

Case number: NAIH / 2019/596/3

Administrator: dr. Ágnes Majsa

Subject: Decision

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The National Authority for Data Protection and Freedom of Information (hereinafter: the Authority) a

Kecskemét Mayor's Office of the County of Kecskemét (6000, Kecskemét, Kossuth tér 1.)

hereinafter referred to as the "Required") following the data protection incident announced on 11 October 2018.

on the processing of personal data by natural persons

the free movement of such data and repealing Directive 95/46 / EC

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

hereinafter referred to as the 'General Data Protection Regulation or Regulation') and Article 34 (2)

in the event of an alleged breach of the provisions of paragraph 1

procedure

1. Declares that the Debtor acted unlawfully in that he transferred, forwarded to the

the public interest in the personal data of the data subject to a third party who so

unauthorized access to

2. due to the above violation, the Debtor within 30 days from the receipt of this decision

within HUF 1,000,000, ie HUF 1 million, to pay a data protection fine; and

3. order the final decision by publishing the identity of the controller

disclosure.

The fine is accounted for by the Authority's forint settlement account for the collection of centralized revenues

(10032000-01040425-00000000 Centralized direct debit account IBAN: HU83 1003 2000 0104

0425 0000 0000) must be paid by bank transfer. When transferring the amount, NAIH / 2019/596 / H

JUDGE. number should be referred to.

If the Debtor fails to meet its obligation to pay the fine within the time limit,

is required to pay a late payment allowance. The rate of the late payment allowance is the statutory interest, which is a

equal to the central bank base rate valid on the first day of the calendar half-year affected by the delay. THE  
the Authority's centralized revenue collection forint account  
(10032000-01040425-00000000 Centralized direct debit).

In the event of non-payment of the fine and the penalty payment, the Authority shall order the  
and the recovery of the late payment allowance.

There is no administrative remedy against this decision, but from the date of notification  
within 30 days of the action brought before the Metropolitan Court in an administrative action  
can be challenged. The application must be submitted to the Authority, electronically, which is the case  
forward it to the court together with his documents. The request for a hearing must be indicated in the application.  
For those who do not benefit from full personal exemption, the judicial review process  
its fee is HUF 30,000, the lawsuit is subject to the right to record material fees. Before the Metropolitan Court  
legal representation is mandatory in these proceedings.

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## EXPLANATORY STATEMENT

I.

Facts, history

The concerned made a public interest complaint to the Local Government of the City of Kecskemét (a  
hereinafter referred to as the Municipality), whose tasks are related to the performance of its duties, and the Registrar  
preparing and implementing matters for its decision-making

The Debtor shall perform the related tasks in accordance with the Act of 2011 on the Local Governments of Hungary.  
year CLXXXIX. of the General Assembly of the Municipality of Kecskemét

4/2013 on the Rules of Organization and Operation of the General Meeting and Its Bodies (II.14.) Of the local government  
pursuant to its Decree and the Rules of Organization and Operation of the Debtor.

A public interest notification for the operation of an institution established and supervised by the Municipality [...] applied. The person concerned was an employee of the institution at the time of the notification. The  
the deputy mayor of the municipality, who is responsible for the supervision of the institution,

whose work is carried out by the Debtor or its officials,

the institution of the fact of the notification in the public interest and has started to investigate it. The

the head of the institution requested further information on the full content of the public interest notification

which has been complied with by the Debt Officer,

ie a document containing personal data, a public interest

sent in full, without anonymisation, to the institution which is otherwise concerned

employer and is the subject of proceedings in a public interest notice.

The legal relationship of the civil servant concerned shall then be waived by the institution

one of the reasons given was the public interest announcement made by the data subject

me. The data subject subsequently requested information from the Debtor that he or she was personal

how and for what reason his data became known to his employer. The Debtor is therefore concerned

became aware of the incident upon request for information.

After the signal, the Debtor was satisfied that the personal data had taken place

unauthorized access, investigated the case and reported the data protection incident to the Authority on 11 October 2018.

In connection with the data protection incident reported by the Debtor on 11 October 2018

NAIH / 2018/6415 / V initiated an official inspection in view of the availability of

available data were not sufficient to judge that the Debtor fully complied

protection of individuals with regard to the processing of personal data

and on the free movement of such data and repealing Directive 95/46 / EC

Article 3334 of Regulation (EU) 2016/679 (hereinafter referred to as the General Data Protection Regulation or Regulation).

Clarification of the facts in the Authority's order NAIH / 2018/6415/2 / V

called on the Debtor to make a statement, to which he replied on 30 November 2018.

for the purpose of

In his response, the Debtor indicated that - due to the consequences of the privacy incident

considered it serious in view of the unauthorized disclosure of personal data

resulted in the termination of the employment of the civil servant concerned - on the incident and his rights

he also informed the person concerned. To inform the data subject several times, on October 8, 2018

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and 25 copies of the copies made available to the Authority

In letters sent to the data subject, the Debtor informed the data subject of the following:

- the fact and nature of the data protection incident;
- the name and contact details of the Data Protection Officer;
- made or planned by the data controller, ie the Debtor to remedy the incident measures.

In its response to the incident report and the request for clarification, a

Defendant presented the measures he had previously applied, which were mainly regulations

and staff training. The Debtor also reported the

other measures taken to remedy the incident, such as:

- conducting an internal audit of the data protection incident and its response consequences;

the department forwarding the notification (due to which the

information on the incident and the correct procedures to be followed;

informing the former employer (ie the institution) concerned that:

unauthorized access to the personal data of the data subject in connection with the notification;

- drawing the attention of other departments to the avoidance of similar incidents

the importance of the rules to be followed and a re-description of the rules.

The Debtor has provided the Authority with a

public interest notification to the institution sending staff and the Data Protection Officer

correspondence between its official and manager. Correspondence revealed the incident

the employees who actually caused it, on the one hand, claimed that the personal data of the person concerned

(name, e-mail address) was handled by the institution before that, so no data was provided

on the other hand, it was argued that it also contained personal data

notification was lawfully communicated with reference to Section 3 (4) (b) of the Complaints Act institution. The Data Protection Officer and Head of the Debtor, on the other hand, is the case In its investigation, it was clearly of the view that, although certain were concerned his personal data, due to his quality as an employer, was really handled by the institution, in the public interest information contained in or deductible from the notification, such as the public interest concerned applicant status had not been previously treated. In addition, in their view, the the cited provision of the Complaints Act is not an appropriate legal basis for the disclosure of data as it is not corresponds to the "become obvious" turn, as neither the untruthfulness of the information nor the the applicant's bad faith was not established on the basis of an investigation to that effect.

Given that, on the basis of the information revealed during the official inspection, it was probable that that the Debtor has breached the provisions of Articles 6 and 34 of the General Data Protection Regulation On 17 January 2019, the Authority issued its Opinion CXII on Freedom of Information with regard to Section 60 (1) of the Information Act (hereinafter: the Information Act) decided to initiate the procedure and informed the Debtor thereof in the notification NAIH / 2019/596.

## II. Applicable legal provisions

He is involved in the reported incident pursuant to Article 2 (1) of the General Data Protection Regulation the general data protection regulation applies to data processing.

According to Article 4 (2) of the General Data Protection Regulation, "processing" means personal data performed on data or files in an automated or non-automated manner an operation or set of operations, such as collecting, recording, organizing, segmenting, storing,

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transformation or alteration, query, insight, use, transmission of communication, distribution or otherwise made available, through coordination or interconnection, restriction, deletion or destruction.

Pursuant to Article 5 (1) (a) of the Regulation, the processing of personal data is lawful and be carried out fairly and in a way that is transparent to the data subject ("legality,

fair procedure and transparency ”).

Article 6 of the General Data Protection Regulation states that “the processing of personal data

lawful only if and to the extent that at least one of the following is met:

(a) the data subject has given his or her consent to the processing of his or her personal data for one or more specific purposes

treatment;

(b) processing is necessary for the performance of a contract to which the data subject is party

at the request of the party concerned or before the conclusion of the contract

necessary to do so;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is in the vital interests of the data subject or of another natural person

necessary for its protection;

(e) the processing is in the public interest or a public authority vested in the controller

necessary for the performance of the task

(f) processing for the legitimate interests of the controller or of a third party

necessary, unless those interests take precedence over such interests

interests or fundamental rights and freedoms that protect personal data

especially if the child concerned.

Point (f) of the first subparagraph shall not apply to the performance of their duties by public authorities

data processing. "

Article 4 (12) of the General Data Protection Regulation defines what constitutes data protection

"security incident" means a breach of security which

accidental or unlawful destruction of personal data stored or otherwise processed,

loss, alteration, unauthorized disclosure or unauthorized disclosure

results in access.

According to Article 33 (1) of the General Data Protection Regulation, a data protection incident is

without undue delay and, if possible, no later than 72 hours after

the data protection incident becomes known to the competent supervisory authority in accordance with Article 55

unless the data protection incident is not likely to pose a risk to the

the rights and freedoms of natural persons. If the notification is not made 72

within one hour, it shall be accompanied by the reasons for the delay.

Under Article 34 of the General Data Protection Regulation, "if the data protection incident

is likely to pose a high risk to the rights and freedoms of natural persons

the data controller shall inform the data subject of the data protection without undue delay

incident. " The information provided to the data subject shall state clearly and intelligibly:

the nature of the data protection incident and shall be communicated at least in accordance with Article 33 (3) (b), (c) and (d).

information and measures referred to in

The information in Article 33 (3) (b), (c) and (d) is as follows:

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(a) "shall be communicated to the Data Protection Officer or to any other person providing further information

the name and contact details of the contact person;

(b) a description of the likely consequences of the data protection incident;

(c) describe the actions taken or planned by the controller to remedy the data protection incident

measures, including, where appropriate, any consequences arising from a data protection incident

measures to mitigate the adverse effects. "

CLXV of 2013 on Complaints and Notices of Public Interest. Act (hereinafter:

According to Section 3 (2) of the Complaints Act), "the complainant or the public interest complainant

Except as provided in paragraph 1, the complaint or the public interest notification shall not be prejudicial

for doing so. " Paragraph 3 of the same section provides that "the complainant or the

the personal data of the public interest notifier, with the exception of paragraph 4, shall be the subject of the complaint only

or competent to conduct proceedings initiated on the basis of a public interest notice

may be transferred to a body if that body is authorized to manage it by law or its data

the complainant or the public interest notifier has explicitly consented to its transmission. The complainant and the personal data of the public interest notifier may not be disclosed without his or her express consent to the public. "

Furthermore, under section 3 (4) of the Complaints Act, "if it has become apparent that the complainant or the public - interest notifier has disclosed in bad faith, materially untrue information, and

(a) there is a circumstance suggesting the commission of a criminal offense or irregularity, personal his data must be communicated to the body or person empowered to conduct the proceedings,

(b) it is reasonably probable that it has caused unlawful damage or damage to others, personal data to the body authorized to initiate or conduct the proceedings, or

shall be provided at the request of the person concerned. "

Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein shall apply with the additions provided for in

Infotv. Enforcement of the right to the protection of personal data pursuant to Section 60 (1)

In order to do so, the Authority may initiate ex officio data protection proceedings. The data protection authority CL of the General Administrative Procedure Act 2016. Act (hereinafter:

Ákr.) Shall apply with the additions specified in the Information Act and the general with derogations under the Data Protection Regulation.

Infotv. Pursuant to Section 61 (1) (a), the Authority shall comply with Section 2 (2) and (4) in the context of certain data processing operations in the General Data Protection Regulation may apply certain legal consequences.

Pursuant to Article 83 (7) of the Regulation, supervisory authorities pursuant to Article 58 (2) without prejudice to its power to correct, each Member State may

public or other public-sector body established in that Member State

whether and to what extent an administrative fine may be imposed on the body. Infotv. § 61

Paragraph 4 (b), the amount of the fine may range from one hundred thousand to twenty million forints if the is obliged to pay a fine imposed in a decision taken in a data protection authority proceeding



budgetary authority in the case of a fine imposed under Article 83 of the General Data Protection Regulation.

Pursuant to Article 58 (2) (b) and (i) of the General Data Protection Regulation, the supervisory  
the data controller or processor acting under the corrective powers of the competent authority if  
breached the provisions of the Regulation or Article 83

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impose an administrative fine accordingly, depending on the circumstances of the case  
in addition to or instead of the measures referred to in

The conditions for the imposition of an administrative fine are set out in Article 83 of the General Data Protection Regulation.  
contained in Article. Infotv. 75 / A. § 83 of the General Data Protection Regulation.

taking into account the principle of proportionality  
in particular by virtue of the law on the processing of personal data or  
for the first time in a binding act of the European Union

Article 58 of the General Data Protection Regulation  
in particular by alerting the controller or processor.

Infotv. Pursuant to Section 61 (2) (b) and (c), the Authority may order its decision - the  
by publishing the identification data of the data controller or the data processor  
if it was made in the context of the activities of a body performing a public task, or  
the gravity of the infringement justifies disclosure.

### III. Decision

#### III.1. Unlawful disclosure of personal data

The public interest declaration of the data subject contains personal data: for example, it includes  
the name of the notifier (s), the telephone number, e-mail address of the person concerned and the fact of the notification itself,  
as  
it also constitutes information about the data subject.

The operation performed by the Debtor as a data controller to process personal data - a  
the public interest notice and its full content, with a third party other than the controller, shall be

the processing of data in accordance with the General Data Protection Regulation

it counts as. It could therefore have been lawful only if it was listed in Article 6 of the Regulation

one of the cases exists.

The Debtor himself has identified that the personal data have been unlawfully disclosed,

to which third parties have had unauthorized access.

In this regard, the Authority itself is shared between the Debtor and its Data Protection Officer

the interpretation referred to above by the Court of First Instance, cited above, and emphasizes that

There is no application of Section 3 (4) (b) of the Complaints Act in the present case

therefore cannot serve as a legal basis for the disclosure of data. The Authority also

emphasizes that the cited provision is a general rule set out in section 3 of the Act

and, as such, must be interpreted strictly from the outset, since the general rule is that the

that the personal data of the public interest notifier is only a procedure initiated on the basis of the notification

may be transferred to a body competent to carry out

authorized by law or the notifier has explicitly consented to the transfer of his / her data,

which did not take place in the present case. This general rule also applies if the notifier is in the public interest

does not specifically request anonymity, which is otherwise from the rules of the General Data Protection Regulation

also clearly follows.

Based on the above, it can be concluded that the personal data of the public interest notifier is third

the legal bases listed in the Regulation for the processing of personal data

and in spite of the express prohibition provided for in the Complaints Act. THE

The debtor thereby infringed Article 5 (1) (a) and Article 6 of the Regulation.

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III.2. Reporting a data incident and the action taken on it

The unlawful disclosure thus identified also constitutes a data protection incident under the Regulation

is considered because the security of the data has been compromised in such a way that the personal data processed

unlawful, unauthorized disclosure of, and unauthorized access to,

The Debtor himself has identified that the data protection incident is high risk the rights and freedoms of the data subject, since the fact of the public interest notification is unauthorized disclosure of its contents could have serious consequences for him. As stated in the recital 75 of the Regulation also states that the risks may arise from the fact that processing of personal data leads to property or non-property damage, for example if financial loss from data processing, or any other significant economic or social disadvantage may arise. The data management affected by the data protection incident and the data handled during it unauthorized access to such high-risk data processing due to its nature considered, which is why the previously cited complaint law contains the complainant's personal additional strict rules on the confidentiality of your data.

All this confirms that this data management can be considered high risk, so this the controller must take appropriate measures to ensure that the data processing is carried out in accordance with the provisions of the Regulation and is properly ensured confidentiality of personal data.

However, in the case of a reported data protection incident, in connection with such data processing in addition to the risks identified, the data could be detected as illegal and unauthorized also the specific consequence of getting to know the person: serious financial loss, economic and suffered a social disadvantage as he was released in part as a result of the report civil servant.

The obligations of the Debtor in relation to the data protection incident are set out in Articles 33-34 of the Decree. Articles contain. Upon becoming aware, the Debtor has duly identified that incident poses a risk to the rights and freedoms of those affected, and therefore on 18 October 2018 notified it to the Authority in accordance with Article 33 (1) of the Regulation obligation. In the notification, it provided the Authority with the information required by the Regulation, thus: in particular, it described the measures taken by the Authority to remedy the incident found appropriate.

The Debtor, having assessed the risk of the incident as (correctly) high, is covered by Article 34 of the Regulation  
Has largely complied with its obligation to provide information under Article  
did not inform the data subject of the likely consequences of the data protection incident.

However, in the circumstances of the case, the Authority considered that it was not necessary  
since they have actually occurred and, before the person concerned, by their very nature, are  
termination of the employment of the civil servant concerned.

Based on the above, the Authority has determined that the Debtor is bound by the reported data protection incident  
33-34 of the General Data Protection Regulation. contained in Article  
therefore did not find an infringement in this respect.

### III.3. Sanctions applied

#### III.3.1. The fine

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The Authority shall decide on the fine to be imposed in accordance with Article 83 (2) of the Regulation  
considered all the circumstances of the case. When deciding whether a decision is justified  
whether it is necessary to impose an administrative fine, or a

In setting the amount of the administrative fine, it took the following into account.

The Debtor has violated the principle governing data processing and the violation is serious  
consequences for the data subject and the Authority therefore considers it necessary to impose a fine  
Infotv. 75 / A. § would not apply in the present case  
appropriate legal consequence.

It is a budgetary body established by the Municipality of Kecskemét

(Section 2 of the Organizational and Operational Regulations of the Mayor's Office of the City of Kecskemét),

for which the Infotv. Pursuant to Section 61 (4) (b), the amount of the fine is one hundred thousand  
up to twenty million forints. Prior to this, the Debtor shall protect personal data

the Authority has not yet been convicted of any breach of the relevant legal provisions.

Although the infringement concerned only one person, it had significant consequences for him

caused him considerable economic and social disadvantage because, on the basis of the documents available between the infringement and the termination of his employment as a civil servant there is a direct causal link. In determining the amount of the fine, the Authority shall: took into account that the processing of personal data in a public interest notification is data higher risk due to their unauthorized acquaintance has significant consequences for those concerned. The scope of personal data processed, and the special laws for their more stringent protection set out above regulations also confirm that the processing of such data by data controllers is enhanced they must act with caution and the breach of this category of personal data more severe sanctions may be justified.

In view of the above, the special and general preventive function of the sanction applied is special significance of that function - in addition to the actual occurrence in the particular case repressive role in causing legal disadvantages - only if the

In such a case, the fine shall be charged if the amount is felt by the Debtor and is generally similar may have a dissuasive effect on debtors.

As a mitigating circumstance, the Authority took into account the fact that it did not refer to the fact-finding there is nothing to suggest that the breach can be traced back to the systemic level of the Debtor problem, and usually the Debtor - the internal regulators and the Data Protection Officer seeks to comply with data protection rules. Infringement Obligated therefore to a lesser degree - although it may have contributed to the incident the conduct of the staff reflects at least a degree of negligence on the part of the facts disclosed partly on the basis of data protection rules and partly on the basis of a specific public interest notification incomplete knowledge or misinterpretation of the person entitled to act in the investigation could also be a reason.

In the end, the Authority also took into account that the Debtor's personal data consistently after becoming aware of it by an unauthorized person

applied its internal procedures in order to determine the circumstances of the data protection incident

investigate and take the necessary action or cooperate with the Authority in the matter

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during the investigation, although this conduct - as it did not comply with legal obligations

too - not specifically assessed as an attenuating circumstance.

### III.3.2. Publication of the decision

The Debtor is therefore a body performing a public task, and the infringing data processing is performed by performing this public task.

took place in the context of. The Authority considered that the reasons for disclosure were that:

it is not simply a higher-risk data management, but one that

increased protection of the identity of notifiers in the public interest

indirectly, the Data Protection Regulation and this explicitly provide for this enhanced protection

violation of the provisions of the Complaints Act to the institution of public interest notices

may undermine public confidence, which may justify disclosure.

In view of all this, the Authority Pursuant to Section 61 (2) (b) and (c), ordered a

decision by publishing the identification data of the data controller, ie the Debtor

disclosure.

### ARC. Other issues

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a), its jurisdiction is covers the whole country.

The decision is based on Ákr. 80.-81. § and Infotv. It is based on Section 61 (1). The decision is based on Ákr. 82. § (1), it becomes final with its communication.

The Ákr. § 112 and § 116 (1) and § 114 (1), respectively

there is an administrative remedy against him.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (2) (a), the Authority

The administrative lawsuit against the decision of the Criminal Court falls within the jurisdiction of the court. Section 13 (11)

The Metropolitan Court shall have exclusive jurisdiction pursuant to On civil procedure

on the 2016 CXXX. Act (hereinafter: Pp.) - the Kp. Pursuant to Section 26 (1)

applicable - legal representation in a lawsuit falling within the jurisdiction of the tribunal pursuant to § 72

obligatory. Kp. Pursuant to Section 39 (6), unless otherwise provided by law, the application

has no suspensory effect on the entry into force of the administrative act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of administration and trust services. Act (a

hereinafter: E-Administration Act), the client's legal representative pursuant to Section 9 (1) (b)

obliged to communicate electronically.

The time and place of the submission of the application is Section 39 (1). THE

Information on the possibility of requesting a hearing is provided in the CM. Section 77 (1) - (2)

based on. The amount of the fee for an administrative lawsuit shall be determined in accordance with Act XCIII of 1990 on

Fees. law

(hereinafter: Itv.) 44 / A. § (1). From the advance payment of the fee is

Itv. Section 59 (1) and Section 62 (1) (h) shall release the party instituting the proceedings.

The Ákr. According to § 132, if the debtor does not comply with the obligation contained in the final decision of the authority

fulfilled, it is enforceable. The decision of the Authority With the communication pursuant to Section 82 (1)

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it becomes final. The Ákr. The Ákr. Section 133 enforcement - if you are a law

Government decree does not provide otherwise - it is ordered by the decision-making authority. The Ákr. § 134

enforcement - if by law, government decree or municipal authority matter

local government decree does not provide otherwise - it is carried out by the state tax authority. The

Infotv. Pursuant to Section 60 (7), a specific act included in the decision of the Authority

obligation to perform, to behave, to tolerate or to stop

implementation of the decision shall be carried out by the Authority.

Infotv. 70 / B. § (1), the Authority has published pursuant to § 61 (2)

published in accordance with the resolutions, the identifier of the data controller or the data processor shall publish it  
indication of the infringement and the legal sanction applied.

Budapest, February 28, 2019

Dr. Attila Péterfalvi

President

c. professor

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