

Comments by Datenanfragen.de e. V. on the EDPB’s “Guidelines 01/2022 on data subject rights – Right of access”, version 1.0

Braunschweig (Germany), on March 10, 2022

Datenanfragen.de e. V. welcomes the EDPB’s efforts to define guidelines on the right of access to provide clarity for controllers and data subjects alike, and wants to thank the members of the working groups for their work. We appreciate the opportunity to provide our comments on the guidelines from the perspective of a non-governmental consumer protection association.

Datenanfragen.de e. V. is a registered data protection non-profit based in Germany. Our primary focus is on helping data subjects exercise their rights recognized the GDPR by providing tools and information to lower the barrier of entry and make the process as easy as possible. For this purpose, we first and foremost offer a generator for requests according to Art. 15 et seq. GDPR, a database of controller privacy contact details, and an accompanying platform for users to manage their requests.

All of our tools are developed from the ground up with data minimisation in mind; wherever possible, processing is done locally on the user’s computer and requests are sent by the user themselves, with no data ever reaching our servers. Thanks to help from our users, we were able to translate our website into seven languages (with more on the way) and offer support for nineteen countries as of the time of writing.

Comments

We believe the right of access to be a core component to the fundamental human right to data protection as it lays the foundation for people to become aware of how a controller is processing their data in the first place, which is often the first step before exercising the other rights based on that.

Both from our own access requests, as well as from conversations with our members and users, we have encountered a number of questions on specific details of the right of access, as well as many cases where a controller restricted a user’s right of access in a way that we believe to be in violation of the law.

We are very glad that the guidelines address almost all of these questions, and we anticipate that they will be very helpful for data subjects who need to argue with a controller before having

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their rights recognized, a situation we regrettably encounter often.

We thus explicitly welcome these guidelines and the positions the EDPB takes. We especially want to voice our support for:

- The clear positions on which channels controllers need to accept access requests through, especially the position that requests do not need to be sent to a specific point of contact defined by the controller (para. 55) and that controllers cannot make it mandatory for data subjects to send requests through self-service tools (para. 136).
- The clear position that Recital 63 GDPR cannot be used by controllers as an excuse to limit the data they have to provide through an access request, and that in such cases controllers need to assist data subjects by providing details on the processing operations concerning them (para 35b).
- The clear positions on the identification data controllers may require, especially the position that controllers must re-use existing authentication channels for online services (para. 63), the position that pseudonymous identifiers like cookie IDs can sufficiently identify a data subject (para. 67), and the position that requesting identity documents is inappropriate in the majority of cases (para. 73).
- The clarification that communication by the controller should be in languages understood by data subjects in the countries it offers its services in (para. 140).
- The clarification that reasonable intervals between requests differ between cases and that a higher frequency of changes in the data justifies a shorter interval between requests without being considered excessive (para. 182).

In addition, we provide a few minor suggestions for changes:

- We note that there is a reference error in para. 35 that should be fixed in the final version of the guidelines.
- We would appreciate clearer wording for the following sentence in para. 65: “Such additional information should not be more than the information initially needed for the verification of the data subject’s identity (authentication).”

We understand this sentence to refer to the information provided by the data subject when initially entering into a relationship with the controller and as such the information that the controller considers sufficient to start collecting data on the data subject, e.g. the information entered in a registration form on a website. But we fear that the current wording may not be enough to communicate that and may lead to misinterpretations by controllers, as we have experienced many cases of controllers demanding identification data for requests that goes beyond that.

- We would appreciate additional clarification on the following sentence in para. 157: “However, 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.”

In particular, we would appreciate clarification on what “without undue delay” means in this context. The example in this paragraph only considers the cases where a controller immediately asks for additional information following a request, but we have experienced a number of cases where controllers took multiple days or even weeks for this initial reply. We believe that controllers cannot expect the time limit to be suspended in such cases.

Final remarks

We remain available for any questions you may have. For questions regarding this statement, please contact the association’s board at vorstand@datenanfragen.de (PGP key 2E72 EA5B DDE3 1730 58D7 F87D A0C1 C012 3E2B 296B).

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