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»Practice» Decisions of the CPDP for 2019

»Decision on appeal with registration № PPN-01-592 / 18.07.2018 Decision on appeal with registration № PPN-01-592 / 18.07.2018

ANSWER

№ PPN-01-592 / 2018

Sofia, March 20, 2019

The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a meeting held on January 23, 2019, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, filed a complaint № PPN-01-592 / 18.07.2018, filed by M.K.

The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA).

The Commission for Personal Data Protection was seised with a complaint filed by M.K. with a subject of illegally carried out video surveillance in a building in the regime of condominium located in the town of \*\*\*\*\*.

The complainant informed that on 30 June 2018 two video surveillance cameras were installed at the entrance of the building. He added that he had not been informed of the decision of the General Assembly on this issue, and that his consent on video surveillance had not been required. He considers that the rights granted to him by the LPPD have been violated, given his refusal to be photographed and monitored.

Relevant evidence in the case - photo material - is attached to the complaint.

In order to clarify the case on the legal and factual side with a letter ref. № PPN-01-592 # 2 / 13.07.2018 the complainant was informed that he should specify the person (natural and / or legal) against whom the complaint is directed, in order to assess the admissibility of the complaint and constitute parties to the proceedings . He was informed that in case of non-compliance with the instructions, the proceedings will be terminated.

Given the fact that the complainant did not indicate a physical address for correspondence, on 16.08.2018 the letter was sent to the email address \*\*\*\*\* from which on 09.08.2018 the complainant submitted an inquiry regarding the movement of administrative proceedings. Within the term indicated by the Commission, the complainant did not fulfill the given instructions, in view of which he was re-notified on 04.10.2018 of the need to specify the person against whom the complaint is directed.

The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 on the protection of personal data persons in connection with the processing of personal data and on the free movement of such data.

In order to exercise its powers, the Commission must be properly seised.

The appeal shall contain the obligatory requisites, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular.

According to Art. 27, para. 2 of the Code of Administrative Procedure, the administrative body checks the prerequisites for the admissibility of the request with which it is seised. The legislator links the assessment of the admissibility of the request with the existence of special requirements established by law, for which the respective administrative body should monitor ex officio (Article 27, paragraph 2, item 6 of the APC).

The power of the Commission is to consider complaints against acts and actions of personal data controllers, which violate the rights of individuals under the LPPD and EU Regulation 2016/679. The presence of a controller of personal data as a respondent in the proceedings is an absolute procedural prerequisite for the admissibility of the respective complaint and for the development of the proceedings under the argument of Art. 10, para. 1, item 7 of LPPD, respectively Art. 57 (1) (f), in connection with recital 122 of EU Regulation 2016/679.

In this case it is necessary to conclude that the complaint is directed against an unknown person, as the respondent is not passively legitimized, is not individualized by the complainant, despite the explicit instructions given by the CPDP in this regard.

In view of the above and the impossibility to individualize and constitute a personal data controller - respondent, passively legitimized party, it is necessary to conclude the inadmissibility of the complaint given the bilateral nature of the proceedings and the need for a respondent.

Guided by the above and on the grounds of Art. 27, para. 2, item 6 of the APC, in connection with Art. 10, para. 1, item 7 of LPPD, respectively Art. 57 (1) (f) in connection with recital 122 of EU Regulation 2016/679, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

Leave without consideration complaint PPN-01-592 / 18.07.2018, filed by MK, as procedurally inadmissible due to lack of passively legitimized party - controller of personal data.

The 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 /

Veselin Tselkov

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