

Home »Practice» CPDP opinions for 2020 »CPDP opinion on the installation of a school access system with facial recognition and body temperature measurement CPDP opinion on the installation of a school access system with facial recognition and body temperature measurement OPINION OF THE PERSONAL DATA PROTECTION COMMISSION Reg. (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Maria Mateva and Veselin Tselkov, at a meeting held on 14.11.2020, considered a request for an opinion (reg. № PNMD-01-96 / 02.10.2020) , with which a senior teacher in a school informs that since this year the director of the school has made changes in the Regulations for the internal order of the school. The changes introduce a pass regime through an access control system with facial recognition and monitoring of body temperature, video surveillance and security company. The letter states that despite the disagreement declared by her and her colleagues for the change of the admission regime, it was introduced, despite the fact that the teachers referred to the Opinion expressed by the CPDP with registration № NDMSP0-17-916 / 01.11 .2018 In addition, the letter states that class teachers are obliged to persuade parents to give their informed consent for the personal identification of their children in order to be admitted to school. In this factual situation, the teacher addresses the CPDP with the following questions: 1. Is the director, as an employer, entitled to oblige teachers to comply with this admission regime in order to be admitted to work, despite their disagreement and to sanction them? because of him? 2. What steps should teachers take to protect their "sensitive data" in this case? Legal analysis: As correctly noted in the request, the CPDP has already expressed an opinion on the topic of facial recognition as a system for controlling access to an educational institution. In view of the reasons for the opinion expressed and taking into account the specifics of the specific case, several additions can be made regarding the application of the mandatory rules for processing personal data within the meaning of Art. 9, para. 2 of Regulation (EU) 2016/679. Recital (51) of Regulation (EU) 2016/679 states in particular that the processing of biometric data for identification purposes is prohibited. Such processing is justified only if there is the express consent of the person concerned, specific legal obligations apply or if the processing is required for reasons of public interest, in the presence of a legal obligation or in connection with the exercise of official authority. In addition to those strict requirements for such processing, the general principles and other rules laid down in the Regulation should apply. The letter states that the introduced system is with facial recognition and temperature measurement. The temperature of the human body reveals data on the health status of a particular data subject, all the more so when the same is unquestionably identified by biometric data. There is a general ban on the processing of health data, except in the presence of any of the hypotheses of Art. 9, para. 2 of Regulation (EU) 2016/679. On the other hand, in view of

the current epidemic situation, employers are given the opportunity to check the temperature of employees, and in this case, students who attend school. The imposed anti-epidemic measures oblige the school principal to introduce a pass regime, which will ensure control and prevention of persons with symptoms of COVID-19 or manifestations of acute infectious diseases on the territory of the school. In the event that an infected employee or student is found on the school grounds, the principal may notify the health authorities, who shall, within their competence, take certain action. The lawful processing of personal data in this case is carried out only by a medical person in the presence of at least one of the grounds specified in Art. 9, para. 2 and in compliance with the principles for processing, specified in art. 5 of Regulation (EU) 2016/679. In view of the introduction of facial recognition with temperature measurement, the only basis for the processing of personal data that could be applied is consent. The conditions for validity in giving consent are specified in Art. 7 of Regulation (EU) 2016/679. It should be noted that consent in the hierarchical relationship between employer and employee, by analogy between principal and student, is an inappropriate ground for suspicion that it is not freely given. As emphasized by the Working Group under Art. 29, also adopted by the European Data Protection Board in several opinions, consent can only be valid if the data subject is able to make a real choice and there is no risk of fraud, intimidation, coercion or significant negative consequences (eg significant additional costs, non-admission to the workplace, etc.) if the person does not agree. Consent will not be free even in cases where there is some element of coercion, pressure or inability to exercise free will. Without denying or downplaying the current epidemic situation, the processing of biometric data in conjunction with health data for school enrollment purposes is an extremely intrusive processing of sensitive personal data. For these reasons, the use of face recognition cameras with temperature measurement at school does not meet the mandatory requirements of the General Regulation on the legality, necessity and proportionality of the processing of personal data. In this regard, the objectives of the school admission regime should be achieved in other ways than by processing health data in conjunction with biometric data, including for children. In addition, the recording of such data by technical means in the absence of a legal basis and in non-compliance with the basic principles and obligations arising from Regulation (EU) 2016/679 could lead to a breach of the rights of the data subjects concerned. At the same time, the measurement of body temperature of all visitors, regardless of their function, in view of the current requirements for the prevention of the spread of COVID-19, can be done individually, without the information being recorded and individualized within the meaning of Art. 4 of the General Regulation. The information system or the application is also subject to evaluation, as a means by which facial recognition is performed by measuring temperature. The analysis should

be carried out at the design stage (according to Article 25 of Regulation (EU) 2016/679), as well as to assess the extent to which the use of such an application can lead to data transfer within the meaning of Chapter V of Regulation (EU) 2016/679.

The responsibility of the controller for guaranteeing the rights of the affected data subjects (in this case - teachers, employees, students and possibly visitors) within the meaning of Art. 12-22 of Regulation (EU) 2016/679. The controller of personal data has the obligation to notify in advance the persons whose data he will process about: the data that identify the controller and the contact details and, where applicable, those of the controller's representative; the contact details of the Data Protection Officer, where applicable; the purposes of the processing for which the personal data are intended, as well as the legal basis for the processing; the recipients or categories of recipients of personal data, if any; where applicable, the intention of the controller to transfer personal data to a third country or to an international organization, as well as the presence or absence of a Commission decision on the adequate level of protection or in case of data transfer as referred to in Articles 46 or 47, or Article 49 (1), second subparagraph, reference to the appropriate or applicable guarantees and the means of obtaining a copy of them or information where available. the period for which the personal data will be stored and, if this is not possible, the criteria used to determine this period; the existence of the right to request the controller to access, correct or delete personal data or to restrict the processing of personal data relating to the data subject, or the right to object to the processing, as well as the right to data portability; where the processing is based on Article 6 (1) (a) or Article 9 (2) (a), the existence of the right to withdraw consent at any time, without prejudice to the lawfulness of prior consent processing, to be withdrawn; the right to appeal to a supervisory authority; whether the provision of personal data is a mandatory or contractual requirement or a requirement necessary for the conclusion of a contract, and whether the data subject is obliged to provide personal data and the possible consequences if such data are not provided; the existence of automated decision-making, including the profiling referred to in Article 22 (1) and (4), and at least in these cases essential information on the logic used, as well as the significance and intended consequences of such processing for the data subject. Any affected person may exercise the rights under Art. 15-22, guaranteed by Regulation (EU) 2016/679, by written request to the controller of personal data. According to Art. 12, para. 3 of Regulation (EU) 2016/679, the controller shall provide the data subject with information on the action taken on a request under Articles 15 to 22, without undue delay and in any case within one month of receipt of the request. If necessary, this period may be extended by another two months, taking into account the complexity and number of requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, stating the

reasons for the delay. When the data subject submits a request by electronic means, the information shall be provided by electronic means, unless the data subject did not ask for anything else. If, after exercising the rights before the respective administrator, the person considers that the data are processed illegally, he has the right to appeal to the CPDP or to the court. The procedure for filing a complaint with the CPDP is set out in Art. 38 and 38a of the Personal Data Protection Act (PDPA) and in Section II of the Rules of Procedure of the Commission for Personal Data Protection and its administration.

The present analysis is based entirely on the long-standing practice of the CPDP related to the processing of personal data of data subjects, as well as on the case law on complaints in such a subject and the instructions of the European Data Protection Board in this regard. The opinion of the CPDP has an advisory nature for the controller of personal data in applying the relevant legal norms. This opinion has only an explanatory character on the application of the norms commented in it, without creating rights and / or obligations for the interested parties. Pursuant to Regulation (EU) 2016/679 - General Regulation on Data Protection, the controller of personal data alone or jointly with another controller determines the rules and procedures for data processing, which must comply with the law and the Regulation. The rules of accountability, transparency, good faith and the norms related to administrative and criminal liability regarding the legality of the processing carried out by him / her shall apply to the data processing actions taken by the controller or joint administrators.

In connection with the above and on the grounds of Art. 58, § 3, b. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

#### OPINION:

1. The processing of personal data through the installation of input-output cameras for facial recognition with temperature measurement in the school for the purposes of introducing a pass regime does not meet the mandatory requirements of Regulation (EU) 2016/679 for legality and proportionality, especially of Art. 5, Art. 9 and Art. 22 of the Regulation and should be implemented in other ways that do not require processing of special categories of personal data. Measurement of body temperature, as part of anti-epidemic measures, can be performed without individual data being individualized or further processed by recording.
2. The controller of personal data, in this case the educational institution, should be able to prove that it lawfully processes personal data and that the conditions for giving consent under Art. 7 of Regulation (EU) 2016/679, including consent to be given voluntarily, as well as to ensure that individuals are free to withdraw consent, which will stop the processing of their

personal data.

3. Any person affected by the processing of personal data may exercise the rights under Art. 15-22, guaranteed by Regulation (EU) 2016/679, by written request to the controller of personal data. In case, after exercising the rights before the respective administrator, the person considers that his data are processed illegally, he has the right to appeal to the CPDP under the procedure described in Art. 38 and 38a of the LPPD and in Section II of the Rules of Procedure of the Commission for Personal Data Protection and its administration or before the court.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Maria Mateva / p /

Veselin Tselkov / p /

Downloads

Opinion of the CPDP on the installation of a school access system with facial recognition and body temperature measurement  
print