

The Hessian Commissioner for Data Protection and Freedom of Information presented its 47th activity report on data protection and its 1st activity report on freedom of information

06/24/2019

Fotolia\_191229458\_S.jpg

© StockPhotoPro fotolia.com

With the Hessian Data Protection and Freedom of Information Act (HDSIG) coming into force on May 3, 2018, the Hessian data protection officer was also assigned the task of freedom of information officer. In this function he is also obliged to report to the state parliament and the state government in accordance with § 89 HDSIG, so that there is now a double report on the topics of data protection and freedom of information.

In the combination of data protection and freedom of information, Hessen is breaking new ground. The regulations on freedom of information are shaped by a modern understanding of informational self-determination. The extension of informational self-determination in the area of information access strengthens the legal status of citizens, but does not make this a means of state control. The Hessian legislator has therefore refrained from using the transparency principle as a civil control instrument over the administration, according to the Hessian Commissioner for Data Protection and Freedom of Information (HBDI) Prof. Dr. Michael Ronellenfitsch.

The year 2018 was characterized by the preparation for the new legal situation with the entry into force of the General Data Protection Regulation and its implementation after May 25, 2018. The data protection report thus deals with questions according to both old (until May 24, 2018) and new (from May 25, 2018) May 2018) Legal situation. The submissions on the new legal situation overwhelmed the authorities of the HBDI with a flood of inquiries that could hardly be dealt with. At times, the agency's employees felt like they were working in a call center. Compared to the previous year, the number of complaints and consultations increased from 7,997 to 12,736. The number of data breaches to be reported has also risen sharply. This is also due to the fact that, contrary to the old legal situation, since the GDPR came into effect, state and local public authorities have also had to report data breaches to the data protection and freedom of information officer.

Due to the many new questions, the employees of the HBDI were increasingly required to train and advise committees in business and administration.

The European data protection reform has also made it necessary to adapt special national laws. In addition to the Hessian

data protection law, the Hessian law on public safety and order (HSOG) was also amended. The HBDI accompanied this legislative process. In the future, the HBDI must be consulted when using new technical methods for data analysis (§ 25a HSOG). He is obliged to regularly check the use of covert and intrusive measures (§ 29a HSOG).

Individual topics:

Inadmissible data transmission to the Protestant church tax office A practice evidently practiced in a large number of municipalities to transmit the data of all property tax A-liable to the Protestant church tax office to determine the local church tax, regardless of whether and which denomination the taxpayers belong to, has been declared inadmissible by the HBDI. The church tax office had received data from citizens for whom it was unable to set a church tax. (3.1.1)

There are also alternatives to WhatsApp. Many teachers at Hessian schools give the impression that communication with parents and students is almost impossible without WhatsApp. It is not taken into account that the use of WhatsApp generates personal data from all users and their contact details (telephone book!), which is transferred to the USA or to Facebook. Consent from all contact persons of WhatsApp users will hardly be available. There are alternative messenger services that do not have this serious disadvantage. The HBDI found that many teachers do not observe the Ministry of Education's guidelines on the use of social media. There is no legal basis for using WhatsApp for school work (4.4.1).

No obligation to sign information sheets If data is collected about a person, the person responsible for processing must inform the person concerned about which data is being processed and for what purposes (Art. 13 DS-GVO). In this context, many doctors demanded that patients acknowledge this information with their signature. The receipted document was then added to the medical records. If the patient refused to sign, numerous doctors refused further treatment. This is not required by the GDPR and ignores the meaning and purpose of the information according to Art. 13 GDPR. Art. 13 DS-GVO primarily serves the information right of the persons concerned - here the patient - and not the documentation obligation of the doctors (4.6.2). (see also the decision of the DSK of September 5, 2019)

Data protection in clubs The uncertainty among club representatives, association officials and club members was particularly great after the GDPR came into effect. Contrary to the general opinion, the GDPR has only led to really substantial changes in the data protection requirements of the clubs in a few areas. Rather, the GDPR has made many responsible persons aware of data protection requirements that had previously been neglected. Clubs therefore have a greater need for adjustment. This is not based on new legal regulations, but on the omissions of the past. To support the clubs, the HBDI has provided information

on its website on data protection issues in connection with the processing of personal data in clubs (4.7.4).

**Photos of employees** Since the GDPR came into force, the legality of taking photos and their use has been discussed particularly frequently. This applies in particular to employment relationships. The publication of photos of employees requires the voluntary written consent of the employees concerned. According to the GDPR, however, consent given can be revoked at any time. Since the revocation only takes effect from the time of the declaration, a publication that has already taken place cannot be undone. It should therefore already be informed of the exact conditions of image use when consent is obtained (4.9.1).

**Links:** Here you can find the 47th activity report of the Hessian Commissioner for Data Protection and Freedom of Information

**Contact for press representatives** Press spokeswoman: Ms. Maria Christina Rost Press and public relations: Telephone: +49

611 1408 119 The Hessian Commissioner for Data Protection and Freedom of Information P.O. Box 316365021 Wiesbaden

Print Send as email