

Contact data collection in accordance with HmbSARS-CoV-2-Containment Ordinance

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(HmbSARS-CoV-2-EindammingVO)

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Covid-19

As early as March, the HmbBfDI published a Corona FAQ collection in order to provide citizens with up-to-date information on current issues that frequently reach the authority. Through media inquiries and some complaints from those affected, the HmbBfDI is now receiving increasing evidence that the contact details of visitors who, due to the Hamburg SARS-CoV-2 Containment Ordinance, have to be recorded when visiting commercial and guest establishments, are often open and accessible to third parties lying out. Customers who register there can thus gain knowledge of the insight into the contact details of the persons previously present.

After we pointed out from the beginning that this is not permitted under data protection law, the Senate has now fortunately included a corresponding note in the HmbSARS-CoV-2 Containment Ordinance. It now states that it must be ensured that unauthorized third parties do not gain knowledge of the data. Apparently, this has not yet reached all responsible data processing authorities, so that we sometimes have to ask operators individually to implement the data protection regulations. There is also uncertainty as to which contact details are to be given specifically. The Hamburg ordinance does not make any precise specifications here - unlike, for example, that in Schleswig-Holstein. We take this as an opportunity to respond to further questions below and to inform you that in its last FAQ update, the HmbBfDI also published a template (PDF) for recording customer contact details in accordance with the Hamburg SARS-CoV-2 Containment Ordinance online has provided. Who is responsible for compliance with data protection in business premises?

The business owner is responsible for compliance with data protection in accordance with Art. 4 No. 7 GDPR. If the owner of a restaurant keeps the contact details of the guests on a list and leaves them openly visible to everyone (e.g. at the

entrance/counter or at the counter), this constitutes a violation of the GDPR, in particular as inadmissible disclosure and as a breach of data security. Because the responsible bodies, i.e. the business owner, must protect the data from unauthorized access and store it securely.

Who controls compliance with data protection on site?

The regulations contained in the Hamburg SARS-CoV-2 Containment Ordinance (HmbSARS-CoV-2-EindämmingVO) are accompanied by a uniform catalog of administrative offenses (cf. § 62 Para. 1 HmbSARS-CoV-2-EindämmingVO, valid from 27.05. 2020) and corresponding fine rule sets (cf. § 62 Para. 2 HmbSARS-CoV-2-Containment Ordinance). These violations constitute administrative offenses according to Section 73 Paragraph 1a No. 24 i. V. m. § 32 IfSG and will be punished by the competent authority (health authority). If the competent authority cannot act (e.g. at the weekend or because there are not enough field staff), the police are responsible.

Restaurants may not be opened if they do not comply with their obligation under Section 22 (4) No. 7

HmbSARS-CoV-2-Containment Ordinance. According to this, for the purpose of tracking infection chains, the contact details of the guests must be recorded, stating the date, the records must be kept for four weeks and submitted to the responsible authority on request, and the data must be deleted after the retention period has expired. If a restaurant opens without these precautions, this is subject to a fine.

The task of the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) as data protection supervisory authority is to monitor compliance with data protection laws and to react with appropriate sanctions in the event of non-compliance. In connection with the HmbSARS-CoV-2-EindämmingVO, the HmbBfDI therefore only controls whether the business owner of a restaurant adheres to the "rules of data protection law". So far, in cases in which violations have been reported, the responsible authorities have been contacted within a very short time and instructed to protect the names from being viewed by unauthorized third parties.

The most important rules for the legally compliant storage and processing of personal data (e.g. collection, storage, transmission, deletion, etc.) can be found in the General Data Protection Regulation (GDPR), in particular in Art. 5 GDPR. In detail, it must be ensured whether there is a legal basis for the processing of the personal data (lawfulness of the processing), whether the processing is appropriate for the purpose and limited to what is necessary for the purpose of the data processing (so-called data economy), whether the data is specified, clear and lawful purposes are collected (so-called earmarking),

whether data security is guaranteed and whether data processing is transparent (result of the transparency requirement is the data protection declaration in accordance with Art. 13 DSGVO).

How can customer contact data be recorded in compliance with data protection regulations?

The data must be stored securely and to prevent access by unauthorized persons and the storage may only be short-term. For this reason, lists in which such data are kept must not lie around openly and not be accessible to everyone. It is often better to keep the data for each recorded visitor/customer on a separate sheet and then securely lock it away if it is not kept electronically. Alternatively, it is often advisable to request the data when making the appointment. In gastronomic establishments, a common list per guest group can be used. They then all sign themselves on the list that is on the shared table and the staff removes them before the following group of guests takes the table. A sample template for recording customer contact details in accordance with the Hamburg SARS-CoV-2 Containment Ordinance can be viewed [here \(PDF\)](#).

Have fines already been initiated?

No, fine proceedings have not yet been initiated. It is our goal to initially advise the affected innkeepers and other tradespeople who are currently suffering significantly from the effects of the pandemic and to sensitize them to data protection issues.

However, we reserve the right to reassess the situation at any time and to act accordingly. Even if comprehensive control is not possible due to the limited staffing of the Hamburg Commissioner for Data Protection and Freedom of Information, the data protection precautions must not be ignored by the respective commercial enterprises. Unannounced spot checks can also be carried out for this purpose.

If a follow-up inspection or a new complaint shows that the requirements have not been implemented contrary to our order, it is possible to impose further measures to enforce the data protection requirements (fine procedures/penalties).

Does the HmbBfDI register an increased number of complaints regarding the collection of contact data?

In addition to numerous requests for advice from restaurateurs or hairdressing salons, we also receive a number of complaints from citizens about specific facilities. We investigate these in each individual case and ensure that they are implemented in accordance with data protection regulations. We do not keep overall statistics on Covid-19-related data breaches, but do register the individual cases reported to us.

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