

Decision

Failure to Fully Comply to a Subject Access Request by Playkot Ltd

A complaint was lodged in Germany (Hessian Commissioner for Data Protection and Freedom of Information) against the company Playkot Ltd (the controller), whose main establishment is in Cyprus and the complaint was subsequently transmitted to the Commissioner on 07.07.2020, in line with Article 56 of the General Data Protection Regulation.

2. On the basis of the above, the Commissioner for Personal Data Protection (the Commissioner) is acting as the lead authority in this matter. In the course of the investigation, other EU countries were identified as being concerned by this case.

Case Description

3. The controller, Playkot Ltd, is a company that develops games and offers web services and other related services. XXX, the complainant, who uses the services provided by the controller, claimed that he contacted the controller several times requesting access to information for all processing done on his personal data as per Article 15 of the General Data Protection Regulation (GDPR). He also stated in his complaint that, he was only provided with a link to the privacy policy of Playkot Ltd and no other information regarding his request.

4. My Office engaged with the controller via email on 9 December 2020 and following the exchange of several communications in relation to the subject matter of the complaint, the following information was provided by the controller's legal representative on their email dated 8 January 2021:

- i. The complainant sent an initial Subject Access Request (SAR) via email on 26 January 2020. The complainant requested to be informed of all his personal data that are processed by the controller. Specifically, he requested full details about data stored about him and his account, the relevant processing and the type and scope of the data transfer to third parties including any processing done in the context of Google Play Store. He repeated his request through the controller's in-game support system on 7 February 2020.

- ii. On 8 February 2020, a representative of the controller responded to the email and requested for him to specify what information was needed by the complainant. The representative did not receive a reply, and thus the relevant support ticket was closed automatically on 12 February 2020.
- iii. On 11 March 2020, the complainant sent a follow up email reminding the controller that his request was not satisfied, to which the controller did not reply.
- iv. On 2 April 2020, the complainant sent a second Subject Access Request and requested any information regarding his personal data. Specifically, he asked “...for information in accordance with Art. 15 GDPR. Please confirm whether you are processing personal data concerning me (Art. 4 No. 1 and 2 of GDPR).

In this case, I ask you in accordance with Art. 15 Paragraph 1 of GDPR for information about all personal data that you have stored about me; the purposes of the processing; the categories of personal data that are processed; the recipients or categories of recipients to whom the personal data have been disclosed or are still being disclosed; if possible, the planned duration for which the personal data will be stored or, if this is not possible, the criteria for determining this duration; if the personal data were not collected from me, all available information about the origin of the data; If applicable, the existence of automated decision-making including profiling in accordance with Art. 22 Paragraph 1 and 4 of GDPR and - if given - meaningful information about the logic involved and the scope and intended effects of such processing for my person.

If you transfer my personal data to a third country or to an international organization, please be informed about the appropriate guarantees in accordance with Art. 46 of GDPR in connection with the transfer.”

- v. A representative replied to the above request on the same day by providing a link to the controller’s Privacy Policy.
- vi. The complainant also made other game related requests during the same period via the same in-game support system.
- vii. On 28 December 2020 and on 8 January 2021, a support team supervisor of the controller contacted the complainant via the support system and provided him with additional information regarding the processing of his personal data.

5. On 5 February 2021, the controller’s legal representative, sent an email informing my Office, that the complainant replied on 9 January 2021 acknowledging the reception of the information provided on 28 December 2020 and on 8 January 2021, but requested that they also sent him all his personal data stored by the controller. The complainant’s last request was eventually satisfied on 21 January 2021 through a corresponding reply from the supervisor.

6. On 31 March 2021, the controller updated my Office via telephone and email, that the complainant informed them that his request was fully satisfied and he withdrew his complaint towards the Hessian Commissioner on 15 March 2021.

Preliminary Decision

7. On 12 October 2021, the Commissioner issued a Preliminary Decision, taking into consideration that:

- i. The initial SAR on 26 January 2020 was not satisfied at all and
- ii. The information provided in response to the second SAR on 2 April 2020 was not satisfactory and in line with the information as per Article 15 of the GDPR

Moreover, it was determined that the controller had not complied with the complainant's request in a timely manner, ensuing a violation of Article 12(3) of the GDPR.

8. The controller's legal representative responded on 16 November 2021, to the Preliminary Decision and stated, inter alia, that:

- i. The controller accepts that the initial SAR was not given the appropriate attention in order to satisfy the complainant's request. It is also understood that sending the privacy policy as a response to the second SAR is not considered satisfactory as per Article 12(3) GDPR.
- ii. The controller did not receive a reminder to the second SAR, and therefore it was incorrectly concluded that the request was satisfied by the information provided on the privacy policy. Despite this, it is emphasized that the controller did not act in bad faith.
- iii. As soon as the controller was made aware of the complaint by my Office, the complainant was contacted again so as to resolve the issue as effectively as possible.
- iv. Following the above communication, the complainant withdrew his complaint to the Hessian Commissioner.

9. In addition to the above, the controller's legal representative included the following mitigating factors to be taken into account, inter alia, by the Commissioner:

- i. The controller did not act in bad faith and all the omissions took place due to lack of experience on GDPR related matters.
- ii. The controller did not benefit or take any advantage of the complainant's rights or data as a result of the possible violation mentioned in the Commissioner's Preliminary Decision.
- iii. The systems and procedures in place related to GDPR related communications and satisfaction of data subject requests have been improved following the complaint.
- iv. The support team has been educated on handling GDPR requests and the Information Security Framework has been improved.

- v. The specific complaint was a remote incident to the best of the controller's knowledge.

Legal Framework

10. Article 12: Transparent information, communication and modalities for the exercise of the rights of the data subject.

Pursuant to article 12(3) of the GDPR The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

11. 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;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;

(d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;

(e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;

(f) the right to lodge a complaint with a supervisory authority;

(g) where the personal data are not collected from the data subject, any available information as to their source;

(h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

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.

Views of the Commissioner

12. After reviewing the information provided by the controller's legal representative, in their response to my Preliminary Decision, specifically the fact that the controller appreciates that there was a lack of correct procedures on GDPR related matters as also a lack of appropriate attention to the complainant's request, I consider that the controller comprehends that the request could have been satisfied from the first instance if the support staff was properly trained in tackling GDPR requests in a timely manner.

13. Despite this, considering that the GDPR had been enforced for almost 2 years at the time of the complainant's first SAR, the controller should have had the appropriate measures in place for **at least** satisfying data subject rights set out in Articles 15 to 22 of the GDPR. Moreover, the complainant should have received a valid response without delay to its first SAR, where he **clearly** requested to be informed of all his personal data which was processed by the controller at the time.

14. Furthermore, as regards the second SAR, the privacy policy cannot in any case constitute information pursuant to Article 15 GDPR to a data subject since, no **specific** information was provided regarding the processing of the complainant's personal data. Article 13 GDPR requires completely different information than Article 15 GDPR, in particular than Article 15(3) GDPR.

Decision

15. Having regard to all the above information, and based on the powers vested in me by

Articles 58 and 83 of Regulation (EU) 2016/679 and article 24(b) of National Law 125(I)/2018, I conclude that there is an infringement by Playkot Ltd of Article 12(3) of the GDPR, since the controller has not complied with the complainant's request in a timely manner.

16. Moreover, following an infringement of Article 12(3) GDPR, as explained above, under the provisions of Article 83 of the GDPR, I take into account the following mitigating (1-3) and aggravating (4-5) factors:

1. That there is no previous violation by the controller of the GDPR 2016/679.
2. The willing cooperation and the responses to our inquiries without delay.
3. The withdrawal of the complaint.
4. None of the two SARs were satisfied in a timely manner.
5. The lack of appropriate procedures and measures for handling data subject rights.

17. In view of the above and on the basis of the powers conferred on me by the provisions of subparagraph (b) of paragraph (2) of Article 58 of the GDPR, I have decided to issue a reprimand to Playkot LTD for the infringement mentioned in paragraph 16 above. In the event of a recurrence of a similar infringement within 12 months from today, this Decision may be counted against the company.

Irene Loizidou Nicolaidou
Commissioner
For Personal Data Protection