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Dispute room

Decision on the merits 118/2022 of 27 July 2022

File number: DOS-2021-01011

Complaint against a CPAS for unlawful collection of

Regarding:

insufficient personal data

The Dispute Chamber of the Data Protection Authority, composed of Mr Hielke

Hijmans, chairman, and Messrs Dirk Van Der Kelen and Jelle Stassijns;

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 on the free movement of such data and revocation of

Directive 95/46/EC (General Data Protection Regulation), hereinafter GDPR;

In view of the law of 3 December 2017 establishing the Data Protection Authority,

hereinafter WOG;

In view of the regulations of

internal order, as approved by the Chamber of

Representatives on 20 December 2018 and published in the Belgian Official Gazette on

January 15, 2019;

Having regard to the documents in the file;

has made the following decision regarding:

The complainant:

X, [...], hereinafter referred to as “the complainant”, represented by Master Luc Coucke,

acting as administrator, established at Cordoeaniersstraat 17 – 8000

Bruges, hereinafter referred to as “the administrator”

The defendant:

Public Center for Social Welfare “Y”, [...], represented□

by master Wouter Rubens and master Willem Mariën, performing for□

‘GD&A Advocaten’, with offices at Antwerpsesteenweg 16-18 – 2800□

Mechelen, hereinafter referred to as “the defendant”□

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I. Facts and procedure□

1.□

The subject of the complaint concerns the unlawful collection of insufficient□

personal data concerning the complainant,□

in the context of her recording□

in the□

Residential care center “Z” (hereinafter, “the WZC”), located in [...].□

2.□

In October 2020, [...], director Burger & Welzijn, associated with the OCMW “Y” initiates□

(hereinafter, 'the CPAS/OCMW') a procedure for the appointment of a provisional administrator for□

both the assets and the person of X. By decision of 30 October 2020, the□

justice of the peace of the third canton [...] issued protective measures, in accordance with□

article 492/1 of the Civil Code. Master Luc Coucke is appointed as administrator and□

confidential counselor with regard to X. Since then he has therefore been involved in this□

capacity in the name and on behalf of the complainant.□

3. On November 10, 2020, the administrator will ask the Social Service of the OCMW for□

a state of affairs with regard to the application for a healthcare budget for□

people in need of severe care. On the same day, the OCMW answers that, in case there is insufficient□

income for admission to a rest home, an application for suretyship must be submitted□

where a statement of income must be provided. on November 11□

2020, the administrator will inform you on the basis of account statements that there will be□

of rental income and sickness benefits is enough money to pay the deposit. □

4. On December 8, 2020, the administrator submits an application to the WZC, in which he □

requests that X be included in the center and indicates that there is enough □

income, as a result of which a guarantee from the OCMW is not necessary, according to him. The □

However, the social service of the OCMW applies the following (own underlining): □

“If a person is definitively admitted to [the residential care center [...]] and under □

administration, our center must provide a surety. □

This is one of the internal rules between the residential care center and the OCMW. □

Is it possible to provide us with the following items so that we can forward the file to the committee □

can submit? □

You must provide us with the following supporting documents: □

- The account statements of all accounts (current and savings accounts) of the last 6 □

months with a statement of all income □

A state of affairs of the financial reserves (savings, investments,...) □

Evidence if the person concerned has property □

Copy of the identity card □

Any details of the children □

- □

- □

- □

- □

- Name of your family doctor □

- □

Notification if the person concerned has acquired funds from . in the past 10 years □

donations, sale of properties,....” □

The OCMW also requests clarification about what is meant by the □

rental income from the property and the associated costs; How much

properties the complainant owns, and how much rental income these properties generate.

The requested supporting documents must be submitted before 14 December 2020.

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5. On the question of the administrator whether a suretyship is required if there is sufficient

financial resources are, in view of the already attached statement of income, answers

the defendant again on December 8, 2020 that there is a suretyship upon administration

necessary, “regardless of [whether] there are sufficient or insufficient resources”¹.

6. On December 15, 2020, the administrator will be invited by letter to a hearing

regarding the admission of the complainant. The OCMW also informs him that there is no

social research could be carried out within the 30-day deadline, as it

OCMW was not allowed to receive the missing documents within the aforementioned period.

As a result, the file is adjourned to the Special Committee of the Social Service

of the CPAS “Y” (hereinafter, “the Special Committee”) of January 11, 2021. Finally, the

administrator that the Special Committee will provide the required surety

refuse if the missing documents are not transferred to the by that date

CPAS.

7. On December 15, 2020, the Autonomous Association [...] will issue a residence certificate

delivered, according to which the complainant was admitted to the WZC2 on the same day.

8. On December 16, 2020, the administrator will provide an overview and history of four

bank accounts in the complainant's name, the lease for lifelong rent, a

tax bill, and proof of ownership of a property. He also requests

exercising the right of access in accordance with Article 15 GDPR³.

9. On December 18, 2020, the PCSW asks for additional information about the financial

situation of the complainant, to which the administrator replies on 20 December 2020 with the

the complainant's last tax assessment in attachment and again indicates as administrator the

to wish to exercise the right of access on behalf of the complainant.□

10. On December 24, 2020, the administrator will be notified that the Special Committee□

of 21 December 2020 decided to adjourn the complainant's file to the□

Special committee of January 11, 2021, during which the additional documents□

administrator on December 16, 2020 will be further examined, because it□

social research could not be done in a timely manner.□

11. On 5 January 2021, the administrator informs [...] by e-mail that he does not agree with the□

decision taken by the Special Committee. In particular, he argues that the internal□

regulations between the OCMW and the WZC are not against him, that the request for the□

provide account statements for the last six months of all accounts□

disproportionate, and furthermore that there is no reason whatsoever to disclose far-reaching information□

1 Document 6 attached by the defendant to the statement of defense.□

2 Piece 1 joined by the complainant.□

3 Document 8 attached by the defendant to the statement of defense.□

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to ask if a guarantee is requested from a bank of your choice. Finally, the□

administrator to inform him of the applicable legal basis for the□

request information regarding the complainant, as well as its necessity and relevance□

of this information having regard to the principle of data minimum processing.□

12. On January 11, 2021, the Special Committee will declare that the CPAS will assess the financial situation of□

the complainant has investigated “following the application for a guarantee on□

8/12/2020” by the administrator, in the context of the complainant's admission to the□

WZC “Z”. The Special Committee proposes that an important part of the monthly□

complainant's income consists of rental income, “what an uncertain factor□

is”.□

In addition, the Special Committee points out that provisional administration ceases at□

death, and the last bill of stay as well as any funeral bill on that
are currently unpaid. Consequently, the Special Committee decides to proceed to a
"passive suretyship in collaboration with the provisional administration", whereby an admission to the WZC
is only possible on condition that the administrator blocks a deposit of EUR 5,000
at a bank of your choice, the official bank documents thereof are delivered to the
OCMW, and the WZC invoice is paid monthly with the income and
Plaintiff's savings.

13. On 14 January 2021, the administrator will receive an email from the official for
data protection (DPO) of the municipality [...]. This means that a residential and
care center may request a guarantee from the OCMW in the context of an admission,
if there is a chance that the invoices would not be paid and even if there
sufficient monthly funds to pay the withdrawal bills. Since a
administrator has been appointed, there is in fact a risk that he will not fulfill his mandate
extends after the death of the applicant, as a result of which all payments are suspended and the
possibility of an unattended estate. Considering the costs and time involved
accompanied by the appointment of a curator, the WZC wishes to cover itself against this
by requiring a suretyship. Furthermore, the DPO states that the OCMW is obliged to provide a social
to conduct a financial investigation, since there is a guarantee for admission to the WZC
is asked. The DPO also states that the provision of a guarantee and the
intervene in bills of residential and care centers are essential parts of the task
that the CPAS has to fulfill. The core mission of the CPAS, as contained in Articles 1
and 60 of the OCMW Act, after all, means that the PCSW must check whether any
intervention is justified, including by requesting account statements, in order to
to be vigilant about the use of community funds. In short, the FG keeps for
that the processing of the complainant's personal data by the CPAS is based on
article 6.1.c GDPR.

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14. On January 27, 2021, the CPAS and the administrator sign an agreement to□

blocking funds at the bank [...].□

15. On February 18, 2021, the administrator lodged a complaint on behalf of the complainant with the□

Data protection authority against the behavior of the CPAS “Y” and the WZC “Z”,□

and communicates the contact details of the municipal administration and the official for□

data protection of the municipality [...]. That same day, the Frontline Service of□

the GBA for clarification on the entity against which the complaint is directed.□

16. On April 23, 2021, the administrator confirms that the complaint is against the CPAS “Y”.□

On the same day, the complaint is declared admissible by the Frontline Service on the basis of:□

Articles 58 and 60 WOG, and the complaint on the basis of art. 62, § 1 WOG transferred□

to the Disputes Chamber.□

17. On July 12, 2021, the Disputes Chamber will decide on the basis of art. 95, § 1, 1° and art. 98 WOG dat□

the file is ready for treatment on the merits, and the parties involved are□

registered mail notified of the provisions referred to in Article 95, § 2,□

as well as those in art. 98 WOG. They are also, on the basis of art. 99 WOG notified□

time limits for submitting their defences. The deadline for□

receipt of the statement of defense from the defendant was thereby fixed at 6□

September 2021, this one for the complainant's reply on September 27, 2021□

and this for the defendant's reply on 18 October 2021.□

18. On 12 July 2021, the defendant requests a copy of the file (art. 95, § 2, 3° WOG),□

which will be transferred to him the same day.□

I.1. Response of the defendant□

19. On September 6, 2021, the Disputes Chamber will receive the statement of defense from the□

defendant, who requests the Disputes Chamber to dismiss the administrator's complaint□

point.□

20. First of all, the defendant states that the WZC is managed by the Autonomous association [...], and is therefore not a residential care center managed by the CPAS. The defendant also asserts that the demand for suretyship prior to a recording is apparent from the internal/household regulations of the WZC as well as the admission agreement submitted to the complainant by the WZC. Under the department inclusion conditions of the internal agreement note, namely the following: determined:

“The persons applying for admission must meet the following requirements to fulfil:

- Have reached the age of 65. This can be discussed.

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-

Provide a medical or nursing report of their general condition.

- The conclusion of a guarantee scheme for the payment of the stay in the WZC. This can be done via a private guarantee agreement or via a CPAS/OCMW suretyship.

Each application for inclusion is individually examined and handled by the social service of the WZC. This is done through a personal conversation with the social service.”

21. The admission agreement between the WZC and future residents also provides for the following (own underlining):

“Article 16

A deposit of 30 times the daily rate is required. Before the recording date, this must be done via a transfer to the account number [...] of Autonomous Association [...]. The deposit is deposited by the WZC on a personalized and blocked account and is only used to claim any damages for intentionally caused to pay damages or if the provisions of the agreement are not complied with. [...]

Article 17□

suretyship:□

□ The resident hereby declares that he has sufficient means and capacity to□

monthly the fixed daily price for the stay, the care and any□

to reimburse supplements to WZC “Z”.□

In addition, a separate guarantee agreement is concluded whereby the parties□

agree that when the debtor/occupier's obligations arise□

would not comply with the present recording agreement, the deposit, what the latter□

expressly accepts, will be held to do so unilaterally, jointly and severally and indivisibly.□

□ The resident hereby declares that he does not have sufficient means and assets□

to pay the fixed daily price for the stay, the care and any□

supplements to be reimbursed WZC “Z” and that a guarantee from the OCMW “Y”□

has been obtained.”□

22. The defendant emphasizes that he in no way□

vouches for□

(the□

content of) this□

policy documents, and points out that the WZC's insistence on a guarantee by□

the CPAS arises from some negative experiences from the past with□

administrators. The defendant argues that the administrator has filed an application for suretyship□

submitted to the OCMW, which in turn was obliged to draw up a social□

conduct a financial investigation.□

23. The defendant further states that it was not clear to him whether the transfer of□

statements of account from the administrator, as well as the notification that (i) a□

total income of €2,003.30 appears, (ii) there are funds available to pay the deposit and□

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(iii) no financial difficulties are anticipated, if a formal application for a

suretyship could be considered.

24. The defendant also emphasizes that, notwithstanding the extensive reply from the DPO of

[...] dated January 14, 2021 as well as the fact that the necessary suretyship was finally paid

delivered to the complainant and she is currently admitted to the WZC "Z", the administrator

filed a complaint with the GBA without prior response to the defendant.

25. The defendant argues that the complaint is very brief and at no time transparent

makes any reasons for dissatisfaction with the answer dated 14

January 2021 of the DPO of [...], with the result that the rights of defense of the

defendant be seriously compromised.

26. In addition, the defendant maintains that he never of his own accord

has requested certain documents and additional information about the social and financial

state of the complainant with a view to her admission to the WZC. In the

In particular, the defendant argues that the administrator has voluntarily turned to the

defendant because the WZC requires a (OCMW) guarantee as a sine qua non condition for

a recording of the complainant. In view of the fact that the administrator on behalf of the complainant

has submitted an application for suretyship to the OCMW, the latter was therefore entitled

to conduct an inquiry into the social and financial condition of the

complainant.

27. The defendant also submits, referring to Article 60, § 1 of the CPAS Act⁴

as well as the case law of the Constitutional Court⁵, which the OCMW through a social

research should examine whether the need for services (in this case, the requested

suretyship) exists and what its size is, whereby this investigation is the OCMW

should be able, if necessary, to refuse the requested service when

the applicant does not meet the conditions to enjoy them.

28. Regarding the nature and scope of the requested personal data,

let the

defendant that the complainant's obligation to provide "any useful information

her condition" to the CPAS also refers to her financial background.

29. In summary, the defendant argues that the processing of the requested

personal data about the complainant is indeed necessary to be able to comply with his

legal obligations arising from Article 60 of the OCMW Act.

4 Article 60 of the Organic Law of 8 July 1976 on public centers for social welfare, B.S., 5

August 1976: "§ 1. The intervention of the center is preceded, if necessary, by a social inquiry that concludes with

an accurate diagnosis of the existence and extent of the need for services and the most appropriate

propose means to do so. The person concerned is obliged to provide any useful information regarding his/her condition

and to inform the center of any new information that may have an impact on the assistance provided

it is granted to him [...]." (own underlining).

5 GwH October 1, 2015, no. 131/2015; GwH October 1, 2015, no. 133/2015; GwH May 18, 2017, no. 61/2017.

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30. Finally, with regard to the other principles of Article 5 of the GDPR, the defendant argues that

the data processing operations complained of by the administrator are justified,

since these were always necessary to achieve the intended purpose,

never went beyond what was necessary or proportionate, and moreover in the line of

reasonable (privacy) expectations.

I.2. Conclusion of the administrator's reply, on behalf of the complainant

31. On 26 September 2021, the Disputes Chamber will receive the statement of reply from the

the complainant's administrator.

32. The administrator first of all maintains that the CPAS, notwithstanding that, according to him,

it was shown that the complainant owned a property and the overview

of the accounts were communicated, continued to insist on the submission of, inter alia

the details of the children, the name of the general practitioner, as well as notification of all

funds raised in the past 10 years from donations, sale of

property and others.

33. The administrator further refutes that he volunteered to join the

OCMW to request a guarantee, as the WZC requires a guarantee in

cooperation with the CPAS and the decision of the latter expressly states

that the CPAS must provide a guarantee if a person becomes definitive

included in the WZC “Z” and is under administration, as a result of one of the

internal rules between the WZC and the CPAS “Y”. In short, the administrator states that there

no intervention from the OCMW was necessary at all, nor was a social and financial

investigation, since the CPAS was already aware that there were sufficient financial

resources and thus the CPAS was not required to grant aid.

34. The administrator also disputes the defendant's argument that a surety

necessary because the complainant is under administration. According to him, it is first

it is not correct that payments are suspended in the event of death, since the costs of the last illness

and residence are paid by the banks, regardless of whether the deceased was under administration

or not. Furthermore, the administrator refers to the specific suretyship of EUR 5,000

concluded between the CPAS and the complainant, as well as the fact that Article 499/19 BW

expressly provides for the possibility for any interested party to

the protected person to submit a request to the justice of the peace in order to

to authorize the administrator to carry out his assignment until no later than 6 months after the death

to practice. Accordingly, the administrator asserts that the distinction by

the CPAS between a person who is under administration or not in any way

to justify. The OCMW law does not provide for the condition that the complainant

must obtain a guarantee in order to be admitted to a WZC, nor that there is

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social and financial research is required if sufficient financial resources are available

to have available. On the contrary, the CPAS Act expressly states that the intervention□
of the CPAS "if necessary" has preceded a social investigation into the existence□
and the extent of the need for services and the most appropriate means to□
to provide it.□

35. Finally, the administrator maintains that the CPAS is wrongly gathering information□
and processing, by demanding the suretyship and by the social investigation whereby□
even to the details of the children, the name of the GP and the resources during□
requested in the last 10 years.□

I.3. Defendant's rejoinder□

36. On October 18, 2021, the Disputes Chamber will receive the statement of reply from the□
defendant, stating that it is not for the defendant to□
reason to the administrator's request for a (OCMW) guarantee□
delivery, as required by the WZC. The defendant also emphasizes□
that the criticism as to whether or not a surety was necessary in the present case was beyond the scope of the□
proceedings before the Disputes Chamber, since it is not the defendant who can do this□
decide, but only the WZC, so that the administrator has submitted the complaint□
against the wrong legal entity.□

37. The defendant also argues that the CPAS necessarily had to□
have all the requested information and documents in order to establish the existence and degree of□
to establish neediness on the part of the complainant. Based on the limited data□
which the administrator had already notified, in particular "some (selected)□
transactions in favor [of the complainant]", no sufficient insight could be obtained□
in its actual means of subsistence — according to the defendant.□

38. According to the defendant, it is therefore established that the administrator on behalf of the complainant□
an application for suretyship was submitted to the OCMW. In addition, the defendant argues□
established that the specific deposit of EUR 5,000 was not made until after or in execution of the□

decision of the Special Committee for Social Services to grant the suretyship□

to the complainant, and thus after conducting the social (financial) investigation. The defendant□

then argues that the fact that the complainant was able to block the required sum□

on an account, says little or nothing about her financial situation, which therefore had to be□

are examined by the CPAS.□

39. According to the defendant, the general principles of should also be taken into account□

good administration, which oblige the defendant to conduct a diligent and□

full social-financial inquiry, which necessarily implies an inquiry□

to all the complainant's means of subsistence.□

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40. Moreover, according to the defendant, the processing of the personal data of the□

the complainant may also be deemed necessary at least indirectly for the implementation□

of the admission agreement between the WZC and the complainant, represented by her□

receiver.□

41. Finally, in view of some particulars, the defendant requests to be heard□

which characterizes the file.□

I.4. Hearing on June 8, 2022□

42. On 2 May 2022, the parties will be notified that a hearing will be held□

take place.□

43. On June 8, 2022, the parties will be heard by the Disputes Chamber.□

44. The minutes of the hearing will be submitted to the parties on 15 June 2022.□

45. On June 22, 2022, the Disputes Chamber will receive some comments from the parties with□

with regard to the official report, which it decides to include in its deliberations.□

II. Justification□

II.1. Jurisdiction of the Dispute Chamber□

46. First of all, the Disputes Chamber points out that it has jurisdiction over the□

processing of personal data by local authorities established in Flanders, such as

the defendant, who must also be regarded as a Flemish administrative authority

as referred to in Article 2, 10° of the e-gov Decree⁶.

47.

In its advice no. 61.267/2/AV of 27 June 2017, which was issued in response to

the preliminary draft that led to the WOG, the Legislation Department of the Council of

State in detail

into the jurisdictional rules

on the supervision of

data protection⁷. The Council of State stated in the aforementioned preliminary draft that the

federal government can establish a supervisory authority with “a general”

jurisdiction [...] over all processing of personal data, including those that take place

in matters for which the Communities and the Regions are competent”⁸. “A

such arrangement is without prejudice to the competence of the communities and

regions,

[...]”, according to the Council of State⁹. As a result, the federal states

supervisory authorities, according to the Council of State, are only authorized to

⁶ See also: <https://overheid.vlaanderen.be/digitale-overheid/is-uw-organisatie-een-vlaamse-bestuursorganisatie>.

⁷ Adv.RvS no. 61.267/2 of 27 June 2017 on the preliminary draft law ‘to reform the Commission for the

protection of privacy’, pp. 28-45.

⁸ Ibid., p. 12, para. 5.

⁹ Ibid., p. 12, para. 6.

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monitor the specific rules they have issued for

data processing in the context of activities under their jurisdiction, and

this, of course, only to the extent that the GDPR still allows Member States to adopt specific provisions

to be determined and the provisions of the WOG are not affected.□

48. In short, the DPA is, as a federal supervisory authority, in accordance with Article 4 WOG□

the competent authority to supervise the general rules, including the mandatory□

provisions of the GDPR that do not require further national implementation¹⁰. This is it too□

case if the data processing relates to a matter covered by the□

competence of the communities or regions and/or□

if the□

controller is a government agency operating under the communities or□

the regions, even if the Land itself has a supervisory authority in□

established within the meaning of the GDPR. It follows from the above that the Flemish administrations are□

subject to the directly applicable provisions of the GDPR and that the DPA□

is authorized to act in this case. The Disputes Chamber also has this power in□

previous decisions confirmed, based on a more detailed justification.¹¹□

II.2. Responsibility of the Defendant for the Disputed Processing□

49. The Disputes Chamber understands from the defenses of the CPAS “Y” that the complaint would□

are directed against the wrong controller, in the sense that the processing□

of the complainant's personal data by the defendant would result from a□

request for this by the WZC “Z”. The defendant also argues that the administrator□

himself, voluntarily addressed the defendant with a view to providing suretyship.□

50. However, the Disputes Chamber decides that the defendant's position cannot be□

followed for the following reasons.□

51. First of all, it is established that the admission agreement between (future) residents and the□

WZC expressly provides for the requirement, in the event that a resident has insufficient□

resources, to obtain a guarantee from the CPAS “Y” (defendant).□

In addition, the data protection officer of the defendant in□

his e-mail dated 14 January 2021 to the administrator that a residential and care center has a□

may request a guarantee from the OCMW in the context of an admission, “even if there is

are sufficient monthly resources to pay the admission bills” and certainly if there is a

10 See also e.g. Adv.RvS, no. 66.033/1/AV of 3 June 2019 on a draft decision of the Flemish Government of 10

December 2010 ‘implementing the decree on private employment services, with regard to the introduction of a

registration obligation for sports agents', p. 5, para. 5.3; Adv.RvS., no. 66.277/1 of 2 July 2019 on a draft decision

of the Flemish Government ‘concerning the further rules for the processing, the storage and the evidential value of the

electronic data on allowances in the context of family policy', p. 7, para. 5.3.

11 See inter alia, Decision 31/2022 of 4 March 2022, paragraphs 25-43.

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administrator is involved, as well as that the CPAS is obliged to provide a social-financial

to conduct an investigation as soon as a deposit is requested for admission to the WZC.

52. On the basis of the above elements, the Disputes Chamber considers that it has been sufficiently proven in the present case

that the WZC offered no other choice to the administrator of the

complainant than applying for a suretyship from the defendant and undergoing

a comprehensive inquiry into the complainant's social and financial situation

— including personal data of relatives — notwithstanding the fact that the

administrator repeatedly provided evidence that the defendant had no financial

should provide support.

53. At the hearing, the defendant again expressly confirmed that the social security

financial investigation into the complainant was initiated as a result of the

request of the administrator to obtain a suretyship from the defendant. The

In particular, the defendant took the position that it in no way belongs to him to

examine whether the condition for the first option provided for in Article 17 is met

of the admission agreement¹², in particular whether the resident has declared sufficient

resources and capabilities.

54. In that regard, the Disputes Chamber notes, however, that the defendant during the

hearing has never disputed that the administrator immediately

had indicated that sufficient financial resources were available. The question that the

The Disputes Chamber has to examine below, therefore, is to what extent the defendant

mere application to obtain a suretyship could immediately proceed to a

extensive social-financial research and could lawfully call upon

Article 60 of the OCMW Act.

12 See para. 21 of this decision.

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II.3. Necessity and lawfulness of the processing

55. Although it does not belong to the Disputes Chamber to judge to what extent the

amounts of the sources of income of the raised by the administrator

complainant actually suffice for her admission to the WZC, does it stand for the

The Disputes Chamber nevertheless established that the defendant should have checked in the first instance in

to what extent the complainant has sufficient income, especially since

the administrator had stated several times, both at the WZC and in the context of

exchanges with the defendant, that sufficient financial resources were available

to have the complainant admitted without a CPAS guarantee.

56. The fact that a legal provision gives a controller the possibility

offers to process personal data, does not mean that this processing also

is systematically necessary. Article 60 of the OCMW Act explicitly states that a

prior social research should only take place when necessary (“as needed”).

In order to invoke Article 6.1.c of the GDPR, the defendant must

to be able to demonstrate in words that the legal obligation incumbent on him is effectively up to the

intended processing, which in view of the above was not the case in the

present case.

57. The Disputes Chamber therefore finds that the defendant has respected the principle of lawfulness

of Article 6 GDPR, in particular Article 6.1.c. Superfluously adds the

The Disputes Chamber admits that an assessment against Article 6.1.e of the GDPR is not an issue, in view of the
the fact that the necessity of the processing is explicitly described in a legal provision.

58. By merely referring to the responsibility of the WZC, to the application of
the administrator, or according to the legal provision that intervenes in the
moreover, the defendant does not yet escape his obligation with
with regard to the principle of data minimum processing.

59. First of all, it does not seem relevant to the recording in which way or in which organism a
specific guarantee of EUR 5,000 has been obtained, as long as the required guarantee of 30
times the daily price is deposited into the account number of the administrator of the WZC¹³.
Furthermore, the Disputes Chamber rules that the mandatory suretyship with the OCMW, such as
provide for the internal arrangement between the WZC and the defendant, not only is at odds with
Articles 16 and 17 of the recording agreement, but also an infringement of
Article 5.1.c GDPR entails.

60. After all, Article 5.1.c GDPR lays down the principle of minimum data processing, which
assumes that only personal data that is adequate, relevant and

¹³ Piece 2 to the defenses of the defendant: Admission agreement between the resident and WZC “Z”, Article 16 and
Article 17. See para. 21 in this decision for the content of these provisions.

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be limited to what is necessary for the purposes intended.

By virtue of that principle, which is closely related to the principle of necessity,
controllers determine in advance whether they will actually process the personal data
need to process for their purposes, and whether the latter cannot reasonably
be achieved with less personal data or with less detailed
personal data, or even without processing personal data at all¹⁴.

61. In view of the documents submitted and the statements made by both parties during the

hearing, the Disputes Chamber decides that the defendant, who has an extensive social financial investigation progressed notwithstanding the statements of the administrator regarding the presence of sufficient resources, has infringed Article

5.1.c GDPR.

62. The question whether such a social-financial investigation actually took place is inadequate. As confirmed by the Court of Cassation, each person concerned has after all, the right to file a complaint with the GBA against a processing practice which he believes infringes his rights under the GDPR, such as the right to have his personal data processed as a minimum so that he can benefit or can benefit from the service, even in the case where the person concerned does not personally receive the benefit or service and his personal data were therefore not processed because he, precisely because of the existence of the alleged infringing practice, the processing has refused¹⁵.

63. The Disputes Chamber rules in this regard that the defendant has infringed Article 60 of the OCMW Act could only invoke as a lawful ground for the processing of personal data, to the extent that the performance of a social-financial investigation is actually necessary used to be. If, on the other hand, a person concerned declares in good time that the intervention of a CPAS is not (any longer) required, and provides sufficient relevant evidence for this purpose, a In other words, OCMW to stop carrying out social-financial research, or at least limited to an examination of the evidence already submitted, without systematically request additional information.

64. Of course, the principle of minimum data processing also applies during the implementation of the social-financial research. Given the specific purposes of a such investigation, the Disputes Chamber doubts whether personal data such as the identity of the children as well as the contact details of the general practitioner of the person concerned are adequate are for the intended objectives. By way of example, the Disputes Chamber determines

14 Recital 39 GDPR: “[...] Personal data may only be processed if the purpose of the processing is not
could reasonably be achieved by other means [...]”. See also EDPB Guidelines 4/2019 on Article 25
data protection by design and by default (October 20, 2020), para. 73-76.

15 Cass., Judgment no. C.20.0323.N of 7 October 2021, para. 3.

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that the defendant both in its written defenses and during the hearing

failed to provide any evidence as to why the physician's contact information for the

purposes of the social-financial research were relevant. Thus, at least for

that data violated the purpose limitation principle (Art. 5.1.b GDPR).

65. Finally, the Disputes Chamber decides that the . submitted by the defendant

necessity to systematically provide a surety in the presence of administrators

obtained from the defendant, is insufficiently substantiated by documentary evidence. It stands for the

The Disputes Chamber has established that such an internal arrangement between the WZC and the OCMW,

taking no account of the specific, individual circumstances

of the data subject and the processing of numerous personal data simply as

sine qua non is raised, the general principles of minimal

data processing and lawfulness of processing.

66. Taking into account the foregoing elements, the Disputes Chamber rules that the

violations of the principles of lawfulness (Art. 6 GDPR), purpose limitation (Art. 5.1.b GDPR) and

minimum data processing (Art. 5.1.c GDPR) are sufficiently proven by the defendant.

III. Publication of the decision

67. In view of the importance of transparency with regard to the decision-making of the

Litigation Chamber, this decision is published on the website of the

Data Protection Authority. It

however, it is not necessary that the

identifiers of the parties are disclosed directly.

FOR THESE REASONS,

the Disputes Chamber of the Data Protection Authority decides, after deliberation, to:

- Pursuant to Article 100, § 1, 5° WOG and Article 58.2.b) GDPR, a reprimand

formulate in respect of the defendant for the violation of the principles of

legality

(Art. 6 GDPR), purpose limitation

(art. 5.1.b GDPR) and minimum

data processing (art. 5.1.c GDPR) in the context of the mandatory provision of

personal data

in the context of a social-financial survey by the

defendant, in the absence of proven need for such an investigation.

- Pursuant to Article 100, § 1, 9° WOG and Article 58.2.d) GDPR, to order that the

processing is brought into line with the GDPR by the internal regulation

between the WZC and the defendant to such an extent that those involved no longer

be required to obtain a surety bond from the defendant without

prior, specific assessment of the need of such

suretyship.

Pursuant to Article 108, § 1 of the WOG, within a period of thirty days from the

notice against this decision, an appeal may be lodged with the Marktenhof (court of

profession Brussels), with the Data Protection Authority as defendant.

Such an appeal may be lodged by means of an adversarial petition that the

should contain the entries listed in Article 1034ter of the Judicial Code¹⁶.

The adversarial petition must be submitted to the registry of the Marktenhof

in accordance with article 1034quinquies of the Ger.W.¹⁷, or via the e-Deposit

IT system of Justice (Article 32ter of the Ger.W.).

(get) Hielke HIJMANS ☐

Chairman of the Disputes Chamber ☐

16 The application states on pain of nullity: ☐

1° the day, month and year; ☐

2° the surname, first name, place of residence of the applicant and, where applicable, his capacity and his national register or ☐

3° the surname, first name, place of residence and, where applicable, the capacity of the person to be ☐

company number; ☐

summoned; ☐

4° the subject matter and the brief summary of the grounds of the claim; ☐

5° the court before whom the claim is brought; ☐

6° the signature of the applicant or of his lawyer. ☐

17 The application with its appendix, in as many copies as there are parties involved, is sent by registered letter ☐

sent to the clerk of the court or deposited at the clerk's office. ☐