

Personal Data Protection Board’s Decision No. 2023/845 dated May 18, 2023, regarding “the unlawful processing of personal data by a courier company employee through the sending of a text message to the data subject’s phone following the delivery of a package”

Date of Decision : May 18, 2023

Decision No. : 2023/845

Summary of the Matter: Unlawful processing of personal data by a courier company employee via text message sent to the recipient’s phone following delivery

In summary, the complaint received by the institution states that the complainant made a purchase through an online shopping site; the product was delivered the day after the order date by a courier employed by the data controller; and subsequently, the courier sent a harassing message to the complainant’s mobile phone number, and the courier company (data controller) confirmed that the sender was indeed the courier; it was alleged that the data controller failed to ensure the security of personal data and that its employee had caused distress, and action was requested.

As part of the investigation initiated regarding the matter, the data controller was requested to provide a defense; in the response received, it was summarized as follows:

- The individual alleged to have committed the act was neither an employee nor a supplier of the company, and there was no legal relationship between them and the company,
- Within the scope of the company’s operations, it may carry out part of the transportation work with third-party suppliers pursuant to collaboration agreements entered into with third parties in accordance with applicable legislation,
- The vast majority of piece-rate suppliers work in units aimed at distributing “DDN” e-commerce shipments more quickly and efficiently; particularly during peak distribution periods at , distribution and delivery are carried out through piece-rate distributors in units where there is a need,
- All active piece-by-piece vehicles and drivers have been added to the company’s systems, all necessary documents have been recorded in the system, and the rules they must adhere to during the process have been clearly explained,
- The incident in question was caused by a third party brought in to assist with distribution—without the company’s knowledge or approval—at the instruction of the per-piece delivery contractor and/or the driver assigned by the contractor to provide distribution and delivery services, due to an issue with one of the per-piece delivery vehicles,

- The reason for processing the data subject's personal data in the company's records is that the individual has received a shipping service from the company; in order to provide the shipping service and deliver the shipments to the recipients, it is necessary to process the recipients' first and last names, addresses, and contact information in the company's records; otherwise, it would not be possible to provide the service properly; therefore, the individual's first name, last name, and contact information are collected and processed,
- For each shipment, a shipping invoice/waybill containing the personal information of the sender and recipient is issued in accordance with the Tax Procedure Law; pursuant to the Turkish Commercial Code No. 6102, these invoices and waybills must be retained for 10 years; records and personal data for which the legal retention periods have expired are destroyed in accordance with the law,
- Following this incident caused by an individual who is neither a company employee nor a supplier, the contract with the person responsible for the delivery—who provided piece-by-piece supply services—has been terminated,
- The company conducts its operations with the utmost dedication, providing necessary information and reminders to employees and suppliers regarding service quality, personal data, confidential information, and data security,
- It was stated that new administrative and technical measures were implemented to prevent similar incidents from recurring; as part of these measures, the phone number on the barcode labels was masked to restrict suppliers' access to customers' phone numbers.

Based on the documents submitted to the Authority by the relevant individual, it was determined that a complaint was filed against the courier who carried out the action in question in accordance with the provisions of the Turkish Penal Code No. 5237, and that the individual was punished as a result of the criminal proceedings

As a result of the investigation conducted on the matter, pursuant to the Decision No. 2023/845 of the Personal Data Protection Board dated May 18, 2023;

- Under Article 3 of the Law titled "Definitions," personal data refers to any information relating to an identified or identifiable natural person; the data controller is the natural or legal person who determines the purposes and means of processing personal data and is responsible for the establishment and management of the data recording system; and the processing of personal data is defined as any operation performed on personal data, such as the collection, recording, storage, retention, alteration, reorganization, disclosure, transfer, acquisition, making available, classification, or restriction of use of such data, whether fully or partially automated or carried out by non-automated means as part of a data recording system;

- Under Article 4 of the Law, titled “General Principles,” after establishing that personal data may only be processed in accordance with the procedures and principles set forth in this Law and other laws, the mandatory principles to be followed in the processing of personal data are outlined. Accordingly, personal data may only be processed in accordance with the following principles: a) compliance with the law and the principles of good faith, b) accuracy and, where necessary, up-to-date status, c) processing for specific, explicit, and legitimate purposes, d) being relevant, limited, and proportionate to the purpose for which they are processed, and e) retention for the period prescribed by applicable legislation or necessary for the purpose of processing,
- Article 5 of the Law regulates the conditions for the processing of personal data; paragraph (1) of the article stipulates that personal data may not be processed without the explicit consent of the data subject, while paragraph (2) provides that processing is permitted only if explicitly provided for by law, the necessity of data processing 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, the necessity of processing personal data belonging to the parties to a contract provided that it is directly related to the conclusion or performance of the contract, the necessity for the data controller to fulfill its legal obligations, where the data subject has made the data public, where data processing is necessary for the establishment, exercise, or defense of a legal claim, or where data processing 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 established that personal data may be processed without the data subject’s explicit consent,
- Under Article 7 of the Law titled “Deletion, Destruction, or Anonymization of Personal Data”; It is stipulated that, even if personal data has been processed in accordance with the provisions of this Law and other relevant laws, such data shall be erased, destroyed, or anonymized by the data controller either on its own initiative or upon the data subject’s request once the reasons necessitating its processing no longer exist, and that the provisions regarding the erasure, destruction, or anonymization of personal data set forth in other laws remain reserved,
- In an investigation regarding the claim that the data subject’s personal data was processed unlawfully, Article 66 of the Turkish Code of Obligations No. 6098 states: “The employer is liable to compensate for damage caused to third parties by the employee while performing the work assigned to them. If the employer proves that they exercised the necessary care to prevent the damage from occurring—whether in selecting the employee, issuing work-related instructions, or exercising supervision and control—they shall not be liable. In a business, the employer is liable to compensate for damages caused by the business’s operations unless they prove that the business’s operational structure is suitable for preventing such damages.”

- In paragraphs 6 and 7 of Article 2 of the Labor Law No. 4857, “The relationship established between an employer who assigns work to another employer—who, in turn, employs workers specifically for that work at the workplace where the work is performed—in auxiliary tasks related to the production of goods or services at the workplace, or in specialized tasks within a part of the main work that require expertise due to the nature of the business, the work, or technological reasons, is referred to as the principal employer-subcontractor relationship. In this relationship, the principal employer is jointly liable with the subcontractor for the obligations arising from this Law, the employment contract, or the collective bargaining agreement to which the subcontractor is a party, with respect to the subcontractor’s workers at that workplace. The rights of the principal employer’s workers may not be restricted by having them hired and continued to be employed by the subcontractor, nor may a subcontractor relationship be established with a person previously employed at that workplace. Otherwise, and generally, if the principal-subcontractor relationship is deemed to be based on a sham transaction, the subcontractor’s workers are treated as employees of the principal employer from the outset. “Except for specialized work requiring expertise due to the nature of the business, the work, or technological reasons, the main work may not be divided and assigned to subcontractors.” These provisions are in effect,
- it has been assessed that the data controller is liable for the aforementioned unlawful data processing incident in accordance with the relevant provisions of the Turkish Code of Obligations and the Labor Code, however, from the response letter submitted to the Authority by the data controller’s representative, it was understood that the individual who carried out the incident and was working on behalf of the data controller at the time of the incident had not received any training on the protection of personal data and data security, nor had the necessary information been provided,
- Upon reviewing the statements made by the individual who carried out the act during the criminal proceedings, it was determined that the individual had declared that they were working temporarily within the data controller’s organization, Nevertheless, it was concluded that the data controller’s statement that there was no legal relationship between them and the courier did not reflect the truth, and that the data controller had failed to provide the individual with the necessary training or any information regarding the protection of personal data,
- In the review conducted regarding the erasure, destruction, or anonymization of the individual’s personal data, it was determined that Article 7 of the Law and Article 7 of the Regulation on the Erasure, Destruction, or Anonymization of Personal Data, and the relevant provisions of the legislation to which the data controller is subject, it was determined that the reason for recording the data subject’s personal data in the data controller’s records was the provision of a transportation service, and that the names, surnames, address, and contact information of the cargo recipients must be processed into the data controller’s records, and based on the assessment that invoices and delivery notes must be retained for 10 years pursuant to the Turkish Commercial Code No. 6102;

- It is concluded that the data controller unlawfully shared the mobile phone number, which constitutes personal data of the data subject, without relying on the conditions for processing personal data set forth in Article 5 of the Law ; and within this scope, it is concluded that the data controller failed to take the necessary technical and administrative measures to ensure an appropriate level of security to prevent the unlawful processing of personal data under Article 12(1) (a) to ensure an appropriate level of security to prevent the unlawful processing of personal data, it was concluded that the data controller failed to take the necessary technical and administrative measures. Consequently, pursuant to Article 18(1)(b) of the Law, it was decided to impose an administrative fine of 250,000 TL on the data controller.