



Baden-Württemberg

THE COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

LfDI Baden-Württemberg · P.O. Box 10 29 32 · D-70025 Stuttgart

via Datatilsynet

Date February 8, 2022

Name [REDACTED]

Extension [REDACTED]

Our File No. [REDACTED]

(please quote in all correspondence)

Final Decision pursuant to Article 60 (8) GDPR

Datatilsynet Reference: 20/03148-2

Preliminary comments

In June 2020, the Baden-Wuerttemberg Supervisory Authority (SA) received a complaint (case no. [REDACTED]) against the controller [REDACTED] about an alleged unlawful processing of data in the form of a letter with a financial proposal. As the controller is based in Norway, the Norwegian SA (“Datatilsynet”) acknowledged to act as Lead Supervisory Authority (LSA) according to Article 56 (1) GDPR (IMI no. 132372).

In December 2021, Datatilsynet broadcast a Draft Decision (IMI no. 342391) to close the case, since the complainant had not responded to the request about the disclosure of his personal data to the controller, which makes it essentially impossible to investigate the case further.

In order to comply with Article 60 (8) GDPR and to close the case, the Baden-Wuerttemberg SA adopts the above-mentioned decision as originally prepared by the Norwegian SA, as follows:

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For information on our privacy notice pursuant to Article 13 GDPR, please consult our webpage at the following address:
<https://www.baden-wuerttemberg.datenschutz.de/datenschutz/>

Decision

The Baden-Wuerttemberg State Commissioner for Data Protection and Freedom of Information (hereinafter “LfDI BW”) adopts the following decision on the complaint submitted against [REDACTED] on 12 June 2020 (Case [REDACTED]):

- The complaint shall be rejected pursuant to Article 60(8) of the General Data Protection Regulation (GDPR).¹

Factual Background

On 12 June 2020, the LfDI BW received a complaint against the Norwegian company [REDACTED] (hereinafter “[REDACTED]”). The complainant claimed that [REDACTED] had processed his personal data without his consent, as he received a letter with a financial proposal from [REDACTED] without having consented to the use of his personal data for the sending of this kind of correspondence.

In his complaint, the complainant expressed the wish to remain anonymous towards [REDACTED] in the context of the handling of his complaint, and forbade the relevant supervisory authorities from disclosing his name to [REDACTED].

On 19 June 2020, the LfDI BW shared the complaint with the other European supervisory authorities through the IMI system. Thereafter, the Norwegian Data Protection Authority (hereinafter “Datatilsynet”) was identified as the lead supervisory authority in the case pursuant to Article 56(1) GDPR, and the LfDI BW and the French National Data Protection Commission (hereinafter “CNIL”) were identified as the other supervisory authorities concerned pursuant to Article 4(22) GDPR.

After having preformed a preliminary vetting of the complaint, on 7 September 2021, Datatilsynet asked the LfDI BW to check with the complainant whether he would accept to withdraw his request for anonymity, as it would be essentially impossible to expedite his complaint without disclosing his identity to [REDACTED].

On 5 October 2021, the LfDI BW wrote to the complainant to ask whether he agreed to the disclosure of his name to [REDACTED]. The LfDI BW requested the complainant

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) OJ L 119/1.

to respond to the query within two weeks of reception. However, the complainant never responded to the LfDI BW.

Legal Background

Pursuant to Article 57(1)(f) GDPR, each supervisory authority shall handle complaints lodged by a data subject and investigate, to the extent appropriate, the subject matter of the complaint.

To enable supervisory authorities to perform such a task, Article 58 GDPR entrusts them with a number of investigative and corrective powers, including the power to request information from the relevant controller.

As noted by the EFTA Court in Joined Cases E-11/19 and E-12/19, *Adpublisher*, “the supervisory authority’s exercise of its powers [...] may necessitate disclosing the identity of the complainants to the controller.”² Indeed, according to the Court, “the effective functioning of data protection compliance under the GDPR may require disclosing the complainant’s personal data to the data controller. This would be the case, inter alia, when the data subject, in accordance with point (c) of Article 58(2) of the GDPR, requests to exercise his or her rights or alleges infringement of his or her rights by the controller. Acting on this request, a supervisory authority may need to disclose the identity of a complainant to the controller to enable the latter to fulfil the order.”³ However, the Court found that “disclosing complainants’ identities may not be necessary for the effective exercise of the right of defence where the investigation or decision concerns standardised and equal data processing for an unspecified number of data subjects, or where the investigation and decision is based on several similar complaints.”⁴

Moreover, under Article 18 of the Norwegian Public Administration Act (*forvaltningsloven*),⁵ a company under administrative investigation has the right to access the documents regarding the investigation that the relevant public authority holds (e.g., a written complaint), unless there are special reasons to withhold access to a certain document.

² EFTA Court, Joined Cases E-11/19 and E-12/19, *Adpublisher*, judgment of 10 December 2020, para. 51.

³ *Ibid.*

⁴ *Ibid.*, para. 52.

⁵ Lov 10. februar 1967 om behandlingsmåten i forvaltningsaker (*forvaltningsloven*).

Findings

The complaint at hand concerns a communication that ██████████ allegedly sent to the complainant to offer him to acquire a specific fund participation ██████████. According to the complainant, ██████████ sent this communication without having obtained his prior consent to the processing of his personal data for this purpose.

To expedite the complaint it would be necessary to disclose the identity of the complainant to ██████████, to enable the company to share its views on whether it sent the communication in question, and whether it had a lawful basis to do so under the GDPR. This would be essential to ensure the effective exercise of the right of defence of the company. Indeed, the complaint does not concern a standardised and equal data processing for an unspecified number of data subjects; it concerns a one off processing operation regarding a specific data subject. Moreover, should the appropriate legal basis for the processing at hand be Article 6(1)(a) GDPR (consent) – as the complainant seems to suggest – it would be basically impossible for ██████████ ██████████ to confirm or deny whether it collected a valid consent without knowing the identity of the relevant data subject. Thus, the complainant's request to remain anonymous towards ██████████ makes it impossible to expedite the complaint.

Moreover, as a rule, a company under investigation in Norway has the right to get access to the case file, which in this case would include the complaint mentioning the name of the complainant.⁶ This rule may be waived only in exceptional circumstances. However, in the present case, Datatilsynet has not identified any special reasons that would justify a waiver, in particular in light of the fact that the complainant failed to provide any reasons why his name should not be disclosed to ██████████ ██████████.

In light of the above, the complaint shall be rejected pursuant to Article 60(8) GDPR. The present case is therefore closed.

Right of Appeal

An appeal against this decision may be filed in writing, electronically or for recording with the Administrative Court of Stuttgart, Augustenstraße 5, 70178 Stuttgart, within

⁶ Ibid., Art. 18.

one month of notification pursuant to Article 78 of the General Data Protection Regulation in conjunction with Section 20(1) and (3) of the Federal Data Protection Act.