

06.11.2020

Personal rights must be protected in the case of certificates for exemption from the mask requirement - data protection officer issues a "warning" to the school supervisory authority Citizens who cannot wear mouth and nose protection for health reasons are increasingly having to submit detailed medical certificates containing sensitive health data. According to the State Commissioner for Data Protection and Freedom of Information (LfDI) of Rhineland-Palatinate, this should be viewed very critically in terms of data protection law. In addition to schools, the question of the requirements for exemption from the mask requirement also affects restaurants, local public transport, workplaces and other areas. Dozens of parents of students have already contacted the LfDI to complain that the certificates that have been used up to now are no longer accepted in the schools. In this context, the LfDI issued a "warning" against the Rhineland-Palatinate school supervisory authority, the Supervisory and Service Directorate (ADD) based in Trier, due to the illegal practice. The state data protection officer Professor Dieter Kugelmann says: "The ADD encouraged the schools to request medical information such as diagnoses for exemption from the mask requirement. From our point of view, this procedure should be evaluated extremely critically in terms of data protection law, since there is a lack of a viable legal basis for requesting such qualified certificates. According to the Corona Control Ordinance, only the submission of a mere Medical certificate can be requested without this having to contain more detailed reasons such as diagnoses. It can therefore also remain open whether the request for medical content to be exempted from the mask requirement should be regulated in a state ordinance at all. Currently, the authority to request The provision of qualified certificates containing health information is not legally specified. The General Data Protection Regulation places health data under special protection; it provides for a fundamental ban on the processing of health data, which may only be breached if certain exceptional circumstances exist. In our opinion, there is currently no legal basis on the basis of which schools and school supervisory authorities could request extensive medical information in connection with the exemption from the mask requirement."Kugelmann emphasizes:"Even in times of a pandemic, data protection rights must not be undermined. The processing of health data is a sensitive information process. The transmission and processing of data that is subject to medical confidentiality represents a serious encroachment on fundamental rights that requires clear legal legitimacy. A transparent legislative procedure in which the suitability and proportionality of the encroachment can be discussed would have to be legal basis to be created. Precautions can also be taken in this against inadmissible circumvention

of the mask requirement."A general suspicion of medical certificates of compliance is not acceptable in terms of data protection, since a fundamental questioning of the informative value of general medical certificates has no basis in the legal system and is also not compatible with the professional regulations. After all, it is unacceptable under data protection law without further legal regulations that the health information of the data subject has to be disclosed to numerous people and bodies who are not subject to any special confidentiality obligation.

return