



Summary of the Final Decision

Vaduz
August 27, 2019

Ref: 103.1.2/2019-283

IMI Case A60FD 75031

Decision of the Data Protection Authority of the Principality of Liechtenstein (DPA)

August 9, 2019

Parties:

Complainant: [may not be disclosed]

Controller: [REDACTED]

regarding a complaint lodged with the Data Protection Authority Liechtenstein

This complaint was treated as confidential. The decision has therefore been anonymised. The masculine form has been used throughout.

DECISION

The Data Protection Authority Liechtenstein finds

1. That [REDACTED] has contravened Art. 15 GDPR. Points 2, 4 and 5 of the information provided do not include all the necessary elements. In addition, the Data Protection Authority recommends that [REDACTED] specifies in Point 7 which supervisory authority is competent.
2. That the requests submitted by the legal representative are to be rejected.

1. Background to the case

On 18 November 2018 the complainant lodged a complaint against the controller for infringement of Art. 15 GDPR with the Commissioner for Data Protection of Lower Saxony.

In his complaint of 18 November 2018 the complainant alleges that he had requested the controller to provide full information pursuant to Art. 15 GDPR on 3 November 2018. The

complainant stated that the information provided by the controller pursuant to Art. 15 GDPR of November 2018 is deficient in the following points:

1. Point 2 (processing purpose) when compared with point 4 (recipients) of the controller's information under Art. 15 GDPR from November 2018 is incomplete resp. contradictory;
2. Point 5 (storage period) does not specify the specific storage period or the criteria according to which the storage period can be determined;
3. Point 7 (right of appeal) does not specify which authority shall be competent to handle complaints of the persons concerned.

As a cross-border case, the complaint was dealt with in accordance with Article 60 GDPR. The complaint was uploaded to IMI (IMI number 58561) on 24 January 2019. For [REDACTED] having its place of domicile in Liechtenstein the DPA Liechtenstein was the lead supervisory authority in accordance with Article 56 (1) GDPR.

The legal representative of the controller was requested by letter of 3 April 2019 to reply to the complaint by 17 April 2019. The legal representative replied to points 2, 5 and 7 of the controller's information under Art. 15 GDPR from November 2018 as follows:

1. Concerning point 2 (processing purpose) the legal representative of the controller stated that the complaint with respect to this point is incorrect since the marketing use of the personal data by third parties is no processing according to point 2. In the opinion of the legal representative of the controller only the controller's own processing shall be subject to point 2. Point 2 therefore shall not include that third parties store and use the data for their own purposes.
2. Concerning point 5 (storage period) the legal representative of the controller acknowledged in his counter-statement [REDACTED] ved. However, since even well-known companies such as [REDACTED] did not have more specific formulations with respect to the storage period there shall be no absolute necessity to name a specific storage period or the criteria for the storage period.
3. Concerning point 7 (right of appeal to the supervisory authority) the legal representative of the controller stated that the legal opinion quoted by the complainant to substantiate his complaint, namely the legal opinion found in Paal / Pauly / Paal, 2nd edition 2018, DS-GVO Art. 15 under point 29, is an individual opinion amongst many others. He stated that as of yet there is no evidence that the opinion quoted will become predominant. The legal representative of the controller further stated that there is no explicit obligation under Article 15 of the GDPR or from Recital 63 to designate the respective competent supervisory authority.

2. Complaint:

On the basis of the submissions of the complainant, the legal question was whether the controller gave incorrect and insufficient information to the complainant which the complainant had a right to receive according to Article 15 GDPR.

3. Legal framework:

a) Competence of the lead supervisory authority

██████████ is a company domiciled in Liechtenstein, registered in the Liechtenstein Trade Register under number ██████████. The GDPR has been in force since 20 July 2018 in Liechtenstein for all companies or other data processing authorities based in Liechtenstein. The complainant requested the controller on 3 November 2018 to provide full information pursuant to Art. 15 GDPR. The controller complied with this request for information beginning of November 2018. According to Art. 55 GDPR, the DPA Liechtenstein is the competent national data protection supervisory authority.

According to Art. 2 para. 1 GDPR, the GDPR applies to the full or partial automated processing of personal data. According to the definition in Art. 4 point 1 GDPR "Personal data" are all information relating to an identified or identifiable natural person, such as names, location data, online identification and other personal data as stated in Art. 4 point 1 GDPR. In accordance with the controller's letter of information from the beginning of November 2018 the complainant in particular processed the address data, contact details and date of birth. These data are personal data of natural persons in accordance with the legal definition of Article 4 (1) GDPR. According to Art. 2 para. 1 GDPR, the present complaint falls within the material scope of the GDPR.

b) Requests submitted by the processor's legal representative

As aforementioned, the legal representative of the controller raised several concerns regarding national administrative law. The DPA Liechtenstein rejected all these concerns.

c) Infringement of the right of access according to Art. 15 GDPR

c.1. Point 2 (processing purpose) and point 4 (recipient) of the controller's information under Art. 15 GDPR from November 2018 states that they process personal data solely ██████████ in accordance with the screenshot. On ██████████ and, the controller states in point 4 that they transfer the personal data to the ██████████ according to the screenshot for marketing purposes. The information given in point 4 is incomplete. In accordance with point 4, the transfer of personal data to ██████████ for marketing purposes should have been listed in point 2 as further processing of the personal data.

c.2. Point 5 (storage period) of the controller's information under Art. 15 GDPR from November 2018 merely states that the data are subject to the statutory retention periods. The indefinite specification of the retention periods in the context of the provision of

information is not sufficient. In accordance with the requirements of Art. 15 para. 1 letter d. GDPR the storage deadlines or the criteria for the determination of this duration in the provision of information must be specifically stated. It is not up to the person concerned to check which specific statutory retention periods apply to the processing of his personal data. The provision of information in point 5 is therefore incomplete.

c.3. Point 7 (right of appeal to the supervisory authority) of the controller's information under Art. 15 GDPR from November 2018 states that there is a right of appeal to a data protection supervisory authority. This corresponds to Art. 15 para. 1 letter f. GDPR. Art. 15 para. 1 letter f. GDPR does not specify with which data protection supervisory authority the complaint shall be filed. The legislator thus allows the complainant to decide with which data protection supervisory authority he intends to file his complaint. Some data protection experts (see for example Kühling / Buchner, General Data Protection Regulation, 2nd ed., 2018, p. 389 p. 39 in conjunction with p. 423 para) believe that the supervisory authority must in any case be specified with regard to the possibility of lodging a complaint. The DPA Liechtenstein does not fully agree with this opinion though. The DPA Liechtenstein considers that in principle the complainant is able to judge by himself which shall be the Data Protection Authority for filing his complaint. In accordance with the legislator's requirement under Article 12 (1) GDPR that the person responsible for data processing should facilitate the exercise of his rights in accordance with Articles 15 to 22 of the GDPR, the DPA Liechtenstein pronounces the recommendation, that the competent supervisory authority or at least the criteria for the designation of the supervisory authority shall be stated in the controllers' information pursuant to Art. 15 GDPR. However, there is no legal obligation to do so.