Republic of Cyprus
The
OFFICE OF THE COMMISSIONER FOR PERSONAL DATA PROTECTION
Republic of Cyprus
The
OFFICE OF THE COMMISSIONER FOR PERSONAL DATA PROTECTION
No. Fac.: 22.20.001, A/P 152/2018
General manager
Ministry of Education and Culture,
Decision
Pursuant to article 58/2H8) et seq) of the General Data Protection Regulation (GDPR) (OJ 2016/679 (hereinafter "GDPR")
Electronic Message from the Director of Education "Update on the decisions of the Sub-Furniture Council of September 4, 2018 on
Education"
Educational Privilege System / SEP
A'1. Background - Facts: Following my letter of the same date dated September 5, 2018 as well as your letter dated September 19, 2018 and after receiving ten complaints from Public Education teachers (hereinafter the "complainants") against the Ministry of Education (hereinafter "the complainant" in its capacity as the controller of the SEP) on the occasion of the use of the Minister of contact details, i.e. the personal e-mail details of Public Education teachers, which were registered in the Educational Planning System (EPS), the purpose of which is the electronic processing of various administrative procedures in Public Education, for the purpose of sending the following email:
"Dear Teachers,
Subject: Update on the decisions of the Council of Ministers of September 4, 2018 on Education
In the context of the effort to remove the crisis that manifested itself in the field of education, with constructive actions and not with further aggravation of the climate, the President of the Republic wanting to once again send a message of goodwill and extend a hand of cooperation to Educational Organizations and

Iasonos 1, 2nd Floor 1082 NICOSIA / P.O. 23378, 1682 NICOSIA-CYPRUS, Tel. +357 22818456, Fax +357 22304565 E-mail: eoppiii55IotG@i3i3rGthIth^ioni.9onkhn, Hpr://www.
to all teachers, convened an extraordinary Council of Ministers today, September 4, 2018. Specific decisions were taken during the session, which are attached for easy reference. The specific decisions substantially differentiate the previous decision of the Council of Ministers of July 4, 2018, taking into account sensitivities expressed and requests submitted. It is the result of the intensive dialogue that took place recently between the President of the Republic, the Ministry of Education and Culture and the Educational Trade Union Organizations, on July 27, 2018 and August 23, 2018, adopting the proposals that were formulated in the meeting of August 23, 2018 and as these were further improved with the proposal made by the President of the Republic on August 30, 2018.
Acknowledging your multifaceted work, toil and contribution in the field of education and the selfless interest you show in upgrading our education system, as well as your anxiety and concern for the smooth start of the 2018-19 school year, I reiterate the readiness as, together and in a climate of consensus, we cooperate for the qualitative modernization of the Public School.

I hope that today's decisions will be seen in a similar spirit of goodwill and will create the conditions for a creative dialogue, which will not only further advance the Education Reform, but will also allow a host of other issues related to the operation of our education system to be effectively addressed. In this way, the State will be able to respond to the desire of tens of thousands of parents and students to receive quality education and to achieve learning results that will allow them to meet the demands of the modern era.
Dr. Kostas Hambiaouris Minister of Education and Culture".
A'2. Waiver Claims:
(a) Their e-mail address was registered in the SEP as part of the registration and activation of their account in said system.
(b) They have never previously received an electronic message from the defendant regarding any matter (administrative process or otherwise).
(c) The message was sent without first obtaining their consent.
2
(d) The content of the message referred to a political communication action which was intended to influence and/or shape opinion during the upcoming vote of the following day, i.e. September 5, 2018.
A.3. Comments regarding the sending of the above message / its content and confirmation of claims:
The email -
(a) was sent to all Public Education teachers including the complainants, (relevant confirmation from the defendant with the electronic message to my Office dated 5/9/2018),
(b) it was also sent outside working hours and/or operating hours of the public authorities and in any case outside the prescribed legal hours for processing the administrative procedures and/or tasks of the defendant, (never questioned),
(c) it was sent at a point in time when communication with the Ministry for the purposes of clarifications and/or submitting complaints was impossible. (Comment),
(d) it was sent a few hours before the referendum in which all the teachers of Public Education had been invited to place themselves with their vote negative or positive and to authorize in this way the leaderships of the Trade Union Organizations of which they are members to take strike measures , (never questioned),
(e) bears the signature of the Minister of Education and Culture, i.e. the political head of the defendant and not the General Director, who according to the service plan of her position becomes responsible, among other things, for the proper and effective organization, direction and supervision of activities of the Ministry in which he is placed, as well as the Departments or Services that fall under it, i.e. duties of an administrative nature. Comment: the signature by the political superior of the defendant and not by the General Director advocates and/or provides an indication regarding the pursuit and/or inclusion of said communication outside of the usual administrative procedures that the SEP was assigned to serve,
(f) the personal e-mail addresses of the teachers were obtained from the SEP (relevant confirmation by the defendant in his e-mail letter dated 5/9/2018),
(g) the operation of the SEP, according to all the evidence before us (all relevant previous correspondence on the occasion of relevant complaints from the
3
Trade Union Organizations of the teachers that concerned the questioning of the legality of the collection/processing and registration of sensitive personal data, e.g. medical certificates in the electronic system SEP as well as the relevant Notification submitted as well as the

letter of the daily. 19/9/2018), concerns and/or serves the purpose of processing administrative procedures such as management of applications for leave of absence / sick leaves, or management of transfer/placement requests concerning Public Education teachers,
(h) the information regarding the personal e-mail address of Public Education teachers is personal data in accordance with the interpretation attributed to the provisions of article 4(1) of the GDPR. The registration of this information in the electronic system is a necessary condition for the activation of the user's account and/or registration, i.e. every teacher in Public Education,
(i) the further and/or subsequent processing and/or use, by the defendant and employer of the data subjects, of the information concerning the personal e-mail address of the Public Education teachers, for sending to all teachers of Public Education including the complainants, electronic message as set forth above, served a purpose other than that for which the said data was originally collected. The obligation to assess whether this new purpose is consistent and/or compatible with the purpose for which the data were originally collected must be done by each data controller based on the criteria very aptly set by the GDPR in Article 6(4) .
The defendant, according to the letter dated 19/9/2018 does not appear to have carried out the evaluation in question, instead it considered the relevant processing (use of the data to send the electronic message) necessary for the fulfillment of a duty in the public interest to ensure that every teacher is informed about the Decision of the Council of Ministers of September 4, 2018.
B1. Legislative basis
(a) Relevant are the provisions of article 4(1) of the GDPR concerning the interpretation of the term personal data:
4(1) "personal data": any information relating to an identified or identifiable natural person ("data subject"); is the identifiable natural person one whose identity can be ascertained? directly or indirectly, in particular by reference to an identifier such as a name? in ID number, in location data, in

linear identifier or to one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question,
(b) One of the fundamental principles of the lawful processing of personal data but also of the entire legislative edifice of the protection of privacy and personal data is "the principle of purpose limitation" as set forth in the provisions of article 5(1)(b) and is explained in the provisions of article 6(4) of the GDPR:
"5(1). Personal data:
b) are collected for specified, explicit and lawful purposes and are not further processed in a manner incompatible with those purposes■ further processing for archiving purposes in the public interest or for scientific or historical research or statistical purposes is not considered incompatible with the original purposes in accordance with Article 89(1) ("purpose limitation"), and
6(4). When the processing for a purpose other than that for which the personal data have been collected is not based on the consent of the data subject or on Union law or the law of a Member State which is a necessary and proportionate measure in a democratic society to ensure the purposes referred to in Article 23 paragraph 1, the controller, in order to ascertain whether the processing for another purpose is compatible with the purpose for which the personal data is initially collected, takes into account, among others: a) any relationship

between the purposes for which the personal data have been collected and the purposes of the intended further processing,
b) the context in which the personal data were collected, in particular with regard to the relationship between the data subjects and the controller,
c) the nature of the personal data, in particular for the special categories of personal data processed in accordance with Article 9, or whether personal data relating to criminal convictions and offenses are processed in accordance with Article 10 ,
d) the possible consequences of the intended further processing for the data subjects,
e) the existence of appropriate guarantees, which may include encryption or pseudonymization.".
(c) Directly intertwined with the principle of purpose limitation is the principle of ("legality, objectivity and transparency"), which is
5
a necessary condition for the legalization of further use, in accordance with the provisions of article 5(1)(a):
"5(1). Personal data:
(a) are lawfully and legitimately processed in a transparent manner in relation to the data subject ("lawfulness, objectivity and transparency"),'.
(d) The following excerpts from recital no. 50 of the GDPR:
"... The legal basis provided by Union or Member State law for the processing of personal data may also constitute the legal basis for further processing. In order to ascertain whether the purpose of the further processing is compatible with the purpose of the initial collection of the personal data, the controller, if it meets all the requirements for the lawfulness of the initial processing, should take into account, among others: any links between of these purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of the data subject based on his relationship with the controller in terms of their further use - the nature of the personal data character1 the consequences of the intended further processing for the data subjects* and the existence of appropriate guarantees for both the initial and intended further operations
processing.......In any case, application should be ensured
of the principles set out in this regulation and, in particular, informing the data subject about these other purposes and about his rights, including the right to raise objections."
(e) The following excerpt from Opinion HVR 203 "Regarding the limitation of purpose" is relevant, which, although it predated the GDPR, the relevant analysis it deals with has been completely transferred to the GDPR as regards the principle of purpose limitation:
"777/5 3P91515 3/50 138 00086(^360068 iot Iith Miith. AttioTh 6(4) oi (iv rioroetha 03i3 Pgthsiop Pthrythop prtsniive 3 0G03a thothryop itotit Iith GthiuiGth What is the meaning of the word "infinity"? p(< thGoaiim iiiie !<vg riioirith.
2008:
3000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000001 TΓ
TOOOOΣ33IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII.
6
"2. Each control authority has all of the following remedial powers:
b) to address reprimands to the controller or processor when processing operations have violated the provisions of this regulation,
f) to impose a temporary or definitive restriction, including the prohibition of processing.

1
(g) Recital (148) of the GDPR is relevant
"In order to strengthen the enforcement of the rules of this Regulation, sanctions, including administrative fines, should be imposed for each violation of this Regulation, in addition to or instead of the appropriate measures imposed by the supervisory authority in accordance with this Regulation. In the case of a minor offence, or if the potential fine would impose a disproportionate burden on an individual, a reprimand could be imposed instead of a fine. However, due consideration should be given to the nature, seriousness and duration of the infringement, the willful nature of the infringement, the actions taken to mitigate the damage, the degree of responsibility or any other relevant previous infringements, the manner in which the supervisory authority was informed of the infringement, the compliance with the measures against the controller or processor, the observance of a code of conduct and any other aggravating or mitigating factor. The imposition of sanctions, including administrative fines, should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including effective judicial protection and due process."
(h) Equally relevant is the following excerpt from the Guidelines for the application and determination of administrative fines for the purposes of Regulation 2016/679 \NP 253:
"Recital 148 does not contain an obligation for supervisory authorities to always replace a fine with a reprimand in case of a minor infringement ("a reprimand could be imposed instead of a fine"), but provides for the possibility of substitution, after a specific assessment of all the circumstances of the case .
Recital 148 introduces the concept of 'minor offences'. Such breaches may constitute a breach of one or more of the provisions of the Regulation listed in Article 83(4) or (5). The assessment of the criteria in Article 83(2) may however lead the supervisory authority to conclude that in the particular circumstances, the breach p .x. it does not constitute a significant risk to the rights of the data subjects concerned and does not affect the essence of the obligation in question. In such cases, the fine may be replaced by a reprimand (however, not always).
(i) The provisions of Article 83(2) of the GDPR are also relevant and determine the manner of evaluation of the selection of the appropriate administrative sanction by the Supervisory Authority:
8
"83(2). Administrative fines, depending on the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in Article 58(2)(a) to (h) and Article 58(2)(j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following shall be duly taken into account:
a) the nature, gravity and duration of the breach, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered,
b) the fraud or negligence that caused the violation, c) any actions taken by the controller or performing the processing to mitigate the damage suffered by the data subjects,
d) the degree of responsibility of the data controller or processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32,
e) any relevant previous violations of the controller or processor,
f) the degree of cooperation with the control authority to remedy the breach and limit its possible adverse effects, g) the categories of personal data affected by the breach,

h) the way in which the supervisory authority was informed of the breach, in particular if and to what extent the data controller or processor notified the breach,
i) in the event that the measures referred to in Article 58 paragraph 2 were previously ordered to be taken against the controller involved or the processor in relation to the same object, the compliance with said measures,
j) the observance of approved codes of conduct in accordance with article 40 or approved certification mechanisms in accordance with article 42 and k) any other aggravating or mitigating factor resulting from the considerations of the specific case, such as the financial benefits obtained or damages avoided, directly or indirectly, from the infringement."
B 2. Commissioner's Reasoning and Conclusion:
After analyzing all the above elements including all the elements of the Case File on the basis of the facts and complaints of the data subjects, as presented before me and in compliance with the relevant legislation including the relevant legal documents for a better and more coherent interpretation of the provisions of the GDPR and after the legal analysis below I have come to the conclusion that:
9
B.2.1 The action of the defendant to use (by extracting them from the SEP and sending an e-mail) the personal e-mail details of all Public Education teachers, including the complaints, which the teachers themselves had registered in SEP for the purpose of activating their account on the SEP online electronic platform, the purpose of which is the electronic processing of various administrative procedures in Public Education, i.e. management of applications for leave of absence / sick leaves, constitutes further or subsequent processing in a manner incompatible with the original purpose of collecting the data and therefore the defendant acted in excess of the principles of purpose limitation and the principle of ("legality, objectivity and transparency"), as a directly interwoven principle (Article 5(1)(a) and (b)).
The above conclusion was based on a legal analysis based on the criteria for assessing the compatibility of the new purpose in accordance with the provisions of Article 6(4) of the GDPR as well as Opinion \/\/R 203:
a) any relationship between the purposes for which the personal data have been collected and the purposes of the intended further processing,
b) the context in which the personal data were collected, in particular with regard to the relationship between the data subjects and the controller,
c) the nature of the personal data, in particular for the special categories of personal data processed in accordance with Article 9, or whether personal data relating to criminal convictions and offenses are processed in accordance with Article 10 ,
d) the possible consequences of the intended further processing for the data subjects,
e) the existence of appropriate guarantees, which may include encryption or pseudonymization.".
"- Hypithic of the Hydrotherace of Hydro363 Immaculates of Rotopes Immunist Immaculates (Hydro868 Hydracel.
- iiith oiivhi ii nniiiiii iiiith rtgbopthiI athith ianv dthvi ooIIthotha aa iiith tvaeoinodiv 6Chrtthiviithi3 Oii)6 03I3 8yd]Ththi8 33 (o iiivit ytiiiithG y3b?
- (iith nviytb oi iiith rtT30P3i 03i3 3P0 iiib iterboi iiith iiiIiiithG rtooth33ir oi iiith 03(3 3ui>]bo(3;
- iiith 83ibry3G03 300rita 0/ sth OOPiGoiIthG io ThiI3yTTH ivitrG00638Iir 3P0 rtvnthpi 3ig youth itersoi o iiiv aviv 3uid]thoie.".
10
B.2.2 Evaluation - Legal Analysis:

(a) Regarding the relationship between the purposes of the initial collection and further processing, sending an electronic message to all teachers, I consider that the time of sending the message (outside working hours), the person signing the electronic message (Minister as a politician supervisor of the defendant), as well as the content of the message and especially the last paragraph, which appears in bold letters (exhorting teachers to act in the upcoming vote in a certain way and in favor of the positions/politics of the defendant) suggestive and /or reduces a political character to the message, which excludes and /or is not related to the purposes of the initial collection of the data (registration in the SEP and processing of administrative procedures such as sick leaves).
(b) The data was initially collected on the basis of the relationship of the defendant as an employer with the teachers including the complainants, while subsequently it has been used on the basis and for the purposes of a communication with political expressions, which goes beyond the employment relationship.
(c) The fact that the teachers had never before received an email from the defendant other than the initial email for the purposes of activating their account as users in the SEP, makes it remote and impossible that the teachers had reasonable expectations and/or expected that their personal e-mail data would be processed by the defendant for sending said e-mail.
(d) The nature of the teachers' personal data that was the subject of further and/or subsequent processing related to their personal e-mail address, i.e. data that does not fall under the definition of special categories and namely sensitive data.
(e) With regard to the potential impact and/or consequences of further processing on the complainants, it has become clear that the relevant further processing has caused some disturbance to the complainants given the point in time at which it took place and the heteronormative relationship as a dependency relationship between the as an employer and the complainants as employees.
(f) The absence of appropriate guarantees and a transparent process in order to ensure fair processing and minimization of the impact was evident considering that there was no relevant prior information regarding the impending further and/or subsequent processing.
11
C.1. Corrective powers of the Commissioner - Warning - Reprimand (Article 58(2)(b) and (f) GDPR
C.1.1. Mitigating factors taken into account for purposes of choosing the appropriate and proportionate administrative sanction in the circumstances:
In light of the above conclusion (See par. 2B.1) of this Decision and after taking into account the following circumstances as mitigating factors-
(a) non-repeated and/or limited-duration infringement (sending a single email);
(b) a limited number of complaints submitted to my Office (ten);
(c) did not involve the use of special categories of personal data / sensitive data,
(d) there are no relevant previous violations of the defendant and his overall degree of cooperation with my Office is considered satisfactory,
(e) no material damage was caused to the complainants, The excerpt from the Guidelines for the application and determination of administrative fines for the purposes of regulation 2016/679 \L/P 253 is relevant:
"The processing of personal data may pose risks to the rights and freedoms of the natural person, as stated in recital 75:
"Risks to the rights and freedoms of natural persons, of varying probability and severity, may arise from the processing of personal data which could lead to physical, material or non-material damage, in particular when the processing can lead to discrimination, misuse

or eavesdropping, financial loss, reputational damage, loss of confidentiality of personal data protected by professional secrecy, illegal de-pseudonymization, or any other significant economic or social disadvantage;"
(f) the relevant processing was communicated directly to my Office by the defendant
C.1.2. Aggravating factors taken into account for purposes of choosing the appropriate and proportionate administrative sanction in the circumstances:
12
(a) The breach concerned a large number of data subjects (all teaching members of Public Education);
(b) The defendant did not take any compensatory measure for the purpose of mitigating the impact and/or consequences of the violation nor did it admit the violation of the relevant provisions, and
(c) His defense through the letter dated 19/9/2018 and the legal points he raised were deemed insufficient.
C.2 ORDINANCE
After taking into account all the above factors and respecting the powers granted to me by the GDPR (Articles 58(2)(b) and (f), and 83(2) and (5) as well as the applicable powers granted to me additionally by the provisions of the national Law pursuant to the above Regulation, i.e. on the Protection of Natural Persons Against the Processing of Personal Data and the Free Circulation of such Data, Law of 2018, (Law 125(I)/2018), (article 32(3)) by virtue of which:
"32(3) An administrative fine imposed on a public authority or public body and related to non-profit activities may not exceed two hundred thousand euros (€200,000)".
DECISION respecting my conclusion and the evaluation of the above factors as addressed to the defendant EPIPLIXI by virtue of the provisions of article 58(2)(b) regarding the violation of the provisions of article 5(1)(a) and (b) since I consider that the breach does not constitute a significant risk to the rights of the data subjects concerned. Also in compliance with article 58(2)(f) I issue a PROHIBITION with the aim of definitively limiting the processing of data relating to the personal e-mail of all Public Education teachers by the defendant for a purpose or purposes other than the processing of administrative procedures of the type license application management
L 'or move/placement request management.
Personal Character
_____' ., of late ones
NICOSIA, September 21, 2018
TO
13