



02 December 2020

Final Decision

Complaint against [REDACTED] – Conditions for consent (Article 7), Lawfulness of the processing (Article 6)

IMI Case: 67526
IMI A61VM: 73797
IMI A61MA: 95819, 133342, 138541, 146138, 151701
IMI A60DD: 160490

The Hessian Commissioner for Data Protection and Freedom of Information (hereinafter “HBDI”) refers to the complaint lodged by Mr. [REDACTED] (hereinafter “Complainant”) against [REDACTED] (hereinafter [REDACTED]) with the Polish Data Protection Authority regarding the alleged transfer of personal data to third parties for the purpose of direct marketing.

1. Case Description

The Complainant alleges that [REDACTED] has processed his personal data without his consent and that [REDACTED] has not accepted his requests for access and erasure.

On 21 June 2018, the Complainant received an unsolicited phone call from the Polish [REDACTED] which offered him financial products and services even though he did not sign up to receive such marketing offers.

According to the Complainant, he has “received information that my phone number has been shared with the bank through the company [REDACTED], because I registered on the website [REDACTED] in 2009”.

On 21 June 2018, the Complainant sent an email to [REDACTED] requesting clarification of the possession and transfer of his phone number and asking for his personal data to be deleted.

On 25 June 2018, [REDACTED] replied that the Complainant’s email address or phone number was not in [REDACTED]’s database and could therefore not be deleted.

[REDACTED] asked the Complainant to check whether the registration was made with a different email address, as only with the correct email address is it possible to unambiguously assign and delete personal data.

In December 2018, the Complainant lodged a complaint with the Polish Data Protection Authority, which was transferred in August 2019 via A61VM 73797 to the HBDI as the Lead Supervisory Authority for further investigation.

2. Investigation Outcome

The HBDI contacted ██████ in May 2020. In its answer, ██████ reiterated that it could not find any personal data in its database on the basis of the e-mail address and phone number provided by the Complainant. Neither could the Complainant's name be used to uniquely identify a record, as the database contained several records on different people with the same name as the Complainant.

Furthermore, ██████ stated that it was not able to reconstruct whether the data generated in 2009 via the lottery at ██████ had actually ever been transferred to the Polish ██████, as the complainant claims, and whether the Polish ██████ had ever received data from ██████. Although ██████ confirmed that it generated data via this lottery in 2009, it could not find any reference in its system to a corresponding campaign with the Polish ██████. Therefore, ██████ cannot detect any transfer of personal data.

In order to investigate the case further, the HBDI asked the Polish Data Protection Authority to request the Complainant to provide evidence to support his claim that his personal data used by the Polish ██████ actually came from ██████. Furthermore, the HBDI asked to clarify whether the HBDI may share his address with ██████ for identification purposes, so that ██████ might be able to identify a record in its system by combining the Complainant's address and name.

In June 2020, the Polish Data Protection Authority forwarded the HBDI's questions and request for information to the Complainant. Unfortunately, to date the Complainant has not replied and has not provided the requested information.

3. Decision

On 02 November 2020 the HBDI submitted a Draft Decision (A60DD 160490) stating that neither the HBDI nor ██████ are in a position to further investigate the case based on the information provided by the Complainant.

Since the Complainant has not been able to substantiate his complaint and provide the information necessary to handle the case, the HBDI informed the supervisory authorities concerned that it does not see any possibility to take further steps in this case and therefore intends to close the file.

No objections to the Draft Decision were raised by the supervisory authorities concerned. The HBDI therefore submits this Final Decision and closes the file.