

Written observations by the Ministry of Justice and Security, also on behalf of the Ministry of Economic Affairs, on the draft-Guidelines 01/2022 on data subject rights — Right of access.

In the above mentioned matter, the Ministry of Justice and Security would like to bring the following comments to the attention of the European Data Protection Board.

First of all the Ministry of Justice and Security welcomes the emphasis on the importance of the position and rights of data subjects and more specific, the right of access.

1. In general the Ministry of Justice and Security notices that many examples are given in these guidelines which are a welcome addition. The examples add great value to the practical use of the guidelines. The Ministry of Justice and Security would like to suggest to add even more examples and additional definitions to illustrate and clarify terms or examples that are used. For instance, the Ministry of Justice and Security would like to ask the EDPB to explain or illustrate "a layered approach" (no. 139), "a complex request" (no. 161) and in regard to no. 140, to illustrate a situation where information is not "easily accessible".¹ In regard to the examples that are used in no. 28, 99 and 171 the Ministry of Justice and Security recommends to clarify or rephrase these examples or perhaps replace them with more practical examples that are more common, to make it easier to understand how to apply the guidelines in daily practice.
2. The Ministry of Justice and Security suggests to refer to recital 64 of the GDPR in the document in relation to the topics data retention (page 4) and identification of data subjects (no. 13).² Also the Ministry of Justice and Security would like to suggest to add an example of a situation in which the EDPB finds it reasonable (taking into account the context, proportionality and subsidiarity) to ask for a copy of the identity card of the data subject.
3. In addition the Ministry of Justice and Security advises to add nuance with regard to sharing data of persons other than the person making the request. On page 3, it is stated that a data access request may contain data of persons other than the data subject. The Ministry of Justice and Security asks to emphasize that based on article 15 (4) GDPR, a controller also needs to take into the account the rights of others and thus should practice caution with regard to sharing data of persons other than the data subject.
4. The Ministry of Justice and Security values the effort creating these guidelines. We would modestly suggest to reconsider some of its structure, the repetition of information and the (in)consistent use of abbreviations to improve the readability and clarity.



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¹ Please take note of the decision of the Irish Data Protection Commission dated 2nd September 2021 concerning WhatsApp in which "easy accessible" also refers to the user that should not have to work hard to access the information. For example linked documents, continuous scroll of information, using overly complex and legal terms which in combination with the length of the document put readers off, etc.

² Recital 64 GDPR: *The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests.*