

vs

COMPLAINT

1. On the 29th December 2023, Mr [REDACTED], acting on behalf of Mr [REDACTED] (the “complainant”), lodged a complaint with the Information and Data Protection Commissioner (the “Commissioner”) in terms of article 77(1) of the General Data Protection Regulation² (the “Regulation”), alleging that the [REDACTED] (the “controller”) failed to rectify the personal data³ of the complainant within the timeframe stipulated by law.
2. By means of an email dated the 6th November 2023, Mr [REDACTED] informed the controller that his client had paid his social contribution payments as self-employed, however, his client had not received proof of payment receipt by post. Accordingly, Mr [REDACTED] requested the controller to confirm if it is processing the correct postal address of his client, and if not, to update the postal address. The email contained the following relevant attachments: (a) a scanned copy of the residence documents pertaining to Mr [REDACTED] and Mr [REDACTED]

¹ Mr [REDACTED] submitted an authorisation letter dated the 23rd January 2024, which stated that he is acting on behalf of the complainant to represent his interests on the territory of the Republic of Malta. The authorisation letter is valid for a period of one (1) year.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

³ The complaint reads as follows: “On behalf of my client, I have duly requested the [REDACTED] to rectify inaccurate data within a prescribed timeframe of 30 days. Regrettably, the aforementioned period has elapsed without the requisite correction of the data. Consequently, a formal complaint has been lodged against the [REDACTED] for the breach of my client’s General Data Protection Regulation (GDPR) rights as an EU citizen”.

██████████ and (b) an authorisation letter dated the 29th of May 2023, which was valid for a period of six (6) months.

3. By means of an email dated the 21st November 2023, the controller informed Mr ██████████ that *“the address can be updated by either filling in the Change of Address Form or by forwarding a signed covering letter including the same information”*.

INVESTIGATION

4. Pursuant to the internal investigation procedure of this Office, the Commissioner provided the controller with a copy of the complaint, including the supporting documentation submitted by the complainant, and requested the controller to provide any information which it deemed relevant and necessary to defend itself against the allegation raised by the complainant. By means of an email dated the 23rd February 2024, the controller submitted the following salient arguments:
- a. that Mr ██████████ is known for demanding to effect changes to personal data of individuals he claims to represent without the written authorisation of said clients;
 - b. that the controller did not accept the request submitted by Mr ██████████ via email as it could not establish any link between the complainant and Mr ██████████, and therefore, the controller did not have any confirmation that Mr ██████████ was acting on behalf of the complainant;
 - c. that Mr ██████████ ever provided the contact details of his client in order to enable the employees of the controller to verify the veracity of his demand;
 - d. that the controller informed Mr ██████████ that to ask for a ‘change of address’, the complainant had to submit a filled in form or a signed covering letter containing the same information as the form;
 - e. that unless the controller can effectively verify that the data subject, in this case, has given his consent to the changes being requested, the controller would be in breach of article 6(1)(a) of the Regulation;
 - f. that the controller is also bound to verify the identity of any individual, who is requesting personal data, or alternations to be made to that data, and to this end, the controller referred to recital 64 of the Regulation, which specifies that a controller should use all reasonable measures to verify the identity of a data subject who requests

access, in particular, in the context of online services and online identifiers, and therefore, the form which the complainant was asked to fill in and sign is in compliance with recital 64;

- g. that the Income Tax Management Act (Cap. 372), Electronic Communications Rules, 2016, states that a person may authorise another to communicate with the [REDACTED] on his behalf, in accordance with the procedures established for the purpose of these rules;
 - h. that, therefore, some form of authorisation, in the context of the regulation mentioned in the preceding sub-paragraph, would be required, however, Mr [REDACTED] did not provide this, and the complainant never contacted the controller;
 - i. that the controller has long held a policy of only dealing with tax representatives that work in warranted and regulated professions, primarily accountants and lawyers, and even in such cases, the controller strictly communicates with data subjects, by sending any documents to their home addresses; and
 - j. that from the research made, Mr [REDACTED] is neither an accountant nor a lawyer, and according to his own LinkedIn profile, he describes himself as a digital marketer.
5. The complainant was provided with the opportunity to rebut the submissions of the controller and by means of an email dated the 21st March 2024, Mr [REDACTED] submitted the following arguments for the Commissioner to consider in the legal analysis of this case:
- a. that when submitting the request for rectifying the address of the complainant, Mr [REDACTED] submitted an authorisation letter along with scanned copies of both the complainant and his own identity documents, thereby furnishing the controller with comprehensive verification of the identity of the complainant;
 - b. that the relevance of the professional designation of Mr [REDACTED] is rendered immaterial by the fact that the complainant had executed an authorisation letter bearing an electronic signature, and therefore, the controller had to accept such electronic signatures pursuant to the eIDAS Regulation (EU) no. 910/2014;
 - c. that the authorisation letter supplied to the controller explicitly outlines the profession of Mr [REDACTED] and his role as a relocation consultant, and includes his VAT number for reference;

- d. that had the controller taken the initiative to review the records of the MFSA, it would have ascertained the status of Mr [REDACTED] as an Authorised Mandatory registered with the [REDACTED], authorised to manage special tax schemes on behalf of his clients, and also registered with the [REDACTED] to submit VAT returns on behalf of his clients;
 - e. that in accordance with article 15 of the Regulation, the data subjects possess the right to obtain their personal data and relevant information in a comprehensible manner, and the controller is duty-bound to furnish this information promptly and without undue impediment, refraining from imposing excessive inquires or unreasonable obstacles upon the data subjects, such as cumbersome form submissions; and
 - f. that Mr [REDACTED] has been in regular communication with the controller on a weekly basis, in his capacity as a relocation consultant since 2019, and throughout this period, authorisation letters along with copies of Malta IDs have been consistently provided and fully accepted by the controller to facilitate the handling of the inquiries of his clients.
6. The controller was provided with the final opportunity to rebut the arguments of the complainant. On the 22nd March 2024, the controller submitted the following salient arguments:
- a. that in terms of Regulation (EU) No. 910/2014, the controller accepts digital signatures that are on the trusted list of qualified trust service providers, however, the controller is obliged to verify that the digital signature has truly been authorised by the data subject and this is by confirming such information with Mr [REDACTED].
 - b. that Mr [REDACTED] supplied documentation without the contact details of the complainant, such as the phone number and the email address of Mr [REDACTED] and therefore, the controller was unable to carry out the necessary checks; and
 - c. that the authorisation letter supposedly digitally signed by Mr [REDACTED] contains a final clause that precluded its use beyond six (6) months from the date of authorisation, and therefore, Mr [REDACTED] had been trying to force changes to personal data with an expired authorisation letter from an unverified data subject.

LEGAL ANALYSIS AND DECISION

7. The Commissioner clarifies that the subject-matter of the complaint strictly relates to the alleged refusal of the controller to rectify the personal data of the complainant, and therefore,

any submissions provided by the complainant in relation to the right of access as set forth in article 15 of the Regulation would not be taken into account for the purpose of investigating this complaint.

8. The Commissioner proceeded to assess the complaint which reads as follows: “[o]n behalf of my client, I have duly requested the [REDACTED] to rectify inaccurate data within a prescribed timeframe of 30 days. Regrettably, the aforementioned period has elapsed without the requisite correction of the data”.
9. Accordingly, the Commissioner examined the request of rectification submitted by Mr [REDACTED] by means of an email dated the 6th November 2023, which reads as follows: “[m]y client [REDACTED] with tax number [REDACTED] did pay his social contribution payments as self-employed on the 1st of August ... Unfortunately, my client has not yet received the proof of payment receipt by post. I would much appreciate it if you would please confirm the below-mentioned address is registered in your system. If not, kindly update accordingly”.
10. The request was accompanied by the following relevant documentation: (a) an authorisation letter dated the 29th of May 2023, which was valid for a period of six (6) months that authorises Mr [REDACTED] “as a relocation consultant to represent the interests of the Individual on the territory of the Republic of Malta at all government bodies, institutions, postal services, banks, EU offices, other organisations and private firms in all non-financial transactional matters related to the Individual’s relocation to/from Malta” and (b) the residence documents of Mr [REDACTED] and Mr [REDACTED].
11. This was followed by the reply of the controller, which states that the “the address can be updated by either filling in the Change of Address Form or by forwarding a signed covering letter including the same information”.
12. For the purpose of this legal analysis, the Commissioner sought to determine whether the requirement of the controller to request the data subject to fill in a ‘Change of Address Form’ or to forward a signed covering letter containing the same information is an infringement of article 12(2) of the Regulation.
13. The Regulation imposes an overarching right upon the controller to facilitate the exercise of data subject’s rights under articles 15 to 22 of the Regulation. The wording of the first sentence of article 12(2) of the Regulation is quite vague and the European Data Protection Board (the “EDPB”) interprets this article in such a manner that the controller should always be able to

demonstrate that the way to handle the request aims to give the broadest effect to the rights of the data subject⁴.

14. The Regulation does not specify how the controller should facilitate the exercise of the rights of the data subjects, however, recital 59 states that “[m]odalities should be provided for facilitating the exercise of the data subject’s rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object”. This is aimed at ensuring that the controllers have in place a streamlined and systemic process and procedures to handle data protection requests in the most effective manner within the timeframe set forth in article 12(3) of the Regulation.
15. Accordingly, the Commissioner proceeded to examine the ‘Change of Address’ form, which requires the data subjects to provide the following information: (a) the ID card number or income tax number; (b) the name and surname; (c) the previous address; (d) the new address; (e) the signature and (f) the date. The controller explained that this information may also be provided by means of a signed letter.
16. After examining the information which is required by the controller to comply with the request of rectification, the Commissioner ascertained that the controller is requesting the information that is strictly necessary for the purposes of complying with the request and identifying the data subject, and, consequently, this is considered to be compliant with the principle of data minimisation as set forth in article 5(1)(c) of the Regulation.
17. Whereas the Commissioner emphasises that, as a general rule, a controller should not oblige a data subject to use a dedicated form or online application to exercise a right under Chapter III of the Regulation, when taking into account the specificities of this case, in particular that the authorisation letter was not authorising Mr ██████████ to exercise the right to rectification in terms of article 16 of the Regulation on behalf of the complainant and that the address which Mr ██████████ requested the controller to rectify on behalf of the complainant did not match with the address contained in his residence document, the Commissioner concludes that the controller’s approach to facilitate the request, did not in any way hinder the complainant from exercising his data protection rights.

⁴ Guidelines 01/2022 on data subject rights – Right of access, Version 2.0, adopted on 28 March 2023, page 17.



On the basis of the foregoing considerations, the Commissioner is deciding that the controller did not infringe the provisions of the Regulation, and therefore, the complaint is being dismissed in its entirety.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
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**Ian Deguara
Information and Data Protection Commissioner**



Right of Appeal

The parties are hereby being informed that 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 to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.

An appeal to the Tribunal shall be made in writing and addressed to 'The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta'.