

Athens, 29-11-2018

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

Prot. No. C/EX/9616/29-11-2018

A P O F A S H A . 72/2018

The Personal Data Protection Authority met as a Department

at its headquarters on Wednesday 06.06.2018 at 10:00 a.m. upon his invitation

Its President, in order to examine the case mentioned in its history

present. They were attended by the Deputy President, Georgios Batzalexis, who was disabled

of the President of the Authority, Constantinos Menoudakos, and the alternate members

Panagiotis Rontogiannis, Evangelos Papakonstantinou, as rapporteur, and Grigorios

Tsolias, in replacement of regular members Antonios ymbonis, Konstantinos

Lamprinoudakis and Charalampou Anthopoulos, respectively, who, although they were summoned

legally in writing, they did not attend due to obstruction. Present without the right to vote

was Evangelia Vassilopoulou, legal auditor, as assistant rapporteur and Irini

Papageorgopoulou, employee of the administrative affairs department, as secretary.

The Authority took into account the following:

With the no. prot. ADDPCH G/EI /1637/28-02-2017 document, o A (hereinafter

"applicant") appeals to the Personal Data Protection Authority,

complaining that X General Hospital, where he works as a nursing assistant,

"he published unnecessarily sensitive personal data without being asked

consented, i.e. made public the medical opinion certifying his disability

(K.E.P.A.) in the Service, in the Ministry of Interior and also in the Ministry of Health.

Furthermore, the applicant in his above mentioned document to the Authority claims the following:

"on 25-11-2016 with no. I requested my first ... document from nursing

address as a superior authority to allow me to continue working with a reduced

hours by one (1) hour per day making use of my entitled special leave with earnings of six (6) working days in addition to my normal leave

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converting them into hours for health reasons in continuation of no. first... previous decision of the administration which I however interrupted due to my absence from the service in order to exercise my duties as President of the Prefectural Court Department of ADEDY X, requesting a trade union license. The service, in violation of article 10 par. 3 of the decree and article 4 of Law 2690/1999, did not respond until today in my submitted request...." and concludes: "Because based on above sensitive personal data, which concern her, were flagrantly violated my health, I beg you with your intervention so that it is stopped immediately or further handling and processing thereof. In addition, as the specific issue is investigated and as the corresponding administrative and disciplinary responsibilities are assigned". attached to it said document, the appellant also sent a number of documents and reports to others competent services at its discretion, as well as its conclusion related to the case of the Citizen's Advocate (prot. no. 225574/23319/2017).

Then, with the under no. prot. ADPPH G/EI /1860/08.03.20187 supplementary document, the Administrative Support Section of the Directorate of Internal Affairs of the Headquarters of the Hellenic Police forwards to the Authority, also notifying the applicant, the applicant's report to their service, attaching them to it accordingly documents. Finally, with the no. prot. G/EI /3840/15.05.2017 supplementary document, the

The appellant filed before the Authority the response of the Administration of the 4th of Health Region P to the Ministry of Health regarding the said report of A as an employee of the Ministry of Health to its administration.

The Authority with no. prot. ADDPH C/EX/2041/13-03-2017 her document informed the applicant as follows: "according to article 15 par. 3 of Law 3917/2011, the Authority has the

discretion to assess the priority of consideration of applications, questions and complaints based on the importance and general interest of the issue. THE large number of cases and the insufficient staffing of the Authority do not allow, unfortunately, the immediate response to your request."

Then, with the provision document No. APDPHX G/EI /2208/20.03.2018 clarifications, the Authority, in order to exercise the powers pursuant to Article 19 of Law 2472/1997 responsibilities, requested the Commander and the competent employees of the General of Hospital X to send the Hospital's opinions on the complainants, based on the attached copy of no. prot. ADPPH G/EI /1637/28.02.2017 appeal of A. with response of the above document, General Hospital X, through Head of the Human Resources Management department, with the no. first...

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(ADPPH G/EI /2563/30.03.2018) sent his opinions regarding the said complaint to the Authority, as well as the documents he had filed before o applicant regarding the granting of a special permit to him.

The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and withdrew after discussion of the case and before the conference and reception decision, after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. Because the provisions of articles 2 par. b', 4 par. 1 and 7 par. 2 item. a' of n. 2472/1997 determine the terms and conditions for legal processing of sensitive personal health-related data. The provisions of articles 5 par. 3 and 13 par. 3 item b' of Law 3418/2005 (Code of Medical Ethics) provide for the exceptional granting of medical certificates to a third party, if the processing is necessary to safeguard his vital interest

subject or provided for by law of the interest of a third party, or if the subject has a legitimate interest and proves it, as well as the conditions for lifting the medical privacy. Because, further, article 11 par. 3 of Law 2472/1997 stipulates that if the data is communicated to third parties, the subject is informed of the communication before from them.

2. Because, in the case under consideration, the appellant claims that they were violated sensitive personal data and specific health data with or without the need information and consent of publication in the Service of G.N. X, in the Ministry of Internal Affairs but also at the Ministry of Health for its medical certification of disability (KE.PA.A.). And he asks the Authority how, with its intervention, it is stopped immediately the further handling and processing of the above sensitive personal data data and as the specific issue is investigated and the corresponding ones are attributed administrative and disciplinary responsibilities".

3. General Hospital X with its document dated 30.03.2018 and the documents attached to it (ADDPHX G/EI /263/30.03.2018),

he answered

in the

under

No.

first

APDPX/G/EX/2208/20.03.2018 document for submission of opinions before the Authority regarding

the above appeal and the reasons for their notification of sensitive data

of the applicant's personal data the following: "according to par. 4 of article 50

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Law 3528/2007 "employees with a disability rate of fifty percent or more are entitled

from the service every calendar year six (6) working days paid leave

in addition to their normal leave". Reason for enactment of the provisions of article 50 N.

3528/2007, as can be seen from the introductory report of the law, there was the desire

of the legislator, as in the previous forms of the civil service code (N.

2683/99), to provide facilities to employees facing health problems.

Given the impossibility of recording in the relevant provision all the diseases and all the

of cases of employees with illnesses requiring services, there was many times the

need to issue circular directives, such as for example the directive of the Ministry

Internal with no. prot. DIDAD/F.53/712/7-11-2013, regarding employees who

they are entitled to a special leave with wages up to 22 working days a year. Also, respectively

in the past, in order to solve the social problem of particular concern

sensitive group of employees, caused the no. 19/2003 legal opinion

Council of State, which was accepted by the Minister of Health and Welfare

as well as by the Minister of Interior, Public Administration and Decentralization. Based

the opinion this special permit should be granted to the beneficiaries after

opinion of the primary health committee with which it will be certified

on the grounds that the condition from which they or one of their children suffers, is necessary

periodical hospitalization, which takes place in a specific public or

private

hospital as well as determining the time period for which the

this hospitalization.

So in view of all this, given the will of our administration to serve

the applicant for the special employee permit, but also given the non-express legislative

provision for satisfying his request, we addressed the Ministry competently

Internal with a specific question. The mention of the applicant's illness prevented

exclusively at the service of the employee to deal effectively with it

of his disease, a fact that could be the cause of a relevant interpretation circular to accept the request. It should be pointed out that no such reasoning exists include it with no. first ... (attachment 3) previous document of his administration of a hospital that had accepted a similar request from the employee, so it would not constitute the invocation of its reasoning is a legal justification.

It is obvious that nothing could be concealed from the administration's point of view other expediency, aimed at insulting his personality, such as baselessly claims in his report the employee, obviously influenced by the rejection of the request for the granting of the permit.

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the specific case, the mention in a document of the hospital, addressed to competent Ministry of the Interior, of the information on his state of health employee, recommends the processing of personal data, in accordance with the provisions of provisions of articles 2 par. b and d of Law 2472/1997, which was directly linked to the public service relationship of the already complaining employee and his request for granting a special permit for health reasons.

The disclosure of the employee's state of health was necessary to assess the reason for granting his requested relief, so its principle was not violated proportionality of article 4 par. 1 item b of Law 2472/1997, as well as the obligation of the confidentiality of processing, in accordance with article 10 of Law 2472/1997 (see related reasoning of the 28/2012 decision of the APDX).

summarizing the above, our management's view on the questions you raised is that: 1) there was no unauthorized processing of employee personal data, 2) h reporting the disease was necessary to achieve the goal, because simple was not enough invoking a disability rate, 3) the employee's approval was deemed unnecessary, given that the action was for his own benefit and 4) he has addressed the issue h

our superior authority, which deemed the processing of his data objectionable  
employee A.

Our management believes that it acted in the exercise of legal  
of her duties and is at your disposal for any further clarification."

4. Taking into account the above, the Authority points out that according to par. 2 of  
of article 7 of Law 2472/1997, which was applicable during the time period of the considered  
processing, exceptionally permitted under certain limitations and alternatives  
mentioned conditions the collection and processing of sensitive data, after  
permission of the Authority.

In addition, in this case, as proved by both sides

General Hospital X notified the Ministry of the alleged allegations  
of the Interior and that of the Ministry of Health, invoking the competence of the second as  
supervising Ministry of the Hospital, its medical certification opinion  
disability (KE.P.A.) of A, i.e. his sensitive personal data according to article 2 par. b  
of Law 2472/1997, without informing him, as required by the provision of Article 11 of Law

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2472/1997 and without the consent of the subject and relevant authorization from the Authority, according to  
with the provision of Article 7 of Law 2472/1997.

Besides, according to article 4 par. 1 f. b' of Law 2472/1997 "personnel data  
character to be subject to legal processing (including by the data controller according to  
article 4 par. 2 of Law 2472/1997, and in this case by General Hospital X, according to  
article 2 para. g' of the same law) must be relevant, appropriate and no more  
from what is each time required in view of the purposes of the processing. Therefore, in  
in this case, General Hospital X, as controller,  
sending the relevant document, without deleting the name of the employee to whom  
was mentioned (data subject), so that it is not possible to identify him

from the competent Ministry for an opinion on granting or not a special permit and at the same time to satisfy the purpose of satisfaction invoked by the Hospital or not of the subject's request, it also violated the principle of proportionality data processing.

#### FOR THOSE REASONS

The Authority, judging the seriousness of the committed violations of those referred to in reasoning of the provisions of Law 2472/1997, as well as the competence and duties of as such, directs a strict recommendation to X General Hospital to discontinue any further processing of the above-mentioned sensitive data of A and such applies with due diligence the national and European provisions on protection personal data.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou