

Case number: NAIH / 2019/1838/9.

Subject: Decision rejecting the application

DECISION

Before the National Authority for Data Protection and Freedom of Information (hereinafter referred to as the Authority) [...] at the request of the applicant (address: [...]) (hereinafter: the Applicant) with [...] (hereinafter: the Applicant) in the data protection official proceedings initiated against the unlawful processing of personal data against makes the following decisions:

I. Request for the deletion of the Applicant's personal data by the Applicant,

and

II. that the Applicant has rejected the Applicant's request for cancellation

failed to inform the Applicant that he could lodge a complaint with the data subject

before the Authority and may exercise its right of judicial review.

There is no administrative remedy against this decision, but it has been available since its notification

Within 30 days, an action brought before the Metropolitan Court may be challenged in an administrative lawsuit. THE

the application shall be submitted to the Authority, by electronic means, which shall forward it together with the file

to the court. The request for a hearing must be indicated in the application. The whole personal

for those who do not benefit from an exemption, the fee for the court review procedure is HUF 30,000;

subject to the right to record material duty. Legal representation is mandatory in proceedings before the Metropolitan Court.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

I.1. On 7 February 2019, the Applicant submitted an application to the Authority in which the Authority requested action to delete his personal data. In his application, he submitted that 16 years ago

his then employer agreed with [...] in a cafeteria. He applied for membership, citing this

to which [...] refused to fill in a complete personal data

however, this was refused by the Applicant. Then he was told it was a plain

statement is also met. It was received following a request for cancellation and a complaint from [...] 's managing director

the reply to the Applicant is [...], which lodged a complaint with the Magyar Nemzeti Bank against the reply. THE Customer Service Department of the Magyar Nemzeti Bank shall handle the Applicant with personal data, referred the matter to the Authority.

I.2. On 26 June 2018, the Applicant applied to the Applicant to cancel him as he has no contract with the Applicant. The Applicant informed the Applicant to complete the exit declaration and return it in its original form required. The Applicant refused to complete the withdrawal form and requested on 28 June 2018 that to delete the Applicant from its register without further ado. After some correspondence, the Applicant informed about it informed the Applicant that it was sufficient to send a statement giving it

at least the information necessary for the unambiguous identification of the person (name, date and place of birth,

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mother's maiden name), it contains an express statement that she is a member of the

you want to cancel and sign and date the application. The Applicant on August 7, 2018

sent the requested statement to the Applicant, but indicated that he was requesting full immediate cancellation, not only the termination of his membership, as in his opinion his data 8

There is no legal basis for its cancellation in one year.

The Applicant informed that his membership was terminated on 7 September 2018 upon resignation. THE

The Applicant subsequently continued to request the Applicant to delete all of its data in full from the register.

In its reply dated 11 October 2018, the Applicant informed the Applicant of the following: "The the duration of the data processing for the enforceability of the rights and obligations arising from that legal relationship in connection with which the Data Controller processes the personal data. " Obligatory

in the case of data processing, the relevant law shall determine the duration of the data processing. On accounting

Pursuant to Section 169 (1) of Act C of 2000 (hereinafter: the Accounting Act), an enterprise may read

must keep the accounts for the financial year, the business report, for at least eight years,

and the supporting inventory, valuation, general ledger extract and logbook, or

other records that comply with the requirements of the law. Money laundering and terrorist financing

Act LIII of 2017 on the prevention and deterrence of Section 58 (1) of the Act (hereinafter: Pmt.)

According to paragraph 5, the service provider carries out the [...] data and documents under the supervision specified in § 5

body, the financial intelligence unit, the investigating authority, the prosecution and the court

for the period specified in the request, up to the termination of the business relationship or the transaction

shall retain it for a period of ten years from the date of performance of the mandate. So this legislation does not

allow the Applicant's data to be permanently deleted for the purpose of establishing membership,

not required to maintain it, on a voluntary basis not covered by the legislation

However, their contact details (telephone number, e-mail address) were removed from their records upon request.

In a subsequent reply dated 10 November 2018, the Applicant further informed the Applicant that:

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

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

Article 17 (3) (b) of Regulation 2016/679 (hereinafter: the General Data Protection Regulation)

the provisions on the right of cancellation do not apply if the personal data

the processing of personal data is governed by Union or Member State law applicable to the controller

or in the public interest or in the exercise of official authority vested in the controller

necessary for the performance of a task carried out in the exercise of that right. Based on the

data processed on a legal basis in order to fulfill the obligation under Hungarian law

shall be compulsorily managed by the Fund for the period prescribed by law.

The Applicant subsequently lodged a complaint with the Applicant, the complaint received on 20 November 2018

Following this, an investigation was initiated at the Applicant. As a result of the investigation, it was dated December 19, 2018

In his reply, the Applicant informed the Applicant about his data management as the basis for his data management

and made the following findings:

The right of cancellation pursuant to Section 11.9 of the Privacy Policy effective May 25, 2018

the data subject shall have the right to have the data subject deleted without undue delay at the request of the controller

personal data concerning him or her and the controller is obliged to provide personal data concerning him or her

delete personal data without undue delay, unless excluded by mandatory data processing.

Act XCVI of 1993 on Voluntary Mutual Insurance Funds. Act (hereinafter: Act)

40 / C. § (6) f) in order to carry out the activities of the fund, its records are up - to - date and

safe driving must implement a reasonable risk based on safety risk analysis

measures and must have at least a statutory re-registration

with a data storage system capable of retrieving the archived material

for a period specified by law, but at least the termination of the membership of that member

retained at any time for a period of 5 years, recoverable at any time.

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The Applicant otherwise informed the Applicant on the basis of the statutory authorization

data, the duration of the processing of the data. None of the Applicant's replies contained

information on the legal remedies available to the data subject, if any

considers that the processing of personal data by the data controller is in breach of general data protection regulation.

During the investigation, the Applicant concluded that in the related legislation,

Act in accordance with the regulations, by providing the Applicant's personal data to the membership

after the termination of his legal relationship for the period specified by law.

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

The Applicant provided the following information on the issues raised in the Authority's call:

The Applicant's membership status with an initiative based on a voluntary decision, entry declaration

was established on September 5, 2003. To terminate the membership, the Applicant shall withdraw

took place on 07/09/2018. The exit settlement was sent on September 20, 2018 a

Applicant's mailing address.

In its reply, the Applicant informed the Authority that the individual legislation applicable to it

which personal data of the fund members according to the provisions, what is the purpose of the data processing and a

how long the data controller must keep this personal data in accordance with the law

data.

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The purpose of the data management of the Applicant is to provide its members with the information specified in the Articles of Association

provide health and self-help fund services. In doing so, the members are as follows

manages your personal data: name, birth name, place and time of birth, mother's maiden name, mailing address, tax identification number, permanent address, citizenship, identity document type, number and validity, address card number, identification statement, data management and transmission declaration. The Öpt. 40 / C. § (6) f) personal data a for at least 5 years after the termination of the membership.

In the course of data management related to banking and financial data, the Court of Auditors TV. based on the following handles personal data: account holder name, bank account number, notice, amount. The duration of data processing in relation to identification and contact details on until the rights and obligations arising out of the legal relationship expire, which in connection with a legal relationship, the data controller handles personal data; for data which are documented and the document supports the accounting, the the duration of data management is TV. At least 8 years pursuant to Section 169 (2).

In the context of customer due diligence, Pmt. handles the following personal data:

surname and first name, date of birth surname and first name, citizenship, place and date of birth, mother birth name, address, type, number and validity of the identification document. The data a provider of Pmt. Pursuant to Section 58 (1), the (...) data and documents are § 5

the specific supervisory body, the financial intelligence unit, the investigating authority, the
at the request of the public prosecutor's office and the court for a period specified in the request, up to a maximum of
for 10 years from the termination of the business relationship or the execution of the transaction order
keep.

During the data processing related to the handling of the complaint submitted by the Applicant, the following
handles personal data: complaint ID, name, date of receipt of the complaint,
telephone number, date of call, details provided during the conversation, mailing address, complainant
service, attached documents, reason for the complaint, the complaint itself. The data controller about the complaint
recorded minutes, audio material and a copy of the answer for 5 years from the date of their recording
manages the Öpt. 29 / A. § (9).

It handles the following personal data on the basis of voluntary consent: e-mail address, telephone number. The
deletion of data processed on the basis of voluntary consent following the termination of membership

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after one year or within 15 days of receipt of the declaration of cancellation
el.

In its reply, the Applicant stated that at the date of their reply, only a
its register contains data that must be retained in accordance with legal provisions. THE
The deletion of the applicant's data from the register was not refused, it was the voluntary consent
in the case of data processed on the basis of
and in the case of data processing, it will delete the Applicant's data at the end of the retention period.

In his reply, the Applicant informed the Authority that his membership had been terminated
The rules of procedure are contained in the Articles of Association and the "Rules for Termination of Membership". THE
On 2 August 2018, the Applicant notified the Applicant by e-mail of his intention to leave and
also requested the deletion of his personal data. Given that, according to the Applicant 's regulations, the
According to the e-mail sent by the Applicant to the Applicant, there was no membership
called upon the Applicant to rectify the deficiencies, requesting the withdrawal form,

or sending a free-form statement with the same data content. The Applicant's exit

the Applicant received his letter of intent on 7 September 2018. Membership of the Applicant

based on this, it was terminated on September 7, 2018.

The Applicant attached to its reply the Privacy Policy in force as of May 25, 2018 and

its data management records, as well as its correspondence with the Fund Member, and to certify that

that his / her personal data processed with the consent of the Applicant has been deleted, his / her records

a copy of the screenshot and a copy of the report supporting the deletion.

II. Applicable legal requirements

The protection of individuals with regard to the processing of personal data and such

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

Pursuant to Article 6 (1) of Regulation 2016/679 (hereinafter: the General Data Protection Regulation) a

the processing of personal data is lawful only if and to the extent that at least the following

one of the following is fulfilled: [...]

(c) processing is necessary for compliance with a legal obligation to which the controller is subject; [...]

In accordance with 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 upon receipt of the request

inform the person concerned of the reasons for not taking action within one month of

that the person concerned may lodge a complaint with a supervisory authority and have recourse to the courts

with the right.

Under Article 17 (1) of the General Data Protection Regulation, the data subject has the right to request

the data controller shall delete the personal data concerning him / her without undue delay, the data controller

and shall be obliged to provide the personal data of the data subject without undue delay

delete if one of the following reasons exists:

(a) personal data are no longer required for the purpose for which they were collected or otherwise

treated;

(b) the data subject withdraws the authorization provided for in Article 6 (1) (a) or Article 9 (2) (a);

consent to the processing and there is no other legal basis for the processing;

(c) the data subject objects to the processing pursuant to Article 21 (1) and there is no priority

there is a legitimate reason for the processing or the data subject objects to the processing pursuant to Article 21 (2);

(d) personal data have been processed unlawfully;

(e) personal data must be deleted in order to fulfill a legal obligation under Union or Member State law applicable to the controller;

(f) personal data have been collected in connection with the provision of information society services referred to in Article 8 (1).

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Pursuant to Article 17 (3) (b) of the General Data Protection Regulation, paragraph 1 shall not apply if the processing is necessary for the processing of personal data by the controller.

in order to fulfill an obligation under applicable Union or Member State law or to carry out a task carried out in the public interest or in the exercise of official authority vested in the controller.

The Öpt. 40 / C. § (6) f) for the performance of the activities of the fund, its records

up-to-date and safe management based on a security risk analysis

justified protection measures and shall have at least the following: [...]

(f) a data storage system capable of retrieving a statutory register which:

ensure that the archived material is for the period specified by law, but at least for that member

for 5 years after the termination of your membership, retrievable at any time, in its original condition

be retrievable in such a way as to preclude subsequent modification, [...].

The Accounting TV. Pursuant to Section 169 (1), the enterprise has prepared a report on the business year, the business

the report and the supporting inventory, valuation, extract from the general ledger and logbook,

or other records in a legible form in accordance with the requirements of the law for at least 8 years

must keep.

In accordance with paragraph 2, the accounting shall be directly and indirectly supported by the accounts

certificate (including general ledger accounts, analytical and detailed records), at least

It must be in readable form for 8 years, retrievable from the reference to the accounting records

keep.

A Pmt. Pursuant to Section 6 (1), the service provider is obliged to apply customer due diligence

(a) when establishing the business relationship;

b) when executing a transaction order in the amount of three million to six hundred thousand forints or more;

c) in the case of a merchant of goods, the amount of transactions equal to or exceeding HUF 2 million to five hundred thousand

when executing an order in cash;

d) in the amount exceeding three hundred thousand forints, as defined in Article 3 (9) of the Decree

when executing a transaction order that qualifies as a money transfer;

(e) in the case of a non-gambling betting operator, not in the case of remote gambling

in the case of betting organized by means of a non-communication device and system

payout of prizes equal to or greater than

in the case of betting organized by means of a device and system, reaching or exceeding six hundred thousand forints

when making a payment from a player balance of

(f) in the event of any indication, fact or circumstance indicating money laundering or terrorist financing,

if a screening as defined in points (a) to (e) has not yet taken place;

(g) if the authenticity or adequacy of previously recorded customer identification data

doubt arises.

A Pmt. According to § 7 (1) The service provider is obliged to do so in § 6 (1) and § 21 (1)

in a specified case, the customer, its proxy, the person entitled to dispose of it, and

identify the representative and verify his / her identity.

(2) The service provider shall record the following data during the identification:

(a) a natural person

aa) surname and first name,

ab) surname and first name at birth,

(c) his nationality,

(ad) place and date of birth,

ae) mother's birth name,

(af) his address or, failing that, his place of residence,

(ag) the type and number of its identification document;

(b) a legal person or entity without legal personality

(ba) his name, abbreviated name,

bb) in the case of its registered office, a company with a foreign seat, if it has the address of its branch in Hungary,

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bc) its main activity,

(bd) the names and positions of the persons authorized to represent him,

be) the identity of his delivery agent,

bf) in the case of a legal person registered in the court of registration, the company registration number, other legal person

the number or registration number of the decision on its creation (registration, registration)

number

bg) tax number.

A Pmt. According to the provisions of § 56 (1) The service provider participates in the performance of its duties under this Act
manager, assisting family member and employee in 7-11. §

personal data obtained solely for the prevention of money laundering and terrorist financing

and to carry out their tasks in order to prevent them

you can get to know and manage it to a great extent.

(2) The service provider shall comply with Articles 7 to 11. § in the course of fulfilling the obligation contained in §
is entitled to eight years from the termination of the business relationship or the execution of the transaction order
to treat.

A Pmt. According to § 57. (1) The service provider - in the register kept by him - §

data which do not constitute personal data obtained in the course of the performance of an obligation, including

data obtained in the course of electronic identification, as well as all other information related to the business relationship

in connection with the termination of the business relationship or the transaction order

for a period of eight years from the date of its performance.

(2) The service provider - in the register kept by it - shall comply with Articles 7-11. §

or a copy thereof, including in the course of electronic identification

the receipt of the document and the provision of data pursuant to § 42, the transaction

a document certifying the suspension of performance pursuant to § 34 and § 35, and a copy thereof, and

all other documents created in connection with the business relationship or copies thereof to the business

for eight years from the termination of the relationship or the execution of the transaction order

keep.

(3) The service provider specified in points (a) to (e) and (l) of Section 1 (1) shall

in the specified register, the amount reaches or exceeds the value of three million to six hundred thousand forints

is also obliged to record transaction orders executed in cash (in HUF or currency), which

information for eight years.

(4) The service provider shall provide the data and documents specified in Section 56 and (1) to (3), as well as

shall be deleted or destroyed immediately after the retention period.

III. Decision of the Authority

The Applicant requested the Applicant not to send it to him further

letters and delete them from its records as it has no contract with the Applicant.

The Applicant canceled the Applicant's membership status on 7 September 2018 and

data that must be kept in its register only in accordance with the provisions of law

are included. Deletion of data (e-mail address, telephone number) processed on the basis of voluntary consent of the membership

immediately upon termination of the legal relationship. The personal data of the Applicant with which

it will be deleted at the end of the retention period required to fulfill the legal obligation to process the data.

Pursuant to Article 17 (3) of the General Data Protection Regulation in the event that

data processing is a legal obligation applicable to the controller requiring the processing of personal data

personal data may not be deleted.

Different custody periods in accordance with the legal provisions applicable to the Applicant

applies to the personal data of the fund members, including the Applicant, processed by the Applicant.

The Öpt. 40 / C. § (6) f) the archive receives the archived materials in the legislation

for a specified period of time, but for at least 5 years after the termination of the membership of the given member,

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it must be kept retrievable at any time and can be restored to its original condition.

In order to preserve the various accounting documents, the Accounting TV. contains provisions, Article 169 of which

The accounting document supporting the accounting must be kept for at least 8 years in accordance with the provisions of §

kept in a legible form in a retrievable manner by reference to the accounting records.

The Applicant was appointed by Pmt. Pursuant to Section 6, it is subject to a customer due diligence obligation, which

the customer, its proxy, the person entitled to dispose of it, and the representative

identify and verify his identity. A Pmt. Section 56 (2)

personal data obtained in the course of the performance of this business relationship

for a period of eight years from the date of termination or execution of the transaction order. Also

for eight years from the termination of the business relationship or the execution of the transaction order

to keep the document obtained during the fulfillment of the customer due diligence obligation, a copy thereof

and all other documents created in connection with the business relationship or copies thereof.

Based on all this, it can be stated that the activities of the Applicant are regulated by law

provisions for different personal data or individual containing personal data

contain explicit provisions on the retention period of documents.

Based on the above, the Authority concluded that the Applicant had not violated the general data protection

Article 17 of the Regulation, provided that the Applicant's request for cancellation is entirely of a general nature

in accordance with Article 17 (3) (b) of the Data Protection Regulation

not fulfilled due to the fulfillment of. The Applicant processed personal data on the basis of consent - so

such as e-mail address, telephone number - for the purpose of deleting the Applicant's membership status and personal data.

immediately upon receipt of the complete application, which was canceled by the Applicant in its records

a copy of the screenshot and a copy of the cancellation report to the Authority. The

The legal basis for the further processing of personal data registered by him is Article 6 of the General Data Protection Regulation.

Article 1 (1) (c).

The Applicant was informed in detail about the decisions made by the Applicant following the cancellation request

Applicant, however, the information did not address the remedy available to the Applicant

you have the option of processing personal data by the controller in your opinion

violates the general data protection regulation.

Based on the above, the Authority rejects the Applicant 's request for deletion of personal data and

The applicant is convicted of his own motion because of the right of appeal against the

lack of information prevented the Applicant from exercising his right of appeal. The Requested

In its reply, the Commission set out the factual and legal reasons for rejecting the application, but did not

informed the Applicant of his remedies, in breach of the general data protection

Article 12 (4) of that Regulation.

However, the Authority draws the Applicant's attention to the fact that the rejection of the Applicant's cancellation request

does not imply that the different personal data or the individual containing them

documents can be handled and accessed by the data controller during their retention period

in the active stock of its register. From now on, the personal data of the Applicant is only mandatory

for purposes and in accordance with the legal provisions governing the processing of personal data

in order to archive and lock data and documents containing them, the relevant legal regulations

appropriate measures are needed in the light of the provisions of

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ARC. Other issues

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

the country

covers the whole territory.

CL of 2016 on General Administrative Procedure. Section 112 (16) of the Act (hereinafter: the Act).

§ (1) and § 114 (1) by way of an administrative action against the decision

there is room for redress.

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 Pursuant to Section 13 (11) the Metropolitan Court has exclusive jurisdiction. Act CXXX of 2016 on Civil Procedure.

Act (hereinafter: Pp.) - the Kp. Applicable pursuant to Section 26 (1) - Pursuant to Section 72 a

legal representation is mandatory in litigation falling within the jurisdiction of the tribunal. Kp. Pursuant to Section 39 (6) - if law does not provide otherwise - the filing of an application is an administrative act

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. Section 9 (1) of the Act

The client's legal representative is required to communicate electronically in accordance with paragraph 1 (b).

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 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: Itv.)

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

Section 62 (1) (h) exempts the party initiating the proceedings.

Budapest, June 7, 2019

Dr. Attila Péterfalvi

President

c. professor