



Deliberation No. 58/RECL18/2022 of 2 December 2022 of the National Data Protection Commission, in a plenary session, on complaint file No 4.696 lodged against the company [REDACTED] via IMI Article 61 procedure 109489

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 Ireland submitted to the National Data Protection Commission (hereinafter: “the CNPD”) the complaint of [REDACTED] (national reference of the concerned authority: C-19-9-447) via IMI in accordance with Article 61 procedure - 109489.
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:
“The data subject raised their initial concern to the DPC via webform received 13th September 2019. The DS outlines in their webform their concerns regarding the DC’s non response to their access request. The data subject requested call recordings which the data subject states she needs to progress a claim with [REDACTED]. The data subject is not satisfied with the response regarding her request.”

4. In essence, the complainant asked the CNPD to request [REDACTED] to provide her access to her data, especially specific call recordings she would need in order to resolve a dispute.
5. The complaint is therefore based on Article 15 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 her right of access.
7. The CNPD received the requested information within the deadlines set.

II. In law

1. Applicable legal provisions

8. According to Article 77 GDPR *"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. Pursuant to Article 56(1) GDPR, *"(...) 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"*;
11. 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"*;
12. 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

13. Following the intervention of the Luxembourg supervisory authority, the controller confirmed that:

- The controller identified that this issue arose due to a disagreement regarding the reimbursement of return shipping costs. [REDACTED] stated that a customer service agent told her she would get all her return shipping costs compensated, but [REDACTED]'s 'return shipping on us' programme is capped at €30.00 EUR, which would have resulted in the complainant only receiving partial compensation.
- On the 5th of September 2019, [REDACTED] submitted a data access request and specified that she wanted copies of all [REDACTED] transactions and copies of two call recordings made on the 8th August 2019. [REDACTED]'s customer service representative replied on the 13th of September 2019, with instructions on how to download her transaction history, but also advised her that there was no option to provide call recordings but only chat transcripts. [REDACTED] considered that this appeared to have been a knowledge gap on behalf of the [REDACTED] agent who dealt with the matter at the time, and these types of coaching opportunities have been addressed in ongoing refresher training delivered to all of their customer service agents in June 2020.
- [REDACTED] replied to [REDACTED] on the 13th of September 2019, reiterating her request for the call recordings and on the 17th of October 2019, [REDACTED] sent the complainant the requested data. However, there were no calls in the systems from the 8th of August 2019 with [REDACTED] only two calls from the 1st of August 2019. It would appear that the discrepancy in the dates lead to an overlook by the [REDACTED] employee who sent the requested data so that the call recordings were not included in the file sent to the complainant.
- Following the intervention of the complainant, [REDACTED] advised her that they would investigate why the recordings were not provided and which human error lead to the problem in the first place.
- In February 2020, [REDACTED] made again a formal complaint to [REDACTED] in relation to the return shipping costs she incurred as part of her buyer complaint, the customer service she received, and the call recordings not being received. [REDACTED]'s



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Executive Escalations team and [REDACTED] discussed the issues she raised and later in February 2020, she agreed to compensation in full and final settlement of her complaint. It seemed that [REDACTED] thus no longer wanted access to the call recordings, as she had indicated that the underlying reasons for her dissatisfaction had been resolved. Nonetheless, [REDACTED] had completed the data set and communicated the call recordings from the 1st of August 2019 to [REDACTED]. Confirmation that this was sent was provided to the CNPD.

3. Outcome of the case

14. The CNPD, in a plenary session, therefore considers that, at the end of the investigation of the present complaint, the controller has taken appropriate measures to grant the complainant's right of access to her call recordings, in accordance with Article 15 of the GDPR.
15. 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.
16. The CNPD then consulted the supervisory authority of Ireland, pursuant to Article 60(1), whether it agreed to close the case. The Supervisory Authority of Ireland 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 view of the above, the CNPD, in a plenary session and deliberating unanimously, decided:

- to close the complaint file 4.696 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the approval of the concerned supervisory authority(s).

Thus decided in Belvaux, dated 2 December 2022

The National Data Protection Commission



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Chair



Commissioner



Commissioner



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.