

## Hvidovre Municipality's processing of information about children

Date: 21-11-2019

### Decision

#### Public authorities

The Danish Data Protection Agency has processed a complaint that Hvidovre Municipality processes information about children that relates to their well-being

Journal number: 2019-32-0550

### Summary

The Danish Data Protection Agency has processed a complaint from a citizen that Hvidovre Municipality - using the TOPI method - processes information about the person's children that relates to their well-being.

The Danish Data Protection Agency found that there was no basis for overriding Hvidovre Municipality's assessment that the municipality in accordance with the legislation to which the municipality had referred in the case, including the Day Care Act, has the task of promoting children's well-being, development and learning.

On that basis, the Danish Data Protection Agency found that the processing of the information in question in the case takes place within the framework of the Data Protection Regulation and the Data Protection Act.

It could not lead to another assessment that Hvidovre Municipality has chosen to use TOPI, as TOPI in the opinion of the Data Inspectorate must only be considered a methodological tool, which aims to support and systematize the municipality's work to promote children's well-being, development and learning.

### Decision

The Danish Data Protection Agency hereby returns to the case, where on 8 January 2019 you have contacted the Authority about Hvidovre Municipality's processing of information about your children.

The Danish Data Protection Agency has understood the inquiry as a complaint that Hvidovre Municipality processes information about your children in connection with the municipality's assessment of your children's well-being, including assessments made according to the TOPI method.

### Decision

Following a review of the case, the Danish Data Protection Agency finds that Hvidovre Municipality's processing of personal

data takes place within the framework of the Data Protection Act [1], section 7, subsection. Article 9 (4) of the Data Protection Regulation [2]. Article 6 (2) (g) and Article 6 (2) of the Regulation 1, letter e.

Below is a more detailed review of the case and a justification for the Danish Data Protection Agency's decision.

## 2. Case presentation

It appears from the case that Hvidovre Municipality processes information about your children's well-being. The information that Hvidovre Municipality collects in this connection is registered in Rambøll's IT system "Hjernen & Hjertet".

Furthermore, it appears from the case that Hvidovre Municipality has politically decided to use the TOPI method to assess children's well-being in the municipality.

The detection model - TOPI - consists of four methods that must support the early detection of children in an exposed position. The tracking model focuses on children's well-being and children's transitions to new institutions. The model must also support the professionals by providing opportunities for external professional sparring and the use of a dialogue model that will ensure effective meetings.

The purpose of the well-being assessment is to assess the well-being of all children and to detect any lack of well-being at an early stage in a problem development, so that early action can be initiated.

The well-being assessment is a systematic tool used to assess and make visible the child's well-being in relation to the context in which it finds itself. The work with the well-being assessment is divided into three steps. In each step, a form is completed:

1. The well-being form that each employee fills in on the children for whom he / she is responsible
2. Group form, where the children's well-being is discussed with colleagues
3. The parent interview form, which forms the basis for parent collaboration on children whose well-being one is concerned about.

It also appears from the case that you have had a correspondence with Hvidovre Municipality about the municipality's use of the TOPI method, and that the municipality i.a. in an email of April 26, 2018 has stated the following:

"TOPI stands for Early Detection and Effort, and is our common method of working systematically to support all children's well-being, development and learning.

TOPI is a model that has been developed jointly by a number of municipalities, the National Board of Health and Welfare and research institutions. It is used today in several Danish municipalities as a method to optimize the pedagogical practice and

efforts in relation to the well-being work that the day care services have always worked with - including examining the individual child's well-being from professional perspectives in dialogue with parents, and that ensure the involvement of parents and other relevant professionals when there is reason for even closer collaboration around the child.

TOPI is thus a method in our pedagogical work - and Ramboll's registration system "The Brain and the Heart" is the tool we use to ensure the systematics.

Below I will try to answer your questions:

How long are my children's registrations available in TOPI?

The registrations are available for 2 years. This has been decided in order to ensure that the pedagogical staff is aware of a progression in the child's development and well-being and intervenes with relevant support in cases where it proves necessary.

Who has in addition to e.g. the staff in the institution, access to my children's information, here I am thinking in particular of the 'handover' from e.g. kindergarten to school, but also under municipal auspices?

Only when you as parents have given consent to it, information is handed over to the SFO / school that your child must go to. Here they will be able to see the latest TOPI registration and will also receive a transition description that focuses on the child's resources and any challenges. . The parents are seen as a resource and equal partners and the transition form is completed in collaboration with the parents.

In the Center for Children and Families, system administrators (those who support the day care services in the use of the Brain and Heart) as well as educational consultants have access to the registrations. However, none of these functions relate to the registration of the individual child. There is a focus on ensuring the system's function, the correct use and having a focus on overall patterns in the municipality (for example, if a large proportion of children have motor difficulties), which calls for competence development of the pedagogical staff or other joint efforts at a general level. .

If I do not want you to test my children several times a year, what is the consequence? Including what significance does it have for me as a parent and my children, respectively?

It is important for us to emphasize that TOPI is not a test of the children, but a method that must help to ensure that the teaching staff systematically examines that all children are in well-being and development, and that in collaboration with parents and possibly other professionals, support is provided if there is a need (eg if a child has language difficulties).

TOPI is a pedagogical method and part of the work that the day care services according to the Day Care Services Act are obliged to carry out in relation to ensuring the children's development and well-being. Therefore, the well-being surveys will be a regular part of the work in the day care services. This means that your children will at all times be part of the day care's work to ensure the children's well-being and development. As a parent, however, you have the right to renounce that your children must be registered in "The Brain and the Heart".

The information that is collected using TOPI, where is it 'stored'?

The information is stored securely in Rambøll's database "The Brain and the Heart". The municipality and Rambøll are both obliged to comply with personal data legislation. ”

By e-mail of 3 May 2018 prompted by comments and questions from you, Hvidovre Municipality has also stated the following:

“We have chosen to use TOPI to ensure that all children's development, well-being and learning are supported. Experiences from other municipalities that have used the method over a number of years (for example Viborg), show that through TOPI you can track down children who need an extra effort that you would not otherwise have noticed.

As you write, we are currently in a start-up period, and we are constantly working to make it run as smoothly and time-savingly as possible. The day care leaders have been involved in the development of the implementation process from the start and are still part of the follow-up and steering groups, which focus on getting TOPI to run in the best possible way.

In relation to your two specific questions:

I refer to the fact that according to the Day Care Act, we have a duty to ensure focus on the well-being and development of all children, and that we have chosen TOPI as the pedagogical method for this.

If you wish to opt out of registering your children, please contact the manager of their daycare. ”

Finally, it appears from the case that Hvidovre Municipality on 20 December 2018 sent a letter to the parents in [...] containing a more detailed explanation of the basis for the municipality's use of TOPI and a clarification that you as a parent can not say no thank you.

## 2.1. Hvidovre Municipality's comments

Hvidovre Municipality has stated that the municipality, pursuant to the overall purpose provision in the Day Care Services Act, is obliged to promote children's well-being, development and learning through the municipality's day care services. The general purpose provision in the Day Care Act is supplemented by a more detailed purpose provision for day care, which states,

among other things, that children in day care must have a physical, mental and aesthetic child environment that promotes their well-being, health, development and learning.

Hvidovre Municipality has also stated that the municipality in connection with the implementation of TOPI has purchased access to Rambøll's IT system Hjernen & Hjerter, and that a data processor agreement has been entered into with Rambøll. The registrations that the day care services must make in Hjernen & Hjerter as part of the early detection and effort, is a mandatory journaling, which in any case must be made when you are enrolled in a day care center, whether this happens in one or the other system. .

In addition, Hvidovre Municipality has explained in more detail the individual processing of information about your children that the municipality has carried out. In this connection, Hvidovre Municipality has stated that the purpose of these treatments is to assess the children's well-being under the auspices of the individual offers as part of Hvidovre Municipality's systematic early detection and efforts. The information is treated as a completely natural part of the municipality's exercise of authority and actual administrative activities within the children's area, where all activities take place within the framework of the national special legislation that applies to the individual municipal offers.

Hvidovre Municipality has stated in continuation of this that the processing of general information about your children takes place on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter e.

The processing of health information takes place on the basis of the Data Protection Act, section 7, subsection. 4, 1st sentence, in conjunction with Article 9 (1) of the Data Protection Regulation. 2, letter g.

The Municipality of Hvidovre has further stated that the municipality has complied with the principles for the processing of personal data in Article 5 of the Data Protection Regulation.

With reference to the stated legal basis, Hvidovre Municipality finds that there is no basis for granting your objection to the processing of the mentioned personal data about your children.

In relation to the municipality's e-mail of 3 May 2018, Hvidovre Municipality has stated that the conclusion in the e-mail that parents can refuse to register is unfortunately misleading, which was based on an erroneous assumption in relation to Brain & Heart functionality around registering the child's well-being position.

## 2.2. Your comments

You have stated that Hvidovre Municipality registers and stores well-being information on your children available to the

municipality and Rambøll, despite the fact that you as parents have refused the registrations.

You have further stated that TOPI is not an offer, but a compulsory registration of children without specific legal authority and without prior agreement or consent.

Measuring and registering the well-being of individual children is not the same as promoting well-being. Every professional will not answer the question of how the well-being of a child or a group of children is promoted through a screening program such as TOPI, but through concrete pedagogical initiatives, which are based on the individual child.

You have also stated that the purpose provision in the Day Care Services Act cannot form the basis for Hvidovre Municipality to screen, as you as a parent can say no thank you for ensuring coherence and continuity in the transitions. In this connection, you have stated that the purpose description states that the task of handling and developing e.g. well-being is something that must take place in collaboration with the parents.

You also question whether Hvidovre Municipality can choose TOPI and introduce a compulsory screening and registration of all children in the municipality. You have not challenged Hvidovre Municipality's choice of concept, but only your right as a parent to waive the screening of well-being for your children.

You have also stated that the measures that the municipality has decided on are the municipality's case, which also applies to the municipality's cooperation with the day care service. You fully agree that the municipality has some special conditions for exercising authority, but it may surprise you that the municipality's exercise of authority may take precedence over the assessment of the well-being of individual citizens and their loved ones.

In relation to the processing of ordinary personal data, you have stated that you wonder how a normative assessment of well-being should and can be treated as a task in the interest of society. The data controller (Hvidovre Municipality) has not been required to screen well-being in accordance with the legislation, but has instead chosen to purchase TOPI. According to the Day Care Services Act, the task in relation to well-being is to promote it and not to measure it.

In relation to health information, where the municipality refers to the Data Protection Act § 7, para. 4, 1. pkt. and Article 9 (1) of the Regulation. 2, letter g, you do not know which societal interests or goals are pursued by Hvidovre Municipality, which justifies the processing of the well-being information.

Justification for the Danish Data Protection Agency's decision

3.1.

Based on the information in the case, the Danish Data Protection Agency has assumed that Hvidovre Municipality processes both non-sensitive information and sensitive information about your children for use in the municipality's assessment of your children's well-being.

Pursuant to Article 9 (1) of the Data Protection Regulation 1, there is in principle a ban on the processing of data covered by Article 9 of the Regulation (sensitive data), including health data. However, the prohibition does not apply if one of the exceptions in Article 9 (1) of the Data Protection Regulation Or provisions implementing Article 9 of the Regulation are complied with.

According to the rules in the Data Protection Act, section 7, subsection 4, the processing of data covered by Article 9 (1) of the Data Protection Regulation may 1, take place if the processing of information is necessary in the interests of the public interest, cf. Article 9 (1) of the Data Protection Regulation. 2, letter g.

Personal data may be processed if there is a legal basis for this in Article 6 (1) of the Data Protection Regulation. 1, letter a-f. Processing is therefore lawful if the processing is necessary for the purpose of performing a task in the interest of society or which falls within the exercise of public authority, which the data controller has been instructed in accordance with Article 6 (1) of the Regulation. 1, letter e.

The Danish Data Protection Agency finds that there is no basis for overriding Hvidovre Municipality's assessment that the municipality, in accordance with the legislation to which the municipality has referred in the case, including the Day Care Act, has the task of promoting children's well-being, development and learning. and that the processing of the information in question as part of this is within the framework of the Data Protection Act, section 7, subsection. 4.

The Danish Data Protection Agency then finds that there is also no basis for overriding Hvidovre Municipality's assessment that the municipality processes the information in question as part of the municipality's exercise of authority within the children's area, cf. Article 6 (1) of the Data Protection Ordinance. 1, letter e.

It can not lead to another assessment that Hvidovre Municipality has chosen to use TOPI, as TOPI in the opinion of the Data Inspectorate must only be considered a methodological tool, which aims to support and systematize the municipality's work to promote children's well-being, development and learning.

On this basis, the Danish Data Protection Agency finds that Hvidovre Municipality's processing of personal data takes place within the framework of the Data Protection Act, section 7, subsection. Article 9 (4) of the Data Protection Regulation Article 6

(2) (g) and Article 6 (2) of the Regulation 1, letter e.

### 3.2.

Pursuant to Article 21 (1) of the Data Protection Regulation 1, the data subject has at any time the right - for reasons relating to the person's special situation - to object to an otherwise lawful processing of his personal data. However, the right to object only applies when the processing of information takes place in the light of Article 6 (1) of the Regulation. 1, letter e or f.

If the data controller demonstrates compelling legitimate reasons for the processing that take precedence over the data subjects' interests, rights and freedoms, or the processing is necessary for legal claims to be established, asserted or defended, the processing may continue.

The Danish Data Protection Agency finds that you have not put forward such reasons regarding your or your children's special situation in support of your objection that your objection is justified, cf. Article 21 (1) of the Regulation. 1, as what you have stated must be regarded as general considerations in relation to Hvidovre Municipality's use of TOPI.

### 3.3.

Hvidovre Municipality has stated that the municipality in connection with the implementation of TOPI has purchased access to Rambøll's IT system, "Hjernen & Hjertet", and that in this connection a data processor agreement has been entered into with Rambøll.

It is against this background that the Data Inspectorate's view is that Hvidovre Municipality's "transfer" of information to Rambøll has the character of a transfer to a data processor, which only processes the information on behalf of Hvidovre Municipality. This means that Rambøll can process the information on behalf of Hvidovre Municipality to the same extent and with the same authority as the municipality.

As Hvidovre Municipality, as stated above, can process the information in question itself, Rambøll can also process the information on behalf of the municipality. Thus, in the Data Inspectorate's view, there is no violation of the data protection ordinance's processing rules in connection with Hvidovre Municipality's transfer of information to Rambøll.

The Danish Data Protection Agency has noted that Hvidovre Municipality has regretted that the municipality's conclusion in the e-mail of 3 May 2018 about the possibilities of refusing registration was misleading.

The Danish Data Protection Agency has also noted that Hvidovre Municipality is aware that the processing of personal data must always take place in compliance with the basic principles in Article 5 of the Data Protection Regulation.



[1] Act No. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).

[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General data protection regulation).