

Case number: NAIH / 2019/890

Subject: Partial application

decision

## DECISION

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

(hereinafter: the Applicant) on 18 January 2019

In proceedings before the Data Protection Authority, the Authority shall take the following decisions:

1. The Authority shall be the Applicant

grant the application and

1.1. finds that the Applicant has not complied with the rights of the Applicant concerned - access

request for the exercise of the right to issue a copy;

1.2. Instructs the applicant, within 15 days of receipt of this Decision, to:

A copy of the public interest announcement of 24 September 2009 shall be provided by the third party concerned by the

announcement

information on the parties (notifier and other notified persons)

send it to the Applicant after anonymisation. During anonymization

personal data not known to the Applicant must be made anonymous,

and the indirect information from which the Applicant provides this information

draw conclusions;

1.3. in 1.1. and 1.2. due to the violation established in point 1

in the event of a finding of a data breach, the present shall apply to the determination of the legal consequences

will take the infringement into account as a precedent with greater weight,

gives a warning.

2. The Authority shall request the information of the applicant in the public interest

rejects in part.

The 1.2. to take the measures provided for in point 1 to the Applicant from the time the measure is taken

must be in writing within 8 days of receipt - the supporting evidence (anonymised application

a copy of the application and proof of delivery to the Applicant)

Towards an authority. The 1.2. In the event of failure to comply with the obligation under point (a), the Authority shall order: implementation of this Decision.

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 shall be submitted to the Authority, electronically, which shall be

forward it to the court together with the case file. Request for a hearing in the action

to be indicated. For those who do not benefit from full personal exemption, the court

the fee for the review procedure is HUF 30,000, the lawsuit is subject to the right to record fees. The Capital

Legal proceedings are mandatory in proceedings before the General Court.

## EXPLANATORY STATEMENT

### I. Facts, antecedents

I.1. In its application received by the Applicant on 17 January 2019, the Applicant is a data protection authority initiated proceedings. The Applicant has requested an undertaking from the Applicant to:

respond in substance to the content of the report filed against him in 2009. The Applicant

in his application he stated that in his letter of 2 January 2019 the Applicant did not submit his application has done enough.

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

NAIH / 2019/890. proceedings were initiated by a data protection authority.

I.2. The Authority called on the Applicant to rectify the deficiencies. In the Applicant 's reply, the

He rectified the shortcomings of his application and confirmed the content of the public interest notification

would like to know, in this regard it has asked the Authority to oblige

Applicant to inform him of the content of the public interest notification.

I.3. The Authority initiated proceedings NAIH / 2019/890/4 on the initiation of the official data protection procedure. number

notified the Applicant in his order and in order to clarify the facts

called for a statement.

I.4. Based on the statements of the Applicant and the Applicant and the attached documents by the Authority

According to the facts established in the letter sent by the Applicant on 3 December 2018 to the a

He requested information from the applicant regarding the disciplinary proceedings conducted in 2009

in the course of the proceedings of whom and on the basis of what content the

disciplinary action and requested information on personal data contained in reports against him

information. In its reply with registration number [...], the Applicant informed the Applicant that

a public interest announcement was received in 2009 and 2010, respectively, in which it was personal

the name and place of work of the Applicant shall be the data of the Applicant.

The public interest notification was aimed at the activities of a person other than the Applicant,

in which the Applicant was also involved and other than the Applicant 's name and place of work, a

It also contained information that could be linked to the applicant.

In its reply to the Authority, the Applicant referred to the complaints and was in the public interest

CLKV of 2013 on notifications. (hereinafter: Complaints Act)

and stated that in his view the Applicant's right to information was not

may result in access to the data of the public interest notifier. In view of all this, "the

in its response to the data subject to protect both the data protection and the public interest notifier

informed the data subject taking into account and complying as far as possible with the relevant rules

the full range of personal data processed about him ".

## II. Applicable legal requirements

On the protection of individuals with regard to the processing of personal data

and on the free movement of such data and repealing Directive 95/46 / EC

Regulation (EU) 2016/679 (hereinafter referred to as the General Data Protection Regulation)

Pursuant to Article 2 (1), the General Data Protection Regulation applies to personal data

to process data in a partially or fully automated manner and to process them

processing of personal data in a non-automated manner which is one of the

are part of a registration system or are part of a registration system

they want to do.

Pursuant to Article 4 (1) of the General Data Protection Regulation, personal data are identified or

any information relating to an identifiable natural person ("data subject"); identifiable

a natural person who, directly or indirectly, in particular any

ID, such as name, number, location data, online ID, or natural

physical, physiological, genetic, mental, economic, cultural or social identity of a person

identifiable by one or more relevant factors.

According to Article 4 (10) of the General Data Protection Regulation, a "third party" is one who is not the same

the data subject, the controller, the processor or the persons who are

under the direct control of a data controller or data processor

have been authorized.

According to Article 12 (4) of the General Data Protection Regulation, if the controller does not do so

measures at the request of the data subject without delay, but at the latest at the time of the request

within one month of receipt of the measure

the reasons for the non-compliance and the possibility for the person concerned to lodge a complaint with a supervisory

authority

authority and may exercise its right to a judicial remedy.

Pursuant to Article 15 (1) of the General Data Protection Regulation, the data subject is entitled to:

receive feedback from the data controller regarding the processing of your personal data

is in progress and if such data processing is in progress, you are entitled to personal

access to 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 limitation of the handling of such personal data against data processing;

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

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

(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 data processing and the the expected consequences for the data subject.

According to Article 15 (3) of the General Data Protection Regulation, the controller is the data controller provide the data subject with a copy of the personal data The affected

for additional copies requested by the controller, the controller shall be reasonable on the basis of administrative costs may charge a fee. If the application was submitted by electronic means, the information should be provided in a widely used electronic form, unless the person concerned requests otherwise.

Pursuant to Article 15 (4) of the General Data Protection Regulation, the data referred to in the right to request a copy shall not adversely affect the rights and freedoms of others.

Pursuant to Article 23 (1) of the General Data Protection Regulation, you are either the controller or Union or Member State law applicable to the processor may limit 12-22. Articles 12 and 34 and Articles 12 to 22. in Article in accordance with certain rights and obligations

the scope of the rights and obligations set out in Article 5, provided that the restriction respects the essential content of fundamental rights and freedoms and the protection of necessary and proportionate action in a democratic society:

(i) the protection of the data subject or the protection of the rights and freedoms of others;

Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein shall apply with the additions provided for in

Infotv. Pursuant to Section 60 (1), the enforcement of the right to the protection of personal data the Authority shall, at the request of the data subject, initiate a data protection authority procedure.

Infotv. Pursuant to Section 61 (1) (a), it was taken in a data protection official proceeding

In its decision, the Authority Data management specified in Section 2 (2)

In the context of these operations, the general data protection regulation is defined

may apply legal consequences. Article 58 (2) of the General Data Protection Regulation

(b) the supervisory authority condemns the controller or the processor,

if its data processing activities have infringed the provisions of this Regulation or the same

in accordance with the corrective powers of the supervisory authority pursuant to paragraph 1 (d)

the controller to carry out its data processing operations, where appropriate in a specified manner; and comply with the provisions of this Regulation.

Infotv. 75 / A. § pursuant to Article 83 (2) - (6) of the General Data Protection Regulation

exercise the powers set out in paragraph 1 in accordance with the principle of proportionality,

in particular by providing for the law or regulation on the processing of personal data

Requirements laid down in a binding act of the European Union

Article 58 of the General Data Protection Regulation

in particular by alerting the controller or processor.

Act CXXV of 2017 on Sanctions for Administrative Infringements. Pursuant to Section 6 of the Act a

with a warning, the authority expresses its disapproval of the administrative

and calls for a new sanction

customer to refrain from committing an administrative offense in the future.

A warning should be applied if the administrative offense is

having regard to the circumstances of the offense, has a low deterrent effect and is sufficiently dissuasive

expected, and if an authority imposes an obligation on the customer and a

does not apply any other sanction in the decision imposing the obligation.

Unless otherwise provided in the General Data Protection Regulation, the application was initiated

CL of the General Administrative Procedure Act 2016 on the data protection authority procedure.

(hereinafter: the Act) shall apply as defined in the Information Act

with differences.

In the proceedings, the Authority shall, in so far as it approves the application, issue a decision

it may apply the legal consequences set out in the General Data Protection Regulation.

According to the General Data Protection Regulation, the Supervisory Authority has the general competence in this area

may apply legal sanctions under Article 58 (2) of the Data Protection Regulation.

Pursuant to Article 58 (2) (b) and (c) of the General Data Protection Regulation, the Authority shall

condemn the data controller or the data processor if he or she acts as a data controller

has infringed the provisions of this Regulation or instructs the controller or the

to exercise the data subject's rights under this Regulation

application.

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

covers the whole country.

Complaint Pursuant to Section 3 (3), the personal data of the complainant or the public interest notifier

- except as provided in paragraph 4, only on the basis of a complaint or a public interest notification

may be transferred to a body competent to conduct the proceedings initiated if

body is entitled to handle it by law or to transfer its data to the complainant

or the notifier in the public interest has expressly consented. The complainant and the public interest complainant

your personal data may not be disclosed without your express consent.

### III. Decisions of the Authority

Pursuant to Article 4 (1) of the General Data Protection Regulation, it can be concluded that the data subject in the public interest notification not only the name and place of employment of the Applicant, but also the Public interest notification in connection with the applicant its contents are also considered personal data. Right of access to personal data information on the data subject and not the document itself with the application subject of the law concerned

According to Article 15 of the General Data Protection Regulation, the right of access is not limited to information on information management. The data controller is required to have effective access provide the data subject with the personal data processed in such a way that the data subject provide it with a copy of the information which is the subject of the data processing.

However, since the filing of third-party qualifying activities in which the Applicant was also involved, ie the document which is the subject of the request for access both the Applicant and the public interest applicant and other third parties also contains personal data relating to a person, the general data protection regulation Pursuant to Article 15 (4), the Applicant's right of access must be restricted because it does not the part of the requested application which is personal to a third party may be made available to him their transmission to the Applicant is the information of these persons would infringe his right to self-determination.

In view of the above, the Applicant violated Article 15 of the General Data Protection Regulation, when you did not provide the Applicant with the 2009 filing on your own personal and only provided information on his name and place of employment, The personal data of the applicant in the application, the statement made about him did not provide information.

As the data concerning the public interest notifier is not the personal data of the Applicant, so its within the framework of the right of access to and access to the



He requested this information only in accordance with the rules of the General Data Protection Regulation could have forwarded it to him.

Processing of personal data under Article 6 (1) of the General Data Protection Regulation

it is lawful only if and to the extent that one of the pleas in law listed therein exists. THE

the transfer of personal data of a public interest notifier in this case is subject to general data protection

in none of the cases referred to in Article 6 (1) of this Regulation. The data subject is in the public interest

did not consent to its transmission (thus it does not exist in Section 3 (3) of the Complaints Act)

Article 6 (1) (a) of the General Data Protection Regulation

no other legal basis is available to the notifier in the public interest

to reveal your identity.

In view of all this, the identity and disclosure of the name of the public interest notifier by the Applicant

the refusal did not conflict with the provisions of the General Data Protection Regulation and the Applicant

lawfully denied access to the personal data of the public interest notifier.

ARC. Legal consequences

In the Authority's view, the breach cannot be considered to be in the present case

serious because nearly ten years have passed since the public interest announcement, the disciplinary action initiated under it

procedure was not appealed by the Applicant. At the request of the Applicant, the Applicant shall meet the deadline

answered, however, his answer may be considered incomplete due to the above. The Applicant is correct

recognized that the identity of the person making the public interest notification could not be revealed.

In view of this, in addition to the detection of infringements, the application of the warning is also appropriate,

general data protection can be considered as a legal sanction with sufficient deterrent effect

to take, implement and enforce measures to ensure compliance with this Regulation

instructions.

In view of the above, the Authority granted the request in part for general data protection

pursuant to Article 58 (2) (c) of the Regulation, ordered the Applicant to ensure that

The Applicant has the opportunity to get acquainted with the part of the 2009 application concerning the Applicant,

and issue a copy to the notifier and to the third party concerned by the notification,

as anonymisation of third party information.

CL of 2016 on General Administrative Procedure. Act (hereinafter: Act)

§ 112, § 16 (1) and § 114 (1) against the decision

there is a right of appeal through an administrative lawsuit.

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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. § 13

(11), the Metropolitan Court has exclusive jurisdiction. The civilian

CXXX of 2016 on the organization of litigation. Act (hereinafter: Pp.) - the Kp. Section 26 (1)

applicable under Article 72 of the Code of Civil Procedure - in a lawsuit falling within the jurisdiction of the General Court

pursuant to § 72

legal representation is mandatory. Kp. According to Section 39 (6) - unless otherwise provided by law

the bringing of the action for the administrative act to take effect

has no suspensive effect.

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. law

Pursuant to Section 9 (1) (b), the customer's legal representative for electronic communication

obliged.

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

the Itv. Section 59 (1) and Section 62 (1) (h) shall exempt the person initiating the proceedings

half.

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 With the communication pursuant to Section 82 (1)

it becomes final. The Ákr. Section 133 enforcement - if you are a law

Government decree does not provide otherwise - it is ordered by the decision-making authority. The Ákr. 134.

§ pursuant to the implementation - if by law, government decree or municipal authority

In this case, the decree of the local government does not provide otherwise - the state tax authority

implements. Infotv. Pursuant to Section 60 (7) of the Authority,

to perform a specific act, to behave, to tolerate or

with regard to the standstill obligation, the enforcement of the decision shall be:

Authority.

Budapest, May 2019

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Dr. Attila Péterfalvi

President

c. professor