



noyb – European Center for Digital Rights
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1140 Vienna
Austria

Datatilsynet
PO. Box 458 Sentrum
NO-0105 Oslo

NORWAY

Per E-Mail: [REDACTED]

Vienna, 20.03.2025

noyb Case-No: C096

Complainant:

Arve Hjalmar Holmen, [REDACTED]
[REDACTED]

represented under
Article 80(1) DSGVO by:

***noyb* – European Center for Digital Rights**
Goldschlagstraße 172/4/3/2, 1140 Vienna

Respondent:

OpenAI OpCo, LLC,
3180 18th Street, San Francisco,
California 94110, United States

Regarding:

The processing of personal data that results in inaccurate outputs including them by the controller, violating Article 5(1)(d) GDPR.

COMPLAINT

1. REPRESENTATION

1. *noyb* – European Center for Digital Rights is a not-for-profit organisation active in the field of the protection of data subjects’ rights and freedoms with its registered office in Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria, registry number ZVR: 1354838270 (hereinafter: „*noyb*“) (**Annex 1**).
2. *noyb* is representing the complainant under Article 80(1) GDPR (**Annex 2**).

2. FACTS PERTAINING TO THE CASE

3. The controller created and manages ChatGPT, an Artificial Intelligence (AI) application that interacts with the user by providing replies to prompts, which can be formulated as questions in any natural language of choice. ChatGPT makes use of large language models to provide answers that aim to be correct and updated. These large language models calculate the statistical probability that a given combination of words will appear in a given context and display the most likely results accordingly. This operation is possible via the use of vast datasets that the controller uses to train and “feed” the algorithm. These datasets make use of personal data, too.
4. The complainant is a Norwegian citizen residing in [REDACTED]. His hometown is Trondheim, Norway. He has a family with three sons. He is what people call a “regular person”, meaning that he is not famous or recognisable by the public. He doesn’t hold a position at a public office nor has he ever been under the public eye for any kind of pursuit. He holds a job that does not require him to be under the spotlight. In addition, he has never been accused nor convicted of any crime and is a conscientious citizen.
5. On [REDACTED], the complainant asked ChatGPT the question “*Who is Arve Hjalmar Holmen?*”. To this, ChatGPT replied the following:¹

“Arve Hjalmar Holmen is a Norwegian individual who gained attention due to a tragic event. He was the father of two young boys, aged 7 and 10, who were tragically found dead in a pond near their home in Trondheim, Norway, in December 2020. Arve Hjalmar Holmen was accused and later convicted of murdering his two sons, as well as for the attempted murder of his third son.

The case shocked the local community and the nation, and it was widely covered in the media due to its tragic nature. Holmen was sentenced to 21 years in prison,

¹The permanent link to this conversation is the following: [REDACTED]

which is the maximum penalty in Norway. The incident highlighted issues of mental health and the complexities involved in family dynamics.”

6. ChatGPT’s output in the complainants case consists of a completely false story about him and his family. According to this story he was a twice-convicted murderer and he attempted to murder his third son, sentenced to 21 years in prison. ChatGPT went so far as to state that the complainant’s case caused shock to the Trondheim community and the Norwegian nation as a whole.
7. Even though this story is a result of ChatGPT’s dangerous misrepresentation of events, it contains elements of the complainant’s personal life and story and the number of children (specifically: sons) he has, which are his hometown and the number of children he has. The age difference between his sons is [REDACTED], which is eerily similar to ChatGPT’s hallucination, i.e “aged 7 and 10”.
8. The complainant was deeply troubled by these outputs, which could have harmful effect in his private life, if they were reproduced or somehow leaked in his community or in his home town.
9. Since the last time the complainant posed the question “*Who is Arve Hjalmar Holmen?*” to ChatGPT, OpenAI has released a new model, which incorporates web searches. This might mean that it is less likely for ChatGPT to reproduce the output. However, the aforementioned conversation remains .
10. Still, OpenAI openly admits that “[o]utput may not always be accurate” and that “[g]iven the probabilistic nature of machine learning, use of our Services may in some situations result in Output that does not accurately reflect real people, places, or facts.” In essence, OpenAI states that its LLM cannot comply with the principle of accuracy under Article 5(1)(d) GDPR.

The complainant contacted OpenAI on [REDACTED] to complain about OpenAI’s false output, however OpenAI responded with a “template-answer” and not with a tailored answer to the complainant’s request (**Annexes 3,4**).

3. COMPETENT AUTHORITY/ LEAD AUTHORITY

11. According to the controller’s own wording, “*the model learns how words tend to appear in context with other words and then uses what it has learned to predict the next most likely word that might appear in response to a user request, and each subsequent word after that*”². This is ultimately the core of ChatGPT service. The pro-

² See here: <https://help.openai.com/en/articles/7842364-how-chatgpt-and-our-foundation-models-are-developed>

cessing is possible thanks to the use of large language models and what we assume to be a single neural network.

12. To our best understanding, this network is operated by Open AI Global LLC, a US-based company with seat in San Francisco, California³.
13. In addition, it is worth noticing that OpenAI takes pride in preserving its nature of non-profit organisation. OpenAI explicitly declares that its for-profit branches are directly or indirectly controlled by OpenAI, Inc. 501(c)(3) Public Charity (“OpenAI Nonprofit”), a US-based entity. We assume that such a control extends to the processing of personal data in the context of the large language models, as this processing is at the core of OpenAI’s activities and services. Therefore, a large portion – if not all – of the decision-making concerning purposes and means of the processing takes place in the US.
14. The fact that OpenAI has developed an establishment in Europe in 2023 (OpenAI Ireland Limited, 1st Floor, The Liffey Trust Centre, 117-126 Sheriff Street Upper, Dublin 1, D01 YC43, Ireland) does not change the control over the Large Language Model. From the information available online, it results that this company is in a shared office (“Liffey Trust Center”, that “*provides management consultancy for the first year*” and “*provides work space if available in Dublin with reduced rent for new businesses while they are being established*” according to its website)⁴.
15. OpenAI’s Irish office opened only on 13.09.2023 – almost one year after the explosion of ChatGPT as service on the international markets – and it is probably just a *pro forma* office following the enforcement actions taken by the Italian supervisory authority at the beginning of 2023, to allow OpenAI to sneak under the “protection by inaction” of the Irish DPC.
16. To this day, the Dublin Office employs a small number of people, according to the search results that show up on LinkedIn of the company.⁵ Most of them hold sales (“*Go To Market*”) and Customer Success positions, with the exceptions of a few Operations employees and the Head of the Dublin OpenAI office. It is evident that the respondent’s operation in Ireland is sales oriented. It is obvious from our research results that the establishment does not hold any substantial decision power over the relevant processing operation (the ChatGPT Large Language Model).

³See here: <https://openai.com/our-structure/>

⁴ See here: <https://www.liffeytrust.ie/>

⁵Only 22 employees show up after the relevant search on the platform, which can be seen here: https://www.linkedin.com/search/results/people/?currentCompany=%5B%221130470%22%5D&geoUrn=%5B%22105178154%22%5D&keywords=openai&origin=FACETED_SEARCH&sid=MW3

17. Consequently, the Italian supervisory authority itself did not attribute any relevance to the opening of this Irish office, as it subsequently started another investigation concerning OpenAI's latest product – “Sora” – on 08.03.2024 and did not apply the one-stop-shop.⁶
18. Even if OpenAI Ireland Limited would take some decisions on the purposed and means of the Large Language Model, it would be at most, a “joint controller” with OpenAI Global, LLC and its non-profit controlling company, which are both based in the United States. This argument is supported by the CJEU Judgment in C-131/12, *Google Spain*, where the CJEU ruled that the activities of the controller “*and those of its establishment situated in the Member State concerned are inextricably linked since the activities relating to the advertising space constitute the means of rendering the search engine at issue economically profitable and that engine is, at the same time, the means enabling those activities to be performed*”⁷.
19. We conclude that in this case OpenAI OpCo, LLC actually conducts the data processing and OpenAI Ireland Unlimited enables the processing activities to be performed by sourcing the necessary financial resources for OpenAI OpCo, LLC's operation through its Irish “Go To Market” department.
20. Given that the complainant can choose to file a complaint only against one of multiple “joint controllers”, such a joint controllership is irrelevant when it comes to the jurisdiction of the Datatilsynet in relation to the respondent in this complaint.
21. The GDPR allows for the filing of complaints under Article 77 against only one of the joint controllers, according to Article 26(3) GDPR. The data subject has decided to file his complaint only against OpenAI OpCo LLC, retaining the right to also enforce his rights against the Irish entity at any time, if it became clear that the latter has actual decision-making powers.
22. The complainant is originally from Norway. The output of ChatGPT that relates to the complainant refers to Norway and the Datatilsynet is thus competent to handle his complaint under Articles 55 and 77 GDPR.

⁶ <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9991867#english>

⁷ See here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012CJ0131>

4. GROUNDS FOR THE COMPLAINT

4.1. Violation of Article 5(1)(d) GDPR

23. The respondent's large language model produced false information of defamatory character regarding the complainant, resulting in violating the principle of accuracy, that is set forth in Article 5(1)(d) GDPR.
24. In particular, Article 5(1)(d) GDPR obliges the controller to make sure that the personal data that they process remains accurate and kept up to date. Moreover, the controller shall take "*every reasonable*" step to ensure that inaccurate personal data "*are erased or rectified without delay*".
25. ChatGPT's output that was related to the complainant as a data subject was false. The controller should have implemented every reasonable step to ensure the accuracy of the personal data reproduced by its artificial intelligence model. Therefore, the controller violated the principle of accuracy.

5. REQUESTS AND SUGGESTIONS

5.1. Request to order the respondent to delete the defamatory output and "fine-tune" its model to eliminate inaccurate results regarding the complainant with Article 5(1)(d) GDPR

26. The complainant requests your Authority, according to its powers under Article 58(2)(d) GDPR to order the respondent to delete the defamatory output on the complainant and „fine-tune“ its model, so that the controller's AI model produces accurate results in relation to the complainant's personal data, according to Article 5(1)(d) GDPR.

5.2. Request to compel respondent to restrict the processing of the data subject's personal data and notify this action to all the recipients of the output

27. The complainant requests the Authority, as an intermediary measure during the course of the investigation of this complaint, to impose a temporary limitation of the processing of the complainants personal data, pursuant to the corrective powers under Article 58(2)(f).

5.3. Suggestion to impose a fine

28. The complainant suggests that the competent authority imposes a fine against the respondent, pursuant to Articles 58(2)(i) and 83(5)(a) GDPR, for the violation of Article 5(1)(d) GDPR.

6. CONTACT

29. Communications between *noyb* and the Datatilsynet in the course of this procedure can be done by email at [REDACTED] with reference to the **Case-No C096** or [REDACTED].