

Nothing personal—personal data and filing systems

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Commercial analysis: Public bodies can only share personal data without consent if the reason is listed as a permitted exemption in the Data Protection Directive, the Court of Justice of the European Union (CJEU) has ruled Pulina Whitaker a partner at the London office of Morgan Lewis, considers the implications of this ruling.

Original news

Bara and Ors v Președintele Casei Naționale de Asigurri de Sntate & Ors: C-201/14

What is the background to this decision?

Personal data, including names, personal identity card numbers and addresses, obtained from self-employed workers in Romania was shared by the Romanian tax authority with the National Health Insurance Fund (NHIF). The NHIF then required the workers to pay arrears on contributions to the health insurance fund. The workers provided their personal data to the tax authority, but they neither consented to the tax authority sharing their personal data with the NHIF, nor were they informed by the tax authority that their personal data would be shared with the NHIF. The NHIF did not inform the workers that it was now a data controller with respect to their personal data.

Romanian law permitted the tax authority to share personal data provided to it with the NHIF. The workers, however, complained that the tax authority breached their data protection rights in doing so and brought claims in the Romanian courts. The matter was ultimately referred to the CJEU to determine if the Data Protection Directive 95/46/EC precluded national laws allowing data sharing on grounds not specified in the Data Protection Directive.

What was the reasoning of the court?

The CJEU found that, despite the provision in Romanian law which allowed personal data to be shared between the tax authority and the NHIF, the only permitted exemptions which can be relied upon for disclosing personal data without consent from the individuals and without informing the individuals in advance of the disclosures were:

- national security
- defence
- public security
- the prevention, investigation, detection and prosecution of criminal offences or of ethical breaches for regulated professions
- important economic or financial interests of a Member State or the EU
- a monitoring, inspection or regulatory function connected with the exercise of official authority in the prevention, investigation, detection and prosecution of criminal offences or of ethical breaches for regulated professions or important economic or financial interests of a Member State or the EU, or
- the protection of the data subject or the rights and freedoms of others

The tax authority was unable to rely on any of the above permitted exemptions to allow it to share personal data of the workers to the NHIF and, therefore, the sharing of data was a breach of the Data Protection Directive.

Further, the Data Protection Directive must be interpreted as precluding national measures which allow personal data to be shared with other recipients on additional grounds without consent from the data subjects and without informing them in advance that their personal data would be shared with such other recipients.

What impact will this have on sharing data in the public sector?

In countries where public sector authorities are permitted under national laws to share personal data obtained from data subjects for a specific purpose, such national laws would need to be interpreted in accordance with the *Bara* decision so that consent from the data subjects must be obtained from the data subjects before transferring their personal data to other authorities, unless one of the exemptions referred to above can be relied upon. Public sector authorities may require additional guidance from the government on how they may share personal data in light of the *Bara* decision. Individuals who are concerned about their personal data rights being breached may choose to bring freedom of information requests against public authorities, or subject access requests, to obtain information about how their personal data is processed and to whom it is shared.

Will the public sector be able to rely on any exemptions?

Yes. Relevant exemptions are likely to include law enforcement, national security, regulatory investigations, medical grounds and protection of the public. For example, a hospital is likely to be able to rely on the 'protection of the data subject' exemption in sharing personal data with another hospital if consent cannot be obtained in the course of emergency medical treatment.

Will the Information Commissioner's Office (ICO) be changing its guidance on data sharing in light of this judgment?

The ICO has published guidance to the public sector on legally permitted data sharing (known as 'gateways') and advises organisations that they must be mindful of the need to comply with data protection laws. The ICO advises organisations to make clear to the public the basis on which their personal data may be shared with another public sector authority. Further guidance, therefore, does not appear to be required in light of the *Bara* decision.

Interviewed by Lucy Trevelyan.

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