

The Hessian Commissioner for Data Protection and Freedom of Information presented his 48th activity report on data protection and his 2nd activity report on freedom of information

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Normally, the presentation of this report should have been dedicated to the 50th anniversary of the Hessian Data Protection Act.

On October 13, 1970, the Hessian Data Protection Act came into force. It was the first of its kind worldwide and initiated a development that led to an increase in the importance of data protection law that was unforeseeable 50 years ago. The anniversary events planned for this occasion have so far fallen victim to the corona pandemic. What's more, the massive encroachments on fundamental rights undertaken to ward off the pandemic raise the question of whether data protection as a whole is in danger of becoming a farce. However, the opposite is the case. The rule of law is the "state" of orderly administrative law, especially in crisis situations. The Executive in Hesse is obviously trying to maintain and guarantee the legal system - for example, to keep interference with the informational self-determination of citizens as low as possible and, in case of doubt, to coordinate with the Hessian Commissioner for Data Protection and Freedom of Information (HBDI). Looking for.

It is therefore not to be expected that the crisis management measures will be misused once their purpose has been achieved. Rather, it is undisputed that the measures restricting fundamental rights do not represent a permanent situation. The exemplary and disciplined behavior of the population in Germany can only be explained by the trust that the population has in public administration. If it remains so in the area of data protection, then it is justified to celebrate the Hessian data protection law (in a small circle).

The year 2019 is the first year in which the new legal situation according to DS-GVO and data protection guidelines applied throughout. The number of inquiries and complaints as well as reported data breaches continued to increase compared to the previous year. However, it is positive to note that the number of HBDI employees who are responsible for processing these submissions has increased compared to the previous year.

However, the demands placed on the supervisory authorities by the increasingly international coordination processes made it

urgently necessary to increase the number of staff.

Individual topics:

Hessian school portal

A state-wide learning platform is currently being implemented in Hesse as part of the so-called school portal. The advantages of such nationwide learning platforms are obvious, especially in times of the corona pandemic.

However, since a large amount of personal data from students and teachers is also processed on such a platform, concepts must inevitably be developed to ensure that this data is handled in accordance with data protection regulations. Since the Hessian Commissioner for Data Protection and Freedom of Information has not yet received comprehensive documentation on the plans, he has not yet been able to submit a final data protection assessment, but wants to continue to accompany the project positively.

Glass container with patient data on the premises of a hospital

The data protection officer of a Hessian clinic was made aware that there were glass bottles with patient data in a normal standard container for waste glass on the freely accessible premises of the clinic. The clinic had disposed of used glass in this container, such as is used for infusion solution bottles or other liquid medicines. A not inconsiderable proportion of the glass containers had labels on which, for example, the patient ID, last and first name of the patient, date of birth, address, health insurance number, name of the health insurance company, hospital station concerned and sometimes the name of the treating doctor were found. After the clinic management found out about this, the HBDI was immediately informed of this data breach. In addition, the data was backed up immediately and a new disposal concept installed.

Data breach in Mastercard and Mastercard Priceless Specials

In August 2019, Mastercard was made aware by a third party that a list of Mastercard customers, which included approximately 90,000 people, had been published on the Internet. In addition to the names of the persons concerned, this list also contained their date of birth, postal address, e-mail address and full credit card number. Mostly German customers were affected. Since the German branch of Mastercard is based in Hesse, Mastercard reported the data breach to the HBDI and within a very short time over 500 customers also contacted the HBDI.

The investigation of the process revealed that the data breach was limited to the Mastercard Priceless Specials program (customer loyalty program) and that Mastercard's payment network was not affected. Above all, security problems at the

service provider commissioned by Mastercard have led to the data protection violation.

The processing resulted in a significant amount of work for both Mastercard and the HBDI. The coordination between the supervisory authorities and with Mastercard to clarify the facts was very time-consuming. The processing of the complaints received by the HBDI was no longer possible with the usual resources and work processes due to the large number of entries. According to Prof. Ronellenfitsch, the process makes it clear that even security deficiencies of a supposedly minor extent when personal data is published can lead to considerable effort and damage to the reputation of the person responsible.

Fines against employees of public authorities for improper use of data

No fines can be imposed on public bodies in Hesse for data protection violations. However, fines can be imposed on their employees if the damaging behavior is not attributable to the public employer. For example, the HBDI imposed a fine on an employee of a public order office who, for no official reason, carried out an electronic resident registration query and requested data on a specific person. This happened from the employer's workplace, but for purely private purposes, so that this procedure was not attributable to the employer but to the employee. In such cases of so-called employee excess, the supervisory authority can take direct action against employees of a public body.

development of freedom of information

Freedom of information has been developing well since the fourth part of the Hessian Data Protection and Freedom of Information Act came into force in May 2018. Even in the municipalities, for which the legislature has made freedom of information subject to a municipal statute, various people see the need for correct information from the state in order to prevent or counteract the abundance of incorrect and incomplete information, especially in social media. In the meantime, some municipalities have passed freedom of information statutes. However, the HBDI does not have an overview of which municipalities have decided to take this step, as there is no obligation to notify.

Links: Here you can find the 48th activity report of the Hessian Commissioner for Data Protection and Freedom of Information

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