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OPINION OF COMMISSION FOR PROTECTION OF PERSONAL DATA reg. No. PNMD -01-31/2022 Sofia, 01/12/2022

REGARDING: Issues related to the implementation of video surveillance by municipalities The Commission for the Protection of Personal Data (PCPD) in composition - Chairman: Vencislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at their regular meeting held on 30.11.2022, considered a letter with No. PNMD-01-31/14.03.2022 by Mr. Nikolay Melemov - Mayor of the Municipality of Smolyan, with which a request is made to express an opinion on the admissibility of a request from the authorities of the Ministry of Internal Affairs to provide permanent access to the built and maintained from the Municipal video surveillance system. The reason for the request was a letter received in the Municipality from the head of the RU - Smolyan to the Ministry of Internal Affairs and Communications - Smolyan, with which it is requested to provide access to review records from the video surveillance system of the Municipality of Smolyan in connection with the implementation of the main activity of the Ministry of the Interior, namely operational - search, security, crime investigation, control and preventive, as well as effective protection of public order and countering conventional crime. It is clear from the attached letter that at the same time, two employees of the Ministry of the Interior have been appointed to grant the requested access. In view of the fact that it is not clear from the letter exactly to which records it is requested to provide access, a working meeting was organized and held with representatives of the RU - Smolyan to the ODMVR - Smolyan. At the meeting, the police representatives explained that it is not actually a question of access to specific recordings, but of providing constant access to the cameras in real time and to their recordings. In the request, it is stated that until now the RU - Smolyan has been repeatedly granted access to the records and they have been transferred at his request for the investigation of specifically committed crimes/suspected crimes. It is also notified that the provision of records containing personal data from the video surveillance of the Municipality is carried out according to the terms and conditions regulated in the Internal Rules for video surveillance of the Municipality of Smolyan and in a special order of its mayor. The request is accompanied by a thorough legal analysis of the relevant legislation, according to which there is no legal basis for the granting of requests by the RU - Smolyan permanent access to the video surveillance system of the Municipality. In view of the above, the following questions are posed:

1. Can the Municipality of Smolyan provide permanent access to the Smolyan Regional Government to the video surveillance system? If yes - what is the legal basis? If the answer is no - what is the legal basis? 2. Are the exceptions under Art. 2, item 2,

letter "d" of the GDPR? 3. In this case, which legal act is applicable - GDPR or Directive (EU) 2016/680? 4. What should be the order of providing CCTV footage? Should it remain as it is at the moment or do changes need to be made to it? 5. In case the requested permanent access is granted, what quality will the Regional Office - Smolyan - processing personal data or not have? The municipality of Smolyan is the administrator of personal data, because it determines the purposes and means of processing personal data, but if the Regional Government - Smolyan is a processor of personal data, the municipality must have assigned this body to process personal data on its behalf. I believe that in the case under consideration, there is no assignment on our part, and the Ministry of Internal Affairs officials are exercising their powers according to law. I ask for your opinion. 6. How should the processing of personal data be arranged between the Regional Government - Smolyan and the Municipality of Smolyan - with a contract or with another legal act that is binding for the processor? 7. What would be the appropriate way for the administrator of personal data to exercise control over the actions performed by the Regional Administration - Smolyan? 8. What measures should the administrator take to protect records from being copied and downloaded?

Legal analysis: Video surveillance is an activity related to the collection and storage of image or audio-visual data about persons within the scope of a monitored area, who are subject to direct or indirect identification based on their appearance or other specific characteristics. An essential element of this activity is that the identity of persons can be established on the basis of this data, and it also creates the possibility to process data regarding the presence and behavior of persons in the relevant area. In this sense, video surveillance falls within the material scope of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR) and should be carried out in accordance with its requirements. However, it is necessary to make a fundamental distinction, according to which the video surveillance carried out by the Municipality falls within the scope of the GDPR, while the processing of the data received by the authorities of the Ministry of Internal Affairs, in their capacity as a competent authority within the meaning of Art. 42, para. 4 of the Personal Data Protection Act (PDPA) video recordings, falls within the scope of Chapter VIII of the Personal Data Protection Act, which introduced the requirements of Directive (EU) 2016/680 into our national law. As a general rule, for the processing of personal data to be lawful within the scope of the GDPR, it must be carried out on the basis of one of the legal grounds specified in Art. 6, par. 1 and/or Art. 9, par. 22 of the same, as well as to apply effectively the principles proclaimed by its Art. 5. According to Art. 49 of the GDPR, the processing of personal data is lawful when it is necessary for the exercise of powers by a competent authority for the purposes of Art. 42, para. 1 and is provided for in the law of the European Union or in a regulatory act (such as, for example, the Ministry

of the Interior), which defines the purposes of the processing and the categories of personal data that are processed. On the one hand, when the authorities of the Ministry of Internal Affairs request records from the video surveillance system of the Municipality, their basis for obtaining the records is precisely the exercise of their powers to prevent, investigate, detect or prosecute crimes or execute punishments, including protection against threats to public order and security and their prevention. On the other hand, however, the Municipality's legal basis for handing over the requested records is compliance with its legal obligation pursuant to Art. 6, par. 1, b. "c" of the GDPR to cooperate with law enforcement authorities. In practice, it often derives from the provision of Art. 159, para. 1 of the Criminal Procedure Code (CPC), when the pre-trial proceedings authorities (such as the investigating police officers) require by decree the handover of objects, papers, computer data and other data that may be relevant to the specific case. This necessitates the conclusion that the Municipality and the bodies of the Ministry of Internal Affairs process personal data for different purposes and on different legal grounds, which determines their roles as independent administrators. The legal relationship "administrator - processor of personal data" in this scenario is inapplicable, since the authorities of the Ministry of Internal Affairs do not process the data from the video recordings by assignment and on behalf of the Municipality, but process them for the needs of exercising their powers. The review of the relevant legislation (NPK, ZMVR and ZMSMA) shows that at the moment there is no legal basis for granting requests from the RU - Smolyan permanent access to the video surveillance system of the Municipality of Smolyan. The current regulatory framework allows the provision of only specific records requested in due course, access to which is carried out according to certain criteria such as e.g. date, time, place, etc. These criteria contribute to guaranteeing the principles of limitation of purposes and reduction of data to a minimum under Art. 5 of the GDPR. They also meet the conditions for disclosure of data laid down in Rec. 22 of Directive (EU) 2016/680, according to which requests for disclosure of data sent by public authorities should always be in writing, be justified and concern only individual cases and should not refer to the entire register with personal data or lead to the association of records with personal data. It is worth noting that the authority of the competent authorities under Art. 159, para. 1 of the Code of Criminal Procedure concerns the transfer of specific data (in this case video recordings) that may be relevant to the specific case, which by its nature is not the same as the provision of a permanent, resp. unlimited access to the video surveillance system of the Municipality. Moreover, providing unregulated permanent access to the video surveillance system would raise numerous questions related to the responsibility of individual administrators and, not least, the rights and freedoms of data subjects. Both GDPR and the requirements of Directive (EU) 2016/680 (resp. GDPR)

oblige the controller to implement appropriate technical and organizational measures to ensure and be able to prove that the processing is carried out in accordance with them, taking into account the nature, scope, context and purposes of the processing, as well as the risks of different likelihood and burden for the rights and freedoms of natural persons (Article 24 of the GDPR and Article 59 of the GDPR). In order for the introduced measures to be adequate and to correspond to the basic principles, they should be reviewed and, if necessary, updated by the administrator. In accordance with the practice of the Court of the European Union (CJEU) and the European Court of Human Rights (ECHR), the legal grounds must be clear, precise and consistent with established judicial practice, and their application to specific cases should be predictable for the persons, to which they refer. The principle is that the unlimited, systematic and large-scale processing of arrays of personal data would constitute a reason for filing a number of complaints before the ECtHR and the CJEU, as it leads to a deep and disproportionate intrusion into the personal sphere and the privacy of a large number of persons. This, in turn, contradicts the legal order in a democratic society. In this sense, by analogy, the conclusions and reasons from the Decisions of the CJEU in the cases C-511/18, C-512/18, C-520/18 and C-140/20 can be applied. Taking into account this principle, in introducing into legislation a legal basis for permanent access to personal data registers (such as video surveillance in this case), the following basic parameters regarding the processing of personal data must always be taken into account:

- the conditions that determine the legality of the processing by the administrator (the purposes of the processing for which the personal data are intended, as well as the legal basis for this);
- the categories of data to be processed;
- the categories of data subjects affected by the processing;
- processing operations and procedures and their consequences;
- the persons/bodies to whom the personal data may be disclosed and the purposes for which they are disclosed;
- limitations on the purposes of disclosure;
- the storage period;
- awareness of data subjects and transparency of processing;
- measures to guarantee the rights and freedoms of the affected data subjects.

Therefore, the granting of requests from RU - Smolyan permanent and unlimited access to the video surveillance system of the Municipality can only be carried out when the above-mentioned parameters related to the processing of personal data are

regulated at the legal level.

For these reasons and on the basis of Art. 58, par. 3, b. "b" of Regulation (EU) 2016/679 in conjunction with Art. 10a, para. 1 of the Personal Data Protection Act and Art. 51, item 2 of the Regulations for the activities of the CPLD and its administration, the Personal Data Protection Commission expresses the following

OPINION:

1. The review of the relevant legislation (NPC, ZMVR and ZMSMA) shows that, at the moment, there is no legal basis for granting requests from the RU - Smolyan permanent and unrestricted access to the video surveillance system of the Municipality of Smolyan.
2. The current regulatory framework allows the provision of only specific records or time-limited access related to the exercise of police powers only, incl. under conditions of urgency, as well as requested in due course, and the same is implemented according to criteria such as e.g. date, time, location, etc. These criteria contribute to guaranteeing the principles of limitation of purposes and reduction of data to a minimum under Art. 5 of Regulation (EU) 2016/679, as well as meet the requirements for disclosure of data laid down in Rec. 22 of Directive (EU) 2016/680.
3. The video surveillance carried out by the Municipality of Smolyan falls within the scope of Regulation (EU) 2016/679, while the processing of the data received by the authorities of the Ministry of Internal Affairs, in their capacity as a competent authority within the meaning of Art. 42, para. 4 of the Law on the Protection of Personal Data (PPA) video recordings, falls within the scope of Chapter VIII of the PPA, which introduced the requirements of Directive (EU) 2016/680 into our national law.
4. The Municipality of Smolyan and the authorities of the Ministry of Internal Affairs process the video recordings for different purposes and on different legal grounds, which determines their roles as independent administrators. The legal relationship "administrator - processor of personal data" in this hypothesis is inapplicable, since the authorities of the Ministry of Internal Affairs do not process the data from the video recordings by assignment and on behalf of the Municipality of Smolyan, but process them for the needs of exercising their powers granted to them by law.

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1 The so-called Directive on the protection of personal data in police and criminal activities

2 In cases where special categories of data are processed through video surveillance

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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