

Summary Final Decision Art 60

Complaint

EDPBI:MT:OSS:D:2021:272

Reprimand

Background information

Date of final decision:	02 September 2021
Date of broadcast:	02 September 2021
LSA:	MT
CSAs:	PL
Legal Reference(s):	Article 12 (Transparent information, communication and modalities for the exercise of the rights of the data subject), Article 17 (Right to erasure), Article 18 (Right to restriction of processing)
Decision:	Reprimand
Key words:	Data source, Data retention, Data subject rights, Transparency, Restriction of processing, Legal obligation

Summary of the Decision

Origin of the case

On 4 June 2019 the Complainant lodged a complaint with the CSA alleging that the controller had obtained his personal data from an unspecified source and was requesting repayment of a loan which the complainant claimed he never took. He informed the CSA that he had been a victim of an identity theft by a third party, which he had reported to the police, and requested the CSA to determine how his data had come into the possession of the controller. The CSA transferred the complaint to the LSA on the 30th January 2020. Subsequently the LSA, after having requested additional information to the CSA, informed the controller of the complaint on 9 March 2020 and requested its submissions to the allegations of the complainant. The controller responded on 24 March 2020 stating that it had been informed by the police about the illegal use of the complainant's personal data and had immediately stopped all debt collection activities. The controller also had received a letter from the complainant requiring the former to refrain from processing any personal data of the complainant and to discontinue any communication with regard to the loan. The controller had decided not to reply to this letter based on the understanding that any further communication was undesirable for the complainant. As to the source from which the personal data had been collected, the controller explained that it had

been obtained through a loan application via the website after the applicant's identity had been verified. The LSA then started an investigation into the on-board verification process of the controller and requested additional documentation, which the controller submitted. The controller also informed the LSA that it was subject to legal obligations under which the retention period for personal data related to loan applications and agreements could go up to 10 years.

Findings

On the question of determining the source of the complainant's personal data, the LSA noted that despite the right available under Article 15(1)(g) GDPR, the complainant had not explicitly asked the controller to provide him with information regarding the source of his data. Nevertheless, the controller did provide this information to the LSA. As regards the request to restrict processing of the complainant's personal data, after carefully analysing Articles 18(1)(b) and (2) and Recital 67 GDPR, the LSA found that the controller acknowledged and complied with the complainant's request to restrict processing of his personal data. Regarding the lack of response by the controller to the complainant's letter requesting restriction of processing, the LSA noted that the controller was in violation of Article 12(3) GDPR which lays down an obligation to provide the complainant with information on the action taken on a request under Articles 15 to 22 GDPR without undue delay and in any event within one month of receipt of the request. As regards the request for erasure, the SA carefully considered Article 17(1) and (2) GDPR, Recital 41 GDPR and the EDPB Guidelines 5/2019 to decide that the data could not be deleted because processing was necessary to comply with legal obligations under the national law to which the controller is subject.

Decision

The controller was served with a reprimand in accordance with Article 58(2)(b) GDPR.