

Development and Planning Authority
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

Your Ref.: "[Your ref.]"
Our Ref.: CAS-03534

24 June 2022

Private & Confidential

Dear Sir/Madam,

The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law")

Section 76 – Notice of Intention to Make a Breach Determination

Case Number – CAS-03534

Controller – Development and Planning Authority ("the Controller")

Complainant – James Collings ("the Complainant")

We refer to the above referenced case which is an investigation conducted by The Data Protection Authority ("the Authority") following a complaint made by the Complainant on 17 January 2022.

Having concluded our investigation, and in accordance with the provisions of section 76 of the Law, the Authority considers it is now in a position to make a breach determination pursuant to section 71 of the Law.

Notice to the Controller under section 76 of the Law

Prior to making a determination, and in accordance with section 76 of the Law, the Authority is required to advise the Controller, in writing, that the Authority is proposing to make a breach determination.

The Authority hereby notifies the Controller that it proposes making the following determination:

- a) that the Controller has breached operative provisions of the Law, namely section 15 relating to "Right of access".

Background to the proposed determination

On 30 June 2020, the Complainant made the following right access request (“the First Request”) to the Controller:

“I am also constructing a precise timeline of events relating to this case. In order to do so and that I may present it properly it is necessary that the Department makes full and frank disclosure to me of all related letters, minutes, emails, notes, legal advice & questions instigating such advice that relate to the matter, and any other relevant information, complete with dates and times. Such disclosure will cover the period from 28/11/19 until 30/03/20, that being the date that I was notified that the Complaints Panel would be convened.”

On 8 December 2021, the Complainant made a follow up Right of access request to the Controller, the subsequent disclosure pack included an email that the Complainant alleged should have been encapsulated by the first request. The email in question is dated 28 November 2019 and has the subject heading of “Re: Bonamy House - Mr James Collings”.

On 17 January 2022, the Complainant submitted a complaint to the Authority.

On 10 March 2022, the Controller was sent a letter by the Authority informing of the initiation of an investigation under section 68 of the Law and asked the following question:

“Please explain why the email of 28 November 2019 with the subject heading of “Re: Bonamy House - Mr James Collings”, was not disclosed to the Complainant in response to the First Request.”

On 14 March 2022, the Controller responded as follows:

“The controller accepts that the email “Re; Bonamy House – Mr James Colling” provided in the Second Request on the 8 December 2021, should have formed part of the First Request submitted on the 28 November 2019. Unfortunately, this appears to be nothing more than an oversight on the Controllers behalf, and the Controller would like to confirm that no documents were intentionally withheld.”

Reasons for the proposed determination

Based on the evidence submitted, the circumstances summarised above and the various representations made/communications received from both the Complainant and the Controller, the Authority is of the view that the Controller has breached operative provisions of the Law, as detailed below.

Section 15 of the Law

Section 15 relates to “Right of access”.

In particular, sub-section 15(1)(b)(ii) provides that:

15(1) An individual has a right to be given the following information in accordance with subsections (2) to (4) –

(b) if personal data relating to the individual is being processed in the context of a controller –

(ii) one copy of the personal data

The Authority is of the view that the Controller has failed to comply with the requirements of this provision, specifically section 15(1)(b)(ii) by virtue of the below:

As recognised by the Controller in the response to the Authority of 14 March 2022, the email “Re; Bonamy House – Mr James Colling” provided to the Complainant in response to the Second Request of 8 December 2021, should have formed part of the response to the First Request submitted by the Complainant on 28 November 2019.

Conclusion

Taking into account the findings as detailed in this letter, the Authority proposes to make a determination that the Controller has breached the following sections of the Law:

- Section 15 of the Law (“Right of access”)

Sanction

Having taken into account all relevant circumstances, particularly noting the Controller's positive and timely engagement, the Authority is **not** proposing to issue a sanction.

This will be confirmed if and when the final notice of determination is issued.

Controller's rights

According to section 76 of the Law, the Controller is entitled, within a period of 28 days beginning on the date of this Notice, to make a written or oral representation to the Authority in respect of the aforementioned proposed determination.

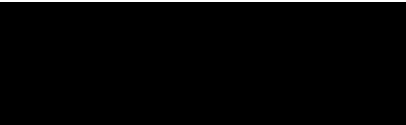
In the event that the Controller elects to make representations, pursuant to section 76, such representation must be received by 22 July 2022.

Any representations made by the Controller will be considered by the Authority before making its final determination, which may include alterations to the current provisional determination detailed in this letter. Should no representations be made by 22 July 2022, the Authority will proceed to make its final determination.

Whether or not any representations are made, the Controller will be advised of the Authority's final determination in due course. Once the Authority has made its final determination it will decide what sanctions, if any, it intends to impose and will inform the Controller accordingly.

Lastly, the Controller has the option to appeal to the Royal Court under section 84 of the Law in respect of any determinations made as a consequence of the process set out above, details of which are set out in this Notice.

Yours faithfully.



Investigations Team
For and on behalf of The Data Protection Authority

Appendix 1**84. Sanctioned person may appeal breach determination or enforcement order.**

- (1) *The person concerned may appeal to the Court against –*
- (a) *a breach determination made by the Authority, or*
 - (b) *an enforcement order.*
- (2) *The grounds of an appeal under this section are that –*
- (a) *the determination or order was ultra vires or there was some other error of law,*
 - (b) *the determination or order was unreasonable,*
 - (c) *the determination or order was made in bad faith,*
 - (d) *there was a lack of proportionality, or*
 - (e) *there was a material error as to the facts or as to the procedure.*
- (3) *An appeal must be made within the period of 28 days immediately following the date on which the person concerned receives written notice of the determination or order from the Authority.*
- (4) *An appeal is made by summons served on the Authority stating the grounds and material facts on which the appellant relies.*
- (5) *Where an appeal is made, the Authority may apply to the Court by summons served on the appellant for an order to dismiss the appeal for want of prosecution; and on hearing the application the Court may –*
- (a) *dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or*
 - (b) *make such other order as the Court considers just.*

(6) The provisions of subsection (5) are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007, rule 51 of the Court of Alderney Civil Rules, 2005 or any similar civil rule of the Court of the Seneschal.

(7) On the application of the appellant, the Court may, on such terms as the Court thinks just, suspend or modify the effect of the determination or order appealed pending the determination of the appeal.

(8) Upon determining an appeal under this section, the Court may –

(a) confirm the determination or order, with or without modification, or

(b) annul the determination or order and –

(i) remit the matter back to the Authority for reconsideration, or

(ii) make, in its place, any determination or order that the Authority is authorised to make under this Law, and make any other order it considers just.

(9) An appeal from a decision of the Royal Court under this section lies to the Court of Appeal on a question of law.