

DRAFT DECISION to be submitted to [REDACTED] based on the comments submitted by the Polish SA.

Dear [REDACTED]

Thank you for your emails of 28 June and 2 July 2019 in regards to Mr [REDACTED]'s data protection concerns about the way [REDACTED] processed his personal data and I apologise for the delay in responding to you.

The ICO's role

Part of our role is to consider complaints from individuals who believe their data protection rights have been infringed.

Our view

1. Transparency obligations

After considering all of the information provided in this case, it is our view that [REDACTED] was not in a position to honour Mr [REDACTED]'s requests of erasure and objection to processing of his personal data. This is because [REDACTED] sufficiently justified its reliance on the performance of a contract as a basis for processing Mr [REDACTED]'s personal data under the GDPR.

Nevertheless, it is our view that complaints submitted by Mr [REDACTED] to the Polish Data Protection Supervisory Authority (Polish SA) and to the ICO could have been prevented if [REDACTED] staff at the point of sale managed to communicate effectively the basis on which Mr [REDACTED]'s data was to be processed.

It is possible that Mr [REDACTED] might have made another choice than buying [REDACTED]'s gift card if he knew that his personal data would not be processed based on consent but mainly on the contractual basis.

Transparency requirements under the GDPR require organisations to be clear, open and honest with people from the start about who they are, and how and why they use individuals' personal data. Transparency is always important, but especially in situations where individuals have a choice about whether they wish to enter into a relationship with certain organisations.

This means that if individuals know at the outset what [REDACTED] will use their information for, they will be able to make an informed decision about whether they wish to provide their personal data to [REDACTED].

Therefore, if customers make an in-store purchase, we would expect [REDACTED]'s staff to provide individuals with clear and simple privacy information.

The Polish SA informed us that Mr [REDACTED] received the privacy policy that he signed (although it was not provided for our review we accept this to be the case). It has been pointed out to us that the privacy policy has provided a misleading information that one of the legal bases for the processing was the complainant's consent. That is why Mr [REDACTED] was convinced he was able to withdraw his consent at any time and that his data would be no longer processed. Additionally, it appears that the basis for processing Mr [REDACTED]'s data and his rights were not clearly articulated at the point of sale.

We hope a lesson will be learnt from this case and you consider the difficulties your customers may have when [REDACTED]'s staff is unable to communicate clearly its privacy policy to them risking an infringement of their privacy rights.

2. Polish AML Law

The Polish SA expressed its serious doubts that the anti-money laundering law can serve as a legal basis for this particular processing. This is because no evidence was provided that [REDACTED] was in fact covered by the AML directive. Moreover, it appears to the Polish SA [REDACTED] does not seem to be able to fulfil the definition of an "entity obliged" to carry out an anti-money laundering analysis.

In light of the above, the ICO is unable to confirm whether the Polish AML law can serve as a legal basis for processing Mr [REDACTED]'s personal data. We recommend you to revisit this issue to ensure [REDACTED] relies on the appropriate basis for processing and the decisions are made on a case by case basis.

Action required

We do not intend to take regulatory action in regards to this issue. However, we require you to revise your privacy policies and make the necessary changes so that the lawful basis and the purpose for processing are clearly understood by individuals. Additionally, you should ensure data subjects are provided with clear information about their rights pertaining to the processing specifically involving the sale of gift cards.

Additionally, you should alter your data retention policy in light of the current limitation periods regulated under Article 118 of the Polish Civil Code and ensure these changes are reflected in your privacy policy.

Lastly, we require you to take steps to improve your information rights practices and ensure that all staff attend mandatory data protection training which is routinely tested and refreshed and all policies and procedures are updated and revised to reflect the transparency obligations placed on [REDACTED] under the GDPR.

You should now that it is our policy to keep a record of all the complaints raised with us about the way [REDACTED] handles personal information. The information we gather from complaints may form the basis for action in the future where appropriate.

Thank you for addressing this data protection concern. Should you need any clarification, please do not hesitate to contact us.

Yours sincerely

[REDACTED]

Case Officer
Information Commissioner's Office
Direct dial number: [REDACTED]

ICO Statement

You should be aware that the Information Commissioner often receives request for copies of the letters we send and receive when dealing with casework. Not only are we obliged to deal with these in accordance with the access provisions of the data protection framework and the Freedom of Information Act 2000, it is in the public interest that we are open and transparent and accountable for the work that we do.

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice