Athens, 04-04-2022 Prot. No.: 853 DECISION 15/2022 (Department) The Personal Data Protection Authority met as a Department via teleconference on 02-08-2022 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the regular members, Spyridon Vlachopoulos, as rapporteur, Charalambos Anthopoulos and Konstantinos Lambrinoudakis, were present. The meeting was attended, by order of the President, Anastasia Kaniklidou, legal auditor - lawyer, as assistant rapporteur, and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint No. C/EIS/645/25-01-2021 of A, Head of the Directorate … of Municipality X, was submitted to the Authority, according to which B, under the status of former Mayor of Municipality X and current Municipal Councillor, possessed and knew the complainant's personal data, which he arbitrarily communicated and disseminated to non-entitled persons without her consent and without any other legal basis for this, committing the offense of paragraph 2 of article 38 of Law 4624/2019. More specifically, the complaint states the following: 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 The complainant, Head of the Directorate … of Municipality X, during the evaluation process of her, chose with her relevant statement (with number ...) to be evaluated, in the context of her work, by the current Mayor of [area] X (with a three-month term instead of the outgoing Mayor), as A' Assessor, by virtue of her with data DAPDEP/Φ5/ 5/IIK17012/08-09-20 circular of the Ministry of the Interior. According to her claims, pursuant to the aforementioned circular, and following a clarifying message she received from the competent department of the Public Personnel Evaluation Department of the Ministry of Interior and Administrative Reconstruction (to which the Director of Administrative Services of Municipality X also sent a relevant question) she had the right, as Head of Directorate ..., to choose to be evaluated either by the new Mayor, as he could evaluate her even with a three-month term, or by the outgoing Mayor, given that the 60-day deadline is not defined as exclusive in the law. Following her evaluation statement, the complainant sent a series of documents in which he referred to the employee in question's refusal to be evaluated by him, while in the first of them he also referred to the fact that she was illegally exercising the parallel duties of head of the mayor's independent department. In particular, according to the allegations of the complainant "... I became aware of him with no. first ... of the Director's ... document, C, with which the former mayor's document with no. first ... which referred to my refusal to be evaluated by the complainant and that I was illegally performing the parallel duties of head of the independent mayor's department". As she further mentions in her complaint "[..] on ... I became aware of it with no. original ... document of the Director ..., C, with

which the no. first ... document of the accused, which he sent to a multitude of persons and Services and which referred to my refusal to be evaluated by him[..] » The first of the above mentioned documents, the accused sent it to a multitude of persons and services , namely: (i) to the Director ... of Municipality X, C, (ii) to the Head of Department ..., D, (iii) to the Panhellenic Federation of Employees (P.O.E.) - OTA, (iv) to Union of Workers and Employees of Municipality X, (v) 2 in the General Directorate of Human Resources Public Sector - Directorate of Evaluation and Monitoring of Selection Procedures and Disciplinary Matters - Department of Human Resources Evaluation of the Ministry of Interior and Administrative Reconstruction, while at the same time it was communicated to both the Minister of Interior and to the Deputy Minister of the Interior. In addition, the above letter from ... sent by the complainant had the same recipients, and was also communicated to the Minister of the Interior. According to the complainant's claims, in the letter in question, the complainant referred to the complainant's refusal to be evaluated by him and requested to receive a response to his previous letters from ... , ... , ... and ... regarding the complainant's alleged refusal and in violation of of law to be evaluated by him. For these reasons, the complainant requests from the Authority the imposition of the prescribed administrative fine against the complainant as well as the transmission of the said complaint to the competent prosecutor's office for criminal prosecution as provided for in article 38 of Law 4624/2019. The Authority, in the context of examining the above complaint, with the no. prot. C/EXE/651/16-02-2021 her document, informed the complainant about the complaint and invited him to express his views on it. The complainant, after requesting and receiving an extension of the deadline for sending his opinions (with the protocol number of the Authority C/EIS/1738/11-03-2021 his request), responded with from ... (with protocol number of the Authority C/EIS /2266/01-04-2021) document of after the relevant documents. In the aforementioned response document, the complainant states that the complainant was placed in the position of supervisor in the Directorate … with his decision no. ... by the decision of the current Mayor, she was assigned the duties of Head... . According to his claims, on ..., the complainant was informed by the head of the department of ... of the Municipality about his obligation to complete the evaluation report of the staff evaluated by him for the year 2019 (which included the complainant) 3 until 31 December 2020. However - according to his claims - when he entered the online evaluation form on ..., the data of the employees evaluated by them had been deleted from the system, without him having been previously informed about it. Following his related question, as he claims, he was informed that the complainant chose the "possibility of evaluation only by the current Mayor" based on a relevant document from an employee of the Ministry of the Interior. Therefore, acting in the exercise of public authority assigned to him, pursuant to article 6 par. 1 item

e' of the GDPR, and not having received information from the competent departments of the Municipality (to which he initially addressed himself), under the pressure of of the evaluation deadline, and following the letters from ..., ..., ..., he sent his letter from ..., in which, as he claims, he mentioned the complainant's name, branch and specialty, insisting on her evaluation by him, as stipulated the written provisions, which he communicated to several bodies due to the strict deadlines and wanting answers to his questions. As the complainant claims, the processing (disclosure) of the personal data was necessary for the purposes of the legitimate interests he was pursuing (according to article 6 par. 1 item f of the GDPR) and consisted of seeking answers to his questions, and evaluated the his own legal interests superior to those of the complainant, by reporting information apparently made public on the Diaygeia website for reasons of transparency, trying to meet his statutory duties. In a similar way and for the same reasons, he also sent his letter from ... to the same addressees and mentioning the name of the complainant, and her express refusal to be evaluated by him, citing as justification the said notification in which he made the order of of article 6 par. 1 para. f of the GDPR for the transmission in question, as above. In view of the above, the Authority with no. C/EX/1554/22-06-2021 and C/EX/1558/22-06-2021 respectively invited the parties to attend the teleconference of the competent Department from 30-06-2021, in order to discuss the above complaint. 4 During the hearing, which took place on 15-09-2021, postponed from 30-06-2021, the complainant appeared, after her lawyer Dimitrios Pollalis, while on behalf of B the attorneys Evangelos Hatzigiannakis and Charalambos Babalos appeared . Both parties, after orally developing their views, were given a deadline during this meeting to submit memoranda to further support their claims and submitted their memoranda on time, with which they briefly presented, among other things, the following: In particular, the complainant in above hearing of 15-09-2021, but also with the no. C/EIS/6275/29-09-2021 with a hearing, its memorandum supported the following: The complainant acted in an unjustified but also incomprehensible manner, since without any valid and legal reason, with a series of written reports to competent and non-competent Public Authorities but and Individuals, disclosed her personal data with the sole purpose of discrediting and defaming her. In particular, the complainant, after repeating that during her evaluation process in the year 2020 she chose to be evaluated, in the context of her work, with the current Mayor of [region] X as First Assessor, as, according to her claims, she had the right to do, she states that the law provides the complainant himself with the possibility to assess her in written form (a provision which applies, according to the complainant, to the case where the departed assessors do not remain active in the Human Resources Register) and therefore even if the complainant were to assess her, it would not be necessary to do so through the Human Resources Register (ie electronically). Therefore, as the complainant

points out, there was no reason for him to send the letters in question to all these agencies and services, allegedly asking to be informed as to why he is not able to evaluate his subordinates through this particular electronic platform, but could to send his evaluation of her in a thank you form. Next, the complainant states that the complainant, as the outgoing Mayor, acted analogously to a data controller, without actually having this capacity, because he had this capacity for the duration of his term as Mayor. After the termination of this, the complainant - as now former Mayor - did not retain this capacity. Regarding the complainant's claim that the complainant's information is accessible to anyone through a simple search of her name on the Google search engine, since the information contained in the letters she sent, such as the complainant's name and position in Municipality X are posted on "Diavygia", the complainant objects that her personal information is posted on the internet for specific purposes, e.g. the "Clarity" program service. Furthermore, the complainant points out that her personal data in question may not be processed beyond the specific purpose for which they have been posted on the individual websites and indeed by anyone and even more so no one has the right to share and disclose them to unrelated Public Services and persons, and for their further disclosure, express consent must have been provided. As the complainant claims, in relation to the report of the complainant about holding a parallel service by the complainant, although there was a complaint by the Union of Workers and Employees of Municipality X before the General Directorate of Internal Operations of the Decentralized Administration, however the appeal was rejected as it appears from the with No. ... document of the same service, and despite all this the complainant continues to attribute this administrative offense to her. On the occasion of the complainant's claim that the disputed letters do not include sensitive personal data, the complainant points out that all personal data, whether simple or sensitive, needs protection, citing in this regard the Authority's decision No. 6/2007 . According to the complainant, the complainant could have addressed his letters and his questions without making specific reference to her name, her industry, her position and her capacity, but also to the fact that she chose to be evaluated by the current Mayor - as she had the 6 right - and not by the outgoing Mayor, creating in this way the impression to her superiors, to her colleagues as well as to bodies outside the municipality, that she did not comply with the obligation she had to be evaluated in the context of her work . The accused both during the above hearing, but also with the no. C/EIS/6031/22-09-2021 with hearing his memorandum supported the following: The complainant addressed in writing to the above institutions and services, in order to verify the legality or otherwise of the complainant's refusal to be evaluated by him and of the parallel performance of duties, presenting as a justifying reason for this action the fact that no matter how many attempts to inform him, he had not received any response to

the allegations put forward by him. Furthermore, the complainant reiterates in his memorandum that in the letter in question, the only details of the complainant that he mentions were her name and work position and status, i.e. the absolutely necessary information in order to carry out the appropriate investigations as to whether the complainant was actually practicing illegally parallel tasks and whether it should finally be evaluated by him, pointing out that the recipients are all the people of the self-government to whom its details were already known. As he states, the processing he carried out through the publication of the above data was carried out in the context of his duties as a municipal councilor and was necessary for the fulfillment of a duty performed in the public interest. In addition, the complainant emphasizes that the details of the complainant mentioned in his letter have been made public and are accessible to all citizens. In particular: a) with a simple search on the website of Municipality X, the name and its specialty appear, b) with the no. ... by decision of the current Mayor, her personal data, namely her name, her patronymic, her specialty, her job position, has been posted on "Diaygeia" and is accessible to all citizens, while it has also been shared with the local press, in the Municipality's employees' union and in the Municipality's departments and departments, without protesting (and 7 reasonably by the complainant), c) the decision with protocol number ... by which the complainant appointed her as a supervisor ... and in which they are notified her name, her patronymic, her specialty, her job position, has been published in "Diavgeia" and has been communicated to the employees' union of Municipality X and to the departments and departments of the Municipality, d) the salary of the complainant who also has be published in the transparency and in which her name, her specialty, her job position and her salary are disclosed. In fact, in addition to the publication in the transparency, the payroll is communicated to the Directors of the Municipality, the Department of Human Resource Development and Payroll and the cash service department. It ends by noting that the complainant does not state which sensitive personal data was breached by him, what was his intention to harm her by disclosing sensitive personal data to her and what moral or material damage she suffered from any of his actions. 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 left after the discussion of the case and before the conference and decision-making, after a thorough discussion, CONSIDERED IN ACCORDANCE WITH THE LAW 1. Since, from the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation 2016/679) and article 9 of law 4624/2019 (Government Gazette A' 137) it appears that the Authority has authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. In particular, from the provisions of

articles 57 par. 1 item f of the GDPR and 13 par. 1 item g΄ of Law 4624/2019 it follows that the Authority has the authority to deal with A's complaint against B. 2. Because, in accordance with the provisions of article 5 par. 2 of the GDPR, the data controller bears the responsibility and must to be able to 8 prove its compliance with the processing principles established in paragraph 1 of article 5. As the Authority1 has judged, a new model of compliance has been adopted with the GDPR, a central point of which is the principle of accountability in the context of which the data controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of the data to be in accordance with the relevant legislative provisions. In addition, the data controller is burdened with the further duty to prove himself and at all times his compliance with the principles of article 5 par. 1 GDPR. 3. Because Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity and transparency"), b) are collected for specified, explicit and legitimate purposes and are not further processed in a manner incompatible with these purposes (…), c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") (…) , f) are processed in a way that guarantees the appropriate security of personal data, including their protection against unauthorized or illegal processing and accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality")'. 4. Because, as the Authority has judged2, taking into account the decisions of the Court of Justice of the European Union (CJEU)3 and the Council of State4, in order for personal data to be lawfully processed, i.e. processed in accordance with the requirements of the GDPR, it should to be met 1 See Authority decision 26/2019, paragraph 8, available on its website. 2 See in particular, decision 44/2019 of the Authority, s. 17, available on its website. 3 See CJEU decision of 16-01-2019 in case C-496/2017 Deutsche Post AG v. Hauptzollamt Köln, sc. 57. 4 See decision StE517/2018, sc. 12. 9 cumulatively the conditions of application and observance of the principles of article 5 par. 1 GDPR. The existence of a legal basis (Articles 6 and 9 GDPR) does not exempt the data controller from the obligation to comply with the principles (Article 5 paragraph 1 GDPR) regarding the legitimate character, necessity and proportionality and the principle of minimization5. In the event that any of the principles provided for in article 5 para. 1 of the GDPR is violated, the processing in question is considered illegal (subject to the provisions of the GDPR) and the examination of the conditions for applying the legal bases of articles 6 and 9 of the GDPR is omitted , for the processing, respectively, of simple and special category personal data. Consequently, the illegal collection and processing of personal data in violation of

the principles of Article 5 GDPR is not cured by the existence of a legitimate purpose and legal basis6. 5. Because, in accordance with the provisions of article 14 paragraph 1 subsection b of Law 4369/2016 ["National Register of Public Administration Staff, grading structure of positions, systems of evaluation, promotions and selection of supervisors (transparency, meritocracy and efficiency of the Public Administration) and other provisions"] "The provisions of the present evaluation system include regular political employees and employees with a private law employment relationship of indefinite duration (I.D.A.X) [...] b. of the local self-government organizations (L.O.A.) of first and second degree". Also, according to paragraph 6 of article 15 entitled "Evaluators", "the evaluation reports of the heads of departments, independent departments or independent offices as well as employees of OTA services. a' and b' degrees are drawn up by the Mayor and the Regional Governor respectively, since the above officials report directly to them", while according to paragraph 2 item (a) of article 16 of Law 4369/2016 "the evaluation reports are drawn up by the competent evaluators compulsorily within the first semester of each year. The electronic conduct of the employee evaluation process of all 5 Bl. L. Mitrou, "The General Regulation of Personal Data Protection" (New law-new obligations-new rights), Sakkoula ed., 2017 pp. 58 and 69-70. 6 See in particular, decision 26/2019 of the Authority sk.5, available on its website. 10 Heads of organic units is carried out through a special platform, which is part of the Human Resources Register of the Greek State". Also, point (c) of the same above article states that "if the supervisor performed duties for at least six (6) months but the employment relationship was terminated, due to resignation or automatic dismissal from the service, the evaluation reports are drawn up and submitted with care of the relevant personnel unit, before his departure. Exceptionally, when the evaluators are the Minister, the Deputy Minister, the Deputy Minister, the General or Special Secretary, the single-member administrative body or the President of a collective administrative body or the Director of the Office of the Minister, Deputy Minister or Deputy Minister, a report may be drawn up evaluation and for a period of at least three (3) months of service and in the event that the above leave their position, evaluation reports may be prepared up to sixty (60) days after their departure". Furthermore, according to paragraph 2 point (f) of article 16 of Law 4369/2016 "Evaluators have an obligation to carry out the evaluation of their subordinates. The relevant Personnel or Administrative Directorate ensures the definition of the appraisees and the appraisers and the proper observance of the appraisal procedures. The evaluation reports may also be completed at the initiative of the evaluated or the evaluator. Especially for the evaluation period of the year 2017, by decision of the Minister of Administrative Reconstruction, the period of time during which the evaluation is carried out, as well as its individual phases, is determined. In accordance with the circular

dated 08-09-2020 and with protocol number DAPDEP/Φ.5/5/OIK17012/08-09-20 of the Ministry of the Interior, General Secretariat of Human Resources Public Sector, General Directorate of Human Resources and Selection Process Monitoring and Disciplinary Matters, Human Resources Evaluation Department, in the cases of evaluators who fall under the above exceptions – i.e. Minister, Deputy Minister, Deputy Minister, General or Special Secretary, single-member administrative body or the president of a collective administrative body or the Director of the Minister's Office, Deputy Sector Minister, Evaluation Directorate 11 or Deputy Minister, - the evaluation reports should in principle be drawn up up to (60) days from their departure. It is pointed out, however, that this deadline is not defined as exclusive in the law. 6. Taking into account the information contained in the immediately preceding considerations, all the elements of the case file, the hearing procedure and the submitted memoranda, it follows that regardless of the fact whether the complainant was included in the evaluation by the complained staff (who should have evaluated by the complainant, or if the complainant had the right to choose to be evaluated only by the current Mayor instead of the outgoing Mayor), the complained processing of the transmission of the letters in question and to entities that are not involved in any way in the evaluation process, under of Law 4369/2016, namely to the Union of Workers and Employees of Municipality X and to the Panhellenic Federation of Employees (P.O.E.) – OTA. was made in violation of the provision of article 5 par. 1 item. a' of the GDPR. And this because, the Union of Workers and Employees of Municipality X and the Panhellenic Federation of Employees (P.O.E.) - OTA. they cannot be legal recipients of the letters in question since they are not related to the evaluation process, as no provision of the law indicates the necessity or the obligation of the notification in question to these bodies. Furthermore, even if it were to be assumed that said processing was necessary to establish the legality or otherwise of the complainant's refusal to evaluate the complainant, it was sufficient to transmit the letters only to those involved in the evaluation process, pursuant to Law 4369/ 2016, bodies [in this case the relevant Personnel or Administrative Department of the Municipality, which is responsible according to article 16 par. 3 point a' of Law 4369/2016 (A' 33/27.02.2016) for the observance of the procedures evaluation, and of any legally hierarchically superior bodies/supervising bodies regarding the performance of the evaluations]. Moreover, the complainant's claim that the complainant's disputed personal data were posted both on the internet and in the "Transparency" program and were accessible to all citizens is also rejected, given that, in addition to everything else, the data of the evaluation of civil servants are not posted in the "Transparency" program. Finally, with regard to the complainant's claim that the complainant does not document what moral or material damage he suffered from any of his actions nor specify which sensitive personal data was

breached by him, it is pointed out that the finding of specific damage to the data subject from the data processing of a personal nature or the invocation of such damage on his part (i.e. damage other than that resulting from the processing of personal data), does not constitute a condition for establishing a violation of the GDPR and Law 4624/2014, while in addition it is noted that the protection of natural persons against the processing of personal data covers both simple and sensitive personal data7.

7. The Authority, in relation to the established violation of article 5 par. 1 item. a' of the GDPR, considers that, based on the circumstances established, it should be imposed, pursuant to the provision of article 58 par. 2 sub. i' of the GDPR, effective, proportionate and dissuasive administrative fine according to article 83 par. 5 item a' GDPR, in accordance with the Guidelines "for the application and determination of administrative fines for the purposes of regulation 2016/679" of the working group of article 29, both to restore compliance and to punish illegal behavior. FOR THOSE REASONS

The Authority considers that the complained processing, i.e. the notification of the disputed

letters containing personal data of the complainant to a) Union

7 See in this regard also Data Protection Authority decision 6/2007 and the relevant reference to

paragraph 68, decision 6.3.2001, C-274/99, P. Connolly v. Commission, Coll. Nomol. 2001, pp. I-1611,

paragraph 37, where it is stated that it is not critical whether the disclosed information constitutes

simple or sensitive data, in order to accept that an intervention in

privacy of the individual, which is taken for granted regardless of the nature of the data.

Workers and Employees of Municipality X and b) to the Panhellenic Federation of Workers

(P.O.E.) – OTA was made in violation of the provision of article 5 par. 1 item. a

GDPR, and imposes on the complainant as controller, administrative

a fine of five thousand (5,000) euros.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou