



General Data Protection Regulation

ACCESS TO PERSONAL DATA UNDER ARTICLE 15

- Most frequently used subjective right of data subjects
- Appears relatively uncontroversial, but...
- Key issues:
 - Access to what? Differentiation between data and documents
 - What is personal data?
 - What is the scope of the right to access personal data? Are there any implied limitations here? Textual v. teleological interpretation

ACCESS TO EXAM FILE

- Mr. Nowak was an accountancy student, studying within the Institute of Chartered Accountants of Ireland (CAI)
- He failed one of his exams (several times)
- He requested a copy of his failed exam, under the personal data protection legislation (currently Art. 15/3 GDPR)
- CAI refuses, claiming *inter alia* that exam script is not “personal data”
- Key facts:
 - Test is written under the code and the examiner does not know the identity of the student
 - CAI has information necessary to connect code with the identity of a student
 - Test includes both the candidate’s answers and comments of the examiner

ACCESS TO LEGAL MEMORANDUM

- The case officer of the Immigration and Naturalisation Service responsible for dealing with an application for a residence permit draws up, where he is not authorised to sign the decision, a memorandum containing:
 - Personal information of the applicant
 - Facts of the case
 - Legal analysis of the situation
- Memorandum is not communicated to the parties, but is used as a basis for writing the decision
- Data subject submitted an application for a residence permit for a fixed period under asylum law, was rejected, and after that requests access to memorandum
- Is legal analysis information which is subject to the access right?

ACCESS TO BANKING DOCUMENTS

- Natural person entered into a loan agreement with the bank some years ago
- The loan was denominated in Swiss Francs
- Legal validity of loan contracts in Swiss Francs was later disputed, legislative amendments pertaining to consumer contracts were made and people who took these loans were given opportunity to initiate proceedings against banks, ultimately with the aim of reclaiming amount which was overpaid
- In order to initiate proceedings, it is necessary to have certain information about credit arrangement (contract, initial loan plan, information about exchange rate, amounts paid, amounts due, ...).
- Clients are requesting copy of documentation under Article 15(3) of the GDPR
- Key facts:
 - Bank is indisputably in possession of all documents which are requested under Article 15
 - All the documents which the natural person needs were already provided to him or her (but some clients lost them)
 - National law has specific provision in the Code on Civil Procedure which regulate collection of documents and evidence for the purpose of civil litigation (sort of pretrial discovery)

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:

(a) the purposes of the processing;

...

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.

RECITAL 63

(63) A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals, in order to be aware of, and verify, the lawfulness of the processing.

ARTICLE 4 - DEFINITIONS

For the purposes of this Regulation:

(1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

PERSONAL DATA



General personal data	Special categories of personal data	Data relating to criminal convictions and offences
All information	data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation (Article 9)	Article 10

PERSONAL DATA

information

relating to

individual

who is
identified or
identifiable

- Objective and subjective
- True and false
- Of personal and professional nature
- Ordinary / sensitive / intimate
- In any form...

PERSONAL DATA



When does information relate to individual?

1. **Content** element: in those cases where information is “about” a particular person, regardless of any purpose on the side of the data, OR
2. **Purpose** element: when the data are used or are likely to be used, taking into account all the circumstances surrounding the precise case, with the purpose to evaluate, treat in a certain way or influence the status or behavior of an individual, OR
3. **Result** element: use of data is likely to have an impact on a certain person's rights and interests

PERSONAL DATA



- Individual = living natural person
- What about deceased persons?
- What about unborn children?
- What about persons who perform public functions (heads of state, government, MPs, judges...)?

PERSONAL DATA



Person is identified	Person is identifiable
Marko Jurić, PIN: 36468973176, is employed at the University of Zagreb and has	Video recording showing that driver of the car with license plates ZG-012-AA broke traffic rules on 13 June 2019 by driving over speed limit

PERSONAL DATA



Individual is “identifiable”

1. Purely theoretical possibility of identification is not sufficient
2. What is relevant: all means reasonably likely to be used to identify individual

JOINT CONTROLLERSHIP

C-210/16 Wirtschaftsakademie Schleswig-Holstein

- the administrator of a fan page on Facebook is jointly responsible with Facebook for the processing of data of visitors to the page
- Directive 95/46 does not, where several operators are jointly responsible for the same processing, require each of them to have access to the personal data concerned. The administrator of a fan page “must be regarded as taking part, by its definition of parameters depending in particular on its target audience and the objectives of managing and promoting its activities, in the determination of the purposes and means of processing the personal data of the visitors to its fan page”.

JOINT CONTROLLERSHIP

C-25/17, Tietosuoja-valtuutus

- a religious community may be – jointly with members of its congregations – responsible for collecting personal data in course of door-to-door preaching activities, by which members of the congregations who engage in preaching spread the faith of their community. Although the personal data gathered is never shared with the religious community, the CJEU considers it being sufficient for the establishment of joint controllership that the community organised, coordinated and encouraged the preaching activities of its congregations

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CONSENT

C-673/17 Planet 49

- consent is not validly constituted if, in the form of cookies, the storage of information or access to information already stored in a website user's terminal equipment is permitted by way of a **pre-checked** checkbox which the user must deselect to refuse his or her consent.

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