

Litigation Chamber

Decision on the merits 67/2021 of 4 June 2021

File number: DOS-2019-01315

Subject: **Complaint relating to the lack of timely response to a request**

erasure by a banking institution

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

Hijmans, chairman;

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

to the free movement of such data, and repealing Directive 95/46/EC (general regulation on the

data protection), hereinafter GDPR;

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority (hereinafter

ACL);

Having regard to the Rules of Procedure as approved by the House of Representatives on 20

December 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The complainant:

Mrs X,

The defendant:

S.A.Y; having as counsel Me T. Léonard and Me O. Guerguinov, lawyers,

whose firm is established at 1050 Brussels, avenue de la Couronne 224.

1. Procedural Feedback

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Having regard to the complaint filed on October 9, 2018 by the complainant with the Authority for the Protection of

data (ODA);□

Considering the admissibility decision of the First Line Service (SPL) of the APD of March 12, 2019;□

Having regard to the decision taken by the Litigation Chamber during its session of April 2, 2019 to seize□

the Inspector General on the basis of Articles 63, 2° and 94, 1° LCA and the referral dated April 4, 2019;□

Having regard to the report and minutes of the Inspector General's investigation sent on January 9, 2020 to the□

Litigation chamber;□

Having regard to the letter of January 21, 2020 from the Litigation Chamber informing the parties of its decision□

to consider the file as being ready for substantive processing on the basis of article 98 LCA□

and communicating to them a timetable for the exchange of conclusions;□

Having regard to the complainant's letter of February 1, 2020;□

Having regard to the conclusions of the defendant filed by its counsel and received on February 19, 2020.□

2. Facts and subject of the complaint□

1. On July 9, 2018, the complainant filed a request for opposition and erasure of certain□

data concerning her from the defendant (agency of (...)), based on the information□

provided regarding the exercise of their rights under the terms of the "Privacy Statement" available□

on the defendant's website.□

2. By letter dated 23 July 2018, the team responsible for data protection issues and□

of private life of the defendant replies to him that he has followed up on his request to oppose□

the use of its data for marketing and profiling purposes. The defendant informs□

the complainant on the data that she processes concerning her and explains the reasons□

for which it cannot erase all the data concerning it, in particular those in□

relation to the products from which the plaintiff benefits, in these terms:□

"(...) Unfortunately, we cannot comply with your request to delete□

data. Indeed, with regard to closed products, we have the legal obligation□

to keep certain personal data after the termination of a contract related to its□

particular product. This retention period may vary between different products (eg.□

e.g. credit products must be archived for up to 30 years after termination of the contract). We confirm that at the end of the legal archiving period, this data are deleted automatically. This deadline has not yet been reached for your products closed.

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In addition, you still have "open" products in the Bank. As part of the execution of our contractual obligations towards you and the fulfillment of our obligations legal, some data must inevitably be processed, otherwise we are impossible to fulfill our mission".

Fifteen (15) pages of appendices containing account numbers, bank cards, contract numbers and other personal data relating to the complainant are communicated to the latter in the appendix to this letter.

This letter also informs the complainant of the possibility of exercising her right to rectification with his agency as well as the possibility of filing a complaint with of the Data Protection Authority (DPA).

3. On July 31, 2018, the complainant informed her agency of (...) of her wish to exercise her right to rectification concerning two categories of data and therefore:

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asks for the correction of the mention relating to his professional activity which indicates erroneously that it is used;
is surprised by the mention of different bank cards which she says she does not have knowledge (...) and asks for additional explanations concerning them.

4. On August 29, 2018, the defendant's (...) agency responded to the complainant's request and informs him that he has submitted a request for rectification of his activity to the head office professional in order to indicate the mention "retired". She also gives him a

explanation concerning the bank cards in question.□

5. By letter dated September 4, 2018, still addressed to the agency of (...), the complainant acknowledges□
of the request for correction of the statement relating to his professional activity and request□
the deletion of the mention of extract withdrawal cards and the indication of the mention “□
closed” with regard to the Mastercard card.□

6. By letter dated 21 September 2018, the team responsible for data protection issues□
and privacy of the defendant confirms the execution of the correction of the mention relating□
to the complainant's professional activity. The defendant specifies that this letter does not□
contains no information relating to bank cards because these mentions come under the□
management of the complainant's products by the agency and not a request for direct rectification□
of the personal data of the complainant processed by the team in charge of the questions of□
data protection and privacy.□

7. On October 9, 2018, i.e. very shortly after receipt of the letter referred to above□
above (35 days after her request to the defendant), the plaintiff filed a complaint□
from the ODA. The defendant's interpretation in this respect is that, according to all□
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likelihood, the plaintiff, wrongly according to the defendant, considered that the absence of any□
indication relating to his requests concerning bank cards should be interpreted as□
a refusal by the defendant to act on it. The defendant explains in submissions that in□
reality “all that remained was for his agency to introduce into the system the modifications□
techniques related to the cards in question. Unfortunately, the agency forgot to carry out these□
modifications and having had no further contact on this point with the complainant since, could not□
correct this omission before the request for information from the inspection service of November 8□
2019” (point 4 of the defendant’s conclusions).□

8. According to her complaint, the complainant points out that this part of her complaint was not followed up.□
request for erasure and asks the DPA to intervene with the defendant so that “□

the necessary is done" and that this is notified to him.□

9. As for the Respondent, it seeks in submissions that the DPA, in view of the implementation□
compliance of the disputed processing with the GDPR and the total lack of will on its part□
to hinder the rights of the complainant, to take no sanction against her and□
subsidiarily, if a sanction were to be pronounced, to grant the suspension of the□
pronounced.□

3. The inspection report of January 9, 2020□

10. According to his inspection report of January 9, 2020, the Inspector General makes the findings□
following:□

Finding 1: it appears that the complainant's letter of 4□
September 2018 addressed to the agency of (...) in which the complainant explicitly requested□
the deletion of bank cards beginning with [...] no longer in his possession, and□
the deletion or rectification of the "open" status of his old expired credit card,□
contrary to Articles 12, 16 and 17 of the GDPR.□

Finding 2: following the letter from the Inspection Service, Y [read the defendant]□
erased the data concerning the bank cards no longer in the possession of the□
complainant and corrected the status of the complainant's expired credit card.□

11. The Litigation Chamber therefore notes that the intervention of the Inspectorate made it possible to□
respond to the complainant's concern and that it has, at this time, been satisfied in a manner□
complete with its request for erasure. The Litigation Chamber also notes that during□
communication of the inspection report to the complainant, the latter was duly□
informed of the steps taken by the ODA and its effects.□

PLACE□

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12. It is the responsibility of the defendant, in its capacity as data controller, to follow up on□
the exercise of the rights of the persons concerned, in compliance with the conditions of article□

12 GDPR. The Litigation Chamber recalls here that under the terms of Article 12.3. of the GDPR, it is the responsibility of the data controller to provide the data subject (here the complainant) with information on the measures taken following a request made in accordance with the Articles 15 to 22 of the GDPR (including therefore a request for erasure as in this case based on Article 17 of the GDPR or rectification based on Article 16 of the GDPR) in the as soon as possible and in any event within one month of receipt of the request. Section 12.3. of the GDPR continues by adding that if necessary, this period can be extended two months given the complexity and the number of requests.

13. The Litigation Chamber notes that according to its conclusions, the defendant does not deny having remained, as a result of human error, in default of completely satisfying at the complainant's request for deletion/rectification to which she apologizes.

14. In support of the findings made by the Inspector General in his report and in view of this above, the Litigation Chamber effectively finds a breach of Article 12.3 and Articles 16 and 17 of the GDPR on the part of the defendant.

15. As part of its sovereign assessment of the corrective measure and/or sanction appropriate to the facts of the case, the Litigation Division takes into consideration all of the following considerations.

16. It follows from the facts and the exhibits filed in the context of this file that the breaches of the defendant as retained by the Litigation Chamber (point 14 above) in support of the findings of the inspection (point 10 above) are limited to the lack of follow-up given to the complainant's final request (of 4 September 2018) to amend the bank card statuses that she no longer used.

17. The facts and exhibits produced by the parties show that apart from this aspect of the claim erasure/rectification of the complainant, the defendant responded to the requests prior information and rectification of the complainant as of July 2018 following in this the procedures put in place within it and informing the complainant in an adequate manner and in

the period prescribed by article 12.3. of the DPR.□

18. As to the number of persons concerned, the Litigation Chamber is not in possession□

of any element that would lead him to believe that the procedures put in place by the□

defendant would not be such as to enable the satisfaction of the rights of persons□

concerned in accordance with the GDPR. The complainant's case so far appears to be an isolated case.□

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19. The Litigation Division does not have any information allowing it to conclude that it would be□

of an intentional breach.□

20. As for cooperation with the DPA, the Litigation Chamber notes, as the report□

of inspection already mentioned makes the observation that following the intervention of the inspection service,□

was immediately followed up on the complainant's request.□

21. Finally, the Litigation Division notes the absence of damage invoked by the plaintiff.□

22. In support of the foregoing, the Litigation Chamber limits itself to reminding the defendant of the□

respect due to requests to exercise the rights of data subjects, in particular□

Article 17 of the GDPR, and this in compliance with the conditions set out in Article 12 of the GDPR without□

that this reminder should not be considered as one of the sanctions or corrective measures□

listed in article 100 § 1erLCA.□

4. Transparency□

23. Given the importance of transparency with regard to the decision-making process□

and the decisions of the Litigation Chamber, this decision will be published on the website of□

DPA by deleting the direct identification data of the parties and of the□

persons cited, whether natural or legal.□

FOR THESE REASONS,□

THE LITIGATION CHAMBER□

After deliberation, decides:□

- That there has been a violation of Articles 16 and 17 of the GDPR combined with Article 12.3. GDPR;□

- That it is not necessary to pronounce one of the measures provided for in article 100.1 LCA.□

Under Article 108.1 LCA, this decision may be appealed to the Court of□

contracts (Brussels Court of Appeal) within 30 days of its notification, with□

the Data Protection Authority as defendant.□

(Sé). Hielke Hijmans□

President of the Litigation Chamber□