



Data Protection

Videotranscript

Accuracy, rejoinder and destruction

[Danielle Kaufmann]: A public body must make certain that the personal data it is processing are also accurate. This is one of the principles underlying the processing of personal data.

Conversely, the data subject about whom the inaccurate personal data are being processed has a right to have them corrected.

To assert this right, it is enough for the data subject to claim that the data are inaccurate. It is then up to the public body processing the data to prove that they are accurate. But what does accurate or inaccurate mean?

[Beat Rudin]: First, we need to make a distinction between facts and value judgements.

In the case of facts, it's usually clear if something is accurate or not. For example, we can check whether a person is married or not. And if the information is not correct, it can be corrected.

But facts can change too. If a public body noted three years ago that the requester is married, that may have been true at that time. But if they have gotten divorced in the meantime, then today the information is no longer correct.

[Danielle Kaufmann]: So now what? Do all old records now have to be updated to show that the person is now divorced and no longer married?

It depends what the records are being used for. If the person's marital status was important at the time the records were created, then the information entered at the time must be correct. Because perhaps the requester had received benefit payments based on their marital status at the time.

Even if the process from that time has since finished, these data are still preserved or archived, as they may still be needed, for example for evidence and backup purposes. However, provided they are no longer actively needed for a new decision, they do not need to be corrected. They are a sort of snapshot of that time and remain so today.

It would be different if the process was being started up again. Then the current, new data on the person's marital status would need to be correct again.

[Beat Rudin]: In contrast to facts, when it comes to value judgements there is no right or wrong. That means there is also nothing to correct, as these judgements are personal assessments only.

Where it gets difficult is with judgements which are based on facts. These are neither pure value judgements, nor pure findings of fact.

Let's take as an example a social worker who has been sent to a family. Her job there is to assess whether the children are adequately cared for or whether child protection measures are required. In her findings, she naturally provides an evaluation.

However, this evaluation is not simply a personal value judgement; rather, it needs to be based on factual observations.



[Danielle Kaufmann]: If the social worker observes that a small child is sitting around in absolutely filthy diapers, that it is just dozing apathetically and that the back of an older child is covered in welts, then she will need to come to a decision based on such factual observations.

The appropriateness of this evaluation and the measures enacted on that basis can be reviewed via an appeal procedure.

[Beat Rudin]: If the public body comes to the conclusion that the data it has processed are inaccurate, then it will correct them either by adding the correct data to the record, or by changing the existing, inaccurate data.

Conversely, if the public body can prove that the data it holds are accurate, then it will put this on record. The data subject can then request that this happen in a ruling which can be contested in an appellate court. This court will then decide whether the data can be described as accurate or whether they are inaccurate and need to be corrected.

If data cannot be found to be either accurate or inaccurate, then the data subject has the right to present a rejoinder: a so-called notice of contestation ("Bestreitungsvermerk").

[Danielle Kaufmann]: But it is not only in the case of value judgements that accuracy and inaccuracy cannot be established. . This also applies to information that a public body has received from another public body.

In this case, it cannot itself establish whether the data received are accurate. Nonetheless, it must apply the notice of contestation if this is requested.

The data subject can then demand that the public body from which the data originally came correct them. And they can also demand that this public body communicate the correction to those bodies which originally received the inaccurate data from it.

[Beat Rudin]: Finally, there is the case in which the inaccuracy of the data has been established, but it is not possible to correct them. This could be due, for example, to documents showing the facts correctly being missing.

In this sort of case the data subject can demand that the inaccurate data be permanently destroyed.

This means that the inaccurate data have to be deleted in such a way that they can no longer be retrieved.