

HmbBfDI not responsible for the "neutrality portal" of the AfD parliamentary group in Hamburg

Those affected must exercise their data protection rights themselves

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Some time ago, the parliamentary group of the AfD Hamburg set up an information area and a contact form on the subject of "neutral schools" on its website. On the one hand, information is provided here about the principles of the neutrality requirement at the Hamburg schools and, on the other hand, the opportunity is offered to report suspected violations of the neutrality requirement to the AfD parliamentary group in Hamburg via a contact form or by e-mail. If there is a reasonable initial suspicion, the AfD parliamentary group offers to forward the process to the school authorities for review. To check the initial suspicion, the telephone number or e-mail address of the person reporting is requested.

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) is currently receiving numerous submissions and expressions of displeasure about this portal. They contain requests to the HmbBfDI to check the legality of the portal and the reporting form under data protection law, some of which demanded that the HmbBfDI stop any violations.

Among other things, it was pointed out that

that it is inadmissible to store and, if necessary, pass on personal data of third parties/teachers,

that there are violations of the GDPR,

that the form does not contain a data protection notice,

that the form is not fully encrypted,

that cookies would be stored inadmissibly,

that data from reporters would be stored and no information would be given about it.

In the absence of its own responsibility, the HmbBfDI cannot pursue the complaints further. Because he has no authority to control, as far as the processing of personal data is carried out in the context of parliamentary tasks by parliamentary groups.

Rather, a data protection regulation applies here that the citizenry has given itself. The parliamentary area, which is to be distinguished from the administrative activities of a parliamentary group, includes in particular public projects of the parliamentary groups in the political sphere. The special regulation under data protection law therefore also extends to the activities carried out by the AfD parliamentary group.

Although the citizenship has set up a data protection committee for internal data protection control, the parliamentary groups

are not subject to this. As far as parliamentary groups are concerned, they are responsible for monitoring the data processing they have carried out themselves in accordance with the data protection regulations of the citizenship.

This does not mean that factions are free to do as they please here. For example, there is a data protection right to information from the parliamentary group and a right for those affected to have the data deleted in accordance with the Citizens' Data Protection Ordinance. However, those affected are dependent on enforcing their rights in court against the responsible body themselves without the support of a data protection complaints authority. If those affected want to assert further data protection rights, in particular rights to information or rights of objection, as provided for in the GDPR, these could result directly from their fundamental right to informational self-determination.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information: "The present case shows that the special position under data protection law makes it difficult to protect the rights of those affected. The regulations are intended to take account of important EU and constitutional considerations. The purpose is to guarantee the independence of parliaments and in particular of the parliamentary groups in terms of data protection law and to exempt parliamentary activities from external supervisory control, while at the same time taking data protection into account. Especially in political competition, this can only work if the powers associated with these exceptional provisions are exercised in a measured and responsible manner, which respects the data protection rights and freedoms of citizens."

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