

[REDACTED]

vs

[REDACTED]

COMPLAINT

1. On the 23rd of February 2025, [REDACTED] (the “**complainant**”) lodged a data protection complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that [REDACTED] (the “**controller**”) refused to comply with his request to access his personal data pursuant to article 15 of the Regulation. The complainant further alleged that the controller based its refusal on a provision of German legislation, namely, the German State Treaty on Gambling 2021 (the “**GlüStV 2021**”), which it argued limits data subjects’ right of access to their transaction data to the twelve (12) month period preceding the date of the request.
2. For the purpose of supporting his allegations, the complainant submitted copies of a number of email exchanges between himself and the controller, which demonstrated that:
 - a. On the 14th of June 2024, the complainant exercised his right of access to his personal data pursuant to article 15 of the Regulation. Specifically, the complainant requested the controller to provide him with “*an overview of all transactions (deposits and withdrawals) made to [his] player account, including the payment method and payment date*”;

¹ 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.

[REDACTED]

- b. On the same day, the controller confirmed that it received the complainant's request, and directed the complainant to contact its data protection officer and to provide certain personal information and documentation for the purpose of verifying his identity as the data subject;
- c. On the 29th of November 2024, the controller confirmed that it received the requested information to verify the complainant's identity as the data subject, and informed the complainant that it "*will respond to [the complainant's] request within 30 days*";
- d. On the 17th of December 2024, the controller informed the complainant that "*due to an unexpected increase in requests that we are currently facing, we are forced to extend the deadline for your request by a further 30 days*";
- e. On the 2nd of February 2025, the complainant sent a reminder to the controller to provide the requested personal data, given that the timeframe prescribed in the Regulation had already passed;
- f. On the 7th of February 2025, after receiving a reminder from the complainant, the controller responded and informed the complainant of its reasons for not acting on his request, namely that:
 - i. "*[...] according to the requirements of GlStV 2021 [section] 6 paragraph 3, we are obliged to provide you with a list of your financial transaction for up to 1 year.*" ;
 - ii. "*All financial data that goes beyond this period will be disclosed in accordance with applicable German law*"; and
 - iii. "*We would like to confirm that no financial transactions or gaming activity have taken place in the last year.*".
- g. On the 11th of February 2025, the controller sent another email to the complainant, in which it reiterated its reasoning as to why it would not be taking action on the complainant's request, and informed the complainant that this would be its "*final response on this matter*".

INVESTIGATION

3. Pursuant to the internal investigative procedure of this Office, the controller was provided with a copy of the complaint and was given the opportunity to make any submissions which it deemed relevant and necessary to defend itself against the allegations made by the complainant. In particular, in light of the fact that the controller did not take action on the complainant's access request, the Commissioner requested the controller to substantiate its position by identifying the specific restriction in terms of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09 (the "**Subsidiary Legislation 586.09**") which it relied upon in order to justify the restriction to the complainant's right of access to his personal data pursuant to article 15 of the Regulation.
4. By means of an email sent on the 8th of April 2025, the controller made the following pertinent submissions for the Commissioner to consider in the legal analysis of the present case:
 - a. that, on the 14th of June 2024, the complainant sent an email to the controller's customer support team requesting an overview of all transactions made by him on the player account associated with the email address [REDACTED] including both deposits and withdrawals, the payment methods used, and the dates of the payments;
 - b. that, when making his request, the complainant did not explicitly refer to his rights under the Regulation, nor did he indicate that he was making a data subject access request within the meaning of article 15 of the Regulation;
 - c. that, nevertheless, in accordance with its internal procedures and pursuant to article 12(6) of the Regulation, the controller requested the complainant to provide proof to confirm his identity as the data subject before proceeding to disclose any personal data;
 - d. that the complainant provided proof of his identity on the 25th of November 2024, more than five (5) months after making his request, and did not provide any further clarification as to the scope of his request;
 - e. that, once the controller verified the complainant's identity, the controller informed the complainant that due to a high volume of access requests, a short extension of the timeframe to respond was necessary, as permitted under article 12(3) of the Regulation;

- f. that the controller then sent an email to the complainant on the 21st of January 2025 (as evidenced by the copies of the email exchanges submitted by the controller as supporting documentation), informing the complainant that no transactions had occurred on his account within the last year preceding the date of his request;
- g. that, accordingly, there was no transaction data that could be disclosed to the complainant within the scope of his access request;
- h. that the controller sought to clarify its position under the national legal framework governing access to personal data by German players, as follows:
 - i. that “[u]nder Article 23 GDPR, Member States may introduce specific restrictions to data subject rights, including the right of access.” ;
 - ii. that “[i]n this case, Section 6(3) of the German Interstate Treaty on Gambling 2021 (ISTG 2021) serves as a *lex specialis*, limiting the access rights of players to gambling transaction data to the previous 12 months. This provision reflects a deliberate legislative choice, balancing player protection with data privacy obligations under EU law.” ;
 - iii. that “[t]he ISTG 2021 was enacted after the GDPR and addresses the specific intersection of gambling regulation and data protection, thus overriding the general provisions of Article 15 GDPR where applicable, in line with the principle *lex specialis derogat legi generali*. As a result, all licensed operators and intermediaries active on the German market - including ourselves - are required to comply with this national restriction.” ;
 - iv. that “Maltese law also allows certain exemptions to data subject access rights under Article 15 GDPR, which may apply in similar circumstances, reinforcing the principle that Member States can provide lawful and proportionate limitations.”; and
 - v. that “[o]ur approach in this matter has been adopted in line with internal procedures and external legal advice from our German counsel, and is consistent with industry practice across German-licensed operators.”

Further clarification sought by the Commissioner

5. After reviewing the controller's submissions, the Commissioner requested further information from the controller pursuant to his investigative powers under article 58(1)(e) of the Regulation. Specifically, as the imposition of a restriction to the rights of the data subject must necessarily be preceded by a necessity and proportionality test, the Commissioner requested the controller to provide a copy of the test it ought to have conducted prior to invoking a restriction to the complainant's right of access.
6. On the 23rd of April 2025, the controller submitted a copy of the necessity and proportionality test which it conducted. In its submissions, the controller also provided its rationale as to why it considered that it was justified to rely on section 6(3) of the GlüStV 2021, being a provision of German law, as a legislative measure to restrict the complainant's right of access, in lieu of the restrictions set out in Subsidiary Legislation 586.09. Pertinently, the controller submitted "*supporting arguments for not processing DSARs from players*", and made reference to the restriction set out in regulation 4(e) of Subsidiary Legislation 586.09, stating that it could only be invoked "*if legal proceedings have been formally instituted*". The controller further submitted that "*not processing DSARs on the basis of provision 4(e) of S.L. 586.09, will certainly result in [the Commissioner] issuing a reprimand, and in case of multiple complaints this might lead to a fine. [...] The only allowed exception is where the data subject has already initiated a legal proceeding against us.*"
7. The Commissioner invited the controller to present any final arguments as to why it considered this German national law to be the law applicable to its data processing activities, notwithstanding that the controller is a company formed and incorporated under the laws of Malta, and is also duly licensed by the Malta Gaming Authority.
8. By means of an email sent on the 30th of April 2025, the controller submitted the following final arguments for the Commissioner to consider in the legal analysis of the case:
 - a. that "[w]e confirm that [the controller] while incorporated in Malta and licensed by the Malta Gaming Authority also holds a German gambling license (operating through [REDACTED] under the ISTG 2021 framework" ;
 - b. that "the application of Section 6d(3) ISTG 2021 is based on the fact that the data subject is domiciled in Germany and accessed our services from Germany" ; and

- c. that “under article 3(2) GDPR, the regulation applies based on the data subject’s location, and article 23 GDPR allows Member States such as Germany to lawfully restrict rights - in this case, limiting access to gambling transaction data to a 12-month period. As a licensed operator in Germany, we are therefore obliged to comply with these national provisions”.
9. Finally, the Commissioner made a series of objective questions to the controller regarding the location of the controller’s main establishment and where its decisions about data processing activities are taken. In its responses sent on the 4th of July 2025, the controller stated that it considered the main establishment of the group of undertakings to which it forms part of to be located in Malta. The controller supported this by explaining, *inter alia*,
- a. that the controller is a company formed and registered under the laws of Malta and having its registered address in Malta;
 - b. that the controller is responsible for making data protection decisions at group level, and that its central management functions and data processing operations are carried out in Malta;
 - c. that decisions about data processing are signed off by the controller’s executive director in Malta; and
 - d. that the controller’s data protection officer and key decision-making personnel are also located in Malta.

LEGAL ANALYSIS

Determining the ‘Main Establishment’ of the Controller

10. Before entering into the merits of the present case, in light of the cross-border nature of the controller’s data processing, the Commissioner undertook a judicious assessment to identify the controller’s main establishment within the Union, and specifically, whether such main establishment is located in Malta. In accordance with article 56(1) of the Regulation, the supervisory authority in the member state of the main establishment of a controller shall be the lead supervisory authority vis-à-vis that controller. The supervisory authority shall have the competence to monitor the application of the Regulation in relation to the controller on the

territory of its own Member State as held in article 55(1) of the Regulation, and to investigate complaints lodged by data subjects concerning the processing of their personal data by that controller, as held in article 57(1)(f) of the Regulation. Accordingly, making this determination was necessary in order to establish whether the Commissioner is the competent supervisory authority for overseeing the controller's processing operations in the present case, and as a corollary, whether the controller is also subject to the provisions of Maltese law which implement and further specify the provisions of the Regulation, namely, the Data Protection Act (Chapter 586 of the Laws of Malta) (the "**Data Protection Act**") and all the regulations made thereunder.

11. In this regard, article 4(16)(a) of the Regulation clearly defines the "*main establishment*" of a controller as "*the place of its central administration in the Union*". This applies unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union, and that establishment also has the power to implement those decisions, in which case, that establishment will be considered the controller's main establishment. This is reinforced by recital 36 of the Regulation, which explains that the main establishment should be determined according to objective criteria, and should imply the effective and real exercise of management activities, determining the main decisions about processing through stable arrangements. This interpretation is further supported by the European Data Protection Board's ("**EDPB**") Opinion 04/2024 on the notion of main establishment of a controller in the Union under article 4(16)(a) GDPR, which stresses that determining the main establishment cannot be based on a subjective designation,³ but rather, it hinges on identifying where these key decisions are taken, and where the power to put those decisions into effect lies. Accordingly, the Commissioner considered that making this determination would involve an objective exercise to identify precisely where the controller makes its final decisions on the purposes and means of its data processing activities, and where the controller has the ability to implement those decisions effectively.
12. The Commissioner also analysed the EDPB Guidelines 08/2022 on identifying a controller or processor's lead supervisory authority, which provide that supervisory authorities may request a controller to provide evidence or information to demonstrate where its main establishment is and where decisions about data processing activities are taken.⁴ Accordingly, during the course

³ EDPB Opinion 04/2024 on the notion of main establishment of a controller in the Union under article 4(16)(a) GDPR, adopted on the 13th of February 2024, paragraph 11.

⁴ EDPB Guidelines 08/2022 on identifying a controller or processor's lead supervisory authority, adopted on the 28th of March 2023, paragraph 38.

of the investigation, for the purpose of further informing his determinations in this regard, the Commissioner put a series of objective questions to the controller.

13. In its responses the controller stated that it considered the main establishment of the group of undertakings to which it forms part of to be located in Malta. The controller substantiated its position by explaining, *inter alia*, (i) that the controller is a company formed and registered under the laws of Malta and having its registered address in Malta, (ii) that the controller is responsible for making data protection decisions at group level, and that its central management functions and data processing operations are carried out in Malta, (iii) that decisions about data processing are signed off by the controller's executive director in Malta, and (iv) that the controller's data protection officer and key decision-making personnel are also located in Malta.
14. After taking into consideration the explanations provided by the controller in its responses, the Commissioner affirmed his determination that the controller's main establishment is that of Malta. Pursuant to article 11(2) of the Data Protection Act, the Commissioner is responsible for monitoring and enforcing the application of the provisions of the Act and the Regulation in relation to controllers that have the main establishment in Malta. Consequently, in conducting his legal analysis of the present case and issuing his legally binding decision thereon, the Commissioner examined the controller's conduct and the complainant's allegations in light of the provisions of the Regulation and the relevant provisions of the Data Protection Act, including the regulations made thereunder. The Commissioner further clarifies that he does not have the competence to interpret the law of another Member State, and that his competence is strictly limited to Malta's territory, as established under article 55(1) of the Regulation.

Restricting the Complainant's Right of Access

15. Firstly, in its submissions, the controller had argued that it was entitled to refuse to provide the complainant with a copy of the personal data he requested, stating that “[u]nder Article 23 GDPR, Member States may introduce specific restrictions to data subject rights, including the right of access”. Accordingly, the Commissioner proceeded to analyse the wording of article 23 of the Regulation and the concept of “restriction” in this context. Specifically, the Commissioner noted that article 23(1) of the Regulation provides that:

“Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and

obligations provided for in Articles 12 to 22 [...] [emphasis has been added].

The wording of article 23(1) of the Regulation makes it clear that the Union and Member States are permitted to adopt legislative measures to restrict the rights of data subjects, and the corresponding obligations of controllers, provided that the restriction “*respects the essence of the fundamental rights and freedoms*” and “*is a necessary and proportionate measure in a democratic society*” to safeguard one or more of the objectives exhaustively listed in article 23(1)(a) to (j) of the Regulation. Additionally, any legislative measure imposing a restriction must contain, at least where relevant, specific provisions as to the elements listed in article 23(2)(a) to (h) of the Regulation, including the purposes of the processing, the categories of the personal data, and the scope of the restrictions introduced.

16. The Commissioner noted that article 23 is supplemented further by recital 73 of the Regulation, which explains that any such restriction should also be in accordance with the requirements set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union (the “**Charter**”). In this regard, while article 8(1) of the Charter enshrines the right of every individual to the protection of personal data concerning him or her, this is qualified by article 52(1) of the Charter, which provides that proportionate limitations are permitted if they are necessary to protect the rights and freedoms of others, or to meet other objectives recognised by the Union. This interpretation has also been reaffirmed by the Court of Justice of the European Union (the “**CJEU**”) in its rulings, including in the ‘Schecke’ judgement, where the CJEU held that “[t]he right to the protection of personal data is not, however, an absolute right, but must be considered in relation to its function in society.”⁵

17. The Commissioner also examined the EDPB Guidelines 10/2020 on Restrictions under Article 23 GDPR,⁶ which explain that while necessary and proportionate restrictions are indeed permissible, they should be seen as exceptions to the general rule of allowing the exercise of data subject rights and should therefore not be interpreted broadly. To that effect, the Commissioner emphasised that while the complainant’s right to the protection of his personal data - including, in the present case, his right of access to his personal data under the Regulation - are not absolute and may be restricted if necessary and proportionate, a restriction must be

⁵ Joined Cases C-92/09 and C-93/09 (Volker und Markus Schecke GbR, Hartmut Eifert vs. Land Hessen), CJEU judgement of the 9th of November 2010, paragraph 48.

⁶ EDPB Guidelines 10/2020 on Restrictions under Article 23 GDPR, adopted on the 13th of October 2021, paragraphs 3 and 85.

compatible with the Regulation and must satisfy the strict requirements in article 23 of the Regulation in order to apply. Furthermore, given that the controller's main establishment is located in Malta, the controller would have had to ensure that such restriction complied both with the Regulation, and with Maltese law, which together constitute the applicable legal framework for the purpose of article 23 of the Regulation.

The Legislative Measure Restricting the Data Subject's Rights

18. During the course of the investigation, the Commissioner requested the controller to identify the specific ground under Subsidiary Legislation 586.09 which it relied on to restrict the complainant's right of access pursuant to article 15 of the Regulation. In its submissions, the controller submitted "*supporting arguments for not processing DSARs from players*", and made reference to the ground in regulation 4(e) of Subsidiary Legislation 586.09, which provides that:

"4. Any restriction to the rights of the data subject referred to in Article 23 of the Regulation shall only apply where such restrictions are a necessary measure required:

(e) for the establishment, exercise or defence of a legal claim and for legal proceedings which may be instituted under any law;"

The controller argued that the ground in regulation 4(c) of Subsidiary Legislation 586.09 could only be invoked "*where the data subject has already initiated a legal proceeding against us*".

19. Taking into account that the controller's submissions directly referred to the ground in regulation 4(e) of Subsidiary Legislation 586.09, the Commissioner sought to clarify the criteria which must be satisfied by the controller in order for regulation 4(e) to apply. In accordance with the wording of regulation 4(e), the controller must be able to concretely demonstrate that the restriction is necessary to defend an actual legal claim and legal proceedings which may be instituted. Accordingly, the controller must be able to demonstrate that complying with the complainant's access request would, because of the nature of the personal data requested by the complainant, have the effect of impairing the controller's ability to defend itself in the following scenarios:

- i. the defence of a legal claim; and
- ii. the defence of legal proceedings which may be instituted.

The Commissioner's interpretation is that, although the two elements of the restriction, namely, the defence of a legal claim and the defence of legal proceedings are related to one another,

they are not cumulative requirements. Accordingly, regulation 4(e) of Subsidiary Legislation 586.09 also applies in scenarios where the restriction is a necessary measure for the controller to defend a legal claim brought against it by the data subject, even where legal proceedings may not have been instituted yet. However, the restriction cannot be invoked on the basis of a mere assumption that the complainant may, following the provision of the requested information, institute a legal action against the controller. In the present case, however, no legal claim nor legal proceedings had been instituted, and therefore, the restriction in regulation 4(e) was not applicable. The controller further submitted that *“not processing DSARs on the base of provision 4(e) of S.L. 586.09, will certainly result in [the Commissioner] issuing a reprimand, and in case of multiple complaints this might lead to a fine. [...] DSARs are requested prior to the starting of the legal proceeding against us.”* Accordingly, based on its submissions, the Commissioner considered that the controller appeared to recognise that it would not have been able to successfully rely on the ground in regulation 4(e) to restrict the complainant’s right of access in the present case.

20. The controller contended that it should be able to restrict the complainant’s right of access on the basis of a German legislative measure, namely, section 6(3) of the German law GlüStV 2021, despite its main establishment being located in Malta. In its reply dated the 7th of February 2025, the controller informed the complainant that *“according to the requirements of GlüStV 2021 [section] 6 paragraph 3, we are obliged to provide you with a list of your financial transaction for up to 1 year”*. As there had been no financial transactions or gaming activity involving the complainant during the year preceding the request, the controller stated that it had no information to disclose. Furthermore, in its submissions, the controller reiterated that the GlüStV 2021 should be regarded as a *“lex specialis”* which should override the general provisions and requirements of the Regulation. However, the Commissioner completely rejects this argument. The Regulation constitutes the primary legal framework regulating the processing activities of the controller. While the Regulation allows Member States to introduce legislative measures in specific areas, such as in areas not exclusively regulated by the Regulation, such measures are intended to further implement and specify the Regulation, not to override it. The controller’s interpretation, suggesting that any national law introduced under the Regulation may take precedence over the Regulation, is legally incorrect.
21. Moreover, during the course of the investigation, when the Commissioner requested the controller to present its final submissions in support of its argument that it may restrict the complainant’s right of access on the basis of German legislation, the controller referred to article 3(2) of the Regulation, which, in its view, supported its line of argumentation. Specifically, the

controller submitted that “*under article 3(2) GDPR, the regulation applies based on the data subject’s location, and article 23 GDPR allows Member States such as Germany to lawfully restrict rights - in this case, limiting access to gambling transaction data to a 12-month period. As a licensed operator in Germany, we are therefore obliged to comply with these national provisions*” [emphasis has been added].

22. Accordingly, the Commissioner proceeded to examine the wording of article 3(2) of the Regulation, which provides as follows on the territorial scope of the Regulation:

“2. *This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:*

a) *the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or*

b) *the monitoring of their behaviour as far as their behaviour takes place within the Union.*”

[emphasis has been added].

23. To begin with, the Commissioner noted that article 3(2) of the Regulation applies exclusively where a controller or processor is *not* established in the Union. The Commissioner considers that the underlying intention behind this provision is to ensure that data subjects in the Union are not deprived of their data protection rights under the Regulation - irrespective of their nationality, or of the location of the establishment of the controller or processor. Accordingly, article 3(2) extends the territorial scope of the Regulation to also cover the processing of personal data by entities that are established outside the Union, but which target individuals located in the Union, whether by offering them goods or services (as provided in article 3(2)(a) of the Regulation), or by monitoring their behaviour within the Union (as provided in article 3(2)(b) of the Regulation). In the present case, however, the controller is established within the Union, and accordingly, the applicability of the Regulation to the controller’s processing activities is not in dispute. The Commissioner therefore fails to see the relevance of this provision to the controller’s line of argumentation.

24. The Commissioner further notes that the controller was also legally incorrect when it argued that “*under article 3(2) GDPR, the regulation applies based on the data subject’s location*”, and that because the data subjects are in Germany, the controller (whose main establishment is

in Malta) may withhold personal data under German law that purportedly limits the right of access. Article 23(1) of the Regulation makes it abundantly clear that a controller may restrict a right of a data subject based on a “*Member State law to which the data controller or processor is subject*”, and not based on the location of the data subjects, as the controller suggested. If the Regulation intended to apply restrictions based on the data subject’s location, it would have explicitly stated so. Given that the controller’s main establishment is located in Malta, the Commissioner determined that the Maltese law, together with the Regulation, constitutes the applicable legal framework for the purpose of article 23 of the Regulation.

The Obligations of the Controller under articles 12(3) and (4) of the Regulation

25. The Regulation imposes strict obligations on controllers regarding how requests exercised by data subjects are to be dealt with, including the specific timeframes within which controllers must respond to such requests. Accordingly, as part of the investigation, the Commissioner also sought to establish whether the controller had responded to the complainant’s access request within the timeframes stipulated in the Regulation, namely, in articles 12(3) and (4) of the Regulation.

26. The Commissioner first proceeded to analyse the wording of article 12(3) of the Regulation, which states that following receipt of a request made by the data subject, the controller is required to provide a response to the data subject “*without undue delay and in any event within one month of receipt of the request*” [emphasis has been added]. While the general rule is that the controller should respond to the request as soon as possible,⁷ the provision goes on to state that the one-month period may be extended by up to two (2) additional months where strictly necessary, taking into account the complexity and number of requests made. In such cases, article 12(3) of the Regulation still requires the controller to communicate with the data subject within the original one-month period, informing the data subject of the extension and the reasons for the delay. Importantly, the Commissioner considers that extensions should not be used lightly and frivolously. As clarified in the EDPB Guidelines 01/2022 on Data Subject Rights – Right of Access, extensions should only be used in “*exceptional cases*”,⁸ and, where a controller decides to avail itself of an extension, it bears the responsibility to demonstrate that the extension was genuinely necessary, in line with the principle of accountability under article 5(2) of the Regulation.

⁷ EDPB Guidelines 01/2022 on Data Subject Rights – Right of Access, adopted on the 28th of March 2023, paragraph 158.

⁸ EDPB Guidelines 01/2022, page 62.

27. The Commissioner then proceeded to analyse article 12(4) of the Regulation, which makes it clear that even in cases where the controller determines that it shall not act on the data subject’s request, the controller is still required to communicate with the data subject without delay, and at the latest within one (1) month, informing the data subject of (i) its justified reasons for not acting on the request, and (ii) the possibility of lodging a complaint with the supervisory authority and seeking a judicial remedy in that regard. The Commissioner observes that, in contrast to the wording used in article 12(3) of the Regulation, article 12(4) does not permit the controller to avail itself of an extension of the one-month timeframe when it decides not to act on the data subject’s request. Rather, the possibility of an extension is intended solely for cases where the controller intends to comply with the data subject’s request. The Commissioner noted that this interpretation is also supported by the EDPB’s Guidelines 01/2022, which state that the controller’s obligation in article 12(3) of the Regulation “*should not be confused with the information that has to be given without delay and at the latest within one month when the controller does not take action on the request, as detailed by Art. 12(4) GDPR.*” [emphasis has been added].
28. Taking these considerations into account, the Commissioner moved on to examine the copies of the email communications submitted by the complainant in support of his complaint, together with those adduced by the controller when making its submissions. The Commissioner undertook the exercise of establishing an accurate timeline, starting from the date when the complainant exercised his right of access, to the point at which the controller sent its final communication to the complainant and informed him that it considered his request to be closed. After examining the relevant email exchanges between the complainant and the controller, the Commissioner established the following timeline with respect to the complainant’s access request:

14 June 2024	The complainant exercised his right of access pursuant to article 15 of the Regulation, by sending an email to the controller in which he requested a copy of all of his transaction data.
14 June 2024	The controller replied to the complainant’s email, confirming receipt of his request, and directed the complainant to provide certain personal information and documentation to its data protection officer, for the purpose of verifying his identity as the data subject making the request.
29 November 2024	After verifying the complainant’s identity as the data subject, the controller informed him that it “ <i>will respond to [the complainant’s] request within 30 days</i> ” from that date.

17 December 2024	The controller sent another email to the complainant, in which it informed him that <i>“due to an unexpected increase in requests that we are currently facing, we are forced to extend the deadline for your request by a further 30 days”</i> .
21 January 2024	The controller sent an email to the complainant, informing him that no transactions had occurred on his account within the last year preceding the date of his request, and that according to the requirements of GlüStV 2021, the controller was only required to provide the complainant with a copy of his transaction data from the last year preceding the date of his request. At this point, a total of thirty-five (35) days had lapsed since the controller’s reply of the 29 th of November 2024.
2 February 2025	The complainant sent a reminder to the controller to provide the requested information to him, as the timeframe prescribed in the Regulation had already passed.
7 February 2025	After receiving a reminder from the complainant, the controller responded, further informing the complainant of its reasons for not acting on his request, namely that: i. <i>“[...] according to the requirements of GlüStV 2021 [section] 6 paragraph 3, we are obliged to provide you with a list of your financial transaction for up to 1 year.”</i> ; ii. <i>“All financial data that goes beyond this period will be disclosed in accordance with applicable German law.”</i> ; and that iii. <i>“We would like to confirm that no financial transactions or gaming activity have taken place in the last year.”</i>
11 February 2025	The controller sent another email to the complainant, reiterating its reasoning as to why it would not be taking action on the complainant’s request. In this email communication, the controller informed the complainant that this would be its <i>“final response on this matter”</i> .

29. In the present case, the controller had decided - albeit, as already established, without having a justified reason for doing so - that it would not provide the complainant with a copy of the personal data he requested, namely, the transaction data associated with his account. Although

the controller did inform the complainant of this, it did so outside of the one-month timeframe stipulated in article 12(4) of the Regulation. In the controller's submissions of the 8th of April 2025, the controller stated, *inter alia*, that after verifying the complainant's identity, it informed the complainant that an extension of the timeframe to respond was necessary due to there being a volume of requests, and that this was permitted under article 12(3) of the Regulation. In this regard, the Commissioner emphasised that where a controller decides not to take action on a data subject's request, the controller has the responsibility to communicate this to the data subject without delay, and at the latest, within one month. Contrary to what occurred in the present case, the controller may not invoke the extension of time provided in article 12(3) of the Regulation when refusing to comply with the data subject's request, because that extension is intended for situations where the controller actually intends on complying with the request, but requires additional time, whether due to its complexity or due to the amount of requests made. In fact, the EDPB Guidelines 01/2022 state that "*if controllers refuse to act on an access request in whole or partly, they must inform the data subject without delay and at the latest within one month*"⁹ [emphasis has been added], making it clear that an extension may not be invoked in such cases.

30. Accordingly, the Commissioner concluded that the controller's significant delay in informing the complainant of its decision not to provide the requested copy of his personal data was not justified. Additionally, the copies of the email exchanges provided by both the complainant and the controller during the course of the investigation demonstrated that the controller had also failed to inform the complainant of his right to lodge a complaint with a supervisory authority and to seek a judicial remedy, as required under article 12(4) of the Regulation. The Commissioner stresses that this would have required minimal time and effort on the controller's part, and should have therefore been done promptly, in line with the controller's obligation to facilitate the exercise of the rights of the data subject pursuant to article 12(2) of the Regulation.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller infringed article 12(4) of the Regulation by failing to inform the complainant of the reason for not providing the requested copy of his personal data, and of his right to lodge a complaint with a supervisory authority and to seek a judicial remedy within the timeframe of one (1) month from the date of receipt of the request.

⁹ EDPB Guidelines 01/2022, paragraph 193.

Furthermore, in accordance with his corrective powers pursuant to article 58(2)(c) of the Regulation, the Commissioner is hereby ordering the controller to comply with the complainant's access request, by providing the complainant with a copy of the full extent of his transaction data that is undergoing processing, in accordance with articles 15(1) and 15(3) of the Regulation.

The controller shall comply with the order of the Commissioner without undue delay, and by no later than twenty (20) days from the date of service of this legally binding decision.

Once the controller has taken the required action to comply with the order of the Commissioner, the controller shall immediately inform the Commissioner of the action taken, and shall provide supporting evidence to demonstrate its compliance. Failure by the controller to comply with the order of the Commissioner shall result in the imposition of an administrative fine pursuant to article 83(6) of the Regulation.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
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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 (Chapter 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.¹⁰

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*”.

¹⁰ Further information on the appeals procedure is available at the following hyperlink: <https://idpc.org.mt/appeals-tribunal/>