

The crisis center's request for a social security number via SMS did not give rise to criticism in a very special and concrete situation

Date: 27-04-2022

Decision

Private companies

No criticism

Supervision / self-management case

Social Security number

Sensitive information

Unsafe transmission

The Danish Data Protection Authority has made a decision in a case where the Joannahuset crisis center had assessed that in a specific and very special situation there were considerations other than the protection of personal data that weighed heavily.

Journal number: 2021-431-0151

Summary

In August 2021, the Danish Data Protection Authority became aware that a child and youth crisis centre, Joannahuset, had requested to receive a young person's social security number via SMS. It is the Danish Data Protection Authority's general assessment that transmission via SMS of confidential information, such as a social security number, entails a significant risk for the rights and freedoms of the data subjects. The supervisory authority therefore decided to take up a case on its own initiative with the crisis center in order to investigate the matter further.

It appears from the information in the case that the crisis center found it necessary to verify the identity of the person in question in order to offer him shelter. According to the information in the case, it was an urgent and very special situation where there were no other and more secure transmission solutions available that could ensure a fast enough verification of the identity of the person concerned.

The supervisory authority has therefore assessed that there is no basis for overriding the crisis centre's assessment that, in the specific situation, there was consideration of the young person's interests, which may weigh more heavily than the consideration of the protection of personal data, and that the young person in the case would be able to suffer a greater loss of

rights if the relevant SMS was not sent.

## Decision

In August 2021, the Danish Data Protection Authority became aware that Joannahuset, in connection with obtaining consent for a child's enrollment in shelter at Joannahuset, has requested to receive the child's name and social security number via SMS. In addition, a request has been made to send a photo of identification, but without specifying how this identification should be sent.

The Danish Data Protection Authority decided to investigate the matter further on its own initiative<sup>[1]</sup>. In this connection, the Danish Data Protection Authority requested Joannahuset on 3 September 2021 for an opinion on the matter, including to answer a number of questions. Joannahuset, represented by DLA Piper, sent a statement in the matter on 24 September 2021. On 24 February 2022, the Danish Data Protection Authority decided to request Joannahuset for further information. On 17 March 2022, DLA Piper sent another statement based on this.

### 1. Decision

In August 2021, the Danish Data Protection Authority became aware that Joannahuset, in connection with obtaining consent for a child's enrollment in shelter at Joannahuset, has requested to receive the child's name and social security number via SMS. In addition, a request has been made to send a photo of identification, but without specifying how this identification should be sent.

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After a review of the case, the Danish Data Protection Authority finds no basis for overriding Joannahuset's assessment that, in the specific situation, there is consideration of the young person's interests, arising in an acute situation and with limited possible solutions available, which must weigh more heavily than the consideration of protection of personal data, and that the young person in the case would suffer a greater loss of rights if the SMS in question was not sent.

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

## 2. Case presentation

It appears from Joannahuset's statements to the case that Joannahuset is a child/youth crisis center which offers shelter to young people who have run away or been kicked out from home or from a place of placement.

It appears from the case that on 2 September 2021 a young person approached Joannahuset and requested shelter, which is why Joannahuset contacted the young person's place of accommodation to obtain consent for the young person to spend the night in Joannahuset, as the staff otherwise assessed, that the criteria for offering shelter were met. It also appears that Joannahuset has previously been in dialogue with the person concerned and has previously provided shelter to the person. Considering the experiences from the previous dialogue with the young person's home municipality, which according to Joannahuset has been difficult, Joannahuset has stated that the staff present assessed that in the specific situation there was a special need to ensure that both the identity of the person who gave the consent regarding the young person, which the young person himself, was unambiguously and documentably established, such that no doubts could subsequently be raised about the consent. Joannahuset therefore requested in the specific situation to receive the young person's social security number via SMS.

Joannahuset has also stated that it was assessed that it could have significant negative consequences for the young person if Joannahuset could not offer shelter, which is why Joannahuset's staff chose to deviate from the normal procedure, which prescribes that only absolutely necessary information is processed and which starting point, not "very personal information" via SMS, and then requested that the contact person from the municipality forward a consent where the young person was identified by social security number.

Joannahuset has further stated that due to the nature of the case and previous proceedings, and because Joannahuset has previously experienced that children and young people in crisis sometimes get others to pretend to be authorized to give consent, Joannahuset also found it necessary to obtain documentation for the consent giver's identity.

Regarding Joannahuset's considerations regarding the request for social security number via SMS, Joannahuset has stated that, particularly in cases where consent must be obtained from the holder of parental authority, who, according to Joannahuset, often has limited resources, including no access to e-mail, employees often have to find concrete solutions with the available funds. Joannahuset has also stated that since most people have access to a mobile phone, consent can often be obtained in a telephone conversation, after which Joannahuset sends an SMS, which the consent giver must then confirm, so

that there is documentation for the consent.

It also appears from the case that Joannahuset's procedure for using SMS prescribes that the employee must consider what information it is concretely necessary to provide, and limit the text to this information. According to Joannahuset, text messages that serve to confirm given consent therefore, as a general rule, do not contain the child's or young person's social security number. In practice, however, according to Joannahuset, there may be situations where consideration of the child's or young person's interests dictates that these procedures are deviated from, e.g. in situations where there is a risk of further and serious negative consequences for the child or young person, if Joannahuset is unable to offer the necessary help due to lack of or insufficient consent. Joannahuset has stated that in the specific situation it is a deviation from the normal procedures based on a concrete assessment of the specific situation, including consideration of the young person's interests and Joannahuset's other obligations.

Joannahuset has informed the case that, on the basis of the inquiry from the Danish Data Protection Authority, Joannahuset has emphasized to employees that consideration of the child's or young person's interests and Joannahuset's obligations according to other regulations must clearly exceed the risk of a violation of the children's or young people's rights and freedoms by , that their personal data is processed using forms of communication that are generally not suitable for processing the type of information in question.

It also appears from the case that the reason why, in the specific situation, the transmission of the social security number via SMS was requested was that the communication took place in the evening, when the consent giver was not at his workplace, and therefore, according to Joannahuset, there was no possibility to establish communication via secure email or equivalent. Since, however, according to Joannahuset, it was important that the consent was received the same evening, since consent was a condition for being able to offer the young person overnight in Joannahuset, and since SMS had to be considered the only way in which a written consent could be sent sufficiently quickly , Joannahuset assessed that consideration for the young person's safety in the specific situation had to take precedence over consideration for the protection of personal data during transmission, which is why it was deemed justified to use SMS for this communication.

Joannahuset has also stated that Joannahuset does not consider the transmission of confidential information via SMS to be sufficiently secure, and that this solution is only used in special situations where other and more secure forms of communication are not available within the time horizon where there is a need receiving information for the sake of

safeguarding the young person's interests. In this connection, Joannahuset has stated that young people who seek shelter in Joannahuset in these situations will be left to spend the night on the street if Joannahuset does not receive the necessary consent. Failure to use SMS as a form of communication can, according to Joannahuset, in such situations cause significant and immediate danger to the young people's lives and health.

### 3. Reason for the Data Protection Authority's decision

#### 3.1.

On the basis of the information provided by Joannahuset, the Danish Data Protection Authority assumes that Joannahuset has requested to receive a young person's social security number via SMS, and that Joannahuset has not made other transmission solutions available to the person in question in this regard.

After a review of the case, the Danish Data Protection Authority finds no basis for overriding Joannahuset's assessment that, in the specific situation, there is consideration of the young person's interests, arising in an acute situation and with limited possible solutions available, which must weigh more heavily than the consideration of protection of personal data, and that the young person in the case would suffer a greater loss of rights if the SMS in question was not sent.

The Danish Data Protection Authority is of the opinion that requirements for data protection in special cases must give way to other more weighty considerations, including, for example, the consideration of urgently securing life and health in relation to particularly vulnerable groups of people. The Danish Data Protection Authority is of the opinion that such relaxation of data protection must be done after a specific assessment, and that the considerations in this regard must be documented.

#### 3.2.

The Danish Data Protection Authority also notes that the requirement for adequate security according to Article 32 of the Data Protection Regulation, in the Danish Data Protection Authority's view, usually includes implies that the data controller must offer the data subjects a sufficiently secure transmission solution when transmitting e.g. confidential information when the data controller collects information from the data subjects for use in processing a case or service.

The Danish Data Protection Authority is of the opinion that all transmissions of information about natural persons, in plain text, over networks over which the data controller has no control, entail a significant potential risk of loss, alteration, unauthorized disclosure and access to the processed information. It is the Danish Data Protection Authority's assessment that it is possible for people with the necessary knowledge and willingness to do so, as well as for people with access to the telecommunications

infrastructure, to see the content of a given SMS. Furthermore, it is technically possible for unauthorized persons to enter as a link in the chain of mobile phone antenna stations, whereby these unauthorized persons can gain access to see the information being transmitted. Such risk scenarios must be included as part of the risk assessments that the individual data controller makes in connection with their processing, which takes place via SMS.

It is the Danish Data Protection Authority's assessment that the transmission of sensitive information and information that must be subject to confidentiality via SMS entails a significant risk to the rights and freedoms of the data subjects, and that the risk, as is also the case with e-mails that are transmitted via the internet, is at the high end of the scale. Furthermore, it is the supervisory authority's assessment that the risk to confidentiality during transport can only be mitigated to a very limited extent by measures initiated by the data controller himself.

In addition, the Danish Data Protection Authority is of the opinion that a data subject cannot opt out of the measures deemed appropriate in accordance with Article 32.

The Norwegian Data Protection Authority has published guidance texts on the transmission of personal data via SMS and e-mail on its website, where Joannahuset can read more about how the data controller should deal with this: Transmission of personal data via SMS ([datatilsynet.dk](https://www.datatilsynet.no/tema/overføring-av-personlige-data-via-sms)) and Transmission of personal data via e-mail ([datatilsynet.dk](https://www.datatilsynet.no/tema/overføring-av-personlige-data-via-e-post)).

[1] The Data Protection Authority oversees any processing that is covered by the Data Protection Act, the Data Protection Regulation and other legislation that falls within the Data Protection Regulation's framework for special rules on the processing of personal data. The detailed rules can be found in Section 27 of the Data Protection Act.