Recent case law on privacy and data protection

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What is the difference between “personal data”, a “copy” and “information”? 

Case 1
Questions (I)

1. Is the term “copy” in Article 15(3) of [the GDPR] to be interpreted as meaning a photocopy, a facsimile or an electronic copy of [an] (electronic) item of data, or does it also cover an “Abschrift”, a “double” (“duplicata”) or a “transcript”, in line with the understanding of the term in German, French and English dictionaries?

2. Is the first sentence of Article 15(3) of the GDPR, according to which “the controller shall provide a copy of the personal data undergoing processing”, to be interpreted as affording a general right for a data subject to obtain a copy of – also – entire documents in which the personal data of that data subject are processed, or to receive a copy of a database extract if the personal data are processed in such a database, or does the data subject have a right – only – to an exact reproduction of the personal data about which information is to be provided pursuant to Article 15(1) of the GDPR?

3. In the event that Question 2 is answered to the effect that the data subject has a right only to an exact reproduction of the personal data about which information is to be provided pursuant to Article 15(1) of the GDPR, is the first sentence of Article 15(3) of the GDPR to be interpreted as meaning that, depending on the nature of the data processed (for example in relation to the diagnoses, examination results and assessments mentioned in recital 63 or documents in relation to an examination within the meaning of the judgment of the Court of Justice of 20 December 2017, Nowak, C-434/16, EU:C:2017:994) and the transparency requirement in Article 12(1) of the GDPR, it may nevertheless be necessary in individual cases to make text passages or entire documents available to the data subject?
Questions (II)

4. Is the term “information” which, pursuant to the third sentence of Article 15(3) of the GDPR, “where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, ... shall be provided in a commonly used electronic form”, to be interpreted as referring solely to the “personal data undergoing processing” mentioned in the first sentence of Article 15(3) of the GDPR?

4. (a) If Question 4 is answered in the negative: Is the term “information” which, pursuant to the third sentence of Article 15(3) of the GDPR, “where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, ... shall be provided in a commonly used electronic form” to be interpreted as also referring to the information pursuant to Article 15(1)(a) to (h) of the GDPR?

4. (b) If Question 4a also is answered in the negative: Is the term “information” which, pursuant to the third sentence of Article 15(3) of the GDPR, “where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, ... shall be provided in a commonly used electronic form” to be interpreted as referring, beyond the “personal data undergoing processing” and the information pursuant to Article 15(1)(a) to (h) of the GDPR, to associated metadata, for example?
Questions (III)

• **1,2,3:** whether the first sentence of Article 15(3) of the GDPR, read in the light of the transparency requirement laid down in Article 12(1) of that regulation, must be interpreted as meaning that the right to obtain a copy of the personal data undergoing processing means that the data subject must be given not only a copy of those data, but also a copy of extracts from documents or even entire documents or extracts from databases which contain, inter alia, those data.

• **4:** whether the third sentence of Article 15(3) of the GDPR must be interpreted as meaning that the concept of ‘information’ to which it refers relates exclusively to the personal data of which the controller must provide a copy pursuant to the first sentence of that paragraph, or whether it also refers to all the information referred to in paragraph 1 of that article, or even covers elements going beyond that information, such as metadata.
1. The first sentence of Article 15(3) of Regulation (EU) 2016/679 must be interpreted as meaning that the right to obtain from the controller a **copy of the personal data undergoing processing** means that the data subject must be given a **faithful and intelligible reproduction of all those data**. That right entails the right to obtain **copies of extracts from documents or even entire documents** or **extracts from databases** which contain, inter alia, those data, if the provision of such a copy is essential in order to enable the data subject to exercise effectively the rights conferred on him or her by that regulation, bearing in mind that account must be taken, in that regard, of the rights and freedoms of others.

2. The third sentence of Article 15(3) of Regulation 2016/679 must be interpreted as meaning that the concept of ‘**information**’ to which it refers **relates exclusively to the personal data** of which the controller must provide a copy pursuant to the first sentence of that paragraph.
GDPR = EUDPR

GDPR

Article 15
Right of access by the data subject

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: (...)

2. (...)

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.

4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

EUDPR

Article 17
Right of access by the data subject

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: (...)

2. (...) 

3. The controller shall provide a copy of the personal data undergoing processing. 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.

4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.
Case 2

How does data protection compensation work?
Questions

1. Does the award of compensation under Article 82 of [the GDPR] also require, in addition to infringement of provisions of the GDPR, that an applicant must have suffered harm, or is the infringement of provisions of the GDPR in itself sufficient for the award of compensation?

2. Does the assessment of the compensation depend on further EU-law requirements in addition to the principles of effectiveness and equivalence?

3. Is it compatible with EU law to take the view that the award of compensation for non-material damage presupposes the existence of a consequence [or effect] of the infringement of at least some weight that goes beyond the upset caused by that infringement?
1. Article 82(1) of Regulation (EU) 2016/679 must be interpreted as meaning that the mere infringement of the provisions of that regulation is not sufficient to confer a right to compensation.

2. Article 82(1) of Regulation 2016/679 must be interpreted as precluding a national rule or practice which makes compensation for non-material damage, within the meaning of that provision, subject to the condition that the damage suffered by the data subject has reached a certain degree of seriousness.

3. Article 82 of Regulation 2016/679 must be interpreted as meaning that for the purposes of determining the amount of damages payable under the right to compensation enshrined in that article, national courts must apply the domestic rules of each Member State relating to the extent of financial compensation, provided that the principles of equivalence and effectiveness of EU law are complied with.
GDPR

Article 82

Right to compensation and liability

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.

3. A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.

4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, each controller or processor shall be held liable for the entire damage in order to ensure effective compensation of the data subject.

5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.

6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).

EUDPR

Article 65

Right to compensation

Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the Union institution or body for the damage suffered, subject to the conditions provided for in the Treaties.
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# Data protection rulings 12/2022-5/2023 (IV)

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