



ANDMEKAITSE INSPEKTSIOON

ASUTUSESISESEKS KASUTAMISEKS

Teabevaldaja: Andmekaitse Inspeksioon

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Reprimand and notice of termination of termination of proceedings in a personal data protection case

The Data Protection Inspectorate received a complaint from the data protection authority of the Republic of Lithuania via the cross-border procedural system IMI concerning contact with [REDACTED] via [REDACTED] and the transfer of his personal data through [REDACTED] to third parties (the applicant's mother [REDACTED]) [REDACTED] Lithuanian branch representative [REDACTED].

On the basis of the above, I initiated supervision proceeding on the basis on clause 56(3)(8) of the Personal Data Protection Act. As part of the supervisory procedure, I made enquiries about the processing of [REDACTED] personal data by [REDACTED]. [REDACTED] has replied to inquiries and explained the grounds for processing personal data.

[REDACTED] has explained that it processes personal data for the performance of a contract entered into with the participation of the data subject, for the performance of the legal obligations of [REDACTED] and also on the basis of a legitimate interest. [REDACTED] acquires claims on the basis of an assignment agreement entered into by the original creditor, replacing the assignor and becoming the new owner of the claims. [REDACTED] has acquired [REDACTED]'s claim against [REDACTED]. The purpose of the processing of personal data is the fulfilment of the business interests and purposes of [REDACTED], i.e. the successful satisfaction of claims. [REDACTED] has been contacted by the employees of the Lithuanian branch of [REDACTED], a subsidiary of [REDACTED], and they have used the following channels: registered mail, regular mail, email, [REDACTED] and phone.

The Lithuanian branch of [REDACTED] has also contacted [REDACTED] through [REDACTED]. [REDACTED] was sent the first and last name of [REDACTED] and the year and month of birth. In such a case, [REDACTED] has indicated as the basis for the transfer of personal data the legitimate interest and the purpose of forwarding the request for contact to the debtor. [REDACTED] has also submitted an analysis of legitimate interest.

Position of the Data Protection Inspectorate

There must be a legal basis for the processing of personal data as set out in Article 6 of the General Data Protection Regulation (GDPR). Regardless of the legal basis, the data controller is required to comply, inter alia, with the principles set out in Article 5 of the GDPR, including:

- Processing must be lawful, fair and transparent
- Personal data collected for specified and explicit legitimate purposes
- Personal data are relevant, relevant and limited to what is necessary for the purposes for which they are processed.

Compliance with this obligation must be demonstrated by the controller (Article 5(2) of the GDPR). Personal data may be processed only to the extent necessary to achieve the specified purposes and it must be ensured that the purpose of the processing is ensured by the least possible interference with fundamental rights. In order to do so, the data controller must assess in advance whether the processing of the data is strictly necessary for the fulfilment of the purpose or whether the fulfilment of the purpose is limited to less harmful measures.

Processing of personal data related to the debtor

For the processing of personal data related to the debtor, ██████████ relies on Article 6(1)(f) GDPR (legitimate interest). ██████████ collects data related to the debtor from public sources in the event that no contact has been made with the debtor.

According to Article 6(1)(f) GDPR, processing of personal data is lawful where processing is necessary for the purposes of a legitimate interest pursued by the controller or by a third party, unless such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data. In order to assess the existence of a legitimate interest, the controller is obliged to compare his or her legitimate interest with the interests and fundamental rights of the data subject, and as a result it becomes clear whether it is possible to rely on Article 6(1)(f) GDPR as a basis for processing.

The assessment of legitimate interest must assess whether the impact of the processing on the data subject is proportionate to the objective pursued. An infringement of fundamental rights is excessive if there is another instrument that helps to achieve the stated objective just as well, but does not adversely affect the rights of a person. When assessing the extent of the impact of the interests on the data subject, account must be taken, among other things, of the reasonable expectation of the data subject, i.e. that his or her personal data will not be processed in a manner that he or she cannot reasonably foresee and whether the data controller's objectives can be achieved by less harmful methods. The interference with fundamental rights and freedoms is excessive if there is another instrument that helps to achieve the stated objective just as well, but does not adversely affect the rights of a person.

The Data Protection Inspectorate found that the processing of personal data related to debtors for the purpose of contacting the debtor cannot be based on the grounds of legitimate interest or on the other grounds set out in Article 6 of the GDPR. The close relatives of the debtor have no connection with the debtor's debt, they are not liable to the debtor's outstanding obligations. Thus, the close relatives of the debtor cannot reasonably expect that their personal data will be processed in connection with the debts of someone they know, a friend of a relative, etc. It also showed that ██████████ has alternative measures to achieve the objective (referral to court, implementation of bailiff's assistance). The cost of an alternative measure that harms privacy less or not at all cannot be the only one. The Supervision Authority found that the interference with the fundamental rights and freedoms of the debtor's close relatives is excessive, so not all the elements of legitimate interest have been fulfilled and it is not possible to rely on the basis of legitimate interest.

On the basis of clause 56(2)(8), 58(1) of the Personal Data Protection Act and Article 58(1)(f) and (g) of the GDPR and taking into account Articles 5 and 6 of the GDPR, the Data Protection Inspectorate issued to ██████████ a mandatory injunction to terminate the processing of personal data relating to the close of debtors on the basis of the legitimate interest of the company for the purpose of contacting the debtor and to delete the personal data of the persons close to debtors collected so far on that basis and for that purpose.

██████████ has assured the Supervision Authority that it has complied with the precept.

Processing of debtor's personal data

██████████ has a legal basis for processing the debtor's personal data, but the processing of debtors' data must also be based on the reasonable expectations of the data subject. Debtors cannot reasonably expect the information relating to their debt to reach their vicinity through the creditor. Creditors do not have the right to share debt information with third parties (relatives, friends, acquaintances, employers, etc.) unless the debtor has given their consent. ██████████ has confirmed that upon contacting the debtor's relatives etc., the data will be transmitted to the minimum extent, and that data on the debtor's debt will not be communicated, but will be asked to forward a notification to the debtor to contact the company. However, it must be taken into account that the activity of the companies belonging to the ██████████ group is debt collection, so there is a high probability that the close-up of the debtor can assume that contact with the debtor is sought precisely because of the breach of his obligations. Creditors have alternative methods in place, data processing cannot be justified solely on economic and convenience grounds.

██████████ has confirmed that ██████████ was contacted via ██████████ ██████████ ██████████ has also submitted a screenshot of correspondence via ██████████ to the Supervision Authority. The display shows that the user with whom ██████████'s employee interacted uses the username ██████████ in ██████████. Using the search on ██████████, you can see that this account comes in the field using ██████████'s name, as well as the name ██████████ on the linked user account.

Creating an account in social media channels generally does not require identification, and each account creator has the opportunity to choose a name that is not actually related to his/her identity as the username of the account. It is also not uncommon for there to be several people with the same name. Due to this, the company has to take into account the risk of contacting the wrong person and transferring data for which there is no legal basis. There must not be a situation where personal data is transferred to outsiders.

On the basis of the above, the Data Protection Inspectorate terminates the supervisory procedure ██████████ and ██████████ reprimands ██████████ in accordance with Article 58(2)(b) of the GDPR and points out that the processing of personal data must comply fully with the principles of processing personal data set out in Article 5 of the GDPR, including the processing of personal data must be lawful, purposeful and transparent. Processing of personal data is lawful only if one of the grounds laid down in Article 6(1) GDPR is fulfilled.

This decision may be challenged within 30 days by submitting:

- an appeal to the Director General of the Data Protection Inspectorate in accordance with the Administrative Procedure Act, or
- appeal to the administrative court on the basis of the Code of Administrative Court Procedure (in this case, the appeal can no longer be examined in the same case).

With respect

(signed digitally)

██████████
lawyer
under the authority of the Director-General