

Case number: NAIH / 2019/5112/15.

Subject: Partial decision granting the application

## DECISION

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

hereinafter referred to as the "Applicant") against [...] (hereinafter referred to as the "Applicant")

take the following decision in the data protection authority procedure:

1. The Authority shall be the Applicant

grant his application in part and

finds that the Applicant has violated the Applicant's right of access because

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within one month of receipt of the request did not provide information and access

complied with the request after the deadline, and

did not guarantee the issue of the first copy free of charge during subsequent performance, and

set a fee.

2. The Authority shall ex officio oblige the Applicant to comply with the regulations on internal reimbursement fees and the bring its data management practices into line with the General Data Protection Regulation.

3. The Authority shall send copies of the Applicant's application in certified form

relevant part

rejects.

The measures provided for in point 2 shall be taken by the Debtor from the date of taking the measure

must provide written confirmation, together with the supporting evidence, within

Towards an authority. In the event of non-compliance, the Authority shall order the enforcement of the 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 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. In the proceedings before the Metropolitan Court

legal representation is mandatory.

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## EXPLANATORY STATEMENT

### I. Procedure and clarification of the facts

I.1. The Applicant submitted an application to the Authority on 18 June 2019, in which he submitted that he had an accident in December 2015 and received hospital treatment. In 2016, he filed a complaint in connection with hospital care.

In letters dated 2 April, 8 May and 22 May 2019 from the Applicant in 2016, following an inquiry into a complaint against the institution

documents generated in connection with this procedure and the State Public Health and Medical Officer

Examination material conducted by the National Office of the Chief Medical Officer of the Service (hereinafter: ÁNTSZ) requested certified copies. The Applicant received the first letter of the Applicant on April 4.

received his second letter on 9 May and his third letter on 27 May.

In the reply letter dated 17 May 2019 to the Applicant, the Applicant will pay HUF 3,937

established the reimbursement fee in the amount of the amount to be charged by the Applicant on 23 May

transferred to your bank account number. The Applicant did not receive the requested documents and therefore with the Applicant

requested proceedings from the Authority.

The Applicant attached to his application all the applications written to the Applicant, their receipt

certified return receipts and copies of the bank order for the transfer of the procedural costs, and

the Requested JOG31-31-3 / 2019. registered on 17 May 2019.

I.2. Due to the deficiencies in the content of the application, the Authority called on the Applicant to rectify the deficiencies.

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The applicant complied with this by letter received by the Authority on 2 July 2019.

In its reply to the Authority 's request for rectification, the Applicant stated that

Copies of documents generated during the investigation of the applicant and requested to be sent in 2019.

received on 27 June, however, the documents were authenticated despite a strong request from the Applicant

not happened. The Applicant further complained that the Applicant had set a fee for issuing the copy, despite the fact that the

Applicant had not previously requested a copy,

and that he was late in complying with his request from the time he sent his first letter

It took place 84 days later.

In view of the above, the Applicant finds a violation of the right of access by the Authority

he asked.

I.3. The Authority requested information on the matter from the Applicant to clarify the facts

in order to.

In its reply of 23 July 2019, the Applicant informed the Authority that

the Applicant after the completion of the internal investigation or upon leaving the institution

received the documentation due free of charge. In his view, neither the GDPR nor that

1997 on the processing and protection of human health and related personal data

year XLVII. (hereinafter: Eüak.), has already been originally received

documentation for re-issuance deadline, nevertheless the Applicant for Human Resources

tried to comply with the Applicant's request, taking into account its workload. Given that

it is the material of internal investigations in previous years, so he retrieved the material from the archives. The

After reviewing the documents retrieved, the Commission informed the Commission by letter dated 17 May 2019

Applicant to the Eüak. § (3) and on the Applicant's website

can be found in the reimbursement fee policy and the recommendation of the maintaining State Health Care Center

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established a total reimbursement fee of HUF 3,937 gross. The Applicant is May 2019

The Applicant paid the reimbursement fee on the 23rd day of the year, therefore the Applicant

The applicant sent copies of two of the documents in its possession.

I.4. The Authority requested that the Applicant be informed that it had requested all the documents in its letters in the original or a copy, on departure from the hospital before the applications are submitted, or after the completion of the internal investigation.

I.5. By letter received on 17 October 2019, the Applicant informed the Authority that he was leaving the Hospital on leaving, he took an outpatient sheet and a piece of X-ray findings. The internal investigation and [...] part of the materials of the procedure initiated by the patient's rights representative by the Applicant directly, by post also received. However, the Applicant complained that one of the internal investigation materials was any minutes drawn up in the course of the proceedings, if any, and the fact that the copies were not me.

I.6. Following the Petitioner's complaint, the Complaints and Public Interest Notices 2013 CLXV. Act, the ÁNTSZ conducted an investigation. The Applicant access submitted the application only to the Applicant. The Applicant shall provide a copy of the requested documents handled by him sent it. The Applicant is a document created during the investigation conducted by ÁNTSZ is entitled to contact the ÁNTSZ to request copies.

## 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

Article 2 (1) of Regulation (EU) 2016/679 (hereinafter referred to as the General Data Protection Regulation) the General Data Protection Regulation applies to personal data in part or fully automated processing of personal data which are part of a registration system, or which are intended to be part of a registration system.

Under 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. Need

In view of the complexity of the application and the number of applications, this time limit shall be extended by two additional periods

may be extended by one month. The extension of the deadline by the data controller shall be the reasons for the delay within one month of receipt of the request. If

the person has submitted the application electronically, the information shall be made possible, if possible, electronically unless otherwise requested by the data subject.

Under Article 15 (1) of the General Data Protection Regulation, the data subject has the right to:

receive feedback from the data controller on 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

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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

understandable information about the significance of such data processing and what it is for the data subject

with expected consequences.

Article 15 (3) of the General Data Protection Regulation provides that the controller is makes a copy of the personal data which are the subject of the processing available to the data subject, since in this way, effective and complete access to personal data can be achieved.

Pursuant to Article 58 (2) (b) and (d) of the General Data Protection Regulation condemns the controller or processor, acting in his or her capacity to rectify data, if he or she is a data controller has infringed the provisions of the Regulation or instructs the controller or the the data processor to carry out its data processing operations, where appropriate in a specified manner and comply with the provisions of this Regulation.

On the handling and protection of health and related personal data

1997 XLVII. Pursuant to Section 7 (3) of the Act, the general data protection decree for the data subject

All personal data subject to processing as defined in Article 15 (3)

a fee shall be paid for additional copies on the basis of the cost elements specified in a ministerial decree.

Act CXII of 2011 on the right to information self-determination and freedom of information. law

(hereinafter: the Information Act), the task of the Authority is to provide personal data

and the right of access to data in the public interest and in the public interest

monitoring and facilitating the enforcement of personal data within the European Union

facilitating the free movement of

Infotv. 75 / A. §, the Authority shall comply with Article 83 (2) to (6) of the General Data Protection Regulation

shall exercise its powers in accordance with the principle of proportionality, in particular by:

legislation on the processing of personal data or binding European Union law

for the first time in the event of a breach of the rules laid down in

in accordance with Article 58 of the General Data Protection Regulation

by alerting the controller or processor.

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 (2) (b), the Authority may order the decision of the data controller disclosure of his identification data if it is in the public domain in the context of the activities of that body.

Unless otherwise provided in the General Data Protection Regulation, data protection was initiated upon request CL of the General Administrative Procedure Act 2016. Act (a hereinafter referred to as the Act) shall apply with the exceptions specified in the Infotv. The Ákr.

Pursuant to Section 50 (5) (b), it does not count towards the administrative deadline - if it has a contingent effect there is no place to make a decision - the duration of the client's omission or delay.

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### III. Decisions of the Authority

In the investigation of the Complaint of the Applicant concerning his hospital treatment infringement of his right of access to documents relating to him he asked.

III.1. According to the General Data Protection Regulation, the data subject is subject to data processing you must make a copy of your personal data available to the data subject, the right of access sub-license is the right to make a copy available.

In the letters of the Applicant dated 2 April, 8 May and 22 May 2019 a

In 2016, an investigation procedure was initiated from the applicant after filing a complaint against the institution and in connection with this procedure by the National Office of the Chief Medical Officer requested certified copies of the test material.

The Applicant filed for the first time since the application of the General Data Protection Regulation in April 2019 Request for a copy of the documents containing his / her personal data dated 2 September 2019. received it on April 4th. Article 12 (3) of the General Data Protection Regulation a the one-month deadline for reply expired on 4 May 2019. In comparison, the

Letter of 17 May 2019 from the applicant requesting reimbursement of the fee for copies of documents requested after the expiry of the time limit for reply. The issuance of copies of the Requested - for reimbursement After the payment of the fee by the Applicant, it was decided on 18 June 2019.

In view of the above, the Authority concluded that the Applicant had 30 days to contact the Applicant did not ensure the exercise of its right of access, - as this deadline is an extension of the deadline - in breach of Article 12 (3) of the General Data Protection Regulation. and Article 15 (1).

III.2. As a general rule, Article 15 (3) of the General Data Protection Regulation is the right of access the issue of the copy requested by the data subject shall be determined by the issue of the first copy in the case of. The right to issue a copy is limited to Article 12 (5) of the General Data Protection Regulation. may be limited in accordance with the rules laid down in

In the course of the proceedings, the Applicant informed the Authority that "the fee for the issue of charge in accordance with the GDPR Regulation for health and related personal XLVII of 1997 on the processing and protection of personal data pursuant to Section 7 (3) of the Act we have been liquidated. " Considering that the requested documents "have already been received by the Applicant once originally, by law and internal fee in accordance with our policy for copying fee we will charge. "

The Applicant's documents referred to by the Applicant in 2015 were hospitalized after leaving the hospital, is not a data subject's right under Article 15 of the GDPR but under the relevant health regulations available to you.

The Applicant shall issue a copy in accordance with Article 15 (3) of the General Data Protection Regulation

The first application for a regulation was sent to the

For the requested. By letter dated 17 May 2019, the applicant called for the payment of the fee Applicant. The Applicant filed his application on April 2, 2019 for the first access shall be deemed to be an application in respect of which the Applicant may not charge a fee.



The reference to the requested legislation is incorrect because it is a general data protection regulation directly applicable and applicable in the legal systems of the Member States, accordingly the EAEC.

§ 7 (3), fulfilling Hungary's legal harmonization obligation since 26 April 2019

in accordance with Article 15 (3) of the General Data Protection Regulation

the obligation to pay a fee for the issue of additional copies.

In view of the above, the Authority found that the Applicant had breached the general rule

Article 15 (3) of the Data Protection Regulation because it was not provided free of charge by the Applicant documents containing personal data which are the subject of data processing

a copy.

III.3. The Authority shall send copies of the Applicant's application in certified form

Article 15 of the General Data Protection Regulation

Article 5 (3) and Article 5 (1) (d), not the principle of accuracy

the obligation to certify the true contents of the copy by means of a certificate may be inferred to the data controller.

ARC. Legal consequences

The Authority grants the request of the Applicant and Article 58 (2) of the General Data Protection Regulation.

condemns the Applicant on the basis of paragraph III.1. as set out in point

infringed Article 12 (3) of the General Data Protection Regulation. Upon receipt of the request

did not grant the Applicant the right of access within one month of The Authority shall:

It does not oblige an applicant to comply with a request for access, given that its

84 days after its submission.

The Applicant also violated Article 15 § 3 by failing to do so

provided that the first copy was issued free of charge and set a fee.

The Authority shall act ex officio in accordance with Article 58 (2) (d) of the General Data Protection Regulation

instructs the Applicant that the rules of the internal fee referred to by him are general

in line with the Data Protection Regulation.

## V. Other issues

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

The decision is based on Ákr. 80.-81. § and Infotv. It is based on Section 61 (1). The decision is based on Ákr. § 82 Shall become final upon its communication pursuant to paragraph 1. The Ákr. § 112 and § 116 (1), or pursuant to Section 114 (1), there is an administrative action against the decision redress.

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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) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (11) the Metropolitan Court has exclusive jurisdiction. 2016 on Civil Procedure

CXXX. Act (hereinafter: Pp.) - the Kp. Applicable pursuant to Section 26 (1) - Section 72 provides for legal representation in a case falling within the jurisdiction of the Tribunal. Kp. Section 39 (6) unless otherwise provided by law, the date of filing of the application has no suspensory effect on the entry into force of an administrative act.

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A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic CCXXII of 2015 on the general rules of administration and trust services. Act (a hereinafter: E-Administration Act), the customer is legal representative is required to communicate electronically.

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

Information on the possibility of requesting the maintenance of the Kp. It is based on § 77 (1) - (2). THE

the amount of the fee for an administrative lawsuit in accordance with Act XCIII of 1990 on Fees. Act (hereinafter:

ltv.) 45 / A. § (1). From the advance payment of the fee, the ltv. Section 59 (1)

and Section 62 (1) (h) shall release the party initiating the proceedings.

If the Applicant does not duly prove the fulfillment of the required obligation, the Authority shall

considers that it has failed to fulfill its obligations within the prescribed period. The Ákr. According to § 132, if the debtor

has not complied with an obligation contained in the final decision of the authority, it shall be enforceable. The Authority

decision of the Ákr. Pursuant to Section 82 (1), the communication becomes final. The Ákr. Section 133

implementation, unless otherwise provided by law or government decree

ordering authority. The Ákr. Section 134 of the Enforcement - if law, government decree

or in the case of a municipal authority, the decree of the local government does not provide otherwise - the

carried out by a state tax authority. Infotv. Pursuant to Section 60 (7) in the decision of the Authority

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

to stop

aimed at

obligation

with regard to

the

decision

implementation

the

Authority.

Budapest, November 18, 2019

Dr. Attila Péterfalvi

President

c. professor