

Serious criticism of the Family Court's processing of personal data

Date: 29-10-2021

Decision

Public authorities

Serious criticism

Complaint

Treatment safety

Children

The Danish Data Protection Authority has made a decision in a case where a citizen complained to the Danish Data Protection Authority about the Family Court. The complaint concerned the fact that the Family Court had by mistake given the complainant's son's biological father a share in the custody of the son.

Journal number: 2021-32-2143.

Summary

The Danish Data Protection Authority hereby returns to the case where [X] (hereafter complainant) complained to the Danish Data Protection Authority on 12 March 2021 about the Family Court's processing of personal data.

The complaint concerns the fact that on 8 March 2021, an employee of the Family Court – by mistake – gave the complainant's son's biological father a share in the custody of the complainant's son, whereby the biological father was given the opportunity to unlawfully access information about the son.

The Danish Data Protection Authority found that the Family Court had not met the requirement to implement appropriate security measures and, on that basis, expressed serious criticism of the Family Court.

The Danish Data Protection Authority laid, among other things, emphasis on the fact that the biological father – as a result of several mistakes made in the Family Court – had been registered as the holder of parental authority in the CPR register and had thereby gained access to a number of information about the son. He had, among other things, gained access to information about the son's address, regardless of the fact that the son had name and address protection.

The Data Protection Authority noted that, as a result of the incident, the Family Court had updated the guidelines used when assigning parental authority, and that awareness had been carried out in the relevant departments of the Family Court.

1. Decision

After a review of the case, the Data Protection Authority finds that there are grounds for expressing serious criticism that the Family Court's processing of personal data has not taken place in accordance with the rules in the data protection regulation[1] article 32, subsection 1.

Below follows a closer review of the case and a rationale for the Data Protection Authority's decision.

2. Case presentation

It appears from the case that the complainant has full custody of her 13-year-old son, and that she and her current husband applied to the Family Court in March 2021 for shared custody of the son. It also appears that, in connection with the processing of the adoption case, the Family Court, by a manual error, awarded custody to the complainant's son's biological father instead of the complainant's current husband.

2.1. Complainant's comments

Complainant has generally stated that she and her son - as a result of, among other things, violence and threats from the son's biological father - lives a sheltered life with, among other things Name and address protection.

In addition, the complainant stated that on 8 March 2020, after the Family Court's closing hours, she received information that custody of her son had been shared with the biological father. The complainant contacted the Family Court the following day, where she was informed that a case manager at the Family Court had mistakenly awarded the biological father a share of the custody. That same morning, the Family Court informed the biological father that custody had been withdrawn, and the Family Court corrected the error within a few hours.

The complainant has further stated that the biological father - in the period until the Family Court corrected the mistake - found information about where the son goes to school and accessed the son's health records. The biological father also asked for registration for parent intra at the school and tried to change the son's address. In addition, the biological father has subsequently tried to obtain information about the son's whereabouts by abusing the letter he received from the Family Court stating that he had shared custody.

2.2. The Family Court's comments

2.2.1. The Family Court has stated in its consultation response of 11 May 2021 that an employee on 8 March 2021 mistakenly assigned custody to the biological father. The Family Court has further stated that the registration took place in the CPR

register and was continued in the Family Court's ESDH system F2. The error was corrected on March 9, 2021.

According to the Family Court, sharing custody will give access to information about the child in the systems borger.dk, sundhed.dk, AULA and minlaegeapp, all of which are built on the basis of nem-ID validation. The biological father has thus had access to personal data about the complainant's son in a number of the solutions in the period from 8 March to 9 March 2021. In this connection, the Family Court has stated that, for example, in AULA and parental intra, there will be an additional organizational security measure in the form of a manual 2nd validation from the municipality. In addition, the Family Court has stated that NETS and several public authorities have introduced a timer in the allocation of access on the basis of nem-ID validation. Considering this and the fact that the incident has been going on for less than 24 hours, the Family Court finds it less likely that the biological father has gained access to these systems.

The Family Court considers it to some extent likely that the biological father - on the basis of the award of parental authority - may have applied for access to documents from various public authorities in accordance with the provisions of the Public Administration Act.

The Family Court also refers to Section 23 of the Parental Responsibility Act and notes that, pursuant to this provision, the biological father has the right to information about the child's circumstances from authorities and institutions, even if he does not have parental authority. In this connection, the Family Court asserts that the damage effect is limited to the extent that the information would not be passed on according to the provision.

The Family Court finds that the wrongful award of custody to the biological father has not resulted in the compromise of personal data in the Family Court. The Family Court further finds that there is no risk of the information being used for crime or identity theft, as the information relates to a person under the age of 18.

2.2.2. The family court has stated that prior to the incident, a number of technical and organizational measures had been introduced to ensure that custody is awarded to the right person. In this connection, the Family Court has stated that the allocation of parental authority is made on the basis of various provisions in the Parental Responsibility Act, and that – to support the Family Court's case processing – three different online application forms have been prepared, which are used depending on which part of the legislation is applied for. The Family Court notes in this connection that the complainant in the present case used a different form than the one intended for applications for an agreement on joint custody.

Regarding the background for the Family Court to award custody to the biological father, the Family Court has stated that it is

assessed that the misregistration is the result of a number of human errors in the Family Court as a result of using the wrong form. In this connection, the Family Court has stated that, in the period since 25 May 2018, the Family Court has dealt with 7,275 cases regarding the award of parental authority, and that during this period there have been an average of 25 cases per year where citizens have used an incorrect form. The Family Court has also stated that 2 incorrect notifications of parental authority were made during the period, which is why, in the Family Court's assessment, the organizational security measures are effective in 97.4% of cases. The Family Court also notes that this – in relation to the total amount – means that the Family Court's error rate is 0.00027% of the cases.

As a result of the incident, the Family Court has updated the following job descriptions:

"06 Hearing only 1 signature.dotx" and "06b rejection only one signature and instructions on application.dotx", which are used by case handlers when granting parental authority. In addition, the Family Court has implemented awareness in the Journal and Visitation departments. Finally, new employees in the area will go through a central onboarding process with the aim of ensuring the quality of the work.

3. Reason for the Data Protection Authority's decision

The Danish Data Protection Authority assumes that the Family Court has unjustifiably awarded the complainant's son's biological father custody of the complainant's son, which has given the biological father the opportunity to unlawfully access information about the son for a day.

It follows from the data protection regulation article 32, subsection 1, that the data controller must implement technical and organizational measures that suit the risks of varying probability and seriousness to the rights of the data subjects.

The data controller thus has a duty to identify the risks that the data controller's processing poses to the data subjects and to ensure that appropriate security measures are introduced to protect the data subjects against these risks. Under this, the data controller must ensure that employees who process personal data have received sufficient instructions and necessary guidance.

The Danish Data Protection Authority is of the opinion that an erroneous allocation of parental authority over a child entails a high risk for the registered child's rights. The Danish Data Protection Authority hereby places importance on the nature of the information to which an erroneous allocation of parental authority can give access, and on the fact that children should enjoy special protection of their personal data.

Against this background, the Danish Data Protection Authority is of the opinion that appropriate training should be carried out for employees in the secure processing of personal data in connection with the assignment of parental authority, and that higher requirements should be placed on the diligence of employees in ensuring that no erroneous assignment of parental authority takes place .

The Danish Data Protection Authority finds that the Family Court has not met the requirement to implement appropriate security measures in the data protection regulation, article 32, subsection 1.

The Danish Data Protection Authority has emphasized that the Family Court mistakenly awarded custody to the wrong person, which led to unlawful access to information about e.g. the child's address and school – regardless of whether the child had name and address protection.

The Data Protection Authority has also emphasized what the Family Court informed that the wrongful granting of parental authority occurred as a result of the complainant using the wrong form to apply for parental authority and as a result of mistakes made in the Family Court.

In this connection, the Danish Data Protection Authority has also attached importance to the Family Court's information on the frequency of incorrect allocation of parental authority. The Danish Data Protection Authority understands the Family Court's information to mean that incorrect allocation of parental authority occurs more often in cases where applicants use an incorrect form than in cases where applicants use the correct form. The Danish Data Protection Authority considers that the Family Court's security measures should take into account the fact that applicants do not in all cases use the correct form.

Based on the above, the Danish Data Protection Authority finds that there are grounds for expressing serious criticism that the Family Court's processing of personal data has not taken place in accordance with the rules in the data protection regulation, article 32, subsection 1.

The Danish Data Protection Authority notes that the Danish Data Protection Authority has noted that, as a result of the incident, the Family Court has updated the guidelines used when assigning parental authority, and that, among other things, awareness has been carried out in the relevant departments.

In conclusion, the Data Protection Authority notes that the Data Protection Authority on 4 March 2021, among other things, expressed serious criticism that the Family Court's processing of personal data had not taken place in accordance with the rules in the data protection regulation, Article 32, subsection 1 (The Danish Data Protection Authority's case with reference no.

2020-432-0037). The Family Court stated in the case that the Family Court had initiated a major implementation plan that outlined a number of activities and focus areas for the next two years. The Family Court also stated that a larger group of decentralized ambassadors had been appointed who, during 2021, would be trained in a large number of key data protection legal issues, and that it was also planned to focus on e.g. procedures and workflows. The Danish Data Protection Authority assumes that the Family Court will include the present case in the above-mentioned plan in order to limit similar incidents in the future."

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).