

Activity report of the HBDI

Prof. Dr. Alexander Roßnagel presented the 49th activity report on data protection and the 3rd activity report on freedom of information today

06/01/2021

Prof. Dr. Alexander Roßnagel says about the year under review: "The year under review makes it clear that the protection of the fundamental rights of those affected by data processing has gained in importance and attention. One reason for this, I believe, is that European data protection law combines new obligations for those responsible and extended rights for data subjects with effective options for action and sanctions."

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The Hessian Commissioner for Data Protection and Freedom of Information presents its 49th activity report on data protection and its 3rd activity report on freedom of information

The year 2020 unexpectedly developed into a special reporting year. The corona pandemic put data protection and the General Data Protection Regulation (GDPR) as well as the Hessian Data Protection and Freedom of Information Act (HDSIG) to the practical test. Another special feature results from the fact that the present 49th activity report of the Hessian data protection officer and the 3rd activity report of the Hessian officer for freedom of information by Prof. Dr. Michael Ronellenfitsch and his successor Prof. Dr. Alexander Roßnagel, after the change of office on March 1, 2021.

The second year since the GDPR came into force shows that the GDPR and the other data protection standards can withstand the requirements of a pandemic. The supervisory practice has brought the GDPR to life and uses the wide range of tasks and powers to promote compliance with data protection in Hesse. It became very clear, especially in this special reporting year, that staffing is an important success factor in connection with the efficient monitoring of compliance with the GDPR.

Prof. Dr. Alexander Roßnagel on this: "The reporting year makes it clear that the protection of the fundamental rights of persons affected by data processing has gained in importance and attention. I see one reason for this in the fact that European data protection law combines new obligations for those responsible and extended rights for data subjects with effective options for action and sanctions."

individual topics

Data protection in the pandemic

Data protection was also a key issue during the corona pandemic. The Hessian Commissioner for Data Protection and Freedom of Information (HBDI) received submissions on various questions in connection with the storage and processing of personal data to prevent and detect corona infections. The HBDI has declared fever measurement as a prerequisite for access to systemically relevant health facilities to be permissible in individual cases, subject to particularly strict technical security requirements and comprehensive information for the persons concerned. The HBDI dealt extensively with data protection issues in connection with the exemption from wearing a protective mask in retail. Here, the copying of medical certificates and the storage of diagnoses overshot the mark. Restaurants, hairdressers and other businesses had to collect guest and customer data in accordance with data protection regulations in order to be able to trace chains of infection if necessary. There were violations such as sending advertising to people on the Corona contact data list and private contact due to personal interest in the person. The HBDI was able to remedy complaints from swimming pool visitors about the collection and the extent of the data collected about them upon entry. There was no legal basis for this in the Corona Contact and Operating Restriction Ordinance. In addition to processing the individual complaints, numerous information offers were also developed and posted on the HBDI homepage.

Use of video conferencing systems in schools

With the first lockdown in March 2020, the use of video conferencing systems became a key issue. Suitable video conferencing systems were searched for in a hurry, although the considerations of data protection were not the top priority in many places. In this context, almost all video conferencing systems for the school sector were tolerated until August 2020, but this was extended until the end of July 2021 due to the ongoing pandemic. It was decided not to make the unpredictable situation for the schools even more difficult due to complex data protection regulations through stringent data protection regulations.

International Data Transfers - Privacy Shield Invalid

The decision of the ECJ on Schrems II in July 2020 caused considerable uncertainty in connection with the transfer of data to third countries. With this judgment, the ECJ revoked the justification for data transfers to the USA by the "Privacy Shield" agreement because the intelligence services were disproportionate access rights to personal data and there are no legal protection options for those affected from Europe. As a result of the judgment, every company that exports data to a third

country must check in each specific case whether the data recipients in the third country, e.g. the USA, are able to comply with the requirements for secure data transfer. They must provide additional guarantees to prevent US intelligence services from accessing the data. The supervisory authorities have been given the task of preventing data transfers if this is not the case. The year under review was characterized by preparing and providing information on the implementation of the ECJ ruling. The HBDI was intensively involved in the preparation of the corresponding papers of the European Data Protection Board.

Biometric recording of working hours using fingerprints

Due to various inquiries and complaints, the HBDI was asked about the legality of the processing of biometric data in the employment relationship. For example, the complainants asked whether the use of fingerprint work registration systems is permissible without their consent. In one case, the reason for its use was that the previous system had repeatedly been misused and manipulated. The examination of the design of the system showed that it was not in line with the GDPR. Due to the intervention of the HBDI, the biometric time recording was replaced by an ID card-based time recording system.

Access to data by former hospital employees

A data breach report from a Hessian hospital in accordance with Article 33 DS-GVO drew the attention of the HBDI to a problem in data processing in the hospital in connection with employee access. A former employee had gained access to a hospital PC via a ward base and accessed personal data from third parties. This case makes it clear how important it is to ensure that when employees leave a company, their accounts are deactivated.

Processing of data by collection agencies

Affected persons often complained that the immediate and complete deletion of their data from the data set of a debt collection agency, which you requested, was not implemented. In principle, the mandate of a collection agency serves to realize outstanding claims. For this purpose, the debtor's data is transmitted to the collection agency. The consent of the persons concerned is not required. In the event that the amount owed to the debt collection agency is settled and the debt collection process is thus concluded, there initially appears to be a right to have the data deleted. Nevertheless, processing may continue to be permitted, for example for tax reasons. The processing of the data is then restricted for a transitional period, for example by blocking the data records.

Transmission of personal data by email

Communication via e-mail has become even more important, especially during the pandemic. This is associated with questions

about the sending of personal data by e-mail. The misdelivery of e-mails was also one of the most frequently reported incidents of data breaches in accordance with Article 33 GDPR in 2020. The conference of the independent data protection supervisory authorities of the federal and state governments developed a helpful guideline for data protection-safe practice in the form of the orientation guide "Measures for the protection of personal data when it is transmitted by e-mail".

development of freedom of information

The right to freedom of information, which has only existed in Hesse for three years, is being used more and more, but can still be developed. So far, little has happened in the municipalities, districts and cities. A survey by the HBDI revealed that so far only three counties, one large city and very few small towns have opted for a freedom of information statute.

But the HBDI also sees room for improvement at the state level: The Hessian data protection and freedom of information law provides for complete exceptions for the areas of the police and the protection of the constitution. Here, the HBDI is committed to ensuring that the exceptions are limited to operational measures that require confidentiality and do not generally apply to all activities of the police and the Office for the Protection of the Constitution.

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