

Patient data in Büren without data protection

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Patient files in Büren without data protection - HmbBfDI files a complaint with the OVG Hamburg

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VG

Hamburg

Thousands of medical records have been stored unsecured since 2010 on the premises of the hospital in Büren, which has been empty for years. The hospital operating company originally responsible for the files, a subsidiary of Marseille Kliniken, filed for bankruptcy in 2010 and then ceased operations in the same year. After the end of the insolvency proceedings, the insolvency administrator returned the property to the original owner, a subsidiary of Marseille Kliniken with its registered office in Hamburg. Since then, the hospital grounds have been temporarily looked after by a caretaker. The medical records in the empty building were not backed up.

This case was reported in detail on YouTube in May 2020. This achieved wide media coverage. Public reporting led to former patients complaining to the North Rhine-Westphalia Authority for Data Protection and Freedom of Information about the freely accessible storage of their patient files. In addition, the property was subsequently entered several times by unauthorized persons who, out of curiosity or with the intention of stealing things there, illegally gained access to the building.

Since the real estate company has its registered office and the parent company has its headquarters in Hamburg, the complaints were submitted to the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI). In coordination with the city of Büren, as the responsible regulatory authority, he initiated further security measures.

Nevertheless, there were repeated attempts by unauthorized persons to gain access to the filing rooms. This made it necessary to commission a 24-hour on-site security service.

With a decision dated June 23, 2020, the HmbBfDI ordered the property owner, an affiliated company of the original hospital operating company, to store the medical files in a data protection-compliant manner and, in order to secure the rights of those affected to the data, to have them processed by a carrier of medical confidentiality in to take care of. Due to the acute risk of

recurring burglary attempts, the HmbBfDI ordered the immediate enforceability of the basic decree.

The VG Hamburg granted the owner's application for the restoration of the suspensive effect in interim legal protection proceedings on the grounds that the disputed storage of the patient files "from no legal point of view is a processing operation that can be attributed (to the applicant)" within the meaning of the General Data Protection Regulation (GDPR) act. Rather, the mere existence of the files in the applicant's building complex is merely a condition. The term processing requires a relevant change in status, which in the present case is not given by mere storage. The law does not recognize a data protection guarantee obligation.

The decision must be questioned from a data protection point of view. The narrow interpretation of the term processing is likely to leave significant gaps in legal protection for the fundamental rights of data subjects. In the case of the legal succession of a responsible body, mere doing nothing is enough to let the data protection regulations come to nothing: According to these regulations, those affected have neither the opportunity to obtain information about their data nor to raise objections to the data management or to have them deleted to demand. You have neither the right to complain to an independent body, nor can you demand compliance with the necessary technical and organizational security measures. The application of the civil law injunctive relief against the illegal handling of data is legally problematic and should not be enforceable in the absence of responsibility anyway. An interpretation that conforms to fundamental rights, which the administrative court apparently does not consider in this case, can help here: In this respect, it would be necessary to examine whether the storage of data on one's own premises does not constitute processing for those affected, which is also the meaning of the English word meaning of the term "storing" (Storage), which specifies the processing concept in the GDPR. In addition, there are considerable concerns that the responsibility for data protection can be shifted to a legal entity through special corporate splits, which can then go under due to insolvency without the parent or subsidiary having any data protection obligations.

Johannes Caspar, Hamburg's representative for data protection and freedom of information: "In the past few weeks, we have done everything we can to secure the health data of a large number of former patients on site. We had coordinated this with the city of Büren, the district government of Detmold, the Minister for Labour, Health and Social Affairs of the State of North Rhine-Westphalia and with our colleagues from the LfDI NRW. The fact that in the present case there should be no responsibility for a supervisory authority in the area of data protection comes as a surprise, and not only to us. The Hamburg Administrative Court's decision raises many questions, which in particular make further handling of the patient files of the

regulatory authorities on site and ultimately also the enforcement of the rights of numerous affected persons considerably more difficult. We have therefore lodged a complaint against the decision with the OVG Hamburg to ensure that data protection law applies to patient data at the Büren site. At the same time, it must be clarified in principle that comprehensive protection is guaranteed, especially for particularly sensitive data in such case groups, which cannot be circumvented by specific group structures."

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