



Baden-Württemberg

THE COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

LfDI Baden-Württemberg · P.O. Box 10 29 32 · D-70025 Stuttgart

[REDACTED]
[...]

File No. R 2497/1983

Complaint of [REDACTED], R 2497/1983

Dear Madam or Sir,

Having examined the facts of the case presented by both parties, we can make the following detailed comments on the complaint proceedings against [REDACTED] conducted under the above-mentioned Ref. no.

I. The course of the procedure

The Baden-Wuerttemberg DPA (hereinafter: BW DPA) launched an investigation based on the complaint of [REDACTED] (hereinafter: the Complainant) pursuant to Article 57(1)(f) of the General Data Protection Regulation (hereinafter: GDPR).

[Please note that the related procedure regarding [REDACTED], national Ref. no. ZSZZS.1116.2019, has been dealt with in the revised draft decision IMI no. 173932]

On 15 October 2019, the Complainant lodged a complaint with the Data Protection Authority of Poland, in which he presented that he requested access to his personal data from [REDACTED] (hereinafter: the Company), but the company failed to comply with this request.

On 15 November 2019, the Polish Data Protection Authority initiated a procedure to establish the lead supervisory authority and to ask to handle the case on a local level in accordance with Article 56 of the GDPR. In the course of this, it was established that the BW DPA is the lead supervisory authority in the case because the main establishment of the company is based in Renningen, Baden-Wuerttemberg.

By that time, the BW DPA had already received the complaint from the complainant directly as well. On the basis of this complaint, already, the BW DPA called upon the Company to make a statement by letter from 18 October 2019. The Company's statement was received by the BW DPA on 20 November 2019.

On 10 October 2019, the BW DPA also notified the Complainant that an investigative procedure was launched on the basis of his complaint.

[On 19 March 2020, the BW DPA firstly issued a draft decision in the present case (IMI no. 117327), involving the Polish DPA as (only) concerned DPA. At the request of the colleagues from the Polish DPA, the procedure was withdrawn on 26 March 2020 due to their inability to proceed with the draft decisions as usual under the Covid-19 circumstances.

On 28 May 2020, the BW DPA issued the draft decision again (IMI no. 127906). The Polish DPA expressed a relevant and reasoned objection to the draft on 4 June 2020. The BW DPA followed the remarks made in the relevant and reasoned objection and therefore provided a revised draft decision. The EDPB Internal Guidelines on the application of Article 60 GDPR state that in the OSS and cooperation process, the focus of all SAs involved should be on eliminating any deficiencies in the consensus-building process in such a way that a consensual draft decision is the result. Therefore, the EDPB recommends as a minimum standard that the LSA makes all efforts to proactively share, with the other CSAs, the scope and main conclusions of its draft decision prior to the formal submission of the latter. Following this recommendation, the BW DPA shared the revised draft decision through informal consultation with the Polish DPA as only CSA beforehand on 1 March 2021 (IMI no. A60IC 183421). The informal consultation procedure has been closed without any comment made by the Polish DPA on 1 September 2021, even after the BW DPA kindly reminded the Polish DPA to share their views on 17 May 2021 (in IMI) and 28 July 2021 (via e-mail).

Subsequently, the BW DPA formally shared the revised draft decision in accordance with Article 60(5) GDPR on 16 September 2021 (IMI no. A60RD 324143). Despite not having reacted to the informal consultation before, the Polish DPA raised a reasoned and relevant objection to that revised draft decision on 28 September 2021. Therefore, the BW DPA provides the current re-revised draft decision.

However, please note that we understand the remark in the objection reasoning in regards to ██████████ as mistakenly made since the present case is the case of ██████████. A data processing by ██████████ did not take place and would be in the jurisdiction of a different supervisory authority.]

II. Facts of the case

[For a full overview, please refer to the Company's statement uploaded in the relevant documents in IMI]

The Complainant stated that between 4 April 2016 and 31 March 2019 he was an employee of ██████████ in Poland as IT network administrator on the basis of a full-time employment contract. On 19 February 2019, the employer submitted a statement on termination of the employment relationship by the employer. During his work, the employer, ██████████ repeatedly delegated the Complainant to the following company ██████████ in Germany and ██████████ to work in various positions. The Complainant noted that ██████████ provided IT services for ██████████ as well as ██████████, where he was employed. While working for ██████████ and ██████████, he registered coming in and out using a magnetic card. He also stated that the buildings of ██████████ and ██████████ premises are equipped with CCTV cameras, recording the employees. Besides, at ██████████ the company's operations are carried out and backups of mailboxes are stored, including the Complainant's electronic mailbox.

In their response, the Controller also briefly explained the structure within the group of companies: The subsidiary ██████████ operates the entire IT infrastructure of the group of companies. Each company has its own access and rights structures, which ensures that each company within the group only accesses the data that is relevant to that company. This applies to productive data as well as to employee data. The company is ██████████ certified due to the high secrecy requirements and the data separation procedure is a basic requirement to obtain such a certificate. Even if the data is physically located on an identical server, the information is still secured separately and thus protected from unauthorised access. This means ██████████ does not have access to information from employees of other companies in the group, but only the respective company to which the employee belongs. In this case, only ██████████ had access to the information (including mail or mailbox) of the Complainant. Possible access data that were stored during the time of his working period, in the premises of ██████████ or ██████████, have a retention period of 6 months and have therefore already been deleted a long time ago.

In his complaint submitted, the Complainant stated that he requested access to his personal data and a gratuitous copy of his personal data processed in that company by letter from 7 March 2019, sent with acknowledgement of receipt on 8 March 2019. He claimed that he has not received a reply to the date of his complaint.

In their response to the BW DPA, the Company confirmed that the Complainant had been on site with the Company during a training period from the subsidiary ██████████ Poland, for 2 time periods, in April and December 2016, for a maximum of 9 work days. It was stated that the Complainant's request for access was sent to them on 7 March 2019, with the request for confirmation as to whether personal data about his person is stored. They also stated that the request was immediately processed on 29 March 2019 by ██████████ Poland, which is the Complainant's employer within the ██████████ Group.

Due to this constellation, the Company considered the above-mentioned procedure for answering the request for access to be sufficient at that time. The Company apologised for this mistake and, however, provided the requested information to the BW DPA which forwarded them to the complainant accordingly.

As a general note, the Company also stated that data that were communicated to them in connection with the Complainant's request for access would be stored for proof purposes for a period of three years.

On 22 March 2021 the BW DPA received a letter from the Complainant in reaction to our last letter to him. The BW DPA responded to that letter on 11 May 2021 and took into account the Complainant's statements as follows:

1. In his letter, the Complainant referred to the fact that he had made two complaints instead of only one, namely against [REDACTED] and against [REDACTED]. He complained about the handling of the case through the BW DPA, as we only referred to [REDACTED] in our previous letter(s), although the Company did not provide a mandate for acting in the name of [REDACTED]. The BW DPA explained to the Complainant that [REDACTED] is the controller as per Article 4(7) GDPR in this case, whereas [REDACTED] is (only) a processor as per Article 4(8) GDPR. Both Article 12 and Article 15 GDPR rule that "the controller" is the party who has to facilitate the exercise of data subject rights by providing information on action taken on such a request, which the data subject has the right to obtain. Therefore, the infringements regarding these provisions only concern [REDACTED] as controller.
2. The Complainant states in his letter that his two requests of 5 March 2019 to [REDACTED] and [REDACTED] pursuant to Article 15 of the GDPR remained unanswered, indicating that he does not feel that the Controller fulfilled his access request, also because the reply only stemmed from [REDACTED] and not also from [REDACTED]. As stated above, the obligation to fulfil data subject rights lies only with [REDACTED] as controller. In our letter, the BW DPA also explained that the fact that the information was initially provided by [REDACTED] in Poland does indeed not comply with the legal requirements. [REDACTED] apologised for this mistake and subsequently provided the information immediately (sent to the Complainant by post by the BW DPA on 25 February 2021). The reason why the BW DPA submitted the information to the Complainant is that the Company did in fact not have any more information stored about the Complainant. Every information about the Complainant has been deleted, which was also the content of the response to the access request. Thus, the Company asked the BW DPA to submit the information following the Article 15 request to the Complainant. The request for information was fulfilled.
3. The Complainant also claimed that the Company made or relied upon "wrong information" in its letter. He stated that the wrong date of the issuing of his access requests, 5 March 2019 instead of 7 March 2019, was given. The BW DPA explained to the Complainant that this appears only as a

mistake and that it does not change the facts of the case. The same applies for the claims about the timing and quality of his work for [REDACTED]. Even if the dates about his work on site of the Company might have been recalled wrongly, this does not change the assessment of the case. In its response, [REDACTED] states under point 2.1 that it no longer stores any personal data about the Complainant. Accordingly, the Company does not process any personal data from him either for the year 2016 or for the period 2017 and 2018. Also, the processing of employee data is based on Section 26 of the German Data Protection Act, regardless of the exact type of employment, due to the broad definition of 'employee' in Section 26(8) German Data Protection Act. Hence, defining his stay at the Company as "training period" in the statement, is not relevant for the case.

4. The Complainant criticised the fact that, contrary to what was announced, the letter from the BW DPA lacked the statement from the Company. The BW DPA apologised for that mistake and sent the letter once again to the Complainant on 11 May 2021.

In addition to the information regarding the concrete case, the BW DPA provided the Complainant with Guidelines about the cooperation mechanism, the identification of the LSA and the concepts of controller and processor.

III. The findings of the Authority

Pursuant to Article 12(1) GDPR, the controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language. According to Article 12(3) GDPR, the controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request, whereby that period may be extended by two further months where necessary, taking into account the complexity and number of the requests.

The Company has not fulfilled the Complainant's request without undue delay, as it did not respond to it within one month of receipt of the request. The request was indeed received on 07 March 2019, whereas the Company only sent the requested information to the BW DPA in their response from 20 November 2019.

It is not apparent that the Company was in a situation of Article 12(2) or (3) GDPR. Firstly, the Company was able to identify the Complainant, meaning that there was no reason for asking for further identification of the Complainant. Secondly, the Company has not indicated that they process such a wide scope and large number of data so as to request the Complainant to specify his request.

Additionally, the Company did not inform the data subject within a month about not taking action on the request together with reasons for not taking action as requested by Article 12(4) GDPR.

By not having reacted to the Complainant's access request themselves and without undue delay, they have infringed Article 15(1) and 15(3) GDPR as well as Article 12(1) and (3) GDPR.

IV. Legal consequences

The BW DPA establishes that the Company breached Article 15(1) and (3) as well as Article 12(1) and (3) of the GDPR, as the Complainant's access request has not been dealt with in due time.

However, due to the constellation explained above, the Company has considered the response to the Complainant by [REDACTED] Poland, to be sufficient at that time. The Company apologised for this mistake and immediately provided the requested information to the BW DPA which forwarded them to the complainant accordingly. The information the Company sent to the BW DPA and which the BW DPA then sent to the complainant (once again, after his letter in March) states that the controller in fact has no more information stored about the complainant. Every information about the complainant has been deleted. This is the reason why the controller asked the BW DPA to submit the information following the Article 15 request to the complainant in the first place.

In addition, the Company has been very cooperative during the regulatory and supervising process. After being requested by the BW DPA, the Company immediately gave the requested information.

Hence, the BW DPA issues a reprimand to the company for the abovementioned infringements of the GDPR, based on Article 58(2)(b) GDPR.

We will also reiterate to the Company again the fact that requests under Articles 15-22 GDPR must be answered without undue delay, at the latest within one month, and that the controller must implement internal processes that ensure a response within this deadline.

The administrative proceedings against the Company are still on record, which is why we reserve the right to impose a fine in the event of a further violation by the Company.

V. Information on legal remedies

An appeal against this decision may be filed in writing, electronically or for recording with the Administrative Court of Stuttgart, Augustenstraße 5, 70178 Stuttgart, within one month of notification pursuant to Article 78 of the General Data Protection Regulation in conjunction with Section 20(1) and (3) of the Federal Data Protection Act.