

Press release from the State Commissioner for Data Protection and Freedom of Information Mecklenburg-West Pomerania

State Commissioner for Data Protection and Freedom of Information Mecklenburg-Western Pomerania presents activity report  
for 2019

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The State Commissioner for Data Protection and Freedom of Information for Mecklenburg-Western Pomerania presented its activity report for 2019 today. The work volume of the authority has increased further compared to 2018. While in the last four months of 2018 he only made use of one of the supervisory measures provided for in the European General Data Protection Regulation (GDPR), in 2019 it was already 82. The most common measure was the formal warning with which the responsible person is informed of foreseeable data protection violations. Five fines were also imposed during the reporting period.

However, the threat of fines has proven to be a much more effective means of enforcing data protection law. This occurred in eight cases in 2019. The number of data breach reports pursuant to Art. 33 GDPR remained almost constant at 108 in 2019.

At 1069 in 2019, the number of European procedures in which the state representative was involved remained at a high level.

One reason for the overall increasing volume of work is certainly to be found in the GDPR, which has given the supervisory authorities numerous additional tasks. Another cause lies in the rapid technical development of data processing and the progressive penetration of almost all areas of life, which was further accelerated in the Corona crisis.

In contrast, the number of independent audits, which are of particular importance for the enforcement of data protection law, remained at an extremely low level with three cases in 2019. This number makes it clear that the state commissioner is not even beginning to do justice to his task of enforcing the GDPR. As the only data protection supervisory authority in Germany, the state commissioner works with the same staffing as before the application of the GDPR. With the double budget 2020/2021 resolved at the end of the reporting period, the state parliament, at the suggestion of the state government, also put a blocking

note on a large part of the funds for the management of the office. This means that there are still insufficient funds for electricity, cleaning, garbage disposal and security for the current year. It is to be hoped that this blocking notice will be lifted in the course of 2020, because otherwise the authority will be completely unable to act.

The State Commissioner received 533 submissions and complaints last year. In a significant proportion of the letters, citizens criticized the fact that the rights of those affected, which they asserted against a company, the family doctor, an association or an authority, were simply ignored or only inadequately fulfilled. According to the assessment of the GDPR, the data subject plays a crucial role in checking the lawfulness of the processing of their data. With the rights of data subjects, the GDPR ensures that the data subject also has the tools to exercise this control. In principle, the data subject must be informed that personal data about them is being processed. Secret data processing is generally not permitted. The state representative therefore recommends that those responsible in companies and administration establish a fixed process and train employees accordingly on how to deal with the rights of those affected.

The state representative represents the DSK in the IT planning council, in whose "register modernization" project the registers kept in the administration are to be modernized and access to the personal data stored there is to be simplified. Uniform, personal identifiers play a central role here. In a resolution from September last year, the DSK pointed out the risks and the constitutional limits of uniform and cross-administrative identifiers. It rejects such personal identifiers for the direct identification of citizens and calls for alternative methods of unique identification, such as sector-specific identifiers, which allow unique identification but prevent a unilateral state comparison of data.

Since 2012, the state representative has been showing children and young people the opportunities and risks of the digital world with the joint project Medienscouts MV. The so-called peer-to-peer approach is fundamental. The media scouts learn to pass on their knowledge directly to other children and young people. The consistently high number of participants shows an unbroken interest in the project. Since 2018, ten more participants have been trained than before. Nevertheless, there are waiting lists and interested young people have to be put off to the following training course. With the current number of participants, the project has reached the limit of what is possible. Neither the state representative nor his cooperation partners have the structural and financial prerequisites, for example to increase the number of training courses or to adapt them to specific target groups (e.g. for vocational school students).

Shortly after the end of the reporting period, on January 14, 2020, regular Microsoft support for the Windows 7 operating

system ended. The successor to Windows 7 is Windows 10. Due to the constant data transfers from Windows 10 to Microsoft, the question arises as to whether Windows 10 can be used in compliance with data protection at all. This question can not be answered on a general basis. For this reason, the DSK published a test scheme for Windows 10 at its meeting in autumn 2019, which users can use to assess the data protection compliance of their specific application.

At the end of August 2019, the state association of the “Alternative für Deutschland” party activated a so-called “Neutral School” information portal on its homepage. After examining the portal, the state commissioner prohibited data collection via the portal and ordered the immediate implementation of this ban. The state association complied with this ban on time. However, he has filed an action for annulment of the ban and has also taken action in interim legal protection proceedings against the order for the immediate enforcement of the ban. The application for temporary legal protection was unsuccessful. A decision in the main proceedings is still pending.

Complaints about video surveillance systems or video cameras in private and neighborhood areas are repeatedly submitted to the state commissioner. If the person responsible is also monitoring a private neighboring property, this is not permitted. The same applies to the monitoring of public street space, whereby the detection of a narrow strip along the wall of the house may be exceptionally permissible under certain circumstances according to case law.

The state representative has issued a comprehensive statement on the draft law on security and order in Mecklenburg-Western Pomerania (SOG M-V). Due to its incomprehensibility, the SOG M-V hardly makes it possible for users to carry out their tasks without making any legal errors. In the opinion of the state commissioner, the regulations in the SOG M-V on the powers of data protection supervision are also contrary to European law. Individual regulations such as those on online searches or automated license plate recognition are also incompatible with the constitution. Although the state commissioner also expressed his criticism during the public hearing on the draft law, it was passed almost unchanged in March 2020.

The State Commissioner regularly has to open fine proceedings against police officers for using police information systems for private purposes. A total of 16 cases of this type were conducted in 2019. Heinz Müller: "An abuse of personal data by the police is not possible. Here a relatively small number of wrongdoers damage the reputation of an entire institution. A lot of police officers are rightly angry about that."

With the GDPR, the hospitals and university clinics in Mecklenburg-Western Pomerania were faced with new tasks. In order to

provide support with the pending questions, the state commissioner, in cooperation with the data protection officer of the Nordkirche, initiated the project "Handling patient data in the hospitals of Mecklenburg-Western Pomerania (UPKD)" in 2018 and was able to complete it last year. The aim of the project was to get an overview of the status of handling patient data in selected fields of action of hospitals and university clinics in Mecklenburg-Western Pomerania. A public project report can be found on the website of the state commissioner.

One result of the project was the data protection conference on the topic "Data protection: illness or therapy?", which was held on October 28, 2019 in the Bürgersaal in Waren (Müritz) due to the increased need for information on the subject of data protection in hospitals and university clinics in Mecklenburg-Western Pomerania. Management, data protection officers, doctors, administrative staff, nursing staff and other specialists from hospitals and university clinics in Mecklenburg-Western Pomerania were invited. The main focus of this conference was the effects of the GDPR on the work in the state's hospitals and university clinics. As part of the data protection conference, it was discussed whether data protection is more of a "disease" and disrupts the supply company, or whether data protection acts more like "therapy" and, if used correctly, can eliminate undesirable effects. In four area-specific discussion forums, participants' questions were answered and solutions presented.

The Freedom of Information Act for Mecklenburg-Western Pomerania (IFG M-V) dates back to 2006 and, with only one amendment to the content in 2011, is quite outdated compared to other transparency laws/freedom of information laws, such as in Bremen, Hamburg, Rhineland-Palatinate or Thuringia. The State Commissioner recommends fundamentally revising the Freedom of Information Act and developing it into a modern transparency law. Two years ago, he submitted numerous proposals to the state government.

The police headquarters in Rostock has rejected a request for the IFG M-V on the data protection impact assessment and on the data protection and information security concept for video surveillance at Schwerin's Marienplatz. The applicant then asked the state representative to mediate. According to the IFG M-V, the application for access to information is to be rejected, among other things, if there is a fear that the success of official measures would be significantly impaired if the information became known. However, according to the State Commissioner, this was also the case here. Data protection concepts that contain technical and organizational measures, or a data protection impact assessment, first describe the risks of processing and are then intended to define measures to contain these risks. However, these documents also regularly list the weak points

in data processing, which, if they become known, could be used to prepare targeted attacks on the respective data processing. Against this background, even according to the assessment of the GDPR, this information does not necessarily have to be made transparent to the person concerned.

The activity report 2019 is available for download at

<https://www.datenschutz-mv.de/datenschutz/publikationen/taetigkeitsreports/>.

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