

Case number: NAIH / 2019/4127

History: NAIH / 2018/5476 / H.

Subject: Decision granting the application

The National Data Protection and Freedom of Information Authority (hereinafter referred to as the Authority) [...]

at the request of the applicant (hereinafter: the Applicant) against [...] (hereinafter: the Applicant)

the following decisions in the data protection authority proceedings initiated.

I. In the decision of the Authority

(a) finds that the Applicant has not complied with the Applicant's right of access - the right of access

- the exercise of his application, thereby violating the personal data of natural persons

the protection of individuals with regard to the processing of personal data and on the free movement of such data; and

Regulation (EU) 2016/679 repealing Directive 95/46 / EC (hereinafter:

general data protection regulation) and

warns the Applicant;

(b) oblige the Applicant to, within 8 days of receipt of this decision

comply with the Applicant's request to exercise the right of access and 8

certify to the Authority within one day;

(c) order the Applicant to do so ex officio within 8 days of receipt of this decision

delete the Applicant's personal data within the legal basis of the consent

and shall not use them for direct marketing purposes and

certify to the Authority within one day.

There is no administrative remedy against this decision, but from the date of notification

within 30 days of the action brought before the Metropolitan Court in an administrative action

can be challenged. The application must be submitted to the Authority, electronically, which is the case

forward it to the court together with his documents. The request for a hearing must be indicated in the application.

For those who do not benefit from full personal exemption, the judicial review process

its fee is HUF 30,000, the lawsuit is subject to the right to record material fees. Before the Metropolitan Court

legal representation is mandatory in these proceedings.

II. In view of the fact that the administrative deadline was exceeded, the Authority exceeded HUF 10,000, ie ten thousand HUF to the Applicant, at his choice, by bank transfer or postal order to pay.

There is no place for an independent appeal against this decision, it is only on the merits of the case may be challenged in an appeal against that decision.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

I.1. The Applicant submitted the application to the Authority by post on 21 August 2018, in which he stated that he had received several times from the Applicant for the payment of a donation checks and promotional materials. The first check was donated to the Applicant and then this received a letter of thanks in his name on several occasions by post (summer 2018), checks and other promotional material.

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By letter dated 10 July 2018, the Applicant contacted the Applicant by post and requested to be informed of the manner in which his name and address were obtained address and requested that no letters be sent to him in the future. The Requested however, it did not comply with this request and did not reply to the Applicant's letter. The Applicant then turned to the Authority. The Applicant attached to his application the A copy of your application sent to the applicant, dated July 10, 2018, and proof of mailing a copy of the consignment note, the letter of thanks received from the Applicant dated 14 June 2018, the Letter of request for donation dated 5 July 2018 for payment of the attached donation with checks.

I.2. Act CXII of 2011 on the right to information self-determination and freedom of information. pursuant to Section 60 (1) of the Information Act (hereinafter: the Information Act) at the request of the Applicant data protection authority proceedings have been initiated.

The Applicant's application did not contain the data necessary to identify the Applicant, and a firm request for a decision to remedy the alleged infringement, and the Authority will therefore He called on the applicant to remedy these shortcomings.

The Applicant complied with the Authority's request for rectification and in its application the Authority a He requested an obligation to provide the requested information.

I.3. The Authority notified the Applicant of the initiation of the official data protection procedure, at the same time requested information from the Applicant in order to clarify the facts.

The Applicant stated that [...] Kft., On behalf of the Applicant, requested the data of the data subject (s) from the address register for the purpose of direct business acquisition (direct marketing)

for the compilation of a list of personal data and addresses of citizens

LXVI of 1992 on (hereinafter: Nytv.)

Based on. Subsequently, [...] Ltd. sent a letter to the Applicant (and many other recipients). THE

The Foundation was briefly introduced in its letters to the recipients and requested the support of the addressees by payment by check attached to the letter. According to the information of the Debtor on the letters information on data management.

The information letter was sent to the Applicant for the first time on 25 April 2018

donated to the Applicant by payment of a check sent as an attachment.

According to the Applicant, it handles the personal data of those who donate, the the legal basis for data processing is the consent of the data subject to the data subject during the donation me. Accordingly, the processing of the Applicant's personal data is also the responsibility of the Applicant based on the consent given at the time of donation.

To the Authority's question as to why the Applicant did not inform the

Applicant acknowledged the source of access to his personal data

lack of response, due to holidays in the summer months

which, however, did not result from intentional or bad faith conduct.

II. Applicable law

Pursuant to Article 2 (1) of the General Data Protection Regulation, the general data protection Regulation shall apply to the processing of personal data in a partially or fully automated manner processing of personal data in a non-automated manner

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which are part of a registration system or which are part of a intended to be part of a registration system.

Personal data pursuant to Article 5 (1) (a) of the General Data Protection Regulation must be handled lawfully and fairly and in a manner that is transparent to the data subject.

According to recital 39 of the General Data Protection Regulation, natural persons how their personal data concerning them are collected, how they are viewed or otherwise treated the extent to which personal data are or will be processed.

According to Article 12 (3) of the General Data Protection Regulation, the controller is unjustified without delay, but in any case within one month of receipt of the request inform the data subject in accordance with Articles 15 to 22. on the action taken in response to a request under Article.

According to paragraph 4, if the controller does not take action at the request of the data subject, without delay, but no later than one month after receipt of the request the reasons for the non-action and the possibility for the data subject to lodge a complaint to a supervisory authority and may exercise its right of judicial review.

Pursuant to Article 15 (1) of the General Data Protection Regulation, the data subject is entitled to receive feedback from the controller regarding the processing of your personal data whether such processing is in progress and, if such data processing is in progress, you have the right to a access to personal data and the following information:

(a) the purposes of the processing;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipients with whom the personal data are held

have been or will be communicated, including in particular to third country consignees, and international organizations;

(d) where applicable, the intended period for which the personal data will be stored or, failing that possible criteria for determining this period;

(e) the data subject's right to request personal data concerning him or her from the controller rectification, erasure or restriction on the processing of such personal data against its treatment;

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

(g) if the data were not collected from the data subject, all available information on their source;

(h) the fact of automated decision-making referred to in Article 22 (1) and (4), including: profiling and, at least in these cases, the logic used

comprehensible information on the significance of such processing and on the data subject the expected consequences.

According to Article 17 (1) of the General Data Protection Regulation, the data subject is entitled that, at his request, the controller deletes his personal data without undue delay data, and the controller is obliged to provide personal data concerning the data subject delete without undue delay if one of the following reasons exists:

(a) personal data are no longer required for the purpose for which they were collected or for other purposes treated;

(b) the data subject withdraws the authorization provided for in Article 6 (1) (a) or Article 9 (2) (a); consent to the processing, and there is no other consent to the processing legal basis;

(c) the data subject objects to the processing pursuant to Article 21 (1) and there is no priority lawful reason for the processing or the data subject objects in accordance with Article 21 (2) against data management;

(d) personal data have been processed unlawfully;

(e) personal data are required by the law of the Union or Member State applicable to the controller

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must be deleted in order to fulfill an obligation;

(f) the collection of personal data through the information society referred to in Article 8 (1)

in connection with the provision of related services.

In accordance with Article 58 (2) (b) and (g) respectively of the General Data Protection Regulation, the Authority

condemns the controller or processor in the exercise of its powers of rectification if

data processing activities have infringed the provisions of this Regulation and the general data protection law

order the erasure of personal data in accordance with Article 17 of the Regulation.

Az Nytv. Pursuant to Section 19 (1) (d), the name, address and notification address are details

any citizen or any legal person or entity without legal personality

in addition to proving the purpose and legal basis of the use, is entitled to request a direct acquisition of a business

(direct marketing).

The Authority shall inform Infotv. With regard to Section 61 (1) (a), the General Data Protection Decree

It may apply the consequences provided for in Article 58 (2).

III. Decision of the Authority

III.1. Under Article 15 of the General Data Protection Regulation, the data subject is entitled to his or her personal data

request the controller to indicate, inter alia, which

personal data, for what purpose, on what legal basis and for how long, and data processing

from what source he obtained his personal data.

Pursuant to Article 12 (3) to (4) of the General Data Protection Regulation, upon request, the controller

shall reply on the merits within one month. In doing so, you must inform the data subject of the action taken

or, if no action is taken, the failure to take action

and shall provide information on whether the person concerned may lodge a complaint with any of the

supervisory authority and may exercise its right of judicial review.

Exercising the right of the data subject, the Applicant requested information from the Applicant on 10 July 2018.

However, the Applicant did not comply with the Applicant's request for data

did not provide any response despite the fact that the Applicant had sent his application by post

according to his statement.

Based on the above, the Authority found that the Applicant had not complied with the Applicant

request for the exercise of the right of access in breach of the general data protection

Article 15 (1) of the Regulation and by failing to inform the Applicant of his application

the reasons for the non-action and the remedies available

infringed Article 12 (3) to (4) of the General Data Protection Regulation.

III.2. Pursuant to Article 17 (1) of the General Data Protection Regulation, the controller is obliged to:

delete the personal data of the data subject without undue delay if the data subject

withdraw the consent on which the data processing is based and the data management has no other choice

legal basis.

The information letter was sent to the Applicant for the first time on 25 April 2018

donated to the Applicant by paying a check sent as an annex to the

by donation, according to the Applicant's statement, the Applicant also consented in person

to process your data for information.

The Authority did not examine the General Data Management Practices of the Requested in the present proceedings,

however, it can be stated that the granting of the consent in this form is objectionable,

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several conceptual elements of consent - such as the express, concrete and

clear statement - missing.

In a letter sent to the Applicant on 10 July 2018, the Applicant also requested that the

no longer send letters to the Applicant.

On the basis of the above, the Authority found of its own motion that the Applicant had withdrawn his personal data

consent to the processing of your data for information purposes through your donation,

moreover, the consent was not appropriate and the Authority ordered the deletion of the data pursuant to Article 17 (1) of the General Data Protection Regulation.

ARC. Legal consequences

The Authority found that the Applicant had not complied with the rights of the at the same time warned the Applicant to legitimize its processing in accordance with the provisions of the General Data Protection Regulation and obliged the Applicant to exercise the right to be affected by the Applicant to comply with your request.

Pursuant to Article 58 (2) (g) of the General Data Protection Regulation, the Authority shall instruct a Applicant that - in view of the fact that the Applicant has withdrawn his personal data on the other hand, the granting of consent was not already appropriate - delete the Applicant's personal data provided by the Applicant for information.

V. Other issues

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a), its jurisdiction is covers the whole country.

CL of 2016 on General Administrative Procedure. Pursuant to Section 112, Section 16 (1) and Section 114 (1) of the Act on the there is a right of appeal through an administrative lawsuit.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (2) (a), the Authority

The administrative lawsuit against the decision of the Criminal Court falls within the jurisdiction of the court. Section 13 (11)

The Metropolitan Court shall have exclusive jurisdiction pursuant to On civil procedure on the 2016 CXXX. Act (hereinafter: Pp.) - the Kp. Pursuant to Section 26 (1)

applicable - legal representation in a lawsuit falling within the jurisdiction of the tribunal pursuant to § 72

obligatory. Kp. Pursuant to Section 39 (6), unless otherwise provided by law, the application

has no suspensory effect on the entry into force of the administrative act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of public administration and trust services. Section 9 of the Act

Under paragraph 1 (b), the client's legal representative is required to communicate electronically.

The time and place of the submission of the application is Section 39 (1). THE

Information on the possibility of requesting a hearing is provided in the CM. Section 77 (1) - (2)

based on. The amount of the fee for an administrative lawsuit shall be determined in accordance with Act XCIII of 1990 on

Fees. law

(hereinafter: Itv.) 44 / A. § (1). From the advance payment of the fee is

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Itv. Section 59 (1) and Section 62 (1) (h) shall release the party instituting the proceedings.

If the obligated customer does not adequately demonstrate compliance with the required obligations, a

The Authority considers that it has not complied with its obligations within the time allowed. The Ákr. Section 132

if the debtor has not complied with the obligation contained in the final decision of the authority, the

executable. The decision of the Authority Pursuant to Section 82 (1), the communication shall become final

becomes. The Ákr. Section 133 of the Enforcement - unless otherwise provided by law or government decree

ordered by the decision-making authority. The Ákr. Under section 134 of the enforcement - if

a law, a government decree or, in the case of a municipal authority, a decree of a local government

unless otherwise provided - by the state tax authority. Infotv. Section 60 (7)

to carry out a specific act contained in a decision of the Authority

the decision as to the obligation to conduct, tolerate or stop

shall be carried out by the Authority.

In the course of the procedure, the Authority exceeded the Infotv. 60 / A. § (1) is one hundred and twenty days

administrative deadline, therefore Ákr. Pursuant to Section 51 b), it pays ten thousand forints to the Applicant.

Budapest, May 8, 2019

Dr. Attila Péterfalvi

President

c. professor