



REPUBLIC OF CYPRUS



OFFICE OF THE COMMISSIONER
FOR PERSONAL DATA
PROTECTION

COMMISSIONER

Our ref.: 11.17.001.009.100

8 February 2024

Decision

Failure to Fully Comply to an Erasure Request by Aylo Social LTD

A complaint was lodged with the Baden-Wurtemberg SA against MG Social LTD, recently rebranded as Aylo Social LTD (the controller), whose main establishment is in Cyprus. Moreover, the complaint was subsequently transmitted to the Office of the Commissioner for Personal Data Protection (Cyprus SA) on 2/3/2021, in line with Article 56 of the General Data Protection Regulation (GDPR).

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

3. The complaint was filed against the website mydirtyhobby.de that provides pornographic content to its users, and is managed by the controller.

Description of the case

4.1. The complainant had requested the erasure of his account and relevant data on 2 separate emails sent on 25 June and 6 July 2020 to support@mydirtyhobby.com. Up until the day of his complaint, he claims that he never received a reply regarding his erasure request. He also confirmed that his account was still active and that he was still receiving promotional emails.

4.2. The Cyprus SA contacted the Controller on 23 August 2021, and requested their views on the matters raised by the complainant. In their response, they mentioned that the relevant staff member responded to the complainant in both instances, providing him with the necessary information to correctly initiate and complete the relevant procedure.

4.3. As it was determined from the communication provided by the controller, the support staff responded with the available options regarding deactivation of the complainant's account or deletion of the same, providing further information on what each option entails. Additionally, a link was provided at the end of the message to initiate the deletion procedure. The complainant took no relevant or further action regarding the instructions provided.

4.4. Furthermore, it was noted that the link provided in the message as above, leads to an online platform (Managemydata.eu), where the data subject is requested to provide an email address for verification.

4.5. According to the information the controller provided, when a valid request is received, a procedure is initiated via ManageMyData, which enables the verification the identity of the requester as the correct data subject, in order to avoid unauthorized disclosure or deletion.

5.1. On 13 June 2023, the Cyprus SA contacted the controller and requested additional clarification and documentation regarding the above. Specifically, the controller was asked to clarify, inter alia:

- i. Which are the *reasonable doubts* that justify the verification of the data subject identity following Art. 12(6) GDPR,
- ii. whether the complainant's erasure request had been fulfilled,
- iii. if the complainant was informed that no action would be made on the erasure request within one month of receipt of the request (Art. 12(4) GDPR) and
- iv. information regarding the platform ManageMyData.eu such as
 - a. Which entity is responsible for the development and/or management of the platform.
 - b. Where is the platform hosted and where are the relevant personal data stored.
 - c. How are visitors to the platform informed of the processing of their data as per Article 13 GDPR.

5.2. In their reply on 22 June 2023, the controller stated, inter alia, the following:

5.2.1. The step regarding the verification of the data subject email, was added in the process of data subject right handling, to avoid any malicious attempts taking into consideration the unique nature of the industry.

5.2.2. The complainant's erasure request was not fulfilled since he did not proceed with the verification of his email. In any case, they have manually initiated the procedure, to which the complainant must now respond by verifying himself as the account holder (no email verification will be required).

5.2.3. On whether they informed the data subject about the fact that they would not act on the request, the controller stated that:

"We have responded in time, but the matter was pending verification from the data subject. Additionally, we would also kindly like to remind you that, per ICO guidance, the time frame to respond starts upon receiving verification/ID or other information that establishes the identity of the requester/data subject or a third party that represents the same and authorized to act on their behalf. We acknowledged that the request was received, and we informed the user about the required process."

5.2.4. Regarding the use of the ManageMyData platform, the controller clarified that:

- i. it is not a third-party platform/service; it has been developed and is controlled by an internal entity within the group.
- ii. it is solely under the MindGeek group of companies, serving several products simultaneously. It has been set up as an internal platform to deal with GDPR-related requests.
- iii. The service is hosted on Azure Cloud Environment in North Europe, and the data is stored in the same.
- iv. Because this platform can be used by a variety of products/sites of the same group of companies, the privacy policy of the website a visitor arrives at ManageMyData from, is the one that is in effect.

Preliminary Views of the Commissioner

6. On 17 November 2023, I issued a Preliminary Decision regarding the controller's failure to notify the complainant of the erasure of his data. In the said Preliminary Decision, I concluded that:

6.1. In examining whether the verification process is excessive in violation of Article 12(2) GDPR:

6.1.1. It was noted that, in the controller's response, they did not ask for more information. The response offered an alternative option for deactivation but also provided, in the same response, the link required to complete the erasure request. By following the link, the data subject would only need to provide his email address, which was previously known to the controller, solely for verification purposes and no other information was requested.

6.1.2. Additionally, in reference to the EDPB guidelines 01/2022 on data subject rights - Right of access (para. 72): *"In practice, authentication procedures often exist and controllers do not need to introduce additional safeguards to prevent unauthorised access to services. In order to enable individuals to access the data contained in their accounts (such as an e-mail account, an account on social networks or online shops), controllers are most likely to request the logging through the login and password of the user to authenticate, which in such cases should be sufficient to identify a data subject."*

6.1.3. Moreover, I deemed that implementing an additional step for verification purposes in order to prevent malicious attempts, is not considered excessive especially since no additional data is collected for this purpose. Additionally, implementing such a safeguard ensures that there is a balance between the risks for the rights and freedoms of natural persons, and the security of the processing throughout the process of handling data subject requests in accordance with Art. 32 GDPR.

6.1.4. Thus, using a mechanism to verify a data subject identity through his registered email address, can be considered an adequate justification for the

facilitation of data subjects' rights in compliance with Art. 12(2). This view is also enhanced taking into consideration the special categories processed pursuant to Article 9 GDPR, where the controller should take extra precautions to mitigate the risk of mistakenly sharing personal data with the wrong data subject.

6.2. In examining whether the controller informed the data subject about the fact that it would not act on the request in line with Art. 12(4) GDPR:

6.2.1. Despite the controller's response above in paragraph 5.2.3, I consider that the controller should have informed the data subject, within the timeframe set in Article 12(4), that they would not act on the erasure request for the reason that the data subject did not complete the verification process. Thus, there is a breach of Article 12(4) GDPR.

6.2.2. Additionally, as a consequence of the controller's inactivity to inform the data subject as above, I consider that there is also a violation of Article 17 GDPR since the data subject's account is still active.

6.3. As regards the use of the ManageMyData platform:

6.3.1. From an investigation of the platform, it is clear that the platform is used only for websites and/or products developed by the MindGeek group and its subsidiaries. Despite this, although the only visitors to the platform are data subjects who received the link by the controller, I consider that they should have at least provide information on the controller behind the website even if it is the same controller. Moreover, this is in breach of Article 13 GDPR.

6.3.2. Additionally, I consider that the process involving the use of the platform may constitute a structural flaw in the controller's process of granting data subject rights. Following this, I recommend that the controller reviews this process and ensure that it is more transparent and clearer towards the data subjects.

Controller's response to the Commissioner's Preliminary Decision

7. The controller responded on 14 December 2023 to my Preliminary Decision and stated, inter alia, that:

7.1. the complainant never responded, nor proceeded with any relevant actions, either on the Support email chain, or on the ManageMyData platform.

7.2. pursuant to the data subject's complaint to the DPA and the subsequent communication between the controller and the Cyprus SA, the deletion procedure was initiated by the controller on behalf of the complainant who was therefore invited to take the necessary steps to verify himself as the account holder, something the complainant has not realized up to that day.

7.3. according to EDPB Guidelines 01/2022 on data subject rights - Right of access (para.157), *"...when the controller needs to communicate with the data subject due to the uncertainty regarding the identity of the person making the request there*

may be a suspension in time until the controller has obtained the information needed from the data subject, provided the controller has asked for additional information without undue delay.”

7.4. having invited the Data Subject (in multiple instances) to proceed with his request via the dedicated platform, and that both manually and proactively initiated the request on his behalf, the controller has shown clear intent to comply with the erasure request. As such, the case was not closed but suspended, until the necessary information for the verification of the Data Subject was obtained.

7.5. in a factually similar case, the Swedish Data Protection Authority (IMY) found that the controller *“had reasonable reason to doubt the identity of the complainant and thus request that the complainant submit additional such evidence, which the complainant did not respond to. Against this background, IMY considers that the company was not obligated to take any further measures due to the request”*.

7.6. regarding information provided to the data subjects who use MMD, it is noted that visitors (in any capacity) of a platform under the control of the Aylo group of companies do not usually receive a link via e-mail, like in this case. Instead, based on the fact that all relevant links to MMD (such as for GDPR deletion requests) are readily available in the respective privacy policy of each such website, where a user must navigate to in order to begin such process, they believe that Art. 13 GDPR requirements are fulfilled.

7.7. mitigating factors to be taken into consideration are, the unintentional nature and details of the incident, the fact that only a single data subject is concerned, the timely responses and willingness to cooperate – both with the data subject itself and with the Cyprus SA– and that no other, previous and/or similar cases have occurred involving Aylo Social Ltd.

Legal framework

8.1. Pursuant to Article 5(1)(c) of the GDPR *“Personal Data shall be:*

*...
(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
...”*

8.2. Pursuant to Article 12 of the GDPR:

*“ ...
2. The controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject.*

*...
4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the*

*possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.
...*

8.3. Pursuant to Article 13 of the GDPR:

"1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

- (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;*
- (b) the contact details of the data protection officer, where applicable;*
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;*
- (d) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;*
- (e) the recipients or categories of recipients of the personal data, if any;*
- (f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.*

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:

- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;*
- (b) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability;*
- (c) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;*
- (d) the right to lodge a complaint with a supervisory authority;*

- (e) *whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;*
- (f) *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. *Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.*

4. *Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information."*

8.4. Pursuant to Article 17 of the GDPR:

"1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) *the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- (b) *the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;*
- (c) *the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);*
- (d) *the personal data have been unlawfully processed;*
- (e) *the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;*
- (f) *the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).*

..."

8.5. Pursuant to Article 58(2) GDPR, *"each supervisory authority shall have all of the following corrective powers:*

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

Final Views of the Commissioner

9. In addition to my assessments mentioned in my Preliminary Decision, the following are noted:

9.1. Although the complainant never responded to the controller's emails, nor proceeded with the relevant instructions, the controller should have informed the data subject that they would not act on the erasure request in line with Article 12(4).

9.2. The controller initiated the deletion procedure again by sending the same instructions via email to the complainant (see para. 7.2. above). The fact that the complainant did not proceed with the same procedure, proves that the use of the current structure of granting data subject rights needs to be reviewed and refined to cover all possible scenarios. Additionally, considering that the complainant's email is in fact verified, his request should have been satisfied by now without requiring any other action.

9.3. The case mentioned by the controller in paragraph 7.5 involved a request that came from an e-mail address other than the one linked to the relevant account, therefore justifying the controller's actions on requesting proof of identity. In the present case, however, the complainant sent the request through the same email that was linked to his account. Thus, no further identification was needed or justified.

9.4. As regards the use of the ManageMyData platform and the Article 13 requirements, it is be noted that MMD is accessed in 2 ways. Most of the times, relevant links to MMD are readily available in the respective privacy policy of each such website, where a user must navigate to in order to begin such process. The second method is via e-mail such as in the present case. In any case though, all visitors should be presented upon arrival with information regarding the owner/controller of the platform to comply with Article 13.

Decision

10. Having regard to all the above information, and based on the powers vested in me by Articles 58 and 83 of Regulation (EU) 2016/679 and article 24(b) of National Law 125(I)/2018, I conclude that there is **an infringement of Articles 12(4), 13 and 17 GDPR** on behalf of Aylo Social LTD for the reasons mentioned above.

11. Moreover, following an infringement of Article 12(4), 13 and 17 GDPR, as explained above, under the provisions of Article 83 of the GDPR, the following mitigating (1-3) and aggravating (4-6) factors are taken into account:


1. That there is no previous violation by the controller of the GDPR.
2. The controller's willingness to cooperate with the Cyprus SA and to improve the process of handling data subject requests.
3. A single data subject is concerned by the case
4. The complainant's erasure request is still unsatisfied
5. The complainant was not explicitly informed that his request was not satisfied.
6. The lack of appropriate procedures and measures for handling data subject rights at the time of the request.

12.1. In view of the above, I have decided to issue to Aylo Social LTD:

- a. **a reprimand** for the infringement of Article 12(4), and 13 on the basis of Article 58 (2)(b) GDPR and
- b. **an administrative fine of €1,500 (one thousand five hundred euro)** pursuant to Article 83 for the infringement of Article 17 on the basis of Article 58 (2)(i) GDPR.

12.2. In addition to the above I have decided to **order** Aylo Social LTD to:

- c. comply with the data subject's erasure request without any delay on the basis of Article 58 (2)(c) GDPR and
- d. bring processing operations into compliance on the basis of Article 58 (2)(d) GDPR, specifically:
 - i. Provide adequate information regarding the controller on the ManageMyData platform in line with Article 13 GDPR and
 - ii. Review the procedure for handling data subjects request and inform the Cyprus SA of relevant action within 2 months.


Commissioner
For Personal Data Protection
Cyprus