

Feedback paragraph 80 and 89 of the Guidelines regarding the right to access.

Regarding paragraph 89:

Paragraph 89 states that there is no obligation for the controller to provide the data directly to the portal. Is this true even if the data subject has requested that access be given through the portal?

An access request portal can act as a guarantee to facilitate the right to access, since the data subject will have access to a third party for quality control.

In our experience controllers very rarely give access in a satisfactory capacity. Being obliged to provide access through a channel where there are checks in place to make sure that an access request is answered in a satisfactory manner would safeguard the rights and freedoms of the data subject.

Article 15.3 of the GDPR states: "where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form". It would seem that the legislator has taken the will of the data subject into account regarding the form of how access should be given, seemingly taking into account access through third party portals.

The way paragraph 89 is worded gives controllers a carte blanche to ignore the request of the data subject to provide access through a portal simply by claiming that they have no obligation to provide access through said portal. Clarification regarding the controller's obligation to adhere to the data subjects request to provide access in the form requested by the data subject is thus needed.

Regarding paragraph 80:

It has also come to our attention that controllers tend to disregard power of attorney given to us by data subjects. They instead treat the access request as a request done directly by the data subject instead of through an intermediary.

We provide proof of our relationship with the data subject in the portal, which is accessible to the controller when they've logged into the portal. We only send a copy of the document granting us power of attorney to the controller when requested by the data subject. Given that the proof of our relationship is available to the controller if they log in to the portal, can the controller be obligated to log in to the portal as a step to verify that the data subject has given us power of attorney? And if yes, under what circumstances? And if no, why not?

For Lexgate AB
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