

06/25/2020

Kugelmann insists on the voluntary nature of the Corona-Warn-App - it must not become a ticket to the debate about the use of the Corona-Warn-App, the state data protection officer Dieter Kugelmann explains: "Several million German citizens are now using the Corona-Warn-App. From the point of view of data protection officers In Germany, the app operated by the Robert Koch Institute is fine and you can download it with a clear conscience. However, the voices of entrepreneurs, organizers and other responsible persons who are considering using the app as a ticket for concerts, events or even business premises are getting louder demand. From a data protection point of view, such mind games are counterproductive and should be discarded. Just because the app in Germany is organized decentrally and is voluntary, several million people have downloaded it and use it with a clear conscience. If citizens now only want certain offers and services could claim if they had a smartphone with the Corona-Warn-App with them, this would undermine the voluntariness. Hard-won trust would be carelessly lost. Such a development would be fatal in the medium and long term. The Corona warning app must remain voluntary."

Professor Kugelmann, State Commissioner for Data Protection and Freedom of Information in Rhineland-Palatinate (LfDI), explains further: "Media reports state that Mainzplus City Marketing is considering or has considered that visitors to events in Mainz should or must show the app. The LfDI has been written to by a citizen with the request to check this. From the LfDI's point of view, it is generally not legally permissible for organizers or business owners to require the use of the Corona-Warn-App as a prerequisite for access. In addition, a corresponding Suggestion not effective: People who showed their mobile phone at the entrance could deactivate Bluetooth immediately afterwards. The intended purpose (health protection) could not be achieved by the obligation to show the app."

The conference of the independent data protection supervisory authorities of the federal and state governments made it unmistakably clear that the voluntary approach must not be undermined by improper use: "Access to official facilities, workplaces, commercial businesses, catering establishments and accommodation facilities, sports facilities, etc. must not be Showing the app can be made dependent. This would be an inappropriate use that is already incompatible with the concept of voluntariness. Discrimination against people who do not use the app can be ruled out." (see press release). The argument sometimes put forward that the customer can decide for himself whether he wants access and shows his app does not

represent a viable solution in terms of data protection law: Such a barter transaction would not really be voluntary. In addition, the data generated by the app does not provide sufficient conclusions about a Covid19 infection and linking access to showing the app is therefore not a suitable measure to protect the legitimate interests of the organizers and business owners.

The second point of discussion is a question of employee data protection: From the LfDI's point of view, an employer must not oblige its employees to install the Corona warning app on their smartphones. The employer's right to issue instructions does not go so far as to require employees to use certain hardware and software on their private devices. In addition, no employee may be obliged to have their contacts and state of health recorded consistently. This is all the more true as recording would only make sense if it also took place during leisure time. Such a massive encroachment on the employee's freedom is not permissible, since the employer has milder means of protecting its employees in the form of general hygiene measures.

Further information: LfDI press release of June 16, 2020 Release of the Bavarian State Office for Data Protection Supervision

return