

Case number: NAIH-3173-9/2022. Subject: decision partially granting the request

H A T A R O Z A T

The National Data Protection and Freedom of Information Authority (hereinafter: Authority) [...]

based on the application submitted by the applicant (hereinafter: Applicant) on February 21, 2022

regarding the improper fulfillment of a stakeholder request with [...] (hereinafter: Respondent)

makes the following decision in the official data protection proceedings against:

I. The Authority's request for the Authority to oblige the Applicant to

to delete illegally processed personal data,

rejects.

II. 1. The Authority, in response to the Applicant's request for the Authority to establish that the

The applicant did not

informative

obligation

complied with the data subject's request a

gives place and

II.2. finds that the Respondent has violated the personal rights of natural persons

on the protection of data in terms of processing and the free flow of such data, as well as

Regulation 2016/679 (EU) repealing Directive 95/46/EC (hereinafter:

GDPR or General Data Protection Regulation) Article 12 (3), furthermore

II.3. obligates the Applicant to initiate the judicial review

the expiry of the deadline for filing an action, or the decision of the court in the case of initiation of a review

provide the Applicant with information submitted on the basis of Article 17 of the GDPR within 3 days

regarding the fulfillment of your cancellation request.

II.3. the fulfillment of the obligation of the Respondent from taking the measure

must be in writing within 15 days - the supporting evidence, i.e. written to the Applicant

together with the submission of a copy of the letter and the document certifying its dispatch - to be verified by the Authority

towards. In case of non-fulfilment of the obligation, the Authority orders the execution of the decision.

\* \* \*

There is no place for administrative appeal against this decision, but from the announcement within 30 days with a claim addressed to the Capital Tribunal in a public administrative case can be attacked. The claim must be submitted to the Authority, electronically<sup>1</sup>, which is the case forwards it to the court together with its documents. The request to hold the hearing must be indicated in the statement of claim

<sup>1</sup> The NAIH\_KO1 form is used to initiate the administrative lawsuit: NAIH KO1 form (16.09.2019) The form can be filled out using the general form filling program (ÁNYK program).

must For those who do not benefit from the full personal tax exemption, the administrative court fee HUF 30,000, the lawsuit is subject to the right to record the levy. In the proceedings before the Metropolitan Court, the legal representation is mandatory.

## JUSTIFICATION

### I. Procedure of the procedure

I.1. At the request of the Applicant, on the right to self-determination of information and freedom of information CXII of 2011 Act (hereinafter: Infotv.) on the basis of Section 60 (1) February 2022

On the 22nd, official data protection proceedings were initiated.

I.2. In its order, the Authority invited the Applicant to make a statement to clarify the facts

order, with reference to the 2016 CL. law (a

hereinafter: Ákr.) to § 63, to which the Respondent's answer was received on March 25, 2022

and to the Authority (document No. NAIH-3173-3/2022).

I.3. Based on the Respondent's statement, the Authority considered that clarification of the statement because of this, it is again necessary for the Applicant to make a statement in order to clarify the facts to call him, therefore he called him again to make a statement in order to clarify the facts in May 2022 in its order dated the 30th, to which the Applicant submitted to the Authority on the 14th of June 2022 he sent his statement in the letter he received (document No. NAIH-3173-6/2022).

I.4. The Authority NAIH-3173-7/2022., NAIH-3173-8/2022. s. notified in his documents that the

The Applicant and the Respondent that the evidentiary procedure has been completed and drew their attention to make a statement or comment. Neither the Applicant nor the Respondent exercised his right to inspect documents and make a statement.

## II. Clarification of facts

### II.1. The Applicant submitted the following in his application:

RRF-6.2.1. for the implementation of residential free solar panel system no

With a request. The Respondent's regional sales manager - [...] - to prepare the quotation, and requested sensitive, confidential data for the conclusion of the contract, which the Applicant requested also sent The Applicant did not accept the price offers.

On January 5, 2022, the Applicant asked the regional sales manager in writing that the Delete confidential data sent by the applicant and notify the applicant accordingly. THE no response to the request was received, therefore on January 14, 2022, the Applicant - the Respondent in the e-mail addressed to his director - repeatedly requested the deletion of his personal data and that notification of this. According to the Applicant, no response was received to the stakeholder request.

In the request sent to the Authority, the Applicant asked the Authority to oblige the You are requested to delete your personal data and to be notified thereof, and oblige the You are requested to assure the Applicant that his personal data has not been leaked unauthorized possession of a third party.

### II.2. The Applicant NAIH-3173-3/2022.sz. according to his statement on file:

He did not dispute what was presented by the Applicant, he only clarified it, since according to his point of view a personal data are not "sensitive and confidential" data, as they are not considered special personal data.

The Respondent has attached a sample assignment contract in which the parties concerned, such as the Applicant also made his personal data available: Based on the assignment contract sample a

the parties involved conclude a contract with the Application and the sales partner, and the following is personal

data are provided:

- name,
- His mother's name,
- 
- 
- 

residential address,

place and time of birth,

mailing address.

Following the request, measures were taken to delete the data immediately, it was deleted on 14.01.2022

line, which is why the Applicant's personal data is no longer being processed. Unfortunately, the

The Applicant's request to get back to him was avoided by the Respondent

attention, therefore they did not respond to the Applicant.

In the case of the Applicant, only such data as the quotation was handled by the Respondent

was necessary for its preparation (contact data, basic personal data, building technical

data, pictures of the property, electricity supplier bills, network usage contract), and

During a telephone conversation, he provided the data of the data request form used by the respondent

Applicant.

The Applicant made a statement [...] about the deletion of his personal data, which was a

The applicant attached to his statement. [...] statement of 21.03.2022. date, not that day

includes when the data was deleted.

II.3. The Applicant NAIH-3173-6/2022. s. statement filed in the file

[...] is the data processor of the Respondent, but a data processing contract was not concluded with him because

the assignment contract concluded with him complies with the requirements of Article 28 of the GDPR. His claims

in support of this, the Respondent attached a copy of the referred contract, dated October 2020

1 shall apply with effect.

The Respondent considers [...] to be a data processor, the commission contract concluded with him states that performs its tasks as a contributor and cannot hire another contributor, such as a data processor avail. [...], as a sales partner, must upload everything to the internal system of the Applicant offer and contract that you receive from customers. The Requested shall provide [...] with instructions, furthermore, [...] is obliged to comply with the Sales Network Operating Regulations of the Applicant. THE You can also give instructions within your internal system and through your internal system continuously updated study material is also available in connection with the management of personal data. If the Respondent's agent does not comply with what is written therein, so in this case [...], then penalty obliged to pay. The referenced regulation also stipulates that if personal from the data subjects If you receive a request regarding the processing of your data, you must notify the Requested Party, where according to an appropriate decision-making procedure arrange for the data to be modified, deletion.

The cancellation request of the Applicant dated 05.01.2022 was submitted by the sales partner, i.e. [...] and the Applicant customer service, the request of 14.01.2022 was received directly by the Respondent. THE The Request was examined by the Requested Party and the cancellation was immediately complied with on 14.01.2022. on the day of The minutes and statement about the cancellation taken on January 14, 2022 by the Requested forwarded a copy to the Authority. According to the protocol, the surname of the Applicant, your first name, address, e-mail address and phone number have been deleted by the Requested internal system, and it was also established that "no contract was entered into, personal data there is no legitimate interest in keeping it."

The Respondent submitted that [...] also executed the deletion of the personal data stored with him, about this made a statement, which the Requested sent in a copy to the Authority. The buckled statement on 21.03.2022. did it on [...], the time of deletion of personal data is not included can be established. [...] also stated in the attached document that the Applicant's personal data did not share it with third parties.

The Respondent sent a screenshot to prove that the Applicant is personal  
your data is not included in your records.

### III. Applicable legal provisions

The GDPR must be applied when personal data is partially or fully automated  
processing, as well as the processing of those personal data in a non-automated manner  
for handling, which are part of a registration system, or which are a  
they want to make it part of the registration system. It is for data management under the scope of the GDPR  
Infotv. According to § 2, paragraph (2), the GDPR must be applied with the additions indicated there.

Based on paragraphs (1)-(6) of Article 12 of the GDPR:

(1) The data controller shall take appropriate measures in order to ensure that the data subject a  
all the information referred to in Articles 13 and 14 regarding the management of personal data  
and 15-22. and each information according to Article 34 is concise, transparent, comprehensible and easy  
provide it in an accessible form, clearly and comprehensibly worded, especially the  
for any information addressed to children. Information in writing or otherwise  
- including, where applicable, the electronic route - must be provided. Oral at the request of the person concerned  
information can also be provided, provided that the identity of the person concerned has been verified in another way.

(2) The data controller facilitates the relevant 15-22. the exercise of his rights according to art. Article 11 (2)  
in the cases referred to in paragraph 15-22, the data controller is the person concerned. to exercise his rights according to art  
may not refuse to fulfill your request, unless you prove that the person concerned  
cannot be identified.

(3) The data controller without undue delay, but in any case from the receipt of the request  
informs the person concerned within one month of the 15-22. following a request according to art  
on measures taken. If necessary, taking into account the complexity of the request and the  
number of applications, this is the deadline  
it can be extended by another two months. The deadline

request for an extension by the data controller indicating the reasons for the delay

informs the person concerned within one month of receipt. If the data subject is electronic

submitted the application via e-mail, the information must be provided electronically if possible,

unless the data subject requests otherwise.

(4) If the data controller does not take measures following the data subject's request, without delay, but

informs the person concerned no later than one month from the date of receipt of the request

about the reasons for the failure to take action, as well as about the fact that the person concerned can submit a complaint to a

with a supervisory authority, and can exercise his right to judicial redress.

(5) Information provided under Articles 13 and 14 and Articles 15-22 and Article 34

all information and measures carried out based on this must be provided free of charge. If it is affected

your request is clearly unfounded or - especially due to its repetitive nature - excessive, that is

data controller: \*

a) related to providing the requested information or information or taking the requested action

you can charge a fee that is reasonable, taking into account administrative costs, or \*

b) may refuse to take action based on the request.

It is the responsibility of the data controller to prove that the request is clearly unfounded or excessive.

(6) Without prejudice to Article 11, if the data controller has well-founded doubts in accordance with Articles 15-21. article

in relation to the identity of the natural person who submitted the application, further, the person concerned

you can request the provision of information necessary to confirm your identity.

Based on Article 17 (1) of the GDPR, the data subject is entitled to request that the data controller

delete the personal data concerning him without undue delay, and the data controller

is obliged to provide the personal data of the data subject without undue delay

delete if any of the following reasons apply:

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

treated in a manner;

b) the data subject withdraws it pursuant to point a) of Article 6 (1) or point a) of Article 9 (2)

pursuant to point 1, the consent that forms the basis of the data management, and the data management does not have other legal basis;

c) the data subject objects to the processing of his data on the basis of paragraph (1) of Article 21, and there is no an overriding legitimate reason for data processing, or the data subject is Article 21 (2).

objects to data processing based on;

d) personal data were handled unlawfully;

e) the personal data is legal as prescribed by EU or member state law applicable to the data controller must be deleted to fulfill an obligation;

f) to collect personal data with the information society referred to in paragraph 1 of Article 8 took place in connection with the offering of related services.

Pursuant to points b) and d) of Article 58 (2) of the GDPR, the supervisory authority acting within its competence:

b) condemns the data manager or the data processor if its data management activities violated the provisions of this regulation.

d) instructs the data manager or the data processor that its data management operations - where applicable in a specified manner and specified

decree

with its provisions.

- harmonize e

in time

Other administrative or judicial remedies based on Article 77 (1) of the GDPR

without prejudice, all data subjects are entitled to lodge a complaint with a supervisory authority -

in particular your usual place of residence, place of work or the place of the alleged offence

in the Member State of origin - if, according to the judgment of the data subject, the personal data relating to him handling violates this regulation.



Infotv. On the basis of § 38, paragraph (2b), the Authority is provided with personal data in paragraph (2).

with respect to the defined scope of the litigation aimed at making a court decision and

performed by the court in non-litigation proceedings, based on the relevant regulations

in relation to data management operations, it does not cover the provisions specified in paragraph (3).

to exercise powers.

and the treatment of which the procedure is successful

Infotv. § 60 (1) In order to assert the right to the protection of personal data a

At the request of the data subject, the authority initiates official data protection proceedings ex officio

may initiate a data protection official procedure.

Infotv. On the basis of § 71, paragraph (1) during the Authority's procedure - for its conduct

to the extent and duration necessary - you can manage all personal data, as well as by law

data classified as protected secrets and secrets bound to the exercise of a profession, which with the procedure

are related

in order to conduct

required.

Infotv. 75/A. pursuant to § 83 (2)-(6) of the General Data Protection Regulation, the Authority

paragraph

exercises its powers taking into account the principle of proportionality,

especially with the fact that you are in the law regarding the handling of personal data

The regulations defined in the mandatory legal act of the European Union are being implemented for the first time

in case of violation, to remedy the violation - with Article 58 of the General Data Protection Regulation

in accordance with - takes action primarily with the warning of the data manager or data processor.

The Akr. Based on Section 10 (1), the customer is a natural or legal person, other

organization whose right or legitimate interest is directly affected by the case, to whom

the official register contains data, or who (which) is subject to official control

pulled

The Ak. Pursuant to § 35, paragraph (1), the request is a declaration by the client with which the official enforcement of his right or legitimate interest requires the conduct of a procedure or the decision of the authority in order to

5

storage

their duration and based on this, where appropriate, the

ARC. Decision:

IV.1. The Applicant's personal data stored by the Applicant, data managers and data processors

quality

According to Article 4, Point 1 of the General Data Protection Regulation, the Applicant's contact details,

surname, first name, e-mail address, pictures of your property, electricity bills,

network usage contract are considered personal data of the Applicant, which data is a

its storage is considered data management according to Article 4, point 2 of the General Data Protection Regulation.

The Respondent declared to the Authority that the purpose and means of its data management are independently is determined by, therefore, an independent data controller, as it is with regard to the management of personal data has a procedure that its sales partners are obliged to comply with, its violation involves payment of a fine.

On the basis of the assignment contract attached by the Respondent, as well as on the basis of what he presented it can be established that, in relation to the data processing complained of, the Respondent qualifies under Article 4 of the GDPR.

to the data controller pursuant to point 7 of Article [...], as a sales partner pursuant to Article 4 of the General Data Protection Regulation.

data processor based on point 8 of Article Based on the Authority's position, the Respondent is independent as a data controller

can be considered as it has an independent data management purpose and is data management

determines substantive decisions related to circumstances. It was determined by the Respondent

and which personal data of the Applicant are required for the price offer,

furthermore

determines the

about their deletion and

can also decide on their destruction.

Due to the above, the Respondent, as a data controller, was obliged to comply with the Applicant's data subject request fulfill and provide information to him in connection with the data subject's request.

The subject of the present procedure was solely the investigation of whether the Applicant's personal data whether the relevant data subject request was submitted in accordance with the provisions of the general data protection regulation

for performance, so the contract between the Authority, the Applicant and its sales partner

it did not examine other aspects of data management, only the fulfillment of the data subject's request

findings made in relation to the data controller and its data processor.

IV.2. Request to order the deletion of personal data,

also to that

statement that the Applicant has not shared it with third parties

your personal data

The Respondent made a statement and proved it with documents (report, screen recording,

sales partner's statement), that the Applicant's personal data has already been deleted

has taken place, so it is no longer handled by the Applicant in connection with the complained data management

personal data, and therefore the Authority's request to order the deletion of data

rejected.

The Respondent, as a data controller, has certified to the Authority that its data processor has also carried out

the cancellation, however, the attached statement did not reveal when or why the cancellation was made

the declaration of its occurrence only contains the date of making the declaration, and

it does not indicate that the deletion also took place at that time. In the present case, it is the Authority

regarding the date of deletion performed by the data processor, no additional information was deemed justified

clarification of the facts, since the deletion was finally carried out.

[...] uploaded the personal data obtained from the Applicant into the internal system of the Applicant

[...] kept them, the Applicant did not pass them on to third parties

his personal data, he made a statement about this during the clarification of the facts

contrary facts and information did not come to the attention of the Authority, therefore the Authority stated,

that the Respondent and its data processor do not, contrary to Article (6) (1) of the GDPR

6

carried out data transmission in relation to the personal data of the Applicant

based on information.

#### IV.3. Completion of a contact request and the related obligation to provide information

Pursuant to Article 17, paragraph (1) point b) of the GDPR, the Applicant of January 5, 2022 and

On the basis of his request for cancellation on the 14th, he had an obligation to cancel, which the Respondent complied with

IV.2. on the basis of the provisions in point.

At the same time, based on Article 12 (3) of the GDPR, the Requested Party receives the request

should have informed the Applicant about the cancellation within one month of

therefore, in view of the fact that the Applicant sent his first cancellation request on January 5, 2022

and to the data processor of the Requested, what to the data processor

must forward the

To the Respondent, and also did the Applicant send to the Respondent's customer service a

request, therefore the deadline prescribed in the GDPR must be counted from this day. Based on this, it is one

month deadline expired on February 5, 2022, so the Applicant had until this deadline

should notify the Applicant of the measures taken following the request. However, the Applicant a

The applicant failed to provide information and therefore violated Article 12 (3) of the GDPR.

#### IV.4. Legal consequences

IV.4.1. The Authority condemns the Applicant based on Article 58 (2) point b) of the GDPR,

because it violated Article 12 (3) of the GDPR.

IV.4.2. The Authority ordered ex officio in accordance with Article 58 (2) point d) of the GDPR, for the Respondent to inform the Applicant about the fulfillment of the data subject's request.

A. Other questions:

The competence of the Authority is set by Infotv. Paragraphs (2) and (2a) of § 38 define it, and its competence is covers the entire territory of the country.

The decision is in Art. 80-81 § and Infotv. It is based on paragraph (1) of § 61. The decision is in Art. 82.

Based on paragraph (1) of § §, it becomes final upon its communication. The Akr. § 112 and § 116 (1) paragraph or § 114 (1) against the decision by way of an administrative lawsuit

there is room for a legal remedy.

\* \* \*

The rules of the administrative trial are set out in Act I of 2017 on the Administrative Procedure

hereinafter: Kp.) is defined. The Kp. Based on § 12, paragraph (1), by decision of the Authority

the administrative lawsuit against falls within the jurisdiction of the court, the lawsuit is referred to in the Kp. § 13, subsection (3) a)

Based on point aa), the Metropolitan Court is exclusively competent. The Kp. Section 27 (1)

legal representation is mandatory in a lawsuit falling under the jurisdiction of the court based on paragraph b).

The Kp. According to paragraph (6) of § 39, the submission of a claim is an administrative act does not have the effect of postponing its entry into force.

The Kp. Paragraph (1) of § 29 and, in view of this, Pp. According to § 604, the electronic one is applicable

CCXXII of 2015 on the general rules of administration and trust services. law (a

hereinafter: E-administration act) according to § 9, paragraph (1), point b) of the customer's legal representative obliged to maintain electronic contact.

The time and place of submitting the statement of claim is set by Kp. It is defined by § 39, paragraph (1). THE information on the possibility of a request to hold a hearing in Kp. Paragraphs (1)-(2) of § 77

is based on. The amount of the fee for the administrative lawsuit is determined by Act XCIII of 1990 on fees. law

(hereinafter: Itv.) 45/A. Section (1) defines. It is from the advance payment of the fee

Itv. Paragraph (1) of § 59 and point h) of § 62 (1) exempt the party initiating the procedure.

7

If the Respondent does not adequately certify the fulfillment of the prescribed obligation, the Authority considers that the obligation has not been fulfilled within the deadline. The Akr. According to § 132, if a the obligee has not complied with the obligation contained in the final decision of the authority, it can be enforced. The Authority's decision in Art. According to § 82, paragraph (1), it becomes final with the communication. The Akr. Pursuant to § 133, enforcement - unless otherwise provided by law or government decree - ordered by the decision-making authority. The Akr. Pursuant to § 134, the execution - if it is a law, government decree or, in the case of municipal authority, a local government decree otherwise does not have - the state tax authority undertakes.

dated: Budapest, according to the electronic signature

Dr. Attila Péterfalvi

president

c. professor

8