

Litigation Chamber

Decision on the merits 05/2019 of

July 9, 2019

File number: DOS-2018-04887

Subject: Complaint for non-granting of access in connection with the withdrawal of an appointment

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

Chairman, and Messrs. D. Van der Kelen and J. 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 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. Eric Van Cauwelaert

the defendant: the Federal Public Health Service; Eurostation II, Place Victor Horta 40,

box 10, 1060 Brussels

1. Facts and procedure

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On September 13, 2018, the complainant filed a complaint with the Data Protection Authority□
against the defendant.□

The subject of the complaint concerned the failure to grant the complainant access to his data at□
personal character. Despite the complainant's attempts - both by registered mail,□
by simple mail or by e-mail - to know the reason for the withdrawal of its function of member□
deputy of the Provincial Medical Commission of Limburg (Provinciale Geneeskundige□
Commissie, hereinafter PGC Limburg), he received no reaction.□

On October 4, 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.□

On October 23, 2018, the Litigation Chamber decides, on the basis of Article 58.2.c) of the GDPR and□
of article 95, § 1, 5° of the LCA, to order the data controller to comply with the□
request from the data subject to exercise their right of access.□

On October 30, 2018, the parties concerned are informed by registered mail of the decision□
taken on the basis of article 95, § 1, 5° of the LCA.□

On March 4, 2019, the complainant again filed a complaint with the Data Protection Authority.□
given against the defendant, since the latter had not complied with the order of the□
Litigation Chamber, thus forcing the complainant to exercise his right of access once again□
but here too, the defendant did not follow up.□

On March 19, 2019, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and Article 98□

of the ACL, that the case can be dealt with on the merits.□

On March 19, 2019, the parties concerned are informed by registered letter of the provisions□

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, deadlines for transmitting their conclusions. The deadline for□

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the receipt of the defendant's submissions in response was set for April 19, 2019, that for the□

submissions in reply of the complainants on May 20, 2019 and that for the submissions in reply of the□

defendant as of June 20, 2019.□

On May 21, 2019, the Litigation Division received the complainant's submissions in reply in□

which he asserts that in the absence of submissions in response from the Respondent, he is not in a position□

to replicate.□

The Complainant's submissions contain his request to the Respondent to explain the□

reasons why he was replaced as an alternate member in PGC Limburg,□

despite the Royal Decree of November 15, 2017 appointing members practicing art□

of the medical commissions, in which this function was actually attributed to him.□

Then, the complainant retraces the history of his file. He also declares that he does not wish□

only an explanation regarding the withdrawal of the position of alternate member of the PGC□

Limburg but also that he demands damages. If it turns out that a solid motivation makes□

failing that, he also demands the function of substitute member of the PGC.□

On June 14, 2019, the Litigation Chamber receives the defendant's submissions in reply in□

which he explains that after the signing of the Royal Decree of 15 November 2017 appointing□

dental practitioner members of medical boards, in which the plaintiff complained□

given the function of substitute member of the PGC Limburg, the publication of this decree was□

prevented as a result of an administrative error. When drafting the new draft decree□

royal, it was further also observed that the plaintiff himself had a file within the□

PGC Limburg. Following this, it was decided to no longer retain the complainant as a member□

deputy of PGC Limburg in the royal decree which was signed on June 6, 2018. Since the

two royal decrees had been signed, they both legally had to be published.

Their publication in the Belgian Official Gazette took place on June 21, 2018.

The defendant adds to this that the decision of the Litigation Chamber of October 30, 2018

regarding the order to comply with the complainant's request to exercise his right of access has not

been received. In addition, the letter from the Litigation Chamber of March 19, 2019 was not given to the

head of the competent department of the defendant only on April 19, 2019, which did not allow compliance with

the deadline of April 20 to submit the conclusions.

The defendant further points out that the plaintiff did not appeal the publication of the decree

of June 6, 2018 appointing the dental practitioner members of the commissions

medical.

On June 17, 2019, the parties are informed that it has been decided to proceed with a hearing, pursuant to

of article 46 of the internal rules.

On July 9, 2019, the parties are heard by the Litigation Chamber.

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2. Legal basis

- Article 12.3 and 4 of the General Data Protection Regulation

3. The controller shall provide the data subject with information about the

measures taken following a request made pursuant to Articles 15 to 22, in

as soon as possible and in any event within one month of receipt

demand. If necessary, this period can be extended by 2 months, given the complexity

and the number of requests. The controller informs the data subject of

this extension within one month of receipt of the request.□

When the data subject submits his request in electronic form, the□
information is provided electronically where possible, unless the□
person concerned does not request otherwise.□

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□
the receipt of the request of the reasons for its inaction and the possibility of introducing a□
complaint to a supervisory authority and to lodge a judicial appeal.□

- Article 15 of the General Regulations□

on□

data protection□

1. The data subject has the right to obtain from the controller confirmation that□

personal data concerning him are or are not processed and, when□

are, access to said personal data as well as the following information:□

a) the purposes of the processing;□

b) the categories of personal data concerned;□

c) the recipients or categories of recipients to whom the personal data□

have been or will be communicated, in particular recipients who are established in□

third countries or international organisations;□

d) where possible, the retention period of the personal data□

envisaged or, when this is not possible, the criteria used to determine this duration;□

e) the existence of the right to request from the controller the rectification or□

erasure of personal data, or restriction of data processing□

of a personal nature relating to the person concerned, or the right to oppose this□

processing ;□

f) the right to lodge a complaint with a supervisory authority;□

g) when the personal data is not collected from the person□

concerned, any information available as to their source;□

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h) the existence of automated decision-making, including profiling, referred to in Article 22,□

paragraphs 1 and 4, and, at least in such cases, useful information concerning the logic□

underlying data, as well as the significance and anticipated consequences of such processing for the□

concerned person.□

2. When the personal data is transferred to a third country or to a□

international organization, the data subject has the right to be informed of the guarantees□

appropriate, under Article 46, with respect to this transfer.□

3. The controller provides a copy of the personal data making□

the object of treatment. The controller may require the payment of fees□

reasonable based on administrative costs for any additional copies requested□

by the person concerned. When the person concerned submits his request by□

electronic, the information is provided in a commonly used electronic form,□

unless the data subject requests otherwise.□

4. The right to obtain a copy referred to in paragraph 3 does not affect the rights and freedoms□

from others.□

3. Motivation□

Given that the facts show that the defendant at no time acceded to the request of the□

complainant to be granted access to his personal data in order to take□

knowledge of the reason behind the decision to remove him from the position of alternate member of the□

the PGC Limburg, the Litigation Chamber considers that the violation of article 12.3 and 4 of the GDPR as well as□

that of Article 15 of the GDPR is established and proceeds to the imposition of a reprimand.□

The explanations of the defendant's representatives, as presented during the hearing, confirm□

the finding that several errors were made:□

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The defendant was grossly negligent towards the plaintiff by publishing to the□

Belgian Monitor the decision to appoint him as an alternate member of PGC Limburg□

and by immediately revoking this decision, also via publication in the Belgian Official Gazette,□

thereby causing damage to the complainant's reputation.□

Then, the plaintiff was left in complete ignorance as to the reason for this decision.□

by the absence of any reaction on the part of the defendant to the plaintiff's request for access□

in his file. Thus, it is clear that throughout the evolution of the case, the defendant did not□

properly communicated with the complainant as part of their access request.□

Furthermore, the right of access was disproportionately restricted by depriving the complainant□

essential information, namely by not giving him access to the documents that were at□

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the reason for the revocation of his appointment. Despite his request to do so, he was not□

informed of the reasons for reversing the decision to designate him as□

alternate member of PGC Limburg.□

In addition, the defendant did not comply with the Litigation Division's order to provide□

the complainant access to his file, as stipulated in his decision under Article 95,□

§ 1, 5° of the LCA.□

Finally, the defendant indicates that the succession of errors is due to distribution problems□

internal mail.□

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In view of the extreme negligence on the part of the defendant, the decision will therefore be published with□

communication of the identification data of the defendant, as well as of the plaintiff. The latter gave□

his explicit consent to this effect during the hearing.□

The Litigation Chamber cannot accede to the plaintiff's request to receive damages.□

interests, nor to her request to be reinstated as a member of PGC Limburg, given that she□

does not have this skill. The Litigation Chamber rules only on compliance□

data protection, in this case on the respect or not of the right of access. It does not belong□

in no way up to the Litigation Chamber to judge whether or not it was fair to revoke the appointment of the□

complainant as an alternate member of PGC Limburg.□

In addition, the Litigation Chamber further draws attention to the following:□

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The whole of this procedure shows that the defendant did not take (sufficient)□

internal measures to meet the obligations resulting from the GDPR, while the GDPR is□

already entered into force on May 25, 2016 and has applied since May 25, 2018, which had□

is widely publicized.□

The Litigation Chamber considers it very important that organizations take the necessary measures□

necessary, in accordance with the responsibility defined and elaborated in the GDPR. Bedroom□

Litigation therefore emphasizes the importance for the defendant to put in place in the short term□

term the necessary internal procedures in order to be able to ensure that the rights of the persons□

concerned are guaranteed, as required by the GDPR.□

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FOR THESE REASONS,□

the Litigation Chamber of the Data Protection Authority decides with regard to the defendant, after□

deliberation:□

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to issue a reprimand, pursuant to Article 100, § 1, 5° of the LCA;□

to publish this decision on the website of the Authority for the protection of

data, with the identification data of the parties, pursuant to Article 100, § 1, 16° of

the ACL.

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 a defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber