

- b. that the complainant provided the controller with his personal data and car documentation, yet he never received the quotation. Despite engaging in multiple email exchanges with the controller, he eventually chose to cease further communication;
- c. that the complainant requested the controller to erase his personal data from its systems on the 20th January 2023 as the processing had been concluded, by stating *“I withdraw consent to process my personal data for any company or third party purpose and I request that all my data is deleted from [sic] your systems”*;
- d. that, on the 24th January 2023, the controller’s Data Protection Officer stated that:

“Please note that since our office has provided you with a Motor Insurance Quotation, we cannot entertain your request as:

- [the controller], *is required to comply with a legal obligation applicable to the Insurance Industry with regards to the conservation period of personal data; and*
- *therefore your personal data will be retained for a period that is compliant with insurance industry guidelines for the purpose of establishment, exercise or defence of legal claims.*

[The controller] will only process your personal data in line with the Information noted above”;

- e. that by means of an email dated the 8th February 2023, the complainant contended that *“I have not received a quotation from you. That was the entire issue that you exchanged mails with me and effectively it has not been provided because I was fed up with your process. I requested the quotation and this never been provided. I am withdrawing my consent and all my data should be removed”*; and
- f. that on the 13th February 2023, the controller responded by stating that *“the fact that a quotation was registered on our system and allocated is enough for us to hold your personal data on line with our conservation period as per local Market Insurance Guidelines as already informed. Please note that your period data will not be used in any of our marketing campaigns”*.

INVESTIGATION

Request for submissions

3. Pursuant to article 58(1)(a) of the Regulation, the Commissioner provided the controller with a copy of the complaint, including the documentation attached thereto, and requested it to put forward its submissions in order to defend itself against the allegation raised by the complainant. On the 17th March 2023, the controller put forward its submission and also delineated the details of this case in a chronological manner. Taking into account that the complainant has already received these submissions, for the purpose of this section, the Commissioner will only produce the arguments which will be considered in the legal analysis of the case:
 - a. that the controller submitted a screenshot as *“evidence that we had entered [the complainant’s] details on our system with the intention to provide him with a quotation, even though we declined to quote on the basis of lack of information received”*;
 - b. that the complainant initially approached the controller for a motor insurance quotation, indicating that he had maximum No Claims Discount (NCD). However, he failed to provide any supporting evidence from his current insurers, typically presented in the form of a renewal notice. The only document provided was a letter from the Policy Motor Insurance Compensation Board issued in Poland. This letter not only lacked sufficient evidence regarding the number of years claims free upon which NCD is based, but also raised concerns as the issuing body is not a recognised Insurance Company, as is the practice in such circumstances;
 - c. that *“(1) The supposed proof of NCD was an Insurance Guarantee Fund Document the proposer obtained from Poland alleging that it noted 10 years of Insurance. This is not a certificate issued by an Insurance Company and noting the number of years claims’ free, hence not a valid NCD Certificate Insurance Market practise. (2) The proposer noted that he was insured with [a local Insurance Company]. He was on a 0% NCD, hence this may indicate that even [the local Insurance Company] did not recognise this letter. (3) The following screenshot is evidence that we had entered [the complainant]’s details on our system with the intention to provide him with a quotation, even though we declined to quote on the basis of the lack of information received”*;

- d. that the controller is in compliance with the provisions of article 17 of the Regulation as it has taken the measures to block the complainant's personal data from being used for any secondary processes, including potential future marketing campaigns;
- e. that the controller applied the exception outlined under article 17(3) of the Regulation, which contains the obligation of keeping the data for compliance with a legal obligation. Also, article 17(3)(e) of the Regulation allows the controller to keep the data for the establishment, exercise, or defence of legal claims, should such circumstances arise;
- f. that the controller made reference to the '*General Data Protection Guidelines: Guidelines for the Promotion of Good Practice Insurance Business*', which states that:

"The retention periods provided below are for guidance purposes and a data controller may adopt its own internal retention periods which differ from the time lines indicated below. In such a case, the Insurer is advised to clearly document the reasons for longer retention periods.

- ***Personal Data in relation to quotations not taken up by data subjects.***

Retention Period: Maximum period of 5 years (subject to the proviso below)

Retention Purpose: As a measure to combat insurance fraud";

- g. that the lawful purposes for which data are being retained is mainly based on assessing the risk and avoiding insurance fraud (including the risk of intentional non-disclosure).
4. On the 30th March 2023, the Commissioner provided the complainant with the opportunity to rebut the arguments made by the controller. By means of a communication dated the 13th April 2023, the complainant submitted the following principal arguments:
 - a. that the controller did not provide any quotation, in fact no mail or document was received stating the insurance amount based on the provided documents. The controller only requested documents and additional information for data collection, without providing a quotation;
 - b. that "[w]hatever they mark in their systems I cannot control. For having right to retain my data I should have been provided with a mail including clear information about quotation for my motor policy if I would like to proceed"; and

- c. that the complainant referred to the controller's timeline of events and noted that it does not specify in any point that a quotation was given. Therefore, the complainant argued that he has the right to request the removal of his personal data from the controller's database, as no quotation was ever provided.

5. In line with the Office's complaint-handling procedure, the Commissioner provided the controller with the final opportunity to rebut the arguments made by the complainant. In this regard, by means of a letter dated the 5th May 2023, the controller submitted its reply and highlighted the following salient arguments:
 - a. that *"[a]s already noted in our replies of the 17th March 2023, [the complainant] approached us for a motor insurance quotation indicating that he had maximum No Claims Discount (NCD). The supposed proof of NCD was an Insurance Guarantee Fund Document the proposer obtained from Poland alleging that it noted 10 years of Insurance. This is not a certificate issued by an Insurance Company and noting the number of years claims' free, hence not a valid NCD Certificate in accordance with local Insurance Market practise. The proposer noted that he was insured with [a local Insurance Company], yet he was on a 0% NCD, indicating that that even these insurers did not recognise this letter. The Head of our Luqa Regional Office informed the complainant that unless a receipt of a valid NCD certificate is provided we cannot provide any further assistance. The replies from [the complainant] were to disregard his request for a quotation"*;

 - b. that *"[t]hree days later, [the complainant] informed us that he was withdrawing his consent and requested confirmation that we have deleted his personal data from our systems. [The controller] reiterates that we are following the provisions of Article 17 GDPR as [the complainant]'s personal data were blocked from being used for any secondary processes such as marketing campaigns the Company may have in the future"*;

 - c. that *"[i]n addition, the company informed [the complainant] that we cannot delete his personal data from our systems due to a legal obligation [...] Hence, we applied the exception noted under Article 17, sub-article 3(b) GDPR, which contains the obligation of keeping the data for compliance with a legal obligation. Also, Article 17.3 e) GDPR, allows the data controller to keep the data for the establishment, exercise, or defense on legal claims (if they eventually occur)"*;

- d. that “[the complainant] provided us with a document issued by the Polish ‘Insurance Guarantee Fund’, which although it noted that **“In the database of the Information Centre of the Insurance Guarantee Fund, no data of damages/events was found”** it did not include all the relevant information needed for us to allow NCD. Valid No Claims Discount Certificates contain amongst others the following information.
- Name and contact details of the Insurance Company with whom the Motor Vehicle was insured.
 - Policy Number and Vehicle Registration Number.
 - Period of Insurance
 - Details of any claims submitted” [emphasis added by the controller];
- e. that “[i]n the absence of such a document, [the controller] was not able to write the risk as explained to [the complainant] in an email dated the 17th January 2023 [...]. [The complainant] did call at our office with a renewal notice from another local Insurance Company [...]. This notice, however did not provide any evidence of No Claims Discount, which means that:
- the policy was taken out less than 6 months before [the complainant] approached us for a quote, as otherwise it would have contained at least first year NCD; and
 - therefore, the document provided to us was also provided to [a local Insurance Company], who seem that they did not accept it as proof of NCD”;
- f. that “one of the most important principles in insurance is that the Company charges a premium commensurate to the risk being proposed. Proof of NCD not only ensuring that, but it is an important document upon which the insurer decides whether to accept the risk or not”;
- g. that “NCD Certificates are exchanged between Insurance Companies as proof of the claims experience and part of the insuring process. They are also a means to minimise the risk of fraud hence the legal obligation behind the conservation period before any data is anonymised at deleted”;
- h. that “[i]n this regard, [the controller] feels that it was correct in the measures taken in blocking [the complainant]’s personal data from being used for secondary purposes such as marketing and in complying with General Data Protection Guidelines for the promotion

of good practice in the insurance sector as legal basis for the retention of personal data belonging to [the complainant]”.

6. Considering that, according to the controller’s submissions, the complainant’s request could not be entertained as the controller is required to comply with a legal obligation, on the 8th November 2023, the Commissioner requested the controller to indicate the specific article and law from where this legal obligation emanates to retain the personal data of the complainant for five (5) years. In this regard, on the 24th November 2023, the controller provided the following salient arguments:

a. that *“there are three sources of Law, namely the Law itself, Contract Law and Custom where particularly in the Insurance Business, market practices are of paramount importance. In this case, there is no one particular legislation, apart of course GDPR, upon which [the controller] could rest as the basis for legal obligation when it comes to the retention of personal data, hence our reference to the attached General Data Protection Guidelines for the promotion of good practice in the Insurance Business Sector”;*

b. that *“[i]n following these guidelines, we would like to point out the following references:*

- Page 6 of 25

The processing of data by Insurance Operators is carried out on varied legal grounds, in particular that the processing is necessary:

- for the performance of a contract to which the data subject is party, namely the insurance contract, or in order to take steps at the request of the data subject prior to entering into such contract.

- Page 7 of 25

Where the provision of data does not lead to the inception of a contract (for example in the case of a quotation which is not taken up by the data subject), Insurance Operators will still have a legitimate interest to maintain the data collected for a period of time as indicated in the Retention Periods section below, by way that they need to maintain records of quotations given to minimize the risk of insurance fraud or defend themselves against any claim which may arise due to lack of inception of the contract.

- **Page 16 of 25**

The retention periods provided below are for guidance purposes and a data controller may adopt its own internal retention periods which differ from the timelines indicated below. In such a case, the Insurer is advised to clearly document the reasons for longer retention periods.

- **Personal Data in relation to quotations not taken up by data subjects**

Retention Period: Maximum period of 5 years (subject to the proviso below)

Retention Purpose: As a measure to combat insurance fraud.

Provided that it should be noted that retention of personal data should be restricted to the period which is strictly necessary for the defined purpose for which it is processed. It is important for all data controllers to be able to justify the retention of personal data for a well-defined and legitimate purpose”.

LEGAL ANALYSIS AND DECISION

7. After examining the facts of the case, the Commissioner established that the complainant exercised the right of erasure pursuant to article 17 of the Regulation on the 20th January 2023, wherein the complainant requested the controller to erase all of his personal data from its systems. On the 24th January 2023, the controller informed the complainant that his personal data could not be erased for two (2) reasons: (i) “[the controller] *is required to comply with a legal obligation applicable to the Insurance Industry with regards to the conservation period of personal data;*” and (ii) “*your personal data will be retained for a period that is compliant with insurance industry guidelines for the purpose of establishment, exercise or defence of legal claims*”.
8. Accordingly, the Commissioner sought to determine whether the processing of the personal data pertaining to the complainant is necessary: (i) for compliance with a legal obligation which requires processing by law to which the controller is subject; and (ii) for the establishment, exercise or defence of legal claims.
9. Article 17 of the Regulation grants the data subjects the right to have their personal data erased without undue delay where one of the grounds mentioned in article 17(1)(a) to (e) applies. The right to erasure is not an absolute right and it does not apply where the controller manages to effectively demonstrate that the processing is necessary for any of the purposes set forth in

article 17(3)(a) to (e) of the Regulation. Therefore, pursuant to the principle of accountability as held in article 5(2) of the Regulation, the controller bears the onus to demonstrate that the processing of the personal data pertaining to the complainant is necessary for the purposes outlined in article 17(3)(b) and article 17(3)(e) of the Regulation.

10. Article 17(3)(b) of the Regulation states that the right to erasure “*shall not apply to the extent that processing is necessary: - (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller*”. The first part of article 17(3)(b) of the Regulation refers to the lawful basis mentioned in article 6(1)(c) of the Regulation, wherein the processing shall be lawful only if it is necessary for compliance with a legal obligation to which the controller is subject. Hence, there must be a clear legal obligation deriving from a national or European legislation that would permit the processing of personal data.
11. To this end, the Commissioner requested the controller to clearly state which law obliges the controller to process the personal data of the complainant. The controller submitted that “*there is no particular legislation, apart of course GDPR, upon which [the controller] could rest as the basis for legal obligation when it comes to the retention of personal data*” [emphasis has been added]. The Commissioner clarifies that the Regulation does not impose a legal obligation upon the controller to retain the personal data of the complainant for a period of five (5) years. On the contrary, article 5(1)(c) of the Regulation sets forth the principle of data minimisation, which states that personal data shall be “*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed*”. This leads the Commissioner to conclude that, in the absence of a legal obligation which obliges the controller to process the personal data of the complainant, the controller could not rely on article 17(3)(b) to refuse to erase personal data.
12. The controller stated that it was not obliged to erase the personal data of the complainant based on the exception held in article 17(3)(e) of the Regulation, which provides that the right of erasure “*shall not apply to the extent that processing is necessary: - (e) for the establishment, exercise or defence of legal claims*”. This exception could only be raised if the controller manages to concretely demonstrate that the processing of the personal data pertaining to the complainant is indeed necessary to defend a legal claim raised against it by the complainant. The Commissioner emphasises that the data should not be processed on the basis of a remote and hypothetical possibility as this would lead to unlawful processing. During the course of the investigation, the controller did not present any evidence or provide any information that the

complainant filed any legal claims, and therefore, the controller failed to concretely demonstrate that the processing of the personal data pertaining to the complainant is indeed necessary to defend a legal claim.

On the basis of the foregoing considerations, the Commissioner is hereby concluding that the exceptions raised by the controller in its refusal to erase the personal data of the complainant in terms of article 17(3)(b) and article 17(3)(e) of the Regulation are not justified. Therefore, the Commissioner is hereby deciding that the controller infringed article 17(1) of the Regulation, when it failed to erase the personal data of the complainant following the exercise of his right to erasure on the 20th January 2023. Pursuant to article 58(2)(c), the Commissioner is hereby ordering the controller to comply with the request of the complainant and permanently erase all personal data pertaining to the complainant.

The aforementioned order shall be complied without undue delay and by no later than twenty (20) days from receipt of this legally-binding decision and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

Ian
DEGUARA
(Authenticat
ion)

Digitally signed
by Ian DEGUARA
(Authentication)
Date: 2024.01.09
14:34:40 +01'00'

**Ian Deguara
Information and Data Protection Commissioner**

Right of Appeal

In terms of article 26(1) of the Data Protection Act (Cap 586 of the Laws of Malta), *“any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal in writing to the Tribunal within twenty days from the service of the said decision as provided in article 23”*.

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing and addressed to:

The Secretary
Information and Data Protection Appeal Tribunal
158, Merchants Street
Valletta.