

Home »Practice» Opinions of the CPDP for 2018 »Opinion of the CPDP on a request from the director of a kindergarten on issues related to the provision of information containing personal data required under the Access to Public Information Act

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OPINION OF THE PERSONAL DATA PROTECTION COMMISSION Reg. № NDMSPO-01-841 / 2018 Sofia, 12.09.2018 REGARDING: Request with ent. № NDMSPO-01-841 / 2018 by Ms. NK - Director of DG № ***, Sofia, on issues related to the provision of information containing personal data required under the Access to Public Information Act

Commission for Personal Data Protection (CPDP, Commission) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on 05.09.2018, considered a file with registration № NDMSPO-01-841 / 2018 by Ms. NK . - Director of DG № ***, Sofia, on issues related to the provision of information containing personal data required under the Access to Public Information Act (APIA). Pursuant to Art. 10, para. 1, item 4 of the LPPD, Ms. NK addresses the CPDP with a request to express an opinion on issues related to the provision of personal data to children from the entrusted and kindergarten. In the period from July 10, 2018 to July 22, 2018, the kindergarten received 10 by e-mail. applications under the APIA, with which the applicant requests information on the number and diagnoses of children with chronic diseases, accepted in the respective years / 2014, 2015, 2016, 2017, 2018. /. With an application dated 10.07-2018, the applicant requested information on the number of children with chronic diseases enrolled in the period 13.05.2018 - 10.07.2018, as well as their diagnoses under the ICD. With a Decision of 18.07.2018, sent by e-mail on 19.07.2018, Mrs. NK has provided the requested information, indicating the number of children and their diagnoses with exact names as indicated in the minutes of the medical commissions. She clarified to the applicant that the protocols did not contain a diagnosis code according to the ICD. Two hours after receiving the information, the applicant sent a new request by e-mail, requesting the provision of the protocols themselves to LKK, as the diagnoses he said were "too general". The applicant stated in his letter that he did not want dates and diagnoses to be deleted, but wanted information with deleted personal data. According to Ms. NK this means that only the names of the children and the doctors who signed the protocol should be deleted. These protocols from LKK were provided to the management of the kindergarten by the parents of the adopted children with SEN and chronic diseases when enrolling them according to the Ordinance on admission of children to municipal kindergartens and preparatory groups in municipal schools in Sofia. Undoubtedly, the protocols contain personal data and a special category of sensitive personal data for the health condition

within the meaning of Art. 4, item 15 and Art. 9, para. 1 of EU Regulation 2016/679 of the European Parliament and of the Council. In this regard, Ms. NK asks the Commission to comment on the following issues: 'Will it be lawful to provide copies of these protocols to a third party even if the children's names are deleted? "Should the consent of the parents be required for the provision of copies of the protocols and in the absence of such consent, how should he act in his capacity as both a personal data controller and an obligated subject under the APIA, so as not to violate either the law / APIA, LPPD / ". Mrs. NK is concerned about the fact that children can be identified / especially easy for children with SEN /, as it concerns a limited number of children - 10 accepted. children in a total of 2 first groups. Apart from that, he is concerned about the illegal processing of this information, as the APIA applicant receives information from kindergartens as an individual and then distributes it on the Internet on the Facebook page of the Initiative Committee for Quality and Innovative Education System.

The following documents are attached to the request: 1. Application for access to public information from 10.07.2018 2. Decision for granting access from 18.07.2018 3. Application for access to public information from 19.07.2018 4. Excerpt from the Facebook page of the Initiative Committee for Quality and Innovative Education System Legal Analysis: The Law on Access to Public Information regulates public relations related to the right of access to public information, as well as the re-use of information from the public sector. The legal definition of the term public information is given by the provision of Art. 2, para. 1 of the APIA, namely, public is the information that is related to public life in the Republic of Bulgaria and gives citizens the opportunity to form their own opinion about the activities of persons required by law. The information thus determined may be contained in documents or other material carriers, created, received or stored by the subjects obliged under the APIA - the state bodies, their territorial units and the bodies of local self-government in the Republic of Bulgaria. According to the legal definition, the requested information in the presented case could not constitute public information stored by the management of DG № ***, in its capacity of an obligated subject under Art. 3 of the APIA. By its nature, the information requested, as stated in the request for an opinion, constitutes personal data of a third party. According to Art. 2, para. 5 of the APIA, it does not apply to access to personal data. Article 4, para. Article 1 of the Regulation defines personal data as "personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more features specific to the natural, the physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. In par. 15 of the same article, the term "health data" means personal data related to the

physical or mental health of an individual, including the provision of health services that provide information about his health.

From the cited definitions it follows that the information contained in the protocols of LKK is data on the health status of children who are a vulnerable category of data subjects and as such enjoy increased protection by the Regulation. These are data that enjoy a higher degree of protection and are in the category of so-called sensitive data. In the General Data Protection Regulation, namely in Art. 9, para. 1, there is a ban on the processing of personal data revealing racial or ethnic origin, political views, religious or philosophical beliefs or membership in trade unions, as well as the processing of genetic data, biometric data for the sole purpose of identifying an individual, health data condition or data on the sexual life or sexual orientation of the individual. The general rule prohibiting the processing of personal data under the above article does not apply only if one of the following conditions is met: (a) the data subject has given his or her explicit consent to the processing of such personal data for one or more specific purposes, except where Union law or the law of a Member State provides that such prohibition may not be lifted by the data subject; (b) the processing is necessary for the performance of the duties and the exercise of the special rights of the controller or of the data subject under labor and social security and social protection law, in so far as this is permitted by Union law, or the law of a Member State, or by collective agreement in accordance with the law of a Member State, which provides appropriate guarantees for the fundamental rights and interests of the data subject; (c) the processing is necessary in order to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving his or her consent; (d) the processing is carried out under appropriate safeguards in the course of the lawful activities of a foundation, association or other non-profit-making body, for political, philosophical, religious or trade union purposes, provided that the processing relates only to members or former members of that structure; with persons who maintain regular contact with it in connection with its purposes, and that personal data are not disclosed without the consent of the data subjects; (e) the processing relates to personal data which have apparently been made public by the data subject; (f) processing is necessary for the purpose of establishing, exercising or defending legal claims or whenever the courts act in their capacity as judicial authorities; (g) processing is necessary for reasons of overriding public interest based on Union law or the law of a Member State, which is proportionate to the objective pursued, respects the nature of data protection law and provides for appropriate and specific measures to protect fundamental rights and interests the data subject; (h) the treatment is necessary for the purposes of preventive or occupational medicine, for the assessment of the employee's ability to work, medical diagnosis, provision of health or social care or treatment, or for the management of health or social care

services and systems Union or the law of a Member State or under a contract with a medical professional and under the conditions and guarantees referred to in paragraph 3;(i) processing is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and medicinal products or medical devices, based on Union law, or the law of a Member State, which provides for appropriate and specific measures to guarantee the rights and freedoms of the data subject, in particular the protection of professional secrecy;

(j) the processing is necessary for archiving purposes in the public interest, for scientific or historical research or for statistical purposes in accordance with Article 89 (1), on the basis of Union or Member State law proportionate to the objective pursued, respecting the nature of the right to data protection and provides for appropriate and specific measures to protect the fundamental rights and interests of the data subject.

The provision of the requested protocols to LKK is an action for processing personal data within the meaning of para. 2 of Art. 4 of the Regulation and means "processing" means any operation or set of operations carried out with personal data or a set of personal data by automatic or other means such as collecting, recording, organizing, structuring, storing, adapting or modifying, retrieving, consulting, using , disclosure by transmission, dissemination or other means of making the data accessible, arranging or combining, restricting, deleting or destroying it.

In the specific case, namely, the provision of protocols containing sensitive personal data from LKK, provided to the Director by parents of children with SEN does not fall under the hypotheses of Art. 9, para. 2 of the General Regulation and none of them is applicable. From what has been said so far, it follows that the information seeker has no legal basis to receive this data, and the director has no legal basis on which to provide it.

In connection with the above and on the grounds of Art. 58, para. 3 of the General Data Protection Regulation, the Commission for Personal Data Protection stated the following

OPINION:

The protocols of LKK, provided by the parents of children with SEN, contain personal data on the health status of the children, which represent special categories of personal data within the meaning of Art. 4, item 15 and Art. 9, para. 1 of EU Regulation 2016/679 of the European Parliament and of the Council. In this case, none of the conditions for admissibility of the processing of data from these documents are met (in the form of disclosure by transfer to a third party, dissemination or other means by

which the data becomes available), therefore the controller should not provide copies of the protocols of LKK of the applicant of the information under APIA. Even the deletion of children's names from the copies of the protocols of LKK can lead to the identification of a particular child due to the limited number of children in kindergarten who have SEN and the possibility for this reason they can be easily identified, incl. by external signs.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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