

International Baccalaureate Organization
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SWITZERLAND

Sent by email to privacy@ibo.org

IMI Case Rep. reference
N/A

Our reference
20/03087-2/TJU

Date
20.07.2020

Order to provide information – International Baccalaureate Organization – Awarding model and grading system

Background

The Norwegian Data Protection Authority (“NO DPA”) is aware that due to the ongoing pandemic, the International Baccalaureate Organization (“IBO”) decided to revise its awarding model for International Baccalaureate (“IB”) students graduating in 2020. The new awarding model has created controversy in Norway, and it has led to several reports by the Norwegian media regarding students who believe that their final grades do not accurately reflect their academic achievements. The NO DPA has received several inquiries concerning this issue.

The awarding model may potentially raise issues in relation to the General Data Protection Regulation (“GDPR”). We are therefore ordering you to provide more information regarding the model, as specified below.

Our competence

The NO DPA considers that grades and academic results of individuals constitute personal data pursuant to Article 4(1) GDPR.

It appears that the IBO has several establishments in the European Economic Area, and that the processing of IB students’ personal data takes place in the context of those establishments. We therefore consider that the GDPR is applicable to the processing in question pursuant to Article 3(1) GDPR.

The NO DPA is the supervisory authority established in line with Article 51(1) GDPR to monitor the application of the GDPR on the territory of the Kingdom of Norway. This follows from the Norwegian Personal Data Act Section 20. Pursuant to Article 58(1)(a), supervisory

authorities have the power to order controllers and processors to provide any information they require for the performance of their tasks.

IBO's privacy policy includes the contact details of IBO's headquarters in Switzerland. According to the IBO's website, the headquarters in Switzerland provides "legal and governance support", whereas the UK establishment manages "assessment".¹ It is not clear to us what managing assessment entails. In any case, we are addressing this letter to the Swiss establishment as we assume this is the (single or joint) controller and main establishment for the processing in question.

Since the main establishment is presumed to be located outside the EEA, regardless of whether cross-border processing is taking place pursuant to Article 4(23) GDPR, the NO DPA would be competent to pursue this matter in line with Article 55(1), since Article 56(1) would not be applicable.

Outline of potential issues

The NO DPA has taken note of the fact that the May 2020 awarding model is based on student coursework, teacher-delivered predicted grades as well as historical prediction data.² We are also aware that some students believe that this leads to unfair or incorrect assessments, especially in relation to historical prediction data. Using such data may lead to profiling in the sense that students are evaluated similarly to their peers of previous years although there invariably will be individual differences. The NO DPA has seen examples in the press that signify that this may indeed be the case.

Some have voiced concerns that the calculation of individual grades is an automated decision-making process. The reasoning is that although the input factors in part may consist of assessments made through human involvement, the calculation of the final grade itself appears to happen through a wholly automated process where there is no room for meaningful human assessment.

The NO DPA is aware that some students have requested access to their data as well as the logic behind the decision-making process, but that they are yet to obtain such access.

In line with Article 5(1)(a), (c), and (d) GDPR, personal data must be processed fairly, they must be adequate, relevant and limited to what is necessary in relation to their purpose, and they must be accurate.

All processing of personal data must have a legal basis in Article 6(1) GDPR. Automated decision-making as defined in Article 22(1) is nonetheless prohibited unless one of the exceptions of Article 22(2) applies and on the condition that there are suitable measures and

¹ <https://www.ibo.org/contact-the-ib/office-locations/>, accessed on 20 July 2020.

² <https://www.ibo.org/news/news-about-the-ib/awarding-may-2020-results-further-information/>, accessed on 20 July 2020.

safeguards in place in line with Article 22(3), such as the right to human intervention and to contest the decision.³

Data subjects have the right to information regarding how their personal data are processed as well as access to those data pursuant to Article 13–15. The right to access includes, *inter alia*, the right to receive meaningful information about the logic involved. Data subjects have the right to receive an answer to their access requests without undue delay pursuant to Article 12(3).

Order to provide information

Pursuant to Article 58(1)(a) GDPR, we hereby order the IBO to provide the following information:

1. Please describe the May 2020 awarding model, the input data, how the input data are weighted, and how the actual calculation takes place.
2. Please explain how you consider that the processing of IB students' grades is fair, in line with Article 5(1)(a) GDPR.
3. Please explain how you consider that the data used in the calculation of final grades are adequate, relevant and limited to what is necessary in relation to their purpose, in line with Article 5(1)(c) GDPR.
4. Please explain how you consider that the final grades of IB students are accurate, in line with Article 5(1)(d) GDPR.
5. Please explain whether you consider the process of awarding final grades as automated decision-making falling under Article 22 GDPR and why or why not that is the case.
6. If you consider that you are carrying out automated decision-making falling under Article 22 GDPR, please explain what your legal basis in Article 22(2) for doing so is, and please explain which measures and safeguards are in place, in line with Article 22(3).
7. Please explain how you have, in the context of calculating final grades for IB students graduating in 2020, complied with your informational duties as well as the duty to provide access to data subjects without undue delay.

Due to the importance and urgency of the matter, we ask that you provide your answers by email to tobias@datatilsynet.no by **Friday 24 July 2020 COB**.

³ See the Article 29 Working Party Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, which have been endorsed by the European Data Protection Board.

Pursuant to the Norwegian Public Administration Act Section 14, you have the right to appeal our order to provide information if you consider that you are not under an obligation or lawfully entitled to comply with it. The appeal must be lodged within **three days** of receiving this letter.

In line with the Norwegian Public Administration Act Section 48, we inform you that you may have a right to not answer questions or disclose documents or objects when the answer or the disclosure may subject you to an administrative sanction.

Kind regards

Tobias Judin
Head of International