

Statement on the data processing activity of the Hungarian Religious Association of Scientology

Case reference number: NAIH/2015/3940/2/V

[...]

Dear Mr...,

You have submitted a consultation request to the Hungarian National Authority for Data Protection and Freedom of Information (hereby referred as: the Authority) about the data processing activity of the *'Hungarian Church of Scientology'*. The Authority has previously already examined the *'Hungarian Church of Scientology'* concerning its data processing practice and more communiqués have been issued in the past. Upon your requests in your letter, you may find my responses below:

Issues of scope

Pursuant to (1) of Article VI of the Fundamental Law of Hungary: *'Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest.'*

Pursuant to (1) of Article VII of the Fundamental Law of Hungary: *'Everyone shall have the right to freedom of thought, conscience and religion.'*

Pursuant to (1) of Section 6 of the Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities (hereinafter: Religious Act) *religious communities are churches and religious organizations. Churches are admitted by the Parliament are recognized churches"* and (1) of Article 19 states: *'Religious communities shall operate according to their own principles of faith and rites'.*

Pursuant to (1) of Section 2 of the Act CXII of 2011 on the Rights of Informational Self-Determination and Freedom of Information (hereinafter: Privacy Act): *'This Act shall apply to all data control and data processing activities undertaken in Hungary relating to the data of natural persons as well as data of public interest and data public on grounds of public interest.'*

Regarding the above mentioned provisions religious communities are data controllers under the scope of the Privacy Act. In connection with their religious activities they process personal data and special data based on religion or religious belief of congregations or other people being connected with them. Thus religious communities are entitled to processing of personal data for fulfilling their duties in accordance with the principles and guarantees of the Privacy Act.

In the course of data processing they have to pay special regard to the proper legal basis of data processing, to the principle of the purpose of data processing, to providing preliminary information to the data subject, as well as to the requirements of data security.

Statements of the Authority

1. The Authority maintains the terms of communiqué of the Commissioner for Data Protection issued in connection with the data processing of the 'Hungarian Church of Scientology' (http://81.183.229.204:51111/abi/index.php?menu=aktualis/allasfoglalasok/2006&dok=732_A_2005-14), assuming that there is no fundamental change in the practice of data processing activity of the 'Hungarian Church of Scientology'.

However, the Authority hereby adopts some additional amendments regarding that several changes of regulations, which have been issued from the time of the given communiqué to the present request.

2. The Hungarian Religious Association of Scientology was registered as an association by the Budapest Court of Justice on 19th July 2015, so it is regarded as a religious organization according to the Religious Act. The annex of the Act contains a list of the so called recognized churches. The Hungarian Church of Scientology can not be found on the list, although the title 'church' is still in use on the homepage of the organization (<http://www.scientology-budapest.org/>). Pursuing the statement of the Authority, the title of the religious organization is deceptive, which statement may count significant as the usage of title may have influence on the right to free decision of the members of the community.

3. In connection with the data processing of the religious organizations, - in specific about the questions asked in the request - the Privacy Act provides a regulation as follows:

a) According to (2) and (3) of Section 3 of the Privacy Act personal data mean any data relating to the data subject - in particular by reference to the name and identification number of the data subject or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity as well as conclusions drawn from the data in regard to the data subject. Personal data revealing racial origin or nationality, political opinions or any affiliation with political parties, religious or philosophical beliefs or trade-union membership, and personal data concerning sex life, health, pathological addictions and criminal record are special data.

According to (10) of Section 3 of the Privacy Act: *'data processing shall mean any operation or the totality of operations performed on the data, irrespective of the procedure applied, in particular, collecting, recording, registering, classifying, storing, modifying, using, querying, transferring, disclosing, synchronizing or connecting, blocking, deleting and destructing the data, as well as preventing their further use, taking photos, making audio or visual recordings as well as registering physical*

characteristics suitable for personal identification (such as fingerprints or palm prints, DNA samples, iris scans.'

b) The legal basis of data processing - as it is set out in Section 5 of the Privacy Act -, is either upon the consent of the data subject - in writing regarding to special data- or upon authorization derived from an act.

Pursuant to (7) of Section 3 of the Privacy Act. *'the consent shall mean any freely and expressly given specific and informed indication of the will of the data subject by which he signifies his agreement to personal data relating to him being processed fully or to the extent of specific operations.'*

c) The legality of data processing requires the consent of the data subject which shall be voluntary and well informed. The requirements of the preliminary information as it is laid down in the Privacy Act are as follows: (1) of Section 20 *'prior to data processing being initiated the data subject shall be informed whether his consent is required or processing is mandatory.*

Before processing operations are carried out the data subject shall be clearly and elaborately informed of all aspects concerning the procession of his personal data, such as the purpose for which his data is required and the legal basis, the person entitled to control the data and to carry out the processing, the duration of the proposed processing operation, if the data subject's personal data is processed in accordance with Subsection (5) of Section 6, and the persons to whom his data may be disclosed. Information shall also be provided on the data subject's rights and remedies.'

d) The data subject shall be entitled to the right of being informed, as pursuant to (1) of Section 15 of Privacy Act: *'Upon the data subject's request the data controller shall provide information concerning the data relating to him, including those processed by data processor on its behalf or according to his/her notice, the sources from where they were obtained, the purpose, grounds and duration of processing, the name and address of the data processor and on its activities relating to data processing and -if the personal data of the data subject is made available to others -the legal basis and the recipients'.*

Pursuant to (4)-(5) of Section 15 of the Privacy Act. *'(4) Data controllers must comply with requests for information without any delay, and provide the information requested in an intelligible form, in writing at the data subject's request, within not more than thirty days.'*

(5): The information prescribed in Subsection (4) shall be provided free of charge for any category of data once a year. Additional information concerning the same category of data may be subject to a charge. The amount of such charge may be fixed in an agreement between the parties. Where any payment is made in connection with data that was processed unlawfully, or the request led to rectification, it shall be refunded.'

e) According to point c) of Section 14 of the Privacy Act, the data subject shall have the right to deletion of personal data with the exception of mandatory data processing.

f) The condition of practicing the right to informational self-determination – and the most important guarantee as well - is being bound to purpose, as (1) and (2) of Section 4 of the Privacy Act prescribes:

'(1) Personal data may be processed only for specified and explicit purposes, where it is necessary for the exercising of certain rights and fulfilment of obligations. The purpose of processing must be satisfied in all stages of data processing operations: recording of personal data shall be done under the principle of lawfulness and fairness.

(2) The personal data processed must be essential for the purpose for which it was recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve its purpose.'

Thus the compilation of data which is not determined in advance and the piling of data with the intention of further use in the future may be regarded as aimless and accumulative, so it shall infringe the right to informational self-determination.

g) Besides providing information a significant principle is that the data controller has to ensure the exactness, completeness and – if it deemed necessary regarding the purpose of data processing - up-to-dateness of data. Moreover, the data subject shall be identifiable no longer than is necessary for the purposes for which the data were recorded. ((4) of Section of the Privacy Act)

Summarizing the above mentioned provisions, it can be declared that being derived from the conventional content of the right to freedom of religion, the data processing in direct connection with practicing religion may be based exclusively on the voluntary consent provided by the data subject.

A person connected with a religious organization or with any branch of the organization may exclusively determine on his/her personal data. Personal data of other people may be controlled only upon the consent of the data subjects, as long as the data subjects have been prior properly informed. In case of personal data transfer to the religious organization without having the necessary consent from the data subject entails civil or even criminal liability.

According to the rules of the Privacy Act, the data subject is entitled to request information on his personal data being processed by the religious organization (including on his data found in the folder pursuant to the consultation request) and is also entitled to be acquainted with it. The data subject shall have the right to have a look in his so called pre-clear (pc) dossiers and folders written about his physical and mental advancement and he may also request for copies of documents containing personal records and remarks.

Accomplishing the request for deletion of personal and special data and for destruction of the data carrier is extraordinarily important, since the pc and folders with remarks contain several religious thus sensitive data which need an increased level of data protection.

The right to freedom of religion ensures the right of the individual to make free decisions about leaving his previous denomination and – as it derives from the right to self-determination - to make decisions about his data reflecting his religious belief or about any of his special data.

The religious organization might be released of its obligation of fulfilling the request of deletion based on the legal limitations laid down in (3) of Section 17 (protection of archive materials) and on section 19 of the Privacy Act.

In addition it can be mentioned that the unconditional and irrevocable declaration of disclaimer may not be regarded as a valid statement from the point of personal data protection.

4. Answering your questions – having regard to the above mentioned restrictions – I inform you as follows:

a) Issuance of folders

Data recorded in folders (i.e. personnel management, ethical folders, pc folders) being handled by religious organizations are qualified as personal and special data. All members of the religious organization as well as persons leaving the organization are entitled to be informed about the processing of their personal and special data and they may request for deletion (with the exception when the requirement of erasure does not apply).

The data subject may have request for information about the processing of personal and special data kept in folders. According to (5) of Section 15 of the Privacy Act the information shall be provided free of charge for any category of data once a year.

The data subject (the believer) is entitled to have request for rectification, deletion, objection and blocking of his personal data. The Authority shall accept the notary public's declaration for confirming the deletion of data. In case the religious organization declares that the folder containing personal data has been deleted or destroyed, the data subject may ask for the notary public's declaration as a confirmation.

In case the religious organization provides not reliable information on the destruction of the folders the withdrawing member of the church may ask for the confirmation of deletion approved by the notary or he may turn to court according to (1) of Section 22 of the Privacy Act (in the event of any infringement of his rights, the data subject as well as the data recipient may turn to court action against the data controller).

Upon the data subject's request the religious organization may give out the ex-employees' labour contracts. The Authority states that refusal shall not be reasoned upon the prohibition of communication with ex-colleagues.

One of your question was whether the religious organization may order its co-workers to fill in the list of '*query of life story*'. Keeping in mind that the organization is not empowered by the law to process a query like that, the processing of such personal and special data is allowed exclusively upon the consent of the data subject. Consequently, the data subject must voluntarily decide whether he fills in the list of

'query of life story' or not, and whether he gives consent to data processing or not. It is important to mention that the data subject must be informed prior to the data recording according to Section 20 of the Privacy Act.

b) Ethical folders, the pc folder and confessional secret

Your question was about whether the religious organization may keep an ethical folder on the member's misbehavior and offences, including also the so called 'cognizance reports' and the 'confessions'. This question is not within the jurisdiction of the Authority.

Confessional secret is one of the basic factors of the data processing of the religious organization, from which the subsection 13/A of the Religious Act prescribes as follows: church personnel shall not be obliged to disclose the information affecting personality rights to public authorities which they become aware of in the course of their faith-related service. Accordingly, it can be ascertainable that confessional secret is a predominating factor in the practice of the Hungarian Religious Association of Scientology.

(1) of Article 7 of the Fundamental Law declares also the negative aspect of the freedom of religion so as that everybody shall have the right to abstain from manifesting his or her religion (the same declaration can be found in (2) of Section 1 of the Religious Act). The right of the believer to request the deletion of personal data based upon point (c) of section 14 of the Privacy Act can be restricted by other acts such as exceptions relating to archive materials and purposes of religious belief.

Referring to point 2 of the Statement of the Authority the data subject, when leaving the religious organization, may request for information about the data processing of his personal data to be found either in ethical or in pc folders.

c) Financial folder

Pursuant to (2) of 9/A Section of the Religious Act the rules pertaining to associations apply to religious associations.

Subsection 19/A of the Religious Act states as follows: *'the revenues of religious communities with legal personality shall consist primarily of the donations and other contributions of natural persons, legal persons and organizations without legal personality, as well as from the profit of such revenues.'*

Subsection (2) 'Religious communities with legal personality and internal ecclesiastical legal persons may collect donations.'

Subsection (3) 'Religious communities with legal personality may receive funding, as specified in statutory regulations, from budgetary sub-systems, programs financed from EU funds or on the basis of international agreements, by way of application or outside the system of applications, on the basis of a specific decision.'

Pursuant to 6 (b) of Section 2 of the Act CLXXV of 2011 on the Freedom of Association, on Public-benefit Status and the Activities of and Support for Civil Society Organizations (hereafter: Civil Society Act), an association registered in Hungary is a civil society organization. The religious organization has been registered with the name of Hungarian Religious Association of Scientology by the Budapest Court of Justice, thus it is considered as a non-governmental (civil) organization.

Pursuant to (1) of Section 30 of Civil Society Act the civil organization is obliged to deposit and publish its approved financial report, its public-benefit status report and - in the case of statutory audit - an independent auditor's report containing an audit certificate or a qualified audit certificate - by the last day of the fifth month following the balance sheet date of the financial year in question. Where statutory audit is required, the financial report deposited shall be of the same form and content (text) as the one examined by the auditor.

According to (4) of Section 30 of the Civil Society Act: *'if the civil society organization has its own website, the obligation of publication applies to having the financial report and the public-benefit status report posted on the website as well. The civil society organization shall provide uninterrupted access to the data posted on its website until the publication of information relating to the second financial year following the date of publication.'*

Pursuant to (1) and (2) of Section 2 of Government Decree 350/2011 (XII. 30.) on the Financial Management of Civil Society Organizations, on Fundraising Activities and Public-Benefit Status, (hereinafter referred as: the Government Decree) *'the civil society organizations shall keep the public informed concerning their activities on a regular basis, at least once a year.'* (2) *Civil society organizations shall use their normal means of communication - such as their website or newsletter - to inform the public on their activities, and on the appropriation of donations. Such disclosures shall contain additional information in addition to the executive summary to be submitted for the public registers.'*

(1) to (3) of the Government Decree regulate the donation as follows: (1) *Donation is voluntary. Soliciting donations may not be performed by causing any disturbance to others. Disturbance shall, in particular, mean when the person asked to make a donation is approached repeatedly despite of his express refusal.* (2) *The beneficiary shall inform the benefactor on the objective of soliciting donations, including the appropriation of donations if the benefactor is known.* (3) *The appropriation of donations and giving account thereof shall be carried out in due observation of the requirements of transparency and publicity. To this end, the beneficiary shall give account of the appropriation of donations by way of the means specified in (2) of Section 2.*

The above mentioned provisions mean that a civil society organization is obliged to provide an account to be shown also on its webpage and to provide information about the usage of the donations. Besides a civil society organization - upon request - is obliged to give information about its incomes derived from an ex-member. The Authority's opinion is that the civil society organization may not find excuse and refer to religious rules of forbidden communication with ex-members being bad terms with

them with the consequence of refusing providing information about their paid-in accounts.

d) About the e-meter

The Data Protection Commissioner has already mentioned in his referred communiqué - primarily based on the examination of e-meter being used in the Hungarian Church of Scientology - that the audit itself is a communication process in which the cleric of the religious organization asks various questions and the person's responses are recorded. Every question has a mental meaning which causes physiological changes - resistance of skin - on the body. The e-meter measures the mental condition and its changes of the individual, and from these data a person with adequate qualification (the cleric) draws conclusions to the mental condition of the individual, in particular to psychological troubles or conflicts.

The e-meter pro or contra confirms the responses in the communication process.

The e-meter and the process of audit together provide personal data of the individual as some of these data are provided directly by the individuals and some data are constituted by the e-meter for the cleric. The information being transmitted by the e-meter mark psychical traumas that are often obscured for the individual himself.

I inform you that evaluation of the e-meter as lie detector falls outside the competence of the Authority. However, the Authority maintains the statements of the Commissioner's communiqué. The expertise of the Chief Criminal Department of the National Detective Bureau, issued on 26 September 2002, declares that the e-meter-regarding the operational technology can be comparable with devices that are used to ascertain truth and falsehood in response considering skin conductivity. Moreover, the gained information through the usage of such device might be such that the individual could not speak about or was not willing to share with. However, such unethical aim for using the device can not be closed out. It would be necessary to learn all the questions and questioning structures, as well as the investigating procedures to establish a well-founded opinion.

Confirming that the usage of e-meter as a lie-detector is not only a theoretical option, the expertise describes some extracts from the work *'Introduction to scientology ethics'* published by L. Ron Hubbard. He says that using the e-meter test is a controlling activity performed by the Ethical Officer who may ask questions to some colleagues in order to gain information about concrete cases, events or situations.

As for the current investigation an expertise issued by The Criminal Department of National Detective Bureau on 30th March 2006 states as follows: if a person is being controlled by using a questionnaire along with polygraphic method, namely considering skin conductivity and thus ascertaining conclusions of reliability of the

controlled person, this procedure is a deception detection, regardless of the original purpose for what the e-meter was invented to or what the user's declared aim is.

The questionnaire with short 'yes-no' responses follows the common method of lie-detecting. However, the omission of verbal responses would not change the procedure since physiological counter-responses matter only.

The question of utility of the e-meter as a lie-detector falls outside the scope of our examination.

e) About the video-recordings of audit sessions and therapy-conversations

Pursuant to (2) of Section 3 of the Privacy Act all records are personal data as these may be connected to the data subject. The Authority's Statements (point nr. 2.) are evidently apply to video-recordings.

Extremely important is that since the religious organization is not empowered by any law to make video recordings about the sessions a free and voluntary consent of the data subject is necessary to do so. According the subsection of Section 2:48 of Act V of 2013 on Civil Code as well, image or audio-recording shall be done and used only with the consent of the data subject.

Additionally, according to Section 20 of the Privacy Act it is essential that the data subject must be well-informed prior to the data processing.

For special data recorded the Authority only accepts the data subject' consent in written.

The data subject may ask for the deletion of video-records. The further processing and storing of video records indicate additional questions on the grounds of data protection.

According to the view of the Authority, records about the sessions including conversations with the aim to reveal the privacy of the individual and so accompanying with intense, uncontrollable emotional reactions may even be regarded as serious lie-detection.

5. The Authority states that the remarks on the webpage (<http://www.scientology-budapest.org/>) of 'privacy notice', 'terms of use' or 'legal notice' are only accessible in English but not in Hungarian language. That makes impossible for a data subject, who wishes to join the community without speaking any foreign language to be informed properly about his personal and expressly about his special data in advance.

Should you have any further questions in data protection or freedom of information matters, please, do not hesitate to contact the Authority.

Budapest, 12 October, 2015

Yours sincerely,

Dr. Attila Péterfalvi