

Arbejdsmarkedets Feriefonds observance of the duty to provide information and use of consent

Date: 20-12-2019

Decision

Private companies

The Danish Data Protection Agency expresses serious criticism of the Labor Market Holiday Fund, because the fund i.a. did not sufficiently comply with its duty to provide information in connection with the Fund's processing of a specific case concerning the payment of holiday pay.

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Summary

The Danish Data Protection Agency found that Arbejdsmarkedets Feriefonds' processing of personal data was not in accordance with the rules in Article 12 (1) of the Data Protection Regulation. 1 and Article 14.

As part of the processing of a case concerning holiday pay, the Labor Market Holiday Fund had, over several months, provided the registered information covered by the fund's duty to provide information in accordance with Article 14 of the Data Protection Regulation.

The Danish Data Protection Agency found that Arbejdsmarkedets Feriefond had thus not fulfilled its duty to provide information within the time limit which follows from Article 14 (1) of the Regulation. 3.

Furthermore, the Danish Data Protection Agency found that Arbejdsmarkedets Feriefond had not complied with Article 12 (1) of the Regulation. 1, as the fund had not provided the information in an overall form and in a concise, transparent, easily accessible and easy-to-understand form.

In addition, the Danish Data Protection Agency criticized the fact that Arbejdsmarkedets Feriefond had requested complaints whose personal data was already processed by Arbejdsmarkedets Feriefond in connection with the specific case of holiday pay, to give consent to the processing of personal data, as complainants tried to contact the fund's data protection adviser.

The Danish Data Protection Agency found that obtaining the complainant's consent was not in accordance with Article 5 (1) of the Regulation. 1, letter a (the principle of "legality, reasonableness and transparency"), as the processing of the complainant's personal data was already carried out on a basis other than consent.

Decision

The Danish Data Protection Agency hereby returns to the case, where XX (hereinafter complains) on 17 February 2019 complained to the Authority that the Labor Market Holiday Fund had not sufficiently fulfilled its duty to provide information and about the fund's obtaining consent.

Decision

After reviewing the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that the Labor Market Holiday Fund's processing of personal data has not taken place in accordance with the rules in Article 12 (1) of the Data Protection Regulation [1]. 1 and Article 14.

Furthermore, the Danish Data Protection Agency finds grounds for expressing criticism that the Labor Market Holiday Fund's processing of personal data has not taken place in accordance with Article 5 (1) of the Data Protection Ordinance. 1, letter a.

Below is a more detailed review of the case and a justification for the Danish Data Protection Agency's decision.

2. Case presentation

It appears from the case files that the complainants on 28 January 2019 received a letter from the Labor Market Holiday Fund, in which the fund informed the complainants that it had received notification that the Danish Agency for Labor Market and Recruitment had decided that the complainants had been wrongfully paid holiday pay. and that the amount due should be paid into the Labor Market Holiday Fund.

The Arbejdsmarkedets Feriefonds letter to complainants also stated the following:

“We draw your attention to the fact that Arbejdsmarkedets Feriefond has registered your civil registration number, name, address, account number. as well as information regarding. the debt ratio in question in the fund's case management system and financial system, respectively. ”

On 8 February 2019, complainants contacted the Labor Market Holiday Fund via the fund's ordinary mailbox and the fund's DPO, respectively. Complainants stated in this connection that she was critical of Arbejdsmarkedets Feriefonds' handling of her personal information, e.g. regarding the fund's compliance with the duty to provide information and the fund's use of consent.

In a letter of 14 February 2019 to complainants, Arbejdsmarkedets Feriefond stated that in the letter of 28 January 2019, the fund had informed her that the fund had received notification from the Danish Agency for Labor Market and Recruitment, and that the fund had registered her social security number, name, address as well as information on the debt ratio in question in

the fund's case management system or financial system. Arbejdsmarkedets Feriefond stated that on that basis the fund believed that it had informed complaints about the registration of personal data with the fund, including the purpose of the registration.

Arbejdsmarkedets Feriefond also stated complaints that the foundation would forward her personal information to the foundation's permanent lawyer association as well as to the bailiff's court, should it become necessary to go to court to recover the claim. Arbejdsmarkedets Feriefond referred complaints to read more on the foundation's website about how the foundation processes personal data.

Arbejdsmarkedets Feriefond also stated that it does not require consent when Arbejdsmarkedets Feriefond registers personal data in order to pursue a claim that a higher instance has decided must be paid into the fund. As a result, consent cannot be revoked either.

In addition, Arbejdsmarkedets Feriefond stated in the letter to complainants of 14 February 2019 that she had approached Arbejdsmarkedets Feriefond both via the foundation's ordinary contact form and via the foundation's contact form to DPO, which stated the following on both forms:

When you as a citizen contact Arbejdsmarkedets Feriefond, you agree that the foundation may register your personal information (name, address, CPR number) in the foundation's case processing system and / or financial system, depending on what is necessary for the foundation to process your inquiry."

Subsequently, the complainants entered into an agreement on the repayment of holiday pay, which Arbejdsmarkedets Feriefond confirmed in a letter dated 6 March 2019. In the letter, Arbejdsmarkedets Feriefond again stated that the fund had registered her social security number, name, address, account number and information regarding the debt relationship in the fund's case management system and financial system.

Complainants subsequently fulfilled the fund's claim, which the fund acknowledged in a letter dated 28 March 2019. In this connection, the foundation informed complaints that her personal information would be passed on to the National Archives in accordance with the archive rules.

By letter dated 19 March 2019, the Danish Data Protection Agency requested the Labor Market Holiday Fund for an opinion in the case, which the Authority received on 28 March 2019.

2.1. Complainant's remarks

Complainants have generally stated that Arbejdsmarkedets Feriefond has not complied with its duty to provide information by only informing her of which personal data the fund processes about her. Complainants have added that the duty to provide information means that the data controller - in addition to informing the data subject about what information is processed about the data subject - must also provide the data subject with a number of information about the processing.

In addition, complainants have stated that Arbejdsmarkedets Feriefonds request for consent to the processing of personal data in connection with her contact with the fund's data protection adviser was not in accordance with the data protection rules, including that the consent was not given voluntarily, as complainants could not really decide whether she would give consent or not.

2.2. Arbejdsmarkedets Feriefonds remarks

2.2.1.

Arbejdsmarkedets Feriefond has stated that the fund is a self-governing institution under the state administration, and that it is the responsibility of Arbejdsmarkedets Feriefond to recover the fund's (state) claim for unjustified holiday pay due to decisions made by the Danish Agency for Labor Market and Recruitment or by the National Board of Appeal.

In relation to the specific case, Arbejdsmarkedets Feriefond has stated that on 28 January 2019 the fund received information about complaints from the Danish Agency for Labor Market and Recruitment in the form of a copy of the agency's decision of 18 May 2018 for complaints about unjustified payment of holiday pay. was confirmed by the National Board of Appeal on 25 January 2019.

Furthermore, Arbejdsmarkedets Feriefond has stated that by letter of 28 January 2019, the fund stated complaints that the fund had registered information about her social security number, name, address, account number and information about the debt in question in the fund's case management system and financial system.

In addition, in a letter dated 14 February 2019 to the complainants, the foundation stated that the foundation would forward the complainant's personal information to the foundation's permanent lawyer association as well as to the bailiff's court should it become necessary to go to court to recover the claim. In the letter, Arbejdsmarkedets Feriefond also referred complainants to read more about the foundation's personal data policy on the foundation's website.

Arbejdsmarkedets Feriefond has stated that the purpose of the fund's processing of complainants' personal data is clear from the context, as complainants in the Danish Agency for Labor Market and Recruitment's decision of 18 May 2018 were informed

that the case would be transferred to Arbejdsmarkedets Feriefond for recovery of the claim.

Arbejdsmarkedets Feriefond has also stated that in its letter of 28 March 2019 to complainants, the foundation informed her that her personal information would be passed on to the National Archives.

Arbejdsmarkedets Feriefond has stated that on that basis it is the fund's opinion that the fund's handling of the duty to provide information has been in accordance with Articles 13 and 14 of the Data Protection Regulation.

2.2.2.

Arbejdsmarkedets Feriefond has stated that the fund has processed non-sensitive personal data on complaints pursuant to Article 6 (1) of the Data Protection Regulation. 1, letter c and letter e. Information on the complainant's social security number has been processed on the basis of the Data Protection Act [2], section 11, subsection. 1.

Arbejdsmarkedets Feriefond has stated that complainants in the specific case subsequently approached the fund via the fund's standard contact form and standard DPO contact form, which are forms that can be used by citizens who apply, regardless of whether the fund has already registered personal information about those concerned. Against this background, Arbejdsmarkedets Feriefond states as standard on the forms that an inquiry will result in the registration of personal information, and that the person in question, by sending the contact form, consents to this.

Arbejdsmarkedets Feriefond has stated that the complainants in the specific case did not provide personal information which the fund had not previously registered as part of the processing of the complainant's pending case of payment of holiday pay. The complainant's personal data were thus not processed on the basis of a consent.

Justification for the Danish Data Protection Agency's decision

3.1.

It follows from Article 14 (1) of the Data Protection Regulation 1 and 2, that the data controller - if the information is not collected from the data subject - must provide the data subject with a number of information, e.g. to ensure fair and transparent treatment as regards the data subject.

Pursuant to Article 14 (1) of the Data Protection Regulation 3, the data controller shall provide information as referred to in para. 1 and 2, at the latest at the time of the first communication with the data subject, if the information is to be used to communicate with the data subject, and otherwise no later than within one month after the collection of the data. The information can be given to the data subject, for example, in a direct link.

In addition, pursuant to Article 12 (1), the controller 1, take appropriate measures to provide any information referred to in Articles 13 and 14 on processing to the data subject in a concise, transparent, easily understandable and easily accessible form and in a clear and simple language.

The Danish Data Protection Agency assumes that the personal information about complaints was not collected from the data subject himself, but was received from the Danish Agency for Labor Market and Recruitment on 28 January 2019.

The Danish Data Protection Agency also assumes that Arbejdsmarkedets Feriefond in a letter of 28 January 2019 informed complainants that the fund processed information about the complainant's social security number, name, address, account number and information about the current debt relationship, that Arbejdsmarkedets Feriefond in a letter of 14 February 2019 at the request of the complainant, stated that the information could be handed over to a lawyer, and that Arbejdsmarkedets Feriefond in a letter of 28 March 2019 informed complainants that the information would be passed on to the National Archives.

In addition, the Danish Data Protection Agency assumes that the Labor Market Holiday Fund - in response to inquiries from complainants - in the letter of 14 February 2019 referred complaints to read more about the fund's personal data policy on the fund's website.

The version of the Fund's personal data policy in force at that time stated the following:

identity of and contact details of the data controller

contact information for any data protection adviser

the purposes of the Fund's processing of information

the affected categories of personal data

how long the information was stored

information on data subjects' rights

the right to lodge a complaint with a supervisory authority (which was incorrectly declared to be the Danish Agency for Labor Market and Recruitment)

where the information came from

The personal data policy thus contained i.a. no information on the legal basis of the processing (Article 14 (1) (c)) and information on any recipients of the personal data (Article 14 (1) (e)).

The Danish Data Protection Agency then finds that Arbejdsmarkedets Feriefond did not sufficiently comply with its duty to provide information to complainants, cf. Article 14 (1) of the Data Protection Ordinance. 1 and 2.

The Danish Data Protection Agency also finds that Arbejdsmarkedets Feriefond did not fulfill its duty to provide information within the time limit that follows from Article 14 (1) of the Regulation. 3. The Danish Data Protection Agency has hereby emphasized that Arbejdsmarkedets Feriefond in its first letter of 28 January 2019 should have provided complainants with all the information covered by the disclosure obligation, but that a number of the information was only notified to complainants on 14 February 2019 and 28. March 2019.

The Danish Data Protection Agency also finds that Arbejdsmarkedets Feriefond has not complied with Article 12 (1) of the Data Protection Regulation. 1, in connection with the processing of the complainant's personal data. The Danish Data Protection Agency has emphasized that Arbejdsmarkedets Feriefond, by notifying the complainants of the information step by step during the case processing rather than in a single notification, has not taken appropriate measures to provide any information referred to in Article 14 in a concise, transparent, easy-to-understand and easily accessible form.

Against this background, the Danish Data Protection Agency finds grounds for expressing serious criticism of the Labor Market Holiday Fund's processing of complainants' personal data.

3.2.

With regard to the part of the complaint that concerns obtaining consent, the Danish Data Protection Agency notes that Article 5 of the Data Protection Regulation contains general principles for the processing of personal data. It appears i.a. of Article 5, para. 1, letter a, that personal data must be processed legally, fairly and in a transparent manner.

Arbejdsmarkedets Feriefond has stated that the information in the case is processed on the basis of Article 6 (1) of the Data Protection Regulation. 1, letters c and e, as well as the Data Protection Act § 11, paragraph. 1, cf. section 2.2.2. above. The processing thus takes place on a basis other than consent, which is why obtaining the complainant's consent is not in accordance with Article 5 (1). 1, letter a.

On that basis, the Danish Data Protection Agency finds grounds for expressing criticism of the Labor Market Holiday Fund.

4.

It is added that if Arbejdsmarkedets Feriefond otherwise processes personal data which Arbejdsmarkedets Feriefond believes can only take place on the basis of consent, the Danish Data Protection Agency must point out that it follows from Article 4, no.

11 of the Data Protection Regulation, that consent is understood as any voluntary, specific, informed and unambiguous statement by the data subject, whereby the data subject by declaration or clear confirmation agrees that personal data relating to the person in question be made the subject of processing. It also follows from Article 7 (1) of the Data Protection Regulation 3, that the data subject has the right to withdraw his consent at any time.

It is the Data Inspectorate's assessment that the consent given by the complainant in connection with his inquiries to the Labor Market Fund's data protection adviser does not meet the conditions for a valid consent, e.g. because it can not be considered to have been submitted voluntarily, as the complainant had no alternative but to give his consent to the processing if the complainant would contact the data protection adviser.

[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] 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).