

Athens, 11-01-2018

Prot. No.: G/EX/228/11-01-2018

PRINCIPLE OF DATA PROTECTION

OF A PERSONAL CHARACTER

A P O F A S H 2/2018

(Department)

The Personal Data Protection Authority met in composition

Department at its headquarters on Wednesday 10.1.2018 at 10:00 a.m. after invitation

of its President, in order to examine the case referred to

history of the present. The President of the Authority Konstantinos was present

Menoudakos, and the alternate members Panagiotis Rontogiannis and

Charalambos Tsiliotis, as rapporteur, to replace the regular members

Antonio Symvonis and Spyridon Vlachopoulos respectively, who, although

were legally summoned in writing, did not attend due to obstruction. They did not attend

due to obstruction, although the regular member of the Authority was legally summoned in writing

Charalambos Anthopoulos and his deputy Grigorios Tsolias.

Present without the right to vote was Fereniki Panagopoulou, legal auditor

- lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of

department of administrative and financial affairs, as secretary.

The Authority took into account the following:

With the no. first... (ADPPH G/EIS/6591/13-09-2017), correct assessment

thereof, the General Hospital for Chest Diseases of Athens "I SOTIRIA" (hereinafter

Hospital) forwards A's application to the Authority in this way as well

submits a question to the Authority if the applicant can receive copies

medical file of his estranged wife, B, for judicial use and

specifically to defend the request for temporary guardianship

of a minor child brought by the applicant against B before the Single Member Court of First Instance of Athens (proceedings for protective measures, GAC..., EAK with 1

scheduled trial on ... following postponement from the original trial ...). The A also wishes to invoke the requested data to refute them of B's requests, that is to refute the counter-temporary request assignment of custody of a minor child (proceedings of insurance measures, GAK..., EAK ... with a fixed hearing on ... after adjournment from the original hearing ...) as well as the independent communication regulation request (procedure insurance measures, GAK ..., EAK ... with a fixed hearing on ...), which has filed against him before the Single Member Court of First Instance of Athens.

The Authority, after examining the elements of the file, after hearing him rapporteur and the clarifications from the assistant rapporteur, who attended without right to vote and withdrew after the discussion of the case and before the conference and decision-making, after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. Because the provisions of articles 2 par. b', 4 par. 1 and 7 par. 2 item. c of Law 2472/1997 determine the terms and conditions for the legal processing of sensitive personal data related to health. The provisions of articles 5 par. 3 and 13 par. 3 item. b' of Law 3418/2005 (Code of Medical Ethics) provide for exceptional administration medical certificates to a third party, as long as he has a legitimate interest and proves it and the conditions for lifting medical confidentiality. Because, further, Article 11 par. 3 of Law 2472/1997 stipulates that if the data is disclosed to third parties, the subject is informed of the announcement before them.

2. Because article 1511 of the Civil Code provides, among other things, that every decision of the parents regarding the exercise of parental care must aim at interest of the child, as well as that the court decides on the assignment of parental care or the manner in which it is exercised based on his interest child. Furthermore, Article 1520 of the Civil Code provides for the right to privacy communication of the parent with his child and stipulates that a court is competent for the regulation of the more specific issues related to this right.

3. Because, in the considered case, A is requesting as a third party (art 2 pcs. i' of Law 2472/1997) the granting of sensitive personal data

(health data) concerning his estranged wife B. From the data

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of the case file it appears that the purpose of processing consists of support of the application for temporary custody of a child he has bring an action against B himself before the Single Member Court of First Instance of Athens (proceedings for protective measures, GAS ..., EAK ... with a fixed hearing on ... after adjournment from the original hearing on ...) with which he requests to be assigned temporarily to him the custody of his minor child. It is also intended to invoke the data in question to refute the requests of B, i.e. her against a request for the temporary assignment of custody of a minor child (procedure insurance measures, GAS ..., EAK ... with a fixed trial on ... later postponement of the original trial on ...) as well as the independent application communication regulation (procedure of insurance measures, GAS ..., EAK ... with set for trial on ...), which he has brought against him before him Single Member Court of First Instance of Athens. According to A's claims, B due of her mental health condition for which she was admitted and was hospitalized in the applicant hospital, he is not able to exercise his supervision

their minor child. Therefore, he requests to obtain B's mental health data from the requesting hospital, in order for them to be taken into account by the court.

4. Because this proposed processing purpose is consistent with aforementioned provision of article 7 par. 2 item c' of Law 2472/1997. However, it is judged that the provision of B's complete medical file is inconsistent with her principle of proportionality of personal data processing (Article 4 par. 1 item b' of Law 2472/1997). And this, because the support of his claims A can be achieved by milder means, and in particular, by the administration of medicine certificate, in which his general state of health is indicated data subject, B. The granting of the medical certificate is judged in this case, necessary and appropriate for the defense of his rights applicant for the temporary assignment of custody of his minor child and the regulation of his wife's communication with him before the Single Member Court of First Instance of Athens. Because the intended processing purpose is consistent with the aforementioned provisions of articles 4 par. 1 item b' and 7 par. 2 item. c of Law 2472/1997 and the granting of the requested medical certificate is relevant, appropriate and necessary for the intended purpose of the defense right before a court (refutation of the above insurance claims measures regarding the temporary assignment of custody and communication regulation

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with a minor child that are pending before the above Court).

FOR THOSE REASONS

The Authority grants a license to the General Hospital for Thoracic Diseases of Athens "H SOTIRIA" to grant A a medical certificate regarding her state of B's mental health with the above-mentioned content, the which he will use in the context of the above legal dispute between them

after the Hospital has previously informed B.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou