

## A Glance at the Turkish Data Protection Board's decisions dated February 11<sup>th</sup>, 2021

### Turkish Data Protection Board ("Board") decisions

#### What is the subject?

The Board provides criteria for identifying data controllers and data processors **and** clarifies who is responsible for the fulfilment of disclosure obligation.

#### What was the Board's approach?

As per the *Guideline on concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725* prepared by the European Data Protection Supervisor and the national legislation, the Board evaluated that having a direct relationship with the data subject, appointing a data processor on its behalf, having interest in data processing and independently determining the collection, collection method, type of data to be collected, data subjects, processing method, fundamentals of data processing and data sharing without being subject to any orders or instructions are criteria to be considered in the determination of the data controller.

On the other hand, the Board stated that for data processors prominent factors mainly relate to technical aspects of data processing. Data processors act within scope of the authorization provided by the data controller and process data per the purposes and tools determined by the data controller. In this regard, the autonomy of the data processor is dependent on the authorization of the data controller and the data controller may authorize the processor to determine the methods for data collection, transfer, retention, erasure, destruction or anonymization and the data security measures through a data processing agreement. However, it is crucial that the processor is not yielded the authority to determine the processes for data collection, retention, disclosure; to determine the purpose for data processing and that the data controller is not responsible for the consequences for data processing.

Moreover, the Board concluded that data controllers' disclosure obligation may be fulfilled by either the controller itself or by a party authorized by the controller, which may also be the data processor.

### Data subject complaints

#### What are the facts?

The Enforcement Office commenced lien notifications against the debtor's relatives who were not party to enforcement proceedings.

What was the complaint?	It is alleged that the search for the addresses and identity information of debtor's relatives is not within the scope of the data controller's duty, and it is unlawful to share the personal data of the debtor with his relatives.
What was the Board's approach?	The Board decided that the data processing conducted by the Enforcement Office, a body which does not have a discretion in the seizure of property or receivables of third parties as per Article 89/3 of the Execution and Bankruptcy Act, was based on the legal ground that such processing is clearly stipulated under the laws, and hence, there is no action to be taken per the Act No. 6698 on the Protection of Personal Data (" <b>Act</b> ").
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What are the facts?	The insurance company requested explicit consent to renew the health insurance policy of the data subject.
What was the complaint?	A complaint is filed before the Authority on the grounds that the service provided is conditional on explicit consent.
What was the Board's approach?	The Board stated that the health insurance containing personal data of special categories (health data) can only be processed with explicit consent. For this reason, obtaining explicit consent from the relevant person was not found in contradiction with the Act.
What are the facts?	Personal data of several lawyers such as name, surname, bar association registration numbers and photographs are shared on certain lawyer inquiry sites on the Internet.
What was the complaint?	A notification was filed before the Authority stating that said websites that unlawfully obtain and share personal data without the consent of the lawyers.
What was the Board's approach?	<p>The Board determined that most of the websites are not accessible, and that only one of the data subjects were found to have a profile on the accessible sites, which includes data subject's e-mail address. It has been concluded that this data is also provided in the bar association plate of the province where the lawyer is registered and on his profile in the Turkish Bar Association's ("<b>TBA</b>") official website, and that the personal data anonymised by the data subject himself can be processed. It has been evaluated that these websites, which enable people seeking legal services to easily access the contact information of lawyers, do not process data contrary to general principles.</p> <p>It is assessed that the information shared on the websites is not different from the information shared in the provincial bar association plates and the TBA's website, and that there is no determination on whether the purpose of sharing the data is different from the purpose of sharing in the provincial bar association</p>

	plates and the TBA's website. Considering the data subjects have the means to correct or delete these data on the websites, it is evaluated that there is no violation of the Act.
What are the facts?	A hospital storing blood, serum and tissue samples of patients have failed to provide necessary conditions for the preservation of the samples and have disposed the samples without investigating whether they could be restored to scientific life.
What was the complaint?	The notification filed before the Authority states that the hospital acted in negligence in the protection of the destructed data and failed to fulfil its obligations regarding data security under Article 12 of the Act.
What was the Board's approach?	<p>The Board considered that the blood, serum and tissue samples subject to notification should be deemed as personal data since their storage conditions allowed for the identification of the patients, and that the process of recording these data by classifying them according to certain criteria was deemed as data processing activity.</p> <p>However, the Board concluded that no action should be taken in response to the complaint and the data processing should benefit from the exemption provided under Article 28 of the Act since it was conducted for scientific purposes and did not meet the restrictions stipulated under the same provision.</p>
What are the facts?	The request for correction of the records containing the medical report/diagnosis information of the data subjects (especially diagnoses of psychiatric diseases), was rejected by the relevant provincial health directorates.
What was the complaint?	The complaint filed before the Authority stated that said medical reports did not reflect the truth in relation to the health conditions of data subjects and their presence created hardships in the daily lives of the data subjects. Therefore data subjects requested the correction or erasure of relevant reports and diagnoses,.
What was the Board's approach?	The Board decided that no action should be taken in response to the complaint submitted, since the data processing condition, " <i>protection of public health, preventive medicine, provision of medical diagnosis, treatment and care services, planning of health services and financing</i> " was not ceased in terms of the health data recorded in the present case.

<b>What are the facts?</b>	An electricity distribution company sent explanatory SMS messages to an individual with respect to different subscription numbers that do not belong to that individual.
<b>What was the complaint?</b>	Data subject requested not to receive any information related to the different subscription numbers that do not belong to her. Also, she requested the deletion of her data from the contact information of said subscription agreements. However, the data controller did not respond the request and then she made a complaint before the Authority.
<b>What was the Board's approach?</b>	The Board explained that data controllers are obliged to respond to data subjects' applications in a timely and complete manner pursuant to the provisions of the Act and instructed this data controller to respond to the application immediately. Furthermore, the Board mentioned that processing data without relying on the lawful legal basis is considered as a violation of obligation to ensure data security. Consequently, the Board imposed an administrative fine of TRY 100,000 to the electricity distribution company for failing to respond to the application and processing data without relying on any lawful basis. Additionally, the Board instructed the data controller to submit information and documents related to the instructions given by the Board for fulfilment of data subject's request, within 30 days following the date of the decision.
<b>What are the facts?</b>	The entrance and exit time of the data subject who is a municipal officer were tracked by the data controller via processing biometric data.
<b>What was the complaint?</b>	The data subject has filed a request to the data controller and requested the deletion of his biometric data recorded in the system via scanning fingerprints during entries and exits. As the request was rejected by the data controller, data subject lodged a complaint before the Authority.
<b>What was the Board's approach?</b>	The Board stipulated that the activity of processing biometric data for tracking entries and exits is against the data minimization and proportionality principles outlined under the Act. Additionally, Board stated that rejecting the application of data deletion made by the data subject is in violation with the principle of good faith. Consequently, the Board has instructed the data controller to initiate destruction of the biometric data recorded in the systems and to send relevant information and documents to the Board regarding this matter.
<b>What are the facts?</b>	Data subject who works as an academic staff at a university has stated that he was made subject to baseless news regarding an alleged illegal appointment of another academic staff to the same university, who happens to be his family relative.

What was the complaint?	Even though it was determined that the appointment was legally executed per the investigations conducted by the university, news about the appointment were still placed on the search engine when name of the data subject was searched. Data subject has applied to the search engine for the deletion of such news. The search engine responded stating that it could only send the request to the website where the news are published and that it is not possible to take any further action. Following the said response, data controller filed a complaint before the Authority stating that the content has adverse effects on his professional and public life and requesting the content to be removed.
What was the Board's approach?	<p>Even though the Board pointed out that the contents may be considered within the scope of journalism activities and it can cause prejudice against the data controller, it also stated that such a statement is not provable. On the other hand, the Board evaluated that the response of the search engine was reasonable and no further action is required pursuant to the provisions of the Act.</p> <p>Additionally Board specified that claims of the data subject with respect to the unrealistic statements about the appointment should be challenged before judicial authorities.</p>
What are the facts?	Data subject had arguments with the hospital staff when he went to the hospital for his father's treatment. After the quarrel, a criminal scene report was recorded concerning the data subject and a criminal complaint was filed to the Office of the Chief Public Prosecutor. Data subject was sentenced to a judicial fine and had to pay the attorney fee.
What was the complaint?	A complaint was filed to the Authority stating that the crime scene report was prepared by the hospital staff 1 year and 3 months after the incident and through processing the personal data consisting of the name, surname and identification number of the data subject without his explicit consent. The data controller, on the other hand, stated in its responses to the data subject and the Authority that the action was initiated according to the Circular of the Legal Counsel of the Ministry of Health on Legal Aid and White Code Application numbered 2016/3.
What was the Board's approach?	The Board decided that the hospital is lawfully required to keep a report per the relevant Circular in order for the healthcare personnel who were subjected to violence to benefit from legal aid. The Board stated that; the personal data in question was processed by the data controller to fulfil its legal obligation in accordance with Article 5(2)(ç) of the Act and there was no action to be taken under the Act.
What are the facts?	In this case, the data subject who filed a complaint against the data controller is also a shareholder and authorized manager of the data controller company. The information and documents in the e-mail

	account assigned to the data subject were presented as evidence in the judicial processes carried out before the Commercial Court of First Instance and the Prosecutor's Office.
What was the complaint?	The data subject lodged a complaint before the Authority, since her access settings were changed through accessing her e-mail account illegally, and her request to delete and remove all data belonging to the e-mail account was rejected by the data controller.
What was the Board's approach?	The Board stated in its decision that the data, accessed from the server backup records in order for the protection of the rights of the company of which the data subject is a shareholder, were processed within the scope of Article 5(2)(e) of the Act reading as "... <i>Data processing is mandatory for the establishment, use and protection of a right</i> " and that the personal data processed due to the court proceedings before the Commercial Court of First Instance using the relevant personal data will be considered within the scope of Article 28(1)(d) of the Act. Board has also indicated that there is no action to be taken within the scope of the Act regarding the complaint in question.
What are the facts?	The Board was consulted on whether it is necessary to sign the "personnel confidentiality agreement" included in the Personal Data Security Guide for personnel subject to the Public Servants Act numbered 657.
What was the complaint?	No complaint was filed as the opinion of the board was consulted on the issue.
What was the Board's approach?	The Board mentioned that the obligation to act in accordance with the Act and its relevant regulations is one of the main obligations of the personnel who work within the scope of Act No.657. Board stated in its decision that the issue of signing a confidentiality agreement can be applied to employees subject to the employment contract in accordance with the orders and instructions of an employer or to employees in public institutions and organizations without being subject to Act No. 657. Additionally, the Board also mentioned that it would be appropriate for the relevant personnel (i) to be notified of an informative text regarding the procedures and principles to be followed within the scope of the right to protect personal data and (ii) to periodically receive data protection trainings.



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