

## Processing of information about dismissed employee

Date: 18-06-2020

Decision

Private companies

The Danish Data Protection Agency has expressed serious criticism of NCC's processing of information about a dismissed employee and failure to fulfill the duty to provide information.

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### Summary

On the basis of a complaint, the Danish Data Protection Agency has expressed serious criticism that NCC Danmark A / S 'processing of personal data had not taken place in accordance with the rules in the Data Protection Ordinance on legal processing of personal data and sensitive personal data, and that NCC had not fulfilled its duty to information that NCC had collected about its employees.

NCC had dismissed an employee, and on the basis of the dismissal, a case was pending before the Labor Court with allegations of anti-organizational behavior at the time of dismissal, just as the case was covered in the media.

In an internal briefing in an e-mail to several of the company's employees, NCC had processed personal information about complaints in the form of name, reason for dismissal, previous employment relationship and trade union affiliation.

NCC justified the briefing in the email with the unrest that the coverage of the case in the media created in the workplaces.

The Danish Data Protection Agency found that NCC's processing of personal data and sensitive personal data in the e-mail had not taken place in accordance with the rules in the Data Protection Regulation, as NCC had not demonstrated a legitimate interest in informing about the dismissal of complaints and the complainants' previous employment. as the information about a conflict with a particular trade union could not contain personal data, as there is an absolute ban on processing information about trade union matters, and none of the exceptions to the ban applied.

The Danish Data Protection Agency also found that NCC had not fulfilled its duty to provide information to its employees, as it was not sufficient that the personal data policy for employees was available on the intranet if the data subject had not been specifically referred to it.

Decision

The Danish Data Protection Agency hereby returns to the case, where 3F on behalf of 3F's member XX (hereinafter complaints) on 11 September 2019 has complained to the Authority about NCC Danmark A / S '(hereinafter NCC) processing of personal data on complaints as part of a trade union case concerning the objectivity of the dismissal of the complainant. The Danish Data Protection Agency has understood the complaint as a complaint that NCC has processed information on complaints without a legal basis in the Data Protection Regulation.

The Danish Data Protection Agency must note that the Authority can only take a position on data protection law issues. With this decision, the Danish Data Protection Agency has therefore not taken a position on the accuracy of the information covered by the processing, just as the Danish Data Protection Agency has not taken a position on issues concerning the labor law conflict. Furthermore, the Danish Data Protection Agency has not taken a position on the issue concerning the alleged suspension of e-mails in a shed in the case in question.

## Decision

Following a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that NCC Danmark A / S 'processing of personal data has not taken place in accordance with the rules in the Data Protection Ordinance [1], Article 6 (1). Article 9 (1) (f), Article 9, Article 13 and Article 14.

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 NCC on 1 November 2018 dismissed complaints with effect from 4 November 2018. 3F went into the case as a representative of complaints, and a case is now pending before the Labor Court with allegations of anti-organizational behavior at the termination.

At the request of 3F, the conflict has been covered in the press by Avisen.dk and by the trade magazine 3F, without the complainant's name having been mentioned in the coverage. The ongoing conflict led on 18 February 2019 that 3F / BJMF Snedker Tømrernes Brancheklub showed up unannounced at NCC's head office in a protest demonstration with approx. 30-50 shop stewards and carpenters from Copenhagen.

In an e-mail of 19 February 2019 with the subject field "3F case in the press", a senior production manager at NCC informed 17 construction managers about the background to the conflict with 3F.

The e-mail stated, among other things:

"Hello everyone

As most of you are actually familiar with, we currently have a pending case pending with 3F / Brancheklubben.

[the rest of the content of the email is not published for the sake of complaints]

On behalf of the complainants, on 3 March 2019, 3F requested that the information regarding the complainants' previous employment conditions be corrected, with reference to the fact that this is incorrect information.

Attorney AA has, on behalf of NCC, stated in a letter to the Danish Data Protection Agency that it is not possible for NCC to correct the information, as it is NCC's opinion that the content of the e-mail of 19 February 2018 about the complainant is correct.

#### 2.1. Complainant's remarks

On behalf of the complainants, 3F has generally stated that NCC's disclosure of information about the complainant's previous employment relationship, information about the reasons for the dismissal and the information about the complainant's trade union affiliation has been in violation of data protection law rules, as the information goes beyond what can be considered to be necessary for NCC to disclose in order to pursue a legitimate interest.

On behalf of complaints, 3F has further stated that NCC has unjustifiably passed on information about complaints in two rounds, respectively in connection with the briefing on 19 February 2019 and in connection with the same e-mail being printed and hung up in a shed, which used by NCC's employees.

3F has also stated on behalf of complaints that the information about dismissal in previous employment relationships is untrue. Finally, on behalf of complaints, 3F states that NCC has not complied with its duty to provide information pursuant to Article 14 of the Data Protection Regulation when processing personal data on complaints.

#### 2.2. NCC's comments

Attorney AA has, on behalf of NCC, generally stated that no information has been passed on. In this connection, he has stated that the e-mail of 19 February 2019 is an internal briefing sent only to 17 carpenter apprentices who acted as managers of various construction sites on 19 February 2019, and that NCC is not aware of, that the email should have been hung up in a shack.

Furthermore, lawyer AA on behalf of NCC has stated that the background for the briefing was the unrest that the coverage in the media and 3F's behavior created in the workplaces.

Attorney AA has further stated on behalf of NCC that NCC is of the opinion that the content of the e-mail of 19 February 2019 is correct and that there is no basis for making an update, deletion or correction of the personal data.

Attorney AA has finally stated on behalf of NCC that NCC's personal data policy for employees appears on the intranet, but that NCC in connection with the complaint has become aware that not all hourly employees have access to the intranet and therefore have not been made aware of the policy. NCC will in future send a letter with the personal data policy to all hourly employees' e-Box, just as NCC will prepare a "flyer" for distribution on all construction sites about NCC's processing of personnel information. The personal data policy for employees states, among other things, that NCC collects information from the data subject himself and from others than the data subject.

Justification for the Danish Data Protection Agency's decision

### 3.1. Processing of personal data in the e-mail of 19 February 2019

In its decision, the Danish Data Protection Agency has assumed that NCC in an internal briefing in an e-mail of 19 February 2019 has processed personal data on complaints in the form of name, reason for dismissal, previous employment and trade union affiliation. The Danish Data Protection Agency notes that such internal information is not an expression of a transfer, but only an expression of a processing.

The processing of personal data is lawful to the extent that at least one of the conditions in Article 6 (1) of the Data Protection Regulation 1, letters a-f, applies.

Pursuant to Article 6 (1) 1, letter f, processing may take place if the processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the data subject's interests or fundamental rights and freedoms that require the protection of personal data take precedence.

It is also clear from Article 9 (1) of the Data Protection Regulation 1, that the processing of personal data on, among other things, trade union affiliation is prohibited, unless one of the in subsection. The exceptions listed in points (a) to (2) shall apply. NCC has stated that the background for the briefing in the e-mail of 19 February 2019 was the unrest that the coverage of the case in the media and 3F's behavior created in the workplaces. The purpose of the briefing was thus not to inform the other employees or managers that a dismissal had been made, which was also well ahead of the briefing in terms of time. The purpose, on the other hand, was to "defend" oneself internally in the public conflict with 3F.

The Danish Data Protection Agency finds that NCC's processing of personal data has not taken place in accordance with

Article 6 (1) of the Data Protection Regulation. 1 (f) and Article 9.

In this assessment, the Danish Data Protection Agency has emphasized that the information about the dismissal in the e-mail was not based on a consideration that was linked to the dismissal of complaints, but instead was related to the labor law conflict with 3F. NCC has thus not shown that it had a legitimate interest in informing about the dismissal of complaints, notwithstanding that such a legitimate interest may, depending on the circumstances, outweigh the consideration of complaints.

The Danish Data Protection Agency also finds that NCC has not had a legitimate interest in processing information about the complainant's previous employment relationships.

Furthermore, the Danish Data Protection Agency finds that the processing of personal data in an e-mail with the heading "3F in the press" in itself implies that sensitive personal data is processed on trade union matters, which is why the processing of all personal data in the e-mail also constitutes a violation of the Data Protection Regulation. 9.

In this assessment, the Danish Data Protection Agency has emphasized that Article 9 (1) of the Regulation 1, contains an absolute prohibition against processing information on trade union matters, and that none of the exceptions in para. 2, letters a-j shall apply.

However, the Danish Data Protection Agency finds that NCC has a legitimate interest in informing the company's employees about an ongoing conflict that creates unrest in the workplace, especially when the conflict is public and the employees receive information from other parties. However, such information about a conflict with a particular trade union may not contain personal data, as Article 9 (1) 1, contains an absolute prohibition against processing information on trade union matters, and as none of the exceptions in para. 2, letters a-j shall apply.

The Danish Data Protection Agency notes that NCC could have served the purpose of the briefing without processing personal data.

### 3.2. Duty to provide information pursuant to Articles 13 and 14

On the basis of the information in the case, including what is stated in the personal data policy for employees, the Danish Data Protection Agency assumes that NCC collects information about its employees from the employee himself and from others than the employee.

When the data controller collects personal data from the data subject and from persons other than the data subject, the data

controller shall comply with the information obligation pursuant to Articles 13 and 14 of the Data Protection Regulation. In order for the data controller to be able to observe the duty to provide information, it is a prerequisite that the data controller provides the information to the data subject. This means that the data controller must take active steps to provide the information. Thus, it should not be necessary for the data subject himself to actively search for information covered by the provisions.

The Danish Data Protection Agency finds that NCC has not fulfilled its duty to provide information pursuant to Articles 13 and 14.

In this assessment, the Danish Data Protection Agency has emphasized that NCC has not proved that complaints had been made aware of the personal data policy for employees. In this context, the Authority notes that it is not sufficient to fulfill its obligation under Article 13 and Article 14 that the policy is available on the intranet unless the data subject has been specifically referred to it.

Following an overall assessment of the case, the Danish Data Protection Agency finds grounds for expressing serious criticism that NCC's processing of personal data has not taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation. Article 9 (1) (f), Article 9, Article 13 and Article 14.

In this assessment, the Authority has emphasized the nature of the information that has been processed illegally.

The Danish Data Protection Agency has noted that NCC has introduced procedures to comply with its obligations under Articles 13 and 14 in the future.

[1] 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).