

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-310 / 18.07.2017 Decision on appeal with registration № Ж-310 / 18.07.2017 DECISION № Ж-310 / 2017 Sofia, 04.06.2018 Personal Data Protection Commission (CPDP) composed of: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a regular meeting held on 04.04.2018 and objectified in Minutes № 15 / 04.04.2018, based on Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint reg. № Ж-310 / 18.07.2017, filed by T.R.I. against B.N. and V.N. for violation of the Personal Data Protection Act (PDPA). The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). THREE. has lodged a complaint with the Commission for Personal Data Protection, containing allegations of illegal installation of a video surveillance camera. The complaint alleges that neighbors B.N. and VN, with whom they coexist on one floor of a residential building, installed a video surveillance camera against the front door of the applicant's apartment. The applicant informed that her neighbors from the apartment 142 have installed a camera aimed at the door - on the app. 143 (property of the applicant). At the request of Ms T.R.I., the camera was moved slightly to the side, but the door of Ms T.R.I. remains in the field of view of the device. According to the applicant, her neighbors had to be registered as data controllers in order to carry out video surveillance, and according to her assumptions they were not registered. In this regard, Ms. T.R.I. considers that the video surveillance violates its rights under the LPPD, and asks the Commission to conduct an inspection. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case with a letter ex. № Ж-310 / 18.07.2017 # 1 from 09.08.2017 of the CPDP, of Mr. B.N. a deadline was given for a written opinion and submission of relevant evidence. The letter was returned by the post office with a mark as unsolicited. Complaint reg. № Ж-310 / 18.07.2017 contains the obligatory required requisites, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The complaint filed by T.R.I. is fully compliant with the requirements of the CPDP, according to PDKZLDNA and contains the necessary regulatory details for regularity. According to Art. 38, para. 1 of the Personal Data Protection Act (PDPA) in case of violation of his rights under the LPPD, each individual has the right to refer to the Commission for Personal Data Protection within one year of learning of the violation, but not later than five years from mu. The complaint was filed within the term of art. 38, para. 1 of LPPD and is admissible. In Art. 27, para. 2 of the APC, the legislator links the assessment of the admissibility of the request with the presence of the

requirements specified in the text. The applicability of the Personal Data Protection Act is related to the protection of individuals in connection with the processing of their personal data by persons having the capacity of administrators of personal data within the meaning of the legal definition of Art. 3 of the Act. The complaint is directed against illegal processing of the personal data of the complainant, which is expressed in the illegal installation of a video surveillance camera. According to Art. 10, para. 1, item 7 in connection with Art. 38 of the Personal Data Protection Act, when referring it, the Commission considers complaints against acts and actions of personal data controllers, which violate the rights of individuals under this law, as well as complaints of third parties in connection with their rights under this law. In view of the said ruling, the appeal was declared admissible and the parties in the administrative proceedings were constituted: appellant - T.R.I., respondent parties - B.N. and V.N. and a date has been set for examining the merits of the complaint. The parties are regularly notified. The applicant, T.R.I. appears in person. The respondent V.N. appears in person. B.N. husband of Mrs. VN, represented by the wife. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, reflected in Protocol № 59 / 18.10.2017 and Order № RD-14-325 / 03.11.2017 of the Chairman of the CPDP to conduct an inspection in connection with clarifying the facts and circumstances of the complaint, objectified in the Statement of Findings № PPN-02-590 / 23.11.2017. The main task of the inspection is to establish whether a video surveillance system has been built and what are its technical parameters in a residential building - condominium, located at: * *****. On 15.11.2017 and 21.11.2017 the inspection team visited the address and an attempt was made to establish contact with B. and V.N. in order to carry out the subsequent inspection, but after repeated calls no one opened. During the inspection of the building it was found that the entrance is maintained by a professional house manager - "VM". In order to fulfill the tasks set in the Order of the Chairman of the CPDP, the inspection team established telephone contact with the professional house manager, who denied that there was a decision of the condominium to install the process video camera. In view of the above, the inspection team is prevented from establishing the facts and circumstances in connection with the filed complaint. The on-site inspection revealed that the address indicated in the complaint contained an eight-storey residential building with six entrances, the apartment inhabited by the defendants and the applicant's property located on the eighth floor at entrance E. The inspection team found that a video camera was installed at the address, located on the wall above the door of the defendants' apartment and aimed at the landing on the eighth floor. The video camera is connected to cables leading to the defendants' home. The inspection team found that there were no information boards at the entrance warning of video surveillance. Despite the efforts made and only with an external view, the

inspection team failed to establish in an indisputable way who owns the installed video camera, whether it actually works, who maintains it and monitors its output, whether it is stored and where video recordings are stored, if any, as well as the actual range of video recording. To document the results of the inspection, a statement of findings was drawn up and a graphic image (photo) attached to this statement of findings was made. At an open meeting of the Commission, objectified in the minutes № 67 / 13.12.2017, complaint № G-310 / 18.07.2017 was postponed for consideration on the merits for 24.01.2018, and requested assistance from the authorities of Ministry of Interior (Mol), to notify the defendants of the initiated administrative proceedings, the possibility of submitting a written statement on the subject of the complaint, as well as to be notified that after a decision of the Commission for Personal Data Protection, a complaint with reg. № G-310 / 18.07.2017 will be considered on the merits at an open meeting of the administrative body. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, reflected in Protocol № 67 / 13.12.2017 and Order № RD-14-16 / 17.01.2018 of the Chairman of the CPDP to conduct a follow-up inspection in connection with clarifying the facts and circumstances on the appeal, objectified in the Statement of Findings № PPN-02-163 / 01.03.2018. The inspection was carried out in the presence of N.Z.Y. to the position - technician in "V.M. Ltd. It was established that at the address indicated in the complaint there was an eight-storey residential building with six entrances, as the apartment inhabited by the defendants and the applicant's property were located on the eighth floor at entrance E. With the help of Mr. N.Z. J. the inspection team was provided with access to the apartment indicated in the complaint. Access to the inspection was not provided. The presence of information boards warning about video surveillance has not been established. In an attempt to carry out the tasks under the order, the inspection team contacted by phone a police inspector in charge of the area. Two employees of the 06 Regional Department of the Sofia Directorate of the Interior at the Ministry of the Interior were sent for assistance. The police inspector clarified that the CPDP's request for assistance was distributed to him in order to inform the defendants in the complaint about the initiated administrative proceedings in the CPDP on the specific complaint and that after two visits to the address he also failed to meet with residents. 142, but a complaint was lodged by Mr N. against him for harassment. In view of the above, the staff of the 06 District Office informed the inspection team that if assistance is requested in the case, it must be requested formally. Since the representative of the professional house manager - Mr. N.Z.Y. did not provide information about the residents of the app. 142, which is registered in the home book, the inspection team visited the central office of "V.M. Ltd., where he met with A.M.B. - legal counsel. Mrs. A.M.B. specifies that for contacts at the verified address the data of V.B.N. tel. **** and e-mail: *****. After a request was received

with ent. № Ж-310 # 19/2017 / 22.02.2018 by V. and B.N. to provide copies of the file filed with the CPDP, the inspection team contacted Ms. V.N. and specify a new date and time for the inspection. On February 27, 2018, the inspection team again visited the address indicated in the complaint and handed over the inspection order to VN, which provided an opportunity for access and collection of evidence. After an on-site inspection, it was established that a video camera was installed on the wall of the front door of the app. 142. The camera is connected by means of a power cable to the electrical installation of the apartment and imitates video recording. At the time of the test, the camera is not connected to a recorder and is not recording video. The inspection team found that the camera was a sham (fake), simulated video surveillance and did not have the ability to record video and monitor in real time. The camera is equipped with a red LED and a motion sensor, which turns on when moving an object within the range of the camera. The camcorder is placed for preventive security purposes, not for the purpose of recording video footage. To document the results of the inspection, 4 (four) graphic images (photos) were attached to this statement of findings.

In response, a statement was received from the defendants - V. and B.N.i, filed with reg. It was also stated that apartment 143 (owned by the applicant) had been broken into more than a year ago. The trial apartment is not inhabited by Mrs. T.R.I. It is rented to a company that carries out business activities and is constantly visited by clients. Apartment 144 is not inhabited. Defendants claim that because they live on the top floor, before installing the camera, they have more than once witnessed the use of the site as a toilet.

They point out that after a phone call from V.M. on February 21, 2018, they found out that the CPDP was trying to contact V. and B.N. They claim that they had no idea about the attempts to find them by the police and the Commission.

The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as control over compliance with the Personal Data Protection Act.

In order to exercise its powers, the Commission must be properly seised.

As a result of the evidence gathered in the administrative proceedings and after an analysis of the relevant legal norms, it is proposed to motivate the Commission's ruling with the provisions discussed below.

According to Art. 1, para. 1 in connection with Art. 38, para. 1 of LPPD, this law regulates the protection of the rights of individuals in the processing of their personal data and in case of violation of his rights under this law, each individual has the right to refer to the Commission for Personal Data Protection.

Paragraph 1, item 1 of the LPPD contains a definition of the term "processing of personal data", namely: any action or set of actions that can be performed on personal data by automatic or other means, such as collection, recording, organizing, storing, adapting or modifying, restoring, consulting, using, disclosing by transmitting, distributing, providing, updating or combining, blocking, deleting or destroying.

As a result of the findings of the inspection, substantiated by the evidence attached to the Finding Act, the inspection team found that there was no functioning video surveillance system at the time of the inspection at the address indicated by the complainant.

In this sense, it is concluded that the personal data of the applicant were not processed by V. and B.N. by means of video surveillance, as a result of which no violation of the provisions of the LPPD has been established.

It should also be noted that in view of the evidence gathered in the administrative proceedings and the findings of the Findings Act № PPN-02-163 / 01.03.2018, V. and B.N. do not process personal data in the case of video surveillance.

As can be seen from the above and on the grounds of Art. 38, para. 2 of the Personal Data Protection Act, it is proposed that the Commission for Personal Data Protection rule with the following

ANSWER:

Dismisses as unfounded the complaint with reg. № Ж-310 / 18.07.2017, filed by T.R.I. against B.N. and VN, due to the lack of evidence of violation of the applicant's rights by the respondent, given the established lack of a functioning video surveillance system.

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court - Sofia - city.

MEMBERS:

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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