

RETO-MOTO ApS

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Caseworker

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Complaint about the right to access

The Danish Data Protection Agency (DPA) hereby returns to the case where [REDACTED] (the complainant) on 17 July 2019 filed a complaint about Reto Moto ApS' reply to his request for access.

1. Decision

After a review of the case, the DPA finds grounds for **reprimanding** Reto Moto for not providing a copy of in-game chat messages sent directly to and from the complainant in accordance with Article 15(3) of the General Data Protection Regulation (GDPR)¹.

However, the DPA finds that Reto Moto was entitled not to provide a copy of other in-game chat messages, cf. GDPR Article 15(4).

Furthermore, the DPA finds that Reto Moto was entitled not to provide a copy of any personal information in relation to anti-cheat measures, cf. section 22(1) of the Danish Data Protection Act (DDPA)².

Below is a detailed examination of the case and an explanation of the DPA's decision.

2. Statement of the facts

The complainant requested access on 30 May 2019.

Reto Moto replied to the complainant's request on 26 June 2019. Reto Moto wrote in the reply, that data about game replay, anti-cheat related information, server logs and in-game chat messages would not be disclosed to the complainant, as this is property of Reto Moto and/or constitutes trade secrets

On 28 June 2019, the complainant contacted Reto Moto regarding the reply, as the reply in his opinion was incomplete.

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Regulation (EU) 2016/679 of the European Parliament and¹ of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Regulation on data protection).

²Law No 502 of 23 May 2018 supplementing the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).

2.1. Reto Moto's comments

Reto Moto has stated that Reto Moto replied to the complainant's access request on 26 June 2019.

Reto Moto did not provide a copy of the following data:

- Game replay data
- Anti-cheat related information
- Server logs
- In-game chat messages

A copy of game replay data and server logs was not provided as Reto Moto had deleted these before receiving the complainant's access request.

Reto Moto has stated that when the company received the access request, the company assessed the data subject's wish to gain access to his personal data and the protection of the rights or freedoms of other persons, including business secrets and intellectual property rights of Reto Moto. As a result, Reto Moto did not provide a copy of personal data containing anti-cheat related information and in-game chat messages.

Reto Moto has explained that anti-cheat information is a sort of a technical log with data explaining why a given player is excluded from the game. Anti-cheat information contains very few personal data. In connection with the complainant's cheating, he was given the reasons for his exclusion and made aware of the time of the cheating in the game. The anti-cheat related information that was not disclosed consists of information used to determine whether a player should be excluded from playing because the player has attempted to cheat in violation of Reto Moto's terms of business and the rules of the game. This includes information about the software used by the user to cheat the game. Reto Moto does not consider this information to be personal data, as it is software and other technical aspects that are not personal data in itself, even if it is linked to the complainant. In addition, Reto Moto considers this information strictly confidential, because disclosure of this information, including the software type and properties of Reto Moto's game, might reveal how players can cheat the game and the underlying logic, which harms Reto Moto and other players.

In regard to in-game chat messages, Reto Moto has explained that this includes messages that players can exchange with each other during their online games at Reto Moto. Such messages can be provided in the form of files in which chats are logged.

Reto Moto has not provided copies of these conversations and their content to the complainant as this will involve disclosure of personal data of other people. Reto Moto cannot remove other people's data from in-game chat messages. This is due, among other things, to the fact that in-game chat messages take place in a multitude of different languages that Reto Moto does not understand. In-game chat messages are also often written in "jargon", for example using national abbreviations for actions, users etc. that Reto Moto does not understand either. In addition, even where Reto Moto understands in-game chat messages linguistically, there may be context in the messages that Reto Moto does not understand, which means that the messages might relate not only to the complainant but also to another player. Thus, Reto Moto cannot guarantee that a copy of in-game chat messages will not result in disclosure of personal data of other players.

Consequently, Reto Moto is of the opinion that the protection of the rights and freedoms of the other players outweighs the interest of the complainant in receiving access to personal data.

In-game chat messages with the technical aids available within reasonable limits cannot be made public without also publishing the personal data of others.

2.2. The complainants comments

The complainant has stated that Reto Moto has refused to grant him access to all the personal data they have collected about him.

In regards to the anti-cheat related information, the complainant has stated that, that kind of information usually is highly private since anti-cheat software employs techniques usually only used by intelligence agencies and hackers to get an exceptional level of access on the computer. The user has no control over that software once it is installed, and that the data is personal data covered by the GDPR.

The complainant has also stated that the software regularly gets defeated by cheaters and gets adapted and updated, and therefore Reto Moto will keep updating and adapting the software even though, they might reveal some critical information.

Finally, the complainant has stated, that he only wants data about him related to in-game chat messages.

3. Reasons for the decision of the DPA

3.1. It follows from Article 15 of the GDPR that the data subject has the right to obtain confirmation by the controller of whether personal data relating to him or her are processed and, where appropriate, access to the personal data and a number of additional data. In addition, it follows from paragraph 3 that the controller in principle is required to provide a copy of the personal data processed.

However, a data controller may refuse to comply with an access request from a data subject if one of the exceptions to the right of access under Article 15(4) of the GDPR or section 22 of the DDPA can be invoked.

It follows from Article 15 (4), that the right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

According to section 22(1) of the DDPA, Article 15 of the GDPR does not apply if the data subject's interest in this information is found to be overridden by essential considerations of private interests, including the consideration for the data subject himself.

The controller must make an assessment of the opposing interests.

It is clear from the preparatory work of section 22(1) of the DDPA³ that the private interests which may, among other things, justify secrecy are decisive considerations of business secrets or decisive considerations of people involved other than the data subject, e.g. a minor child of the data subject. Furthermore, it appears that the provision can only be applied where there is an obvious danger that the interests of individuals will be adversely affected.

3.2. The DPA finds that Reto Moto by not providing a copy of in-game chat messages sent directly to and from the complainant has infringed Article 15(3) of the GDPR as there was no basis for exempting this information.

³L 68 Proposal for a law supplementing the regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The DPA has emphasised that the complainant already would have knowledge about the content of these messages.

3.3. However, the DPA finds that other in-game chat messages may be exempt according to Article 15(4) of the GDPR.

The DPA has attached weight on the fact that chats are conducted in different languages and in jargon, and therefore it cannot be ruled out that Reto Moto will disclose information about other people when disclosing the messages.

In addition, the other participants in the game must be assumed to expect a certain degree of confidentiality regarding messages sent in the heat of the moment.

3.4. Furthermore, the DPA finds that Reto Moto was entitled not to provide a copy of any personal information in relation to anti-cheat measures, cf. section 22(1) of the Danish Data Protection Act (DDPA).

The DPA has emphasised the fact that disclosure of the information in question can reveal how players can cheat the game and the underlying logic, which harms Reto Moto and other players. In the light of this, the complainant's interest in obtaining any such information is overridden by Reto Moto's interest in not disclosing how the company identifies cheating.

3.5. In regards to game replay data and server logs, the DPA finds no reason to disregard the statement by Reto Moto, that the company has deleted the information before receiving the access request.

4. Final remarks

A copy of this letter is sent to the complainant for information.

The DPA's decision may be appealed to the courts, cf. Article 63 of the Danish Constitution.

The DPA thus considers the case closed and does not take any further action.

Kind regards

Josefine Grue

Annex: Legal basis.

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Article 2(1) This Regulation shall apply to the processing of personal data carried out in whole or in part by means of automatic data processing and to other non-automatic processing of personal data which is or will be contained in a register.

Article 4 For the purposes of this Regulation:

- 1) 'personal data' means: any information relating to an identified or identifiable natural person ('the data subject'); identifiable natural person means a natural person who can be identified directly or indirectly, in particular by an identifier such as a name, identification number, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 2) 'treatment' means: any activity or set of activities, whether or not using automatic processing, which personal data or a collection of personal data is subject to, such as collection, recording, organisation, organisation, storage, adaptation or modification, retrieval, search, use, disclosure by transmission, dissemination or any other form of entrustment, alignment or combination, limitation, erasure or destruction;

[...]

- 7) 'data controller' means: a natural or legal person, a public authority, an institution or other body which, alone or jointly with others, determines for what purposes and with what means personal data may be processed; where the objectives and means of such processing are laid down in Union or Member State law, the controller or the specific criteria for its designation may be laid down in Union or Member State law;
- 8) 'data processor' means: a natural or legal person, a public authority, an institution or other body that processes personal data on behalf of the controller;

[...]

Article 12. 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, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

[...]

5. Information provided under Articles 13 and 14 and any communication and any actions taken under Articles 15 to 22 and 34 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:

- a) charge a reasonable fee taking into account the administrative costs of providing information or notifications or taking the requested action; or

- b) refuse to comply with the request.

The burden of proof that the request is manifestly unfounded or excessive shall be borne by the controller.

[...]

Article 15. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

- (a) the purposes of the processing;
- (b) the categories of personal data concerned;
- (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
- (f) the right to lodge a complaint with a supervisory authority;
- (g) where the personal data are not collected from the data subject, any available information as to their source;
- (h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

[...]

3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Act on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Danish Data Protection Act)

§ 22. The provisions of Articles 13(1) to (3), Article 14(1), Article 15 and Article 34 of the Data Protection Regulation shall not apply if the data subject's interest in this information is found to be overridden by essential considerations of private interests, including the consideration for the data subject himself.

