



REPUBLIC OF CYPRUS



OFFICE OF THE COMMISSIONER
FOR PERSONAL DATA
PROTECTION

COMMISSIONER

Our ref.: 11.17.001.010.172

23 October 2023

Decision

Investigation of complaint under the General Data Protection Regulation (GDPR)

A complaint was lodged with the Malta DPA against Brivio Limited (hereinafter, "the Controller"), a company that is registered in Cyprus. The complaint was subsequently transmitted to the Office of the Commissioner for Personal Data Protection (hereinafter, "the Commissioner's Office") on 16/06/2022, in line with Article 56 of the General Data Protection Regulation (EU) 2016/679 (hereinafter, "the GDPR").

2. On the basis of the above, the Commissioner for Personal Data Protection (hereinafter, "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.

Description of the case

3.1. The complaint was lodged by [REDACTED] (hereinafter, "the Complainant") and involves the Controller's failure to comply with the Complainant's access request (Article 15 of the GDPR). The complaint included the following information:

3.2. The Complainant, who is a registered user on the online casino "icecasino.com" (hereinafter, "the website"), contacted the Controller, who is the operator of the said website via email at support@icecasino.com on 22.02.2022, requesting that he is provided with information regarding all personal data concerning him, payments made and casino games that he has participated in on the website as is his legal right according to Article 15 of the GDPR. Nevertheless, the Complainant claims that he had not received a response to his request within the one-month period pursuant to the Article 12(3) and (4) of the GDPR.

Investigation by Cyprus SA

4.1. The Commissioner's Office contacted the Controller on 05/09/2022 and requested the reason for not responding to the Complainant's access request as well as any other information they deemed necessary. The Controller was also informed for the provisions of the Article 12(3) and (4) of the GDPR.

4.2. In their reply, on 19/09/2022, the controller stated the following:

- i. On 22.02.2022, the Customer Support Team (email support@icecasino.com) received an email from the Complainant requesting that they provide the latter with

information regarding all personal data concerning him, including payments made and casino games that he had participated in.

- ii. In course of the Controller's internal investigation, it ascertained that despite the internal data protection policies and procedures of the Controller, the Customer Support employee failed to inform the Data Protection Team regarding this particular request.
- iii. Taking into account the specifics of their business and to limit employees' access to the customers' personal data, they have intentionally designated a separate team for privacy matters. Therefore, their customers are always encouraged to contact the Data Protection Team directly at privacy@icecasino.com in case of questions, requests, or complaints. Nevertheless, following the GDPR, the Controller mentions that they accept data protection requests via all available means of communication, and all the staff interacting with customers are instructed on how to reply to different types of data subject requests.

4.3. Moreover, to effectively deal with this case and enhance internal technical and organisational measures imposed by the GDPR to be in a position to reply to all demands in a timely manner, the Controller informed the Commissioner's Office that several corrective actions were applied:

- i. When the Data Protection Team received the complaint, they immediately contacted the Complainant and, on 12.09.2022, the personal data were sent to the latter. Therefore, the subject access request has been fully satisfied. The Malta SA confirmed that, on 24/11/2022, the Complainant access request was indeed fully satisfied.
- ii. The privacy procedures have been reviewed and a new technical flow has been adopted in order to facilitate the cooperation between the Customer Support Team and the Data Protection Team and to ensure that all data subject requests are answered in a timely manner in the future.
- iii. Additional training sessions have been conducted, for the staff who interacts with customers and instructions have been granulated as to how the staff should reply to each type of request.

4.4. As requested by the Commissioner's office, the Controller provided the former, on 25.11.2022, with the following written evidence of the corrective measures taken:

- i. The Subject Access Request Procedure
- ii. Screenshots of the information system where data subject requests are processed
- iii. The educational content of the course on 'Privacy and Customer Service' which all members of the Customer Support Team were obliged to complete, as well as proof of completion by the staff.

4.5. Furthermore, the Controller informed the Commissioner's office about the updated workflow, according to which, the members of the Customer Support Team, immediately after receiving the data subject request, they recognize and identify the data subject request among other messages, ask security questions to verify the data subject identity, create a service ticket in the information system and assign a service ticket to the Data Protection Team. After that, the Data Protection Team takes all the necessary actions to implement the data subject's rights in a timely manner.

Preliminary Decision

5.1. On 06/07/2023, the Commissioner issued a Preliminary Decision and concluded that:

- i. There is an infringement of the Article 12(3) of the GDPR, since the Controller failed to satisfy the Complainant's access request and comply with the provisions of the aforementioned Article.
- ii. The Controller's immediate actions to satisfy the access request, as well as the corrective measures taken after receiving notice for the complaint, are taken into consideration.
- iii. It is worth mentioning that a similar complaint against the Controller had been lodged to the Austria SA and thereafter received by the Commissioner's office. The complaint was referred to the Controller's failure to respond to an access request exercised by an attorney on behalf of a data subject, since no additional information was requested to assure that the said attorney was entitled to represent the data subject. Considering the fact that the Controller eventually complied with the access request, the Commissioner was of the view that the mere delay appears to be a minor infringement which only slightly affected the data subject's rights and freedoms. Therefore, the Commissioner considered that the investigation proceedings could be concluded as no further supervisory measure was necessary at that stage. The information about the case conclusion was sent to the Controller on 05.01.2023.

5.2. The Commissioner invited the Controller, as by 03/08/2023 at the latest, to state the reasons why they believe they should not be sanctioned and/or any mitigating factors that they believe should be taken into account before a Decision was issued.

5.3. On the 07/07/2023, the Controller informed the Commissioner that they would answer within the set period. However, the Commissioner sent a reminder, on 04/09/2023, since no such response was received within the deadline.

5.4. The Controller responded on 04/09/2023 to the Preliminary Decision and stated, inter alia, the following:

- i. The Complainant's right to access was completely fulfilled.
Despite the initial delay in responding to the Complainant, upon becoming aware of the request, the Controller promptly reached out to the Complainant and completely fulfilled their request. Consequently, the former actively played a role in mitigating the effects of delayed response on the latter's rights and freedoms. By successfully fulfilling the Complainant's access rights, the Controller did their best in these circumstances to effectively meet the objectives of Article 15 of the GDPR. The Complainant, upon receiving the comprehensive response to their request, did not assert any claims concerning their data protection rights. The Controller believes that this demonstrates the effectiveness of their efforts in addressing the situation promptly and thoroughly, and they consider the matter to be resolved to the satisfaction of the Complainant. They believe that the essence of data protection regulations is to safeguard the rights and freedoms of individuals, and in this case the Complainant's rights were protected and their request fulfilled.

ii. The Controller enhanced their internal policies and procedures concerning data subject rights.

To ensure timely responses to data subject requests, the Controller has introduced a range of corrective measures, encompassing both organisational and technical improvements. Such measures include:

- revision of the Subject Access Request Procedure and update of the company's workflow concerning the data subject requests;
- setting up a new technical flow for cooperation between the Customer Support Team and the Data Protection Team;
- improvement of internal compliance training 'Privacy and Customer Service' mandatory for all members of the Customer Support Team;
- conducting additional training sessions for the staff interacting with the customers, to remind them of the privacy policies and procedures.

Due to these improvements, the Controller successfully avert delays in responding to data subject requests, ensuring compliance with Article 12(3) of the GDPR.

iii. The Controller actively cooperated with the Commission throughout the investigation process.

Demonstrating openness and transparency, the Controller provided the Commission with comprehensive explanations regarding the case, along with supporting evidence of the corrective measures implemented. Thus, the Controller contributed to an effective investigation through every available means. Considering all mentioned above, they believe that in this case, holding the company accountable is excessively burdensome and disproportionate, taking into account the fact that the resolution of the matter left the Complainant satisfied, and given the company's endeavors to remain compliant with the GDPR and transparent with the Commission throughout the investigation process.

Legal framework

6.1. Article 58 of the GDPR:

"1. Each supervisory authority shall have all of the following investigative powers:

(a) to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks; [...]

2. Each supervisory authority shall have all of the following corrective powers:

(a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;

(b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;

(c) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;

(d) to order the controller or processor to bring processing operations into compliance

with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period; [...]

(f) to impose a temporary or definitive limitation including a ban on processing; [...]

(i) to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case; [...]"

6.2. Article 15 of the GDPR:

"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. [...]

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".

6.3. 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. [...]"

Views of the Commissioner

7.1. After reviewing the information provided by the Controller, in their response to my Preliminary Decision, I consider the following:

7.2. Regarding what the Controller states, in paragraph 5.4.i. above, I take into consideration that the Controller promptly reached out to the Complainant and completely fulfilled their request. Nevertheless, I consider that, the Controller understands that the request could have been satisfied from the first instance if the appropriate organizational and technical measures were in place and the staff was properly trained in dealing with GDPR requests in a timely manner.

7.3. Moreover, regarding the claims of the Controller that, the Complainant, upon receiving the comprehensive response to their request, did not assert any claims concerning their data protection rights and that the resolution of the matter left the Complainant satisfied, I would like to point out that, the Data Protection Team got aware of the access request and the Controller satisfy the request, after the Complainant lodged a complaint with my Office.

7.4. As for the corrective measures, mentioned in paragraph 5.4.ii. above, which the Controller has taken in order to be in a position to reply all demands in a timely manner, are also favorably considered.

7.5. Regarding the paragraph 5.4.iii. above, I understand that, by the term "Commission", the Controller means my Office. Consequently, I accept the claim of the Controller that they actively cooperated with my Office throughout the investigation process, despite the fact that, they had not responded to the Preliminary Decision in a timely manner.

Decision

8.1. In the view of all the above facts, I find that there is a violation of the Article 12(3) of the GDPR, for the reasons mentioned above.

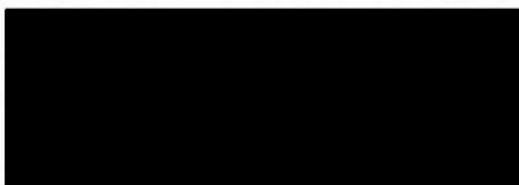
8.2. Considering both the following moderating (a-d) and aggravating (e-h) factors:

- a. the eventual and prompt satisfaction of the access request;
- b. the corrective measures taken regarding the handling of data subject requests;
- c. the Controller's cooperation in the investigation process;
- d. the minor infringement on the Complainant's rights and freedoms;
- e. the Controller's Data Protection Team only became aware of the access request after being notified of the complaint by my Office;
- f. the non-satisfaction of the access request according to the Article 12(3);
- g. the non-existence of appropriate measures in order to deal with GDPR requests in a timely manner;
- h. the existence of a previous similar violation by the Controller;

and based on the corrective powers granted to me according to the Article 58(2) of the GDPR, including "(b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation",

the Commissioner decided to issue a reprimand to Brivio Limited to ensure that in the future it handles the data subject rights in accordance with the provisions of the Article 12(3).

8.3. It is understood that in case of a similar incident, this will be handled more strictly and the present complaint will be taken into consideration on taking any supervisory measures.



Commissioner
For Personal Data Protection