

Personal Data Protection Board's Decision No. 2023/1050 dated June 15, 2023, regarding “the Bank’s failure to comply with the data subject’s request to provide a transcript of the audio recording of the conversation between the customer representative and the data subjects”

Date of Decision : 15/06/2023

Decision No. : 2023/1050

Summary of the Matter: The Bank’s failure to comply with the data subject’s request to provide a transcript of the audio recording of the conversation between the customer representative and the data subject

In summary, the complaint submitted to the institution states that during a conversation with the Bank’s customer service center, the data subjects learned that their virtual card had been cloned and, as a result, the card had been deactivated without prior notice. Accordingly, pursuant to Article 11 of the Personal Data Protection Law No. 6698 (Law) Article 11, the individual submitted a request to the data controller seeking information regarding which personal data might have been copied and the specific banking transaction that led to this finding; however, this request was left unanswered by the data controller; In a second application made to the data controller on a different date regarding the same matter, the applicant requested confirmation under Article 11 of the Law as to whether their personal data had been processed, as well as the audio recording or transcript of the conversation conducted with the customer representative; however, this application was also left unanswered by the data controller, and the applicant has requested that the relevant audio recording transcript be provided to them.

As part of the investigation launched regarding this matter, the data controller was requested to submit a defense; the response received stated, in summary:

- Following a detailed investigation into the matter, conducted in response to the data subjects’ inquiry regarding whether any data had been copied in connection with the virtual card product, it was determined that none of the data subjects’ personal data had been copied,
- Since no data copying occurred, no written notification regarding copied personal data was provided; however, during the conversation between the data subjects and the customer service center, the data subjects were informed that their card information was at risk,
- The data subjects’ second inquiry was comprehensively addressed via the content sent to their email address, and in this response, it was stated that the reason for the virtual card being blocked for authorization was the detection of a transaction made with said virtual card on a website classified as a high-risk merchant, and that the card’s deactivation was carried out in accordance with the instruction communicated by the

data subjects through the Bank's communication channels at their own request and discretion,

- It was stated that the audio recording of the conversation between the data subjects and the Bank's customer representative, along with the transcript of said recording, could not be shared with the data subjects in accordance with the confidentiality obligation established under Article 73 of the Banking Law No. 5411 titled "Confidentiality of Information" and the "Regulation on the Disclosure of Confidential Information" issued by the Banking Regulation and Supervision Agency pursuant to the relevant provisions of the aforementioned Law " issued by the Banking Regulation and Supervision Agency pursuant to the relevant provisions of the aforementioned Law, the audio recording of the conversation held between the data subjects and the Bank's customer representative, along with the transcript of said recording, cannot be shared with the data subjects as stated.

As a result of the investigation conducted on this matter, pursuant to the Decision No. 2023/1050 of the Personal Data Protection Board dated June 15, 2023;

- Under Article 11 of the Law titled "Rights of the Data Subjects," everyone has the right to apply to the data controller regarding their personal data to: (a) learn whether personal data is being processed, (b) request information regarding the processing of personal data if it has been processed, (c) learn the purpose of the processing of personal data and whether it is being used in accordance with that purpose, (d) to know the third parties to whom personal data has been transferred within or outside the country, (e) to request the correction of personal data if it has been processed incompletely or incorrectly, (f) to request the erasure or destruction of personal data under the conditions set forth in Article 7, (g) to request that the third parties to whom personal data has been transferred pursuant to subparagraphs (d) and (e) be notified to the third parties to whom the personal data has been transferred, (g) to object to a decision made solely through the automated processing of data that adversely affects the individual, (ğ) to request compensation for damages suffered due to the unlawful processing of personal data,
- Pursuant to Article 13 of the Law titled "Application to the Data Controller," the data subjects shall submit requests regarding the application of this Law to the data controller in writing or through other methods determined by the Board; the data controller shall resolve the requests contained in the application free of charge within the shortest possible time and no later than thirty days, depending on the nature of the request; it is stipulated that the data controller shall either accept the request or reject it by providing a justification, and shall notify the data subjects of the response in writing or electronically,
- Furthermore, Article 6 of the "Regulations on the Procedures and Principles for Applications to the Data Controller," titled "Response to the Application," Paragraph (1) of Article 6 of the "Regulation on the Procedures and Principles for Applications to

the Data Controller,” the data controller is obligated to take all necessary administrative and technical measures to resolve applications made by the data subjects under this Regulation in an effective, lawful, and fair manner; Paragraph (2) states that the data controller shall either accept the application or reject it by providing a justification; Paragraph (3) provides that the data controller shall notify the data subjects of its response in writing or electronically; and Paragraph (5) provides that the data controller shall resolve the requests contained in the application free of charge within the shortest possible time and no later than thirty days, depending on the nature of the request,

- Upon reviewing the letter and the documents attached thereto submitted by the data controller to the Authority, it was determined that the data controller did not respond in writing to the first request made by the data subjects; however, it was observed that the second request was, contrary to the data subjects’ claim, responded to by the data controller; however, it was determined that the response to the aforementioned request was provided after the thirty-day period stipulated in the Law had elapsed,
- The “duty of confidentiality” cited by the data controller as the reason for not sharing the audio recording or transcript of the conversation the data subjects had with the Bank’s customer representative is regulated in Article 73 of the Banking Law No. 5411, “Confidentiality of Secrets,” and that paragraph (3) of the aforementioned article defines the boundaries of the concept of “customer confidentiality”—a concept specific to banking law—and stipulates that data pertaining to natural and legal persons arising from the establishment of a customer relationship with banks in the course of banking activities shall constitute customer confidentiality,
- On the other hand, the “Regulation on the Disclosure of Confidential Information” aims to determine the scope, form, procedures, and principles regarding the sharing and transfer of information classified as bank secrets and customer secrets; it outlines the scope of the duty to maintain confidentiality, the exceptions to this duty, and the general framework for the disclosure of confidential information,
- Upon reviewing the transcript submitted to the Authority by the data controller regarding the meeting between the data subjects and the data controller’s customer representative, it is understood that the specific incident occurred as described by the data controller,
- The duty of confidentiality established under the Banking Law No. 5411 and relevant legislation requires that, except in cases of legal compliance as provided by statutory regulations, prohibits the disclosure of information and events obtained due to a commercial relationship with the customer to third parties; and on the other hand, based on the assessments under Article 11 of Law No. 6698, which stipulates that data subjects have the right to request information regarding the processing of their personal data, including the right of access to such data,

Based on these assessments;

- The “duty of confidentiality” set forth in the Banking Law No. 5411 and related legislation requires that, except in cases of legal compliance as provided by statutory regulations, information regarding facts and events obtained due to a commercial relationship with the customer shall not be disclosed to third parties; and on the other hand, the right of data subjects to request information regarding the processing of their personal data, as regulated under Article 11 of Law No. 6698, (1)(b), the right of data subjects to request information regarding the processing of their personal data—which includes the right of access—and that this right of access, by complementing the right to request information, enables data subjects to exercise their rights over their personal data by ensuring they are informed about how such data is processed, the Data Controller shall be instructed to send the relevant transcript—which contains the parties’ direct statements during the meeting—to the data subjects after taking measures such as redacting or masking the personal data of third parties other than the data subjects, and to provide the Board with information regarding the procedures established for this purpose,
- The Data Controller should be reminded that applications made by data subjects under the Law must be concluded in an effective, lawful, and fair manner, with proper justification, and within the prescribed timeframe, in accordance with the provisions of Article 13 of the Law and Article 6 of the Regulation on the Procedures and Principles for Applications to the Data Controller,

it has been decided.