

Publication of Activity Report 2022

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The Hamburg Commissioner for Data Protection and Freedom of Information presented his 2022 activity report today and then handed it over to Carola Veit, President of the City Council, for the first time.

The report makes it clear that the digitization of the public sector in Hamburg is picking up speed, as is also shown by a record number of audits and consultations with public bodies by the HmbBfDI in the 2022 reporting year. At the same time, the challenges posed by the digitization strategy of the European Union and the digital political paradigm shift towards the use of large amounts of data in the interest of society, especially for research purposes, are increasing. In this context, the federal government's recently presented plans for a Health Data Utilization Act are of particular importance. Data use instead of data economy, objection instead of consent: the focus of data protection will change, data use and access concepts must be checked and evaluated, data protection guarantees must be considered from the outset. Thomas Fuchs: "Protecting the rights of the affected citizens and at the same time raising the potential of data use, we are happy to face this challenge."

In its 2022 activity report, the HmbBfDI addresses the following topics, among others:

Hacker attacks continue to increase

With 807 data breaches, of which 227 were hacker attacks, a new record high for reportable data protection violations was reached by Hamburg companies and institutions in 2022. What is striking is the increasing intensity of cyber attacks, some of which penetrate deep into IT systems and can damage organizations over a long period of time. "IT security remains a highly relevant topic. Facilities that are not part of the critical infrastructure must also attach importance to high security standards in order to protect their systems and personal data. In 2023, the HmbBfDI will examine and accompany companies and institutions in this context even more specifically," says Thomas Fuchs.

Control of police databases

In 2022, the HmbBfDI fulfilled its new legal task (§ 73 HmbPolDVG) of systematically checking the police databases in which

the results and procedures of covert and intervention-intensive measures (e.g. home surveillance, telephone surveillance or undercover investigations) are stored. The subsequent reviewability of these measures by an independent authority is a constitutionally required balance of the encroachment on fundamental rights.

Unfortunately, it had to be established that the Hamburg police did not comply with the obligation under § 64 HmbPolDVG to log these interventions separately and thus enable an effective review of the processes. The processes therefore had to be recorded manually and could therefore only be checked to a limited extent and with a considerable amount of time for both sides. This deficient documentation is unacceptable. The HmbBfDI is therefore accompanying the upcoming change process. In terms of content, deficits were found in particular in the subsequent notifications of those affected by covert measures. Comparable deficiencies exist in the labeling of data obtained from the above measures. Such data must be specially marked in the file systems in order to make the source from which they were obtained transparent (§ 65 HmbPolDVG). The police are currently not fulfilling this obligation. Even if the law provides for generous transitional periods here, this is not a good situation. Thomas Fuchs: "It is not data protection that prevents digitization, but poor digitization that hinders data protection.

Implementation deficits in digitization lead to poor data quality, low transparency and ultimately to poorer usability of data."

This is also shown by a test case at the Hamburg public prosecutor's office. Due to an error in the automated delivery of notices of hiring, the immigration authorities were not informed, or only very late, whether preliminary investigations against registered fellow citizens of foreign origin had been discontinued. As a result, the foreigners files often contain incomplete or incorrect data. Since tens of thousands of cases are affected, this is a serious system error. The original problem has since been resolved, but how this error-prone old system will be replaced in the medium and long term is not yet foreseeable. The talks with the public prosecutor's office are fully cooperative, but unfortunately so far without a concrete solution perspective.

Fines against test centers

In a focus analysis of test centers that collected a large number of sensitive health data during the Corona Pandemic, the HmbBfDI uncovered abuses in data processing in some cases, which in some cases led to the illegal disclosure of test results.

Fines were therefore imposed in four cases.

Cookie Banner

With the amendment of the HmbDSG in January of this year, the HmbBfDI was given responsibilities and supervisory powers to monitor the TTDSG. This also applies to checking the so-called cookie banners, which can be found in almost every online

service. Already last year, the HmbBfDI, together with other supervisory authorities, achieved that the legally required equivalent rejection alternative at the first level (so-called Reject All button) is increasingly becoming the standard. Extensive cookie-based tracking often takes place despite the rejection of unnecessary cookies, which means that the user's decision to refuse is unlawfully ignored. In this context, the HmbBfDI will initiate the first proceedings against Hamburg companies in March.

Meta Platforms Inc. and Europe

In 2022, several major European lawsuits against Meta Platforms Inc. products came to a conclusion. Fines totaling 800 million were imposed last year as a result of binding decisions by the European Data Protection Board, in which the HmbBfDI was closely involved. A fundamental decision in a Facebook case is still pending in 2023. The deficits in data protection law on Facebook, Instagram and WhatsApp, especially when using personal data for advertising purposes, are thus determined at the highest European level of data protection supervision. In this respect, it remains problematic that government agencies believe they must continue to use Facebook for their public relations work.

The report can be downloaded here (PDF).

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