

Position of the National Authority for Data Protection and Freedom of Information on the Hungarian Medical Chamber's recommendation for the transparency of medical ethics procedures

The Hungarian Medical Chamber (MOK) requested the Hungarian Authority's position on MOK's recommendation for the transparency of medical ethics procedures, the constraints of implementation in the current legal environment and the amendment of legislation necessary for the implementation.

Subsection 1 of Article 6 of the General Data Protection Regulation (GDPR) lays down the legal basis of lawful processing of personal data. Point c) provides that the processing of personal data shall be lawful if the processing is necessary for compliance with a legal obligation to which the controller is subject.

Article 86 of the GDPR provides that: "Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation."

In the Hungarian legislation Subsection 2 of Section 26 of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (Privacy Act) determines what personal data of the person acting on behalf of a body performing public duties shall be considered information of public interest: name of the person, his job description and responsibilities, title and other personal data that may be of interest relating to the public function, as well as all other personal data that is to be made public by law.

The Authority concluded that it follows from the joint interpretation of Subsection 2 of Section 26 of the Privacy Act and Section 112 of Act CLIV of 1997 on Healthcare (Healthcare Act) that if an ethics procedure initiated in the context of a medical practitioner performing his public duties (for instance, fraud in the context of medical activity) was closed, then the right to informational self-determination of the person performing public duties may be restricted. Based on the above, the name and title of the person performing public duties, the fact of the legally binding sentence imposed in the ethical procedure and the dates of entry into force and expiry of the final decision may be disclosed.

In case of requests for public information, it is necessary to distinguish whether the ethics procedure conducted by MOK concerns - and if so, to what extent - the performance of public duties by a medical practitioner. When a decision brought in the ethics procedure is made accessible in order to fulfil a data request, the disclosure shall be restricted to the content relevant to the performance of public duties by the medical practitioner.

Pursuant to the provisions of the relevant legislation in force, the fact of the legally binding sentence imposed in the ethical procedure and the dates of entry into force and expiry of the final decision constitutes personal data related to the performance of the public duties of medical practitioners and thus it is considered data accessible on public interest grounds. The legal situation would become clearer by amending Section 112 of the Healthcare Act and specifying exactly what data of the ethics procedures can be accessed via data requests.

These personal data of medical practitioners related to the performance of their public duties do not fall under publication obligation, therefore it is not necessary to publish these data on any website, nor may it be freely distributed. According to the Authority it is sufficient to publish anonymised decisions of the Ethics Committee for the public, there is no need to publish names of the specific medical practitioners. The Hungarian Medical Chamber took note of the information provided by the Authority.

(NAIH-1715/2022).