



Twinning project “Implementation of the best European practices with the aim of strengthening the institutional capacity of the apparatus of the Ukrainian Parliament Commissioner for human rights to protect human rights and freedoms (apparatus)”
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Activity 2.1.4. Developing new or improving the existing methodologies and procedures to carry out a monitoring of the observance of human rights, ensuring activities of the Ombudsperson in preventing such violations

Document	Guidelines on the Procedure of Giving Methodological Advises/Consultations on Data Protection
Short description of the document	<p>These Guidelines offer the order for the provision of consultations on the protection of personal data in the Apparatus of the Ukrainian Parliament Commissioner for Human Rights. They are designed to apply when providing consultations to data subjects, data controllers and processors (other than representatives of mass media) by phone, by e-mail or in person within the Apparatus.</p> <p>These Guidelines could be a basis and a model for an internal document to be approved by the Commissioner. Seeking transparency, it would be recommended to make the Guidelines available on the website of the Commissioner.</p>
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GUIDELINES ON THE PROCEDURE OF GIVING METHODOLOGICAL ADVISES/CONSULTATIONS ON DATA PROTECTION

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I. GENERAL PROVISIONS

1. The Guidelines on the procedure of giving methodological advises/consultations on data protection (hereinafter – Guidelines) provide for the order for the provision of consultations on the protection of personal data in the Apparatus of the Ukrainian Parliament Commissioner for Human Rights (hereinafter – the Apparatus. It applies when providing consultations to data subjects, data controllers and processors (other than representatives of mass media) by phone, by e-mail or in person within the Apparatus. The Guidelines do not apply when providing consultations by formal written answer, signed by authorized person of the Apparatus which is regulated by the procedure established by legal acts.

2. Definitions used in the Guidelines:

2.1. **consultation** – individual explanations, opinion provided by the employees of the Apparatus who are authorised to provide consultations to the applicants on the questions of the protection of personal data.

2.2. **employees of the Apparatus who are authorised to provide consultations / consulting employees** – employees of the Department of Personal Data Protection (hereinafter – the Department) of the Apparatus who are authorised to consult the applicants¹;

2.3. **consultation phone** – the phone number identified on the website of the Apparatus (<http://www.ombudsman.gov.ua>) which is dedicated to consult the applicants and which charges the regular connection fee²;

2.4. **applicant** – natural or legal person who approaches the Apparatus for consultation on the protection of personal data;

2.5. **inquiry** – the inquiry of the applicant to the Apparatus for provision of consultation in the area of the protection of personal data;

2.6. other concepts used in these Guidelines are understood as defined in the Law of Ukraine on Protection of Personal Data and other legal acts.

3. Inquiries to the Apparatus may be made by applicants by phone, upon the arrival to the Apparatus or by email.

4. The consultations to the applicants are provided in official state language. When the applicant is foreign institution, international organisation, natural or legal person, consultations can be provided in other language (which is understood by the consulting employee and the applicant).

¹ It is recommended that consultations would be provided by the employees of one unit.

² It is recommended to identify the separate phone number on the website of the Apparatus that would be used only for the consultations.

5. The employees of the Apparatus who are authorised to provide consultations take steps to ensure the coherent consultations of high quality. For this purpose, they familiarise themselves with:

5.1. legal acts regulating the activities of the Apparatus and data protection;

5.2. court practice in the respective area;

5.3. practice of analysing claims;

5.4. frequently asked questions and answers that are published on the website of the Apparatus in the section “FAQs”³ (sample FAQs (Frequently Asked Questions) are provided in the Annex 1);

5.5. other relevant information.

6. The consultation provided to the applicant is to be seen as an opinion of the employee of the Apparatus who is authorised to provide consultations and who has specific expertise in the field of data protection. The official position of the Apparatus is provided through written consultations in line with the laws of Ukraine and is signed by the authorised representative of the Apparatus.

7. The employee of the Apparatus who is authorised to provide consultations provides information of general character which is not directly linked to the personal data of the applicant or any third person. However, such personal data if received should be treated confidentially.

8. The employee of the Apparatus who is authorised to provide consultations is not entitled on its own initiative or upon the request of an applicant to state that in certain specific case discussed with an applicant there exists or does not exist a breach of laws. In case of an inquiry regarding possible breach of laws or other legal acts, the applicant should be referred to the Apparatus (if it is within its competence) or other institution/body and be informed of his/her right to submit a claim.

II. PROVISION OF CONSULTATIONS BY PHONE

9. Data subjects, data controllers and processors, as well as other persons have a right to receive consultations by phone without identifying themselves (i.e. without specifying name and surname if the person is a natural person, or without specifying the name if the person is a legal person).

10. The applicant, having called the consultation phone, is connected with employee of the Apparatus who is authorised to provide consultations.

³ It is recommended on the website of the Apparatus to create a section “FAQs” under the “Personal Data Protection”.

11. Only employees of the Apparatus who are authorised to provide consultations may reply to inquiries.

12. When consulting, the employee of the Apparatus who is authorised to provide consultations must comply with the following requirements:

12.1. to pick up the phone before the third ring (advisable);

12.2. present himself/herself by saying the name of Apparatus and his/her name and surname;

12.3. listen carefully and request a wider explanation of the question if necessary (if necessary, repeat the question in other words to make sure the question was understood correctly);

12.4. to provide a clear and precise answer to questions, supporting an explanation or opinion with references to legal provisions, or to indicate the authority (its address and/or electronic contact details) to which the person should apply if the Apparatus is not competent to provide a consultation on the questions of the applicant;

12.5. speak calmly and politely say goodbye.

13. Consultation by phone should be provided immediately, unless additional information is required for it.

14. If the employee of the Apparatus who is authorised to provide consultations asks the applicant to wait until he/she clarifies some information which is needed to answer the question, and the applicant agrees to wait, then the consulting employee, if the technical specifications of the equipment allow so, should press the phone button 'hold' (so that the applicant hears music or silence), otherwise, she/he should do his best in ensuring the silence (so that the applicant would not hear talks/discussions/laugh or other sounds from the consulting employee or its colleagues). If more time is needed to answer the question of the applicant, the inquiry should be answered in line with paragraph 15 of the Guidelines.

15. If there is no possibility to provide consultation immediately since, for example, additional information from other Departments of Apparatus is needed for consultation, or additional analysis or data collection is required, the consulting employee should inform the applicant about this and ask him/her to provide a contact number and agree to call back not later than within 5 days, or to suggest to submit the inquiry by email to mailbox hotline@ombudsman.gov.ua or in written (informing about the deadlines for the consultations) or to suggest to come to the Apparatus for consultation in person.

16. An applicant (with his/her consent) may be transferred to another employee of the Apparatus who is authorised to provide consultations if the latter is competent to provide an

explanation or has specific knowledge on the subject. The applicant should be informed why he/she is transferred to another consulting employee.

17. If the applicant is not satisfied with the consultation received, consulting employee informs the applicant about the right to apply to the Apparatus in other ways (by e-mail, in writing, in person).

18. The consulting employee closes the conversation when the applicant receives the consultation, and says goodbye.

19. If the applicant is insulting a consulting employee, threatens him/her, or the person's behaviour raises reasonable concerns that the person is intoxicated with alcohol, narcotic, psychotropic or other substances, and therefore there is no possibility of properly consulting such person, the consulting employee warns such applicant that the consultation may be interrupted and, if necessary, terminates the conversation.

III. PROVISION OF CONSULTATIONS BY EMAIL

20. The employees of the Apparatus who are authorised to provide consultations respond to the inquiries by e-mail in cases where the inquiries on personal data related issues are submitted to the Apparatus to an electronic mailbox specifically dedicated for consultations⁴.

21. In case the employee of the Apparatus who is authorised to provide consultations receives an inquiry to his/her email account, such employee forwards the email to electronic mailbox dedicated for consultations. Then the email is answered by an employee having less workload.

22. The inquiries received to the electronic mailbox dedicated for consultations are assigned to the employees of the Apparatus who are authorised to provide consultations by an authorised person of the Department.

23. If the email received to mailbox specifically dedicated for consultations is complicated and additional analysis or data collection is required to answer it, the consulting employee not later than within 5 days from the date of receipt of the inquiry should inform thereof the applicant and suggest an applicant to submit the inquiry by email to hotline@ombudsman.gov.ua or in written.

24. In cases where a conflict of public and private interest may arise, the employee of the Apparatus who is assigned to answer the inquiry should withdraw himself/herself from the handling of inquiry or this particular inquiry should be removed from his/her tasks by the head of unit.

⁴ This would be a different email than mailbox hotline@ombudsman.gov.ua. The requests received in mailbox hotline@ombudsman.gov.ua are formally registered and answered in a formal way. It is suggested that an additional mailbox for consultations is created which is meant for those asking for informal advice.

25. Inquiries are handled if they fall under the competence of the Apparatus. If the Apparatus is not authorized to provide consultations on the question submitted in the inquiry, the inquiry shall be forwarded by the consulting employee to another competent authority not later than within 5 days⁵ from the date of receipt of the inquiry. The applicant should be informed thereof setting out the reasons.

26. The Apparatus does not repeatedly deal with an inquiry which is received from the same person on the same issue that has already been examined by the Apparatus and an answer was provided, or if it turns out that the court has ruled on this matter. It should only be repeatedly analysed if new circumstances are indicated or additional arguments are presented which cast doubts on the validity of the previous answer. If the repeated inquiry is not examined, within 5 working days⁶ from the date of receipt of the repeated inquiry in the Apparatus, the consulting employee informs the person about the reasons for non-examination.

27. If within one month several inquiries are received from the same person with similar content by email, only one answer is prepared and it should state that it covers all the inquiries submitted. In this case, for the provision of the consultation the time limit of one month from the date of receipt of the first inquiry applies⁷.

28. The inquiry for consultation which is within the competence of the Apparatus, shall be examined and the consultation shall be provided to the respondent by e-mail not later than within one month from the date of receipt of the inquiry in the Apparatus⁸. In case the applicant identifies compelling reasons why the time limit of one month is too long, the consultation is prepared and sent by e-mail within the deadline suggested by the respondent, but not earlier than within 5 working days.

29. If an applicant, having received an answer to his/her request submits a clarifying request, the consultation shall be provided to the respondent by e-mail not later than within one month from the date of receipt of the clarifying request in the Apparatus⁹.

30. Consultations by e-mail are provided by sending an e-mail in the form set out in the Annex 2, in the subject of the e-mail message indicating "Reply to your inquiry".

31. When consulting by email, the consulting employee shall provide an explicit and precise answer to the questions and to justify his/her opinion by provisions of law. If the consulting employee does not know how to answer the question, or if he/she is not sure of the correctness of the answer, he/she must contact the head of unit. On the proposal of the head of

⁵ In case the laws set specific time limits, such specific time limits should be followed.

⁶ In case the laws set specific time limits, such specific time limits should be followed.

⁷ In case the laws set specific time limits, such specific time limits should be followed.

⁸ In case the laws set specific time limits, such specific time limits should be followed.

⁹ In case the laws set specific time limits, such specific time limits should be followed.

unit, the question submitted in the inquiry may be discussed with the head of the Department or management of the Apparatus.

32. The consultation shall be sent to the email address from which the inquiry was received or to another email address identified in the inquiry.

IV. PROVISION OF CONSULTATIONS IN PERSON UPON ARRIVAL TO THE APPARATUS

33. If a person arrives to the Apparatus to receive in person a consultation on personal data, an employee of the Department who is authorised to provide consultations shall be called.

34. Consultations in person upon arrival to the Apparatus are provided if the inquiry can be dealt with no delay. If an inquiry cannot be answered immediately (additional information from other units of the Department is needed for it, additional details should be clarified, etc.), the consulting employee should suggest an applicant to submit the inquiry by email to mailbox hotline@ombudsman.gov.ua or in written (informing about the deadlines for the consultations) or to ask the applicant to provide contact details (phone number or an email). In this case, the consulting employee should provide the consultation to the applicant to the contact details given not later than within 5 days¹⁰.

35. In cases where the behaviour of the applicant who seeks consultation in person is inadequate or has obvious indications of a criminal violation or administrative offence, or if a person's inquiry is based on manifestly inaccurate facts or when the consulting employee is unable to understand the content of the inquiry, the consulting employee shall have the right not to serve this person and must immediately report this to the head of unit. Upon the decision of the head of the Apparatus, behaviour of the applicant which has indications of a criminal violation or administrative offence might be reported to the competent institutions.

36. When a person arrives to the Apparatus to receive consultations in person, he/she is consulted in the official state language. If an applicant does not know the official state language, and there is no employee of the Department who is authorised to provide consultations and who knows the language used by the applicant, or when due to a sensory or speech disorder a person cannot reasonably express his/her thoughts, a person who could provide interpretation (interpreter) should be present. The interpreter should be invited on the initiative of the applicant.

37. When providing consultations in person, the consulting employee should present himself/herself and to follow the requirements set in paragraphs 12.3–12.5 of these Guidelines.

¹⁰ In case the laws set specific time limits, such specific time limits should be followed.

V. FINAL PROVISIONS

38. The consulting employee notes the fact of consultation in the Register of Consultations on Data Protection¹¹, which is kept in electronic format (e.g. Excel sheet).

39. If the applicant notifies of a potential breach of laws or regulations relating to the protection of personal data, and the consulting employee considers that the information provided by the applicant is important, the consulting employee shall inform the head of unit and, if necessary, other senior persons. If necessary, the consulting employee shall provide the information received by filing a report.

40. If an employee of the Apparatus who is authorised to provide consultations observes that certain inquiries appear frequently, he/she suggest the head of the Department to prepare and publish such question with answer on the website of the Apparatus in the section “FAQs”.

¹¹ It is recommended that the consultations provided by the consulting employees of the Apparatus would be recorded in an electronic register which would note: the date of the consultation, the method of the consultation (by phone, by email, in person), the topic of the consultation, the consulting employee and other relevant information.

**Sample FAQ's (Frequently Asked Questions) to be added to the website of the
 Apparatus**

<p>What constitutes personal data?</p>	<p>Personal data refers to any information related to a natural person or 'data subject', that can be used to directly or indirectly identify the person. It can be anything from a name, personal ID number, a photo, telephone number, an email address, bank details, social networking websites, medical information, or a computer IP address and much more.</p>
<p>What is the difference between a data processor and a data controller?</p>	<p>A data controller is in general the entity that determines the purposes, conditions and means of the processing of personal data. Under the Law of Ukraine on Protection of Personal Data the controller of personal data' means a natural or a legal person that decides what should be the purpose of the personal data processing, what personal data should be stored and what processing operations should be applied to them, unless otherwise stipulated by the law.</p> <p>The data processor refers to an entity which processes personal data on behalf of the controller. Under the Law of Ukraine on Protection of Personal Data 'processor of personal data' means a natural person or legal entity that obtained the right to process such data on behalf of the controller of personal data or according to the law.</p>
<p>Is the sound recording and images/videos</p>	<p>Law of Ukraine on Protection of Personal Data in its Article 2 defines 'personal data' as information or aggregate information about a natural person who is identified or may be identified.</p>

¹² The FAQ's suggested here should be only seen as a sample list. The Apparatus could regularly update them with the questions that frequently appear in the practice of the Apparatus

<p>captured by cameras considered as personal data?</p>	<p>A human voice recorded in a sound recording would be considered as personal data if it allows to identify a person, i.e. if the sound recording is sufficiently clear (with high sound quality) to identify a particular person. An example could be the voice of the client who provides instructions to the bank which is recorded.</p> <p>Similarly, with visual data, images and videos captured by cameras are considered as personal data if the image is clear (bright, high-quality, taken with sufficient distance to distinguish objects) and allows to identify a particular person.</p> <p>It should be noted that if the goal of image/video surveillance is to identify the identity of the people (one, few or all) appearing in the image/video, such surveillance in any case should be considered as processing of personal data, even if there is practically no possibility to identify some of the people appearing. It is also worth noting that a person could be identified not only by a clear audio, image or video, but also by additional information such as the time of the recording of the call, the telephone number, the manner of speaking (a certain dialect, speaking disorder, etc.), etc.</p>
<p>How could the data controller enforce the right of the data subject to access his/her personal data, without interfering to the right of third parties to privacy?</p>	<p>State and municipal institutions as well as private companies often raise question about implementation of the data subject's right of access to his/her personal data in situations where the data subjects request to provide copies of documents (certificates confirming legal facts, copies of employment or redundancy orders, etc.) that contain not only the applicant's personal data, but also personal data of third parties, such as name, surname, personal identification number or other information identifying a person.</p> <p>Sometimes data controllers, when implementing the data subject's right of access to their personal data, forget about the right of third parties to their private life. However, they are required to ensure it, and should take measures to prevent the disclosure of such data.</p> <p>In order not to infringe the right of third persons to their private life, when ensuring the right of a person to access to his/her</p>

	<p>personal data, only data related to that particular person should be made available. Therefore, when copies of documents are provided they should be de-personified, for example, by hiding the personal data of third-persons (using black markers, or making extracts from these documents instead of providing them in full).</p>
<p>On its website, a school wants publish photographs of all teachers and students. Can they do this?</p>	<p>Photographs constitute personal data so a school must get consent from all the individuals concerned before displaying their photographs. Consent could, for example, be obtained by asking students and staff to supply photographs and informing them at the point of collection exactly how the photographs are to be used. In case an individual objects to the display of his/her photograph then it must be removed.</p>
<p>Are energy meter readings personal data?</p>	<p>Law of Ukraine on Protection of Personal Data in its Article 2 defines ‘personal data’ as information or aggregate information about a natural person who is identified or may be identified.</p> <p>The data of separate energy meters in apartment buildings are to be considered as data which should be processed in line with Law on Protection of Personal Data.</p> <p>It should be noted that on 4 April 2011 the Working Party set up under Article 29 of EU Directive 95/46/EC issued Opinion 12/2011 on smart metering (http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2011/wp183_en.pdf). It acknowledges that smart meters allow for the generation, transmission and analysis of data relating to consumers, much more than is possible with a ‘traditional’ or ‘dumb’ meter. The data generated by smart meters is in most cases associated with unique identifiers such as a meter identification number. For domestic consumers of energy suppliers, this identifier is inextricably linked with the living individual who is responsible for the account. In other words, the device enables that individual to be singled out from other consumers.</p>

Annex 2 to the Guidelines on the
Procedure of Giving Methodological
Advises/Consultations on Data
Protection¹³

Standard form of an email to be used in consultations

Good afternoon,

In accordance with the paragraph 6 of the Guidelines on the Procedure of Giving Methodological Advises/Consultations on Data Protection, which was approved on [__date__] by the order No. [____], the consultation by email is to be seen as an opinion of the employee of the Apparatus who is authorised to provide consultations and who has specific expertise in the field of data protection.

(the text of the consultation)

In case of additional questions, we kindly invite you to contact the Apparatus by phone: [_____] ¹⁴.

Sincerely

(the name and surname of the consulting employee)

(position of the consulting employee)

(contact information of the consulting employee (phone number, email))

(Copied inquiry (without corrections))

¹³ It is recommended that standard form is used when consulting by email.

¹⁴ It is recommended to identify the separate phone number on the website of the Apparatus that would be used only for the consultations.