

Case number: NAIH-4771-1/2021

History: NAIH/2020/3476

Administrator: [...]

Subject: decision partially granting the request

H A T A R O Z A T

The National Data Protection and Freedom of Information Authority (hereinafter: the Authority) [...] requested field ([...]; hereinafter: Applicant) the data collected about him and from him, can be associated with him and the data about him

data used to prepare the expert opinion, including the psychodiagnostic data

file, examination reports and audio recordings (hereafter together: the applicant's

lyes data) with [...] ([...], company registration number: [...]; hereinafter: Applicant)

makes the following decisions in the official data protection proceedings against

In the Authority's decision, to the request submitted by the Applicant

partially correct.

I. Finds that the Respondent has not complied with the Applicant's own personal data

his request aimed at exercising his right of access, thereby infringing natural persons

on the protection of personal data in terms of processing and such data is free

Regulation (EU) 2016/679 on the flow and repeal of Directive 95/46/EC

(hereinafter: GDPR) Article 12 (4) and Article 15 (3).

II. It instructs the Applicant that within 15 (fifteen) days from the date of this decision becoming final

within, hand over to the Applicant only what was taken from him and what was taken from him based on his expert examination

data used to produce an expert opinion, including the psychodiagnostic data file,

copies of test reports and audio recordings.

[...]

ARC. In view of the fact that the administrative deadline has been exceeded, the Authority orders

10,000 HUF, i.e. ten thousand forints, to the Applicant - at his choice -

by bank transfer or postal order.

There is no place for administrative appeal against this decision, but from the announcement

within 30 days with a claim addressed to the Metropolitan Court in a public administrative case

can be attacked. The statement of claim must be submitted to the Authority, electronically<sup>1</sup>, which is the case

forwards it to the court together with its documents. The request to hold the hearing must be indicated in the statement of claim

must For those who do not benefit from the full personal tax exemption, the administrative court fee

HUF 30,000, the lawsuit is subject to the right to record a material levy. In the proceedings before the Metropolitan Court, the

legal

representation is mandatory.

I N D O C O L A S

1 The NAIH\_K01 form is used to initiate the administrative lawsuit: NAIH\_K01 form (16.09.2019) The form is the general

can be filled out using a form-filling program (ÁNYK program).

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I. Procedure and clarification of the facts

The Applicant submitted an application to the Authority on 16.04.2020, in which he submitted that he had unsuccessfully

turned to the Respondent in order that the Győr District Court 2018.07.16. dated [...]

s. during an expert examination carried out on the basis of the order of the

including data that can be associated with him, collected about him and from him, used for processing

the psychodiagnostic data file, examination reports and audio recordings (the further together with: the Applicant's personal data) the Applicant should send it to him and do so for him become known.

The Applicant 04.02.2020. informed the Applicant in his letter dated 31/2008 on expert operation. (XII.31.) IRM Decree 20/B. § (5) of the experts data generated during the investigation can only be accessed by the person authorized by law - in particular another expert assigned to the case - you can get to know him. In addition, the information contained that if any assigning authority will oblige the Applicant to carry out data generated during the expert work carried out on the basis of issued to an assigned forensic expert colleague, he will do so in compliance with the law.

The Applicant requested that the Authority order the Applicant to release the requested data, to make it possible, with special attention also to making the release of your data known item was refused by the Respondent. In addition to this, the Applicant requested that the Authority oblige the Applicant will be reimbursed for the costs incurred by the Applicant in this data protection official procedure to do.

In the case, CXII of 2011 on the right to informational self-determination and freedom of information. Act (hereinafter: Infotv.). On the basis of Section 60 (1), it is for the protection of personal data in order to enforce the right, a data protection official procedure was initiated at the request of the data subject. In order to clarify the facts, the Authority provides information, a statement and the relevant asked the Applicant to send documents on the legal reasons for this

row concerning the exercise of the rights of the affected party presented in the subject of the Applicant's own personal data to reject his request, he requested an expert examination, which is the subject of data management sending a copy of the assignment order and the expert opinion prepared as a result of it, as well invited the Applicant to make a statement that it contained the Applicant's personal data in order to make a decision on the rejection of the request for the release of documents did you contact the Győr District Court regarding the XXIX of 2016 on judicial experts? Act 42.

According to paragraph (5) of §, and whether he was instructed to exercise the right of access of the Applicant to refuse to comply with the contents of his request.

The Applicant 29.06.2020. in his statement dated (document No. NAIH/2020/3476/3) explained that the Győr District Court on 16.07.2018. dated [...] no. order of expert branch (hereinafter: assignment order), a combined forensic expert report and opinion was issued. THE 31/2008 on the operation of forensic experts in his answer to the applicant. (XII.31.) IRM decree (hereinafter: IRM R.) 20/B. referred to the provisions of paragraph (5) of §, attached the assignment order, the Applicant on 26.03.2020. application dated 04.02.2020. on the day of dated 09.11.2018 and prepared by the Respondent. dated [...] expert case number a copy of the expert opinion (hereinafter: expert opinion). The Respondent submitted that he did not seek it and the assigning district court, given that R. 20/B. Based on § (5), it is not another expert assigned to the case initiated the release of the data and NAIH/2018/426/V. case file establishes the competence of the expert between his personal data and the expert data in differentiation.

In fact-finding order No. 6, the Authority requested information from the Application that whether data emerged during the investigation that, with regard to the Applicant, the relevant

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an order restricting access to health documentation is necessary and the restriction is CLIV of 1997 on health. whether it took place based on § 193 of the Act (hereinafter: Eütv.).

The Applicant 06.08.2020. according to his statement dated combined forensic findings based on legislation and expert methodological guidelines and an opinion has been issued. During the performed expert examination, only with regard to the applicant expert data were obtained, no health data was generated (document no. NAIH/2020/3476/7).

In fact-finding order No. 9, the Authority requested information about the Tatabánya Act from the seat, whether data emerged during the proceedings of the court at first instance that a With regard to the applicant, the restriction of access to the health documentation relating to him

order is necessary and the restriction is based on CLIV of 1997 on health care. law (the further

in biak: on the basis of § 193 of the Eütv.)

was sent to the Applicant, and whether the Applicant or an

the managing director of the assigning Győr Járásbírós release the Applicant's special personal data

concerning mud, 26.03.2020. regarding the feasibility of your request dated

By the Tatabánya Court on 09.09.2020. according to the information given on

the defendant - the Applicant of this data protection official procedure - received and accepted it in its entirety.

In several submissions, the Petitioner-Defendant requested that the court obtain the combined experts

complete expert findings belonging to the opinion, which is not only for the Applicant, but also for the professional

it would have contained findings relating to all persons affected by forensic examination. Győri

The District Court only invited the expert to act on the contents of the Petitioner's submission

comment. He did not issue a specific invitation to the expert to send the findings. Győri

According to the order of the District Court, he stated that the combined expert opinion contained the

The discovery part of the Rorschach test (its figures). The complete findings were not sent

neither the Applicant nor the persons affected by the investigation. Among the documents of the first instance proceedings

the request issued by the Respondent or its manager regarding it cannot be found

regarding the release of the Applicant's special personal data,

26.03.2020 application dated (document No. NAIH/2020/3476/10).

The Tatabánya Court provided the information on 14.09.2020. on the day of

that the Győr District Court [...] no. in his ruling, he called on the expert that the combined professional

send the entire evidence file related to the opinion to the court, but to send it

did not actually take place during the first instance procedure, in other

animals (document No. NAIH/2020/3476/11).

After the completion of the evidentiary procedure, the Authority may exercise the right to inspect documents

gé, and also invited the Applicant and the Respondent to make a statement.

The Requester submitted a request for document inspection until the day of the Authority's decision

which the Authority fulfilled (document No. NAIH/2020/3476/15).

In the applicant's statement filed under sub-number 16, the Authority requested to use as an analogy the previous in, NAIH/2019/211/7 brought on the same subject. and NAIH/2020/593/7. s. decisions.

According to the position expressed in the Applicant's statement, the entire findings of the investigation are covered by the Szaktv. 47.

§ a, no. 10 methodological letter, and made accessible in accordance with the provisions of Section 10 R. of the IRM must be done to the expert by the parties, the court, or for the appointing authority, i.e. the expert opinion you must disclose all data used to produce it and you cannot make the expert opinion verifiable

2 Eütv. § 193. In the case of a psychiatric patient, the patient's access to health documentation may be restricted exceptionally right, if there are good reasons to assume that the patient's recovery would be greatly endangered, or another person's personal

your rights would be infringed by the knowledge of the health documentation. Only a doctor is authorized to order the restriction.

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would be idle by not providing this information. According to the Applicant - with the position of the applicant - below - health data was also generated in the case, because it is a clinical psychology examination

took place on the basis of § 20 R. of the IRM and as such the Eütv. § 103 also categorizes. The Applicant arrow- according to his opinion, the Tatabánya Court annulled the judgment of the Győr District Court.

In response to the Authority's inquiry filed under sub-number 17, the Győr District Court sent [...] no. judgment and the Tatabánya Court [...] no. execution.

[...]

## II. Applicable legal regulations

Based on Article 2 (1) of the GDPR, the GDPR must be applied to this data management.

The relevant provisions of the GDPR in this case are the following:

According to Article 4, point 1 of the GDPR, personal data is "identified or identifiable natural any information relating to a person ("data subject") [...]"

GDPR Article 4 2. "data management": personal data or data files are automated

any operation or set of operations performed in a non-automated manner, such as collection, recording, organizing, categorizing, storing, transforming or changing, querying, viewing, by use, communication, transmission, distribution or otherwise making it available, alignment or linking, restriction, deletion or destruction;

GDPR Article 4 7. "data controller": the natural or legal person, public authority, agency

or any other body that independently determines the purposes and means of personal data management

or determines with others; if the purposes and means of data management are defined by the EU or

determined by the law of the Member State, the data controller or the particulars regarding the designation of the data controller

aspects can also be determined by EU or member state law;

According to Article 5 (1) point a) of the GDPR, "personal data shall be processed legally and

must be carried out properly and in a transparent manner for the person concerned ("legality, fairness procedure and transparency")"

According to Article 12 (3) of the GDPR, "The data controller shall, without undue delay, but

15-22 within one month from the receipt of the request.

on measures taken following a request pursuant to Art. If necessary, taking into account the request

complexity and the number of applications, this deadline can be extended by another two months. THE

regarding the extension of the deadline, the data controller shall, indicating the reasons for the delay, hand over the request

informs the person concerned within one month of receiving it. If the person concerned electronically

submitted the application, the information must be provided electronically if possible, unless

the person concerned requests it differently."

Based on Article 12 (4) of the GDPR, "if the data controller does not take measures, the data subject

following your request, without delay, but no later than one month from the receipt of the request

informs the data subject internally of the reasons for the failure to take action, as well as that the data subject is

can file a complaint with a supervisory authority and exercise his right to judicial redress", the (5)

according to paragraph 13 and 14 information and 15-22. and information according to Article 34

and measures must be provided free of charge.

According to Article 15 (3) of the GDPR, "the data controller is the personal person who is the subject of data management provides a copy of the data to the data subject. For additional copies requested by the data subject

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data manager may charge a reasonable fee based on administrative costs. If it concerns

submitted the application electronically, the information is widely used electronically

format, unless the data subject requests otherwise".

According to Article 23 (1) point (i) of the GDPR, "applicable to the data controller or data processor

applicable EU or Member State law may limit the provisions of 12-22 with legislative measures. in Article and 34.

contained in Article 12-22. in accordance with the rights and obligations specified in Article

with regard to its provisions in the scope of the rights and obligations contained in Article 5, if a

restriction respects the essential content of fundamental rights and freedoms, as well as the

necessary and proportionate measure for the protection of biak in a democratic society: the person concerned

protection or the protection of the rights and freedoms of others."

According to Article 58 (2) of the GDPR, "The supervisory authority acting in its corrective capacity:

b) condemns the data manager or the data processor if its data management activities violate

made the provisions of this regulation;

c) instructs the data controller or the data processor to fulfill the data subject's

your request to exercise your rights;

d) instructs the data manager or the data processor that its data management operations - where applicable

in a specified manner and within a specified time - brought into line with the provisions of this decree-

with;"

According to Article 77 (1) of the GDPR, "Without prejudice to other administrative or judicial remedies,

all data subjects have the right to complain to a supervisory authority - in particular a

in the Member State of your habitual residence, place of work or the place of the alleged infringement



- if, according to the judgment of the data subject, the processing of his personal data violates this regulation."

For data management under the scope of the GDPR, Infotv. According to Section 2 (2) of the GDPR, there shall be applied with additions in the provisions indicated. Infotv. According to § 60, paragraph (2).

request to initiate a data protection authority procedure in Article 77 (1) of the GDPR

can be submitted in specific cases.

Infotv. According to Section 60 (1), "the enforcement of the right to the protection of personal data

In order to do so, the Authority shall initiate a data protection official procedure at the request of the data subject".

In the absence of a different provision of the GDPR, the data protection authority procedure initiated upon the request is

CL of 2016 on general administrative regulations. Act (hereinafter: Act)

provisions shall be applied with the deviations specified in Infotv.

Infotv. According to § 61. (1) point a) in the decision made in the data protection official procedure, the Authority

in connection with data management operations subject to the GDPR as defined in the GDPR

may apply legal consequences.

Based on points b), c) and d) of Article 58 (2) of the General Data Protection Regulation, the supervisory

authority, acting in its corrective powers, condemns the data controller or the data processor if

its data management activities violated the provisions of this regulation; instructs the data controller or it

data processor to fulfill the data subject's rights in accordance with this regulation

your request; instructs the data manager or the data processor that its data management operations - given

in a specified manner and within a specified period of time - harmonises this regulation

with its provisions. Infotv. 75/A. § 83 of the General Data Protection Regulation, the Authority

(2)-(6) exercises its powers taking into account the principle of proportionality,

especially with regard to the processing of personal data - in the European legislation

In the event of the first violation of the regulations defined in the mandatory legal act of the Union

to remedy the violation in accordance with Article 58 of the General Data Protection Regulation - primarily

takes action with the warning of the data manager or data processor.

Infotv 75/A. According to §, the Authority has exercised its powers contained in paragraphs (2)-(6) of Article 83 of the GDPR practices taking into account the principle of proportionality, especially with the fact that personal data regarding its handling - defined in legislation or in a binding legal act of the European Union - in the event of a first-time violation of regulations, to remedy the violation - Article 58 of the GDPR. in accordance with Article - primarily with the warning of the data manager or data processor takes action.

XXIX of 2016 on forensic experts. Act (hereinafter: Statute) § 40. (2)

according to paragraph "the expert with regard to the facts and data he came to know in the course of his activities is bound by a duty of confidentiality, the facts and data relating to the case are only available to the authority, furthermore may provide information to another body or person authorized to handle the data".

The Szaktv. According to paragraph (5) of § 42: "The expert on the right to self-determination of information and the according to the Freedom of Information Act, to the data belonging to the data subject and handled by the expert the issuing of relevant information is refused by the assignee or principal prevention or prosecution, as well as to protect the rights of the data subject or others at the behest of." [July 1, 2018-I.31, 2019 text state between]

The Szaktv. According to § 42:

"(1) The expert shall manage the personal data handled by him in the course of his activity - if the law otherwise - immediately after the completion of the assignment or completion of the assignment limits.

(2) After completing the assignment or commission, the expert shall, according to paragraph (1), limited processing of personal data disciplinary

from the restriction for the purpose of verifying its compliance and compliance with the law stored for ten years, and only with the authority, the client, and forensic experts

disciplinary proceedings against, as well as the proceedings establishing the evaluation of the forensic expert authorized to conduct it, as well as another body or person authorized to process personal data

can be forwarded to

its activities are professional, methodological,

(5) Access to the personal data of the expert concerned with regard to the data managed by him

the exercise of his right is denied by the assignee or principal in order to prevent crimes or to

tolerance, as well as to the instructions given in order to protect the rights of the data subject or others.

(6) The data provided to the expert, during the investigation, is classified as data according to paragraph (5).

generated data, source of data, purpose, legal basis, duration of data processing, data processor

name, address and activity related to data management, and - the person concerned

in the case of transmission of your data - the legal basis and recipient of the data transmission." [2020.I.1. from day

effective text status]

The Szaktv. According to Section 45 (2), "the secondment must include:

l) - in justified cases - the instruction of the authority that the expert is for the person concerned

by him

the

is obliged to refuse information in accordance with the Act on Freedom of Information." [2018.VII.1-

31.I.2019 text state between]

The Szaktv. According to Section 45 (2), "the secondment must include:

self-determination

informative

concerning

to data

handled

about law

and

the

l) - in justified cases - the instruction of the authority regarding the fact that the expert is to the person concerned

is obliged to refuse to exercise his right of access to his personal data," [2020.I.1.

effective date]

31/2008 on the operation of forensic experts. (XII. 31.) IRM Decree (hereinafter: IRM

R.) under the heading of the clinical and mental hygiene adult and child psychological examination in the 20/A.

Section (3) provides that "during the investigation, the expert is the person under investigation

with the written consent of its legal representative, it may make an audio recording."

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IRM R. 20/B. According to § (5), "the expert is the adult and child clinical and mental health specialist

during the preservation of data generated during a psychological examination about forensic experts

and on the right to informational self-determination and freedom of information

acts on the basis of law. The data generated during the investigation is only authorized by law

person - so in particular another expert assigned to the case - can get to know it."

CLIV of 1997 on health. According to § 193 of the Act (hereinafter: Eütv.): "A

in the case of a psychiatric patient, the patient's medical documentation may exceptionally be limited

to get to know

it can be assumed that the patient's recovery

would greatly endanger or violate the privacy rights of another person

getting to know the documentation. Only a doctor is authorized to order the restriction."

Acr. § 51. If the authority

right if there is a good reason

b) the administrative deadline is exceeded - and there was no place to make a decision with contingent effect -

an amount corresponding to a fee or fee for conducting the procedure, failing which ten thousand

pays a fee to the requesting client, who is also exempt from paying the procedural costs.

Acr. § 124 Procedural costs are all costs incurred during the procedure.

Acr. § 125. (1) If the law does not provide otherwise, the costs of the procedure shall be borne by the person with whom they

are

they dived.

(2) The participant in the procedure shall bear the costs caused by his illegal behavior.

Acr. § 126. (2) In the legal dispute procedure, the authority obliges him to bear the costs of the procedure

a) in case of rejection of the application, the requesting customer,

b) in the case of a decision approving the request, the customer with the opposite interest.

(3) If the decision partially approves the request, the authority shall bear the proportional cost of the procedure obligates the requesting client and the opposing client.

About procedural costs, reimbursement related to file inspection, payment of costs

469/2017 on the exemption of costs. (XII. 28.) Government Decree (hereinafter: Expenditure

ségr.) According to Section 1, Paragraph (1), Point 10, procedural costs in public administrative authority proceedings: the correspondence and document forwarding arising from the client and other participants in the procedure cost.

III. Evidence taken into account during the Authority's decision and their evaluation:

The Authority took the Respondent into account as evidence in this official data protection procedure

29.06.2020 statement dated on

dated [...] no. expert assignment order (hereinafter: assignment order), the Applicant

prepared by, 09.11.2018 expert opinion with expert case number dated [...] (hereinafter:

expert opinion), the Applicant 2020.03.26. application dated 04.02.2020. on the day of

dated answer, by the Győr District Court and the Tatabánya Court during the present proceedings, the Authority

provided information to his inquiry, the Győr District Court [...] no. judgment and Tatabányai

Court 1. [...] no. completion [...]

The Authority's procedure was aimed at deciding whether the Respondent lawfully refused the

The applicant's request to exercise the right of access contained in Article 15 of the GDPR

performance in relation to the Applicant's own personal data.

The Authority judged the request according to its content. The request for the right of access - Article 16.

due to the reference to analogous cases indicated in document no. - the forensic examination

which is based on, is solely about and recorded by the Applicant, can be linked to him and was made about him

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data used,

to produce an expert opinion

(including psychodiagnostic

data file), test reports and audio recordings, so to the Respondent

the subject of the submitted data request was not the completed expert opinion, but the Applicant's own personal data.

ARC. Findings

IV.1. The Applicant's own personal data

The legal basis for making a sound recording during an expert examination is the consent of the person concerned, a 31/2008. (XII. 31.) IRM Decree 20/A. in accordance with § (3).

The recording of what is said by a natural person through a voice recording is a GDPR

according to its definition, the recorded sound is considered personal data of the data subject.

According to the definition of the GDPR, a data controller is someone who controls the purposes and means of data management

defines, according to the definition, national law can also do this. The domestic legislation, Szaktv.

the expert is defined as a data controller by the expert opinion and the materials on which it is based regarding. [Article no. § 40, paragraph (1), § 42, paragraphs (1)-(3), (5)-(6)].

In the investigated case, the Respondent is considered to be the data controller because the expert examination the ordering court order appointed [...] to carry out the expert examination as judicial

expert company. [...] is the executive officer authorized to represent the Respondent, so its legal representative

acts on behalf of a person (company), which is responsible for data protection in its capacity as a data controller for compliance with regulations. The court also allowed the involvement of a co-expert in the case. THE

expert opinion contains a combined expert opinion, which [...] a forensic psychologist

signed by expert, [...] forensic medicine expert and [...] forensic medicine expert.

The Szaktv. According to paragraph (6) of § 42, the data managed by the expert belong to the expert, among others transferred data and data generated during the examination.

The data management of an expert is specific in that the data management is a court or official order base, which assigns the expert, and the expert is bound to this assignment. The Szaktv.

it does not precisely define the scope of the processed data - due to the nature of the task, it does not even know this to do - and defines the data collected during the examination as data managed by the expert.

The data that the Applicant himself provided during the examination (when filling in the test, questionnaire his answers, what he said recorded in the examination report, audio recording data, etc.) are clearly considered personal data of the data subject.

Article 15 of the GDPR, within the right of access, details data processing upon request information, pursuant to Article 15 (3), the data subject may request a copy of the data

is also eligible. In this case, the Applicant is handled by the expert, the Applicant's forensic experts in the course of the investigation, about the Applicant and taken from him, can be associated with him and was made about him

to produce an expert opinion

used data, including psychodiagnostic

requested data files, test reports and audio recordings. So the right of access

the subject of its exercise was not the expert opinion, which was the conclusions drawn by the expert contains, but the data provided by the data subject.

Regarding the materials on which the expert opinion is based, the Requested expert company is the above is considered a data controller, and as such, has independent decision-making rights in data management matters has The data controller must ensure the enforcement of the data subject's rights.

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The Szaktv. The scope of data transmission set out in § 42, paragraph (2) does not exclude data transmission to the data subject

legal enforcement in relation to your own data. The data controller owns the data subject's own data

conceptually, it is not forwarded to you, but is for the data within the framework of the right of access provides access, in the form of a copy upon request.

The Szaktv. Secrecy provided for in § 40, subsection (2) applies to other bodies and persons, by definition, the data provided by the data subject cannot be regarded as secret. The concerned a the owner of the data provided by himself, who can also grant a confidentiality exemption, with him on the other hand, confidentiality cannot be interpreted. The Szaktv. Paragraph (2) of § 40 provides for who information about the data can be provided within the framework of confidentiality, while the data subject can be informed by himself with regard to the data provided, he is not entitled to information, but to access.

As part of his right of access, the data subject is therefore entitled to a right to request a copy. The data subject's enforcement of rights in Article 12 (5) and Article 15. can be limited according to the provisions of Article (4). Pursuant to Article 15 (4), the copy the right to claim may not adversely affect the rights and freedoms of others.

Article 23(1)(i) of the GDPR provides Member States with the possibility to, through legislation introduce a restriction on the application of the enforcement sections to protect the rights of the data subject or others. The Szaktv. Section 42 (5) is Article 23 of the decree It is considered a restriction in accordance with point e) of paragraph (1).

The expert is only given in justified cases, in the order of the appointing authority or court may refuse to exercise the data subject's right of access on his instructions Article 15 (4) of the GDPR on the basis of paragraph § 42, paragraph (5) prescribes. In the absence of this, the person concerned your fundamental right to informational self-determination cannot be restricted.

The dispatching order of the Győr District Court did not contain the Szaktv. According to § 42, paragraph (5). restrictive provision, the Applicant NAIH/2020/3476/3. s. according to his statement in the document, no approached the assigning court regarding the feasibility of the Applicant's request. THE

According to the information provided by the Tatabánya Court, the Applicant-defendant completes the expert opinion was received and accepted in scope, and it cannot be found among the documents of the first instance proceedings either



An inquiry issued by the applicant or its manager stating that a whether the request can be fulfilled. Referring to the restriction of the Respondent's right to self-determination of information neither the judgment of the Győr District Court nor the Tatabánya Court overruled the order did not include

The Authority would like to note here that - with the Applicant's statement filed under sub-number 16 against - according to the annulment order, it is not the expert opinion prepared by the Respondent, rather, the expert testimony conducted by the court at first instance was incomplete, and not because of that because the evidence file was not attached to the expert opinion, but because the court of first instance was not evaluated the expert opinions obtained earlier in the trial and did not examine whether they were are they in conflict with the expert opinion presented by the Applicant, are they questioned its validity. The justification for the order also states that in the expert opinion the data obtained on the basis of the tests must be recorded, but it is not necessary for the tests, thus attaching the entire inventory to the expert opinion, based on the no deficiency in the content of the expert opinion can be established (document number NAIH/2020/3476/18. 2. annex [53], [56] paragraphs).

From all these facts, the Authority concluded that there are no circumstances which would preclude the fulfillment of the Applicant's request regarding the right of access and which based on the fulfillment of the request - submitted in relation to the Applicant's own personal data in connection with the exercise of the right of access - can be refused.

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The Authority points out that IRM R. 20/A. Based on § (3), during the examination, the expert a with the written consent of the examined person or his legal representative, audio recording can inflame. According to § 459, point 12, point e) of Act C of 2012 on the Criminal Code an expert is considered a person performing a public function in court or other official proceedings. Say in these procedures, the expert performs a public task, appears in the capacity of an expert, thus the public task he does not communicate what he says during his care as a private individual. As a result, the rights of the stakeholders

provision of practice cannot be denied with reference to this.

Based on all of this, the Authority concludes that with the action taken by the Respondent, during which the Applicant's request for access to his own personal data is not fulfilled, violated Article 15 (3) of the GDPR.

In the present examined case, the Respondent is the Applicant on 26.03.2020. to the access request dated a Within the period specified in Article 12 (3) of the GDPR - 04.02.2020. on the day - gave an answer, and informed you about the reason why you did not fulfill the access request. The Authority points out that the IRM R. 20/B. It does not follow from the phrase "in particular" according to § (5) that it is exclusively another assigned expert is entitled to know the data generated during the investigation, because his own with regard to his personal data, the data subject has the right of access to his own personal data concerned is entitled to manage both GDPR and Szaktv. Based on § 42, paragraph (2).

However, at the same time, he did not inform the data subject in accordance with Article 12 (4) of the GDPR according to which the data subject to the Authority due to non-fulfillment of the request can apply or use the right of judicial enforcement. For this reason, the Authority concludes that a The respondent violated the provisions of Article 12 (4) of the GDPR.

The Authority, in view of the established violations of law, of the operative part of the decision, II. in point a Based on GDPR Article 58 (2) point c) the Applicant was instructed by the Applicant's experts during the examination, the data collected about him and from him, and used to prepare the expert opinion on him, including the psychodiagnostic data file, test reports and audio recordings for fulfillment by issuing a copy.

[...]

V. Legal consequences:

V.1. The Authority partially grants the Applicant's request and GDPR Article 58 (2) b) points, condemns the Applicant for violating Article 12 (4) of the GDPR and Paragraph 3 of Article 15.

Based on Article 58 (2) point c) of the GDPR, the Authority instructs the Applicant to fulfill the

Send the applicant's access request to the applicant's expert examination exclusively about him and from him, can be connected with him and for the elaboration of the professional opinion made about him data used, including the psychodiagnostic data file, test reports and copies of audio recordings and proves the fact that this has taken place to the Authority.

V.2. According to the Authority's point of view, it is related to the Respondent's exercise of rights as a data subject failure to take action can be attributed to the general practice of assigned experts

back, which makes the fulfillment of the data subject's request dependent on the order of the assigning court. THE

The authority's experience after examining data management by several experts can be outlined as a

assigned forensic experts are generally not aware that, as a data controller –

in the specific case, the assigned forensic expert company - you have to fulfill it yourself

data collected during the expert examination of data processing requests of data subjects

with regard to - especially with regard to the provision of copies contained in Article 15 (3) of the GDPR

obligation - and in all cases the applicant is referred to the branch office. The Authority is at fault for this

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wishes to achieve a change in practice, among other things, with those explained in this decision.

V.3. During the procedure, the Authority exceeded Infotv. One hundred and fifty days according to paragraph (1) of § 60/A administrative deadline, therefore the Ákr. On the basis of point b) of § 51, he pays HUF ten thousand to the Applicant.

## VI. Other questions

The Authority provides information on the basis of point e) of Article 57 (1) of the GDPR that personal data

in case of violation of the right to protection, the Civil Code 2:43 a.m. § and 2:52. damages based on §

the possibility of going to court in order to pay.

The competence of the Authority is set by Infotv. Article 38, Paragraphs (2) and (2a) defines it, the jurisdiction of the country covers its entire territory.

The decision is in Art. 80-81. § and Infotv. It is based on paragraph (1) of § 61. The decision is in Art. Section 82

Based on paragraph (1), it becomes final upon its communication. The Ákr. § 112, § 116, paragraph (1), respectively

on the basis of § 114, paragraph (1), the decision can be challenged through an administrative lawsuit

as a remedy.

\* \* \*

The rules of the administrative trial are set out in Act I of 2017 on the Administrative Procedure hereinafter: Kp.) is defined. The Kp. Based on § 12, paragraph (1), by decision of the Authority the administrative lawsuit against falls within the jurisdiction of the court, the lawsuit is referred to in the Kp. § 13, subsection (3) a)

Based on point aa), the Metropolitan Court is exclusively competent. The Kp. Section 27, paragraph (1).

Based on point b), legal representation is mandatory in a lawsuit within the jurisdiction of the court. The Kp. Section 39 (6) of the submission of the claim for the administrative act to take effect does not have a deferral effect.

The Kp. Paragraph (1) of § 29 and, in view of this, Pp. According to § 604, the electronic one is applicable CCXXII of 2015 on the general rules of administration and trust services. Act § 9

According to point b) of paragraph (1), the client's legal representative is obliged to maintain electronic contact.

The time and place of submitting the statement of claim is set by Kp. It is defined by § 39, paragraph (1). The trial information about the possibility of an application for keeping the Kp. It is based on paragraphs (1)-(2) of § 77. THE the amount of the fee for an administrative lawsuit is determined by Act XCIII of 1990 on fees. law (hereinafter: Itv.) 45/A. Section (1) defines. Regarding the advance payment of the fee, the Itv. Section 59 (1) paragraph and § 62 paragraph (1) point h) exempts the party initiating the procedure.

If the obliged customer does not adequately certify the fulfillment of the prescribed obligations, the Authority considers that the obligations have not been fulfilled within the deadline. The Akr. According to § 132, if a the obligee has not complied with the obligation contained in the final decision of the authority, it can be enforced.

The Akr. Pursuant to § 133, enforcement - unless otherwise provided by law or government decree has - it is ordered by the decision-making authority. The Akr. Pursuant to § 134, the execution - if law, government decree or, in the case of municipal authority, a local government decree does not provide otherwise - it is undertaken by the state tax authority. Infotv. § 61, paragraph (7). on the basis of a specific act included in the Authority's decision, specified

the decision regarding the obligation to conduct, tolerate or stop

its implementation is undertaken by the Authority.

Budapest, May 10, 2021.

Dr. Attila Péterfalvi

president, c. professor