainant was already aware of this right.

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This ground for refusal was examined by the Litigation Chamber and compared with the relevant provisions

of the GDPR, paying attention to the following considerations:

First of all, the right to erasure is not an absolute right in the sense that the person responsible for the

treatment, in this case the non-profit organization, must only act on it insofar as one of the cases listed

17 GDPR applies. Applied to the present complaint, it turns out that there is no basis

legal to proceed with the erasure but that, on the contrary, the continuation of the processing of the data
identification of the complainant as an "undesirable person" is legitimate within the framework of the management
of the dispute involving the parties.

As the inspection report rightly points out, in accordance with Article 40.2.k) of the
GDPR, associations, such as an asbl, can develop codes of conduct
regarding dispute resolution procedures for resolving disputes between
controllers and data subjects. This provision already recognizes
implicitly that defining a procedure for the settlement of disputes constitutes a legitimate purpose
associations. The provision, included in the articles of association since May 24, 2017, according to which the
persons excluded from membership by decision of the general meeting may be registered on a
"list of undesirable people" and that after seven years, these people can introduce a
request to the Board of Directors to be removed from this list, request on which
the general meeting will also decide, is entirely within the framework of the purpose of the regulations
disputes between the controller and (ex-)members in the context of the processing of
given by an association. The settlement of disputes in the relationship between the association and its
(ex-)members, in particular by providing an additional membership condition for membership in
the association by which people on the "undesirable persons list" cannot
not be members of Y, must therefore be considered as a specific, explicit and legitimate purpose
within the meaning of Article 5.1.b) of the GDPR. Moreover, this applies not only to the management of
disputes but also for the management of members in general.

In concrete terms, the processing of the complainant's identification data as a "person
undesirable" is necessary for the purposes of the legitimate interest pursued by the association (art. 6.1.f) of the GDPR),
namely the interest of managing its own disputes according to the procedure it has defined in the statutes.

Regarding the assessment of whether the legitimate interest of the controller
takes precedence over that of the data subject, recital 47 of the GDPR states that account must be taken
reasonable expectations of data subjects based on their relationship with the data controller

processing. The Litigation Chamber considers in this respect that the procedure involving the association and the complainant for several years is such that the complainant can reasonably expect their personal data to be processed by the association for the purpose determined, namely the management of disputes. Although the "undesirable persons list" was not Decision on the merits 09/2019- 8/10 provided for as such in the statutes at the time when the complainant was a member of the association, the possibilities of sanctions against (ex-) members were however already included in the statutes at that time, including exclusion and suspension. At the time, he accepted these statutes. That implies that it is within the complainant's reasonable expectation that at the time of a possible exclusion, his data are processed for this purpose, as well as in the broader context of the management of disputes.

Moreover, no document reveals that the defendant would use the complainant's data for a any other purpose than the management of disputes (art. 5.1.b) of the GDPR). Therefore, there is no transfer of data to third parties who are not involved in the dispute with the complainant. Although the complainant tries to demonstrate that there was indeed communication of information concerning his person by the defendant to a banking institution in which he holds an account, as well as to an establishment of Y in Portugal, - which would imply, according to the complainant, a data leak -, these parts are not convincing. The document that should attest to the data leak from the defendant to the bank turns out to be only a letter from the plaintiff to the bank concerning a release of an account, in which he himself mentions "the publication of a possible" list of undesirable persons". No other document demonstrating a possible leak of data from the defendant to the bank is added.

The e-mail that would have been sent by Y Portugal to the complainant is also not likely to support the assertion that there is talk of a leak of data from the defendant to the establishment in Portugal. Such a data leak is firmly denied by the defendant who adds however documents that raise a reasonable doubt about the proof of such a data leak

presented by the complainant. In Portugal, there is so far no official Y association. A group

Facebook Y was however created which uses the email address YPT@gmail.com (as mentioned in

the document added by the complainant) but this address has not been active since June 2016, whereas

the e-mail submitted by the complainant would date from July 20, 2019. All the elements presented by the

leader of the Y group in Portugal who is trying to launch a Y association there lead the Chamber

Litigation to conclude that it is not proven that there is any question of the slightest data leak.

In addition, the association respects the principle of minimization of data implying that in the light of

the purpose of dispute management, only the name of the complainant is processed (art. 5.1.c) of the GDPR).

The complainant asserts that this principle relating to the processing of personal data would not

not respected and argues that depriving him of his membership in organizations in different States

members would cause him a financial loss. This leads to a disproportionate result. Bedroom

Litigation draws attention to the fact that the principle of data minimization implies that the

data processed must be adequate, relevant and limited to what is necessary for the

purposes for which they are processed. The treatment of the name of the complainant, by which it is

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considered as an "undesirable person" pursuant to the articles of association, in the context of the management of

disputes meets this criterion.

The denial of membership to the plaintiff stems from the fact that he is an "undesirable person" for the

respondent. The Complainant's position that the treatment of his name, combined with "person

junk" involves the creation, by the defendant, of a blacklist is not, however, followed by the

Litigation Chamber.

Defendant's statutes state the following: "Anyone who was ever a member of Y,

whether or not it is a member at the time of the general meeting, who has committed acts that could

result in expulsion if they were a member, may be placed on the "undesirable list"

by the general meeting. " [Free translation by the Secretariat of the Authority for the Protection of

data, in the absence of an official translation] In the statutes of the defendant, it is therefore a question

of a "list of undesirable people", but this is insufficient to qualify it as a blacklist□

which is shared with third parties. The treatment of the name of the person concerned as a "person□

undesirable" remains strictly limited within the framework of the association in Belgium, which processes this data□

by virtue of its legitimate interest. The only consequence for the complainant that stems from the decision of□

the defendant's general meeting to include him on this list is that he cannot be a member□

for 7 years and that at the end of this period, he can submit a new application for membership. There□

has no indication that this list will be disseminated or used within any specific industry, involving□

that the processing would take place outside the closed circle of the association and that the complainant would be confronted w

any negative consequence affecting his or her fundamental rights. The decision of□

defendant was taken on the basis of its statutes and therefore only concerns the association in Belgium.□

This does not bind the associations of Y in the other Member States. The alleged financial loss□

by the plaintiff is also not demonstrated in any way.□

The plaintiff is described by the defendant as an undesirable person and this concerns only a□

internal decision of the association whose sole purpose is the proper management of its disputes and its members.□

The way in which an association organizes in its statutes the membership, the conditions of membership and□

the exclusion comes under the right of association, on which the Litigation Chamber does not rule.□

In this regard, for the sake of completeness, the Litigation Chamber notes that the processing□

of the complainant's name as an "undesirable person" is central and that the manner in which this□

processing takes place, namely by qualifying this person as such in the decision of the meeting□

general, or by means of registration on a separate list, constitutes a modality of□

treatment without consequences for the complainant. The fact that the statutes of the association establish that□

excluded persons are included in a "list of undesirable persons", while the defendant□

asserts that there is no separate list, precisely because the complainant is the only□

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person to have been described as an "undesirable person", making the mention of his name in the□

minutes of the decision of the general meeting of March 10, 2018 sufficient, not relevant□

as such under the definition of processing (Art. 4.2) of the GDPR).□

The Litigation Chamber can only come to the conclusion that the defendant is processing the data□
appearing on the "undesirable persons list" in accordance with the GDPR and that there is therefore no□
slightest violation, by the defendant, of the applicable provisions of the GDPR as mentioned□
above.□

The Litigation Chamber therefore **decides to close the present complaint without further action**.□

Given the importance of transparency concerning the decision-making process of the Litigation Chamber,□
this decision is published on the website of the Data Protection Authority. However, he□
is not necessary that for this purpose the identification data of the parties are directly□
mentioned.□

FOR THESE REASONS,□

the Litigation Chamber of the Data Protection Authority decides, after deliberation, to□
dismiss the present complaint, pursuant to Article 100, § 1, 1° of the LCA, given that no□
violation of the provisions of the GDPR cannot be established. Based on the information available to the□
Litigation Chamber at present, it considers to date that it is therefore not possible to give□
following the complaint.□

Under article 108, § 1 of the LCA, this decision may be appealed within a period of□
thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of□
given as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□