

Notice: This document is an unofficial translation of the Swedish Authority for Privacy Protection's draft decision.

COMPLAINANT

See appendix

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IMY-2023-15896

Nat.ref.no
2023-31-7819

IMI case register:
580527

Date of the decision:
2024-07-31

DATA CONTROLLER

Scandinavian Airlines System AB

Final decision under the General Data Protection Regulation – Scandinavian Airlines System AB

Decision of the Swedish Authority for Privacy Protection

The Swedish Authority for Privacy Protection (IMY) finds that Scandinavian Airlines System AB has processed personal data in breach of Article 12 (3) of the General Data Protection Regulation (GDPR)¹ by not having accommodated the complainant's request for erasure made on the 1 September 2019 without undue delay, and first on 15 June 2023.

The Swedish Authority for Privacy Protection issues a reprimand to Scandinavian Airlines System AB pursuant to Article 58(2)(b) of the GDPR for the infringement of Article 12(3) of the GDPR.

Presentation of the supervisory case

The Swedish Authority for Privacy Protection (IMY) has initiated supervision against Scandinavian Airlines System AB (SAS) due to a complaint. The complainant has been submitted to IMY, as the lead supervisory authority under Article 56 of the GDPR, by the supervisory authority of the country (Denmark) in which the complainant lodged its complain in accordance with the Regulation's provisions on cooperation in cross-border processing.

Since it is a cross-border complaint, IMY has made use of the mechanisms got cooperation and consistency of the GDPR. The supervisory authorities concerned have been the data protection authorities in Denmark, Netherlands, Belgium, Estonia, France, Norway, Germany (Bayern, Berlin, Hesse) and Ireland.

The complainant has stated the following. The complainant requested access to his personal data on 1st September 2019. The complainant received an email from SAS

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¹ 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).

that the request will be complied within 30 days. The complainant's request was complied with on the 15th June 2023.

SAS has stated the following. SAS received the complainant's request for access on 1 September 2019. As of September 6, 2019, SAS systems that manage data subjects' rights and access to information ("Privacy App"), have collected all necessary data. Normally, the Privacy App sends an email to the individual who requested their information, but in this specific case the email function in the system was not working. Only one data subject, the complainant in this case, was affected by this. In 2023, the Privacy App was updated and changes were made to the email function, which is the reason that the system sent the delayed response to the complainant. SAS had no knowledge that the complainant had not previously received a response from the Privacy App.

Since May 2018, the Privacy App has produced information about 1,300 times, and SAS review the functionality and process of this procedure at least once a year. This is the first time that this technical bug has been found in the Privacy App, and this bug is now fixed.

SAS believes that they have handled the request from the data subject on time, but that unfortunately there was a technical bug in the Privacy App that SAS did not know about at the time, which meant that the email response to the complainant (that SAS had no information about the complainant) got stuck in the Privacy App.

The complainant has been given the opportunity to comment on the material but has not been heard.

Applicable provisions, etc.

It follows from Article 57(1)(f) of the GDPR that IMY shall handle complaints lodged by a data subject who consider that their personal data is being processed in a manner contrary to the Regulation and investigate, to the extent appropriate, the subject matter of the complaint. The Court of Justice of the European Union has ruled that the supervisory authority must investigate such complaints with due care.²

Pursuant to Article 15 of the GDPR, a data subject has the right to obtain from the controller confirmation as to whether or not personal data relating to him or her are being processed and, if so, access to the personal data and certain information.

Pursuant to Article 12(3) of the GDPR, upon request, the controller shall provide the data subject, without delay and in any event no later than within one month of receipt of the request, with information on the measures taken pursuant to, inter alia, Article 15 of the GDPR. That period may be extended by two months further, if necessary, considering the complexity of the request and number of requests received. The controller shall inform the data subject of such an extension within one month of receipt of the request and shall state the reasons for the delay.

Assessment of IMY

It appears from the investigation that the parties agree that the complainants request for access was complied with more than one month after the request was received. It does not appear that the request was of a particularly complex nature. Nor is it

² Schrems II, C-311/18, EU:C:2020:559, p. 109.

apparent that SAS informed the applicant of the delay in accordance with Article 12(3) of the GDPR. IMY therefore takes the view that SAS failed to fulfil their obligation under Article 12(3) of the GDPR in that they did not comply with the complainants request to access on the 1 September 2019 until the 15 June 2023.

Choice of corrective measure

It follows from Article 58(2) and Article 83(2) of the GDPR that the IMY has the power to impose administrative fines pursuant to Article 83 of the GDPR.

In the case of a minor infringement, the IMY may, as stated in recital 148 of the GDPR, instead of imposing a pecuniary penalty, issue a reprimand pursuant to Article 58(2)(b) of the GDPR. Account must be taken of aggravating and mitigating circumstances of the case, such as the nature, severity and duration of the infringement as well as previous relevant infringements.

IMY notes the following relevant circumstances. The supervision covers SAS handling of an individual complainants request for access to his personal data. The infringement in question has affected one person and has occurred due to a temporary system problem at SAS. The company states that this is the first time that the technical bug occurred and that it has now been fixed. Against that background, IMY considers the infringement to be minor within the meaning of recital 148 and that Scandinavian Airlines Systems AB should be issued a reprimand under Article 58(2)(b) of the GDPR.³

This decision has been made by specially appointed decision-maker, legal advisor [REDACTED] after presentation by legal advisor [REDACTED].

Appendix

The complainant's personal data

³ EDPB Guidelines 04/2022 on the calculation of administrative fines under the GDPR (finally adopted on 24 May 2023).