

Data protection is also a design task

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Reported data breaches at peak

2021 was also characterized by a high number of complaints. For the first time, the HmbBfDI received more than 4,000 submissions, including 2,775 complaints. The number of cases has thus stabilized at the high level of the previous year. This means a sustained high workload for the authority, but at the same time it is a positive sign that the awareness of the right to privacy and data protection is high among the citizens of Hamburg. Most complaints (31%) relate to the IT/media/telemedia sector, followed by the healthcare sector (14%).

The highest fine (€901,338) related to a Hamburg energy supplier. Customer data was compared here without this being made transparent in advance. The most frequent individual cases with sanctions in the private sphere concerned the secret filming of young women, sometimes linked to stalking in public spaces. A partial aspect of these data protection violations is now also punishable (so-called upskirting).

What is striking is the high number of incidents (data breaches) reported by data processing offices, which at 871 clearly exceeds the previous year's figure (686). This also points to a growing awareness of the problem of data protection, but also to ongoing attacks on the IT security of Hamburg companies.

In addition to these statistical figures, the HmbBfDI also deals with current topics:

“Reject all”: Changes to the cookie banners

Cookie banners are ubiquitous and most users click away annoyed because it is too time-consuming to deal with the details of data processing. This is another reason why it is important that there is an equivalent alternative to the usual "I agree" or "Accept all" button, for example in the form of a "Reject all" button.

This equal rejection alternative has been demanded for a long time. Now the European supervisory authorities are beginning to enforce this, also based on guidelines from the European Data Protection Board. After the decision of the French supervisory authority CNIL, which imposed fines on Facebook and Google in this context, the HmbBfDI asked Google for Germany, among others, to revise its cookie banners to make them user-friendly and data protection compliant. In connection with the current complaints procedure (Section 2.6 TB), the HmbBfDI has also raised this claim against three Hamburg media

houses.

The goal is to make the “reject everything” button the standard: then it will become clear whether users really want personalized advertising and are willing to accept comprehensive tracking of their surfing behavior.

VeRA/Palantir also in Hamburg? – Legal basis in the Hamburg Police Act before the Federal Constitutional Court

Last month, the Bavarian Minister of the Interior announced that Bavaria had opted for a "procedural research and analysis system" (VeRA) from the US company Palantir for data analysis in police work. As part of the nationwide cooperation, his state has concluded a framework agreement that other states, including Hamburg, can join.

Classic police work can be made more efficient through the use of intelligent technology. The interest in using technologies that allow access to huge amounts of data in real time by means of big data analysis and can even provide new insights is therefore understandable. The use of such systems is in conflict with data protection law, since the already controversial significance of the knowledge gained is mostly based on a comprehensive evaluation of personal data. This data processing is only compatible with the purpose limitation principle if the scope of the processing is limited to what is strictly necessary to fulfill the purpose. However, such systems often use data for purposes that are completely different from those for which they were originally collected.

This is another reason why Section 49 of the Hamburg Law on Data Processing by the Police (PoIDVG) is being examined by the Federal Constitutional Court. The standard creates a legal basis for the "automated application for data analysis" in the field of police security, whereby the width and lack of certainty of the standard are problematic. The HmbBfDI will comply with the request for an opinion from the highest German court and draw attention to the data protection requirements for legal bases for such far-reaching interventions.

Data protection in transition: enabling and shaping the (non-profit) use of data for research.

The use of data can and should be in the interest of society. Modern mobility concepts, for example, urgently need data on the mobility behavior of citizens. Numerous trend-setting projects are being implemented here in Hamburg following the ITS World Congress, in which the HmbBfDI is involved (Section 6.6 TB).

However, the pandemic has also shown how much catching up there is in the data situation in the healthcare sector, as the Federal Government's Corona Advisory Council has determined. This raises the question of how health data can be used in compliance with data protection regulations, for example through good pseudonymization or anonymization concepts. It is

important to awaken unused research potential and at the same time to give researchers legal certainty through precise specifications and to strengthen the trust of patients.

The HmbBfDI welcomes the plans of the Federal Government to better regulate this topic with various legislative projects (Research Data Act), especially in the health sector (Health Data Utilization Act) and to improve data access and use for the benefit of society as a whole. At the state level, the HmbBfDI supports the amendment of the Hamburg Hospital Act so that research data can be used in compliance with data protection guarantees. In addition, the HmbBfDI is in regular contact with medical institutions to explore the possibilities that the law is already opening up.

Data protection has a design task here, which the HmbBfDI meets with constructive suggestions.

The full activity report can be downloaded [here](#).

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