From: **Marlies Samarin** masacr t ca36@gma .com
Subject: dereferenc ng request
Date: August 10, 2023 at 5:54 AM
To: marchant@offshorea ert.com

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Dear Mr. Marchant, I attach a formal letter requesting that some technological measures be taken in order to restore my dignity and move on with my life, please confirm receipt of the letter

Offshore
Alert.pdf

Dear Editorial Staff of the website Offshore Alert, I am writing you today in order to request that you anonymize my name from the following reports that you have published, or that you at least consider the possibility of dereferencing the report by including *metatags* or the technological instructions "noindex" and "disallow" (robot.txt instructions), so that when my name is entered into a search engine, the report will no longer be associated with my personal data and will not appear on the first, second-, or third-page results:

https://www.offshorealert.com/sec-v-morrie-tobin-et-al-first-amended-complaint/

It is reported in that post that the SEC filed (and then amended) a complaint alleging securities fraud regarding Environmental Packaging Technologies Holdings Inc. and CURE Pharmaceutical Holding Corporation, against me and five other people in the US District Court for the District of Massachusetts.

This brief summary was made in order to make clear that I have already paid my debt to society, both with the fine and the probation time. For that reason, I am eager to enforce my rights as a Swiss citizen, to restore my privacy and to protect my personal information which has been published by your website and has been made publicly available for anyone who enters my name in a search engine, like Google, Bing or Yahoo.

Switzerland's Federal Data Protection Act is directly applicable to this situation. Let's not forget that Article 13 DPA defines an unlawful invasion of privacy as one that is not justified by the consent of the injured party, by an overriding private or public interest, or by law. Furthermore, an overriding interest is deemed to exist in particular if the data subject processes personal data relating to his or her profession exclusively for publication in the editorial section of a periodically published medium or collects data relating to a person that is in the public interest, provided that the data relates to that person's public activities. Since I have not given my consent for this, nor is there a law that permits this, it can therefore only be assumed that this violation of privacy is based on an alleged overriding private or public interest. Pursuant to article 15 DPA, the data subject may in any case request that the data processing be stopped, that the data not be disclosed to third parties, or that the personal data be corrected or destroyed.

As I understand it, you consider yourselves entitled to process my personal data exclusively because I am a person of "public interest". If that is the case, my argument (which I hope is

compelling enough to convince you) is that the situation has changed. This view violates my rights and therefore your infringement must cease at once. Let's not forget that '*On June 26, 1979, the US Supreme Court handed down an opinion which squarely held that a person who engages in criminal conduct does not by virtue of that conduct alone automatically become a public figure. Wolston v. Reader's Digest Assoc. involved a libel suit against the publisher of a book about Soviet spying by an individual who was named in the book as a Soviet spy. In 1958 the individual had refused to testify before a grand jury investigating Soviet intelligence activities. He was subsequently convicted for contempt but was never proven to be a Soviet agent. The Supreme Court said that the individual's failure to testify before the grand jury did not mean that he had voluntarily thrust himself into the public eye:* "This reasoning leads us to **reject the further contention that any person who engages in criminal conduct automatically becomes a public figure for purposes of comment on a limited range of issues related to his conviction. To hold otherwise would create an 'open season' for all who sought to defame persons convicted of a crime**[1]."

But I do not base this "right to be forgotten" concern neither on Swiss nor US federal law exclusively, even though the Swiss Federal Constitution of 1999, as amended in March 2021, contains a number of provisions in this area, including some explicit recognitions of data protection, such as Article 13(2), which states that everyone has the right to be protected from misuse of their personal data, or Article 13(1), which states the right of every person to respect for their privacy family life, home, correspondence and their telecommunications.

Rather, I would like you to consider that this discussion involves the need to reconcile two distinct sets of rights explicitly enshrined in the European Convention on Human Rights (ECHR), to which Switzerland belongs. The final arbiter of the Convention is the European Court of Human Rights (ECtHR), which hears complaints from individuals about alleged human rights violations by signatory states. Switzerland signed the Modernized Convention for the Protection of Individuals with regard to the Processing of Personal Data, also known as Council of Europe Convention 108+, on November 21, 2019.

[1] Cooper, G. & Belair, R. (1979), Privacy and Security of Criminal History Information: Privacy and the media, US DOJ Bureau of justice statistics, Search Group Inc, Washington DC, pages 12/13.

Article 8 ECHR provides for the right to respect for private and family life, while Article 10 refers to freedom of expression. As we all know, neither of these rights is absolute. Rather, the ECtHR believes that a fair balance must be struck between the two sets of rights to determine which right unquestionably takes precedence over the other and has priority over the interest sought by the other, as there would be an inherent incompatibility. According to the Court, both rights deserve equal respect[2].

The criterion of legitimacy of an interference with the right to freedom of expression is defined in Art. 10. 2 of the Convention: "*The exercise* [of the right to freedom of expression, which includes freedom to hold opinions, to receive and impart information and ideas without interference by public authority and regardless of frontiers] *may be subject to such formalities, obligations and responsibilities, conditions and restrictions, or penalties as are prescribed by law and are necessary in a democratic society...*".

Article 6 of Convention 108+ provides that the processing of personal data relating to offences, criminal proceedings and criminal convictions, and related security measures, shall be permitted only if appropriate safeguards are enshrined in law which complement the safeguards of the Convention, and those safeguards are designed to protect data subjects against the risks which the processing of such data may present for their interests, rights and fundamental freedoms, **in particular against the risk of discrimination**. In addition, pursuant to Article 9, any person has the right to object at any time, on grounds relating to his or her situation, to processing of personal data concerning him or her, unless the controller can demonstrate legitimate grounds for the processing which override his or her interests; furthermore, upon request, the data shall be erased or rectified free of charge and without undue delay if they are being or have been processed in breach of the provisions of this Convention, and a judicial remedy may be sought in accordance with Article 12 if the rights of the individual under this Convention would be infringed.

It is recalled that in Mediengruppe Österreich GmbH v. Austria, 2022, the Court addressed the "right to be forgotten" in the context of Article 10 ECHR, which concerned a court order against a newspaper. The Court prohibited the publication of certain information indirectly related to the

[2] Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], 2017, § 163; Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece, 2018, § 46.

campaign of a political candidate in the run-up to a presidential election. The Austrian Higher Regional Court had pointed out **a lack of temporal connection** and prohibited the complaining company from publishing pictures of the office manager's brother without the latter's consent if the same article reported that the latter was a convicted neo-Nazi in the accompanying report. The court found no violation of the right to freedom of expression in this case, emphasizing in particular the **long period of time between the conviction and the publication of the article in question; the loss of notoriety of the person in question; the fact that he had no other criminal conviction; the importance of reintegrating those who have served their sentence into society;** and the legitimate and very important interest of the person not to be confronted with his conviction after a certain period of time. The court emphasized that both convicted and suspected, released, or acquitted individuals should be given a concrete opportunity to request the deletion of stored data to ensure that the retention period of the data is proportionate to the crime and punishment[3].

The ECtHR also considers that the right to be forgotten in the context of media web archives containing personal data of a person who has been the subject of a publication in the past is **intended to protect a data subject by allowing him or her to request that search results linked to his or her name, which he or she considered inappropriate, be partially or completely deleted after a certain period of time[4]**.

In summary, this should not be taken as a threat or warning on my part. Rather, it is a humble and polite request for you to give me some relief and ensure that I have the right to be forgotten, to finally step out of the limelight once and for all, and to start my life anew, **especially given the fact that I have not been convicted of any of the serious felonies for which I was formally indicted 33 years ago; rather, my case was dismissed, which means that the allegations originally made by the prosecutor have been proven wrong by the judiciary, so I don't understand why this information, which shows my whole name and appears on top of a Google Search on it, MUST be kept online forever.**

I ask the website's owners for some sympathy, because even the judiciary has long since finished with me, so I do not understand why a digital media outlet should have a higher status

[3] Mediengruppe Österreich GmbH gegen Österreich, § 45; B.B. v. France, 2009, § 68; Brunet v. Francee, 2014, §§ 41-43.

[4] M.L. and W.W. v. Germany, 2018, § 100.

than the criminal records department, which is why I want to reiterate that I would like for you to at least consider the implementation of dereferencing techniques so people can't find these reports with a quick and easy Google/Bing/Yahoo search, **at least as regards Swiss territory, where the FDPA is fully operational and your publication infringes the rights I'm entitled to according to that law**. These techniques may include the use of meta tags or the robot.txt software or similar measures that could be implemented to balance your right to freedom of information with my right to be forgotten, to restore my privacy and to protect my personal data.

Websites such as yours, which are available on a worldwide scale, should also be subject to the Data Protection Act, even when based in the US and acting under that country's law. Freedom of expression and freedom of the press are among the highest fundamental freedoms in a democracy. Therefore, data protection laws should avoid the introduction of preventive censorship, but rather provide a means of determining the proper balance between the rights to privacy and freedom of expression, without unjustifiably superimposing them.

I will be happy to wait for your reply.

Yours sincerely,

Matthew Ledvina

[redacted] n° [redacted]