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OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № RD-18-10 / 2018

Sofia, November 22, 2018

SUBJECT: issuing an opinion on applications for access to public information

Commission for Personal Data Protection (CPDP, Commission) composed of: members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on 21.11.2018, considered a file with registration № RD-18-10 / 2018 by Mr. Ivan Markov - Secretary General of the Ministry of Transport, Information Technology and Communications (MTITC), on issues related to the provision of information containing personal data required under the Access to Public Information Act (APIA). MTITC has received an application for access to public information with a request to submit a "list of the three names of all advisers to the Ministers of Transport, Information Technology and Communications for the period 01.01.2008 - 03.09.2018" and information for the period in which the persons described were advisers to the Ministry of Transport, Information Technology and Communications'.

In this regard, Mr. Markov turned to the CPDP to express an opinion on whether the provision of the requested information is in accordance with the General Regulation on Data Protection.

Legal analysis:

The Law on Access to Public Information regulates public relations related to the right of access to public information, as well as the re-use of information from the public sector.

The legal definition of the term public information is given by the provision of Art. 2, para. 1 of the APIA, namely, public is the information that is related to public life in the Republic of Bulgaria and gives citizens the opportunity to form their own opinion about the activities of persons required by law. The information thus determined may be contained in documents or other

material carriers, created, received or stored by the subjects obliged under the APIA - the state bodies, their territorial units and the bodies of local self-government in the Republic of Bulgaria. According to the legal definition, the requested information in the presented case is public information processed by MTITC, in its capacity of an obligated subject under Art. 3 of the APIA, namely a state body.

In its practice, the Constitutional Court of the Republic of Bulgaria also discusses the issue with persons holding senior public positions. Such a social status of a person puts him in a position of lower protection in relation to his personal data. The reason for this can also be found in Decision № 4 of 26 March 2012 on Constitutional Case № 14/2011, which confirms the interpretation of the balance between the two rights adopted in 1996 - in public figures the protection of personal data is "much lower" than the protection of others.

According to the provisions of the Administration Act, namely in Art. 28, para. 4 it is reflected that the activity of the political cabinets of the Prime Minister and the ministers is supported by advisers on certain issues, who cannot perform management functions, by experts and by technical assistants.

In par. 2, para. 1, item 4 of the Additional Provisions of the Anti-Corruption and Confiscation of Illegally Acquired Property Act (LCONPI) it is reflected that the members of the political cabinets outside the ones indicated in Art. 6, para. 1, the advisers and experts to the political cabinets and respectively shall be equated to persons holding senior public positions within the meaning of this law. Therefore, advisers to the Ministers of Transport, Information Technology and Communications enjoy reduced protection under the law.

In its long-term practice, the CPDP considers the data of persons holding senior public positions within the meaning of the LCONPI as data of public figures whose protection is "much lower" than the protection of other persons. The same is reflected in the provisions of the Law on Amendments to the Personal Data Protection Act, where it is said that when processing personal data the controller takes into account whether the data subject is a person holding a position under Art. 6 of the LCONPI.

Article 4, para. Article 1 of the Regulation defines personal data as "personal data" means any information relating to an identified or identifiable natural person ("data subject"); a natural person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more characteristics specific to the physical, physiological, genetic, mental, intellectual, economic, the cultural or social identity of that individual.

From what has been said so far, it should be concluded that a list of the three names of all advisers to the Ministers of Transport, Information Technology and Communications for the period 01.01.2008 - 03.09.2018 and information about the period in which the described persons were Advisors in the Ministry of Transport, Information Technology and Communications should be considered as public information and should be provided under the procedure for access to public information of the Law on Access to Public Information.

In connection with the above and on the grounds of Art. 58, para. 3 of the General Data Protection Regulation, the Commission for Personal Data Protection stated the following

OPINION:

A list of the three names of all advisers to the Ministers of Transport, Information Technology and Communications for the period 01.01.2008 - 03.09.2018 and information for the period in which the described persons were advisers in the Ministry of Transport, Information Technology and Communications should be considered public information that does not constitute personal data protected under the General Data Protection Regulation.

MEMBERS:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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