

No. Fac.: 11.17.001.009.088 February 15, 2022 BY HAND Complaint for breach of personal data Mr. XXXXX DECISION

other reference are complaint subject Based on the duties and powers conferred on me by articles 33(5) and 55(1) of the General Data Protection Regulation (EU) 2016/679, hereinafter "the Regulation", I issue the following decision: A. Incidents of the Case 2.1. A complaint was submitted to my Office on May 7, 2021, by Mr. XXXXXX (hereinafter the "complainant"), regarding a breach of his personal data. After examining the complaint, as part of my duties, pursuant to Article 57(1)(f) of the Regulation, a violation of the provisions of the Regulation was found by an employee of the Municipality of Strovolos, Mr. XXXXXX (hereinafter the "Professor") . 2.2. The eventual responsibilities of the Municipality of Strovolos, as a data controller, for the independent case/procedure. 2.3. As stated in the complaint, an official of the Municipality of Strovolos, collected, recording screenshots, and communicated to an unauthorized third party five forms/photographs that have been printed on June 10, 2020, from the Registry of the Municipality of Strovolos concerning the complainant and license for XXXXX. In particular, the screenshots in question were shared with a lawyer in the context of filing a supplementary affidavit during legal proceedings, in which the complainant is not involved. The complainant claims that the said processing of his data was done "without having been asked or given his consent, and without any judicial or other warrant justifying the specific act by anyone." 2.4. The complainant provided my Office with the screenshots in question. More specifically, the first three documents titled "XXXXXX", include information XXXXXX, postal address and date of registration) in the street where the complainant lives. Also, in the fourth document entitled "Details of the Dealer", the name, ID number and postal address of the complainant appear. The last document entitled "TRADING XXXXXX", includes a list of the trading owners (name and postal address), in the specific street. 2.5. On September 8, 2021, based on my duty to examine complaints, pursuant to Article 57(1)(f) of the Regulation, an electronic message was sent on my behalf to the Data Protection Officer of the Municipality of Strovolos (hereinafter the "DPO"), with which he was informed about the complaint in question and was called upon to inform me regarding the positions on the allegations of the complainant. 2.6. On October 05, 2021, following a written request from the Ministry of Internal Affairs, the said screenshots were provided, for the purpose of investigating the said complaint, on behalf of the Municipality. 2.7. On October 21, 2021, my Office received via e-mail a reply letter, dated the same date, from a representative of the Municipality of Strovolos, in which, among other things, the following is stated: (a) The Municipality of Strovolos confirms that the request was made verbally by the lawyer Mr. XXXXX to Prof. (b) The aforementioned lawyer reported to the Defendant that the disclosure of the complainant's data was "necessary for the purposes of administration of

justice based on Article 5 of Law 125(I)/2018". Thus, the Defendant acted voluntarily in his attempt, as he reported to the Municipality, to contribute to the case. (c) The Municipality of Strovolos clarifies that no written request was ever made to the Municipality by the lawyer in question, so that the predetermined procedure for responding to such requests was followed, but neither was a request made under the Right of Access to Public Information Sector. (d) The Municipality of Strovolos clarifies that, for requests from lawyers, it is the Municipality's policy that documents containing personal data are shared with lawyers in the event that a relevant Court Order has previously been issued. (e) The Municipality notes that the procedure followed for the collection and notification of the forms is not the appropriate procedure contained in the Municipality's data protection system. The Defendant confirmed to the Municipality that the lawyer approached him a year ago and verbally requested specific information from the Municipality Registry. (f) The Municipality admits that the Defendant recorded screenshots and without informing his supervisor or the Municipality's DPO communicated them to the lawyer via fax.

2.8. On November 03, 2021, I issued a prima facie Decision against the Municipality of Strovolos, with which the Municipality was requested to state the reasons why they consider that no corrective measure or administrative sanction should be imposed and to communicate to me the details of the employee in question.

2.9. The Municipality of Strovolos in a letter dated November 24, 2021, among other things, stated the following, as far as the responsibilities attributed to the Defendant are concerned: (a) According to the Municipality's policy, for requests by lawyers, documents containing personal data are only shared by presenting a relevant court order. Every request sent to the Municipality, based on the relevant procedures, is archived by the Central Archive and handled on a need-to-know basis. For matters concerning personal data, the Municipality's Office of the Ombudsman is informed, which immediately sends its own opinions and contributes to the handling of each case separately. (b) In this case, the request of the lawyer in question was not officially submitted to the Municipality and as a result the Municipality was not in a position to know about the existence of the specific request in order to respond accordingly. (c) The Defendant acted voluntarily, arbitrarily, without applying the express instructions contained in the relevant circulars of the Municipality and without first informing and/or consulting the Data Protection Officer of the Municipality (DPO), in violation of the express policy and the procedure of the Municipality which has been communicated to all employees of the Municipality and for which the Defendant received training. (d) After a relevant administrative examination by the Municipality, the Defendant stated that he did not act maliciously and/or fraudulently, as he considered that the lawyer in question was an associate of the Municipality and believed that he was obliged to make the notification for the purpose of issuing a court decision, in accordance with article

5 of Law 125 (I)/2018, following relevant representations and statements of the lawyer in question. (e) The Defendant did not check through his supervisor and/or through the Municipality whether the lawyer in question was a partner-lawyer of the Municipality, which is not the case. (f) The Defendant printed the information in question through the print screen function (snapshots/screen printing) through the Municipality's computer and sent it via facsimile to the lawyer in question. (g) The Municipality notes that the screenshots in question were sent without any cover letter, in violation of the Municipality's standing procedure. Consequently, the Municipality did not have any possibility of timely information about the actions of the employee in question. (h) The printing of the data was possible, because the Defendant has access to the specific file and the possibility of printing, in the context of his duties, as a member of the prevention team of the Municipality. (i) The Municipality confirms that it has taken all the necessary actions to investigate the incident and conduct disciplinary proceedings against the specific employee of the Municipality, after the notification of the incident. (j) The Municipality notified me as it should, the details of the Defendant.

3.1. On December 02, 2021, my Office sent an email to the Defendant, requesting his positions, regarding the said complaint, until 12/16/2021. 3.2. After the Defendant contacted my Office by telephone on December 22, 2021, he was granted an extension until January 7, 2022, as he claimed that he had not received the electronic message from my Office dated December 02, 2021. 3.3. On January 04, 2022, the Defendant replied by email, among other things, the following: (a) The Defendant is an employee of the Municipality of Strovolos and not an official. His duties in the Prevention Team include, among other things, supervision of city neighborhoods, detection of nuisances and other sources of filth, investigation of complaints submitted by citizens, service of subpoenas and other notices, conduct of investigations to identify offenders, submission of charge reports against offenders. (b) As part of his duties, the Defendant is instructed to cooperate with the Municipality's lawyers, who are numerous in number, and to transmit to them information and documents of the Municipality regarding the cases assigned to them by the Municipality and to provide evidence in court. In order to carry out these tasks, the Municipality of Strovolos has given the necessary access to the various registers of the Municipality. (c) Regarding the said case, the affected lawyer contacted by phone with the Office of the Municipality of Strovolos and spoke with the Defendant, as the Defendant's colleague, who handles the issues of the Acropolis area, was absent. (d) The Defendant states that, during the telephone conversation, the attorney mentioned his name, his status, and the fact that he handles a dog case and then asked him if the City has issued possession permits dogs for this case. The Defendant, thinking that this is a lawyer, who has been assigned a case by the Municipality, which case is being handled by his colleague who was absent from the Office of the

Municipality of Strovolos at that particular moment, proceeded to transmit the requested information. (e) It became clear in retrospect that the Defendant made a mistake and that he should have asked for more clarification from the lawyer to make sure that he was actually handling a case of the Municipality. However, the Defendant considers that this lawyer "should have informed me correctly and not taken advantage of me in his way". (f) The Defendant points out that his actions were done out of his zeal for his work and he had no improper intention, while he apologized for his mistake. (g) The Defendant informed me that the Municipality has already "punished him heavily", demoting him from the position of head of the group of workers, which he held, and by extension cutting off the corresponding allowance of approximately 85 euros monthly.

**B. Legal Framework**

**4.1.** Article 4(1) of the Regulation defines that "personal data" is "any information concerning an identified or identifiable natural person (data subject)".

**4.2.** In Article 4(2), processing is defined as "any act or series of acts carried out with or without the use of automated means, on personal data or sets of personal data, such as the collection, registration, organization, structuring, the storage, adaptation or alteration, retrieval, retrieval of information, use, disclosure by transmission, dissemination or any other form of disposal, association or combination, limitation, deletion or destruction".

**4.3.** Further, in Article 4(7), a data controller is defined as anyone (the natural or legal person, public authority, agency or other body) who, "alone or jointly with another, determine the purposes and manner of data processing of a personal nature".

**4.4.** Article 4(10) defines as a third party, "any natural or legal person, public authority, agency or body, with the exception of the data subject, the controller, the processor and the persons who, under the direct supervision of controller or processor, are authorized to process personal data".

**4.5.** Article 4(11) provides that consent means "any indication of will, free, specific, explicit and fully informed, by which the data subject expresses that he agrees, by statement or by a clear positive action, to be the subject of processing personal data relating to it."

**4.6.** In Article 4(12) a personal data breach is defined as "a breach of security that results in the accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access of personal data transmitted, stored or otherwise processed ».

**4.7.** The Principles governing the processing of personal data are defined in Article 5(1) of the Regulation. In subsection (a) of this Article it is provided that personal data must be "subject to legal and legitimate processing in a transparent manner in relation to the data subject ("legality, objectivity and transparency)". Also, in subsection (b) of the same Article it is stated that personal data must be "collected for specified, explicit and lawful purposes and not further processed in a manner incompatible with these purposes ("purpose limitation)". Furthermore, in subsection (f) of this Article it is provided that, personal data must be "processed in a way that guarantees the appropriate security of personal data, including their

protection from unauthorized or illegal processing and accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality"). 4.8. Article 6(1) of the Regulation, which concerns the legality of the processing, provides that the processing is lawful, "only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of personal data of its nature for one or more specific purposes, b) the processing is necessary for the performance of a contract to which the data subject is a party or to take measures at the request of the data subject prior to the conclusion of a contract, c) the processing is necessary for compliance with a legal obligation of the controller, d) the processing is necessary to safeguard a vital interest of the data subject or another natural person, e) the processing is necessary for the fulfillment of a task performed in the public interest or against the exercise of public authority assigned to the controller, f) the processing is necessary for the purposes of the legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject he is a child. Item f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties." 4.9. In Article 6(4) of the Regulation it is explained that, "When the processing for a purpose other than that for which the personal data have been collected is not based on the consent of the data subject or on the law of the Union or the law of a Member State which constitutes necessary and proportionate measure in a democratic society to ensure the purposes referred to in Article 23 paragraph 1, the controller, in order to ascertain whether the processing for another purpose is compatible with the purpose for which the personal data are initially collected, takes into account, among others: a) any relationship between the purposes for which the personal data have been collected and the purposes of the intended further processing, b) the context in which the personal data was collected, in particular with regard to the relationship between data subjects and the controller, c) the nature of the personal data ra, in particular for the special categories of personal data processed, in accordance with Article 9, or whether personal data related to criminal convictions and offenses are processed, in accordance with Article 10, d) the possible consequences of intended further processing for the data subjects, e) the existence of appropriate guarantees, which may include encryption or pseudonymization." In Recital 50 of the Preamble of the Regulation it is explained that, "The processing of personal data for purposes other than those for which the personal data were originally collected should only be allowed if the processing is compatible with the purposes for which the personal data character were originally collected. In this case, a legal basis separate from that which allowed the collection of the personal data is not required. If the processing is

necessary for the performance of a task carried out in the public interest or in the exercise of public authority delegated to the controller, Union or Member State law may determine and determine the tasks and purposes for which to be considered compatible and lawful for further processing. Further processing for archiving purposes in the public interest, for the purposes of scientific or historical research or for statistical purposes should be considered a compatible lawful act of processing. The legal basis provided by Union or Member State law for the processing of personal data may also constitute the legal basis for further processing. In order to ascertain whether the purpose of the further processing is compatible with the purpose of the initial collection of the personal data, the controller, if it meets all the requirements for the lawfulness of the initial processing, should take into account, among others: any links between of these purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of the data subject based on his relationship with the controller regarding their further use; the nature of the personal data; the consequences of the intended further processing for the data subjects; and the existence of appropriate safeguards for both initial and intended further processing operations'. 4.10. Article 24(1) of the Regulation states that it is the responsibility of the controller, such as, "taking into account the nature, scope, context and purposes of the processing, as well as the risks of different probability of occurrence and severity for the rights and liberties of natural persons, ... implements appropriate technical and organizational measures in order to ensure and be able to demonstrate that the processing is carried out in accordance with this regulation. These measures are reviewed and updated when deemed necessary." 4.11. Article 29 of the Regulation, which concerns processing under the supervision of the controller or processor, states that, "... any person acting under the supervision of the controller or processor, who has access to personal data , processes said data only on the instructions of the controller, unless obliged to do so by Union or Member State law.' 4.12. Based on Article 58(2), the Commissioner has all the following remedial powers: "a) to issue warnings to the controller or processor that intended processing operations are likely to violate the provisions of this regulation, b) to issue reprimands to the controller or the processor when processing operations have violated provisions of this regulation, c) to instruct the controller or the processor to comply with the requests of the data subject for the exercise of his rights in accordance with this regulation, d) to instruct the data controller or the processor to make the processing operations comply with the provisions of this regulation, if necessary, in a specific way and within a certain period, e) to instruct the data controller to announce the personal data breach a to the data subject, f) to impose a temporary or permanent restriction, including the prohibition of processing, g) to order the

correction or deletion of personal data or the restriction of processing pursuant to articles 16, 17 and 18 and an order to notify these actions to recipients to whom personal data has been disclosed pursuant to Article 17(2) and Article 19, h) withdraw the certification or order the certification body to withdraw a certificate issued in accordance with Articles 42 and 43 or order the certification body not to issue a certification, if the certification requirements are not met or no longer met, i) to impose an administrative fine pursuant to article 83, in addition to or instead of the measures referred to in this paragraph, depending on the circumstances of each individual case, j) to give order to suspend the circulation of data to a recipient in a third country or internationally organization." 4.13. Furthermore, Article 83 of the Regulation, which concerns the general conditions for imposing administrative fines, provides that, "1. Each supervisory authority shall ensure that the imposition of administrative fines in accordance with this article against violations of this regulation referred to in paragraphs 4, 5 and 6 is effective, proportionate and dissuasive in each individual case. 2. Administrative fines, depending on the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in Article 58 paragraph 2 points a) to h) and Article 58 paragraph 2 point j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following shall be duly taken into account: a) the nature, gravity and duration of the infringement, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered, b) the fraud or negligence that caused the breach, c) any actions taken by the controller or the processor to mitigate the damage suffered by the data subjects, d) the degree of responsibility of the controller or the processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32, e) any relevant previous violations of the controller or processor, f) the degree of cooperation with the control authority to remedy the violation as well as the limitation of its possible adverse effects, g) the categories of personal data affected by the breach, h) the way in which the supervisory authority was informed of the breach, in particular if and to what extent the controller or processor notified the violation, i) in the event that the measures referred to in Article 58 paragraph 2 were previously ordered to be taken against the controller involved or the processor in relation to the same object, the compliance with said measures, j) the observance of approved codes of conduct in accordance with article 40 or approved certification mechanisms in accordance with article 42 and k) any other aggravating or mitigating factor resulting from the circumstances of the specific case, such as the financial benefits obtained or losses avoided, directly or indirectly, from the violation. 3. In the event that the controller or processor, for the same or related processing operations, violates several

provisions of this regulation, the total amount of the administrative fine does not exceed the amount set for the most serious violation. 4. Violations of the following provisions shall attract, in accordance with paragraph 2, administrative fines of up to EUR 10 000 000 or, in the case of undertakings, up to 2 % of the total worldwide annual turnover of the previous financial year, whichever is higher: a ) the obligations of the controller and the processor in accordance with Articles 8, 11, 25 to 39 and 42 and 43, b) the obligations of the certification body in accordance with Articles 42 and 43, c) the obligations of the monitoring body in accordance with Article 41 paragraph 4. 5. Violations of the following provisions shall attract, in accordance with paragraph 2, administrative fines of up to EUR 20 000 000 or, in the case of undertakings, up to 4 % of the total global annual turnover of the previous financial year, depending whichever is higher: a) the basic principles for the processing, including the conditions applicable to the authorization, in accordance with articles 5, 6, 7 and 9, b) the rights of the subjects of the data in accordance with Articles 12 to 22, c) the transmission of personal data to a recipient in a third country or an international organization in accordance with Articles 44 to 49, d) any obligations under the law of the Member State which are established pursuant of chapter IX, e) non-compliance with an order or temporary or permanent restriction of processing or suspension of data circulation imposed by the supervisory authority pursuant to article 58 paragraph 2 or failure to provide access in violation of article 58 paragraph 1. 6. The failure to comply with an order of the supervisory authority as referred to in Article 58 paragraph 2 shall attract, in accordance with paragraph 2 of this Article, administrative fines of up to EUR 20 000 000 or, in the case of undertakings, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher. 7. Without prejudice to the corrective powers of the supervisory authorities in accordance with Article 58(2), each Member State may determine the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that member state. 8. The exercise by a supervisory authority of its powers under this Article shall be subject to due process safeguards in accordance with Union and Member State law, including effective judicial review and due process. 9. Where the legal system of the Member State does not provide for the imposition of administrative fines, this Article may be applied in such a way that the enforcement procedure is initiated by the competent supervisory authority and enforced by the competent national courts, while ensuring that such remedies means are effective and have an equivalent effect to the administrative fines that imposed by the supervisory authorities. Anyway, the fines that imposed are effective, proportionate and dissuasive. The Member States in question notify the Commission of the provisions of their laws which they adopt pursuant to



this paragraph, until May 25, 2018 and, without delay, each

subsequent amending law or their amendment."

### C. Rationale

5.1.1. In this case the complainant has stated that the collection and notification

to an unauthorized third party of the screenshots (screenshots), from

Register of the Municipality of Strovolos was made without obtaining its consent and without

secure any judicial or other warrant that can justify the

said processing of his data.

5.1.2. Therefore, I consider that, the processing was not done in a transparent way to

data subject, in this case the complainant, the data

were subjected to further processing, which is not compatible with the original

purpose of collecting such data, and were shared with an unauthorized third party

person, which constitute on the part of the Defendant, a violation of the provisions of the Article

5(1)(a), (b), (f) of the Regulation.

5.2.1. On the part of the Defendant, there was an admission that the

prescribed procedures of the Municipality of Strovolos, regarding the notification

personal data to unauthorized third parties. This fact, has

make the Defendant a separate data controller with all the consequences

obligations under the Regulation.

5.2.2. Even if the fact is accepted that the Professor acted in good faith and

made said disclosure to a third unauthorized person out of "his zeal

for his work", although he had to follow the prescribed procedures,

so as to ensure the rights and freedoms of their subjects

data.

5.3.1. The Municipality of Strovolos has informed me that a specific has been established

process to respond to solicitors' requests for notification

documents containing personal data and has shared with all the personal special confidentiality clause. For said claims they have adduce evidence to my Office.

5.3.2. According to Article 29 of the Regulation, "... every person acting under the supervision of the controller or processor, which has access to personal data, processes said data only by order of the data controller, unless obliged to do so by the Union or Member State law.'

5.3.3. Therefore, even though the Defendant is authorized by the Municipality Strovolou to have access to the said Registry of the Municipality and by extension to processes the personal data in question and despite what it knew the prescribed procedure for collection and notification of forms from the Registry of the Municipality of Strovolos, however, he acted beyond the scope of of his duties by sharing screenshots to a third party authorized person, without verifying the identity of the recipient, without follow the appropriate procedure with a written request and without consulting him his supervisor or the Data Protection Officer of the Municipality, thus violating Article 29 of the Regulation.

5.4. As regards the legality of the processing of the complainant's data, which was done on the initiative of the Defendant, it should be noted that none of the conditions of Article 6(1) of the Regulation.

#### D. Conclusion – Conclusion

6.1. Bearing in mind the above and based on the powers granted to me by Articles 58 and 83 of Regulation (EU) 2016/679 and article 24(b) of the Law 125(I)/2018, my conclusion is that there is a violation, on the part of the Defendant, of

Articles 5(1)(a), (b), (f), 6(1) and 29 of the Regulation, since the data complainant were further processed, which was not compatible to the original purpose of collecting this data, the prescribed procedures of the Municipality of Strovolos for the specific requests and the because data was shared with an unauthorized third party.

6.2. Based on the provisions of Article 83 of the Regulation, insofar as these apply in this particular case, I consider them below mitigating (1-4) and aggravating (5) factors:

(1) Lack of intent to infringe.

(2) The fact that the Defendant immediately admitted the violation.

(3) The fact that the Municipality of Strovolos had proceeded with a disciplinary investigation against of the Defendant, which led to a downgrade and a reduction in salary.

(4) The fact that there were no previous complaints of similar violations by him

Here you go.

(5) The fact that the Defendant did not follow the prescribed procedures of the Municipality Strovolou, acting voluntarily and sharing personal data of the complainant to unauthorized third parties.

6.3. Having considered and considered –

(a) The applicable legislative basis regarding the prescribed administrative sanctions in provisions of Article 58(2) and Article 83 of the Regulation.

(b) All the circumstances and factors which the Lord placed before me on the basis of all existing correspondence.

(c) The above mitigating and aggravating factors.

I consider that, under the circumstances, the imposition of an administrative fine is not justified, since As he has already been severely punished by the Municipality of Strovolos for this disclosure of personal data of the complainant.

Notwithstanding, Article 58 par. 2(b) of the Regulation gives me the authority as Commissioner

Personal Data Protection, among others, to address

reprimands to the controller or processor when they act

processing have violated the provisions of this Regulation.

6.4. Having regard to the above facts, the legal aspect on which it is based

this decision and the analysis as explained above, under the

powers granted to me by Article 58 par. 2(b) of the Regulation, I address Strictly

Reprimand to the Professor, as in the future, follows all procedures to

compliance with the Regulation.

6.5. In the event that it is established that the Defendant has acted in a similar manner

violation of the Regulation, this Reprimand will be measured in the event

imposing an administrative sanction against him.

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character

/A.D.