



Baden-Württemberg

THE COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

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

File No. 4400-6/5493



Final Decision pursuant to Article 60 (8) GDPR

National file number (NL): z2022-06106

Preliminary comments

On 4 July 2022, the Baden-Wuerttemberg Data Protection Authority (DE/BW DPA) received a complaint (ref. no. 4400-6/5493) against the controller [REDACTED], [REDACTED], complaining about receiving newsletters with marketing offers although complainant only agreed to receive newsletters with important information on updates for [REDACTED] devices. Second, the complainant indicates that it is not possible to deselect cookie analytics on the website of the controller.

As the controller is based in the Netherlands, the DE/BW DPA submitted the complaint to the Dutch DPA on 29 September 2022 via IMI under 61VMN 442550 to handle the case as lead supervisory authority.

On 4 April 2023, the Dutch DPA broadcast a Draft Decision (IMI 60DD 503235) 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 DE/BW DPA adopts the above-mentioned decision as originally prepared by the Dutch DPA, as follows:

Decision:

With regard to the abovementioned case and pursuant to Article 60(3) of the General Data Protection Regulation (GDPR), the Autoriteit Persoonsgegevens (Dutch Data Protection Authority, hereafter: NL SA) has issued the following draft decision:

Summary of the Case

On 29 September 2022 an article 61 notification with number 442550 was broadcast by the Baden-Wurttemberg SA.

The complainant complains about receiving newsletters with marketing offers although complainant only agreed to receive newsletters with important information on updates for [REDACTED] devices.

Second, the complainant indicates that it is not possible to deselect cookie analytics on the website of the controller.

Investigation by the NL SA

1. The NL SA has assessed the complaint and found that the complainant does not want the NL SA to use his personal details in the correspondence with the controller.
2. A letter dated on December 14, 2022 by the NL SA was forwarded to the complainant by the SA of Baden-Wurttemberg explaining that the complaint cannot be investigated on an individual basis if the complainant does not want to share its personal details with the controller.
3. The Baden-Wurttemberg SA confirmed in IMI on February 14, 2023 that they did not receive any response by the complainant regarding the letter.

Norm allegedly infringed

Article 6.1 (a) GDPR states: Processing shall be lawful only if and to the extent that at least one of the following applies: the data subject has given consent to the processing of his or her personal data for one or more specific purposes.

Article 21.1 GDPR states: 1) The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. 2) The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

Proposed action by the NL SA

The NL SA was not in a position to investigate the case further due to the complainant's refusal to use his personal details in the correspondence with the controller. The NL SA is therefore obliged to reject the complaint and will close this case.