



09.08.2023

Final decision

Complaint by [REDACTED] against [REDACTED] ([REDACTED]) of 29 June 2018 (IMI Notification No: 537956; Reference of the Bavarian State Office for Data Protection: LDA-1085.4-7273/18-I)

In the above matter, pursuant to Article 60(8) of the GDPR, the Bavarian State Office for Data Protection Supervision (BayLDA) adopts the following decision on the basis of the draft decision of the Luxembourg supervisory authority (National Commission for Data Protection Grand Duchy of Luxembourg (CNPD) of 13.7.2023):

Dismisses the complaint of 29 June 2018 by [REDACTED] against [REDACTED]

Reasoning:

I. Facts

After receiving [REDACTED]'s complaint to the BayLDA, it was prepared and forwarded to the lead supervisory authority, the CNPD, for transmission via IMI.

In his complaint, the complainant claimed that he had received multiple unsolicited products via [REDACTED]. He then contacted the company's customer service. From the correspondence with a customer service employee, the complainant has concluded that he has made contact with the consignor of the products and has disclosed to him/her personal data (e.g. name and address).

The main concern was that the competent data protection supervisory authority should investigate whether his personal data have been disclosed by an [REDACTED] employee and, and, if necessary, to take appropriate measures to prevent such business practices in future cases.

The CNPD concluded from this that the complaint is based on an infringement in the scope of Article 5(1)(f) GDPR.

In accordance with Article 57(1)(f) of the GDPR, the CNPD has contacted [REDACTED] and requested the company to comment on the facts described by the complainant, in particular to the processing of the complainant's personal data in the facts described in the complaint.

The company has complied with the request to send an statement, stating that the said orders were made by a customer account associated with a person bearing the same family name as the complainant (in the follow-up "third party" – note: both names are known to the CNPD and the BayLDA). In addition, the delivery address stored in this customer account is the same as the address of the complainant. Only two orders (on 13 and 14 May 2018) have been successfully placed through this account and it is clear from the records of the controller that Customer Service sent to this customer account on 13 and 14 May 2018 messages related to the orders, but no further communication took place in May or June 2018.

The controller had no evidence that an employee of the customer service exchanged personal data with the third party or that it was a case of so-called "brushing", given the common names and addresses and the limited number of products ordered in this way.

The CNPD has informed the controller that the complainant has provided an email from an employee of the controller dated 16 May 2018 informing the complainant that the employee has informed the third party of the complaint of the complainant and requested the third party to clarify the matter directly with the complainant. The complainant therefore had reason to believe that his personal data had been unlawfully passed on to the third party.

II. Legal assessment

The CNPD has determined that even taking into account the above e-mail, it is not possible to prove whether or which data the company's employee may have passed on to the "third party". It would be conceivable that the employee only described the journey to the third party without disclosing the identity of the complainant. In any case, it remains unclear (and not proven) which specific data may be affected (e.g. name and/or address). In addition, the employee concerned acted prudently by not disclosing the third party's personal data to the complainant, which in turn led the CNPD to assume that the controller's employees were aware of the importance that customer data should not be disclosed to other customers. The person responsible further confirmed that the said e-mail does not correspond to what is conveyed in the employee training courses.

The CNPD also noted that the complainant had filed a criminal complaint against unknown to the German law enforcement authorities, but was discontinued by the public prosecutor's office due to a lack of evidence.

Finally, it is apparent from the file procedure that the third party already knew the name and address of the complainant, since the third party had deposited the address in the customer account and had the parcels delivered to that address before communication with the company's employee had taken place.

As the lead supervisory authority, the CNPD has therefore decided that, following the conclusion of the investigation into the facts, there is no evidence that the controller has disclosed the complainant's personal data.

For the above reasons and taking into account the seriousness of the alleged breach of data protection law and the impairment of fundamental rights and freedoms in the area, the CNPD did not consider it necessary to pursue the complaint and reject it.

This decision was to be adopted by the BayLDA in accordance with Article 60(8) of the GDPR.

Bavarian State Office for Data Protection Supervision