

Entertainment Trading ApS
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20 April 2021

J.No. 2019-7320-1575
Doc.no. 341204
Caseworker

Sent with Digital Post

Complaint about the processing of personal data

The Data Protection Agency thus returns to the case in which [REDACTED] (hereinafter referred to as complainant) has complained to the Finnish Data Protection Agency that Entertainment Trading ApS (hereinafter Coolshop) has not deleted information about him in the form of a customer account and that Coolshop retains information about him.

Pursuant to Article 56 of the Data Protection Regulation, the Finnish Data Protection Supervisory Authority has forwarded this complaint to the Data Protection Agency, which has assumed the role of leading supervisory authority in relation to Coolshop's cross-border processing activities.

1. Decision

Following an examination of the case, the Danish Data Protection Agency considers that there are grounds for criticizing that Coolshop's processing of information on the customer account of complainants has not been carried out in accordance with the rules laid down in Article 17 of the Data Protection Regulation.

The Danish Data Protection Agency also considers the basis for notifying Coolshop an injunction to delete the complainant's customer account.

The injunction shall be notified pursuant to Article 58(2)(g) of the Data Protection Regulation.

The deadline for compliance with the injunction shall be four weeks from today's date. Coolshop please notify the supervision when deletion has occurred.

Under Paragraph 41(2)(5) of the Data Protection Act, the person who fails to comply with an order issued by the Data Protection Agency pursuant to Article 58(2)(g) of the Data Protection Regulation is punishable by a fine or imprisonment for up to 6 months.

Below is a detailed examination of the case and a statement of reasons for the Danish Data Protection Agency's decision.

2. Statement of the facts

It appears from the case that the complainant made a purchase at www.coolshop.fi. A customer account was created at the time of the purchase.

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Having received the purchased goods, on 14 April 2019 he requested the deletion of information that Coolshop dealt with about him.

Coolshop informed complaints that information about him – except for payment information – would be deleted after one month's inactivity and that complaints should therefore simply not log in to his customer profile.

The complainant contacted Coolshop on 24 May 2019, as the complainant's customer profile at www.coolshop.fi was still available.

Coolshop replied the same day and stated that Coolshop was obliged to keep payment information for 5 years, so all information about complaints could not be deleted immediately.

The complainant replied the same day Coolshop stating that he wanted all non-necessary information about him to be deleted and that Coolshop kept the payment information in a different way.

On 27 May 2019, Coolshop informed the complainant that the data relating to him would be deleted in accordance with the data protection rules on deletion, but if the customer account continued to be accessed, the deletion procedure in relation to the customer profile would be interrupted.

The complainant informed on the same day that he continued to want the customer profile and all non-necessary information about him deleted.

Coolshop replied on the same day to the complaint and stated that all information except for payment information would be deleted and that the customer profile would be deleted 30 days after the deletion procedure was initiated. Coolshop reiterated to the complainant that the data would not be deleted if he continued logging in to the customer profile when the deletion procedure was suspended.

On 7 August 2019, the complainant again contacted Coolshop and stated that he had not accessed the customer profile for more than two months and that, despite this, the information about him was still not deleted. The complainant also resubmitted a request for deletion.

Coolshop replied the same day to the complainant's inquiry and informed us that the information about the complainant was reactivated when the complainant re-logged in to the customer account. Moreover, the complainant's information was deleted except for contact details which Coolshop kept for some time in case it became necessary to contact him in relation to the product purchased.

The complainant then lodged a complaint with the Finnish Data Protection Agency, which, having identified the Data Supervisory Authority as the lead supervisory authority on 4 September 2020, submitted the complaint to the Danish Data Protection Agency.

On 16 September 2020, the Danish Data Protection Agency sent the complainant's complaint to Coolshop and asked for a statement on the matter.

Coolshop made a statement on the matter on 14 October 2020. The Finnish Supervisory Authority forwarded the opinion to the complainant on 30th October 2020 and asked the complainant to submit comments, if any.

On 15 January 2021, the Finnish Surveillance Authority indicated that the complainant had not commented on the opinion.

2.1 Remarks from the complainant

The complainant have generally stated that Coolshop has not deleted all non-necessary information about him, including the customer profile that was created in connection with his purchase at www.coolshop.fi.

The complainant agrees to keep statutory information about him, but he does not want Coolshop to keep his customer account active.

2.2. Comments by Coolshop

Coolshop has stated the following:

General about Coolshop's processing of personal data

When a customer makes purchases at www.coolshop.fi, this is done via a customer account created by the customer.

In connection with the customer account, the customer must provide the name, address, e-mail and telephone number. The purpose of the collection and storage is to identify the customer and make it possible for Coolshop to contact the customer in connection with transactions at the webshop. The customer will never be asked to provide information covered by Article 9 of the GDPR.

Coolshop has developed a privacy policy, which is available at www.coolshop.fi.

If the customer does not make purchases at www.coolshop.fi via the customer account for 2 years, Coolshop automatically deletes the customer account and all the customer's information.

However, the automatic deletion assumes that Coolshop is not obliged to store personal data or maintain the customer account under other laws.

Coolshop stores information about the company's customers on the basis of section 83(1) of the Purchase Act, which states that a consumer has a complaint for two years after the delivery of a purchase item. Since [Coolshop.fi](http://www.coolshop.fi) is a webshop, customers submit complaints via the customer account, where an online form is completed and submitted to Entertainment Trading. In order for the customer to exercise his right of complaint, it is therefore necessary that the customer has access to the customer account for at least two years after the purchase.

This means that personal data will be deleted at the earliest after two years if the customer has made a purchase via his customer account at www.coolshop.fi. At the end of the two years, automatic deletion takes place if the customer has not made use of his account within the last year.

Section 10 of the Accounting Act also provides that the person responsible for keeping accounts must keep records in a secure manner for five years from the end of the financial year to which the material relates. Coolshop is therefore obliged to keep the information provided, together with information on the goods purchased by the customer, for five years from the end of the financial year in which the purchase was made. This information is stored in an ERP system and does not require the customer account to be maintained.

In general, Coolshop processes information about customers on the basis of Article 6(1)(a, b and c) of the GDPR respectively.

Deletion upon request

Customers have the opportunity to request through the customer account to have information about themselves deleted.

If a customer so requests, all information about a customer that Coolshop is not obliged to keep under the Accounting Act and the Purchase Act shall be deleted within 24 hours.

Therefore, if a customer has not made transactions, the customer account is deleted within 24 hours. If the customer has made transactions, the customer account is deleted two years after the purchase made, as the customer must have the opportunity to exercise the right of complaint in the Purchase Act.

Furthermore, bookkeeping material arising from the customer's purchase will not be deleted until five years after the end of the financial year in which the purchase was made, cf. section 10 of the Accounting Act.

Personal data that Coolshop is not obliged to store shall be deleted within 24 hours of the submission of a request for deletion.

If the customer makes new purchases after initiating the deletion procedure, the deletion procedure shall be cancelled. However, already deleted personal data is not recreated. They'll stay erased.

Coolshop generally agrees to delete requests if the data subject withdraws consent, in accordance with Article 17(1)(b) of the Data Protection Regulation. Furthermore, Coolshop deletes information necessary for the warranty of the Purchase Act after two years, when the information is no longer necessary pursuant to Article 17(1) of the Regulation.

However, pursuant to Article 17(3) of the Regulation, Coolshop cannot comply with a request for deletion as Coolshop is legally obliged to keep certain payment information, cf. section 10 of the Accounting Act.

The complainant's case

The complainant made a purchase on 22 March 2019.

Immediately after the complainant initiated the deletion procedure, information about him whom Coolshop was not legally obliged to store was deleted.

However, the customer account associated with the complainant is deleted not earlier than two years after the complainant's last purchase, as he must be given the opportunity to exercise his right of complaint. The customer account will therefore be deleted at the earliest on 22 March 2021.

Furthermore, Coolshop keeps information on the complainant under the Accounting Act's rules until 2024.

In conclusion, Coolshop has stated that Coolshop has replied to all the complaints and that he has received appropriate reasons for refusing immediate deletion of all information about him.

3. Reasons for the decision of the Data Protection Agency

It follows from Article 17 of the Data Protection Regulation that the data subject has the right to have personal data about himself deleted by the controller without undue delay, and the controller is obliged to delete personal data without undue delay if any of the circumstances referred to in paragraph 1(a) to (f) applies.

It follows from Article 17(3)(b) of the Regulation that the right to have data relating to oneself deleted shall not apply where processing is necessary to comply with a legal obligation requiring processing under Union or national law to which the controller is subject.

The Danish Data Protection Agency considers that it is not necessary for the complainant to have access to his customer account for at least two years after the purchase, in order for him to exercise his right of complaint under the Purchase Act. It is therefore not necessary for Coolshop to comply with a legal obligation that the customer account should not be deleted until at least two years after the complainant's last purchase.

On this basis, the Danish Data Protection Agency considers that Coolshop cannot refuse to delete the complainant's customer account on the basis of Article 17(3)(b) of the Data Protection Regulation.

The Danish Data Protection Agency has thus emphasised that it is possible for the complainant to advertise a product in a way other than the use of an online form in the customer account, e.g. by e-mail or by telephone.

On these grounds, the Danish Data Protection Agency considers that Coolshop has not erased the complainant's customer account in accordance with Article 17 of the Data Protection Regulation.

The Danish Data Protection Agency also finds the basis for notifying Coolshop an injunction to delete the complainant's customer profile at www.coolshop.fi.

Furthermore, the Danish Data Protection Agency finds no grounds for overriding Coolshop's assessment that the company is obliged under the Accounting Act and the Purchase Act to keep information about complaints and his purchases at www.coolshop.fi.

It is thus the Danish Data Protection Agency's opinion that the right to erasure in Article 17(1) of the Data Protection Regulation does not apply in relation to this data, in accordance with Article 17(3) (b). Thus, the Danish Data Protection Agency's injunction for deletion does not include data processed (stored) under a legal obligation.

4. Final remarks

The decisions of the Data Protection Agency cannot be appealed to any other administrative authority, cf. section 30 of the Data Protection Act. However, decisions of the Supervisory Authority may be appealed to the courts, cf. Article 63 of the Danish Constitution.

Coolshop is asked to inform the Danish Data Protection Agency when the order has been complied with.

Copy of this letter are sent today to the complainant.

Kind regards

