

Case number: NAIH / 2020/4014/6.

Administrator: □... □

Subject: Rejection of the application

Before the National Data Protection and Freedom of Information Authority (hereinafter referred to as the Authority) □... □

against the applicant (hereinafter referred to as the Applicant) □... □ (hereinafter referred to as the Applicant)

submitted on 12 May 2020 concerning the unlawful processing and disclosure of personal data

in the data protection official proceedings initiated following the request of the

below

## DECISION

The Authority shall request the Applicant to establish that it is an Applicant

- produced in an infringing manner, without the consent of the persons concerned and in the social media

publish a sound recording,

- The splitters of the entry containing the applicant and the audio recording are unlawful

condemned for violating the general data protection

provisions of this Regulation,

Prohibit the continuation of data processing, and

- oblige the Applicant and the distributors of the entry to make the audio recording from Facebook

to delete

rejects.

There is no administrative remedy against this decision, but from the date of notification

within 30 days of the application to the Metropolitan Court in an administrative lawsuit

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. Request for a hearing in the application

to be indicated. For those who do not benefit from full personal exemption, the court

the fee for the review procedure is HUF 30,000, the lawsuit is subject to the right to record material fees. The Capital

Legal proceedings are mandatory in proceedings before the General Court.

## EXPLANATORY STATEMENT

### I. Facts, antecedents

The Applicant - [

] - dated 5 May 2020, by post to the Authority on 12 May 2020

submitted in his submission submitted that on March 11, 2020 from 14:00 Tata City

Members of the Board of Representatives of the Municipality, including the Candidate, as well as the

Representatives of the Committee on the Environment and Urban Development and the Committee on Human and Public Affairs

with the participation of its non-member members and the heads of the mayor's office

They took part in a meeting in the Ceremonial Hall of the Tata City Hall, the topic of which is ÉDV Zrt.

and planned for the shores of the Old Lake at Avalon Hotel

was a prospectus for its investment.

In his submission, the petitioner expressed the view that "[...] Where the public

published the recording for the information of (the Applicant), in my opinion its data management

even then it is considered legal. An information would have been sufficient to inform the public

also a text entry without a sound recording, as a sound recording published in the entry

it has no special added value in contributing to the discussion of public affairs. [...] ”.

The applicant provided the following information on the meeting concerned by the proceedings:

Authority: '[t] he purpose of the information was specifically to provide information on the topics

from the leaders and representatives of the organizations concerned - to make a later well-founded decision

necessary and the dissemination of false, untrue and unfounded information

local government representatives and committee members participating in decision-making

be informed of any questions they may have. [...] ”

In his submission, he explained that the participants in the discussion were aware,

they expressed the view that the meeting was in camera and no audio recordings or minutes were made

prepare.

The Applicant further submitted that the Application was filed on April 17, 2020 on the Facebook Community Portal published on its own public actor page at the discussion by him, informing stakeholders and sound recording without the consent of the In the feed of the requested public profile you can still find the post you complained about, which has been shared several times.

Due to the illegal handling and disclosure of personal data, the Applicant is a data protection authority initiated proceedings and requested the Authority to:

"[...]

- declare that there has been an infringement;
- The splitters of the entry containing the applicant and the audio recording are unlawful condemned for violating the general data protection provisions of this Regulation, prohibit the continuation of data processing, and
- oblige the Applicant and the distributors of the entry to make the audio recording from Facebook to delete. "

Before the Authority, at the request of the Applicant, the right to information self - determination and the CXII of 2011 on freedom of information Section 60 (1) of the Information Act (hereinafter: the Information Act) based on NAIH / 2020/4014. proceedings were initiated by a data protection authority.

Given that the application did not contain the Applicant's identification all data, the Authority shall comply with NAIH / 2020/4014/2 dated 18 June 2020. in order no CXL of 2016 on general administrative order. (hereinafter: the Act) called on the Applicant to remedy the deficiencies.

In its response to the call for rectification, the Applicant provided it to the Applicant necessary data.

The petitioner explained in his submission that Hungary could not be covered by the discussion CLXXXIX of 2011 on local governments (hereinafter: the Act) the principle of ensuring wide publicity, as it does not

was a board meeting, but the prior information required for a decision-making process is private discussion. In his view, the issue of public interest data is not may arise, a sound recording made in a private meeting is not in the public interest concept. In its application, it also stated that '[t]he names of the participants in the meeting, such as mine is also considered to be in the public interest when the sound recording is made and published,

2

but the recording of my voice is not considered to be public (personal) data in the public interest Infotv. Pursuant to Section 26 (2). [...] ”

The Authority initiated the initiation of the data protection authority procedure NAIH / 2020/4014/4. No., July 2020

In its order dated 27 January, the Ákr. Clarification of the facts by reference to § 63 invited the Applicant to make a statement in order to

Date of receipt of the application by the applicant dated 6 August 2020, received by the Authority on 11 August 2020

In its reply, the Commission commented on the questions raised by the Authority and informed the following Authority:

The purpose of the event held on 11 March 2020 was to inform those invited. The guests were: members of the Board of Representatives, members of external committees, heads of the mayor's office and a Member of Parliament for the district, ie no one attended the meeting in private.

Those present were not informed that no audio recording would be made. “[...] □... □ is for information only

In the AVALON case, which began at 39.50 minutes, he announced: “no press is public our togetherness, I forgot to say that at the beginning. But my request is for self-communication - if I may, let everyone do so with due restraint. ’

According to the applicant, he made the recording because the two topics covered there were great far-reaching in the lives of the city of Tata and its citizens. The population of Tata spoke at the briefing information of public interest to them, as they concerned projects that were irreparable can cause damage and affect the lives of Tata and its citizens for decades:

-

The first topic: The EDV. CEO of Tata Bright I. Source commissioning daily

It intends to transport 6,000 m<sup>3</sup> of water from the karst waters of Tata. The Danube-Ipoly National Park

The Board of Directors emphasized in its remark that the risk of this is extremely high in Tata

It is also bright for the wildlife of the Source Region and the condition of the karst region. Competent Government Office did not grant an authorization during the investigation procedure, but lasted for at least one year required an environmental impact assessment.

-

The second topic: The case of the hotel to be built by AVALON on the shores of the Old Lake Tata as well treated as an important public issue by the citizens of Tata. A referendum initiative was also launched and thousands took part in a protest against the construction of the hotel. So far eight public forums were held where a number of speakers voiced their support for hotel construction counter-opinion on

In its reply, the Applicant further submitted that it had written to the Applicant on 5 April 2020, summarizing its position on the planned investment in the Old Lake Tata. Again asked "[...] On 11 March 2020, the representatives of AVALON's representatives

You did not make the Tata citizens aware of what was said at the meeting, despite the fact that I asked you in writing, why? " Answer your question Applicant to the Authority not received by the date of the letter sent.

In connection with the disclosure of the phonogram, the that the mayor communicated on his own Facebook page that he had offered AVALON the building of the Tata grammar school. Against the "false" accusation, in order to prove it right, 2020. on April 17, he posted the recording in the feed of his politician page on the community portal.

3

## II. Applicable legal provisions

1. The 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 2 (1) of Regulation (EU) 2016/679 (hereinafter referred to as the General Data Protection Regulation)

The General Data Protection Regulation applies to personal data

partially or fully automated and their personal use

non-automated processing of data which is the subject of a register

which are part of a registration system or which are intended to be part of a registration system.

According to Article 4 (1) of the General Data Protection Regulation, "personal data" means identified or

any information relating to an identifiable natural person ("data subject"); identifiable by a

a natural person who, directly or indirectly, in particular by an identifier, e.g.

name, number, location data, online identifier or physical, physiological,

genetic, intellectual, economic, cultural or social identity

identifiable by a factor.

According to Article 4 (2) of the General Data Protection Regulation, "data processing" means the processing of personal data

or any operation on automated or non - automated data files, or

a set of operations such as collecting, recording, organizing, segmenting, storing, or transforming

change, query, view, use, transmit, distribute or otherwise

harmonization or interconnection, restriction, deletion,

or destruction.

According to Article 4 (7) of the General Data Protection Regulation: "controller" means the natural or

legal person, public authority, agency or any other body that provides personal data

determine the purposes and means of its management, alone or in association with others; if the data management

purposes and means are determined by Union or Member State law, the controller or the

EU or national law also lays down specific criteria for the designation of a controller

you can specify.

Personal data only under Article 5 (1) (b) of the General Data Protection Regulation

may be collected for, and not combined with, specific, clear and legitimate purposes

cannot be handled in a compatible way ('purpose-based').

Pursuant to Article 6 (1) of the General Data Protection Regulation, personal data may only be used if:

and can be lawfully managed if 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

4

interests or fundamental rights and freedoms that protect personal data

especially if the child concerned.

Pursuant to Article 17 (1) of the General Data Protection Regulation, the data subject is entitled to:

at the request of the controller, delete the personal data concerning him without undue delay,

and the data controller is obliged to make the personal data concerning the data subject unjustified

delete without delay if one of the following reasons exists:

(a) personal data are no longer required for the purpose for which they were collected or

treated differently;

(b) the data subject withdraws the authorization provided for in Article 6 (1) (a) or Article 9 (2);

the consent on which the data processing is based pursuant to paragraph 1 (a), and

there is no other legal basis for data processing;

(c) the data subject objects to the processing pursuant to Article 21 (1) and is not  
priority legitimate reason for the processing, or Article 21 (2) is concerned

protests against data processing on the basis of

(d) personal data have been processed unlawfully;

(e) personal data are required by the law of the Union or Member State applicable to the controller  
must be deleted in order to fulfill an obligation;

(f) the collection of personal data referred to in Article 8 (1)  
in connection with the provision of social services.

Pursuant to Article 17 (2) of the General Data Protection Regulation, if the controller  
has disclosed personal data and is required to delete them pursuant to paragraph 1,  
taking into account the technology available and the cost of implementation  
expected steps, including technical measures, to inform  
data controllers that the data subject has requested the personal data in question from them  
deleting links to data or a copy or duplicate of such personal data.

Pursuant to Article 17 (3) of the General Data Protection Regulation, paragraphs 1 and 2 do not  
applicable if data processing is required:

(a) for the purpose of exercising the right to freedom of expression and information;

(b) the Union or Member State rules governing the processing of personal data applicable to the controller  
fulfillment of a legal obligation or in the public interest or entrusted to the controller  
for the performance of a task performed in the exercise of a public authority;

(c) in accordance with Article 9 (2) (h) and (i) and Article 9 (3)  
on grounds of public interest in the field of public health;

(d) for the purposes of archiving in the public interest in accordance with Article 89 (1), scientific and  
for historical research or statistical purposes as referred to in paragraph 1

law would be likely to make it impossible or seriously jeopardize that



data management; obsession

e) to file, enforce or defend legal claims.

The Infotv. Section 2 (2)

according to the general data protection regulation in the provisions indicated therein

shall apply mutatis mutandis.

Infotv. Pursuant to Section 60 (1), the enforcement of the right to the protection of personal data

the Authority shall, at the request of the data subject, initiate a data protection authority procedure, or

may initiate ex officio data protection proceedings.

5

2. Unless otherwise provided in the General Data Protection Regulation, the application was initiated

CL of the General Administrative Procedure Act 2016 on the data protection authority procedure. law

(hereinafter: the Act) shall apply with the exceptions specified in the Information Act.

The Ákr. Pursuant to Section 103 (1), the Ákr. Initiated ex officio proceedings upon request

provisions of the Act on With the exceptions set out in §§ 103 and 104

apply.

Infotv. Pursuant to Section 61 (1) (a), it was taken in a data protection official proceeding

In its decision, the Authority Data management specified in Section 2 (2)

in accordance with Article 58 (2) of the General Data Protection Regulation

may apply legal consequences.

Pursuant to Article 58 (2) (b), (c) and (d) of the General Data Protection Regulation

the data controller or the processor, acting in accordance with the corrective powers of the competent authority, if

its data processing activities have infringed the provisions of this Regulation; instructs the data controller or the

to exercise the data subject's rights under this Regulation

application; instructs the controller or processor to perform its data processing operations

bring this Regulation into line with the provisions of this Regulation

provisions.

Infotv. 75 / A. § pursuant to Article 83 (2) - (6) of the General Data Protection Regulation

exercise the powers set out in paragraph 1 in accordance with the principle of proportionality,

in particular by providing for the law or regulation on the processing of personal data

Requirements laid down in a binding act of the European Union

Article 58 of the General Data Protection Regulation

in particular by alerting the controller or processor.

3. Infotv. Under Section 3 (5), data of public interest are “state or local government

body or person performing other public duties specified by law

in connection with the performance of its activities or the performance of its public tasks

generated in any way or form that does not fall under the concept of personal data

information or knowledge, regardless of how it is handled, whether individual or collective,

thus, in particular, the competence, competence, organizational structure, professional activity, its

the types of data held and the rules governing its operation

data on legislation and management, contracts concluded ’.

The other group of public data includes public data in the public interest. Infotv. 3. § 6.

includes in this category all data which do not fall within the concept of data of public interest,

the disclosure, acquaintance or making available of which is required by law

in the public interest. Public data may therefore be personal data in the public interest.

Infotv. Section 26 (1) further states that the task of the state or local government,

and to any other body or person performing a public task as defined by law (a

hereinafter together referred to as the "public body") must allow the

public interest data and public data in the public interest, with the exceptions specified in this Act,

anyone can find out about it on demand.

Infotv. Pursuant to Section 26 (2), a body performing a public task is a public data in the public interest

the name, scope of work, position of the person acting within the scope of his or her duties and responsibilities, a

other personal data related to the performance of a public task, as well as personal data

the disclosure of which is required by law. Public personal data in the public interest for the purpose may be disseminated in accordance with the principle of data protection.

4. Act LIII of 1995 on the general rules for the protection of the environment. Act (hereinafter:

Pursuant to Section 12 (2), everyone has the right to environmental protection as defined in a separate legal regulation information as data of public interest.

Kvt. § 12. (3) State bodies, local governments - except courts and legislative bodies in this

fulfilling an obligation or task related to the environment

bodies or persons providing public services or performing other public tasks (a

hereinafter referred to as "the body with environmental information") are responsible for the environment

monitor its condition and its effects on human health, if necessary a

make available and make available environmental information available to them, and

the scope of environmental information specified in a separate legal act, or the information in its possession or

publish the list of information stored for him electronically or otherwise.

Kvt. § 12. (4) The body with environmental information shall provide the public and the

for a person requesting environmental information

be aware of their rights and facilitate access to environmental information

access. In order to promote these rights, the body with environmental information

appoint an information officer.

Kvt. § 12. (5) It is not possible to get acquainted with the information related to the release into the environment

denying that personal data, trade secrets, tax secrets, are highly protected

plant or animal habitat, depletion of depleted natural resources, to an increased extent

data on the location of a protected geological natural value.

Kvt. § 12. (8) A decision declared final or immediately enforceable, and a

the environmental authority contract shall be published on the website of the environmental authority

the implementation of which has a significant effect on the environment.

Kvt. § 12. (9) The user of the environment is obliged to pay for the environmental load caused by him

data on use and environmental risks to anyone on request

provide information. In the event of a breach of the obligation to provide information, the user of the environment

the action of the body supervising the legality of the matter may be initiated.

311/2005 on the procedure for public access to environmental information. (XII. 25.)

Government Decree § 2 Regardless of the form in which it appears, environmental information is all such

information (data) that applies

(a) the environment and the state of the environment, including biodiversity; and

its components and genetically modified organisms, and

the interaction between these elements;

(b) environmental impact, including noise, radiation, waste, radioactive waste into the environment

directly or indirectly, if affected or likely

may affect the elements of the environment specified in point (a);

(c) measures relating to the environment, in particular related sectoral measures

policies, legislation, plans, programs, agreements and

affecting or likely to affect the

7

activities and the protection of the environment and its components

measures and activities;

(d) reports on the implementation of environmental legislation;

(e) used in the context of the measures and activities referred to in point (c),

cost-effectiveness and other economic analyzes and assumptions;

(f) the state of human health and safety, including contamination of the food chain,

human living conditions, cultural sites and structures, in so far as they are

the status of environmental elements or through these elements in point (b) or (c)

any of the factors or measures referred to above have or may have an effect.

5. Mötv. § 2. (1) The local government is the voter of the settlement and the county the law of the community in which the sense of civic responsibility takes effect is unfolded creative collaboration within the local community.

(2) Local government in local public affairs in a democratic way, wide publicity creating and realizing the local public will.

Mötv. § 3. (1) The right of local self-government is the responsibility of settlements (local governments) and counties (local authorities).

Mötv. § 4 Local public affairs are essentially for the provision of public services to the population as well local government and cooperation with the population in organizational, personnel and material related to the creation of conditions.

Mötv. § 6 In the performance of the duties of the local government:

(a) support the self - organizing communities of the population, cooperate with those communities, ensure the broad civic participation in local public affairs;

Mötv. § 41. (2) The performance of local government tasks shall be ensured by the representative body and its bodies. THE bodies of the representative body: the mayor, the mayor, the chairman of the county assembly, the committees of the representative body, the sub-municipal body, the mayor's office, the county municipal office, the joint municipal office, the clerk, and the association.

Mötv. § 44. The Board of Representatives shall, as necessary, in the rules of organization and operation holds a specified number of meetings, but at least six per year. The meeting is scheduled for fifteen days shall be convened by a quarter of the representatives of the local council, the committee of the representative body, and the reason for convening the board meeting of the head of the government office motion. On the basis of the motion, the board meeting shall be convened by the mayor at the board meeting specifying the reason, date, place and agenda.

Mötv. § 45. The meeting of the representative body shall be convened and chaired by the mayor in the case of more than one deputy mayor, in the case of several deputy mayors, by the mayor. deputy mayor exercises. The office of mayor and deputy mayor are simultaneous

vacancy and, in the event of permanent obstruction, the organizational and operational rules

provides for the manner of convening and chairing the representative body.

Mötv. § 46. (1) The meeting of the representative body shall be public.

8

Mötv. § 46. (2) The representative body

a) holds a closed meeting on matters of municipal authority, conflicts of interest, unworthiness, awards

the imposition of disciplinary sanctions and the declaration of assets

procedure;

b) holds a closed meeting at the request of the data subject for election, appointment, dismissal, management appointment

revocation, disciplinary proceedings and resolution

when hearing a personal matter;

(c) order a closed meeting in the event of disposition of its property, as well as a notice convened by it

when determining the conditions of the tender, when negotiating the tender, if it is public

trial would harm the business interests of the municipality or other stakeholders.

(3) In closed session, the members of the Board of Representatives shall be elected from among the non-members of the

Board of Representatives

Deputy Mayor and the Registrar, the Registrar, the Registrars and, in the event of an invitation, the

office or the administrator of the joint municipal office, the data subject and the expert. THE

the president of a nationality self-government is only on the agenda of a matter concerning the nationality he or she represents

may attend the hearing in camera. It may be prescribed by law or municipal decree, which

In this case, the invitation of the data subject is mandatory.

6. Act V of 2013 on the Civil Code (hereinafter: the Civil Code) 2:48. § [THE

the right to take a picture or sound recording] (1) To make a picture or sound recording and

the consent of the person concerned is required for its use.

Ptk. 2:48. § (2) The consent of the data subject is not required for the preparation of the recording and the

was made for mass recording and public performance for use in the recording

in case of recording.

### III. Principles for the Authority 's findings

In the present case, in the light of all the facts available to the Authority, its decision

it is necessary that

- concerning a specific group of staff invited by the mayor (private),
- in a discussion on public affairs,
- the voice of the Applicant as mayor is personal data or in the public interest

whether it qualifies as data and whether

- whether the consent or information of the participants in the private meeting can be prepared

whether a sound recording or a sound recording made in this way can be published.

#### 1. Publicity of the operation of the local government

Pursuant to Article 32 (1) of the Basic Law of Hungary (hereinafter: the Basic Law)

In Hungary, it is local in order to manage local public affairs and exercise local public power

municipalities are operating.

The task of the Authority is to comply with Article VI of the Basic Law. the fundamental right guaranteed in Article 3 (3)

insurance. As the primary purpose of freedom of information is the state (including local

local authorities).

9

The Mötv. § 2 declares the publicity of the meetings of the Board of Representatives as a principle, which is set out in Art.

Section 46 (1) (2) is confirmed by the legislator. Local government in local public affairs

in a democratic way, creating and implementing a wide public

public will. The public shall, on the one hand, attend and participate in the meetings of the Board of Representatives

means of accessing the minutes. Thus creating the municipality

social control over its operation.<sup>3</sup>

The Municipal Council of the Mansion has stated in several resolutions that the municipal

publicity of a meeting of a representative body is an important requirement of a democratic state governed by the rule of law.

The

Mötv. under the provision of publicity, local government is local

in public affairs in a democratic way, by creating a wide publicity, expresses and implements the

local public will. Under this rule, it is in itself a principle to the public

for exclusionary decision-making only in cases that are pre-determined by law, in justified cases, in a narrow circle take place.

The Mötv. Paragraph 3 (1) further states that the right of local self-government is the responsibility of municipalities and the electorate of the electorate of the counties. The Mötv. this provision is local

includes the statutory fixation of the right to self-government. The electorate is

the right to self-government on the one hand directly (through a local referendum) and on the other hand indirectly (through the election of municipal representatives). However, it is

from the right to self-government also arises the requirement that the electorate be subject to

can accompany local government decision-making: the transparent operation of local government a

one of the requirements of a democratic rule of law. [Vol.5019 / 2016/3., Vol.5020 / 2016 / 3.]

The Authority draws attention to the fact that Infotv. § 1 specifies the purpose

which must be used to obtain information in the public interest and in the public interest: a

transparency of public affairs. In the field of transparency in public affairs, the functioning of the Board of Representatives publicity is a guarantee that municipal representatives are elected by the local

they act in accordance with the interests of the community and the local public will. The public,

the requirement of transparent operation applies to the operation of all local governments

requirement. Köf.5003 / 2012/9 of the Municipal Council of the Mansion. decision no

stated that "the public is concerned with the work of the Members present at the meeting, that

voters living in the township or anyone can already monitor the municipality

decision-making. ".

Publicity is essential to the functioning of local democracy, and it is in the public interest

access to information, its dissemination and, where appropriate, its critique, ie so



one of the important basic conditions and means of community existence is communication.

## 2. Prominent publicity of environmental information

The Authority has a "qualified" public interest in environmental information according to its importance

as citizens without access to environmental information

they cannot be properly enforced in the Basic Law on a Healthy Environment

fixed rights. That is why it is important to emphasize that Kvt. based on the environmental impact,

Mötv. § 2. (1) Local self-government is the right of the electorate of the settlement and the county, during which

the sense of civic responsibility prevails, the creative cooperation within the local community unfolds.

(2) Local government shall express and express itself in local public affairs in a democratic manner,

implements the local public will.

2 Mötv. § 46. (1) The meeting of the representative body shall be public.

3 Mansion Municipal Council Vol.5.036 / 2012/6. Decision No

1

10

the disclosure of data related to the use of the environment or endangering the environment

only to organizations performing public tasks or managing public funds, but all

organization, company.

In order to guarantee the right to a healthy environment, it is essential that the public a

access to environmental information. Lack of this information may prevent the

public participation in decision-making on environmental issues. Access

legal basis is provided several times, Infotv. in addition to the Kvtv. Section 12 (2) also states that

environmental information is data of public interest, on the other hand, the so-called On the promulgation of the Aarhus

Convention

2001 LXXXI. Article 4 (1) of the Act requires the authorities to "environmental

upon request, the requested information shall be made available to the public by the national

regulation. " Although the law allows exceptions to the public, such as

due to the confidentiality of official procedures or the protection of personal data, but with exceptions

"Shall be construed narrowly, taking into account the public interest served by disclosure."

Which data qualifies as environmental information is public environmental

311/2005 on the procedure for access to information (XII.25.)

(for example: data on the state of the environmental elements as well as the environmental load,

data on environmental measures taken to protect the environment

data on measures).

In the Authority's view, it is a nature conservation site of European Community importance

discussion on a planned investment in a Natura 2000 site

and the information provided there in relation to the investment is directly environmental

considered to be privileged and widely available to the public.

In view of the above, in the present case, the Authority will still accept it

the lawfulness of data processing if the sound recording was made in a disguised manner and in secret

The Applicant did not inform the Applicant about its disclosure.

### 3. Public data of public actors in the public interest

Constitutional Court 60/1994. (XII. 24.) AB also expressed its position in its resolution, according to which

"[...] For the sake of democratic state life and public opinion, public officials and others

the constitutionally protected private sphere of public figures is much narrower than others,

in particular, they must expose themselves to criticism from others. However, their personal data does so

knowledge may also be required if they are relevant to their function or public role

are related. For those exercising public power or taking political responsibility a

persons, in particular voters, to access data of public interest

the right of the former to take precedence over the protection of the personal data of the former which

they may be relevant to their public activities and their assessment. [...]"

Infotv. Section 26 (2) (5) lists, by way of example, in the public interest

data, but also the public task of supplementing the scope of public data in the public interest

275/2004 on sites of European Community importance for nature conservation purposes. (X. 8.) Government Decree 5.

Annex I - Special protection areas for birds

5 Infotv. § 26. (2) In the public interest, the name of a person acting within the scope of duties and powers of a body performing a public task,

duties, responsibilities, managerial assignments, other personal data related to the performance of public duties, as well as their

your personal data, the disclosure of which is required by law. Public personal data in the public interest for the purpose may be disseminated in accordance with the principle of data protection. Public personal data on the website in the public interest

4

11

with the category of data of another person related to the provision of However, the same paragraph

it also states that it should also apply to public personal data in the public interest

the principle of purposeful data processing for the processing of personal data.

In the present case, the fundamental right to the protection of personal data and data of public interest

the fundamental right to know must be interpreted in the light of each other. In connection with this, the

it is a question of whether, in the case of public authorities or political public figures,

freedom of information or the protection of personal data takes precedence. That personal

data relating to the public activity of that person and his judgment

access to information and the public interest

take precedence. Access to this personal data is necessary in order for it to

trust in the operation of public bodies is unbroken, and their activities should be open to all

for.6

Infotv. Section 26 (2) in addition to the itemized listing of public data sets in the public interest, respectively

in addition to the information required by other law, extends it to all personal information a

in the course of the procedure within the task and competence of the given body a

directly related to the performance of a public task.

The Authority emphasizes that the extent to which the data processed relate to the extent that they fall within the scope of the private sector to be protected - all requires special care.

The Constitutional Court ruled in 443 / D / 2006 In the explanatory memorandum to the decision, B explained that “[t] he fundamental right

(...) it is not in itself sufficient for the constitutionality of the restriction to be another fundamental right for the protection of liberty or any other constitutional purpose, but it is necessary that meet the requirements of proportionality: the importance of the objective to be achieved and the proportionate to the seriousness of the infringement of fundamental rights

The Mötv. Pursuant to Section 41 (2), the performance of local government tasks is the responsibility of the Board of Representatives and

bodies. As an applicant mayor, it is a body of the representative body, thus a mayor in the public interest relating to the performance of his public duties public data. Given that the Applicant and the subject of the proceedings

The participants of the discussion play an active role in the public life of Tata, they perform a public task, therefore their public duty in conciliation on public matters affecting the citizens of the city of Tata their personal data related to the provision of Infotv. Pursuant to Section 26 (2) in the public interest are considered public data.

The voice of the person performing the public task, if exercising his public task, directly related to the performance of its public task. Oral statements are based on speech, oral communication, consequently, the Applicant, as the mayor leading the settlement, has a legal voice cannot be separated from the data of public interest which the mayor, as a public actor, a to the public.

the provisions of Annex 1 and the special law on the status of a person performing public duties are applicable.

public personal information

12

#### 4. "Closure" of the discussion

The attached invitation was for a meeting with up to one participant, Mötv.

They could also have been participants in a meeting of the Board of Representatives convened in accordance with § 44. So much

the meeting held on 11 March 2020 departed from a meeting of the House of Representatives to convening is not the Mötv. and in accordance with the rules of the municipal decree<sup>7</sup>.

For this reason, the Authority shares the Applicant's position that on 11 March 2020

The conciliation was not a meeting of the Board of Representatives, so it is not subject to the provisions of Art. provisions.

However, the Authority emphasizes that by allowing the municipality to rules bypassing the conciliation, it cannot yet exclude the operation of the legislation, so the from the provisions on data protection and freedom of information. Otherwise holding municipal meetings could easily restrict the functioning of the municipality publicity.

According to the consistent practice of the Authority and the Data Protection Commissioner, local public affairs to discuss and organize, as a rule, the meetings of public representative bodies and committees in which anyone may participate without their express consent or permission, and there free image and / or sound recording of the events, while respecting the rights of the individual you can make.

The Authority listened to the audio recording posted on Facebook, of which it is established that the Applicant did not inform those present that the minutes, or an audio recording is made or not made of the meeting, and the data and information that is given no attention has been drawn to its closedness.

According to the audio material, the Applicant made the following statement: “[...] Members of the Board of Representatives sit here, the members of the external committee and the heads of the office, the clerk and János Bencsik I have invited another Member of Parliament and he is here. Our coexistence is not in the press, this I forgot to say at the beginning, but my request is for self-communication, if I may, then everyone should do it with due restraint. [...] ”

The Authority also found that the Board of Representatives and the

The agenda of the closed discussion informing the members of the committee included only public affairs. THE participants in the discussion were not present as individuals and were on the agenda topics are not private, but only directly affecting the city and its inhabitants were issues that were valued as a priority public issue by citizens.

It should be noted that the planned investment on the shores of the Old Lake Tata is primarily environmental due to its involvement and the interest of the national media yourself.

According to the consistent position of the Authority, in accordance with the Basic Law, the Infotv. the data principle prevails in its conceptual system, therefore it is represented by the Applicant finding that the audio recording of a private meeting - hence the

what was said there - does not fall within the notion of public interest data, is wrong. In this context, the

The Authority has consistently taken the view that the operation of a public body is a matter for the public

The data generated in this context are, in principle, data of public interest,

25/2014 of the Board of Representatives of the Municipality of Tata. (XII. 18.) is the local government decree On its Rules of Organization and Operation

7

13

which are of particular interest to the citizens of the city of Tata and whose outcome is significant

affects the lives of the inhabitants of the city, the residential and natural environment, and to what extent Tata

The City Council has the power to make decisions - data of public interest. For the requested party a

The purpose of the discussion was also recorded in a voice recording: "[...] we did not do this because now we advertise how cute we are and we are already talking to everyone, but because so that Members and committee members have direct access to [...]"

## 5. Legal basis for data management

Pursuant to Article 17 (2) of the General Data Protection Regulation, if the controller has disclosed personal data and is required to delete them pursuant to paragraph 1, taking into account the technology available and the cost of implementation expected steps, including technical measures, to inform data controllers that the data subject has requested the personal data in question from them deleting links to data or a copy or duplicate of such personal data.

Pursuant to Article 17 (3) of the General Data Protection Regulation, paragraphs 1 and 2 do not applicable if data processing is required:

- (a) for the purpose of exercising the right to freedom of expression and information;
- (b) the Union or Member State rules governing the processing of personal data applicable to the controller fulfillment of a legal obligation or in the public interest or entrusted to the controller for the performance of a task performed in the exercise of a public authority;
- (c) in accordance with Article 9 (2) (h) and (i) and Article 9 (3) on grounds of public interest in the field of public health;
- (d) for the purposes of archiving in the public interest in accordance with Article 89 (1), scientific and for historical research or statistical purposes as referred to in paragraph 1 law would be likely to make it impossible or seriously jeopardize that data management; obsession
- e) to file, enforce or defend legal claims.

Based on the position expressed by the applicant, the data and information provided at the private meeting it could not have been known to anyone other than the participant concerned, so he asked the Authority - inter alia, order the applicant to delete the recording from the Community.

From the definition in Article 4 (1) of the General Data Protection Regulation

it clearly follows that the voice of a natural person (like that of another person)

personal data. The general data protection regulation does not apply

requirements for the processing of personal data by a natural person solely for personal or domestic use

any professional or business activity

cannot be linked (so-called private data management) .8 The Civil Code. 2:48. § (1) 9

for both the making and the use of the phonogram

the consent of the person is required. Under that provision, therefore, the making and recording of sound recordings

the lawfulness of its use in the current Hungarian legal system is, as a general rule, the data subject

the consent of the person is required.

Article 2 (2) (c) GDPR, having regard to recital 18 of the GDPR.

Ptk. 2:48. § (1): "For the production and use of a pictorial or sound recording, the person concerned

consent is required. "

8

9

14

However, according to the official position on the production and use of sound recordings<sup>10</sup>

participation in a public representative body or committee meeting in an official capacity is subject to the provisions of Art.

shall be deemed to be a public performance within the meaning of paragraph 2 of the section referred to above

the consent of the data subject is not required under the provision of that legislation

and to use the recorded recording.

The recording and publication of sound recordings is governed by the general data protection regulations

therefore the data controller must inform the data subject

the data subject (s) concerned and provided for in the General Data Protection Regulation

specific rights of the data subject.

Making personal data available in the public interest in accordance with the Information Act and a separate law,



or its disclosure for the purpose of data management on which the creation and collection of the data is based where applicable, shall be considered as separate data processing for separate data processing purposes, for which the According to the General Data Protection Regulation, together with other conditions, this can only take place if the controller shall be required to comply with any of the provisions of Article 6 (1) of the General Data Protection Regulation has a legal basis.

To the Authority's question on this point, the Applicant replied: "I made it for that recording because the 2 themes spoken there are so far - reaching in the lives of the city of Tata and its citizens that I didn't even understand why Tata TV wasn't there and why it wasn't broadcast live? " Requested Article 6 (1) (e) and (f) of the General Data Protection Regulation as the legal basis for data processing.

Article 6 (1) of the General Data Protection Regulation

(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 the interests of the data subject take precedence over those interests or fundamental rights and freedoms which call for the protection of personal data, especially if the child concerned.

The legal basis referred to in point (e) focuses on the performance of tasks in the public interest.

We can talk about tasks of public interest if the basis of data management is EU law or Hungarian legislation. In domestic law, the concept of a public task is basically two related to the subsystem: public administration and local government bodies and with the statutory responsibilities established by law bodies and persons performing public tasks. 12

The Möt. Section 32 (2) lists the rights and obligations of a local government representative.

In addition, the organizational and operational rules of the representative body are other, with the settlement

He may also entrust the Member with the performance of public tasks relating to The Möt. according to

municipal representative with responsibility for the whole settlement (capital district, county)

represents the interests of its constituents.

10

[https://naih.hu/files/2016\\_05\\_09\\_tajekoztato\\_hangfelvetelekrol.pdf](https://naih.hu/files/2016_05_09_tajekoztato_hangfelvetelekrol.pdf)

GDPR Article 4 (2): "processing" means whether or not personal data or files are automated

any operation or set of operations performed in an automated manner, such as collecting, recording, organizing, segmenting

store, modify or alter, query, inspect, use, transmit, distribute or otherwise

harmonization or interconnection, restriction, deletion or

destruction;

12 Explanation of the GDPR - Edited by Péter Buzás / Attila Péterfalvi / Balázs Révész, 6.6. It is a task of public interest

supply and exercise of official authority

11

15

A municipal representative elected by the electorate to the electorate community

13 In his statement, the applicant emphasized: '[t] he city as a whole

affecting investment concept of public affairs, making disclosure of public interest, social

it has no danger, in fact, as a representative, it is a legitimate expectation to inform the electorate.

[...]”.

By Applying on Facebook, under the public profile available to anyone

published the sound recording he made, in fact he was in the capacity of the representatives included in the Mötv

away, as he informed not only his constituents but all Tata citizens

in connection with the Old Lake investment.

In the petition of the petitioner, not the data and information provided at the meeting, but the

complained about the publicity of his voice as mayor,

whereas, in its view, an audio recording would have been sufficient to inform the public

a textual entry which does not contain it, in its view, published in the entry

a sound recording has no special added value in contributing to the discussion of public affairs.

In so doing, Applicant acknowledged that the disclosure of the information was essentially not  
it objects only to the way in which it expressly expresses its own voice.

In view of all the circumstances of the case detailed above, the Authority is present

Article 6 (e) of the General Data Protection Regulation as the legal basis for data processing in this case.  
point.

Consequently, Article 17 (3) of the General Data Protection Regulation  
the obligation to cancel set out in Article 17 (2)  
not applicable.

However, the Authority emphasizes that it does not consider it acceptable yet to follow a  
nor is it a disguised, secretly recorded recording of discussions on public affairs  
and the publication of the audio material thus produced.

Further findings of the Authority

The Authority shall also determine in relation to the case if there are two points in the discussion

In the case of discussing the

1. the operation of the local government would have provided the right to participate in addition to the image and  
the right to make sound recordings, ie to make images and sound recordings available to the public  
persons attending a meeting of the Board of Representatives shall

2. in the case of a closed meeting, due to the content of the discussion, the public interest expressed there  
access to the data shall be provided by means of a request for data  
to the municipality. The Authority emphasizes the public interest expressed in the private meeting  
any request for access to data must also be complied with  
to the municipality.

The Authority notes that Section 16 (4) of the Local Government Act provides for the complex  
the procedure for ensuring publicity also in cases: "The Board of Representatives is the more complex professional  
in a matter requiring preparation, more complex regulation or affecting the general public

may prescribe a two-round hearing. Unless otherwise decided by the Board of Representatives a

13

Mötv.32. § (1)

16

the date of the second round hearing shall be the second meeting of the panel following the first hearing '. The SZMSz the publicity of the functioning of the Board of Representatives was violated by disregarding the provisions of guarantee rule, which is also the key to democratic functioning.

According to Article I (3) of the Basic Law, a fundamental right is the exercise of another fundamental right or in order to protect a constitutional value to the extent strictly necessary

proportionate to the aim pursued, while respecting the essential content of the fundamental right.

The representative body of the local government exercises public power in the management of local public affairs. THE the decision is an essential condition for the proper exercise of a public authority

possession of data and information necessary for making. The right to local government a

belongs to the community of voters, which it exercises through the representatives elected by them. Based on this, it is essential to involve voters a

decision-making procedures.

In the present case, on the basis of all the circumstances, the Authority considers that

data and information in a private meeting based on the content of the communication in the public interest

public data, and in this case the public affairs that trigger the public activity of citizens

the fundamental right of access to data of public interest relating to

protection of the personal data of a public actor present on behalf of the

Based on the above, the Authority has decided in accordance with the operative part.

The Authority shall inform Infotv. Pursuant to Section 61 (2) (b), the data controller shall order the decision, that is, the disclosure of the Applicant's identification data.

\*\*\*

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 Ákr. Pursuant to § 112 and § 116 (1) and § 114 (1)

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 (1) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (3) a)

Pursuant to point (aa) of the Act, the Metropolitan Court has exclusive jurisdiction. A Kp. Section 27 (1)

(b), legal representation shall be required in legal proceedings before the General Court. A Kp. § 39

(6) of the application for the entry into force of the administrative act

has no suspensive effect.

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

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

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

obliged to communicate electronically.

The place and time 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)

17

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.) 45 / 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.

Budapest, October 29, 2020

Dr. Attila Péterfalvi

President

c. professor

18