

The State Archives of the Republic of Macedonia: Use of Archival Material and Data Protection Pursuant to the Law on Personal Data Protection and the General Data Protection Regulation

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ABSTRACT

The aim of this paper is to explain the position of the State Archives of the Republic of Macedonia as guardian of the archival material, which is a subject of use for scientific, academic, administrative, public, publishing, exhibition and other purposes. In the process of use of the archival material, the archivists must be very careful in order to protect confidential, sensitive, legal and other information contained in the archival material, and take some measures in relation to the personal data protection. Herein, the author, also talks about the current Law on personal data protection and the harmonisation of the national law with the European legislation.

Key words: access, protection, personal data protection, law on personal data protection, European legislation

Archivio di Stato della Repubblica di Macedonia: uso di materiale d'archivio e protezione dei dati ai sensi della Legge sulla protezione dei dati personali e del Regolamento sulla tutela dei dati generali

SINTESI

Scopo di questo articolo è quello di spiegare la posizione dell'Archivio di Stato della Repubblica di Macedonia come custode del materiale d'archivio, oggetto di utilizzo per esposizione scientifica, accademico, amministrativo, pubblico, di pubblicazione e per altri scopi. Nel processo di utilizzo di materiale d'archivio, gli archivisti devono essere molto attenti al fine di proteggere i dati confidenziali, sensibili, legali e le altre informazioni contenute nel materiale d'archivio e prendere alcune misure in materia di protezione dei dati personali. L'autore parla anche dell'attuale legge sulla protezione dei dati personali e dell'armonizzazione del diritto nazionale con la legislazione europea.

Parole chiave: accesso, protezione, protezione dei dati personali, legge sulla protezione dei dati personali, legislazione europea

Državni arhiv Republike Makedonije: uporaba arhivskega gradiva in varstvo podatkov v skladu z Zakonom o varstvu osebnih podatkov in Uredbo o splošnem varstvu podatkov

IZVLEČEK

Cilj prispevka je pojasniti položaj Državnega arhiva Republike Makedonije kot varuha arhivskega gradiva, ki je subjekt uporabe v znanstvene, akademske, administrativne, javne, objavne, razstavne in druge namene. V procesu uporabe arhivskega gradiva mora biti arhivist zelo previden ter upoštevati in se poslužiti določenih postopkov v zvezi z varstvom osebnih podatkov, da zavaruje zaupne, občutljive, pravne in druge podatke. Avtorica prispevka med drugim govori o trenutnem zakonu o varstvu osebnih podatkov ter harmonizaciji državnega zakona z evropsko zakonodajo.

Ključne besede: dostop, zaščita, varstvo osebnih podatkov, zakon o varstvu osebnih podatkov, evropska zakonodaja

Државниот архив на Република Македонија - користењето на архивскиот материјал и заштитата на податоците во согласност со Законот за заштита на личните податоци и Општата регулатива за заштита на податоците

АПСТРАКТ

Целта на оваа статија е да ја објасни позицијата на Државниот архив на Република Македонија како чувар на архивскиот материјал, којшто е предмет на користење за научни, административни и јавни цели, заради публикување, изработување изложби и слично. Во тој процес на користење на архивскиот материјал, архивистите мора да бидат многу внимателни и да ги заштитат доверливите, осетливите, правните и некои други информации кои се наоѓаат во архивскиот материјал и да преземат одредени мерки за да се заштитат личните податоци. Овде авторот, исто така, зборува и за актуелниот Закон за заштита на личните податоци и усогласувањето на националниот закон со европското законодавство.

Клучни зборови: достапност, заштита, заштита на личните податоци, Закон за заштита на личните податоци, Европско законодавство

1 Use and accessibility of the archival materials in the State Archives of the Republic of Macedonia versus data protection

One of the main activities of the State Archives of Republic of Macedonia, as well of all archival institutions, is providing accessibility to the archival records, which is kept in its depots.

The archival materials is used for scientific and research purposes, administrative and public purposes, for publishing purposes, exhibition planning, etc.

The Archives, as keepers of the archival materials, must protect confidential and sensitive information and carefully regulate its usage, regardless of its purposes.

When using archival records, the Law on Free Access to Information of Public Character (Official Gazette of Republic of Macedonia, no. 148/2015), regulating the conditions, manner and procedure of exercising the right of free access to information of public character, and the Law on Personal Data Protection (Official Gazette of Republic of Macedonia, no. 99/2016), regulating the personal data protection matters as basic rights and freedoms of natural persons, especially privacy rights related to personal data protection shall be taken into consideration. These two laws have been considered throughout the preparation of the current Law on Archival Records (Official Gazette of Republic of Macedonia, no. 95/2012) and the internal acts (rulebooks which regulate the archival materials usage).

The requests by researchers for using the archival records are often related to sensitive information and their disclosure may threaten the national security, confidentiality, or data protection principles. It is of particular importance to deal with such information appropriately. The archival staff approving the use of the archival records, regardless of its form, must treat sensitive information with caution, in order to ensure their safety.

1.1 Accessibility of the archival materials for use

All users have an equal access and right for using the public archival material¹.

Pursuant to the Law on Archival Records, the public archival materials shall be available for use 20 years after their creation, but it may be available for use prior the expiration of the 20-year period, if the material has been intended for the public, or the holder so decided.

The archival and documentary materials containing data related to defence, international relations, matters of national security, including those for maintenance of public order and peace, intelligence work and security activity, the economic interests of Republic of Macedonia, tax secrets, the disclosure of which

1. Archival and documentary material created throughout the work of the state bodies, institutions, public institutions and services, public enterprises, self-government units and the city of Skopje, trading companies, established by the state or in which the dominant capital is owned by the state, self-government units and the city of Skopje and legal entities and natural persons who have been publically authorized.

may have adverse effects on the national security and national interests of Republic of Macedonia, shall be available for use after 100 years of their creation, unless otherwise specified by law or specific provisions.

The archival and the documentary materials which contains data of natural recourses, geological or triangulation research and the economy, shall be available for use 70 years after their creation.

The archival and documentary materials containing data on facilities and capacities of strategic importance for the country shall be available for use 100 years after their creation.

The archival and documentary materials containing data which are commercial secret, technological development and innovations shall be available for use 50 years after their creation.

The records containing data, whose content may limit or cause adverse effects on the rights and freedoms of citizens and the person's and family's integrity, shall be used after the expiration of a defined period of time:

- documents which hurt national feelings, limit the human rights and freedoms, documents which contain sensitive personal data, data on racial, nationality, political, religious or philosophical beliefs, health condition, sexual life, recording and/or deleting of criminal records, kept pursuant to a law, which may cause national or racial issues and discrimination, limit or humiliate the human physical and moral integrity, shall be available for use 70 years after their creation or 20 years after the death of the person, unless otherwise specified by other provisions;
- health records and person data shall be available for use 20 years after the person's death or 100 years after their birth;
- personal records and data with characteristics and statements shall be available for use 100 years from the person's birth, except in cases determined by law;
- documents created throughout litigation shall be available for use 50 years after the decision's effectiveness;
- data on statistical inventory and interviews shall be available for use 100 years after the census/interview; and
- documents containing confidential information on natural persons and their heirs (rape, illegitimate birth, adoption, juvenile delinquency, etc.) shall be available 20 years after the person's death or 100 years since their birth.

The archival and documentary materials with longer periods for use may be available prior the expiration of the determined period for official and other purposes, at the request of the holder, i.e., the user, for which the Government of Republic of Macedonia shall decide.

The State Archives shall prepare public scientific and informative sources for the purpose of availability of the archive fond and material.

The availability of the requested State Archives documents may be temporarily limited in the following cases:

- unhindered and unprocessed documents;
- the physical state of the documents limits their use;
- the document is being used by another user; and
- the document is being restored, conserved, microfilmed, digitalized, etc.

The most common reason why certain archival materials may be unavailable to researchers is that they may contain personal information about a particular living person and their disclosure would violate some of the data protection principles.

2 Privacy concept and personal data protection

The culture of respect for privacy and the protection of personal data is a benefit for every democratically developed society. It is built on respect for the basic standards, established by the United Na-

tions, the Council of Europe, and by the European Commission² (EC), and further developed by international and national legal acts which regulate personal data protection.

The respect of the right of privacy is characteristic of the developed countries with longer tradition of the rule of law and societal ambiance which aims at higher level of political, legal, economic and culture living.

The right to personal data protection and the right to privacy are guaranteed by the 1951 European Convention on Human Rights, the 2000 European Union Convention on the Fundamental Rights and the Universal Declaration of Human Rights of the United Nations, which states that no one shall be subjected to arbitrary interference in their private and family life, home or correspondence, nor shall have their honour and reputation be attacked.

On April 26th, 2006, the Ministries' Committee within the Council of Europe has reached a decision by which January 28th became the World Day of Personal Data Protection.

Within the Council of Europe, the significance of the right to personal data protection and the right to privacy has been stressed in the European Convention for Human Right and Freedoms Protection, as the first and basic document of the Council of Europe for protection of human rights and freedoms.

The privacy protection has been stated in Article 8 of the European Convention, where it is envisaged that each person shall enjoy the right to respect of their private and family life and their home and correspondence.

Pursuant to this Convention, the authorities must not interfere in the exercise of this right, if such interference is not determined by law and if it is not a measure in the country's interest and national security, economic wellbeing and health and moral protection or protection of human rights and freedoms in a democratic society.

Starting from the democratic determinations for privacy and personal data protection, the Macedonian Constitution also stipulates that each citizen is guaranteed with privacy protection in respect of their personal and family life, their dignity and reputation. Regarding the legislation, the essential provision in the area of personal data protection in Republic of Macedonia is the Law on Personal Data Protection, which regulates person's privacy protection throughout the personal data processing.

3 The law on personal data protection in Republic of Macedonia and its compliance with the General Personal Data Protection Regulation (2016/679)

The goal of the Law on Personal Data Protection (Official Gazette of Republic of Macedonia, no. 99/2016) is to ensure to all the persons on the territory of Republic of Macedonia, regardless of their citizenship or residence, protection of human rights and freedoms, and the privacy and data protection rights in particular, in terms of personal data processing.

The Law on Personal Data Protection shall provide appropriate use of personal information of living persons.

Pursuant to the Law on Personal Data Protection, a Directorate of Personal Data Protection shall be established as a separate and independent state body, competent for monitoring the legality of the activities during personal data processing and their protection on the territory of Republic of Macedonia.

The Law imposes obligations for those who store personal information at the same time guaranteeing the rights of those to whom this information are related. Special categories of personal data are personal data which reveal racial or ethnic origin, political, religious or other beliefs, membership in a trade union and data relating to the state of health or sexual life of a person.

2. European Commission – Directive 95/46/EC of the European Parliament and of the Council of Protection of Persons in term of personal data processing and free data flow, adopted in October 24th, 1995, which, on May 25th, 2018, has been substituted with the Regulation (EU) 2016/679 of the European Parliament and of the Council for Protection of Persons in terms of personal data processing and free data flow (General Data Protection Regulation), adopted on April 27th, 2016.

Personal data processing may be done only after written consent obtained from the personal data holder; there are exceptions, however, when the personal data processing is for purpose of public interest.

The processing of the specific personal data categories is forbidden, however the law envisages certain exceptions.

Each person with access to personal data shall be obligated to ensure confidentiality, personal data protection and may process them in accordance with their authorizations.

The transfer of personal data to other states may be performed only if the other state provides an adequate level of personal data protection. The degree of appropriateness of personal data protection in another country shall be assessed by the Directorate for Personal Data Protection, established for the purpose of supervising the legality of the activities during personal data processing and their protection on the territory of Republic of Macedonia, and it constitutes a separate and independent state body with the capacity of legal entity.

The current Law on Personal Data Protection in Republic of Macedonia, which is considered *lex generalis* in this area, and the right to personal data protection is incorporated in the legal system of Republic of Macedonia, thus establishing a new concept that emphasizes the significance of this right as one of the fundamental human freedoms and rights and as an essential value of every modern and technologically developed society. This concept covers privacy and personal identity protection of every person, wherever and whenever personal data is processed.

The appointing of a personal data protection officer³ at the public and private sector controllers⁴ is of essential importance for completion of this process and for establishing higher standards for respect of privacy, as well as for intensifying the collaboration between the controllers and the Directorate for Personal Data Protection.

4 What type of obligations does the General Data Protection Regulation (2016/679) impose on Republic of Macedonia?

Our country, as a candidate for EU membership, i.e., as a country awaiting a date for initiation accession negotiations for EU integration, is obligated to transcribe the Regulation in the national legislation and implement it in practice. The obligation regarding the transcription should be completed as soon as possible, and the new legislative solution should envisage a one-year transitional period for application initiation, i.e., implementation of transcription provisions.

Starting from the need of improvement of the legislation in the area of personal data protection, the Directorate for Personal Data Protection has announced a Draft-Strategy for Applying the Personal Data Protection Right (2017-2020).

The Strategy envisages revision of the Macedonian legislation in relation to the EU Regulation dated May 25th, 2016 of the European Parliament and of the Council for Protection of Persons in connection to the personal data processing and free data flow, which is effective as of May 25th, 2018. In the Strategy, the need of harmonization of the Macedonian legislation with the European legislation is stressed.

The Regulation determines which controllers are obligated to appoint a Personal Data Protection Officer; however, there is also a possibility for one Personal Data Protection Officer to be appointed for performing the same function on behalf of several controllers.

The obligation of appointing a Personal Data Protection Officer is imposed on the following entities:

3. A person, authorized by the controller, who provides compliance of the work with the personal data protection provisions and monitors their implementation (in the Law on Personal Data Protection there is no definition of the term Personal Data Protection Officer. The definition has been derived on the basis of Article 26-a of the Law on Personal Data Protection).

4. Physical entities and natural persons, government bodies or other body, which independently or together with other determines the goals and the manner of personal data processing.

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- All public bodies and authorities⁵, with the exception of courts, when they operate within their judicial competence,
- Controllers whose main activities include personal data processing operations, which, due to their nature, scope and/or purposes require regular and systematic monitoring of personal data holders, and
- Controllers who process specific personal data categories or data related to verdicts or criminal actions.

The obligation for Personal Data Protection Officer appointment applies to both the controller and the data processor.

A Personal Data Protection Officer may be the following person:

- employee of the controller, or
- hired by the controller, on the basis of service providing agreement.

The Officer, pursuant to the Regulation, has an obligation for data confidentiality and secrecy while performing their tasks. They are obligated to monitor the compliance with the personal data protection provisions and to provide internal compliance between the controller and these provisions. More precisely, the Officer shall assist the controller with ensuring internal compliance with these provisions, collects information on identifying the data processing operations, conducts analysis and checks the compliance with the provisions, and provides notifications, advices and recommendations to the controller.

One of the key obligations of the Personal Data Protection Officer is increasing the awareness of the controller's employees, regarding the personal data protection right, thus affirming this right and educating the controller of their obligations, arising from the personal data protection provisions.

The Personal Data Protection Officer shall aim to find numerous activities through which they will increase the awareness of the controller's employees, particularly those engaged in personal data processing operations.

The Regulation stipulates that one of the tasks of the Officer is organizing trainings for employees included in the data processing operations, which shall be stated as a key responsibility in their legal settlement.

The Personal Data Protection Officer shall also be responsible for providing the controller with advice regarding completion of obligations arising from personal data protection provisions and with recommendations for practical improvement of the personal data protection. He shall be authorized (independently or with appropriate assistance) to perform revision/control/inspection of the personal data protection provision compliance of the controller.

The specificity of the personal data protection provisions consists of the fact that only rights are envisaged for personal data holders, and only obligations for the controller. The rights of the personal data holders are the following: the holders shall be informed about their data processing; shall seek data access and amendments, modification, deleting or terminating the data processing.

The controller shall be obligated to act in accordance with personal data protection standards:

- legality, fairness and transparency;
- limitation of goals;
- minimizing the data being processed;
- accuracy;
- limitation of data storage;
- integrity and confidentiality, and
- accountability request.

The preparation of the new Law on Personal Data Protection in Republic of Macedonia shall be conducted as a comprehensive consultative process, accompanied by extensive public debate by including experts, the NGO sector, and relevant institutions, particularly from the field of human rights protection.

5. Regardless of the type and cope od processed data.

The public awareness must be especially stressed in the new legal solution. The strong public awareness shall contribute to real implementation of laws, but also shall help with the prevention.

Based on the draft-law on personal data protection, the controller shall be responsible for monitoring the legality of the personal data processing, and process the personal data on legal grounds and with consent of the personal data holder.

The person who disposes with the information shall be obligated to provide evidence that the holder have provided their consent for their personal data processing. If the consent is provided in a form of a written statement, it should be provided in a clear and comprehensible form, using clear and simple language. The holder has the right to withdraw the consent at any given time. The withdrawal of the consent shall not affect the processing legality, since the consent was given prior its withdrawal.

The processing shall be considered legal, if it is performed for the purpose of:

- Fulfilling of an agreement where the holder is a contracting party;
- Fulfilling of the controller's legal obligation;
- Protection of life or the essential interest of the holder;
- Performing public interest matters or an official authorization, and
- Fulfilling of the controller's legitimate interest.

In order to fulfil the obligation arising from the Law on Personal Data Protection, the controller shall adopt the documentation and shall undertake technical and organizational measures for securing confidentiality and secrecy in the personal data processing, thus preventing unauthorized access, data changing, unauthorized disclosure, accidental loss or destruction.

In case of safety issues, i.e., personal data breach, the Regulation shall also add additional obligation to the controller to notify the Supervision Board and the relevant personal data holder.

By reflecting the Regulation in the new legal solution, the controller shall be obligated to notify the Directorate of Personal Data Protection about any safety issues, i.e., personal data breach, provided that there is a probability that the issue/breach is a threat to human rights and freedoms.

For the purpose of informing the personal data holders about their rights, the controller shall publish useful information and documents (handbooks, guidelines, manuals and instructions for personal data protection) on the website.

The controller shall be obligated to do the following:

- To prepare internal acts for personal data protection, intended for employees who perform personal data processing operations, especially for controllers with a greater quantity of personal data processing operations and with a greater number of persons who process personal data;
- To create a separate part on the corporate's website intended for privacy and personal data protection, where the internal acts on personal data protection, the handbooks, guidelines, periodical reports regarding the Personal Data Protection Officer's work shall be published, as well as other documents which the controller may find useful;
- To organize and conduct training for the controller's employees, who are included in the data processing operations, based on previously composed training plan (regularly, according a determined time interval);
- To organize meetings with the top management;
- To indicate the obligation to sign statements of privacy and personal data protection, to seek authorizations for employees who process personal data and keep records for these persons;
- To indicate the obligation of performing external and internal control, as well as periodical controls on the information system and the controller's information infrastructure, and
- To prepare periodical and annual reports on the activities of the Personal Data Protection Officer.

The new Law on Personal Data Protection shall provide comprehensive personal data protection as part of the basic human rights, protected by conventional law and modern national legislations. It shall

be comprehensive and in compliance with the European Union's legislation, therefore, the personal data protection shall be redesigned and in compliance with the European legislation, form a legal aspect.

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SUMMARY

The life and actions of humans are unthinkable without documents and archival material. Due to the social, economic, political and above all technical transition, the State Archives of the Republic of Macedonia has to serve as public service institution and has to maintain a good level of transparency and accessibility parallel with the implementation of a quality protection of personal data. The use of the archival material in the State Archives of the Republic of Macedonia is regulated by the Law on archival material and other relevant acts of the Archives, as well as by the terms and conditions agreed upon between records owners and the Archives on the occasion of their reception. A huge influence to the terms of accessibility and the protection of sensitive data at the State Archives has the Law on free access to public information; the Law on personal data protection and the Law on cultural heritage protection. The contemporary political, economic and other changes contribute to the construction of a new concept of special protection that in an integral, uniform way and with a methodology procedure, defines the measures, procedures and activities of special protection in the Archives and at the holders of archival material. The inquiries received at the Archives, often deal with information of a sensitive nature, such as information whose disclosure would breach national security, confidentiality or the data protection principles. Proper handling of this information is a significant issue and the archivists must handle sensitive information correctly, irrespective of format, so as to ensure that it is protected as necessary. A very important moment in the process of personal data protection at the State Archives of the Republic of Macedonia has the current Law on personal data protection and the activities on national level in order to make some changes in the national law in order to adapt it to the General regulations on data protection (GDPR - 2016/679) of the European Parliament and the Council of 27 April, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which repealed Directive 95/46/EC, introduced in 1995.

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