

**COMPLAINANT**

See appendix

**CONTROLLER**

Pierce AB

**Swedish ref:**  
IMY-2022-6646

**IMI case register:**  
331357

**Date:**  
2024-12-20

# Final decision pursuant to Article 60 under the General Data Protection Regulation

## Decision of the Swedish Authority for Privacy Protection

The Swedish Authority for Privacy Protection (IMY) finds that Pierce AB (556763 – 1592) has processed the complainant's<sup>1</sup> personal data in breach of:

- article 6(1) of the General Data Protection Regulation (GDPR)<sup>2</sup> by during the period April 7, 2021 – June 6, 2021 having used the complainants email address for the purpose of sending newsletters to him without being able to demonstrate a legal basis for that processing,
- article 13 by having provided the complainant with insufficient information about the processing in question, and
- article 12(3) by not having handled the complainant's request for access on May 30, 2021 without undue delay.

IMY issues a reprimand to Pierce AB pursuant to Article 58(2)(b) of the GDPR for the infringements.

## Presentation of the supervisory case

IMY has initiated supervision regarding Pierce AB ('Pierce', the company) due to a complaint. The complaint was submitted to IMY as the lead supervisory authority pursuant to Article 56 of the GDPR. The submission of the complaint was made by the supervisory authority with which the complaint was lodged (the Norwegian supervisory authority) to be handled in accordance with the provisions of the GDPR on cooperation in cross-border processing. In handling the case, IMY has used the cooperation and consistency mechanism of chapter VII of the GDPR. The other supervisory authorities concerned have been the authorities of Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Poland and Spain.

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<sup>1</sup> The complainant's identifications data are set out in annex.

<sup>2</sup> 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).

The complainant has essentially stated the following. After he made a purchase from Pierce on 7 April 2021, and provides his email address, the company sent him marketing emails (newsletters) in large quantities and without legal basis. At the time of purchase, he had neither consented to, nor been given the opportunity to object to, the sending of newsletters. At the time of purchase, he also received insufficient information about the company's processing of his personal data for the purpose of sending newsletters, including no information about the processing of his personal data in connection with the opening and reading of the newsletters. On 30 May 2021, he requested access to his personal data pursuant to Article 15 of the GDPR, to which the company did not respond. The mailings ended a week after his access request. In support of the complaint, the complainant submitted, i.a. written information from the company.

IMY has initiated supervision to investigate whether Pierce had a legal basis pursuant to Article 6(1) of the GDPR to use the complainant's email address to send marketing emails to the complainant during the period in question, whether the complainant has received sufficient information about the processing pursuant to Articles 12 and 13 when the email address was collected, and whether the company handled the complainant's request for access without undue delay. The examination of the case is limited to what the complainant has stated about Pierce's processing of his personal data relating to the newsletters in question, and his request for access on May 30, 2021, and not the company's processing in general. The case has been handled through written procedure.

Pierce has stated that the company is the controller concerning the processing to which the complaint relates.

## Reasons for the decision

### Legal basis

The lawfulness of the processing of personal data requires a legal basis in Article 6(1) of the GDPR. Personal data can be processed on the basis of a balance of interests under Article 6(1)(f), if the processing is necessary for the purposes of legitimate interests and the interests of the data subject do not override those interests. Marketing is, according to recital 47 of the GDPR, an example of a purpose that may support the processing of personal data based on a balance of interests. When assessing whether a processing operation can be based on a balance of interests, account may be taken, i.a. of what information the data subject has been given about the processing of his or her personal data, and whether the specific interest may conflict with other legislation, such as the Marketing Act (2008:486).<sup>3</sup>

Section 19 of the Marketing Act states that, under certain conditions, a trader may use e-mail for marketing to a natural person without consent. One of the conditions is that the natural person, when the e-mail address is collected, is clearly and explicitly given

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<sup>3</sup> See Recital 70 of the GDPR and EDPB Guidelines 1/2024 on processing of personal data based on Article 6(1)(f), Section 4, adopted for public consultation on October 8, 2024, in particular at paragraph 116.

the opportunity to object to the use of such details for marketing purposes free of charge and easily.

Article 12 of the GDPR imposes a requirement to provide transparent information to the data subject when personal data is collected. Examples of information to be provided pursuant to Article 13 when personal data is collected include the purposes of the processing, the legal basis for the processing and, where the processing is based on Article 6(1)(f), the legitimate interests pursued by the controller or by a third party. In addition, according to the provision, the data subject must be informed at the time of collection of his or her right to object to the processing. Article 21(3) states that the data subject has the right to object to processing for direct marketing purposes. Article 12(2) requires the controller to facilitate the exercise of data subject's rights under Article 21.

The complainant stated that after providing his e-mail address in connection with a purchase from Pierce, he received marketing e-mails (newsletters) from the company without any legal basis. According to the complainant, he had neither consented to, nor been given the opportunity to object to, receiving these mailings.

In the written information from the company, submitted by the complainant in this case, states under the heading *Direct Marketing* that personal data will be used to send offers by e-mail if you have given your consent. Under the headings of *What are your rights* and under *Your right to object to direct marketing*, it is stated that you can opt out of receiving direct marketing by following the instructions in each marketing message.

Pierce has responded to the complaint, including the documents submitted by the complainant in support of the complaint, and mainly stated the following. The company sent approximately 27 e-mail newsletters to the complainant during the period in question. This was done on the basis of a balancing of interests under Article 6(1)(f) of the GDPR. The company does not rely on consent. At the time of the collection, the complainant did not have the opportunity to opt out of receiving e-mail newsletters via a checkbox. In order to be able to send newsletters, the company relies on section 19(2) of the Marketing Act. The company provides the natural person with a clear and simple opportunity to object, free of charge, to the use of their data for marketing purposes both at the time of collection and in each subsequent marketing message. In Pierce's privacy policy, the company informs data subjects of their right to object to direct marketing and how to do so. The data subject could therefore, already at the time of collection, contact the company to opt out of newsletters. Each newsletter sent out also contained a clearly indicated unsubscribe link. The company has now updated its procedures, so that customers are more clearly given the opportunity to decline at the time of collection, and updated its privacy policy, among other things, to be even clearer and comply with the requirements set by IMY and other supervisory authorities in their latest practice. The company has submitted a documented balance of interests that, among other things, refers to Section 19 of the Marketing Act.

IMY notes that the GDPR requires data controllers, when collecting personal data, to provide transparent information on the purposes for which the data will be used and, where applicable, the right to object to the processing, and to facilitate the data subject's right to object to direct marketing.

The investigation shows that when the e-mail address was collected, the complainant was not clearly informed that he would receive marketing e-mails unless he actively

objected. According to the information provided by the company at the time, sending offers by e-mail required his consent. It is questionable whether the procedure was in accordance with Section 19 of the Marketing Act. Against this background, IMY considers that it has not been established that Pierce has been able to rely on Article 6(1)(f) of the GDPR to support the processing of the complainant's personal data in question. No other legal basis has been relevant to apply for the processing. IMY finds that by sending the newsletters in question by email to the complainant without being able to demonstrate a legal basis for the processing, Pierce has processed the complainant's personal data in breach of Article 6(1) of the GDPR.

### **Information to the complainant**

When personal data is collected from a data subject, Article 13 of the GDPR requires the controller to inform the data subject about the processing of his or her personal data.

Some uncertainties in the information provided to the complainant regarding the legal basis and the right to object to the processing has already been taken into consideration when assessing whether the company had a legal basis for sending the newsletter emails to the complainant.

The complainant also claims that the company did not inform him about the processing of his personal data when opening and reading the newsletter.

Pierce has essentially stated the following. Through the company's newsletter register, data has been collected on whether the complainant has opened the newsletters, including whether the complainant has clicked on anything in the newsletters. This information was not previously provided to the complainant, but the company informed the complainant on October 12, 2022 that the company processes information that he has not opened the newsletters. The company has also updated its privacy policy with information about this and referred the complainant to the updated policy.

The investigation shows that, when collecting the complainant's personal data, Pierce did not inform the complainant about the company's processing relating to the complainant's opening and reading of the newsletters in question. IMY finds that by providing insufficient information about the processing of the complainant's personal data at the time of collection, Pierce has processed the complainant's personal data in breach of Article 13 of the GDPR.

### **Request for access**

Pursuant to Article 15 of the GDPR, the data subject has 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 certain additional information.

Articles 12(3) and 12(4) of the GDPR set out the information to be provided to the data subject in connection to a request for access and the time limits that apply in different cases.

The complainant has stated he requested access from Pierce on May 30, 2021, did not receive a response within one month and when the complaint was filed still had not received a response.

Pierce has essentially stated the following. The complainant's request was not opened because, in accordance with the company's security procedures, the e-mail was unfortunately misinterpreted as a security threat. There was therefore no deliberate refusal of the customer's request, nor was the company unable to handle the request. The complainant's request was granted on 12 October 2022. To minimize the risk of similar situations in the future, Pierce has created an email address for data protection issues, which is referred to in the company's privacy policy.

The investigation shows that the complainant requested access from Pierce on May 30, 2021 and that the company, according to its own statement, did not respond to the request until October 12, 2022.

While there may be circumstances in individual cases that may explain why a request is not opened, controllers have an obligation to take measures to counteract this. One such example is to facilitate, through instructions and guidance, data subjects who wish to exercise their rights. It has not been established that the company had taken sufficient measures in this respect at the time of the request.

IMY finds that by not having handled the complainant's request for access on May 30, 2021, without undue delay, Pierce has processed the complainant's personal data in breach of Article 12(3) of the GDPR.

### **Choice of corrective measure**

In case of infringements of the GDPR, Article 58(2)(i) allows IMY to impose administrative fines in accordance with Article 83. Recital 148 states that in a case of a minor infringement, IMY shall instead issue a reprimand under Article 58(2)(b). In the assessment due regard must be given to the circumstances of each individual case, such as the nature, gravity and duration of the infringement, the scope of the processing, the number of data subjects affected and any relevant previous infringements.

In this case, IMY has taken into consideration the following circumstances. The company has used the complainant's email address for the purpose of sending newsletters without having a legal basis for that processing, provided insufficient information about the processing in question and did not handle the complainant's access request without undue delay. The infringements concern a limited amount of personal data. They do not involve processing of sensitive personal data. There are no previous decisions on infringements of the GDPR against the company. According to the information received, the company has taken actions to remedy the infringements.

Against this background, IMY considers that these are minor infringements within the meaning of recital 148 of the GDPR and that Pierce is to be given a reprimand for the infringements.

This decision has been approved by Head of Unit [REDACTED] after presentation by legal advisor [REDACTED].

### **Appendix**

The complainant's personal data

## How to appeal

If you wish to appeal the decision, you should write to the Swedish Authority for Privacy Protection (IMY). Indicate in the letter which decision you wish to appeal and the change you are requesting. The appeal must have been received by IMY no later than three weeks from the day you received the decision. If the appeal has been received in time, IMY will then forward it to the Administrative Court in Stockholm for review.

You can e-mail the appeal to IMY if it does not contain any privacy-sensitive personal data or information that may be covered by confidentiality. IMY's contact information is shown in the first page of the decision.