

Supervision of Rejsekort & Rejseplan A / S 'processing of personal data

Date: 26-02-2020

Decision

Journal number: 2019-41-0031

Summary

In 2019, the Danish Data Protection Agency carried out a planned inspection at Rejsekort & Rejseplan 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.

The Danish Data Protection Agency found that, Rejsekort & Rejseplan A / S 'responses to requests for insight have generally been made in accordance with Article 15 of the Regulation, and that the company in all the cases reviewed has responded to the requests within one month of receiving the request.

The Danish Data Protection Agency's concluding statement states, among other things, that it is the Authority's assessment that the automatic decision made by Rejsekort & Rejseplan A / S on the price of a trip in connection with registration of forgotten checks does not affect the data subject's legal rights. otherwise has no serious effects on the data subject, which is why such a decision will not be covered by Article 22 of the Regulation. , PCS. 1, letter h.

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

Decision

Rejsekort & Rejseplan 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 Rejsekort & Rejseplan 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, Rejsekort & Rejseplan A / S had filled in a questionnaire before the inspection visit and submitted this together with further material to the inspection. The actual inspection visit took place on 7 May 2019.

Decision

Following the audit of Rejsekort & Rejseplan A / S, the Danish Data Protection Agency finds reason to conclude in summary: That Rejsekort & Rejseplan A / S has to a large extent prepared guidelines, procedures, etc. for the undertaking's compliance

with Articles 15 and 12 of the Data Protection Regulation.

That Rejsekort & Rejseplan A / S has to a large extent prepared templates that can help to ensure and facilitate the company's employees' compliance with Article 15 of the Data Protection Ordinance.

That Rejsekort & Rejseplan A / S 'responses to requests for insight have generally taken place in accordance with Article 15 of the Data Protection Regulation.

That Rejsekort & Rejseplan A / S in all cases that have been reviewed, has responded to requests for insight within one month after receipt of the requests, cf. Article 12 (1) of the Data Protection Ordinance. 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.

Rejsekort & Rejseplan A / S 'guidelines and procedures

Prior to the inspection visit, Rejsekort & Rejseplan A / S sent a copy of the company's procedures, guidelines, etc., which were in force on the date of notification of the inspection, regarding the handling of access requests in accordance with Articles 15 and 12 of the Data Protection Regulation.

Rejsekort & Rejseplan A / S stated during the inspection visit that the company's templates and internal guidelines, policies, etc. are available to all the company's employees, but that it will typically be the data protection adviser or two other specific employees from the Customer Center who handle requests for insight, which is why it is primarily they who make use of the prepared templates and internal guidelines, policies etc.

The guidelines, policies, etc. prepared by Rejsekort & Rejseplan A / S contains i.a. information on Article 12 of the Data Protection Regulation, including information on the time limit for replying to requests for access, and that requests for access to requests must be made in a concise, transparent, easily understandable and easily accessible form and in clear and simple language.

In addition, information is provided on how employees should handle requests for access where there is doubt about the identity of the data subject, and where the company will therefore have to request additional information from the data subject in order to confirm the identity of the data subject, cf. PCS. 6.

It thus appears that information may only be disclosed when the data subject has duly identified himself or herself or when assurance has otherwise been provided that the person making the request for access is identical to the person to whom the

information relates. This can be done, for example, by the data subject stating his or her travel card number, and control questions being asked about the data subject's or the data subject's recent travel.

Furthermore, it appears that in general there will be no reason to carry out special investigations when a request for insight has been made per. letter or e-mail, and whose name and address in the inquiry are identical to the information that already appears on the travel card system. However, if this is not the case, the matter should be investigated further, for example by contacting the person who made the request or the population register, possibly. via the CPR register.

In this connection, the Danish Data Protection Agency presupposes that the e-mail address in question must of course also be identical to the information that already appears in the travel card system.

In the case of telephone requests for access, employees may ask control questions to the data subject during the interview, or employees may make a control call to an already registered telephone number to ensure that it is the right person requesting access to their personal data.

The guidelines, policies, etc. also contains information on what information must be provided to the data subject in answering requests for access pursuant to Article 15 (1) of the Regulation. 1, letters a-h.

In addition, the guidelines, policies, etc. contain information on how employees in practice should handle requests for access, including how employees should process requests for access to information on children and young people under the age of 18, for example in cases where a parent requests access on behalf of the child.

It appears from the prepared guidelines, policies, etc. that the right of access does not include information about who has made entries in customers' data or information about which IP addresses have logged on Rejsekort Selvbetjening.

When asked, Rejsekort & Rejseplan A / S stated during the inspection visit that the processing that takes place in connection with the company's registration of IP addresses takes place in such a way that it will not be possible for the company to identify the registered person. Rejsekort & Rejseplan A / S can thus not provide insight into information about IP addresses, cf. Article 11 (1) of the Data Protection Ordinance. 2.

This does not give the Danish Data Protection Agency cause for comment.

3. Rejsekort & Rejseplan A / S 'standard texts

Rejsekort & Rejseplan A / S has sent a copy of the templates that the company's employees use when answering insight requests, including a general template for answering insight requests and a template for answering insight requests regarding

telephone recording.

Rejsekort & Rejseplan A / S stated during the inspection visit that the submitted templates have been prepared in accordance with the Danish Data Protection Agency's template, which can be found on the inspection's website.

During the audit, the Danish Data Protection Agency asked whether Rejsekort & Rejseplan A / S makes decisions against data subjects based solely on automatic processing, in accordance with Article 22 (1) of the Data Protection Ordinance. Article 15 (1) of the Regulation provides: 1, letter h, that the data controller must provide the registered information about the occurrence of automatic decisions.

Rejsekort & Rejseplan A / S stated that the company in some cases makes automatic decisions, including when registering forgotten checks out via the app Check Udvej or via the website. If a person forgets to check out after a trip, he or she can report a check out for up to 10 days after the start of the trip. In some cases, there will then be an automatic decision regarding the new travel price. In the case of abnormal cases, the decision will not be automatic, just as it will only be the registered persons who use Check Udvej that Rejsekort & Rejseplan A / S will in certain cases make automatic decisions. Therefore, it will not be in all cases that the company will provide information about the occurrence of automatic decisions when responding to requests for insight.

Rejsekort & Rejseplan A / S stated in continuation of this that the company has changed the company's templates on the basis of an inquiry, so that it now also appears that in some cases information must be provided about the occurrence of automatic decisions.

Following the inspection visit, however, Rejsekort & Rejseplan A / S has stated that the automatic calculations that take place in Check Udvej, in the company's assessment, are not covered by Article 22 of the Data Protection Regulation.

Rejsekort & Rejseplan A / S has stated in this connection that registration of missing checks is done by a customer who has not checked out on a trip, subsequently through Check Udvej (both via an app and Rejsekort's website). failure to check out with information about time and place of the actual end of the trip. If the registered check-out matches the information that Rejsekort already has (including time and place of check-in), an automatic approval of the registered check-out will then take place, and on the basis of this information, the price of the trip will be calculated.

On the basis of the above, Rejsekort & Rejseplan A / S is of the opinion that the company in connection with the customer's registration in Check Udvej of missing check out, as stated, makes an automatic calculation, but that this calculation is not

covered by Article 22 of the regulation on automatic decisions, as - in the company's view - these are not measures that evaluate personal circumstances, etc., and that the automatic calculation is thus not covered by the special right of access in Article 15 (1). 1, letter h.

Rejsekort & Rejseplan A / S has referred to report 1565/2017 (p. 376f), which states the following:

"It does not appear directly from the regulation that it must be information intended to assess certain personal circumstances, as is the case with section 39 of the Personal Data Act and Article 15 of the Data Protection Directive.

However, it is clear from recital 71 in the preamble to the regulation that the data subject should have the right not to be the subject of a decision which may include a measure which evaluates his personal situation and which is based solely on automatic processing and which: has legal effect or which in a similar way significantly affects the person concerned, such as an automatic rejection of an online application for credit or e-recruitment procedures without any human intervention.

In the context of Article 4 (4) of the Regulation, profiling is: any form of automatic processing of personal data which consists in the use of personal data to evaluate certain personal matters relating to a natural person, in particular to analyze or predict matters regarding the natural person's work performance, financial situation, health, personal preferences, interests, reliability, behavior, geographical position or movements.

In addition, the title of Article 22 is automatic individual decisions, which also supports the fact that the decision must relate to personal matters. The scope of these treatments is thus also seen to be identical with the applicable law.

It is important to keep in mind that the treatment referred to in Article 22 is the automatic treatment in which personal circumstances are evaluated. Thus, there will be no decision within the meaning of Article 22 if the decision taken is based on a purely mathematical calculation based on the given factual assumptions, without there being an evaluation of personal circumstances concerning the person concerned. "

Furthermore, Rejsekort & Rejseplan A / S has referred to the following in the Data Inspectorate's guidelines on the rights of data subjects [2]:

"The court [in Article 22] implies, firstly, that the data subject has the right not to be subject to a decision based solely on automatic processing, which has legal effect or in a similar way significantly affects him.

Secondly, the court implies that the data subject has the right not to be subjected to an automatic processing of personal data, which consists in using the data to evaluate certain personal matters concerning the data subject, in particular to analyze or

predict matters relating to the data subject's work performance. financial situation, health, personal preferences, interests, reliability, behavior, geographical position or movements (profiling - when this forms the basis for an automatic decision).

In practice, the court means that you, as the data controller, as a starting point, may not make decisions that are based solely on automatic processing or profiling when the decision or profiling has legal effects for or significantly affects the data subject. Thus, if the two conditions below are met, you must not, in principle, make decisions based solely on automatic processing or profiling against the data subject:

The decision or profiling has legal effect for or significantly affects the data subject.

2. The decision or profiling involves an evaluation of the data subject's personal circumstances. ”

In summary, Rejsekort & Rejseplan A / S's opinion is that automatic calculations in an IT system made on the basis of a mathematical or statistical procedure will (only) be covered by Article 22 if, in connection with the calculation, an evaluation of personal circumstances, which is not the case with the automatic calculation of the price of the trip, which takes place in Check Resort on the basis of the customer's entered information about the trip, etc.

It is the Data Inspectorate's assessment that the calculation that takes place on the basis of the customer's entered information about the trip in Check Udvej must be regarded as an automatic decision, as the calculation of the trip price is based on an automatic processing without human intervention.

It follows from Article 22 (1) of the Regulation that the data subject has the right not to be the subject of a decision based solely on automatic processing, including profiling, which has legal effect or has a significant effect on the person concerned in a similar way.

In this connection, the Article 29 Working Party's guidelines on automatic individual decisions and profiling state:

The Data Protection Regulation does not define "legal effect" or "similarly significant effect", but it is clear from the wording that only serious effects will be covered by Article 22.

[...]

A legal effect presupposes that the decision, which is based solely on automatic processing, affects a person's legal rights such as freedom of association, the right to vote in an election or to bring an action. A legal effect can also be something that affects a person's legal status or rights under a contract. Examples of these types of effects include automatic decisions about a person that result in:

cancellation of a contract

the right to or a refusal of a particular social benefit granted by law, e.g. child or housing allowance ”

[...]

Although a decision-making process does not affect the legal rights of the individual, it may still fall within the scope of Article 22 if it similarly significantly affects the individual concerned.

In other words, even if no changes have been made to the data subject's legal rights or obligations, the data subject may still be sufficiently affected to claim protection under this provision. In the Data Protection Regulation, the words "similarly" are inserted (in Article 15 of Directive 95/46 / EC) before "significantly affects". The threshold for significance must therefore be the same as for a decision which has legal effect.

Recital 71 gives the following typical example: "automatic rejection of an online application for credit or e-recruitment procedures without any human intervention".

If the data processing is to be considered as significantly affecting a person, the effects of the processing must be sufficiently significant or important to be taken into account. In other words, the decision must potentially:

significantly influence the person's situation, behavior or choices

have a long-term or permanent impact on the data subject or

lead to the exclusion or discrimination of individuals in the most extreme cases.

It is difficult to specify what would be considered sufficiently significant to meet the threshold, although the following decisions could fall into this category:

Decisions that affect a person's financial situation, e.g. his access to credit

Decisions that affect a person's access to health care

Decisions by which a person is excluded from an employment opportunity or is significantly weaker

Decisions that affect a person's access to education, e.g. admission to the university. ”

It is then the Data Inspectorate's assessment that the automatic decision on the price of the trip does not affect the data subject's legal rights, and that the decision otherwise has no serious effects on the data subject. Thus, in the Authority's opinion, the automatic decision on the price of the trip is not covered by Article 22 of the Data Protection Ordinance, which is why Rejsekort & Rejseplan A / S is not obliged to provide information in answering requests for insight in accordance with

Article 15 (1). 1, letter h.

Rejsekort & Rejseplan A / S 'handling of requests for insight

4.1. Rejsekort & Rejseplan A / S has stated to the Danish Data Protection Agency that the company has received and responded to 19 requests for insight from customers in the period from 25 May 2018 to 9 April 2019. Rejsekort & Rejseplan A / S has sent a copy of 10 of the answers to the Danish Data Protection Agency prior to the inspection visit.

The Danish Data Protection Agency generally has no comments on Rejsekort & Rejseplan A / S 'responses to the access requests, cf. Article 15 of the Data Protection Ordinance.

After a review of the replies, the Danish Data Protection Agency may further establish that the requests for insight in question have in all cases been answered within 1 month of receipt of the request in accordance with the deadlines in Article 12 (1) of the Regulation. In this connection, Rejsekort & Rejseplan A / S has also stated that the company spends an average of 11.6 days processing a request for insight.

4.2. 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.

Rejsekort & Rejseplan A / S has in this connection stated that the company in February 2019 received two requests for insight via the app "WeAreDavid" with generally formulated inquiries from persons specified by name and e-mail.

Rejsekort & Rejseplan A / S requested further information about the persons in question, including, for example, card number and registered e-mail address, but did not receive any feedback from the requesting persons. Rejsekort & Rejseplan A / S therefore did not respond to the requests. [3]

The Danish Data Protection Agency has no comments on this.

5. Conclusion

Following the audit of Rejsekort & Rejseplan A / S, the Danish Data Protection Agency finds reason to conclude in summary: That Rejsekort & Rejseplan A / S has to a large extent prepared guidelines, procedures, etc. for the undertaking's compliance with Articles 15 and 12 of the Data Protection Regulation.

That Rejsekort & Rejseplan A / S has to a large extent prepared templates that can help to ensure and facilitate the company's employees' compliance with Article 15 of the Data Protection Ordinance.

That Rejsekort & Rejseplan A / S 'responses to requests for insight have generally taken place in accordance with Article 15 of the Data Protection Regulation.

That Rejsekort & Rejseplan A / S in all cases that have been reviewed, has responded to requests for insight within one month after receipt of the requests, cf. Article 12 (1) of the Data Protection Ordinance. 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] The guidelines can be accessed on the Authority's website.

[3] 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.