

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-77 / 16.02.2017 Decision on appeal with registration № Ж-77 / 16.02.2017 DECISION № Ж-77 / 2017 Sofia, 08.05.2018 Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 23.03.2018 and presented in the minutes № 14 / 28.03.2018, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint Reg. № G-77 / 16.02.2017, filed by E.A.A. for violation of the Personal Data Protection Act The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). E.A.A. has filed a complaint with the Commission for Personal Data Protection alleging misuse of his personal data when concluding a contract of assignment. The complaint alleges that on February 15, 2017 he received a phone call from the phone number *****, from which he was contacted by an employee of a debt collection company for debts in the amount of BGN 110 unpaid old bills to " IN." (name of the trademark of BTC EAD) from 15 years ago. The employee of the debt collection company introduced himself as a private bailiff, who would submit documents to the court, and the applicant was convicted. Mr. E.A.A. informs that more than 10 years ago he visited the company's office and there he was informed that he has no current obligations to them. They never asked Mr. E.A.A. for a mobile operator to declare that he had obligations to them. The applicant informed that TB EAD, whose services it currently uses, have disclosed its personal data to third parties - address and contact telephone number, without his consent. Mr. E.A.A. asks for an inspection to be carried out and for the unlawful processing of his personal data to be stopped. He wants cooperation and opinion. There are no appendices to the complaint. In the conditions of the official principle and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, the respondent companies were required to submit written statements and relevant evidence. With a letter ex. № P-3030 / 03.05.2017 of the Chairman of the CPDP, Mr. MF, Representative of TB EAD was notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings. Pursuant to Art. 36 of the APC provides a deadline for expressing an opinion and for presenting relevant evidence. The Commission for Personal Data Protection has received an opinion from TB EAD, filed with reg. № C-285 / 11.05.2017. The allegations that the Company has processed the personal data of Mr. E.A.A. lawfully, as they have been collected for specific purposes and have not been processed in a way incompatible with those purposes. It is stated that E.A.A. has signed a contract with TB EAD, whose contract was terminated on 22.06.2007, as the grounds for termination are unpaid amounts by the complainant. In view of the long-term non-fulfillment of the obligations by Mr. E.A.A., the latter were transferred with a contract of assignment to "S.G.G." Ltd., on 17 January 2009.

At present the applicant is a consumer only of prepaid services. "T.B." EAD declares that in no way did they provide the personal data of E.A.A. of BTC EAD. Due to the above circumstances, they consider that the complaint is unfounded. With a letter ex. № P-3031 / 03.05.2017 of the CPDP, Mr. AD, a representative of BTC EAD was notified pursuant to Art. 26 of the APC for the initiated administrative proceedings. Pursuant to Art. 36 of the APC provides a deadline for expressing an opinion and presenting relevant evidence. In response, a statement was received from BTC EAD, expressing allegations that E.A.A. was a party to a contract for mobile service, concluded on 08.02.2007. Under the said contract, liabilities in the amount of BGN 118.71 have been accumulated, and they have been transferred with a cession contract with S.G.G. Ltd. on 27.04.2016 BTC EAD has authorized SGG Ltd. to notify the debtor Mr. E.A.A. for the concluded cession. It is believed that the personal data of E.A.A. have been processed by BTC EAD in compliance with the legal requirement of Art. 2 para. 2 of LPPD - lawfully and conscientiously, for precisely defined and lawful purposes and not to be further processed in a way incompatible with the purposes. Only data provided by the client on the occasion of the conclusion of the contract, as specified in it, have been transferred to the assignee. They alleged that BTC EAD had no information on what other telephone numbers the applicant had and could not provide them to the assignee. Due to the presented arguments, it is concluded that the complaint is inadmissible and unproven. BTC EAD expresses an alternative opinion on: irregularity, inadmissibility or unfoundedness of the complaint. With regard to the facts, they inform that Mr. E.A.A. has been a party to a contract for mobile and voice service with number ****, as proof is attached an application, form 1A № *****. Under the concluded contract, liquidated and due liabilities in the total amount of BGN 119.09 arose for the complainant. Between BTC EAD and SGG OOD has entered into a contract for cession № 30837 / 27.04.2012, pursuant to which the receivables of BTC EAD have been transferred to SGG Ltd. and the latter is a creditor in terms of liabilities. Pursuant to Art. 99, para. 3, proposed 2 of the CPA the personal data of Mr. E.A.A. are provided to the assignee, for which the consent of the debtor is not required. The legal fact that makes the processing of personal data admissible is the transfer of the claim, not the notification. This is because the assignee receives the debtor's personal data under the assignment agreement. From that moment on, there is a legitimate interest in it, which allows the processing of data in connection with the collection of the debt - Art. 4, para. 1, item 7 of the LPPD. Attached to the opinion are: application, form 1A № ****, invoice number ***, assignment agreement № 30837 / 27.04.2012 with an extract from Annex № 1 to it, power of attorney of "S.G.G. ." Ltd. for sending notifications under Art. 99, para. 3 of the CPA, acceptance-transfer protocol for providing Annex 1 to the assignment agreement of 09.11.2016. By letter ref. № P-5235 / 20.07.2017, "SGG" Ltd.

was notified on the basis of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion and present evidence. With a letter ex. № G-77 (17) # 10 / 06.03.2018 is again indicated a 7-day period for providing an opinion with the necessary evidence to clarify the case and the responsibility for refusing to cooperate is indicated. An opinion was received in which the allegation of unfoundedness of the complaint of Mr. E.A.A. The opinion states that by virtue of a contract for cession dated 27.04.2012, concluded between "SGG" Ltd. and BTC EAD, SGG Ltd. has purchased an outstanding debt of Mr. EAA, a receivable in the amount of 118.71, generated by customer number № ***** for consumed services under a contract dated 08.02.2007, for which it was issued invoice № *****. The company has purchased the receivable in the specified amount, both in the capacity of creditor and proxy of the assignor "BTC" EAD, "SGG" Ltd. by virtue of the contract concluded on 27.04.2012 has sent two letters dated 07.11.2012 and on 22.06.2012 to E.A.A. at the address specified by the person in the contract for mobile services. It is also stated that the notification letters within the meaning of Art. 99, para. 4 of the CPA were sent as non-registered mail under the Postal Services Act, and the letters were duly served. According to the provision of art. 4, para. 1, item 7 of the LPPD, the processing of personal data is allowed, in case it is necessary for the realization of legitimate interests of the personal data controller or of a third party to whom the data are disclosed. It is pointed out that "S.G.G." there is a valid basis for processing the complainant's personal data and this is the said assignment agreement. The personal data are provided only for the purposes related to the collection of the unpaid in time accounts of the faulty subscribers of the operator, according to art. 2, para. 2, item 3 of the LPPD. During the official inspection in the Register of personal data controllers and the registers kept by them by the Commission, it was established that the companies have fulfilled their obligation under Art. 17, para. 1 of LPPD and are registered as administrators of personal data. At a meeting of the Commission held on February 28, 2018, the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: complainant - E.A.A. and respondent - BTC EAD, T.B. EAD and SGG Ltd., as administrators of personal data. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for March 28, 2018. The applicant, E.A.A. - regularly informed, does not appear, is not represented at the meeting. For BTC EAD is a legal adviser J.R. with a power of attorney for the file. For "T.B." EAD is a legal adviser I.A. with a power of attorney presented at the meeting. From S.G.G. Ltd. - regularly notified, do not send a representative. The Personal Data Protection Act (PDPA) regulates the protection of the rights of individuals in the processing of their personal data. The purpose of the law is to guarantee the inviolability of the person and

private life by ensuring the protection of individuals in the event of improper processing of related personal data in the process of free movement of data. According to the legal definition given in Art. 2, para. 1 of the LPPD, personal data are any information relating to a natural person who is identified or can be identified directly or indirectly by an identification number or by one or more specific features. From the evidence gathered in the file it was established that a service contract was concluded between the complainant and BTC EAD. personal data about the person within the meaning of Art. 2, para. 1 of the LPPD. In Art. 4, para. 1 of the LPPD stipulate the conditions under which the processing of personal data of individuals is permissible. The legislator has accepted that the processing of personal data should be carried out in the presence of at least one of these conditions, which is a prerequisite for the lawfulness of the processing. In order for there to be lawful processing of personal data, the same should be done in strict compliance with the principles for their processing referred to in Art. 2, para. 2 of the LPPD.

BTC EAD has processed the personal data of the complainant on the grounds of Art. 4, para. 1, item 2 of LPPD - on the basis of an explicit consent of Mr. EAA, objectified in the contract. At the same time, personal data are processed on the basis of Art. 4, para. 1, item 3 of LPPD - for fulfillment of an obligation under a contract to which the natural person is a party.

As can be seen from the evidence gathered, on the basis of a contract for transfer of receivables (cession) № 30837 / 27.04.2012, BTC EAD has assigned its receivables to Mr. E.A.A. of S.G.G. Ltd. The obligation under the contract is indisputable, as the applicant does not deny its existence.

The transfer of receivables is carried out according to the special rules of art. 99 et seq. Of the Law on Obligations and Contracts (LOAC). In Art. 99, para. 3 of the CPA stipulates that the previous creditor is obliged to hand over to the new one the documents in his possession, which establish the claim. When transmitting these documents, the personal data of the complainant contained in them shall be provided as necessary. In the sense of § 1, item 1 of the Additional Provisions of the LPPD, the "provision" of personal data is an action for their processing.

After the transfer, the assignee - "SGG" Ltd. has entered into the rights of a creditor in respect of the obligations of Mr. E.A.A.

There is no change in the very purpose of the processing - collection of outstanding debt under service contracts. From the moment of the transfer, the assigning company lawfully processes the personal data of the complainant on the grounds of Art. 4, para. 1, item 7 of LPPD - for realization of the indicated legal interests of the administrator, in which the interests of the natural person do not have an advantage over those of the administrator.

For the sake of completeness, it should be noted that in the contract Mr. E.A.A. has given explicit consent to the mobile operator to provide his personal data to third parties for the purpose of debt collection.

The Commission for Personal Data Protection, taking into account the facts and circumstances presented in the present administrative proceedings, and on the grounds of Art. 38, para. 2 of the LPPD,

HAS DECIDED AS FOLLOWS:

Disregards the complaint with reg. № Ж-77 / 16.02.2017, filed by E.A.A. against BTC EAD and TB EAD, as unfounded.

The decision to be communicated to the interested persons by the order of the APC.

This decision is subject to appeal within 14 days of its service, through the Commission for Personal Data Protection, before the Administrative Court Sofia - city.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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