

## Supervision of the preparation of lists in Varde Municipality

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Decision

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### Summary

In August 2020, the Danish Data Protection Agency completed a planned inspection at Varde Municipality. The audit focused on the municipality's compliance with the requirement to keep records of treatment activities, including in particular whether the municipality's records could be used for the purposes on which the requirement to keep records is based.

Following the audit of Varde Municipality, the Danish Data Protection Agency found reason to conclude that certain sections of the municipality's directories raised some challenges in relation to the underlying purposes of maintaining directories.

Based on the overall experience from the three completed inspections regarding the preparation of lists, the Danish Data Protection Agency has found an opportunity to update the guidelines on lists from January 2018.

You can read the Danish Data Protection Agency's guide to listing [here](#).

### Decision

Varde Municipality was among the authorities that the Danish Data Protection Agency in the autumn of 2018 had chosen to supervise in accordance with the Data Protection Ordinance [1] and the Data Protection Act [2].

The Danish Data Protection Agency's planned audit of Varde Municipality focused on the municipality's compliance with the requirement to keep records of processing activities in accordance with Article 30 of the Data Protection Regulation.

At the request of the Danish Data Protection Agency, Varde Municipality had - before the inspection visit - submitted the municipality's lists to the inspection. The actual inspection visit took place on 24 October 2018.

The Data Protection Regulation's requirement to keep records of processing activities is to a large extent related to the Regulation's principle of accountability. This principle requires both that the data controller ensures that the processing of personal data is in accordance with the Regulation and that the data controller is able to demonstrate that the Regulation is complied with, in accordance with Article 5 (1) of the Regulation. And Article 24 (2). The list must be drawn up in order to demonstrate compliance with the Regulation [3] and must be made available to the Danish Data Protection Agency upon

request so that it can be used for supervision in accordance with Article 30 (1). 4.

One of the Data Inspectorate's focus points for the supervision of Varde Municipality was thus whether the municipality's records could be used for the purposes on which the requirement for records of processing activities is to be kept.

Following the audit of Varde Municipality, the Danish Data Protection Agency finds a summary reason to conclude that the preparation of certain sections of the municipality's records raised some challenges in relation to the underlying purposes of keeping records.

Based on the experiences from the inspections regarding the preparation of lists, the Danish Data Protection Agency has therefore found reason to update the guidelines on lists from January 2018 [4].

#### Common data responsibility

Prior to the inspection visit, the Danish Data Protection Agency had noted that Varde Municipality had generally listed named employees in the municipality's registers as being joint data controllers with the municipality for the processing of personal data. When asked about this, Varde Municipality stated that the municipality had stated the names of the heads of the departments / units in which the information is processed.

Against this background, the Danish Data Protection Agency informed Varde Municipality that an employee who has been assigned an internal responsibility for the processing of personal data is not considered a joint data controller in accordance with the rules in the Data Protection Ordinance. The concept of joint data controller refers to another / external legal entity, e.g. another municipality with which Varde Municipality shares a data responsibility. In cases where there is a common data responsibility, it is also a requirement under Article 26 of the Data Protection Regulation that the parties define in a transparent manner their respective responsibilities for compliance with the obligations under the Regulation.

Varde Municipality then stated that the municipality would change the lists so that it becomes clearer that this is an internal division of responsibilities and not a joint data responsibility according to Article 26 of the Data Protection Regulation.

#### Categories of data subjects and categories of personal data

Pursuant to Article 30 (1) of the Data Protection Regulation 1, letter c, a list must contain a description of the categories of data subjects and the categories of personal data.

##### 2.1. Categories of registered

Prior to the inspection visit, the Danish Data Protection Agency had noted that Varde Municipality's registers generally

contained a list of the categories of data subjects about which the municipality processes information.

In some registers, for example, "family members" were listed as categories of registered persons. During the inspection visit, the Danish Data Protection Agency asked in more detail what each of the specified categories covered.

It was then the Data Inspectorate's opinion that those present could not state this with certainty, but that they could only make a qualified guess as to what the listed categories covered. Varde Municipality referred, however, to the fact that the municipality's employees in the individual areas would be able to explain exactly what the specified categories of registered persons covered.

The Danish Data Protection Agency therefore stated during the inspection visit that Varde Municipality can advantageously specify several of the specified categories of data subjects in order to ensure that it is not only the municipality's employees in the individual areas who can provide more information about the categories.

## 2.2. Categories of personal information

Prior to the inspection visit, the Danish Data Protection Agency had noted that Varde Municipality's lists generally contain fields in which the municipality could check whether Article 6 information, Article 9 information and Article 10 information are processed in connection with the specific processing activity.

During the inspection visit, however, the Danish Data Protection Agency was able to establish that neither those present nor the inspection could see from the records which specific Article 6 information, Article 9 information or Article 10 information that the municipality processes in connection with the processing activities in question. When asked about this, Varde Municipality stated, however, that the municipality's employees in the individual areas to which the lists relate would be able to specify the categories of information.

In this connection, the Danish Data Protection Agency referred to the Authority's (now earlier) guidelines on inventories from January 2018, which state that the data controller must be able to specify which specific types of Article 9 information are processed.

During the inspection visit, it was therefore discussed that Varde Municipality - in the opinion of the Data Inspectorate - can advantageously prepare its lists in such a way that all categories of personal information are specified in more detail, including to ensure that it is not only the municipality's employees. individual areas that can provide more information about the categories.

## Coupling between categories of data subjects and categories of information

After a review of the submitted lists, it was not clear to the Danish Data Protection Agency which categories of personal data Varde Municipality processes about the individual categories of data subjects. For example, the Danish Data Protection Agency could not deduce from the records whether the municipality processes Article 9 information on all of the categories of data subjects listed in the individual directories, or whether this was only the case for some of the specified categories of data subjects.

When asked about this, Varde Municipality stated that the persons present would not be able to state from the lists which categories of personal data the municipality processes about the individual categories of data subjects, and that this would at best be qualified guesses.

Against this background, the Danish Data Protection Agency stated during the inspection visit that, in view of the purposes of the register requirement, the Authority's assessment is that a list of processing activities must contain a clear link between the categories of personal data processed about the individual categories of data subjects. The Danish Data Protection Agency's updated guidance on inventories from August 2020 is in accordance with this.

## Categories of recipients to whom the information is or will be passed on

Pursuant to Article 30 (1) of the Data Protection Regulation 1, letter d, a list shall include information on the categories of recipients to whom the personal data are or will be transferred, including recipients in third countries or international organizations.

Prior to the inspection visit, the Danish Data Protection Agency had noted that Varde Municipality's lists generally contained a list of the companies, authorities, etc. to which personal data is or could be passed on. In addition, the municipality had specified data processors as a category of recipients to whom personal data is or could be passed on

During the inspection visit, the Danish Data Protection Agency stated that - in the Data Inspectorate's opinion - it is important to distinguish between when information is handed over to data processors and when information is passed on to other independent data controllers, as there are different forms of exchange of personal data. .

After a review of the submitted lists, it was not clear to the Danish Data Protection Agency which categories of personal data, including which categories of data subjects, could be passed on to the recipients that the municipality had stated in the list.

When asked about this, Varde Municipality stated that the persons present would not be able to state this based on the lists.

In this connection, the Danish Data Protection Agency's assessment is that a list - if personal data is or will be passed on - must contain information about which categories of personal data are or will be passed on to the recipient in question. In connection with this, it must also be stated which categories of data subjects the information in question relates to. The Danish Data Protection Agency has therefore updated the guidelines on inventories so that the edition from August 2020 is in accordance with this.

#### 5. Deadlines for deleting the different categories of information

Pursuant to Article 30 (1) of the Data Protection Regulation 1, letter f, a list shall, if possible, include the expected time limits for deletion of the various categories of information.

Prior to the inspection visit, the Danish Data Protection Agency had noted that in Varde Municipality's registers there was a reference to the recommended deletion deadlines in the municipalities' subject system, KLE.

Asked about the lists' references to the recommended deletion deadlines in KLE, Varde Municipality demonstrated during the inspection visit how to quickly look up in KLE during certain treatment activities and then see the recommended deletion deadline.

During the inspection visit, the Danish Data Protection Agency stated that, after the inspection's assessment, it was sufficient that the municipality had stated a reference to the recommended deletion deadlines in KLE.

#### 6. Description of the technical and organizational security measures

Pursuant to Article 30 (1) of the Data Protection Regulation A list shall, if possible, include a general description of the technical and organizational security measures referred to in Article 32 (1) (g). 1.

Prior to the inspection visit, the Danish Data Protection Agency had noted that Varde Municipality in the lists generally referred to the municipality's information security policy.

During the inspection visit, the Danish Data Protection Agency generally had no comments on the fact that Varde Municipality in the lists referred to the municipality's information security policy with regard to a general description of the technical and organizational security measures. However, the Danish Data Protection Agency stated that the municipality can advantageously state this in the list if special measures are implemented - in addition to the general security measures - e.g. in relation to security in Citizen Service Centers, in municipal libraries or in connection with the processing of personal data via television surveillance, etc.

Prior to the inspection visit, the Danish Data Protection Agency had also noted that Varde municipality had stated in several lists "obtaining a child certificate" as a technical or organizational security measure. During the inspection visit, the Danish Data Protection Agency stated that "obtaining child certificates - in the Authority's view - does not constitute a security measure within the meaning of Article 32 (1) of the Data Protection Regulation. 1 in obtaining such a certificate has a different purpose than the protection of personal data.

#### 7. TV surveillance as a treatment activity

Prior to the inspection visit, the Danish Data Protection Agency had noted that it did not appear from Varde Municipality's records whether the municipality processes personal data in connection with television surveillance.

When asked about this, Varde Municipality stated that TV surveillance is carried out in the municipality's citizen service center.

The Danish Data Protection Agency pointed out that this processing should appear in the list for the civil service area. In addition, the Authority pointed out that if the TV surveillance is set up for the purpose of crime prevention, the municipality should also be aware that information about criminal offenses is potentially processed and that this should be stated in the list.

#### 8. Conclusion

The Danish Data Protection Agency has generally noted that there were several sections in Varde Municipality's registers where neither those present from the municipality nor the Danish Data Protection Agency were able to see through the processing activities solely from the lists. Although Varde Municipality stated that the municipality's employees in the areas to which the lists relate could elaborate on the contents of the lists, it is the Data Inspectorate's opinion that the lists should be prepared in such a way that the requested information can be clearly deduced directly from the lists.

However, the Danish Data Protection Agency can also conclude that the preparation of certain sections of Varde Municipality's lists - including the sections of the lists concerning deletion deadlines and technical and organizational security measures - provides a good overview for both the municipality and the Danish Data Protection Agency.

The requirement to keep records of processing activities is - as mentioned above - largely related to the regulation's principle of accountability.

The responsibility is expressed by the data controller both having to comply with the rules of the regulation and at the same time be able to demonstrate that this is in fact the case. It is thus up to the data controller to have an overview of the processing activities that he carries out and to be able to demonstrate to e.g. the supervisory authority that the treatment

activities in question comply with the rules of the Regulation.

Each data controller (and data processor) must thus cooperate with the supervisory authority and, upon request, make the records available to the supervisory authority so that these can be used to monitor whether the data controller complies with the processing conditions in the Regulation. The common thread in the regulation on accountability is thus implemented, among other things, in the requirement to list treatment activities in Article 30 of the Regulation.

Based on the experiences with the inspections of lists in a number of municipalities - including Varde Municipality - the Danish Data Protection Agency has therefore found an opportunity to update the guidelines on lists from January 2018 [5].

This is partly due to the fact that the records that the Danish Data Protection Agency has had for review in connection with the inspections, in the Authority's assessment, could not be used to a sufficient degree for the purposes behind the inventory requirement. In several cases, neither the municipalities nor the Danish Data Protection Agency could form an overview of the scope of the processing activities based on the content of the lists. Thus, it was also difficult for the Authority to ensure that the treatment activities in question complied with the rules of the Regulation.

It is the Data Inspectorate's assessment that an update of the guidelines contributes to inventories being prepared in a way that ensures that the inventories are concretely and practically usable for both the data controller / data processor and for the Data Inspectorate.

The Danish Data Protection Agency thus emphasizes that the requirement to draw up lists must not just become a formal requirement, and that the lists only become really substantive when they are drawn up in a way that creates a real overview of the treatments in question and forms a basic foundation for the data controller's / data processor's general compliance with the data protection rules.

[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

on the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 / EC (General Data Protection Regulation).

[2] 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).

[3] Cf. preamble No 80

[4] The Danish Data Protection Agency's updated guide to inventories from August 2020 can be found on the Authority's website.

[5] The Danish Data Protection Agency's updated guide to inventories from August 2020 can be found on the Authority's website.