

Registration code 70004235 FOR INTERNAL USE OF THE INSTITUTION Information holder: Data Protection Inspectorate

Note made: 18.06.2020 Access restriction applies until the decision comes into force Basis: AvTS § 35 paragraph 1 point 2

PRESCRIPTION-WARNING in public information matter no. 2.1-3/20/994 Issuer of the injunction Chief Inspector of the Data

Protection Inspectorate Elve Adamson Time and place of issuance of the injunction 18.06.2020 in Tallinn Information holder

Jõelähtme Municipal Government address: Postijaama tee 7, Jõelähtme küla e-mail address: kantselei@joelahtme.ee Person

in charge of information holder Municipal secretary RESOLUTION: On the basis of § 45 subsection 1 point 1 and subsection 2

of the Public Information Act (AvTS), § 51 subsection 1 points 3 and 4 and § 751 subsection 4 of the Government of the

Republic Act, I issue a mandatory injunction to the information holder to comply with: 1. Because of the objection decision

made by the Data Protection Inspectorate on 30.04.2020 - point 2b of the resolution of the injunction has not been fulfilled

properly, then the Jõelähtme Municipal Government must: a) re-examine point 2 of the request for information registered in the

Jõelähtme municipality's document register on 14.02.2020 and point 2b of the resolution of the Data Protection Inspectorate's

injunction dated 30.04.2020 and find out whether and how much information requested by the request 70 of the contracts

(since 9 contracts have been issued) contain objection e information requested by the sender; b) issue the requested contracts

to the objectors or refuse to issue them, if there is a legal basis for this. In case of refusal, the legal basis must be cited and the

refusal must be justified. 2. properly fulfill point 2b of the order 2.1-3/20/994 of 30.04.2020 no later than 03.07.2020. According

to § 52 of AvTS, the information holder must take measures to comply with the order within five working days after receiving

the order and notify the Data Protection Inspectorate. REFERENCE FOR DISPUTES: This order can be challenged within 30

days by submitting either: - an appeal under the Administrative Procedure Act to the Director General of the Data Protection

Inspectorate, or - an appeal under the Administrative Court Procedure Code to the administrative court (in this case, the

appeal in the same matter cannot be reviewed). Challenging a precept does not stop the obligation to fulfill it or the

implementation of measures necessary for fulfillment. WARNING: If the information holder fails to comply with the Data

Protection Inspectorate's order, the Data Protection Inspectorate may contact the higher-ranking institution, person or entire

party of the information holder to organize official supervision or initiate disciplinary proceedings against the official. (AvTS § 10

subsections 1 and 4, § 53 subsection 1). WARNING: If the injunction has not been complied with by the set deadline, the Data

Protection Inspectorate will impose a fine of 3,000 euros on the addressee of the injunction on the basis of § 51 (3) of the

Public Information Act. A fine may be imposed repeatedly - until the injunction is fulfilled. If the recipient does not pay the penalty, it will be forwarded to the bailiff to start enforcement proceedings. In this case, the bailiff's fee and other enforcement costs are added to the enforcement money. FACTUAL FACTS: 1. On 30.04.2020, the Data Protection Inspectorate issued an objection decision and injunction-warning No. 2.1-3/20/994 to the Jõelähtme Municipal Government, in point 2 b of the resolution of which the inspection obliged the Jõelähtme Municipal Government to find out the information requested in point 2 of the Jõelähtme Municipality and the developers following the detailed planning regarding the contracts for the transfer of the obligation to build roads and facilities in the period May 2016 - December 2019, how many of the list of documents forwarded to the inspectorate (out of 79 documents) contain the information requested by the objector. If there are many such documents and the municipal government refuses to fulfill the request for information due to the large volume, then it is necessary to explain to the complainant what the large volume consists of and how it prevents the institution from fulfilling its tasks. 2. In the 11.05.2020 response to the execution of the injunction, the Jõelähtme Municipal Government stated that the reasoned part of the decision of AKI 30.04.2020 shows that the information requesters have requested specific contracts, quoted in the contention submitted by the information requesters in the text of the decision, which are titled as the transfer of the obligation to build roads and facilities according to the detailed plan contract. The municipal government forwards the 9 contracts in question, with which the municipal government considered point 2 b of the objection decision-injunction resolution to be fulfilled. 3. On 13.05.2020, the objectors forwarded a memorandum to the Data Protection Inspectorate, in which they found that the Jõelähtme Municipal Government, in fulfilling the request for information with such an arbitrary interpretation, according to the information requestors, has distorted the prescription in the objection decision p 2 (b) and it does not correspond to what was asked in the information request. The holder of the information has not contacted the information requesters, it is unknown how many of the list of documents forwarded to the inspectorate (out of 79 documents) contain the information requested by the objectors. Please check whether the Jõelähtme Municipal Government has complied with the order of the Data Protection Inspectorate of 30.04.2020 p. 2 (b) of 11.05.2020 in the case of public information No. 2.1-3/20/994 or whether there is a violation. 4. On 22.05.2020, the Data Protection Inspectorate made an inquiry to the Jõelähtme Municipality regarding improper compliance with the injunction EXPLANATION OF THE INFORMATION HOLDER: On 22.05.2020, you submitted a request regarding compliance with the injunction on 30.04.2020 (injunction-warning no. 2.1-3/20/994) and asked to respond by June 1, 2020 to two to an additional question. The Jõelähtme Municipal Government

(hereinafter: the municipal government) has not reviewed and analyzed all 79 contracts in the light of information requesters' requests. As the municipal secretary explained to the representative of the Data Protection Inspectorate over the phone, the municipal government signs contracts for the construction of publicly used roads, landscaping and infrastructure objects (hereinafter: infrastructure) necessary for the realization of detailed plans (hereinafter: DP) in three different stages. DP at initiation, adoption and establishment stage. Almost without exception, in all DP initiation agreements, it is agreed that the person interested in preparing the DP will build the necessary infrastructure for the realization of the DP from its own funds. This is regardless of whether it is known at the initiation stage that it is necessary to build out the infrastructure for the realization of the DP or not. This is due to the fact that the initiation agreement is fixed as a procurement document in the framework procurement contract for the DP technical preparation state procurement, and because of this its content is not changed as a rule. At the same time, it is important to understand that in the DP procedure, as a rule, infrastructure development agreements are concluded with interested parties, moving from abstract obligations to more and more precise obligations, no later than the moment of establishing the DP. E.g.: upon initiation, it is agreed that all infrastructures planned with the DP or necessary for its realization will be built by the interested party; upon acceptance, the person's construction obligations regarding a specific street and rainwater ditches and the transfer of the land to serve the street to the local government are agreed upon; upon establishment, a notary is visited and a preliminary agreement is signed in the required form for the transfer of the land to be distributed from the DP area to the local government after the establishment of the DP. At the same time, there are also situations where, as part of the DP procedure, agreements are made with landowners remaining in the planning area (who may not be interested in the preparation of the DP) before the establishment of the DP, to transfer an existing private road or publicly used private road to municipal ownership, without transferring the obligation to build the road. For example, the road may already exist in a suitable form, or a third party undertakes to build the road, or the obligation to build the road is not transferred to a non-administrative person by contract. For example, in a situation where the area is reserved for the construction of a light traffic road for the future. In general, it is not possible to get an overview of the obligations imposed on a person interested in drawing up a DP by a specific contract without looking at the explanatory letter and drawings of the DP. Therefore, in order to review the 79 contracts in the context of the information requesters' request, all the materials of the DP procedure, within the framework of which the specific infrastructure contracts have been concluded, should also be reviewed at the same time. According to the municipal government, specific, already documented information

can be requested during the request for information. If the fulfillment of a request for information requires the holder of the information to further systematize and analyze the information and document new information based on this, such a request for information is considered a request for clarification, and the response to it is regulated by the Act on responding to notices and requests for clarification (AvTS § 23 subsection 2 paragraph 5). Therefore, the municipal government has not reviewed and analyzed all 79 contracts in the light of the information request, and the information requesters have not requested this in their information request, nor has the Data Protection Inspectorate obliged in its order. In the order of 30.04.2020, the Data Protection Inspectorate obliged the following: to re-examine the part of the information requests of the objectors' appeal of 13.02.2020 and to clarify the requests for information in point 2 of the request for information regarding the agreements for the transfer of the obligation to build roads and facilities according to the detailed planning concluded between Jõelähtme municipality and the developers in the period May 2016 - December 2019 , how many of the list of documents forwarded to the inspection (out of 79 documents) contain the information requested by the objector. If there are many such documents and the municipal government refuses to fulfill the request for information due to the large volume, then it is necessary to explain to the objectors what the large volume consists of and how it prevents the fulfillment of the tasks assigned to the institution. The municipal government got acquainted with the order of the Data Protection Inspectorate dated 30.04.2020 and reviewed the request for information on 13.02.2020. The injunction cites the circumstances with which the information requesters were not satisfied, i.e. which documents they wanted to receive. Investigating the above-mentioned appeal of the information requesters in the light of the circumstances that the persons had disclosed to the Data Protection Inspectorate, the municipal government came to the conclusion that the interest of the information requesters is to obtain the specific 9 contracts mentioned in the injunction, of which the municipal government was not previously aware. The municipal government forwarded the 9 contracts in question to the information requesters, thereby complying with the Data Protection Inspectorate's prescription, and informed the inspectorate about it. No information has reached the municipal government that the information provided is not what the persons would have wanted. Nor has the municipal government received a new and specified request for information from the information requesters, which the municipal government would be able to fulfill or, in justified cases, refuse to fulfill. In this case, the information requesters have chosen a way to communicate with the information holder through the Data Protection Inspectorate, which is undoubtedly their right, but leaves the municipality government in the dark about what did not suit the information requesters in terms of fulfilling the information request of the municipality government, or why the persons consider

that the order has not been fulfilled properly. GROUNDS OF THE DATA PROTECTION INSPECTION: What the addressee of the injunction is obliged to do must be reflected in the resolutive part of the injunction, and it must be understandable and enforceable even without the substantiating part. In this case, the Data Protection Inspectorate obliged the Jõelähtme Municipality in point 2b of the resolutive part of the objection decision-injunction made on 30.04.2020 to find out in point 2 of the request for information regarding the contracts for the transfer of the responsibility for the construction of roads and facilities according to the detailed plan concluded between the Jõelähtme municipality and the developers in the period May 2016 - December 2019, how much to the inspection from the list of transmitted documents (out of 79 documents) contain the information requested by the objector. In the event that there are many such documents and the municipal government refuses to comply with the request for information due to the large volume, the complainant must be explained what the large volume consists of and how it prevents the institution from fulfilling its tasks. contracts related to plans from the document register, the document register gives 56 documents in response, of which in 9 cases it can be understood from the title that it is a contract for the transfer of the obligation to build roads and utility networks and facilities according to the detailed plan. The above agreements, which could be found in the document register by title, have also been referred to by the objectors in the objection. As we also explained our inquiry, it does not follow from the above that the information requesters only wanted those contracts, which are titled as the contract for the transfer of the responsibility for the construction of roads and facilities according to the detailed plan. 9 contracts with this title could be found in the document register. In the request for information, however, the objectors asked to issue the contracts for the transfer of the responsibility for the construction of roads and facilities according to the detailed plan concluded between Jõelähtme municipality and the developers in the period May 2016 - December 2019 (to cover the part with access restrictions). Therefore, it cannot be concluded from the request for information that only the 9 contracts mentioned in the dispute were requested. The objectors could not find any more contracts with this title in the document register. It is completely legitimate that the Jõelähtme Municipal Government issued the 9 contracts cited in the objection to the objectors, with which point 2 b of the injunction must be considered partially fulfilled. But this does not mean that the rest of the (70) contracts forwarded to the inspectorate, which were forwarded as a list to the inspectorate as contracts containing the information requested by the objectors, should not be found out whether they contain the information requested by the objectors or not, as was required in the resolution of the injunction. All the more so since Jõelähtme Municipal Government initially refused to comply with the request for information on the grounds that there are dozens of contracts

requested by the objectors. In the same explanations sent to the inspection, the Jõelähtme Municipal Government has explained that during the detailed planning procedure, the parties interested in the detailed planning will agree on the construction of the road and infrastructure for public use at different stages of the procedure. Much depends on the specific plan and specific need. If the plan does not plan new public roads or utility networks, there is no need to agree on it. It can be understood from the above that all the contracts on the list may not contain the information requested by the objector. If the request for information is refused due to a large volume, it must be explained what the large volume consists of. If the municipal government cannot say how many of the 79 contracts contain the information requested by the complainant, it remains unclear on the basis of which the request for information is refused due to the large volume. At this point, I would like to draw the attention of the Jõelähtme Municipal Government to the fact that the Data Protection Inspectorate, as a supervisory body, cannot justify a refusal to comply with a request for information on behalf of the municipality, but can assess the legality of the refusal. In addition to the above, the Jõelähtme Municipal Government has explained in its response to the inspection's inquiry: At the same time, there are also situations where, as part of the DP procedure, agreements are made with landowners remaining in the planning area (who may not be interested in the preparation of the DP) before the introduction of the DP, to transfer an existing private road or a publicly used private road to municipal ownership, without the obligation to build the road without transfer. For example, the road may already exist in a suitable form, or a third party undertakes to build the road, or the obligation to build the road is not transferred to a non-administrative person by contract. For example, in a situation where the area is reserved for the construction of a light traffic road for the future. In general, it is not possible to get an overview of the obligations imposed on a person interested in drawing up a DP by a specific contract without looking at the explanatory letter and drawings of the DP. Therefore, in order to review the 79 contracts in the context of the information requesters' request, all the materials of the DP procedure, within the framework of which the specific infrastructure contracts have been concluded, should also be reviewed at the same time. According to the municipal government, specific, already documented information can be requested during the request for information. If the fulfillment of a request for information requires the holder of the information to further systematize and analyze the information and document new information based on this, such a request for information is considered a request for clarification, and the response to it is regulated by the Act on responding to notices and requests for clarification (AvTS § 23 subsection 2 paragraph 5). Therefore, the municipal government has not reviewed and analyzed all 79 contracts in the light of the information request, and the information requesters have not requested this in their

information request, nor has the Data Protection Inspectorate obliged in its order. I agree that a request for information can request specific documented information. However, the above does not mean that the holder of the information does not have the obligation to review the contracts and identify whether and which contract contains the information requested by the objectors (a corresponding agreement has been concluded in the contract). Since the objectors have requested contracts in which the obligation to hand over the construction of roads and facilities according to the detailed plan between the municipality and the developers in the period May 2016 - December 2019, if there is no such obligation in the contract, then such a contract does not have to be issued. The inspection understands that there are desired contracts where such an agreement exists. If the objectors have also requested other contracts, then the objectors must specify their request for information. The views of the Jõelähtme municipality also remain incomprehensible, that in order to find out the information it is necessary to additionally consult the drawings, and in this case it is a request for clarification instead. At the same time, the Jõelähtme Municipal Government, when refusing to comply with the request for information, or in the response to the inquiry of the inspectorate in the appeal procedure, has never previously indicated that it considered the information request of the complainant as a request for clarification. Since the objectors' desire has been to receive specific contracts in which the responsibility for the construction of roads and facilities according to the detailed plan has been signed in the period May 2016 - December 2019, the Jõelähtme Municipal Government, by failing to find out how many contracts such an agreement has been signed, has not fulfilled the order properly. Based on the above, the Jõelähtme Municipal Government must re-examine point 2 of the request for information of the objectors registered in the document register of the Jõelähtme municipality on 14.02.2020 and point 2b of the resolution of the order of the Data Protection Inspectorate dated 30.04.2020 and find out whether and how many of the 70 contracts (as 9 contracts have been issued) contain objections by the objector requested information and whether to issue the requested information or refuse to issue it if there is a legal basis for it. In case of refusal, the refusal must be justified. /digitally signed/ Elve Adamson Inspector General under the authority of the Director General