

*noyb* acting on behalf of  
**Josephine Spiteri**

v.

**C-Planet (IT Solutions) Limited**

## COMPLAINT

1. On the 28<sup>th</sup> March 2022, Ms Josephine Spiteri (the “**complainant**”) mandated a not-for-profit organisation active in the field of the protection of data subjects’ rights and freedoms, *noyb* – the European Center for Digital Rights (the “*noyb*”) <sup>1</sup>, in terms of article 80(1) of the General Data Protection Regulation <sup>2</sup> (the “**Regulation**”) to represent her in lodging a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”).
2. On the 29<sup>th</sup> April 2022, *noyb* lodged a complaint with the Commissioner and exercised the right referred to in article 77(1) of the Regulation on behalf of the complainant against C-Planet (IT Solutions) Limited <sup>3</sup> (the “**C-Planet**”), and alleged that the “*controller refused to provide the data subject information on the source of the data it processed without having collected it directly from her*”.
3. The complainant laid down the following facts pertaining to the present case:
  - a. that the Commissioner investigated a personal data breach after being notified by C-Planet on the 1<sup>st</sup> April 2020 about a compromised database, which database included the personal data of over 335,000 eligible voters;

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<sup>1</sup> A non-profit association with registry number 1354838270 and registered address at Goldschlagstr. 172/4/2, AT-1140 Vienna, Austria.

<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>3</sup> A limited liability company incorporated in Malta with number C 41536 and registered address at 24, Telemetry House, Conservatory Street, Floriana, Malta.

- b. that *noyb* lodged a complaint, in representation of the complainant, on the 10<sup>th</sup> November 2020, in relation to the incident notified by C-Planet, including a specific request to investigate and determine any information as to the source of the complainant’s personal data contained in the database;
        - c. that, on the 14<sup>th</sup> January 2022, the Commissioner issued a legally binding decision (the “**decision**”) bearing the reference number CDP/DBN/31/2020 concerning the personal data breach notified by C-Planet, where it was decided that C-Planet, in its capacity of a controller, infringed several provisions of the Regulation; and
        - d. that, in paragraph 141 of the decision, the Commissioner stated that C-Planet, as a controller, had an obligation in terms of article 14 of the Regulation to inform the data subjects on its processing activities, including the source from where the personal data originated and whether it came from publicly accessible sources, however, the complainant had never received the information mentioned in article 14 of the Regulation.
4. On the 22<sup>nd</sup> January 2022, the complainant exercised the right of access, wherein she specifically requested C-Planet to provide information in accordance with article 15(1)(g) of the Regulation. The request was received by C-Planet on the 16<sup>th</sup> February 2022. The complainant requested C-Planet to “*provide any personal data of mine that you currently hold. Additionally, I request that you also provide the source from which you have retrieved any of my personal data you currently hold and previously held according to the IDPC in the aforementioned decision, in compliance with Article 15(1)(g) GDPR*”.
5. On the 28<sup>th</sup> February 2022, C-Planet replied to the request of the complainant and provided the following reply:
  - a. “*that due to the ongoing criminal investigation into the cyberattack of which C-Planet was a victim (which investigation was initiated at our request), as well as ongoing civil legal proceedings, C-Planet has a right to invoke Article 23 of the GDPR and Articles 4(b) and (e) of the Restriction of the Data Protection (Obligations and Rights) Regulations (Subsidiary Legislation 586.09), whereby your right of access would be restricted until such time as the ongoing criminal investigation and legal proceedings have been concluded*”;

- b. *“that we do not “currently hold” or otherwise process any personal data relating to you”*; and
  - c. *“that the file in question as reported in the media was never used by C-Planet in the role of data controller and in any case, it is now under the control of the Malta Police and the IDPC. We have no access to it, we have no way of knowing whether or not your personal data is included therein and, in any case, after the conclusion of the above-cited proceedings, we understand that the file will be irreversibly deleted”*.
6. Accordingly, *noyb* acting on behalf of the complainant, highlighted the grounds of the complaint:
- a. that, in accordance with article 15(1)(g) of the Regulation, and as confirmed by the decision of the Commissioner, the data subject shall have the right to obtain from C-Planet any information as to the source of the information when the personal data have not been collected from the data subject;
  - b. that C-Planet stated that it had never acted as the controller of the database, however, the role of C-Planet as a controller had been well established by the Commissioner in his decision, and the reasons provided by C-Planet for refusing to comply with the request would only make sense if C-Planet would have considered itself as a controller;
  - c. that C-Planet’s reliance upon article 23 of the Regulation and regulation 4(b) and regulation 4(e) of Subsidiary Legislation 586.09 in order to restrict the complainant’s right of access, by invoking ongoing criminal and civil proceedings, is based on an incorrect interpretation as to the applicability of the law with regard to the complainant’s access request;
  - d. that although there are criminal and civil proceedings related to the security breach, C-Planet did not explain why providing information as to the source of the database would jeopardise or interfere with these ongoing proceedings;
  - e. that, in accordance with the EDPB Guidelines 10/2020 on restrictions under Article 23 GDPR, any limitation to the fundamental right to data protection needs to be proportionate, restrictions should be interpreted narrowly, and only applicable in specifically provided circumstances where certain conditions are met;

- f. that regulation 7 of Subsidiary Legislation 586.09 makes it clear that any restriction shall respect the essence of the fundamental rights and freedoms of the data subject, and shall be a necessary and proportionate measure;
  - g. that the EDPB Guidelines 01/2022 on the right of access clearly state that when exceptions or restrictions to the right of access apply: “[...] *the controller must carefully check to which parts of the information the exception relates to and provide all information that is not excluded by the exception, [...] As a result, information has to be provided about all the personal data and all the information referred to in Art. 15(1) and (2) that are not concerned by the exception or the restriction*”;
  - h. that a mere reference to an existing investigation cannot equal to a blank exemption from the right of access and that evidence needs to be presented to demonstrate a specific and concrete risk that providing the source of the database would represent for ongoing proceedings related to the breach;
  - i. that the fact that C-Planet does not have, or no longer has access to the database is in no way relevant to deny the access request of the complainant and communicating the source of the database to the complainant does not require access to the database itself;
  - j. that although C-Planet stated that it has no way of knowing if the data of the complainant were included in the database, C-Planet is well aware that the database contained the personal data of the vast majority of voters in Malta, and the complainant received a copy of the decision, which led her to believe that her personal data were indeed contained in the database; and
  - k. that, in terms of article 5(2) of the Regulation, C-Planet is responsible for, and must be able to demonstrate compliance with, its obligation to grant data subjects’ access right under article 15 of the Regulation, and to observe the principle of transparency, and that for this reason, the lack of appropriate reply from C-Planet as to the presence of the personal data of the complainant in the leaked database and to its source amount to a violation of the principle of accountability.
7. Based on these considerations, the complainant alleged that C-Planet infringed article 15 and article 5(2) of the Regulation and requested the Commissioner to investigate the matter to the

extent appropriate, and also suggested imposing an effective, proportionate and dissuasive administrative fine upon C-Planet.

## INVESTIGATION

8. In terms of the investigation procedure of this Office and by means of a communication dated the 27<sup>th</sup> June 2022, the Commissioner provided a copy of the complaint, including the supporting documentation, and requested C-Planet to provide its submissions and any other information for the purpose of the investigation of this complaint pursuant to article 58(1)(a) of the Regulation.
9. By means of a reply received by the Commissioner on the 14<sup>th</sup> July 2022, C-Planet reiterated its position and submitted the following:
  - a. that the complainant is already a party in the civil suit that has been instituted before the First Hall of the Civil Court bearing the names ‘*Caruana Galizia Matthew et vs C-Planet (IT Solutions Limited)*’ 912/2020, and the complainant is being represented by the same legal counsel that is appearing on behalf of *noyb*; and
  - b. that the complainant has access to all the documentation present with the acts of the relative judicial proceedings and thus, the complainant is aware of all the evidence and documentation that were submitted before the relative Court.
10. On the 18<sup>th</sup> July 2022, the Commissioner granted the complainant the opportunity to rebut the submissions provided by C-Planet. Accordingly, on the 4<sup>th</sup> August 2022, *noyb* acting on behalf of the complainant, submitted the following salient points:
  - a. that the submissions of C-Planet do not add anything to the factual and legal arguments in order to rebut the complaint;
  - b. that C-Planet wrongly states that the complainant, Ms Josephine Spiteri, is “*represented by the same legal counsel that is appearing on behalf of noyb*”, and this is because *noyb* is not a party to the civil suit, and is therefore, not represented by any legal counsel;

- c. that the fact that a civil lawsuit is pending between the complainant and other plaintiffs in the context of a class action does not have an impact on this complaint lodged with the Commissioner;
  - d. that, on the contrary, article 30(1) of the Data Protection Act (Cap. 586 of the Laws of Malta), which implements article 79(1) of the Regulation, provides that “[w]ithout prejudice to any other remedy available to him, including the right to lodge a complaint with the Commissioner, a data subject may, where he believes that his rights under the Regulation or this Act have been infringed as a result of the processing of his personal data in contravention of the provisions of the Regulation or this Act, by sworn application filed before the First Hall of the Civil Court, institute an action for an effective judicial remedy against the controller or processor concerned”;
  - e. that, therefore, the data subjects are free to choose the avenue they want in order to enforce their data protection rights, and for this reason, parallel administrative and judicial proceedings could co-exist in this respect; and
  - f. that even if the complainant has access to the documentation and evidence of the proceedings in the civil suit, it appears that the fundamental right of the complainant to know how her data were collected remains unanswered.
11. On the 25<sup>th</sup> August 2022, the Commissioner provided a copy of the complainant’s submissions to C-Planet and, on the 12<sup>th</sup> September 2022, C-Planet reiterated its position and provided the Commissioner with the following documentation:
- a. a copy of the lawsuit filed before the First Hall of the Civil Court bearing the names ‘*Caruana Galizia Matthew et vs C-Planet (IT Solutions) Limited*’; and
  - b. a copy of the affidavit filed by a noyb representative, which according to C-Planet sheds further light on the matter at hand and moreover corroborates and substantiates its position.

## **LEGAL ANALYSIS AND DECISION**

12. The Commissioner sought to investigate, to the extent appropriate, the subject matter of the complaint, in terms of article 57(1)(f) of the Regulation, which is limited to the request dated

the 22<sup>nd</sup> January 2022, wherein the complainant alleged that C-Planet infringed article 5(2) and article 15 of the Regulation when it failed to comply with its obligation to provide the complainant with access to her personal data and information about the processing activity, and to demonstrate compliance with such obligation.

#### The reply provided by C-Planet

13. The Commissioner proceeded to assess the reply dated the 28<sup>th</sup> February 2022, wherein C-Planet informed the complainant that her request to access her personal data could not be met. For the purpose of investigating this complaint, the Commissioner considered the reply of C-Planet in three (3) parts:

- a. that *“the file in question as reported in the media was never used by C-Planet in the role of data controller”*;
- b. that *“we do not “currently hold” or otherwise process any personal data relating to you” and “in any case, it is now under the control of the Malta Police and the IDPC. We have no access to it, we have no way of knowing whether or not your personal data is included therein and in any case after the conclusion of the above-cited proceedings, we understand that the file will be irreversibly deleted”* and
- c. that *“due to the ongoing criminal investigation into the cyberattack of which C-Planet was a victim (which investigation was initiated at our request), as well as ongoing civil legal proceedings, C-Planet has a right to invoke Article 23 of the GDPR and Articles 4(b) and (e) of the Restriction of the Data Protection (Obligations and Rights) Regulations (Subsidiary Legislation 586.09), whereby your right of access would be restricted until such time as the ongoing criminal investigation and legal proceedings have been concluded”*.

#### The role of C-Planet in relation to the database

14. Firstly, the Commissioner refers to the fact that it has already been well established that C-Planet acted in its capacity of a controller within the meaning of article 4(7) of the Regulation in relation to the personal data contained in the database at the time of the personal data breach.

15. Secondly, it is the controller and not the processor, who may restrict a data protection right in terms of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09 (the “**Subsidiary Legislation 586.09**”). Thus, it is not clear how C-Planet is arguing that it is not the controller vis-à-vis the data contained in the database, but at the same time, it decided to restrict the right of the complainant to access her personal data pursuant to article 15 of the Regulation. The European Data Protection Board (the “**EDPB**”) clarifies that it is the controller who bears the responsibility for complying with the requests of the data subjects to exercise their rights in terms of Chapter III of the Regulation. For this reason, the EDPB explains that it “*is crucial to bear in mind that, although the practical management of individual requests can be outsourced to the processor, **the controller bears the responsibility for complying with such requests**. Therefore, the assessment as to whether requests by data subjects are admissible and/or the requirements set by the GDPR are met should be performed by the controller, either on a case-by-case basis or through clear instructions provided to the processor in the contract before the start of the processing*”<sup>4</sup> [emphasis has been added].
16. Furthermore, regulation 6 of Subsidiary Legislation 586.09 states that the “***data controller shall inform the data subject about any restriction provided for under these regulations***” [emphasis has been added]. Thus, it is abundantly clear that the law imposes an obligation upon the controller to provide information on the action taken on the request of the data subject.

#### Processing of personal data pertaining to the complainant

17. Additionally, C-Planet argued that “*we do not “currently hold” or otherwise process any personal data relating to you*”. This is once again a statement which contradicts the other parts of the reply provided by C-Planet because a controller could not restrict a fundamental right if there is no processing of personal data undertaken by that same controller.
18. Furthermore, in its reply, C-Planet stated that “*the file **will be irreversibly deleted***” which clearly indicates that it was still processing the personal data contained in the database at the time of receipt of the subject access request. This was also confirmed in the sworn declaration dated the 2<sup>nd</sup> March 2023, wherein Mr Philip Farrugia declared that “[i]s-server(s) ta C-Planet li fuqhom għadhom id-dokumenti in kwistjoni huma mitfijin u tajt kopja tagħhom lil-Pulizija ta’ Malta **u dawn jistgħu jithassru biss wara li jintemmu l-proċeduri ċivili li għaddejjin bħalissa u wara l-eżitu tal-investigazzjoni kriminali li talbet C-Planet stess mill-Pulizija**”

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<sup>4</sup> Guidelines 07/2020 on the concepts of controller and processor in the GDPR, version 2.1, para. 132.



[emphasis has been added]. The Commissioner emphasises that the role of the controller does not change due to the fact that the Malta Police Force and this Office hold a copy of the database. This therefore led the Commissioner to conclude that C-Planet was processing the personal data of the complainant at the time of receipt of the request.

### Right to Access Personal Data

19. Article 15 of the Regulation provides for the exercise of the right of access by the data subject with the controller. This provision reflects and implements the requirements emanating from the fundamental right to the protection of personal data, as set forth in the second sentence of article 8(2)<sup>5</sup> of the Charter of Fundamental Rights of the European Union.
20. The provisions of the Regulation have to be interpreted in the light of the fundamental right guaranteed by the Charter, in connection with the spirit and scope of the law, which are specifically intended to provide a high level of protection of personal data to natural persons within the European Union, and to that end, ensure a consistent and homogeneous application of the Regulation<sup>6</sup>.
21. In terms of article 15 of the Regulation, the data subject shall have, first of all, the right to obtain from the controller confirmation as to whether or not personal data concerning her are being processed. Where such data are being processed, the complainant shall have the right to access the personal data that are being processed, as well as access to the information listed in article 15(1)(a) to (h) of the Regulation. In this regard, pursuant to article 15(1)(g) of the Regulation, the data subject shall have the right to access “*where the personal data are not collected from the data subject, any available information as to their source*”.
22. The CJEU in the ruling ‘F.F. vs Österreichische Datenschutzbehörde’ held that “[a]s regards the context of which the first sentence of Article 15(3) of the GDPR forms part, it should be noted that Article 15 of the GDPR, which is entitled ‘Right of access by the data subject’, defines, in paragraph 1 thereof, the subject matter and scope of the data subject’s right of access and enshrines that data subject’s right to obtain **from the controller access to his or**

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<sup>5</sup> C-398/15, Manni judgment of the 9th March 2017, paragraph 40.

<sup>6</sup> Recital 10 of the Regulation.

*her personal data and the information referred to in points (a) to (h) of that paragraph.*<sup>7</sup>  
[emphasis has been added].

23. Additionally, the CJEU repeatedly stated that the right of access is necessary to enable data subjects, depending on the circumstances, to exercise other data protection rights<sup>8</sup> as set forth in Chapter III of the Regulation, and to seek judicial action in the event that they suffer harm and to obtain damages, pursuant to article 79 and article 82 of the Regulation. In particular, the judgment ‘RW vs Osterreichische Post AG’ clarified that “*Article 15(1)(c) of the GDPR is one of the provisions intended to ensure transparency vis-a-vis the data subject of the manner in which personal data are processed and enables that person, as the Advocate General observed in point 33 of his Opinion, to exercise the rights laid down, inter alia, in Articles 16 to 19, 21, 79 and 82 of the GDPR*”<sup>9</sup>. It therefore follows that the complainant shall have the right to receive a copy of her personal data, including any information in relation to the source of her personal data in terms of article 15(1)(g) of the Regulation in order to enable her to exercise her data protection rights to the fullest extent as provided by law.

### Restrictions

24. In its reply, C-Planet informed the complainant that “*your right of access would be restricted until such time as the ongoing criminal investigation and legal proceedings have been concluded*” and referred to article 23 of the Regulation and regulation 4(b) and (e) of Subsidiary Legislation 586.09.

25. As the CJEU had underlined and as provided in recital 4 of the Regulation, the fundamental right to the protection of personal data is not an absolute right<sup>10</sup>, and it may be subject to some limitations pursuant to article 52(1)<sup>11</sup> of the Charter of Fundamental Rights of the European Union. This therefore means that the limitations should be provided by law, respect the essence of the rights and freedoms, and be necessary and proportionate to genuinely meet objectives of general interest or the need to protect the rights and freedoms of others. Therefore, a restriction should not be extensive and intrusive in such a manner that it would void a fundamental right

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<sup>7</sup> C-487/21, judgment of the 4<sup>th</sup> May 2023, paragraph 30.

<sup>8</sup> C-434/16, Nowak and joined cases C-141/12 and C-372/12, YS and Others.

<sup>9</sup> C-154/21, judgment of the 12<sup>th</sup> January 2023, paragraph 42.

<sup>10</sup> Joined cases C-92/09 and C-93/09, judgment of the 9<sup>th</sup> November 2010, para.48.

<sup>11</sup> Article 52(1) of the Charter provides that: “1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

of its basic content. It is against this background that Subsidiary 586.09 should be read and interpreted as the exception to the general rule.

26. For the purpose of this legal analysis, the Commissioner sought, in essence, to determine whether the restrictions invoked by the controller are indeed applicable to the circumstances of the case. Within this context, the Commissioner examined regulation 4(b) and regulation 4(e) of Subsidiary Legislation 586.09, which state that: “[a]ny restriction to the rights of the data subject referred to in Article 23 of the Regulation shall only apply where such restrictions are a necessary measure required: (b) for the prevention, detection, investigation and prosecution of criminal offences, including measures to combat any money laundering activity, and the execution of criminal penalties” and “(e) the establishment, exercise or defence of a legal claim and for legal proceedings which may be instituted under any law”.
27. In accordance with article 5(2) of the Regulation, the controller should be able to provide evidence demonstrating detailed reasons for taking a decision to restrict a fundamental right of the data subject. In view of this, both the EDPB and the EDPS advise to document the necessity and proportionality test applied by the controller before taking such a decision. The necessity aspect should be assessed in the light of the objectives the restrictions intend to achieve and thus, the controller should be able to demonstrate that the restrictions are indeed effective and deliver upon their purpose.
28. Thus, pursuant to the accountability principle, the controller had the onus to show how the disclosure of the personal data pertaining to the complainant, including the information about the processing activity, would actually or at least most likely jeopardise the criminal investigation undertaken by the Malta Police Force and the pending judicial proceedings.
29. In this regard, the Commissioner noted that the controller did not present any assessment as to how it reached its decision to restrict the right of the complainant. In fact, no evidence was submitted to effectively demonstrate that there is a specific and concrete risk that could materialise as a result of the disclosure. A mere reference to an existing investigation and pending judicial proceedings could not exonerate the controller from complying with its obligations emanating from the Regulation and it is certainly not sufficient to restrict the fundamental right of the complainant. This led the Commissioner to conclude that the restrictions invoked by the controller do not respect the essence of the fundamental rights and freedoms of the data subject and are not a necessary and proportionate measure as required pursuant to regulation 7 of Subsidiary Legislation 586.09.

**On the basis of the foregoing considerations, the Commissioner establishes that C-Planet, acting in its role of a controller in terms of article 4(7) of the Regulation, was processing the personal data pertaining to the complainant at the time of receipt of the request.**

**Thus, the Commissioner is hereby deciding that the controller infringed article 15(1) and article 15(3) of the Regulation when it failed to provide the complainant with a copy of her personal data undergoing processing and the information concerning the processing activity.**

**As a result, the controller is hereby being served with a reprimand pursuant to article 58(2)(b) of the Regulation. Furthermore, in terms of article 58(2)(c) of the Regulation, the controller is hereby being ordered to fully comply with the complainant's request to exercise her right pursuant to article 15 of the Regulation.**

**The controller shall comply with this order within twenty (20) days from the date of receipt of this legally binding decision. Non-compliance with this order shall lead to an effective, proportionate and dissuasive administrative fine in terms of article 83(6) of the Regulation.**

In accordance with article 26(1) of the Data Protection Act (Cap. 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal in writing to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof<sup>12</sup>.

**Ian Deguara**  
**Information and Data Protection Commissioner**

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<sup>12</sup> More information about how to file an appeal before the Information and Data Protection Appeals Tribunal may be found at <https://idpc.org.mt/appeals-tribunal/>