Athens, 09-09-2022 Prot. No.: 2224 DECISION 48/2022 (Department) The Personal Data Protection Authority met as a Department via video conference on 07-04-2022 at 10:00, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, due to the impediment of the President of the Authority, Constantinos Menoudakos, and the alternate members Demosthenes Vougioukas as rapporteur and Maria Psalla in place of regular members Konstantinos Lambrinoudakis and Grigorios Tsolias, who did not attend due to disability, although they were legally invited in writing, attended. The meeting was attended, by order of the President, by George Roussopoulos, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint No. C/EIS/2736/16-04-2020 of A was submitted to the Authority. According to the information therein, the complainant received on 30-12-2019 a message from the personal e-mail account of the Mayor of [area] X B, without having given his consent. Following the message, he exercised the right to object, asking not to receive such a message again. The complainant appealed to the Authority after a new message, which he received on 16-4-

2020, despite his previous objection. With his complaint, the complainant also raises the question of the illegal origin and use of his personal data, as he considers that the complainant became aware of his data by registering in a program of Municipality X (…). The Authority informed the complainant about the complaint with its document No. C/EX/2736-1/05-06-2020. The complainant, after being reminded (with the Authority's document no. C/EX/2736-2/25-09-2020) replied with the document no. C/EIS/3870/11-6- 2021 document of. With this document he claims that the e-mail message he sent was not for the purposes of political communication (there is even a reference to the Authority's decision 16/2021), that the e-mail address used does not show any association with a natural person (identified or identifiable), as well as that after sending it from 04-16-

2020 of the complainant's counter message, he did not send another message. The Authority, with its latest document (G/EME/1748/21-07-2021) pointed out that there was no issue of using the data (of the aforementioned e-mail address) for political communication purposes, but a) failure to satisfy the right to object after the initial message received by the complainant on 30-

12-2019 and b) illegitimate origin of the data, as the complainant considers that the (only) source of his data can be his registration in the program of Municipality X ... . With his original document, the complainant did not provide an answer to the above two issues. The Authority invited him to clarify the above two issues, informing also of the reasons why he did not satisfy

the objection of the complainant after the initial message and providing any information regarding the source of the email address "...". In fact, the Authority specifically informed him about the definition of personal data in article 4 para. 1 of GDPR1. The complainant confirmed (with his document no. prot. C/EIS/5467/30-08-2021) that for tracking purposes he uses unique e-mail addresses on his own relevant server, for each registration in online services, online stores, etc. With the 1 The Authority also referred to opinion 04/2007 of the O.E. of article 29 as well as the CJEU decision in case C□582/14. 2 this way he can easily trace where each of his addresses leaked from when he receives spam from strangers. In this case, he registered with the email "..." to the service ... (https://www.....gr/), which is operated by a third company and in this case on behalf of Municipality X. The complainant replied with the his document no. prot. of which does not constitute the processing of personal data, as the complainant's address does not indicate an association with a natural person and c) that following the complainant's objection and after sending his message from 16-4-2020, he has not sent a new message, making delete this address. The Authority proceeded with the summons to a hearing of the complainant with reference number C/EXE/697/15-03-2022. Following the postponement of discussion of the case during the meetings of 30-03-2022 and 13-04-2022, the case was discussed at the meeting of the Authority's department on 11-05-2022. The complainant appeared through the attorney-in-fact of Apostolos Georgoulas, while he received a deadline and filed on 05-29-2022 the memorandum with the number G/EIS/8053/17-06-2022. It now states that the complainant actually submitted a request to the Municipality's online platform... The citizen who uses the said electronic service registers his name, telephone number and e-mail address. These contact details are necessary for the proper functioning of the service, as it is very frequent that an employee of the Municipality or an elected official needs to contact the person submitting the request for clarification or even to explain to him why his request cannot be granted. Citizens who use the application know the purposes of the communication and, by extension, the disclosure of their contact information. A part of the communications are addressed to the Mayor of the city, who is asked to satisfy requests or explain the reasons why this 3 cannot be done. This results in a portion of the contact information being forwarded internally to the Mayor's office and from that administrative structure further communication is made with the citizens. The contact details are not used for purposes other than those mentioned above, and rather for political communication purposes. However, in the context of the communication developed by the Municipality (in this case through its Mayor) with the citizens who use the application, communication emails of some citizens that had been forwarded internally to the Mayor's Office for the above purposes, were used to send wishes, i.e. for reasons social skills that enhance

communication. The complainant maintains that the specific communication and its purpose is not far from the purposes for which the data was collected, and it was known to the citizens, who had already received communication from the Municipality previously, in many cases even by telephone, and had been informed about. In this context, the complainant received the congratulatory e-mails in question, as he had contacted the Municipality in order to complain about the operation of the application.... His details had been forwarded to the Mayor's Office so that he could be contacted, his complaint heard, his observations recorded, etc. The contact details that the complainant communicated to Municipality X were not used for any other purpose (e.g. in context of political communication) by the one about whom they were disclosed, neither before nor after the communications in question. The Complainant states that the Complainant was given the opportunity to exercise the right to object to future communications and did so by replying to the email and asking not to receive any such communication again in the future. The fact that he nevertheless received such communication again is due to an error. In particular, the deletion of those exercising the right to object from the list of recipients is done by deleting the contact details by a natural person charged with this task. This method of deletion has been qualified over an automated one for the reason that, on the one hand, there are not many e-mail addresses in the specific directory and, on the other hand, there are few requests for deletion. In this case, the individual responsible for removing the complainant's email address from the recipient list mistakenly did not remove it after the first communication, but did so after the second, resulting in the complainant not having received to date another communication. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote, after a thorough discussion, DECIDED IN ACCORDANCE WITH LAW 1. According to article 4 par. 1 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free circulation of such data (hereinafter GDPR), ""personal data" is any information that concerns an identified or identifiable natural person ('data subject'); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data , to an online identifier or to one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person.' In this context, the e-mail address of a natural person is personal data, since it can act as an identification element of its owner, allowing communication with him. It is also pointed out that, in accordance with Opinion 4/2007 of the Article 29 working group on the concept of personal data, especially during the operation of electronic services, indirect identification elements can in some cases sufficiently distinguish one person from

others in context 5 of a particular set, even if its name has not been verified. 2. In article 4 para. 7 of the GDPR as a data controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of personal data processing". 3. According to article 2 paragraph 2 point c) of the GDPR, the processing of personal data by a natural person in the context of an exclusively personal or domestic activity, which may also include online activity, does not fall within the scope of the GDPR. This provision – also known as the domestic activity exception – must be interpreted in its narrow sense as the CJEU has judged in relevant cases2. Therefore, the communication of a Mayor with a citizen, with whom he does not have a personal or domestic relationship, cannot be considered as an exclusively "personal or domestic" activity. 4. Article 5 of the GDPR defines the principles governing the processing of personal data. Specifically, in article 5 par. 1 subsection a) it is defined that personal data "are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity and transparency")". According to the OE of article 293 recital 39 of the GDPR provides information on the meaning and effect of the principle of transparency in the context of data processing: "It should be clear to natural persons that personal data concerning them are collected , are used, taken into account or otherwise processed, as well as to what extent the personal data is or will be processed. This principle requires that any information and announcement regarding the processing of said personal data be easily accessible and 2 See judgment in case C-101/01, Bodil Lindqvist case, 6 November 2003, paragraph 47 and judgment in case C-212/13, František Ryneš v Úřad pro ochranu rosnych dátní, 11 December 2014, paragraph 33. 3 Guidelines on transparency under Regulation 2016/679 6 understandable and use clear and simple language. This principle concerns in particular the information of data subjects about the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in relation to the natural persons in question and their right to receive confirmation and achieve communication of the personal data related to them that are subject to processing...". In cases where a data controller collects personal data from sources other than the data subject, Article 14 of the GDPR is applicable. The controller must, to satisfy the principle of transparency, provide specific information to the data subject no later than one month from the collection of the personal data, or if the data is used for communication, no later than during the first communication. 5. In article 5 paragraph 1 subsection b) it is defined that the data "are collected for specified, explicit and legal purposes and are not further processed in a manner incompatible with these purposes; the further processing for archiving purposes in the public interest or purposes of scientific or historical research or statistical purposes is not considered incompatible with the original purposes in

accordance with Article 89(1) (``purpose limitation''). There are four parameters of this principle. The obligation for a specified purpose means that processing for an unspecified purpose is not lawful. Express purpose means that it must be clearly determined (stated) before the processing begins, while lawful means that it cannot violate the law and requires a legal basis. Finally, further processing of data already lawfully held for a purpose may be permitted, only if the new purpose is compatible with the original, however, the further processing must not be carried out in a manner unexpected by the data subject or in a manner in which which the data subject may object4. 4 For a full analysis see OE Opinion 03/2013 on purpose limitation and FRA-COE Handbook on European legislation on the protection of personal data (Edition 2018), section 3.2. 7 6. Furthermore, according to article 5 paragraph 2 of the GDPR the data controller bears the responsibility and must be able to prove his compliance with the processing principles established in paragraph 1 of the same article. In other words, with the GDPR, a compliance model has been adopted with the central pillar of this principle of accountability, according to which the data controller is obliged to design, implement and generally take the necessary measures and policies, in order for the data processing to be in accordance with the relevant legislative provisions and, in addition, must be able to prove, himself and at any time, his compliance with the principles of article 5 par. 1 GDPR. 7. According to article 21 par. 1 of the GDPR "the data subject has the right to object, at any time and for reasons related to his particular situation, to the processing of personal data concerning him, which is based on article 6 paragraph 1 letter e) or f), including profiling under those provisions. The controller no longer processes the personal data, unless the controller demonstrates compelling and legitimate reasons for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or support of legal claims claims." 8. In article 12 paragraph 3 of the GDPR it is defined that "The data controller shall provide the data subject with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. (…)". 9. From the file of the case it appears that with the complainant's memorandum after the call, his arguments differ significantly, in relation to the documentation of the legality of the processing of the personal data of the 8 complainant for the purpose of sending electronic greeting messages from the Mayor to citizens who had previously used the Municipality's electronic application to submit various requests. The complainant essentially accepts that personal data has been processed. It is also clear that the e-mail address of the

complainant is an online identifier, which uniquely identifies him. In fact, according to the memorandum, the complainant had this information at his disposal, through the platform ... (as the complainant claimed from the beginning), in order for his office to communicate with the complainant, in the context of exercising the powers of the Mayor. The purpose of the processing to which the complaint relates, according to the complainant, is to send wishes to citizen users of the platform, in the context of actions to improve the direct communication of citizens with their elected representatives and the employees of the Municipality, without requiring the transition to the Municipality and the observance of bureaucratic procedures. Based on the complainant's memorandum, it appears that the controller is himself, who, considering that he is acting in the context of his duties as Mayor of [region] X, considered that the use of thecontact details of the complainant for the above purpose and determined

fully the way of processing.

10. To examine the legality of such activity must

its context is examined (the nature, extent and purpose of the relevant

processing) and if the basic principles of processing are observed, such as

are described in article 5 of the GDPR. From the case file it appears that the

complainant, as a data subject, did not receive in any way

information about the use of his personal data for the above purpose.

And this as none of the messages he received mentions

some of the information required by Article 14 of the GDPR. Further,

although the complainant states that citizens are informed of “[t]heir

purposes of communication and, by extension, disclosure of information

the citizens who use the application know their communications" and that the

communication and the purpose "...was not in the knowledge of the citizens, who had accepted

already contacted by the Municipality before, in many cases even

by telephone and they had been informed about it" it does not appear from any evidence that

the citizens who used the platform and the complainant in particular,

informed about the further use of their contact information for a purpose

different from that of the original collection. Specifically, the platform in question

lacks information about personal data (omission for which

The controller is the Municipality, which is not controlled in its context

complaint) while further, the complainant did not provide the complainant

the information required by article 14 of the GDPR. An infringement therefore arises

of the GDPR article in question and by extension the principle of transparency

(article 5 par. 1 sub. a' GDPR).

11. The complainant does not explicitly specify to the Authority what the legal basis is

of processing and how it is authorized to use data

which had originally been collected for another purpose. It follows that the subject of

data has not been informed, at any stage, about their further use

of his data, which is not done through the online platform in which

registered the data, but after its extraction, for a purpose related to

the wider activities of the Municipality body and indeed through the private sector

(and not the official) email address of the Mayor.

Therefore, the specific way of using the data cannot be

expected by the data subject. An infringement therefore arises

of the principle of purpose limitation (article 5 par. 1 sub. b' of the GDPR).

12. The data controller, while the right to object was exercised after the first

message (on 12-30-2019) did not delete the email address

of the complainant, but used it again, to send a greeting card

message on 4-16-2020. According to his memorandum, this is due to

human error of the natural person who was charged with it

deletion process. It is accepted that the deletion method, due to its nature

processing, the number of data subjects and the few relevant

requests, can be done in a non-automated way, so the non-satisfaction

may be due to human error. Of course not the controller

provides evidence, as it must based on the principle of accountability, of which to

10

it appears that an order had been given to delete the data so that it could

document human error, based on the principle of accountability. Further, to

in each case, the controller should not only have acted but also

to inform the data subject within the period specified in

article 12 par. 3 of the GDPR, therefore it appears that he violated the provision in question.

13. The Authority also takes into account that the gravity of the violation is small

as the established violations are included in article 83 paragraph 5

(violations with a maximum amount of 20,000,000 euros) and the violation was intentional

energy, but the activity was small in scope as it involved a small section

citizens, is not related to the main activities of the data controller,

who is a natural person and did not act in the context of business

activity, no harm occurs to the data subject and h

processing concerns personal data (email address)

which are not included in the special categories of article 9 or its data

Article 10 of the GDPR. As an aggravating factor it is taken into account that

data controller showed difficulty in cooperating with the Authority, non

providing the requested information and ultimately differentiating it

arguments after the hearing at the Authority, when he accepted the origin of

data and attempted to document the legality of its use.

14. Based on the above, the Authority unanimously judges that, in view of the violations that

were established and taking into account the above elements, the

conditions of enforcement at the expense of the administrative controller

sanctioning of the fine, based on article 58 par. 2 subsection i', referred to in

dispositive of the present, which is deemed effective, proportional and

deterrent. The criteria of article 83 have been taken into account for the measurement

par. 2 of the GDPR as defined in the previous paragraph, based on

guidelines for the implementation and determination of administrative

of fines for the purposes of regulation 2016/679 issued by O.E.

of article 29 and have been adopted by the ESPD.

11

FOR THOSE REASONS

The Authority imposes, on B, Mayor [region] X, the effective, proportional and

dissuasive administrative fine appropriate to the particular

case according to its special circumstances, amounting to two thousand

Euros (2,000.00) Euros, for the aforementioned violations of Article 14

in combination with article 5 par. 1 sub. a' of the GDPR, of article 5 par. 1 sub.

b' of the GDPR and article 12 par. 3 of the GDPR, based on article 58 par. 2 sub.

i' of the GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

12