



Berliner Beauftragte
für Datenschutz
und Informationsfreiheit

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27 October 2020

Final Decision

Just Fabulous GmbH
Executive Board
Schlesische Straße 38
10997 Berlin

Reprimand
Complainant: [redacted]
Your letters of 30 September 2019, 22 November 2019, 30 December 2019, and 3 February 2020

The Berlin Commissioner for Data Protection and Freedom of Information issues a reprimand to the Just Fabulous GmbH for a violation of the General Data Protection Regulation (GDPR) when processing personal data in their area of responsibility.

Reasoning:

The decision by the Berlin DPA is based on the following considerations:

I.
The Berlin DPA has established the following facts:

On 13 June 2019, the above mentioned complainant revoked her consent to the recording of telephone conversations by the Just Fabulous GmbH and requested a list of the data stored about her, more precisely the stored telephone conversations.

By way of email of 14 June 2019 the complainant was informed that the transmission is not possible for data protection reasons.

The controller stated the following in their statements:

The employee in charge had assumed that the complainant wanted to express in her e-mail that she wished to receive a copy of the respective telephone records. The complainant had not clarified that it was a request for information as to which telephone calls had been recorded.

After the complainant had revoked her consent to the data processing of telephone calls on 13 June 2019, Just Fabulous GmbH immediately com-

Berlin Commissioner for Data Protection and Freedom of Information

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plied with her request. As the revocation was valid for the future, telephone calls made prior to the revocation were not affected by her revocation of her consent to telephone recording. However, due to the short erasure period of 28 days, the telephone calls had already been erased when the Berlin data protection authority intervened with the first request for a statement on 3 September 2019 and the response of Just Fabulous GmbH on 30 September 2019.

Due to a misunderstanding, the employee in charge had assumed that the complainant was requesting the actual recordings, i.e. a transmission of the telephone calls made instead of a list of the telephone calls. Once this problem had been resolved, the automatic erasure period for the telephone call recordings had already expired. Moreover, most of the recordings had already been erased at the time of their request. Which telephone calls were still present as audio at the time of the complainant's revocation of their consent, could not be identified by the Just Fabulous GmbH because of the previous erasure.

The controller also informed the Berlin DPA that a customer service employee could not interrupt or erase a recording once started. However, a manual erasure before the end of the automatic erasure period of 28 days would be possible.

Furthermore, the controller stated that it was not possible to identify a specific caller in the telephone system used, unless the telephone number was known. However, there is an exception to this rule if the customer calls with the telephone number stored in the customer account. If this is the case, the telephone number is assigned to the corresponding customer account by means of a so-called contact hash, which would enable the creation of an overview of the recorded telephone conversations with the customer over this telephone number.

When the Berlin DPA intervened, it was not possible to create an overview of the recorded conversations with the complainant because the relevant audio files no longer existed due to the erasure period.

In addition, the creation of an overview of caller data from the ACD system (automatic call distribution) in text form was no longer possible, as these were no longer available after 90 days. The Berlin DPA was informed of this in a statement dated 22 November 2019.

In addition, when interacting with customer service by phone, notes on the conversation would be created in the respective customer file in the customer management system. The complainant had been informed about this data processing in the context of a statement provided.

Information on the data stored on the complainant in accordance with Article 15 of the GDPR had been provided to the complainant on 1 October 2019. An explanation was also provided on 4 October 2019.

II.

The reprimand is based on Article 58(2)(b) GDPR. There has been a violation of the GDPR in the controller's area of responsibility.

Pursuant to Article 15(1) and (2) GDPR, the data subject has a comprehensive right to access their personal data that has been processed as well as to further information.

In an e-mail dated 13 June 2019, the complainant requested a list of telephone calls. However, the customer service department informed her that the records could not be sent to her due to data protection reasons.

The complainant's request of 13 June 2019 must be interpreted in such a way that she did not want to receive the telephone records herself, but wanted to obtain erasure of the telephone records and a listing of the telephone calls. In doing so, the complainant sufficiently specified her request for information.

At that time, despite the short erasure period, the telephone call of 13 June 2019 and any other recordings were available.

It is true that Article 17(1)(b) GDPR stipulates that personal data must be erased if the consent to data processing was revoked and no other legal basis justifies continued storage. No legal basis for the recording of telephone conversations other than consent is apparent here.

If, however, a request for access is received at the same time as the revocation and the associated obligation to delete the data, this must be processed with priority in order to guarantee the rights of the data subjects.

Even if, as the controller has pointed out, assignment to a customer could be problematic under certain circumstances, the employee responsible should have recognized the request made by the complainant to Customer Service as a specific request for access and should have been able to request further information for identification purposes (e.g. naming the relevant telephone numbers).

However, the employee's incorrect assessment of the complainant's request was not followed up and the complainant's request for access was overtaken by the automatic erasure of the data.

Since the controller is no longer able to comply with the request for access due to the erasure deadlines, the controller has made it impossible to provide concrete information in relation to the telephone records in accordance with Article 15(1) and (2) GDPR by deleting the data and thus to enforce the rights concerned.

Taking into account the specific circumstances of the facts of the case, the Berlin DPA considers a reprimand to be appropriate after completion of our investigation. This is the first time the Berlin DPA has discovered a violation on this controller's part in this matter. In response to the Berlin DPA's address on the matter, the controller showed understanding and announced that they would comply with data protection regulations and remedy the conduct.

The Berlin DPA expressly points out that after a revocation of consent, not only must future recordings be omitted, but existing recordings must also be erased. Since a revocation can also be declared during an ongoing conversation, the controller must take suitable technical and organizational measures in accordance with Article 24(1) GDPR so that the respective employee can immediately terminate an ongoing recording of a conversation. The controller should also note that they should organize their data processing in such a way that they can immediately fulfil their obligations to

provide information in accordance with Article 15 GDPR, and in particular that they can research all calls and recordings at short notice.

In the safe expectation that the controller will comply with data protection regulations in the future, the Berlin DPA closes the case after issuing the reprimand.