

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 56 procedure - 61900.
2. The complaint was lodged against the controller [REDACTED] ([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 process or did not fully process the complainant's request regarding the access to the personal data relating to him that [REDACTED] is processing."

4. In essence, the complainant asks the CNPD to request [REDACTED] to grant him access to his data.

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 [REDACTED] 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.
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. 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"*;
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, [REDACTED] confirmed that:

- The letter from the lawyer of the complainant (same family name as the complainant) dated 26 April 2018 did not reach [REDACTED] until the lawyer sent a copy of the letter without the proxy in May 2018. [REDACTED] did not refuse the DSAR by letter but was not able to properly identify the lawyer as duly authorized regarding the data of the complainant due to the missing proxy.
- In the following communication between [REDACTED]'s customer services and the lawyer, the controller clarified that [REDACTED] needs to properly identify the requestor as holder of the respective customer account or his/hers duly authorized representative in order to make sure to only disclose personal data to the respective data subject.
- [REDACTED] also explained that the easiest way for the customers to identify themselves, is to log into their account and submit their request via the designated contact form. As it has been stated before, if the data subject does not want this, [REDACTED] will not refuse to use other ways of identification.
- [REDACTED] did not receive a proxy from the lawyer, but a request for a data set from the complainant via her customer account in August 2018. [REDACTED] then provided her with the data set in September 2018.

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 request, 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.



Deliberation No 41/RECL14/2023 of 9 June 2023 of the National Data Protection Commission, in a plenary session, on complaint file No 4.131 lodged against the company [REDACTED] via IMI Article 56 procedure 61900

16. 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 4.131 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 9 June 2023

The National Data Protection Commission

[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.