

begining

»Practice» Opinions of the CPDP for 2019

»Opinion of the CPDP on the application of Regulation (EU) 2016/679 in the collection of donations for treatment through groups on Facebook Opinion of the CPDP on the application of Regulation (EU) 2016/679 in the collection of donations for treatment through groups on Facebook ”

OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO-01-32 / 17.01.2019

Sofia, February 6, 2019

SUBJECT: Application of Regulation (EU) 2016/679 to the collection of donations for treatment through Facebook groups

The Commission for Personal Data Protection (CPDP) composed of: Members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria

Mateva and Veselin Tselkov, at a meeting held on 30.01.2019, considered a request for an opinion with ent. №

NDMSPO-01-32 / 17.01.2019 by Mr. SH, Chairman of the Board of the Citizens Against Bureaucracy Foundation, informing

that the main goal of the organization he represents is to reduce the bureaucratic burden in administration. The main project of the foundation is \*\*\*\* - a platform for free documents in Europe.

The foundation has received signals related to the collection of donations for the treatment of people through groups on

Facebook. They publish medical documents containing data on health status. He adds that despite the prohibition referred to in Art. 9 of Regulation (EU) 2016/679 (General Data Protection Regulation), in comments below the posts users explicitly urge individuals or their parents to publish these documents, often without deleted personal data.

In view of the above, Mr. S.H. considers that this practice creates a precondition for fraud and raises the question of whether it is appropriate to publish on the Internet medical documents containing data on the health status of individuals.

Legal analysis

The Health Act (PDA) is the normative act regulating public relations related to the protection of the health of citizens.

According to Art. 27 of the Health Insurance Act, health information is personal data related to the health, physical and mental development of individuals, as well as any other information contained in medical prescriptions, prescriptions, protocols,

certificates and other medical documentation.

Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been in force since 25 May 2018, is the normative act laying down the rules related to the protection of personal data of individuals during their processing. The General Regulation builds on the previous data protection regime introduced by Directive 95/46 / EC, transposed into the Bulgarian Personal Data Protection Act of 2002, while taking into account the dynamics of the development of new technologies and data processing activities. personal data.

In the specific case, the request for an opinion is related to the processing of data that fall within the scope of the legal definition under Art. 4, § 1, item 15 of the General Regulation, namely “data on the state of health” of the data subject, which are directly related to the physical and mental health of the individual and / or the provision of health services that provide information about his state of health.

The publication of medical documents by individuals or their relatives - parents of children, etc., is the processing of personal data within the meaning of the legal definition referred to in Art. 4, item 2 of Regulation (EU) 2016/679. It should be borne in mind that the General Regulation, in Art. 9, § 1, prohibits the processing of personal data revealing racial or ethnic origin, political views, religious or philosophical beliefs or trade union membership, as well as the processing of genetic data, biometric data for the sole purpose of identifying an individual, data on the state of health or data on the sexual life or sexual orientation of the individual.

The data for the health condition are a special category of personal data under art. 9 of the General Regulation and require enhanced protection of the rights and freedoms of the data subjects concerned. The provision of Art. 9, § 2 of the General Regulation allows the lawful processing of such special categories of personal data under certain conditions referred to in points "a" to "j" of the same text.

According to the factual situation set out in the case, donations for treatment are collected through groups on Facebook. The social network "Facebook" also has access to personal data of its users. There are three possible hypotheses of lawful processing of sensitive personal data in this case:

First of all, these are the cases in which the administrator of the site is the one who performs the publication of the documents containing health information. In this case, the only applicable ground for lawful processing of personal data is Art. 9, § 2 (a) of the General Regulation - the data subject has given his or her explicit consent.

In the second place is the case when the person only publishes the medical documentation related to his illness. Then the hypothesis of art. 9, § 2, letter "e" - sensitive personal data are made public by the data subject.

Finally, we can outline the hypothesis in which health information is published by relatives of the sick person. The latter is related to the protection of his vital interests, due to the immediate threat to his life and the real threat that exists if timely medical care is not provided. The applicable ground for personal data processing is then Art. 9, § 2, letter "c" - the processing is necessary in order to protect the vital interests of the data subject, when he is physically or legally incapable of giving his consent.

In any case, regardless of which of the three hypotheses is considered, account must be taken of the fact that these are data that are particularly sensitive and subject to special protection, as the context of their processing could pose a significant risk for the fundamental rights and freedoms of the natural person concerned. The controller must take appropriate technical and organizational measures, taking into account technical progress, the scope, context and objectives of the processing, as well as the risks that may arise. He should also be able to demonstrate that the processing complies with the General Regulation.

In view of the above and on the grounds of Art. 58, para. 3, letter "b" of Regulation (EU) 2016/679, the Commission for Personal Data Protection adopted the following

#### OPINION

The publication of health information contained in medical documentation for the purpose of raising funds for treatment through groups on Facebook, constituting special categories of data within the meaning of Art. 9, § 1 of Regulation (EU) 2016/679 is lawful if it is carried out under the hypotheses of Art. 9, § 2, letters "a" (presence of explicit consent of the data subject), "c" (protection of the vital interests of the data subject, in cases of objective impossibility on his part to give his consent) or "e" (personal data are made public by the data subject).

#### MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

Downloads

Opinion of the CPDP on the application of Regulation (EU) 2016/679 in the collection of donations for treatment through groups on Facebook

[print](#)