

CORRECT REPEAT Athens, 20-03-2020 Prot. No.: C/EX/2096/20-03-2020 PERSONAL DATA PROTECTION AUTHORITY

A P O F A S I 4/2020 (Department) The Personal Data Protection Authority met , at the invitation of its President, in a regular meeting in the composition of the Department at its headquarters on 12/3/2020 at 11.00 a.m., postponing the meetings from 04/3/2020 and 26/2/2020, in order to examine the case that refers to the history of the present. The meeting was attended by teleconference by Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Constantinos Menoudakos, and alternate members Evangelos Papakonstantinou and Emmanuel Dimogerontakis attended as rapporteur. They did not attend due to disability, although regular members Konstantinos Lambrinoudakis, Charalambos Anthopoulos and Eleni Martsoukou were legally summoned in writing. The meeting was attended, by order of the President without the right to vote, Maria Alikakou, specialist scientist - auditor as assistant rapporteur and Georgia Palaiologou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: With the complaint No. C/EIS/3027/22.4.2019 before the Authority, A appealed against the "Model Center for Speech and Special Education - Michou Dimitra" (hereinafter the Center), which based in ... . In particular, with the appeal under review, A complains about the refusal of the Center to satisfy the right of access and specifically to grant him the data he requested and concerning his minor child, B. 2 In more detail, according to the complaints, on ... 2018 the applicant requested by email to the Center to grant him the number of sessions "per type of session and month during the Fall of 2018", to which his minor child had undergone. His request, which he repeated on ... 2019, the Center refused to satisfy due to a relative refusal of the applicant's ex-wife, C. The Center did not satisfy the applicant's subsequent request on ... 2019, for the same reasons, in which he additionally requested and the tax documents issued for the above sessions. In fact, the Center in its reply letter to the Authority, in the context of the examination of the appeal in question, clarified that the non-satisfaction of the above request of the applicant was due to the fact that the mother of the minor and ex-wife of the applicant was the one who had the parental care and, therefore, only she could allow the Center to proceed with the requested grant ("The medical information of the father and the person having parental care was carried out by us within the framework of our competences and within the limits allowed to us by our principal mother minor"). And the granting of the tax documents, according to the claims of the Center, could be requested by the applicant "in a subsequent court" between the two ex-spouses "through the process of presenting documents". Following this, the Authority sent the document with original number C/EX/3027-2/11.11.2018, with which it requested the Center to immediately satisfy the above-mentioned right of the applicant in accordance with article 15 paragraph 1 and 3 GDPR and to

inform the Authority accordingly. In more detail, the Authority pointed out, among other things, that the question of the right of access of the parent, who exercises parental care and does not have custody, to the data of his minor child, has already been resolved by the Authority. Specifically, according to the established jurisprudence of the Authority (see for example decisions 24/2009 and 53/2010) the parent exercising parental care has in principle the right of access of the aforementioned Article 15 GDPR, in combination with Articles 128 and 1510 Civil Code, to information referring to his minor child, unless otherwise provided by a court order, e.g. a decision designating the other parent as exercising parental care, a decision to prohibit communication with the child, etc. The data controller is obliged to immediately satisfy this right. Regarding, in particular, however, the issue of the granting of the requested tax documents to the applicant, the Authority, having as information from 23 the file of the case completed so far that the relevant documents were issued in the name of the mother, clarified in its above document that the judgment regarding the possibility of granting them to the applicant escapes its competence for the reason that they contain personal data of a third party, i.e. the mother of the minor child. In particular, the Authority pointed out that the relevant judgment rests with the data controller, who must decide on granting or not in accordance with the conditions provided for in art. 6 par. 1 GDPR. The relevant decision of the controller, positive or negative, should be documented in the context of the basic principle of accountability of no. 5 par. 2 GDPR. Subsequently, the appellant came back with his email with the original number C/EIS/8051.21.11.2019 with the attachments to it, informing the Authority that the right of access, as it was clarified in the above document of the Authority, had not still satisfied. For the above reasons and for the additional reason that the Center did not inform the Authority of its own actions after sending the document No. C/EX/3027-2/11.11.2018, as requested in the last , the Authority invited the parties involved to the Plenary meeting of 08.1.2020 and then a deadline was set for them to submit briefs. During the hearing on 08.1.2020, D was present, who submitted a power of attorney, according to which he was authorized by his brother A to attend the meeting instead of him, and Sofia Vlacho Zouneli, the applicant's attorney-at-law. Dimitris Vlemmas also appeared as attorney of the "Model Center for Speech and Special Education - Michou Dimitras". The above-mentioned attendees, after orally developing their opinions, then submitted their relevant memoranda to the Authority. The side of the complainant during the above hearing, but also with the no. prot. C/EIS/528/22.1.2020 memorandum to the Authority reiterated, among other things, that the Center continues to refuse the granting of the requested documents and pointed out that the refusal of the Center is unacceptable and is not based on a thorough justification. The controlled Center during the hearing of 08.1.2020, but also with the no. prot. C/EIS/564/23.1.2020 his memorandum to the

Authority argued that he cannot proceed with the granting of the requested documents due to the contrary position of the minor's mother and lack of relevant consent on her part. In particular, with regard to 3 4 tax documents, both during the hearing and in writing with the memorandum, it was clarified by the Center that these are issued in the name of the minor child and not, as was initially thought, in the name of the mother. However, regarding the last clarification, the Center pointed out that the tax documents "are issued in the name of the minors, without the consent of the mother, we did not forward them to the father of the minors and this because the issuance in the name of the minors serves a purely public purpose interest and namely the return of each amount from the insurance company to the person having custody." In addition, the Center argued that the applicant can obtain the requested documents through the process of presentation of documents nos. 450 ff. of the Civil Code, as well as through the process of no. 1445 AK, i.e. to operate on the applicant with the intervention of the competent Prosecutor. The Authority, from the hearing procedure, from the elements of the case file, as well as from the memoranda submitted to the Authority and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and the taking a decision and after thorough discussion, CONSIDERED ACCORDING TO THE LAW 1. Because no. 5 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data (hereinafter GDPR) sets the principles that must govern a processing. According to the principle of accountability introduced by the said article and expressly defined in its second paragraph, the controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ('accountability')". This principle, which is a cornerstone of the GDPR, implies that the controller can and should be able to demonstrate compliance. In addition, it enables the data controller to be able to control and legally document a processing carried out in accordance with the legal bases provided by the GDPR and national data protection law. 2. Because according to article 15 par. 1, 3 and 4 of the GDPR "1. The data subject has the right to receive from the controller 4 5 confirmation as to whether or not the personal data that it concerns being processed and, if this is the case, the right to access the personal data of the following information: [...] 2. [...] 3. The controller provides a copy of the data personal data being processed. [...] 4. The right to receive a copy referred to in paragraph 3 does not affect adversely the rights and freedoms of others."

3. Because according to article 12 par. 3 and 4 GDPR "The data controller

provides the data subject with information about the action that carried out on request under Articles 15 to 22 without delay and in any case within one month of its receipt request. This deadline may be extended by two more months, if required, taking into account the complexity of the request and of the number of requests. The controller informs it data subject for said extension within one month of receipt of the request, as well as the reasons for the delay. [...] 4.

If the controller does not act on the subject's request of the data, informs within one month of receiving the request data subject for the reasons why he did not act and for the possibility of submitting a complaint to a supervisory authority and exercise judicial appeal."

4. Because according to the provisions of article 58 par. 2 of the GDPR in combination with the provisions of article 15 par. 4 et seq. of Law 4624/2019 the supervisory authority has the corrective powers provided for in said provisions against of the controller, when the latter has violated its provisions GDPR and Law 4624/2019.

5. Because according to art. 9 L.4624/2019 "the supervision of the implementation of provisions of the GDPR, the present and other regulations concerning the protection of the individual against the processing of personal data character in the Greek Territory is exercised by the Authority that has been established with Law 2472/1997 (A'50)."

6. Because according to the provisions of article 3 para. a) of Law 4624/2019 the provisions of said law apply to private entities, among others, if "a) the data controller or the data processor

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processes personal data within Hellenic

Territory

7. Because according to the established jurisprudence of the Authority (see indicatively relevant

decisions 24/2009 and 53/2010 of the Authority, published on its website

www.dpa.gr) the person exercising parental care of his minor child (art. 128 and

1510 AK) has in principle as his legal representative the right of access

of the above article 15 in the data referring to his minor child

(see indicatively relevant decisions 24/2009 and 53/2010 of the Authority,

published on the website of www.dpa.gr), unless otherwise provided

other than a court decision (e.g. a decision that designates as the practitioner

parental care of the other parent, decision to prohibit contact with the child

etc).

8. Because in the present case, the appellant exercised the right of access

on behalf of his minor child before the Center by exercising it

custody. More specifically, the applicant requested from the Center the number of

of sessions submitted by his minor child in the month of ... of 2018,

as well as the corresponding tax documents issued in

name of the minor. The above request was not satisfied by the Center for the

reason that the minor's mother was not in agreement with the disclosure of

requested information to the applicant. In particular, regarding

refusal to grant the tax documents the Center emphasized that

it is about data of the mother and "the issue in the name of minors

serves a purely public interest purpose and namely the performance of the individual

amount from the insurance company to the person having custody". So basically,

the Center claimed that the financial documents are about the person of the mother, despite the minor child listed in them, without, however, to clearly denies that this is personal data of the minor. Moreover, this claim of the Center is false, for the reason that even if it is made accepted that the documents contain information that indirectly concerns the mother (e.g. the payment of a certain amount on her behalf on account of the minor child), this does not mean that they do not contain information of the minor child, since his name and surname are written on them so they constitute, in the narrow sense of the term, his personal data minor.

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9. Because even if it is accepted that the tax documents in question they also constitute the mother's personal data, as the relevant payer amount written on them, the right of access of the practicing father parental responsibility in the data of his child may be limited and, therefore, to be prohibited, only if the rights are adversely affected and the freedoms of others, i.e. the mother, according to article 15 par. 4 GDPR. The simple refusal and opposition of the mother to grant from the Center of the requested documents in conjunction with the lack of adverse invocation effect on the rights and freedoms of the mother, under no circumstances cannot be an obstacle to the satisfaction of the right access. After all, the Center within the framework of the principle of accountability, had to to consider, if there is a question of adverse effect on the rights and liberties of the mother, in order to justify not satisfy the sub judgment right of access.

10. Because, finally, the Center did not comply with the relevant order of the Authority for satisfaction of the applicant's right of access to personal data of his minor child, as shown by the no. prot.

C/EX/3027-2/11.11.2018 her document.

The beginning:

For those reasons

1. Instructs the Center to grant the documents referred to in the history

of the present to A, including the tax ones

documents, for the reasons mentioned in the rationale of the present,

according to article 58 par. 2 item 3 GDPR.

2. It imposes on the Center an administrative fine of three thousand (3,000) euros for non-compliance

satisfaction of the right of access in accordance with articles 58 par. 2 item.

i' and 83 par. 5 item II GDPR.

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3. It imposes on the Center an administrative fine of five thousand (5,000) euros for non-compliance

compliance with the Authority's order in accordance with article 83 par. 5 item so what

6 GDPR.

The Deputy President

The Secretary

George Batzalexis

Paleologo Georgia

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