

DATA ANALYTICS & PRIVACY 2021-22 EXAM

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LOOKING FURTHER

RULES FOR TODAY

We discuss the exam and the way to answer this. We do not discuss the points you received for the exam.

QUESTION A

You are the data protection officer of a school in Amsterdam. This school is working with a software program known as Magister, which allows schools to register and publish grades and make these accessible to parents. Moreover, schools can choose to tailor this program to the individual needs of the school. They also keep a record of individual behaviour related to extracurricular activities which are deemed favourable for being a good student. Membership and accomplishments of the debating club, publications for the school newspaper, taking part in the school choir, membership and accomplishments of the rowing team, membership and accomplishments of the chess team. The overarching and stated purpose of the school is to keep records on the progression of its students for teachers and parents. The processing is based on Article 23 of the Law on Higher Education (LHE) which provides:

- (1) 'Schools are allowed to keep records on their students to monitor their progress.'
- a. Does this processing scheme meet the requirement of purpose specification? (10 points, 100 words max)

ANSWER A

- a. Purpose specification means the data has to be collected for a specified, explicit and legitimate purpose, see Article 5(1)(b) GDPR. (2p)

Two answers are possible, both for 8p.

The stated purpose of the processing is 'to keep records on the progression of its students for teachers and parents'.

1. It is specific, because it allows to differentiate between which data is allowed to be processed and which is not. Moreover, the purpose is made explicit and related to the task of the school (if this is not included it doesn't cost points).
2. It is not specific, because the word 'progress' is too general. Since the school's task only relates to the teaching of certain skills, this should be reflected in the stated purpose.

QUESTION AND ANSWER B

b. Does this processing scheme meet the requirement for data minimisation? (10 points, 100 words max)

Data minimisation means the data processed should be adequate, relevant and limited to what is necessary in relation to the purpose, see Article 5(1)(c) GDPR. (2p)

Two answers are possible, both for 8p:

The data processed concerns grades as well as extracurricular activities considered favourable for being a good student.

1. The data which is processed is clearly limited to the purpose and is necessary to show the progress of the student.
2. The data processed exceeds what is necessary to keep records of the progress of the students, because only grades are necessary for this. It is unclear why data on extracurricular activities such as playing chess or even the fact a student writes for the school newspaper is relevant.

Some of the university studies in the Netherlands work on the basis of 'competitive admissions'. This means that not all students who apply for the study will get in and the university will have to make a choice on which students it will accept and which it will refuse. For many years this was only decided on the basis of grades.

Ms. M is the head of the data analytics unit of University A. Due to a recent rise in the numbers of students falling out in the first year of the studies which work with competitive admissions, she is looking for ways to distinguish even better between suitable candidates. She recently read a sociological research which found that school grades are not the only factor determining the chances for success of university students. Another factor is the presence of extracurricular activities and additionally the levels of success attained by students.

QUESTION C

c. Ms. M advises University A to use data on extracurricular activities in the selection process of the students. She advises to inform the potential future students that the stated purpose is to select suitable candidates for the study. Also students are informed that the data is only used for the selection process and it will be immediately deleted after the decision. She claims that the school is allowed to share this data with the University, because this further processing is compatible according to the system of the GDPR. Argue whether you agree or disagree. (20 points, 150 words max)

ANSWER C

The school will share the data with the University which implies there is further processing of data which is compatible. Further processing which is compatible is allowed under Article 5(1)(b) and 6(4) GDPR. Article 6(4) GDPR provides 5 factors to test the compatibility of the further processing:(5p)

- a. The original purpose is 'to keep records on the progression of its students for teachers and parents' and the new purpose is 'to select suitable candidates for the study' i.e. a selection procedure. Even though both purposes relate to education and there is a link, the link due to the involvement of data on extracurricular activities is loose. (2p)
- b. The context in which the data was collected was high school, in which the student does not have a choice on this. The fact that it is up to the school whether they collect data on extracurricular activities also introduces an arbitrary aspect to the context. (2p)
- c. The data is about grades, which reflect an assessment of personal skills. This can be seen as sensitive data. (2p)
- d. The possible consequence of the further processing is either acceptance or refusal of the student. These are major consequences for a person's life. (2p)
- e. There are safeguards against further processing of the data which was further processed in the first place, because after the selection process the data will be deleted. This won't help the students whose data has been processed though. (2p)

All factors taken together the further processing cannot be considered compatible. (5p)

CONTINUATION OF C

An alternative answer is possible. You could argue the opposite of the points above and claim that the processing is compatible. Points are awarded for the reference to the right provisions, the quality of the arguments and the conclusion.

QUESTION AND ANSWER D

d. The selection of the students will take place on an automated basis. Explain whether this is allowed according to the GDPR and under what conditions? (30 points, 250 words max)

Selection on an automated basis means there will be automated decision-making. Whether somebody will be selected or not will affect the right of a person to follow this specific study. Even when you would say this decision does not produce a legal effect, it does similarly significantly affect a person. 10(p) Therefore Article 22 GDPR is applicable (5p).

The processing therefore has to be based on one of the three grounds in Article 22(2) GDPR. The processing could be based on ground (a), because it could be claimed that it is necessary for the University to enter into a contract with the student. Consent under (c) is not suitable, because the student cannot freely decide to refuse consent. (5p)

The conditions under which processing is allowed can be found under Article 22(c) GDPR which concern at least 'the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision'. (5p)

Also information should be given to the student including meaningful information about the logic involved, see Article 14(2)(g) GDPR (5p).