

Data protection and infection control go hand in hand

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GDPR

Covid-19

According to the Hamburg SARS-CoV-2 Containment Ordinance, restaurants, hairdressing salons and other facilities are obliged to collect the contact details of their guests and keep them for four weeks. Numerous requests for advice and complaints to the HmbBfDI have shown that there is a great deal of uncertainty among traders as to how this requirement is to be implemented. The HmbBfDI has made a sample form (PDF) available for this purpose. The sometimes widespread practice of laying out open lists in the entrance area is very problematic. The contact details are thus disclosed for all subsequent guests. The door is then wide open to abuse. The HmbBfDI has initial indications that a customer was contacted for private purposes after her visit to the restaurant using her mobile phone number. The HmbBfDI will pursue this case with high pressure.

After the HmbBfDI pointed out to the legislator from the outset that open lists are not acceptable, the Senate has fortunately included a corresponding note in the HmbSARS-CoV-2 containment regulation. It now states that it must be ensured that unauthorized third parties do not gain knowledge of the data. Responsible bodies, which are usually the commercial and restaurant businesses, must implement the data protection regulations and take all necessary technical or organizational measures to protect the contact details of customers. If data is lost, the protection of those affected is particularly important. In addition, the competent supervisory authority and, in certain cases, the data subjects must be informed immediately. Because then there is a reportable data breach.

Apparently, this has not yet reached all responsible data-processing bodies, so that operators of commercial and catering establishments sometimes have to be asked individually to implement the data protection regulations. This is problematic because the HmbBfDI does not have the necessary staff to advise those affected and carry out the necessary controls. A further complication is that the authorities mostly receive inquiries from citizens without companies being specifically named,

so that targeted action and sanctions cannot be taken in order to ensure data protection law comprehensively. Despite the massive bottlenecks, the HmbBfDI has taken on the mammoth task of personally visiting commercial and restaurant businesses and monitoring the implementation of contact data collection.

The check turned out to be quite gratifying, since the majority of commercial and catering establishments process the contact data in accordance with data protection regulations and those companies that showed a deficiency were very grateful for the advice given by the HmbBfDI employees on the implementation of the contact data processing according to the rules of the General Data Protection Regulation (GDPR).

In order to get an idea of the data protection-compliant implementation, the HmbBfDI carried out a sample of 100 commercial and restaurant businesses in Neustadt (city), in the Schanzenviertel and in Altona/Ottensen in June. These included 97 restaurants, 2 bakeries and 1 hair salon. The districts were chosen because of the high density of restaurants. The colleagues have identified themselves as data protection authorities and have been shown how contact data collection is implemented in practice. Even if their visit and their suggestions for data protection-compliant processing of contact data were received very positively by the vast majority of companies, the result still leaves room for improvement. Because 33% of the audited companies used lists for contact processing that are lying around openly and are accessible to everyone (e.g. lists that were openly displayed on the counter, on the tables or at the entrance). 67% of the audited establishments did not use any lists. The data was processed here, for example, via individual sheets that were collected immediately, via smartphone apps or directly by the staff.

The following overview shows the results related to the individual districts.

City/New Town

Schanzenviertel

Altona/Ottensen

Result of all districts

Tested locations

25

40

35

100

open list

4 (16%)

14 (35%)

15 (42.8%)

33 (33%)

Data protection compliant

21

26

20

67 (67%)

Prof. Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "The focus of our campaign is on advising and raising awareness of the local economy. In any case, sanctions will not be imposed in this step for first violations, since the industry has already been hit hard enough and has to master complex legal requirements. Since a comprehensive control by the HmbBfDI is not possible in terms of capacity, the social interaction between guests and restaurant operators is particularly important: The experience of our audit has shown that it is often enough for the guest to point out the data protection deficits in order to contact restaurant operators on site bring about a change in practice. If you, as a guest or restaurant operator, are not sure which requirements apply and need to be implemented, you can contact us at any time or find out in our Corona FAQ. This applies in particular to the obligation to delete the data after four weeks in accordance with data protection regulations."

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