

Decision on the merits 13/2019 of 17 December 2019

Litigation Chamber

File number: DOS-2019-04234

Subject: Rights of the data subject, non-removal of registered mail - fine

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

Hijmans, Chairman, and Messrs. Romain Robert and Dirk Van Der Kelen;

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 the free movement of such data, and repealing Directive 95/46/EC (general regulation on the data protection), hereinafter GDPR;

Considering the law of December 3, 2017 establishing the Data Protection Authority (hereinafter LCA);

Having regard to the internal regulations as approved by the House of Representatives on

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision:

1. Facts and procedure

1. The complainant's complaint against the controller has been declared admissible by the Service frontline on August 14, 2019.

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2. The complaint and the facts it relates can be summarized as follows. The complainant used the services from the specialist treatment manager in specialist nursing to receive several health care. She received from the managing director of the controller (an a.s.b.l.), a letter dated May 13, 2019, in which the latter informs users of the services of the responsible for the processing of his presence, alongside two other political personalities, on a electoral list for the regional elections of 29 May 2019).

3. Following this fact, the complainant attempted to exercise her rights of access (herself) and erasure (by through his counsel) with the controller, and alleges that the latter has not given no action.

4. In this context, counsel for the complainant lodged a complaint with the Authority.

5. On August 26, 2019, pursuant to Article 95, § 1, 1° and Article 98 of the law of December 3, 2017 establishing the Data Protection Authority, the Litigation Chamber decides that in this concerning the complaint lodged by the complainant, the case can be dealt with on the merits. A calendar exchange of conclusions is set by this decision and the parties are informed by letter registered with acknowledgment of receipt dated August 26, 2019 and sent the same day.

6. Registered mail (with acknowledgment of receipt) sent to the attention of the controller will be returned to the Litigation Chamber by bpost as "UNCLAIMED". The same mail will be returned on October 1, 2019 by registered mail with acknowledgment of receipt also, to the person in charge of the treatment. This letter will also be returned to the Litigation Chamber by bpost as " NOT DEMANDED ".

7. In the meantime, the complainant will have communicated her conclusions by letter dated October 15, 2019 received on October 16, 2019. She first develops the reasons why she believes that there has been in the head of the controller a breach of Articles 12 and 15 of the GDPR, which would be all the more more serious than the processing of special categories of data referred to in Article 9 of the GDPR. She also explains how she believes there has been a violation of Article 17 of the GDPR (the responsible for processing does not demonstrate on what basis, under Article 6 of the GDPR, it processes the data, these would be illicit in particular since it would have moved away from the purposes of the processing by sending a mail with political tendencies, the data having to therefore be deleted). Considering the services offered to the complainant by the head of the processing, the complainant assumes that it is processing special categories of personal data personnel referred to in Article 9 of the GDPR. It requires the controller to comply to the complainant's requests, under.

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2. Referral□

8. The complainant has explicitly lodged with the Authority a complaint for violation of Articles 12□

and 15 GDPR by the controller.□

9. The complainant ends the statement of the facts of her complaint (, with these two paragraphs:□

“By its letter of May 13, 2019, ASBL Y has completely distanced itself from the purposes of□

treatment that are legitimately expected by users of a healthcare platform□

nurses.□

By letter dated August 12, 2019, the complainant also (through her counsel)□

requested the erasure of their personal data. However, she intends to file a complaint□

with the Data Protection Authority for breaches of the right of access and□

right to transparency which are nevertheless recognized by articles 12 and 15 of the GDPR”.□

10. In her submissions, the Complainant “requests that the Respondent be ordered to□

comply with its requests relating to the exercise of its rights, with regard to the alleged violation of the□

articles 12 and 15 of the GDPR, and it “therefore requests the erasure of all personal data□

personnel which concern it and which are still held by the defendant”, with regard to□

the alleged violation of Article 17 of the GDPR. She maintains in her conclusions that no follow-up has□

been reserved for his requests, and concludes asking the Litigation Chamber to:□

Declare the complaint admissible and founded;□

Order the data controller to comply with the complainant's requests in order to□

to allow him to exercise his rights within the month of the decision under penalty of a penalty of 1000□

EUR per day of delay;□

Order the erasure of the complainant's data held by the data controller□

treatment and notification thereof to the complainant within one month of the decision, under penalty of□

penalty payment of EUR 1,000 per day of delay.□

11. On the basis of these elements (above, points 8 to 10), the Litigation Chamber is only
seizure of the following alleged facts: the lack of follow-up given by the controller, to the
requests to exercise her right of access and right to erasure of the complainant, in violation of the
articles 12, 15 and 17 of the GDPR. For the remainder, the complainant would remain free to seize the Authority of a
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new complaint if it turns out later that the controller has not processed the
personal data concerning him in accordance with the GDPR.

3. Reasons for the decision on breaches

12. Article 15 of the GDPR provides that:

“1. The data subject has the right to obtain from the controller confirmation
that personal data relating to him are or are not being processed and,
when they are, access to said personal data as well as the information
following:

a) the purposes of the processing;

(b) the categories of personal data concerned;

c) the recipients or categories of recipients to whom the personal data
have been or will be communicated, in particular recipients who are established in
third countries or international organisations;

d) where possible, the retention period of the personal data
envisaged or, where this is not possible, the criteria used to determine this duration;

e) the existence of the right to request from the controller the rectification or
erasure of personal data, or restriction of data processing

of a personal nature relating to the person concerned, or the right to oppose this
processing;

f) the right to lodge a complaint with a supervisory authority;

g) when the personal data is not collected from the person

concerned, any available information as to their source;

h) the existence of automated decision-making, including profiling, referred to in Article 22,

paragraphs 1 and 4, and, at least in such cases, useful information concerning the logic

underlying data, as well as the significance and anticipated consequences of such processing for the

concerned person.

2. When the personal data is transferred to a third country or to a

international organization, the data subject has the right to be informed of the guarantees

appropriate, under Article 46, with respect to this transfer.

3. The controller provides a copy of the personal data making

the object of treatment. The controller may require the payment of fees

reasonable based on administrative costs for any additional copies requested

by the person concerned. When the person concerned submits his request by

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electronic, the information is provided in a commonly used electronic form,

unless the data subject requests otherwise.

4. The right to obtain a copy referred to in paragraph 3 does not affect the rights and freedoms

of others".

13. Article 17, 1. of the GDPR provides in particular that the data subject has the right to obtain

responsible for processing the erasure, as soon as possible, of personal data

concerning it in a series of hypotheses that it defines, and insofar as one of the hypotheses of

Section 17.3. is not met in this case.

14. In the case of requests by the data subject to exercise his right of access in accordance with

Article 15 of the GDPR and its right to erasure of data in accordance with Article 17 of the GDPR,

Article 12, 3., of the GDPR, provides that:

“The controller shall provide the data subject with information on the measures
taken following a request made pursuant to Articles 15 to 22, as soon as possible
and in any event within one month of receipt of the request. If needed,
this period may be extended by two months, taking into account the complexity and the number of requests.
The controller informs the data subject of this extension and the reasons for the
postponement within one month of receipt of the request. When the person
concerned submits its request in electronic form, the information is provided by
electronically where possible, unless the data subject requests that it be
other ”.

15. In this case, the complainant sent by registered mail to the attention of the head of the
processing dated June 7, 2019, a request to exercise his right of access under Article 15
of the GDPR. She essentially requested a copy of the data that would be processed about her
as well as a series of information, namely the categories of data held, the purposes of
processing, the retention period of the data and the categories of recipients to whom the
data is communicated. The address given in this letter is as follows: ASBL Y

16. The complainant provided a document according to which on June 29, 2019, the registered mail would not have
not been claimed by its recipient and would therefore have been returned to the sender.

17. Counsel for the complainant in turn sent a letter, ordinary this time, dated August 12, 2019
to the controller in which, in essence, he finds that at the end of a period of one
months, the complainant's request was not followed up, formally puts the
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controller to delete the personal data concerning the complainant,
and informs of the referral to the Authority of a complaint for breaches of Articles 12 and 15 of the
GDPR. This is a simple letter, sent to the address mentioned above.

18. The complainant alleges that this letter was not followed up either.

19. There is nothing in the file to cast doubt on the failure to act on the two

requests sent by the complainant to the attention of the controller. On the contrary, the

following developments will demonstrate that the Litigation Chamber also encountered

difficulties in contacting the controller.

20. In this context, the Litigation Chamber finds, on the basis of the documents in the file, that in the

period of one month enshrined in Article 12, 3. of the GDPR, the controller remains

silent and did not inform the complainant or the measures taken following her requests in application

of Articles 15 and 17 of the GDPR, nor of the reasons why this period should be extended, and has not

communicated any information to the complainant under Article 15 of the GDPR. Consequently, the

controller has breached the obligations set out in Articles 12, 3., and 15 of the

GDPR.

4. Reasons for Decision on Corrective Measures

21. It is important to contextualize the breach of Articles 12, 3., and 15 (above, points 12-20)

in order to identify the most appropriate corrective measures. In the first letter addressed to

data controller, the complainant noted that she “currently uses the services of [the a.s.b.l.]

for blood tests. In the letter sent by the managing director of the head of the

treatment to the complainant, Ms. Z appears in her signature as “nurse specializing in

Oncology”. In her conclusions, the complainant explains that she suffers from serious health problems,

called on the services of the data controller and that nurses therefore went to the

her several times in order to carry out various treatments.

22. In view of these elements, the Complainant rightly considers in her conclusions that it is

is likely that the controller processes the special categories of data referred to in

Article 9 of the GDPR, namely in this case, data concerning health. Bedroom

litigation considers that there are documents in the file that the controller is processing

health data.

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23. However, the legal regime reserved for the processing of such data in Article 9 of the GDPR is motivated by the significant risk that this type of processing may entail for the rights and freedoms of persons concerned. Recital 51 of the GDPR provides in this respect that the "data to be personal character which are, by nature, particularly sensitive from the point of view of the freedoms and fundamental rights deserve specific protection, because the context in which they are processed could create significant risks for these freedoms and rights".

24. With regard to the processing of special categories of data, the importance of being able to verify lawful processing through the exercise of her right of access is all the greater for the complainant. In the present case, in view of the mail relating to the elections that she received and the author thereof (more above, point n° 2), namely an administrator of the controller, the complainant may legitimately be concerned about whether or not the controller has experienced a breach of data, and rightly consider that a data leak could have consequences detrimental to his situation. The silence of the data controller is all the more worrying.

25. Since the controller did not respond to the complainant's requests, the Chamber litigation considers that it is appropriate first of all, pursuant to Article 100, § 1, 6° of the LCA, to order the controller, within 20 working days from the notification of hereof (the date on which this decision is sent by the registry is worth the date of notification) and therefore notwithstanding the deadlines set out in Article 12 of the GDPR due to the context just mentioned: in first, to comply with the complainant's right of access request, in accordance with to Articles 12 and 15 of the GDPR; and secondly, to comply with the request erasure of the complainant, in accordance with Articles 12 and 17 of the GDPR.

26. Next, the Litigation Chamber considers that in this case, the breach of Articles 12, 3., and 15 of the GDPR, considered in its context, justifies the imposition of an administrative fine in accordance with articles 100, 13° and 101 of the LCA as well as 83 of the GDPR. The nature of the processing (Article 83, 2., a) of the GDPR), as it appears from its context (above, points 21-24),

also implies that the breach of Articles 12, 3., and 15 of the GDPR is serious. Bedroom

litigation does not have elements, in the file, with a view to assessing b) to k) of

Article 83, 2., of the GDPR. It considers that in this case, a fine of EUR 2,000 for this breach

is effective, proportionate and dissuasive in accordance with Article 83, 1., of the GDPR.

27. Given the importance of transparency with regard to the decision-making process and the

decisions of the Litigation Chamber, this decision will be published on the Authority's website

data protection by deleting the direct identification data of the parties

and persons cited.

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FOR THESE REASONS,

THE LITIGATION CHAMBER,

pursuant to Article 100, § 1, 6° of the LCA, orders the a.s.b.l. Y, within 20 days

working days from the notification of this decision (the date of dispatch of this decision

by the registry is worth the date of notification):

as a first step, to comply with the right of access request of the

complainant, in accordance with Articles 12 and 15 of the GDPR, notwithstanding the deadlines

enshrined in Article 12 of the GDPR;

and secondly, to comply with the request to erase the

complainant, in accordance with Articles 12 and 17 of the GDPR, notwithstanding the deadlines

enshrined in Article 12 of the GDPR;

pursuant to articles 100, 13° and 101 of the LCA as well as 83 of the GDPR, imposes on the a.s.b.l.

Y, a fine of 2000 EUR for breach of Articles 12, 3., and 15 of the GDPR, in

reason for the aforementioned shortcomings;

and finally, decides that this decision will be notified to the a.s.b.l. Y by mail

registered with acknowledgment of receipt and by ordinary mail.

28. This decision may be appealed within thirty days from the

notification, to the Court of Markets¹ (article 108, § 1 of the LCA), with the Authority for the protection of

given as defendant.

Hielke Hijmans

President of the Litigation Chamber

¹ The Brussels Court of Appeal.