



17 October 2019

## Final Decision

### Complaint against [REDACTED] – Right of access (art. 15 GDPR)

IMI Article 56 No.: 54930

IMI Case Register entry: 62334

The Hessian Commissioner for Data Protection and Freedom of Information (hereinafter “HBDI”) refers to the complaint of [REDACTED] (hereinafter “Complainant”) against [REDACTED] (hereinafter “[REDACTED]”) lodged with the Austrian Data Protection Authority.

#### 1. Case Description

The underage Complainant requested access to and a copy of his personal data processed by [REDACTED] (Right of access - art. 15 GDPR). He submitted all information necessary for his identification by email on 25 July 2018. [REDACTED] confirmed the receipt of his email on the same day.

On 29 August 2018 the Complainant lodged a complaint with the Austrian Supervisory Authority stating that he had not yet received a reply to his request.

#### 2. Investigation Procedure

HBDI contacted [REDACTED] in April 2019. In its immediate answer [REDACTED] stated that at the time of the Complainant’s request the number of complex, data protection related customer queries had suddenly increased, making it impossible for [REDACTED] to observe the one-month time limit. The Customer Service by mistake did not send a notice to the Complainant within one month. On 5 September 2018 [REDACTED] informed the Complainant about the aforementioned difficulties and the necessary extension of the period according to art. 12(3) GDPR. According to the information provided by [REDACTED] the request finally was answered and right of access was granted by [REDACTED] on 28 September 2018, even before [REDACTED] has been contacted by HBDI. [REDACTED] stated that their internal processes had already been improved to ensure that timely responses can be given in similar cases by now.

### 3. Decision

██████████ failed to inform the Complainant about the necessary and legitimate extension within the one-month time period set out in art. 12(3) GDPR. ██████████ admitted the failure, attributing this to an extraordinary number of customer queries in a period, in which GDPR had been fully applicable only for three months and a mistake in the internal processing of the request.

Considering the fact that the right to access was granted and the requested information was provided within the (extended) time limit of three months, the mere delay of a few days in informing the Complainant about the legitimate extension appears a minor infringement, which only slightly affects the Complainant's rights and freedoms.

After consideration of the significance of the infringement, ██████████ cooperation in the investigation process and particularly the improvement action already taken by ██████████ HBDI, in its draft decision dated 03 July 2019 (IMI No. A60DD 283423), considered that the investigation proceedings can be concluded and no further supervisory measures are necessary.

Within four weeks, the following supervisory authorities concerned commented on the draft decision:

The Finnish Data Protection Authority stated that it agrees with the findings of the HBDI.

The French Data Protection Authority commented on the draft decision stating that a procedure to confirm identity of the data subject where the controller would require more information than what had provided to use the service at first, would be disproportionate and not compliant with the GDPR. This comment was taken into account and HBDI can inform that ██████████ did not request more information than already provided.

The Italian Data Protection Authority asked whether the Hessian Data Protection Authority issued a reprimand. HBDI affirmed that it had already issued a reprimand and pointed out to ██████████ that necessary information about requests from data subjects under art. 15-22 GDPR shall be provided without undue delay and no later than one month after receipt of the request.

The Austrian Data Protection Authority expressed an objection and asked whether HBDI had yet informed the Complainant of the outcome of the investigation and whether any statement on his part (approved by his father to the fact that the Complainant is a minor) had been taken into account. As the HBDI had not yet informed the Complainant, HBDI provided the colleagues from the Austrian Data Protection Authority in the course of an Article 61 Voluntary Mutual Assistance Procedure (IMI No. A61VM 80626) with ██████████ statement in order to forward it to the Complainant and

grant him his right to be heard. The Austrian Data Protection has since indicated that the Complainant has withdrawn the complaint.

As the comments made by the supervisory authorities concerned were addressed and as the Complainant apparently considers the originally alleged infringement to be eliminated, HBDI will not carry out any further supervisory measures and close the file.

On behalf of the HBDI

