

Press release

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Berlin data protection commissioner imposes fine on real estate company

On October 30, 2019, the Berlin Commissioner for Data Protection and Freedom of Information imposed a fine of approximately 14.5 million EUR against Deutsche Wohnen SE for violations of the General Data Protection Regulation (GDPR).

During on-site inspections in June 2017 and March 2019, the Supervisory Authority found that the company used an archiving system for the storage of personal data of tenants that did not include the possibility of deleting unnecessary data. Personal data of tenants were stored without verifying whether this storage was permissible or even necessary. In individual cases, it was possible to review year-old information from affected tenants without such processing still serving the purpose of the original collection of the respective data. This involved data on the personal and financial situation of tenants, such as salary statements, self-disclosure forms, extracts from employment and training contracts, tax, social security and health insurance data and bank statements.

After the Berlin data protection commissioner had issued the urgent recommendation to change the archive system in the first inspection in 2017, the company was unable to provide either a clean-up of its database or legal reasons for continued storage in March 2019, more than one and a half years after the first inspection and nine months after the start of application of the General Data Protection Regulation. The company had made preparations to remedy the deficiencies that had been identified. These measures had not, however, led to the legalisation of the storage of personal data. The imposition of a fine for an infringement of Article 25 (1) GDPR and Article 5 GDPR for the period between May 2018 and March 2019 was therefore mandatory.

The General Data Protection Regulation requires supervisory authorities to ensure that fines in each individual case are not only effective and proportionate, but also dissuasive. The starting point for the calculation of fines is therefore, amongst other things, the previous year's worldwide turnover of the affected company. Due to the annual turnover of more than one billion euros reported in the annual report of Deutsche Wohnen SE for 2018, the legally prescribed framework for the assessment of fines for the identified violation was approximately 28 million euros.

For the specific determination of the amount of the fine, the Berlin data protection commissioner has used the legal criteria, taking into account all burdening and relieving aspects. The fact that Deutsche Wohnen SE had deliberately set up the archive structure in question and that the data concerned had been processed in an inadmissible manner over a long period of time had a particularly burdening effect. However, the fact that the company had taken initial measures to remedy the illegal situation and had cooperated formally well with the supervisory authority was taken into account in order to mitigate the fine. In view of the fact that the company could not be proven to have misused access to the inadmissibly stored data, a fine in the middle range of the specified fine framework was appropriate.

In addition to sanctioning this structural violation, the Berlin data protection commissioner imposed further fines of between 6,000 and 17,000 euros on the company for the inadmissible storage of personal data of tenants in 15 individual cases.

The decision to impose the fine has not yet become final. Deutsche Wohnen SE can file an appeal against the administrative order imposing the fine.

Maja Smolczyk (Berlin Commissioner for Data Protection and Freedom of Information):

"Data cemeteries, as we found them at Deutsche Wohnen SE, unfortunately often encounter us in supervisory practice. The explosive nature of such abuses is unfortunately only made clear to us when, for example through cyber-attacks, abusive access has been made to the masses of data that have been hoarded. But even without such serious consequences, we are dealing with a massive violation of the general principles of data protection, which are intended to protect those affected from precisely such risks. It is gratifying that the legislator has introduced the possibility of sanctioning such structural deficiencies with the General Data Protection Regulation before the worst-case scenario takes place. I recommend all data processing authorities to check their data archiving for compatibility with the GDPR".