

Recent case law on privacy and data protection



EDPS-DPO meeting, 30 November 2023 Strasbourg

Thomas Zerdick, LL.M.

Head of Unit
„Supervision and Enforcement“,

European Data Protection Supervisor
thomas.zerdick@edps.europa.eu

Case 1

The log files case



Questions

1. Can a data subject request access to his or her personal data **now**, even if the processing occurred **prior** to the entry into force of the GDPR?
2. Can a data subject request **access to log files**, even when these log files contain information relating to the identity of the persons who carried out the consultation operations?

Case C-579/21 Pankki S

1. Article 15 GDPR, read in the light of Article 99(2) GDPR, must be interpreted as meaning that it is applicable to a request for access to the information referred to in that provision where the processing operations which that request concerns were carried out **before the date** on which that regulation became applicable, but **the request was submitted after that date**.

Case C-579/21 Pankki S

2. Article 15(1) GDPR must be interpreted as meaning that **information relating to consultation operations** carried out on a data subject's personal data and concerning the **dates** and **purposes** of those operations constitutes information which that person has the right to obtain from the controller under that provision.

On the other hand, that provision does not lay down such a right in respect of information relating to the **identity of the employees** of that controller who carried out those operations under its authority and in accordance with its instructions, **unless** that information is **essential** in order to enable the person concerned effectively to exercise the rights conferred on him or her by that regulation and provided that the rights and freedoms of those employees are taken into account.

3. Article 15(1) GDPR must be interpreted as meaning that the fact that the controller is engaged in the business of banking and acts within the framework of a regulated activity and that the data subject whose personal data has been processed in his or her capacity as a customer of the controller was also an employee of that controller has, in principle, no effect on the scope of the right of access conferred on that data subject by that provision.

GDPR = EUDPR

GDPR

Article 15

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (...)
2. (...)
3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. 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.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

EUDPR

Article 17

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (...)
2. (...)
3. The controller shall provide a copy of the personal data undergoing processing. 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.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Case 2

*The
medical files
case*



Questions

1. Can a controller **refuse access to personal data** because the reason for access is not related to data protection?
2. Can the **doctor** who processes the data decide the manner in which he or she compiles the data for the patient concerned?

Case C-307/22 FT vs DW

- ❑ Article 12(5) GDPR and Article 15(1) GDPR and 15(3) GDPR, must be interpreted as meaning that the **controller is under an obligation** to provide the data subject, **free of charge**, with a first copy of his or her personal data undergoing processing, **even where the reason for that request is not related** to those referred to in the first sentence of recital 63 of the GDPR.
- ❑ Article 23(1)(i) GDPR must be interpreted as meaning that a piece of national **legislation adopted prior** to the entry into force of that regulation is **capable of falling** within the scope of that provision. However, such a possibility does **not permit** the adoption of a piece of national legislation which, with a view to **protecting the economic interests of the controller**, makes the data subject bear the costs of a first copy of his or her personal data undergoing processing.

Case C-307/22 FT vs DW

- ❑ The first sentence of Article 15(3) GDPR must be interpreted as meaning that, in the context of a doctor-patient relationship, the right to obtain a copy of personal data undergoing processing means that the data subject must be given a faithful and intelligible reproduction of all those data. That right entails the right to obtain a **full copy of the documents included in his or her medical records** and containing, inter alia, those data if the provision of such a copy is essential in order to enable the data subject to verify how accurate and exhaustive those data are, as well as to ensure they are intelligible.
- ❑ **Regarding data relating to the health of the data subject, that right includes in any event the right to obtain a copy of the data in his or her medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided to him or her.**

GDPR = EUDPR

GDPR

Article 15

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (...)
2. (...)
3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. 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.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

EUDPR

Article 17

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (...)
2. (...)
3. The controller shall provide a copy of the personal data undergoing processing. 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.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Data protection rulings 5/2022-11/2023



Data protection rulings 5/2023- 11/2023

| Case | Date | Parties | Object |
|-----------------|-------------------|-------------------------------|--|
| C-204/21 | 05/06/2023 | Commission v Poland | legal basis for processing - legal grounds - legitimacy of public disclosure - sensitive data - rule of law |
| C-579/21 | 22/06/2023 | Pankki S | Concept of personal data – Article 3(1) – Right of access to log files |
| C-252/21 | 04/07/2023 | Meta v Bundeskartellamt | processing - sensitive data - consent's validity - manifestly made public - legal basis for processing - legal grounds - performance of a contract - legitimate interests- supervisory authorities |
| T-578/22 | 06/09/2023 | EDPS v Parliament and Council | EDPS – Europol Regulation |

Data protection rulings 5/2023- 11/2023

| Case | Date | Parties | Object |
|-----------------|-------------------|---|--|
| C-162/22 | 07/09/2023 | Lietuvos Respublikos generalinė prokuratūra | data retention - combatting serious crime - protection of public security - ePrivacy Directive 2002/58/EC - Law Enforcement Directive 2016/680 - LED |
| C-659/22 | 05/10/2023 | Ministerstvo zdravotníctví - COVID-19 mobile application | processing - GDPR's material scope - EU Digital COVID-19 Certificate - EUDCC |
| C-307/22 | 26/10/2023 | FT vs DW | right of access – copy – medical records |
| T-578/22 | 06/09/2023 | EDPS v Parliament and Council | EDPS – Europol Regulation |
| C-319/22 | 09/11/2023 | Gesamtverband Autoteile-Handel | Vehicle Identification Number – VIN - legal obligation - personal data - processing |
| C-333/22 | 16/11/2023 | Ligue des droits humains - Verification of data processing by the supervisory authority | Law Enforcement Directive 2016/680 – LED - judicial remedy – right of access through supervisory authority |

Judgments scheduled for 2023

| Case | Judgment scheduled | Parties | Object |
|---------------------|--------------------|--|--|
| C-807/21 | 5/12/2023 | Deutsche Wohnen | fines |
| C-683/21 | 5/12/2023 | NVSC | controller - joint controllership- fines – liability – processing |
| C-26/22 and C-64/22 | 07/12/2023 | SCHUFA Holding (Release of outstanding debt) | legitimate interests - public registers |
| C-634/21 | 07/12/2023 | SCHUFA Holding (Scoring) | data subject rights - automated individual decision-making - profiling |
| C-340/21 | 14/12/2023 | Natsionalna agentsia za prihodite | right to compensation – liability - non-material damages |
| C-456/22 | 14/12/2023 | Gemeinde Ummendorf | non-material damages - right to compensation |
| C-667/21 | 21/12/2023 | Krankenversicherung Nordrhein | health data - right to compensation - non-material damages |

Contact & questions



Thomas Zerdick, LL.M

thomas.zerdick@edps.europa.eu

LinkedIn:

www.linkedin.com/in/thomaszerdick

Mastodon:

<https://eupolicy.social/@Tzerdick>