

The Danish Data Protection Authority expresses serious criticism of a municipality for passing on unnecessary information about an employee

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Decision

Public authorities

Serious criticism

Complaint

Sensitive information

Basic principles

The Danish Data Protection Authority has made a decision in a complaint where an employer in a municipality passed on information about an employee's fertility treatment to the employee's department with more than 50 people.

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Summary

The Danish Data Protection Authority has made a decision in a complaint case where an employer sent an e-mail about an employee's discretion as a result of fertility treatment to the employee's department with more than 50 people.

The Danish Data Protection Authority found in the case that it had not been necessary to inform the complainant's colleagues about the reason for her discretion. Against this background, the Danish Data Protection Authority expressed serious criticism of the employer's disclosure of the information about the complainant's fertility treatment. In this connection, the Danish Data Protection Authority emphasized the confidential nature of the information and the group of persons to whom the information was disclosed.

## 1. Decision

The Danish Data Protection Authority hereby returns to the case where [complainant] (hereafter "complainant") complained to the supervisory authority on 9 March 2021 that [X] Municipality has passed on information about the complainant's fertility treatment to all employees in her department at her workplace.

After a review of the case, the Data Protection Authority finds that there are grounds for expressing serious criticism that [X] Municipality's processing of personal data has not taken place in accordance with the rules in the data protection regulation[1]

article 5, subsection 1, letter c.

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

## 2. Case presentation

It appears from the case that the complainant had discussed his need to be spared as a result of fertility treatment by telephone with his team leader. The need for mercy meant that the complainant needed neighborly help for a citizen.

The day after the phone call, the complainant came to work where she read the following email sent out to her entire department (51 recipients):

"Dear All

In connection with [complainant] in team E being in facility treatment, she must lift a maximum of 10 kg in the coming period.

This means that when [citizen] needs two helpers for personal care, she cannot be part of that help.

Therefore, when [complainant] is at work in team E, neighbor help will be needed for that task.

Team E and [complainant] are responsible for asking for help."

The complainant subsequently sent an email to his two managers, his union representative and the occupational health and safety representative:

"Hi

I received this email this morning and I am really sorry that my entire workplace has been involved in my private life.

Otherwise, I had the impression that I had a really good phone conversation with [team leader] yesterday. Where I explained that when I had to ask people for help for [citizen] and if they asked questions, I would say that I was in a course of treatment, as I did not want to involve others in what kind of treatment I was in.

At no time have I given acceptance or permission for it to be published that I am undergoing fertility treatment. I am very sorry that my private life has been exposed in this way. I honestly don't want to be at work right now. Already this morning, people have been talking behind my back, asking others if I am pregnant. It has started some unpleasant (for me) conversations in the house and now I have to go and be afraid that people will talk over me and that the citizens will overhear parts of my private life."

### 2.1. Complainant's comments

The complainant has stated that at no time has she given consent – orally or in any other form – to any announcement about

the fertility treatment. The telephone conversation with the team leader had the sole purpose of informing the manager that the complainant had a concern for fairness, and also had the purpose of trying to find a joint solution to this.

The complainant has also pointed out that during the telephone conversation with her team leader she expressed a wish not to involve her colleagues in her treatment process.

## 2.2. [X] The municipality's comments

[X] The municipality has confirmed that the municipality passed on the information in question. In this connection, the municipality has stated that the disclosure took place on the basis of misunderstood communication between the team leader and the complainant.

The team leader was of the opinion that during the telephone conversation the complainant had verbally consented to the passing on of the relevant information about complaints. [X] In its statement to the supervisory authority, the municipality has stated that the municipality only subsequently became aware that the consent did not meet the data protection legal requirements for a valid consent, and that the municipality has offered to pay compensation to complainants on the basis of the mistake made.

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

The Danish Data Protection Authority notes that [X] Municipality has acknowledged and regretted that the disclosure took place without valid consent, and that it was not necessary to inform the colleagues about the reasons for the complainant's discretion.

It follows from the data protection regulation's article 5, subsection 1, letter c, that personal data must be sufficient, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

The Danish Data Protection Authority then finds that [X] Municipality's processing has not taken place in accordance with the rules in the data protection regulation, article 5, subsection 1, letter c

As a result of the confidential nature of the information and the group of persons to whom the information has been disclosed, the inspectorate finds grounds for expressing serious criticism of [X] Municipality.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).