

Personal Data Protection Board’s Decision No. 2023/1321 dated August 3, 2023, regarding “the continued processing of the data subject’s email data by the data controller Company with which the data subject was previously affiliated”

Date of Decision : August 3, 2023

Decision No. : 2023/1321

Summary of the Matter : The continued processing of the data subject’s email data by the data controller Company, of which the data subject was previously a partner

In the complaint submitted to the Authority, the complainant states in summary that he left the data controller Company, with which he was previously a partner, to establish a new company; however, he learned that the email address he used while a partner of the data controller Company is still active and that the data controller is reading emails sent to that address; stating that this situation created unfair competition for him and caused him financial harm, and that he had contacted the data controller regarding this matter but received no response, and requesting that the necessary actions be taken under the Personal Data Protection Law No. 6698 (the Law).

As part of the investigation initiated regarding this matter, the data controller was requested to provide a defense; in the response provided, it was summarized that:

- The individual in question had withdrawn from the partnership pursuant to a general assembly decision, and as part of this process, the individual’s email address had been deactivated; the use of the deactivated email address was technically impossible,
- The aforementioned email address appears as “unidentified mail” in the data controller’s system; due to personnel turnover (name changes), so as long as the email addresses deleted—regardless of what appears in the prefix—end with the Company’s domain extension, such emails are routed to the administrator’s inbox as “unidentified mail,” and this redirection is carried out by the email service provider,
- Contrary to the allegations, it has been stated that the emails in question do not contain any personal data.

As a result of the investigation conducted on the matter, pursuant to the Decision No. 2023/1321 of the Personal Data Protection Board dated 03/08/2023;

- The conditions for processing personal data are regulated in Article 5 of the Law; accordingly, under the first paragraph of the article, personal data may not be processed without the explicit consent of the data subject; under the second paragraph, it must be explicitly provided for by law; or it must be necessary to protect the life or physical integrity of the data subject or another person when the data subject is unable to express

consent due to actual impossibility or when legal validity is not recognized for their consent; it is necessary for the processing of personal data belonging to the parties to a contract, provided that such processing is directly related to the conclusion or performance of the contract; it is necessary for the data controller to fulfill its legal obligations; the data has been made public by the data subject; Where the processing of data is necessary for the establishment, exercise, or defense of a legal claim, or where the processing of data is necessary for the legitimate interests of the data controller, provided that such processing does not infringe upon the fundamental rights and freedoms of the data subject, it is stipulated that the processing of personal data is permissible without the data subject's explicit consent,

- After the data subject left the data controller Company, the data subject began conducting business in the same field as the data controller Company—of which they had previously been a partner—at the new firm they established,
- During this process, first, a former customer who was unaware that the data subject had ended their partnership with the data controller sent a message to the data subject's old email address; upon reading the message, an authorized representative of the data controller Company contacted the relevant customer;
- Second, an employee of the individual's new company inadvertently sent a message to the old email address; an official from the data controller company responded to this message with a neutral email,
- In this context, although the data controller stated that the email address in question was inactive, was not among the email addresses used by their company, and that messages sent to this address were routed to the administrator's email as "unknown mail," messages continued to be sent to the individual's previously used and currently inactive email address, Given that email data constitutes personal data, and that the individual's personal data continued to be processed after their departure from the company by sending emails that allowed messages to be viewed in the "unidentified mail" folder, and considering that this processing activity does not rely on any of the processing conditions set forth in Article 5 of the Law;
- Messages continued to be sent to the individual's previously used and currently inactive email address; since email data constitutes personal data, the continued sending of emails after the individual's departure from employment—which was not prevented—enabled the viewing of messages in the unspecified email, thereby continuing the processing of personal data; Since the aforementioned personal data processing activity lacks any legal basis under Article 5 of the Law, an administrative fine of 50,000 TL is imposed pursuant to Article 18 of the Law,

- The data controller is instructed to rectify the system in question to ensure that personal data processing activities regarding former employees are discontinued and to inform the Board of the outcome,
- It has been decided to instruct the data controller to destroy the personal data subject to the complaint and to inform the Board of the outcome.