

## Supervision of Nemlig.com A / S 'processing of personal data

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Decision

Private companies

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### Summary

In 2019, the Danish Data Protection Agency carried out a planned audit at Nemlig.com A / S. The supervision focused on the company's compliance with the rules on the data subject's right of access, cf. Articles 15 and 12 of the Data Protection Regulation.

In connection with the audit, the Danish Data Protection Agency has expressed criticism that Nemlig.com A / S 'processing of personal data had not taken place in accordance with Article 15 and Article 12 (1) of the Regulation. 3.

The Danish Data Protection Agency's concluding statement states, among other things, that in the period from 25 May 2018 to the time of notification of the audit, Nemlig.com A / S has responded to two requests for insight, and that in both cases the company has not provided the registered insight into the information that the company has collected about the person's behavior on the company's website and / or app, just as the two requests for insight had not been answered within one month of receipt of the request.

In addition, it appears from the statement that it is the Data Inspectorate's assessment that a procedure in which Nemlig.com A / S asks a registered person to appear in person at Nemlig.com A / S in order to have his identity verified will not be in accordance with Article 12 (2) of the Regulation 2.

You can read the Danish Data Protection Agency's guide on data subjects' rights [here](#).

### Decision

Nemlig.com A / S was among the companies that the Data Inspectorate had selected for inspection in the spring of 2019. The Data Inspectorate's planned inspection of Nemlig.com A / S focused in particular on the company's compliance with the rules on the data subject's right of access, cf. 15 and Article 12.

At the request of the Danish Data Protection Agency, Nemlig.com A / S had filled in a questionnaire before the inspection visit and submitted this together with additional material to the inspection. The actual inspection visit took place on 16 May 2019.

## Decision

Following the audit of Nemlig.com A / S, the Danish Data Protection Agency finds reason to conclude:

That Nemlig.com A / S has prepared guidelines, procedures, etc. for the company's compliance with Articles 15 and 12 of the Data Protection Regulation, but that these contain individual descriptions which, in the opinion of the Danish Data Protection Agency, are not sufficient in relation to the company's compliance with Article 12 (1) of the Regulation. 2 and 3.

That Nemlig.com A / S has prepared templates that can help ensure and facilitate the company's compliance with Article 15 of the Data Protection Ordinance, but that these contain individual descriptions which in the Data Inspectorate's opinion are not sufficient in relation to the company's compliance with Article 12 of the ordinance. PCS. 2 and 3.

That Nemlig.com A / S in the period 25 May 2018 at the time of notification of this supervision has received and responded to two requests for insight, and that Nemlig.com A / S in both cases has not provided the registered insight into the information that Nemlig .com A / S has collected about the data subject's conduct on the company's website and / or app, just as Nemlig.com A / S in both cases has not responded to the request for insight in accordance with the deadlines in Article 12 (1) of the Data Protection Regulation. 3.

In relation to point 3, the Danish Data Protection Agency finds grounds for expressing criticism that Nemlig.com A / S 'processing of personal data has not taken place in accordance with the rules in Article 15 and Article 12 (1) of the Data Protection Regulation. 3.

Below is a more detailed review of the information that has emerged in connection with the audit and a justification for the Danish Data Protection Agency's decision.

### 2. Namely.com A / S 'business process descriptions

2.1. Prior to the audit visit, Nemlig.com A / S submitted a copy of the company's business descriptions, which were valid on the date of notification of the audit, regarding the handling of access requests in accordance with Articles 15 and 12 of the Data Protection Regulation.

During inspection visits, Nemlig.com A / S stated that all the prepared business process descriptions, etc. are available to the departments that use them (ie primarily customer service and IT), but that the business process descriptions and standard texts are in principle available to all company employees.

In addition, Nemlig.com A / S stated that the company spends a lot of time training the employees in relation to the data

protection rules, including for example by training customer service employees every 6 weeks, just as data protection is a fixed item on the agenda at weekly status meetings. a. followed up on whether the business process descriptions are complied with in practice.

2.2. The business process descriptions include i.a. information on what process employees must follow when receiving access requests from customers and how employees ensure the identity of the person who has requested access before responding to a request, cf. Article 12 (1) of the Data Protection Regulation. 6. In addition, the business process description contains information on handling insight requests from current and former employees at Nemlig.com A / S.

In relation to securing the data subject's identity in connection with requests for insight, it appears from the business procedures descriptions that the employee can validate the data subject's identity by examining whether the telephone number or e-mail that the data subject calls / writes from matches what appears of the data subject's customer account.

In case of uncertainty about the data subject's identity, the employee can request to be contacted by the data subject via email or by performing a check of the identity with questions about previous purchases on Nemlig.com A / S 'website. If this is the case and there is no uncertainty as to the identity of the data subject, the request can be answered. If the necessary security for the data subject's identity is not obtained, the data subject is encouraged to appear physically at Nemlig.com A / S and present a valid ID.

It follows from Article 12 (1) of the Data Protection Regulation 2, that the data controller must facilitate the exercise of the data subject's rights in accordance with e.g. Article 15 on insight.

According to the CVR register, Nemlig.com A / S 'main company is located in Brøndby. In addition, the company has an establishment in Aarhus, Odense and Kolding, respectively.

It does not appear from the business process descriptions whether the registered person will have the opportunity to appear physically at one of Nemlig.com A / S 'establishments in Aarhus, Odense and Kolding with a view to verifying his identity, or whether physical attendance can only take place at the company's main establishment in Brøndby.

Regardless of whether a data subject will have to show up physically at Nemlig.com A / S 'main establishment in Brøndby, or whether attendance will also be possible at one of the company's other establishments, it is the Data Inspectorate's assessment that it will be unnecessarily difficult for the data subject to had to physically show up at Nemlig.com A / S to be able to verify his identity. The Danish Data Protection Agency has hereby emphasized that Nemlig.com A / S 'is only

established in four cities, and that - in the Data Inspectorate's opinion - it can be unnecessarily difficult for the registered person to travel from his residence to one of Nemlig.com A / S 'establishments with a view to verifying its identity, including especially in cases where the data subject does not reside in the vicinity of the establishments. It appears, for example, from Nemlig.com A / S 'website that the company can deliver goods to customers residing in Fredericia. The closest of Nemlig.com A / S 'establishments for customers residing in Fredericia will thus be in Kolding.

In the Authority's view, such a procedure may result in the data subject - as a result of the inconvenience - abandoning his request. It is against this background that the Danish Data Protection Agency's assessment that it will not be in accordance with Article 12 (1) of the Regulation. 2, if Nemlig.com A / S asks a registered person to appear in person at Nemlig.com A / S in order to have his identity verified.

The Danish Data Protection Agency therefore finds that Nemlig.com A / S must find an alternative to this for those registered who want insight. In this connection, the Danish Data Protection Agency must draw attention to the fact that the Authority has previously made decisions regarding verification of the data subject's identity, where the Authority, among other things, has stated that a general procedure for ID validation prior to the response to requests for access will not be in accordance with Article 12 of the Regulation and that a procedure whereby the data subject must provide more information than was originally collected in order to process a request to exercise the rights of data subjects will not comply with Article 5 (1) of the Regulation. 1, letter c. [2]

2.3. The business process descriptions also contain information on how the company's employees should handle the deadline for responding to requests for insight. In this connection, it appears that the deadline for replying to a request for access runs from the time when the identity of the data subject has been verified. If there is no doubt as to the identity of the data subject, the time limit shall run from the time of receipt of the request.

In this connection, the Danish Data Protection Agency should note that it appears from Article 12 (1) of the Data Protection Regulation 3, that the data controller without undue delay and in all cases no later than one month after receipt of the request must inform the data subject of measures taken on the basis of a request in accordance with i.a. Article 15.

This period may be extended by two months, if necessary, taking into account the complexity and number of the request. The controller shall notify the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay.

It is thus the Data Inspectorate's opinion that the deadline for responding to requests for insight must be calculated from the time when the data controller has received the request. The data controller then has the option of extending the response to the request by a further two months if the request is complicated, including for example in cases where it proves difficult to identify the registered person.

However, the data controller shall in all cases endeavor to respond to the request without undue delay and within one month of receipt of the request.

On this basis, the Danish Data Protection Agency finds that Nemlig.com A / S - to the extent that the company has not already done so - must update the content of the business process descriptions, so that it appears that the deadline is calculated from the time of receipt of the request, even in cases where need to verify the identity of the data subject.

### 3. Namely.com A / S 'standard texts

3.1. Nemlig.com A / S has sent a copy of the standard texts that the company's employees use when answering requests for insight.

In the standard text used when Nemlig.com A / S has received a request for insight from a customer, the receipt of the request is initially confirmed, and the registered person is then, according to the text, asked to return with a description of what information the data subject wishes to receive. The standard text also consists of an appendix, which is always attached, and which has the following heading: "General information about your data at nemlig.com" with further information about the information being processed, the purpose of the processing, recipients of the information, etc. "

At the request of the Danish Data Protection Agency, Nemlig.com A / S stated during the inspection visit that the company wishes as far as possible to specify what information the data subject will have insight into, and that it is standard practice for the company to ask the data subject to clarify its request. based on the information in the standard text with the purpose that the process and the collection of the information about the registered person at Nemlig.com A / S can be carried out as efficiently as possible.

Nemlig.com A / S stated in continuation of this that the company checks whether the registered person has returned with a clarification after 7 days. If the data subject has not returned within a total of 10 days from receipt of the request, Nemlig.com A / S will respond to the request without a specification from the data subject and send all information to the data subject shortly after the 10th day. Nemlig.com A / S is of the opinion that this procedure is in practice as soon as possible and without

unnecessary delay.

It follows from Article 12 (1) of the Data Protection Regulation 2, that the data controller must facilitate the exercise of the data subject's rights in accordance with e.g. Article 15 on insight.

Given that requests for access must be answered without undue delay and within one month of receipt of the request, in accordance with Article 12 (1) of the Regulation. 3, it is the Data Inspectorate's assessment that in all cases a concrete assessment should be made of whether there is a need for clarification of a request for insight. In the opinion of the Danish Data Protection Agency, a request for insight cannot be said to have been answered without undue delay if the data controller by default - even in cases where a request is sufficiently clear - awaits clarification from the data subject.

3.2. It also appears from the above-mentioned standard text, which is used when Nemlig.com A / S has received a request for insight from a customer, that Nemlig.com A / S 'distinguishes between "data we can send to you" and "data you can find on nemlig.com under My name, which is not handed out ", and that the registered person can find the following information on Nemlig.com A / S 'website:

Favorites (ie a list of the items that the data subject has previously purchased)

Favorite recipes (recipes the registrant has added to his basket in connection with a purchase)

Account activity

Marketing consent (consent given by the data subject on nemlig.com)

Order history

Credit card information (last 4 digits and expiration date)

Then there is a specific reference to where on the website the data subject can find the individual information.

During the inspection visit, Nemlig.com A / S confirmed that the company does not send a copy of the information that the registered person has access to on the company's website under the customer's profile when responding to requests for insight - in accordance with the standard text.

After the inspection visit, however, Nemlig.com A / S has stated that the company can, by a new review of the two processed access requests, establish that the data subjects have been provided with a copy of the information that they can access on the website under the customer's profile.

It follows from Article 15 (1) of the Data Protection Regulation 1, that the data subject has the right to receive the data

controller's confirmation of whether personal data concerning the person in question is processed, and if necessary access to the personal data as well as a number of information about the processing or processes that the data controller performs.

In addition, it follows i.a. Article 15 (1) of the Regulation 3, that the data controller must hand over a copy of the personal data that is processed. If the data subject submits the request electronically, and unless the data subject requests otherwise, the personal data is provided in a commonly used electronic form.

The purpose of the right of access is to give the data subject the opportunity to see what personal data the data controller processes about the person in question and to create more transparency about how the data controller processes them. On that basis, the data subject can check that personal data about the person in question are correct and otherwise processed legally.

In this connection, it appears in other respects, among other things. also from the Data Inspectorate's guidelines on the data subjects' rights [3], that the data controller can choose to provide the data subject with insight by handing out copies of original documents, etc. to the person in question, but that the data controller can also choose to copy the information about the data subject into a new document or similar. Furthermore, it appears that the data controller can provide the data subject with insight into the personal data in several ways, including, for example, by the data controller electronically giving the data subject access to the data from his own PC or the like.

Against this background, the Data Inspectorate's assessment is that in a case such as the present, it will be sufficient to refer the data subject to Nemlig.com A / S 'website and thereby give the data subject electronic access to the information processed about it. unless the data subject requests to receive the information in another way in accordance with Article 15 (2) of the Regulation. 3.

The Danish Data Protection Agency emphasizes that the data subject also has the opportunity in this way to check the accuracy of the information and the legality of the processing. Furthermore, the Danish Data Protection Agency emphasizes that the data subject - because the standard text contains specific instructions that clarify where on the website he or she can find the individual information - must be assumed to be able to easily find the information on the website.

As mentioned above, Nemlig.com A / S has prepared an appendix, which is attached to the standard text for answering access requests. The appendix describes the types of information that Nemlig.com A / S processes about the data subject, the purpose of the processing, recipients of the information, Nemlig.com A / S 'storage of the information and the data subject's

rights.

It appears i.a. of the appendix that Nemlig.com A / S processes information about the data subject's behavior on the website or by using the company's app. It further appears in relation to the recipients of the information that Nemlig.com A / S makes use of technical subcontractors in third countries, including Ukraine.

Nemlig.com A / S has stated that the company has updated the standard appendix after the notification of the supervision so that information on the transfer basis now appears.

If Nemlig.com A / S 'transfer basis consists of necessary guarantees pursuant to Article 46 of the Regulation, Nemlig.com A / S will in connection with the response to a request for insight have to notify the data subject of these, cf. Article 15 (1) of the Regulation. 2. The Danish Data Protection Agency must thus, as the scope of Nemlig.com A / S 'transfer basis consists of such guarantees, recommend that Nemlig.com A / S - to the extent that the company has not already done so - update the content of the standard document, so that the document also contains information about these.

#### 4. Namely.com A / S 'handling of requests for insight

4.1. Nemlig.com A / S has informed the Danish Data Protection Agency that the company has received and responded to two requests for insight from customers in the period from 25 May 2018 to 9 April 2019. Nemlig.com A / S has sent a copy of the two responses to the Danish Data Protection Agency prior to the inspection visit. Nemlig.com A / S has not received insight requests from current or former employees during the period.

As mentioned, it appears from the submitted standard appendix with general information about insight into data at Nemlig.com A / S that the company collects information about the data subject's behavior when he or she visits the company's website or app.

During the inspection visit, the Danish Data Protection Agency asked whether it was correctly understood that Nemlig.com A / S did not provide the registered insights into this information when answering the two requests for insight.

Nemlig.com A / S stated that in answering the two requests, the company has not provided insight into the information collected about the data subject's behavior on the company's website and / or app. Nemlig.com A / S has subsequently sent an anonymised copy of the personal information that the company collects about behavior on the company's website and app, and has in this connection stated that the company will in future provide registered insight into this information.

After a review of the information that Nemlig.com A / S collects about the data subjects' behavior on the website, the Data



Inspectorate's assessment is that it is personally identifiable information, which is why the two responses to access requests should have contained information in this regard, cf. the Data Protection Ordinance Article 15.

4.2. Nemlig.com A / S received one of the insight requests in question on 25 May 2018. It appears from the request that the registered person wanted insight into all the information that Nemlig.com A / S had registered about the person in question.

On 28 May 2018, Nemlig.com A / S sent a standard text to the data subject, informing the data subject of what information the company kept about the data subject and the purposes hereof. The data subject was also asked to confirm whether he or she wished to receive the information. The data subject confirmed on the same date that he wanted access to his personal data.

Nemlig.com A / S then responded to the request on 29 June 2018, ie. 1 month and 4 days after receipt of the request.

Nemlig.com A / S has stated that the company as a result of a human error has not been aware that the deadline had been exceeded. When Nemlig.com A / S became aware that the deadline had been exceeded, the company prioritized responding to the request instead of giving the data subject a notification of the extension of the response.

Nemlig.com A / S stated in continuation of this that the request, which was received on 25 May 2018, was the first request for insight that the company had received, and that the company has subsequently optimized its procedures in relation to a fast and efficient processing of requests for access.

Nemlig.com A / S received the second of the insight requests in question by telephone on 23 July 2018.

On the same date, Nemlig.com A / S sent a standard text to the data subject, in which the company confirmed receipt of the request, and in which the data subject was asked to return with a description of what information the data subject wished to receive. At the same time, an appendix "general information about your data at nemlig.com" was attached with further information about the information that was processed, the purpose of the processing, recipients of the information, etc.

The data subject replied back the same date and objected to a particular treatment. The registered person also invited Nemlig.com A / S to respond to the request for insight before the end of the week in question.

Nemlig.com A / S responded to the request on 3 April 2019, ie. about 8 months after receipt of the request.

Nemlig.com A / S has informed the Danish Data Protection Agency that the inquiry with the request for insight was closed on 23 August 2018 on the basis of a telephone discussion with the data subject. Nemlig.com A / S only subsequently understood, in connection with the data subject's complaint to the Danish Data Protection Agency, that the data subject continued to want insight into his personal information. Immediately after Nemlig.com A / S became aware that the registered person wanted the

insight, the company sent the information to the registered person.

Nemlig.com A / S has subsequently stated that the company has subsequently changed its procedures so that in similar cases the company will send an email to the registered person and state that the company has understood that the registered person does not want insight into his personal information. In this way, Nemlig.com A / S will try to avoid similar misunderstandings in the future.

When asked about this, Nemlig.com A / S stated during the inspection visit that the company had not made a specific assessment of whether in the two above-mentioned cases there was a need to ask the data subject to specify what information he or she wanted sent.

As mentioned under section 2, it is the Danish Data Protection Agency's assessment that in all cases a concrete assessment must be made of whether there is a need for clarification of a request for insight. unnecessary delay if the data controller by default - even in cases where a request is sufficiently clear - awaits a clarification from the data subject.

It is the Data Inspectorate's assessment that Nemlig.com A / S in responding to the two requests for insight has not complied with the deadlines in Article 12 (1) of the Regulation. 3. The Danish Data Protection Agency has also emphasized that Nemlig.com A / S has not made a specific assessment of whether there was a need for clarification of the requests.

The Danish Data Protection Agency has noted that Nemlig.com A / S stated that the extension of the response to one request for insight was due to a misunderstanding, and that the company has subsequently changed its procedures in order to avoid similar misunderstandings in the future.

4.4. It follows from Article 12 (1) of the Data Protection Regulation 6, that the data controller, if there is reasonable doubt about the identity of the natural person who has requested access, may request additional information necessary to confirm the identity of the data subject.

In this connection, Nemlig.com A / S has stated that in the autumn of 2018 the company received requests for insight via the app "WeAreDavid", and that in none of these cases was it possible for Nemlig.com A / S to identify the registered persons, which the request for access was allegedly sent on behalf of. Nemlig.com A / S thus did not respond to the insight requests, as the company did not want to register on the app in order to be able to respond to the requests. [4]

The Danish Data Protection Agency has no comments on this.

## 5. Conclusion

Following the audit of Nemlig.com A / S, the Danish Data Protection Agency finds reason to conclude:

That Nemlig.com A / S has prepared guidelines, procedures, etc. for the company's compliance with Articles 15 and 12 of the Data Protection Regulation, but that these contain individual descriptions which, in the opinion of the Danish Data Protection Agency, are not sufficient in relation to the company's compliance with Article 12 (1) of the Regulation. 2 and 3.

That Nemlig.com A / S has prepared templates that can help ensure and facilitate the company's compliance with Article 15 of the Data Protection Ordinance, but that these contain individual descriptions which in the Data Inspectorate's opinion are not sufficient in relation to the company's compliance with Article 12 of the ordinance. PCS. 2 and 3.

That Nemlig.com A / S in the period 25 May 2018 at the time of notification of this supervision has received and responded to two requests for insight, and that Nemlig.com A / S in both cases has not provided the registered insight into the information that Nemlig .com A / S has collected about the data subject's conduct on the company's website and / or app, just as Nemlig.com A / S in both cases has not responded to the request for insight in accordance with the deadlines in Article 12 (1) of the Data Protection Regulation. 3.

In relation to point 3, the Danish Data Protection Agency finds grounds for expressing criticism that Nemlig.com A / S 'processing of personal data has not taken place in accordance with the rules in Article 15 and Article 12 (1) of the Data Protection Regulation. 3.

The Danish Data Protection Agency then considers the audit to be completed and does not take any further action on that occasion.

[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).

[2] Reference is made i.a. to the Danish Data Protection Agency's decisions with j.nr. 2019-431-0018 and 2018-7320-0166, which can be accessed via the Authority's website.

[3] The guidelines can be accessed on the Authority's website

[4] On 14 November 2018, the Danish Data Protection Agency published a news item regarding insight through apps. The news can be accessed on the Authority's website.