

Methodological guideline no. 1/2018
Institute of the responsible person in the conditions of municipalities and cities

According to § 81 par. 2 letter d) of Act no. 18/2018 Coll. Office for Personal Data Protection
Of the Slovak Republic (hereinafter referred to as the "Office") issues this methodological guideline.

INTRODUCTION

The institute of the responsible person in the conditions of the Slovak Republic is not new
institute. The legal regulation valid and effective until 24.05.2018 is the authorization of the responsible person
voluntary. According to the new legislation, which will apply from 25.05.2018, it will be
for municipalities and cities, the obligation to entrust the responsible person with the performance of protection supervision
personal data. The reason for issuing this methodological guideline is changes that
Regulation (EU) 2016/679 and Act no. 18/2018 Coll. (hereinafter "GDPR" and "the law")
and which will also affect municipalities and cities. This methodological guideline addresses in particular issues such as
organizationally ensure the fulfillment of obligations related to the designation of the responsible person
in the conditions of municipalities and cities.

1 LEGISLATION

Municipalities and cities must be understood as a public authority within the meaning of Art. 37 par. 1 letter
a) GDPR resp. § 44 par. 1 letter a) of the Act.
Conditions for determining the responsible person as well as his role and duties of the municipality / city in
relation to the responsible person is established by Art. 37 - Art. 39 GDPR resp. § 44 - § 46 of the Act.

1.1. CONDITIONS TO BE MET BY THE RESPONSIBLE PERSON

The responsible person must first and foremost have **professional qualities** . Under these
can be understood for example:

- sufficient knowledge and experience in the field of personal data protection,
- expertise in law - especially in GDPR, law and other regulations related to protection of personal data,
- knowledge of the functioning of public administration as such,
- practical knowledge of the organization, operation and internal regulations of the municipality / city,

The level of expertise is not precisely defined, it should be proportionate to the sensitivity,
complexity and amount of data that the municipality / city processes.

The municipality / city is responsible for ensuring that the responsible person mentioned above
meets the preconditions and these can be demonstrated, for example:

- evidence of the highest level of education attained in terms of expertise, focus,
- various certificates or attestations of completion of courses or training,
- documents proving that person's experience in the field of personal data protection (eg recommendation from a previous employer, ...).

1.2 STATUS AND TASKS OF THE RESPONSIBLE PERSON

In the context of the new legislation, the responsible person has the status of:

- **assistant and consultant** in the system of personal data protection,
- the **contact person** for the Office and the persons concerned whose personal data are being processed (eg villagers).

In order for it to have this status, it needs to be **truly available** - it must
be, if necessary, realistically reachable both for the municipality / city and for the persons concerned and the office.
If the responsible person performs in addition to tasks related to personal data protection, another
agenda, it must be ensured that it actually "pursues" all its agenda.

For a more detailed description of the individual tasks of the responsible person, we recommend see WP Guideline 29
concerning the responsible persons which the Office has published on its website also in Slovak here:
https://www.dataprotection.gov.sk/ucni/sites/default/files/uznernenia_tykajuce_sa_zodpovednostych_osob.pdf

e.g. the function of *mayor / mayor, vice-mayor / vice-mayor* or other, if filled
condition for deciding on the purposes and means of personal data processing (purpose
and the means of processing are determined by the operator, resp. person authorized to act on behalf of
operator). In order to avoid conflicts of interest, the Office recommends specifying in internal
regulations of the municipality / city positions that are incompatible with the function of the responsible person.

The municipality / city must ensure the **independent performance of tasks by a responsible person**. This
can be ensured, for example, by:

- the responsible person **will not receive any instructions**
 - how does it have its tasks according to the GDPR resp. exercise the law,
 - what result is to be achieved in compliance monitoring,
 - how to resolve the complaint of the data subject, or
 - how to consult the Office in matters of personal data protection, etc.
- **The responsible person must not be dismissed or otherwise penalized** by the operator
performance of tasks according to GDPR resp. of the law,
- **The responsible person will provide all reports, information and proposals** related to the performance of their
tasks directly to the person authorized to act on behalf of the operator (usually
mayor).

The Authority recommends documenting any operator opinion deviating
from the recommendations of the responsible person and justify this deviation, as the responsibility for compliance
borne by the operator.

The responsible person should have a **direct obligation to notify**
the mayor so that he can inform him of any findings
and recommendations regarding the protection of personal data. This must be ensured without
regardless of whether the responsible person is an employee of the municipality / city or an external entity.

The Office emphasizes that by appointing a responsible person, the **municipality / city does not get rid of its own**
responsibility for the processing of personal data in accordance with the law. If
the operator entrusts the responsible person, who is not sufficiently competent, has not checked
her expertise before her appointment, for possible failure to perform tasks (erroneous
opinion, incorrect recommendation e.g. in the impact assessment), is responsible
operator (municipality / city) in full, as it was the duty to take care of professional competence
(principle of operator responsibility); the responsible person is therefore not personally liable for
any non-compliance, the operator is responsible for the breach of the GDPR and the law, however
he may claim from the liable person the damage caused to him, within the framework of
employment law or similar relations resp. on the basis of the contract he has with this
by a responsible person closed in the case of an external entity.

1.3 OBLIGATIONS OF MUNICIPALITIES AND PLACES IN RELATION TO THE RESPONSIBLE PERSON

The municipality / city must ensure:

- (a) **the involvement of the responsible person in a proper and timely manner** in all matters
with the protection of personal data, for example:
- ensuring the presence of a responsible person in cases where they are admitted
decisions with an impact on the protection of personal data so as to provide appropriate
counseling (municipality / city should have a possible deviation from the opinion of the responsible person
substantiated by reasons),
 - during immediate consultation in case of breach of personal data protection, etc.
- (b) **support of the responsible person in performing his tasks** according to the GDPR resp. of the law,
for example in the form of :
- **provision of resources** - finances, premises, equipment or facilities (eg computer)
and sufficient time, space to carry out its tasks properly and in a timely manner; in larger
municipalities / cities as well as staff, if necessary to create a team around the responsible
persons and adjust the structure and tasks of individual team members,
 - **providing access to personal data** - to monitor compliance with the GDPR
and the law,
 - **continuous training of the responsible person** - constantly increasing his / her level
expertise in the field through its participation in trainings, courses or
seminars, also due to the fact that the responsible person subsequently retrain as well
employees of the municipality / city who work with personal data, etc.
- (c) **publication of the contact details of the responsible person** - on the website (if any)
established) and the official bulletin board, possibly also in municipal / city newspapers, etc.
- such information may be the e-mail address or telephone number at which it is located
the responsible person can be reached. The e-mail address can be e.g. in shape
responsible@personal.name/mesta.sk, it is therefore not necessary to indicate the name
and the surname of the responsible person; the phone number can be a business mobile phone or
a line set up for this purpose. Contact information can also be correspondent
address e.g. municipal / municipal authority (or legal person responsible for
person), if the responsible person has an office here, or its door number, etc.
- (d) **notification of the contact details of the responsible person of the Office** - the Office shall publish for this purpose
a form for reporting the data in question on its website.

2 WHO CAN BE A RESPONSIBLE PERSON AND HOW TO DETERMINE IT

The responsible person can be a natural person as well as a legal entity. The Office recommends
in the case of the designation of a legal person as the responsible person in a contract concluded between
municipality / city and such a legal entity to designate a specific natural person who
will actually perform the function of the responsible person and will be reachable to the municipality / city as
also for the Office and the persons concerned.

The responsible person can be an employee of the municipality / city or an externally cooperating
person. One municipality / city can also have several responsible persons, e.g. responsible person
for IT, the person responsible for human resources, etc., but each is responsible separately
and also for the performance of their tasks in the field. There may also be a situation that multiple
municipalities / cities share one responsible person.

The function of responsible person can also be performed by a deputy of the municipal / city council
council, but not by virtue of his function as a member of the council. As a member of parliament
municipal / city council is according to § 11 par. 2 letter b) of the Act on General Establishment
incompatible with the function of the employee of the municipality / city in which he was elected, would be the responsible person
could be in such a municipality / city only on the basis of a service contract.

In the conditions of municipalities / cities, we distinguish several ways of determining the responsible person:

- (a) **an employee**
- on the basis of an employment contract
 - we recommend concluding for an indefinite period of time, as the responsible person should know
internal operation and organization of the municipality / city in detail (probation clause by
not affected),
 - must contain a confidentiality clause on personal data,
 - if the performance of the function of the responsible person is not the only agenda of the person is appropriate
sign a statement with the employee that the employee does not have any
conflict of interest,
 - the function of the responsible person may be the only activity he carries out or may have
also in charge of another agenda that is not related to the protection of personal data (in such a
in this case, it is necessary to ensure that there is no conflict of interest),
 - he must perform the function of responsible person independently without any instructions
your superior or the mayor / mayor directly,
 - **reports directly on all its data protection findings**
to the mayor / mayor and not to his / her head within a department or division, by
of which he is assigned if he also performs another agenda,
 - remuneration for the performance of the work of the responsible person according to the Labor Code, Act no. 553/2003
Z. z. on the remuneration of certain employees in the performance of their duties in the public interest
possibly other regulations,
 - may not be penalized for remuneration or in any other way for
independent performance of his duties under the GDPR and the law.
 - representation in case of absence
 - short-term absence - proceed as in the case of representation of any
another employee, in principle no further action is required,
 - long-term absence - the municipality / city should appoint a "substitute" responsible person
(eg temporarily appoint another employee or temporarily appoint an external employee)
responsible person - even such "temporary" responsible persons must meet all
the above conditions for the performance of this function).

- (b) **an externally cooperating person**
- has a non-employment relationship with the municipality / city,
 - it can be a natural person or a legal entity that concludes a contract with the municipality / city
on the provision of the service, which should include in particular:
 - identification of the person or persons who will perform the tasks of the responsible person,
 - in the case of several persons, the designation of one specific person who will be the principal
the contact person for the persons concerned and the Office,
 - an indication of the individual tasks to be performed by the responsible person,
Z. z. on agreement guaranteeing the independence of the responsible person,
such as the obligation of the responsible person to report a conflict of interest, exhaustive
calculation of the reasons for which the contract may be terminated and the person responsible
may be a long - term failure to perform tasks, loss of ability to perform
individual reasons)
 - the obligations must not include a disguised sanction for the independent performance of the function
responsible person and must not create room for arbitrary uniting
cooperation with the responsible person by the municipality / city,
 - confidentiality clause on personal data and security measures
municipalities / cities,
 - we recommend concluding the contract for an indefinite period of time, as the responsible person should know
internal operation and organization of the municipality / city in detail,
 - conditions of remuneration and amount of remuneration - a matter of agreement of the municipality / city
and the responsible person,
 - Representation in case of absence - the responsible person should take appropriate measures
to ensure that individual tasks are performed continuously (for example, setting deadlines
in which the individual tasks are to be performed under threat of sanctions).

(c) **the joint responsible person**

- Neither the GDPR nor the law excludes the possibility to designate one responsible for several municipalities / cities
person
- the joint responsible person must perform his tasks effectively in relation to all
cooperating municipalities / cities.
- methods for designating the joint responsible person:
 - **responsible person of the district / regional city** - responsible person
district / county town would perform this function in smaller ones as well
municipalities / cities belonging to its district,
 - **contract concluded between the municipality / city and the responsible person** - several
municipalities / cities would independently conclude contracts with 1 responsible person,
 - **contract concluded between municipalities / cities** - this is a contract for the purpose of implementation
specific task and activity and its essence is that one municipality / city will provide
its responsible person to the other municipality / city (this may be, for example, cases of neighboring
municipalities / cities, or also in cases where it is necessary to ensure continuity of performance

- tasks of the responsible person due to his long absence and to replace him temporarily
another responsible person),
- **contract concluded between the association of municipalities / cities and the responsible person** - according to §
20 par. 1 of the Act on Municipal Establishment, municipalities (cities) may cooperate on the basis of
a contract concluded for the purpose of carrying out a specific task or activity, on the basis of
agreements on the establishment of an association of municipalities (cities), the establishment or establishment of a legal
persons under a special law. Once an association is created, that association can
enter into a contract with a specific responsible person to perform the function
responsible for the municipalities / cities that created the association.

3 PENALTIES FOR BREACH OF OBLIGATION TO IDENTIFY THE PERSON RESPONSIBLE

For breach of the obligation to designate a responsible person as well as other related obligations
with the institute of the responsible person threatens the municipalities resp. cities according to Art. 84 par. 4 letter a) GDPR
(Section 104 (1) (a) of the Act) imposition of a fine of up to EUR 10,000,000, depending on
from the circumstances of each individual case and after due regard to other facts. 2

CONCLUSION

The determination of the responsible person is an obligation of the municipality / city arising directly from the GDPR
and the law. However, such a designation should not only be formal, but the person actually responsible
must meet all the conditions set out in the GDPR resp. law and must carry out its tasks in real terms
perform. For this purpose, the municipality / city is obliged to allow the responsible person to carry out
these tasks and must not prevent it from doing so or otherwise obstruct its activities.

The municipality / city may not be responsible for the fulfillment of individual tasks in any way
sanction. The existence of a responsible person should ensure that the procedures of municipalities / cities are at
processing of personal data in accordance with the GDPR and the law and is intended to assist it in fulfilling its
individual responsibilities.

Done at Bratislava, 20 March 2018

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