

Having regard to 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 (the ‘**GDPR**’);

Having regard to the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the General Data Protection Regime (hereinafter referred to as the ‘**Law of 1 August 2018**’);

Having regard to the Rules of Procedure of the National Data Protection Commission adopted by Decision No 3AD/2020 of 22 January 2020 (hereinafter referred to as the ‘**ROP**’);

Having regard to the complaints procedure before the National Data Protection Commission adopted on 16 October 2020 (hereinafter referred to as the ‘**Complaint Procedure before the CNPD**’);

Having regard to the following:

I. Facts and procedure

1. In the framework of the European cooperation, as provided for in Chapter VII of Regulation (EU) 2016/679 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 or GDPR), the Supervisory Authority of Bavaria, Germany, submitted to the National Data Protection Commission (hereinafter: “the CNPD”) the complaint of [REDACTED] (national reference of the concerned authority: [REDACTED]) via IMI in accordance with Article 61 procedure - 73526.
2. The complaint was lodged against the controller [REDACTED], who has its main establishment in Luxembourg. Under Article 56 GDPR, the CNPD is therefore competent to act as the lead supervisory authority.
3. The original IMI claim stated the following:

“[REDACTED] did not act on the complainant’s request regarding the access to his personal data [REDACTED] is processing. Furthermore [REDACTED] addressed several e-mails to the complainant using the wrong name.”
4. In essence, the complainant asks the CNPD to request [REDACTED] to grant him access to his personal data and to rectify this personal data.

5. The complaint is therefore based on Articles 15 and 16 of the GDPR.
6. On the basis of this complaint and in accordance with Article 57(1)(f) GDPR, the CNPD requested the controller to take a position on the facts reported by the complainant and in particular to provide a detailed description of the issue relating to the processing of the complainant's data, and in particular with regard to his right of access and rectification.
7. The CNPD received the requested information within the deadlines set.

II. In law

1. Applicable legal provisions

8. Article 77 GDPR provides that *“without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, (...) if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.”*
9. In accordance with Article 15 of the GDPR *“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 (...);”*
10. In accordance with Article 16 of the GDPR *“The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her (...);”*
11. Article 56(1) GDPR provides that *“(...) the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60”;*
12. According to Article 60(1) GDPR, *“The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in an endeavour to reach consensus. The lead supervisory authority and the*

supervisory authorities concerned shall exchange all relevant information with each other”;

13. According to Article 60(3) GDPR, *"The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views”;*

2. In the present case

14. Following the intervention of the Luxembourg supervisory authority, the controller confirmed that:
15. The controller’s customer service team was in contact with the complainant regarding order related topics and that in the e-mail conversation the complainant asked for access to his personal data. The controller then replied to the complainant that he could submit the data subject access request via the designated contact form when logged in to the customer account, but the complainant did not utilise this option or otherwise contact the controller again regarding his request. As the data subject request was made outside the contact form, the controller required additional verification for the complainant in this case (as there are two accounts for that delivery address with nearly identical emails) and therefore contacted him again.
16. Regarding the request for data rectification, the controller reviewed its systems and confirmed that the name in the customer account connected to the e-mail address (AAA) is the name of the complainant and that no other name is registered in the controller’s systems to that account or has been used in communications associated with that customer account.
17. The complainant ([REDACTED]) forwarded to the controller an email the controller sent to a different e-mail address, (BBB), which is linked to a separate [REDACTED] customer account ([REDACTED]); this second account is registered with the name of a different person (same family name) and includes the same delivery address as the complainant. In mails to the email address (BBB), the controller used the name [REDACTED] which is the registered name of the holder of that account in the controller’s systems. By contrast, in e-mails to the customer account associated with the e-mail address (AAA), the controller used the name [REDACTED] which is the registered name of the holder of that account in the controller’s systems. Therefore, the controller could not find any name data which the controller would

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have to rectify pursuant to Article 16 GDPR. In addition, as customers can change names associated with their account through a setting, the controller contacted the complainant to enable him to change his name in his account, if he wished to do so.

3. Outcome of the case

18. The CNPD, in a plenary session, therefore considers that, at the end of the investigation of the present complaint, the controller did not refuse to act on the complainant's right of access and rectification, in accordance with Articles 15 and 16 of the GDPR. With two nearly identical email addresses belonging to two persons having the same family name and delivery address, additional verification seemed necessary. Also it seemed obvious, based on the evidence, that the complainant [REDACTED] also had access to the other email account of [REDACTED]
19. Thus, in the light of the foregoing, and the residual nature of the gravity of the alleged facts and the degree of impact on fundamental rights and freedoms, it does not appear necessary to continue to deal with that complaint.
20. The CNPD then consulted the supervisory authority of Bavaria, Germany, pursuant to Article 60(1), whether it agreed to close the case. The Supervisory Authority of Bavaria, Germany, has responded affirmatively, so that the CNPD has concluded that no further action was necessary and that the cross-border complaint could be closed.

In light of the above developments, the National Data Protection Commission, in a plenary session, after having deliberated, decides:

- To close the complaint file 3.633 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the approval of the concerned supervisory authority.

Belvaux, dated 22 September 2023

The National Data Protection Commission



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[REDACTED]
Chair

[REDACTED]
Commissioner

[REDACTED]
Commissioner

[REDACTED]
Commissioner

Indication of remedies

This Administrative Decision may be the subject of an appeal for amendment within three months of its notification. Such an action must be brought by the interested party before the administrative court and must be brought by a lawyer at the Court of one of the Bar Associations.