

No. Fac.: 11.17.001 – AP 103/2018

November 7, 2018
Dr. Andreas Neophytou
Executive Director
Archbishop Makarios III Hospital,
1474, Nicosia

DECISION

COMMISSIONER FOR PROTECTION OF PERSONAL DATA

SUBJECT: Loss of medical file

I refer to the letter sent by my Office dated 07/05/2018, in relation to a complaint/complaint submitted by Ms. XPS (hereinafter the "Complainant/Complainant"), regarding his non-satisfaction right of access to the personal data concerning her from the Archbishop Makarios III Hospital (NAMIII - henceforth "Kathou the complaint") and specifically to receive a copy of the personal medical record her folder.

2. In my Office's letter dated July 05, 2018, I gave the right to the Defendant of the complaint to state in writing the opinions, positions and anything else it considers relevant to the complaint/complaint by 19/07/2018 and at the same time I cited the data as it emerged from the complaint/complaint as follows:

- the Complainant/Complainant exercised a right of access to the doctor her file, sending the complaint to Kathou, letter dated 28/12/2016 for which he has not received an answer until today.

- the lawyer of the Complainant/Complainant, on the same subject, sent two (2) letters dated 26/04/2017 and 13/02/2018, respectively, for which and again he has not received any response from the Complainant.

3. The Defendant filed the complaint in a reply letter dated 12/07/2018, which received on 23/07/2018 and which is signed by, Supervisor - Inspector O.K.P. states the following:

- the Complainant/Complainant had spoken several times with a Supervisor - Inspector and was aware that part of her medical file, which she kept at office of Dr. XX, it was lost,
- Dr. XX kept the file of the Complainant/Complainant to arrange an appointment for surgery,
- the Complainant/Complainant was informed about the developments regarding her finding her file by both the Warden - Inspector and a friend of which the complaint is being made to Kathou, with her own consent,
- the last time the Supervisor - Inspector had contact with her Complainant/Complainant, was on and/or around April 2018, when with her in charge of Outpatient Clinics, they took from the Office of Dr. XXX, the new one medical file opened for the Complainant/Complainant
- a meeting was held between Dr. XPSPS, Director of NAMIII, and her Complainant/Complainant where she was told that she will have every possible

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facilitation by the Defendant of the complaint about her medical examinations due to the loss of her medical file. Present at the meeting were Foreman - Inspector, the Complainant/Complainant's husband and particulars of Dr. XPSPS

- several attempts were made on the part of the Complainant to find the Complaint folder.

4. In my reply letter dated 07/30/2018 to Kathou complaint and having taken into account the provisions of articles 23(1)(f), 23A and 25(1) of Law 138(I)/2001 On the Processing of Personal Data (Protection of the Individual), which was in force, prima facie I found breach of the obligations of the Complainant as responsible processing and I asked him to state any reasons why he thinks so

that he should not be fined up to five thousand euros for his non-compliance/response to the examination of the complaint.

5. I received a reply letter from the Complainant, dated 12/09/2018, which was received on 18/09/2018 and which bears a signature, NAMIII File Manager and states the following:

- superhuman efforts were made both inside and outside the Archive to the medical file of the Complainant/Complainant was found but unfortunately this was not done,
- in the last two years patient complaints about the right of access are almost zero and this can be confirmed by the person in charge patient complaints, and
- such as an on-site visit to the Archives, so that take own knowledge as an Office of the conditions, means and manner which the Archive is working, to get to know the people and their knowledge and maybe with our own contribution and knowledge, to achieve better results than existing.

6. Having regard the above, I note that I visited and met with Dr. XPSPS, Director of NAMIII, in an earlier time and place, to be informed of his progress computer system and for the security and protection measures of patients' medical records.

6.1. During my visit I was informed that:

- procedures were activated regarding the circulation of medical files and began the operation of the system for recording the movement of files,
- began the electronic storage of radiographs,
- computerized recording of lost files was planned system,
- measures and levels of accessibility to the medical record were defined,
- that no one can have remote access (from computers except hospital) in the system and
- signs were placed stating that it is strictly forbidden to files are found in the possession of patients.

7. For this purpose, I also issued a relevant Directive dated 11/10/2017, with number 4/2017, which is posted on the website of my Office, with instructions to the controllers (Ministries/Departments/Services) of Public Sector and Organizations of the wider Public Sector for the exercise Article 83, in addition to or instead of the measures referred to in this paragraph, depending on the circumstances of each individual case..."

8.6. In article 83 of General Regulation 2016/679, to which reference is made in the general conditions for imposing administrative fines, the following are mentioned:
"7. Subject to the remedial powers of the supervisory authorities pursuant to

Article 58 paragraph 2, each Member State may determine the rules for the whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State...”

8.7. In connection with the above, the provisions of article 32 of the Law, me give the right, as Commissioner, to impose an administrative fine in case that I find a violation, by a public authority or a public body, which does not may exceed two hundred thousand euros.

9. In addition, in the past the Personal Data Protection Commissioner Character based on the competence granted to him by articles 23(f) and 25 of Regarding the Processing of Personal Data (Protection of the Individual), Law 138(I)/2001 imposed a fine of €3,000 (three thousand euros) on Archbishop Makarios III Hospital for violation of Article 10(3) thereof Law due to the exhibition on a bench in a corridor of the Hospital results of sensitive patient health data and specifically of results of clinical laboratory analyzes in September 2010.

10. It appears that measures have been taken that improve the data protection of medical records of the patients at NAMIII, and that actions are taken daily improvement and harmonization with the provisions of the Regulation and Legislation, but these measures need further improvement since they have not arrived to the desired extent.

10.1. On the facts of the complaint/complaint under consideration, there is resulting in a breach of the obligation of the Complainant, under his capacity as a data controller, to take the appropriate measures for the data security and its protection against accidental or unlawful destruction or by accidental loss.

11. Based on the above and based on the powers granted to me by the provisions of article 58(2)(i) of the Regulation and article 32 of the Law, after I received considering the facts of the complaint, the mitigating factors which were mentioned, the fact that there were earlier decisions as well as the sensitive of the data contained in the lost folder DECISION as in the capacity of the Complainant as data controller, impose a fine of €5,000 (Five Thousand Euros).

Irini Loizidou - Nikolaidou
Data Protection Commissioner
Personal Character