

Complaint about photo on Mette Frederiksen's Facebook profile

Date: 31-05-2021

Decision

The Danish Data Protection Agency has not found reason to process a complaint about Mette Frederiksen's publication of a picture of a school class, as the picture was removed at the request of one of the students' parents.

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Summary

When Prime Minister Mette Frederiksen visited a school in March, a picture of her with a school class was published on her Facebook profile. The parents of one of the students who appeared in the picture then objected to Mette Frederiksen, and the picture was removed the same day.

Subsequently, the parents complained to the Danish Data Protection Agency, but at the end of May they received a decision that the Danish Data Protection Agency does not consider it necessary to process the complaint. The primary reason is that the removal of the image, which is one of the key objectives that could potentially be achieved by an actual appeals process, has just already taken place.

Decision

On 7 April 2021, on behalf of your son [...], you contacted the Danish Data Protection Agency about the publication of a picture of him on the Facebook profile Mette Frederiksen.

The Danish Data Protection Agency has understood your inquiry as a complaint that the publication has taken place without sufficient consent. Furthermore, you request that the Danish Data Protection Agency take a position on:

who is data responsible for posts on Mette Frederiksen's social media

compliance with the basic principles of lawful treatment

legal treatment authority

continued treatment after the reactions in the image

responsibility for the use of young people for political message

Decision

On the basis of the information in the case - in particular that the image was removed on the same day as you requested - the

Danish Data Protection Agency does not find it necessary to initiate an appeal, cf. Article 57 (1) of the Data Protection Regulation. 4 [1].

Below is a justification for the Danish Data Protection Agency's decision.

2. Case presentation

It appears from the case that Mette Frederiksen visited the [...] school on 18 March 2021, including the class your son attends.

Pictures were taken in connection with the visit. One of these pictures is a group picture, where your son in the background (in relation to Mette Frederiksen) shows an outstretched middle finger.

This picture was subsequently published in a post on the Facebook profile Mette Frederiksen and by various media.

The picture, where your son shows an outstretched middle finger, subsequently gave rise to a number of comments, for which you have attached examples. One of these reads: "He must be happy that we have abolished the asshole".

When on 22 March 2021 he objected to the publication of the picture in question, it was later that day removed from the Facebook profile Mette Frederiksen.

It also appears from a note prepared by a named school principal that - before Mette Frederiksen's visit - the class teachers' verbal consent was obtained from the parents for the media to take and use pictures in connection with the visit.

Another note states that the headmaster in connection with the visit asked Mette Frederiksen if the students could take a picture of her, in which connection Mette Frederiksen suggested that a group photo be taken. The students were then asked by Mette Frederiksen if they wanted to have a joint picture taken.

This note further states that the students were all over the age of 15, that everyone confirmed they would attend, and that Ritzau had a photographer in the room who took pictures at the same time.

You have stated in your complaint that you (the parents) were orally asked whether it was OK to take pictures, which you verbally agreed to. It was not mentioned on any of these occasions that the image was to be used for a political campaign on Mette Frederiksen's Facebook page or other of her social media. The parents thus only gave permission for the use of the media, just as the students were asked by Mette Frederiksen if they wanted to have a common (group) picture taken - without stating the use.

You have further stated that on the basis of the above, no specific consent has been given for the use of Mette Frederiksen's Facebook page, where the purpose is political agitation, just as no information has been provided about the possibility of

withdrawing the consent. There has also been no requirement for active action, and passivity cannot constitute consent, just as students would have to say no in front of the rest of the class. Special protection should apply in particular to the use of children's personal data for the purpose of political agitation, just as the picture shows your son in a situation that many perceive as compromising.

You also notice that more than 600,000 kroner has been spent on advertising Mette Frederiksen's Facebook page. In addition, the page is registered as a politician page, and 12 administrators are registered, and the page contains mainly politically profiling posts with pictures. This is clearly a matter of political agitation - even to a considerable extent.

You have also stated that when the notice was public, it was quickly shared. Alone from Mette Frederiksen's Facebook page over 380 times, where it was initially exposed to her almost 300,000 followers. Likewise, the posting was used by many others on various digital platforms, including finger-crossed versions. This gave rise to tens of thousands of "dis / likes" and comments in various places.

You have not seen that anything has been done on Mette Frederiksen's own Facebook page to moderate or ask for a proper tone. Not even after it was known to her staff that there were many hateful and condescending comments and that the picture showed your son in a situation that was perceived by many as compromising. Against this background, you believe that the image should have been removed by own operation.

Justification

3.1.

There are no specific data protection law rules regarding the publication of images on the Internet by recognizable persons. When a data controller wants to publish an image on the Internet with identifiable persons, it is crucial that there is a legal basis for the publication.

Processing of personal data can, among other things, take place if the data subject (the person in the picture) has given his or her consent.

However, personal data (in the form of an ordinary image) can also be processed if the data controller has a legitimate interest in publishing the image, and this interest exceeds the data subject's interests or rights (the balance of interests rule).

In assessing whether a picture can be published on the basis of a balance of interests, it is, among other things, depends on the nature of the image, including where and why the image was taken, in what context the image is included and what the

purpose of the publication is. It is crucial that the people in the picture can not reasonably feel exposed, exploited or violated, e.g. in connection with marketing or other commercial purposes. The age of the person in the picture must also be taken into account in this connection.

The Danish Data Protection Agency has previously assessed that the publication of personal data in order to create political debate - when freedom of expression is also taken into account - is a legitimate interest, which in certain cases takes precedence over the interest of the person whose personal data is published.

If the person in the picture is dissatisfied with the publication, he or she has the right to object. This can happen before the image has been published or at a later date. In that case, the person must state which image is to be deleted and why. If the person or persons in the picture do not want the picture to be on the Internet, in many cases it should be removed.

The Danish Data Protection Agency does not normally go into cases where an image - on request - has been removed by the data controller.

3.2.

It appears from the case that you gave an undertaking that the media may take and use pictures in connection with the visit, and that in connection with the visit a journalist participated who took pictures.

Under these circumstances, it must have been clear to you - and your son - that pictures would be taken, which would be published with accompanying media coverage.

It also appears from the case that when I on 22 March 2021 - i.a. as a result of the comments made - objected to the publication of the photo in question on the Facebook profile Mette Frederiksen, it was already removed from the profile the same day.

Based on this - especially that the image was removed the same day you requested this - the Danish Data Protection Agency does not find reason to initiate an appeal.

In this connection, the Danish Data Protection Agency refers to Article 57 (1) of the Data Protection Regulation. 4, which states that if a request - e.g. a complaint - is disproportionate, the supervisory authority may refuse to comply with the request.

The Danish Data Protection Agency also notes that Mette Frederiksen is not responsible for data in the sense of data protection law for postings or comments made by others. Mette Frederiksen was therefore not obliged under the data protection rules to moderate any comments.

[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)