

Athens, 08-02-2019

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

Prot. No.: G/EX/1091/08-02-2019

A P O F A S H 4 /2019

(Department)

The Personal Data Protection Authority met in

composition of the Department at its headquarters on 06.02.2019 at 10:00 a.m. after

invitation of its President, in order to examine the case which

refers to the history of the present. The Deputy President, G.

Batzalexis, obstructing the President of the Authority, K. Menoudakou, and the

alternate members of the Authority E. Papakonstantinou, as rapporteur and P.

Rontogiannis, replacing regular members K. Lambrinoudakis and Ant.

pulpit respectively, which, although legally summoned in writing, were not

attended due to obstruction. The regular member of the Authority X. Anthopoulos and the

deputy member Gr. Tsolias, although they were legally summoned in writing, they did not

attended due to obstruction. Present without the right to vote were K. Karveli,

specialist scientist-lawyer, as an assistant rapporteur, who left after

discussion of the case and before the conference and decision-making and E.

Papageorgopoulou, employee of the administrative affairs department, as

secretary.

The Authority took into account the following:

With the no. prot. G/EI /2795/06.05.2014 her appeal to the Authority, the

A complains that the General Hospital of Thessaloniki "Papageorgiou" granted

without her prior information and consent her complete medical record

file kept at that hospital on B for judicial use.

As in particular emerges from the above-mentioned appeal to Authority and the documents attached to it, as well as from the no. first ... (prot. no. Authority G/EI /3757/01.07.2015) document of the General Hospital Thessaloniki "Papageorgiou" in response to no. prot. C/EX/2978-/26.05.2015 of the Authority's document to provide clarifications regarding the case, the applicant filed together with her husband, C the no. ... lawsuit in the Single Member Court of First Instance of Thessaloniki against B and (husband) D requesting the annulment of the termination of the employment contract by the defendant.

according to the claimants, B and D terminated the contract of her work as a domestic worker as soon as they were informed of her pregnancy and to obtain a more complete picture of the plaintiff's health, the defendants they saw fit to have access to her medical data. For that reason, B with his application from ... to the Misdemeanor Prosecutor of Thessaloniki, invoking legal interest, requested the granting of a relevant prosecutor's office order, in order to receive from the General Hospital of Thessaloniki "Papageorgiou" copies from which the time period can be derived her hospitalization.

Following this, the Prosecutor with no. first ... he forwarded a document to him the application of B to the General Hospital of Thessaloniki "Papageorgiou", inviting it to grant the requested data in accordance with article 25 no. 4 sec. b of Law 1756/1988.

in compliance with the above prosecutorial order, the Traffic Department Patients of the General Hospital of Thessaloniki "Papageorgiou", he informed in B, except for the one with no. first ... from ... certificate for the days of hospitalization of the applicant, and copies of her complete medical file, viz

briefing notes, detailed findings and complete obstetric history.

The Authority, after examining the elements of the file and after hearing him
rapporteur and the clarifications from the assistant rapporteur, who then
left before the decision conference, after thorough
discussion

SEVEN E ACCORDING TO THE LAW

1. in accordance with the provisions of article 2 sec. b) as "sensitive data"

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means data concerning racial or ethnic origin, political
opinions, religious or philosophical beliefs, association membership,
union, and trade union organization, health, social welfare and
love life as well as those related to criminal prosecutions and convictions.

in accordance with the provisions of article 4 par. 1 item a' b' and c' of n.

2472/1997, personal data to be lawfully processed

should be collected in a fair and lawful manner for specified, clear
and legal purposes and that there is legitimate and legal processing in view of them
purposes. Also, the data must be relevant, convenient and no more
from what each time is required in view of the purposes of the processing, as well as to
are accurate and, if necessary, submitted to an update.

Also, the transmission of personal data to a third party constitutes processing
of personal data, which is not allowed in principle without consent
of the data subject (article 5 par. 1 of Law 2472/97). Exceptionally
it is allowed to grant them to a third party, and without the subject's consent
of the data, only in the exceptional cases of article 5 par. 2 of the law.

2472/97. One of these cases is when: the third party's legitimate interest
clearly overrides the rights and interests of the person to whom

the data are reported, and at the same time fundamental freedoms are not affected of (see item e of the aforementioned article). Such a case occurs, in particular, when the provision of personal data is necessary for identification, exercising or defending a right before a court (see item c of article 7 par. 2 of Law 2472/1997 on sensitive personal data, which applies according to major reason and simple personal data). The third, in his sense article 2 para. i' of Law 2472/1997, in his application to the person in charge processing must be invoked but also prove that the specific information requested is absolutely necessary and suitable for identification, exercising or defending his right before a court, and especially in view specific pending trial, in order to delimit the extent of the necessary and suitable for this purpose elements that are allowed to be granted according to articles 5 par. 2 item. e' and 4 par. 1 item b' of Law 2472/1997. in the case of communication of personal data by the person in charge processing to third parties the data subject should be informed before from them (Article 11 par. 3 of Law 2472/1997).

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Furthermore, according to the Authority's Opinion 3/2009, the prosecution order is binding for the administration, only in the preliminary context investigation, preliminary investigation and main investigation, while in the cases it has as content the granting of documents containing personal data of third parties of persons binds the administration in the sense of an imperative order to investigation of the request to grant the document and does not oblige the administration in its administration. Also, in accordance with Decision 46/2018 of the APDPH, from start of the implementation of the General Data Protection Regulation (25.5.2018) the provisions of article 7 of Law 2472/97 do not apply according to

part which provide for the granting of a licence, and therefore the Authority no longer has authority to grant licenses in the cases provided for in the aforementioned article.

2. the considered case, the General Hospital of Thessaloniki

"Papageorgiou", in accordance with the no. chief ... prosecutor's office

order, communicated to B details from

her medical file

applicant for judicial use, and specifically for his defense as

defendant in the discussion of the action brought by the applicant such as these

specialize in history.

The transmission of his specific sensitive personal health data

of the applicant's medical file to B was not legally done because it did not

prior information to the data subject as required by Article 11

par. 3 of Law 2472/1997, and this update was necessary, in order for the

applicant, as a data subject, to exercise the right to object

of article 13 of law 2472/1997, which has in any case. Besides, the energy

of the hospital to transmit the applicant's data to a third party infringes

the obligation to inform the data subject and based on the article

13 of the General Regulation.

Furthermore, even though with the Authority's decision 46/2018 the latter does not have

now competent to grant permissions for processing through transmission

of sensitive data to a third party, at the time the transmission was made to

considered case (...), the permission of the Authority was required. Yes, existence

prosecutor's order allowing the transmission due to the existence of a law

interest lacks legal significance, according to the above. Therefore n

transmission had not been carried out in compliance with the legal conditions.

In view of the above, the Authority, taking into account the seriousness of the violation of article 11 of Law 2472/1997 which was proven and of the insult caused by she in the subject judges that it should be imposed on the General Hospital Thessaloniki "Papageorgiou", as data controller, the provided in article 21 paragraph 1 paragraph a' of Law 2472/1997 sanction referred to in the ordinance.

FOR THOSE REASONS

The beginning :

1) considers that the General Hospital of Thessaloniki "Papageorgiou", as

controller, should have informed her beforehand

applicant A for the transmission of her sensitive personal data

data for the reasons mentioned in the rationale of the present

2) imposes on the General Hospital of Thessaloniki "Papageorgiou", as

controller, for non-compliance with the above obligation

prior notification of the applicant and for the reasons that

refer to the rationale of the present, the sanction of the warning,

pointing out that henceforth he should inform patients-

data subjects for the transmission of their personal data

data to third parties.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou