

Supervision of the data protection adviser's tasks in Mariagerfjord Municipality

Date: 17-03-2021

Decision

Public authorities

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Mariagerfjord Municipality's use of an external data protection adviser is within the framework of the Data Protection Ordinance

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Summary

In the first half of 2019, the Danish Data Protection Agency decided to supervise various topics concerning the municipalities' data protection advisers (also often called DPO after the English term Data Protection Officer), including the data protection adviser's tasks, resources, professional qualifications and data subjects' access to the data protection adviser.

One group of supervisors focused on municipalities that shared data protection adviser with other municipalities. The second group of supervisors focused on municipalities that had purchased the service from a law firm, including Mariagerfjord Municipality, which the decision below concerns.

The Danish Data Protection Agency found that the municipalities' solutions for the use of data protection advisers were within the framework of the Data Protection Ordinance.

It is the Data Inspectorate's opinion that the data controller and the data processor themselves are closest to assessing how the practical part of the collaboration with the data protection adviser should be implemented, so that the collaboration can take place most efficiently and appropriately in the organization. The data controller and the data processor can therefore to a large extent organize the practical part of the cooperation with the data protection adviser, as long as this takes place within the framework of Chapter 4 of the Data Protection Regulation.

Decision

Mariagerfjord Municipality was among the authorities that the Danish Data Protection Agency had selected for supervision in 2019. The Data Inspectorate's planned audit focused in particular on the data protection adviser's tasks, including the question of whether the data protection adviser is available to employees in the municipality and registered regarding data protection issues, and whether the data protection adviser carries out the necessary control of the municipality's processing activities. In

this connection, the Danish Data Protection Agency notes that data protection advisers are not personally liable in the event of non-compliance with the Data Protection Regulation. The responsibility for compliance with the data protection provisions - including the provisions regarding requirements for data protection advisers - lies with the data controller and the data processor (in the present case, Mariagerfjord Municipality).

In accordance with the obligation laid down in Article 37 (2) of the Data Protection Regulation 7, Mariagerfjord Municipality has prior to the audit notified the Danish Data Protection Agency that a lawyer from the law firm HjulmandKaptain is handling the role of data protection adviser for the municipality. The lawyer also handles the role of data protection adviser for e.g. Hjørring Municipality, which the Data Inspectorate has also supervised.

Mariagerfjord Municipality has for the purpose of the inspection on 9 July 2019 sent a completed questionnaire, the municipality's contract with the lawyer and other relevant appendices. Furthermore, on 25 November 2019, the municipality sent a supplementary statement and a copy of a control form to the Danish Data Protection Agency.

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Mariagerfjord Municipality's use of an external data protection adviser is within the framework of the Data Protection Ordinance. In this connection, the Danish Data Protection Agency has noted the following:

That Mariagerfjord Municipality has appointed a lawyer from the law firm HjulmandKaptain as data protection adviser, and that her function is performed on the basis of a service contract.

That Mariagerfjord Municipality's data protection adviser has the necessary professional qualifications to carry out the role, cf. Article 37 (1) of the Data Protection Regulation. 5.

That Mariagerfjord Municipality in accordance with Article 38 (1) of the Data Protection Regulation 1, has ensured that the data protection adviser is adequately and timely involved in all matters concerning the protection of personal data.

To be registered in Mariagerfjord Municipality in accordance with Article 38 (1) of the Data Protection Regulation. 4, may contact the Data Protection Adviser regarding any questions concerning the processing of their information and the exercise of their rights under the Data Protection Regulation.

That Mariagerfjord Municipality's data protection adviser in accordance with Article 39 (1) of the Data Protection Regulation 1, letter a, notifies and advises the municipality and employees in the municipality about their data protection law obligations.

That Mariagerfjord Municipality in accordance with the Data Protection Ordinance Article 39, paragraph. 1, letter b, has

ensured that the data protection adviser monitors the municipality's compliance with the data protection law rules, cf. Article 39 (1) of the Data Protection Regulation. 1, letter b.

Below is a more detailed review of the Danish Data Protection Agency's conclusions.

1. Position of the Data Protection Adviser

It is clear from Article 37 (1) of the Data Protection Regulation 6, that the data protection adviser may be the data controller's or data processor's employee or perform the task on the basis of a service contract.

Data controllers and data processors, including public authorities, thus have the option - instead of having an internal employee to take on the role of data protection adviser - of choosing to have the data protection adviser's function exercised on the basis of a service contract concluded with a person or organization outside the data controller. or the data processor's organization.

Mariagerfjord Municipality has appointed a lawyer at HjulmandKaptain as data protection adviser for the municipality. The lawyer performs the role of data protection adviser for the municipality on the basis of a service contract. The lawyer is also a data protection adviser for Hjørring Municipality. The Danish Data Protection Agency has also supervised the data protection adviser's function in this municipality.

Based on the case information in the two inspections, it appears that the data protection adviser can involve the other 5 employees from the personal data law team at HjulmandKaptain in the solution of specific, delimited tasks to the extent necessary. The named lawyer, however, in terms of his role as data protection adviser, is the person who has the primary contact with the municipality and participates in relevant meetings, etc.

It also appears that if the situation requires it, the law firm HjulmandKaptain has a number of employees who can assist with specific control tasks. In addition, the data protection adviser will have the opportunity to spar with specialists at HjulmandKaptain within different border areas, if this is relevant in relation to a specific task solution.

The data protection adviser also has the opportunity to appoint another employee at HjulmandKaptain to temporarily - for example during holiday periods - handle the data protection adviser's tasks. To the extent relevant, the data protection adviser will also be able to involve a professor of public law in the advice.

It also appears that the data protection adviser collaborates with the municipality's own team in the data protection area, including in connection with the timely involvement of the data protection adviser and advising employees at the municipality.

In relation to invoicing of the service, it appears from the submitted material that the task is divided into a mandatory and variable part, respectively. The municipality pays a fixed price for the mandatory part, whereas the variable part is settled on an hourly basis at a fixed hourly rate.

It is against this background that the Danish Data Protection Agency is of the opinion that the construction is in accordance with the rules on the appointment of a data protection adviser in Article 37 of the Data Protection Regulation.

It is also the Data Inspectorate's opinion that the data controller and the data processor himself are closest to assessing how the practical part of the collaboration with the data protection adviser should be implemented so that the collaboration can take place most efficiently and appropriately in the organization. The data controller and the data processor can therefore to a large extent organize the practical part of the cooperation with the data protection adviser, as long as this takes place within the framework of Chapter 4 of the Data Protection Regulation. the data processor's organization and should, as a minimum, assist in the implementation of key elements of the Data Protection Regulation. This can be done, for example, in the form of concrete advice from a selected group of employees in the data controller's or data processor's organization, who is subsequently responsible for the practical implementation provided that the data protection consultant exercises the necessary control over the organization's compliance.

2. The expertise and professional qualifications of the Data Protection Advisor

According to Article 37 (1) of the Data Protection Regulation 5, the data protection adviser shall be appointed on the basis of his professional qualifications, in particular expertise in data protection law and practice and the ability to perform the tasks referred to in Article 39.

Based on what is stated in the Danish Data Protection Agency's supervision of the data protection adviser's function in the two municipalities, it appears that the data protection adviser has a legal education and that since 2017 she has primarily worked with data protection and that she has participated in several courses before data protection. The data protection adviser is also certified CIPP / E, of which information technology and the security aspects of data protection are a part.

It also appears that the data protection adviser has previously advised public authorities in a number of different contexts, whereby she has generally gained knowledge of municipalities' organization, administrative rules, procedures and the processing activities carried out in municipalities, and that the data protection adviser has gained knowledge of organizations in a theoretical plan through his diploma program (HD in organization and management).

Prior to the appointment, the data protection adviser was not aware of the specific organization in the municipality and the specific procedures in the municipality. Immediately after joining, however, the data protection adviser has participated in meetings with center and department heads as well as key employees in all subject areas and thus gained knowledge of the municipality's organization and processing activities.

The Danish Data Protection Agency notes that the ability to perform the tasks incumbent on the data protection adviser must be seen in the context of his or her personal qualifications and knowledge as well as his or her position in the data controller's or data processor's organization. With regard to the professional qualifications required by Article 37 (1) of the Data Protection Regulation 5, in addition to an in-depth understanding of the data protection law rules, the data protection adviser should also have knowledge of information technology and data security as well as the protection needs of the data controller and the data processor. Furthermore, the data protection consultant should have a solid knowledge of administrative rules and procedures in the organization. The requirements for the data protection adviser's professional qualifications must thus be seen in connection with the data protection adviser's ability to promote a data protection culture within the organization [1].

On the basis of the information in the case, the Danish Data Protection Agency finds that the lawyer in question at Hjulmand Kaptajn has the necessary professional qualifications to handle the role of data protection adviser for the municipality, and that the municipality thus complies with the requirement in Article 37 (1) of the Data Protection Ordinance. 5.

In this connection, the Danish Data Protection Agency has emphasized that the data protection adviser has relevant educational and professional experience in the area of data protection law and information technology, that the data protection adviser - despite the fact that she had no knowledge of the specific organization and procedures in the municipality - immediately after joining has participated in internal meetings in the municipality, whereby she has gained a thorough and concrete knowledge of the municipality's organization and processing activities, and that the data protection consultant in general - before joining - had a knowledge of municipalities' organization, administrative rules, procedures and processing activities. .

Involvement of the Data Protection Advisor

Article 38 (1) of the Data Protection Regulation 1, requires that the data controller and the data processor ensure that the data protection adviser is sufficiently and timely involved in all matters concerning the protection of personal data.

Based on the information provided by the Danish Data Protection Agency's supervision of the data protection adviser's function

in the two municipalities, it appears that the data protection adviser regularly participates in a number of meetings with the municipality. The Data Protection Adviser is part of the Security Committee and is involved in key decisions with a number of selected key employees. At the meetings, the data protection adviser provides guidance and discusses selected data protection law topics - for example the data subjects' rights -, with which the data protection adviser can follow the overall development as well as selected issues and projects in the municipality. The data protection adviser is also involved for information in other contexts, for example in connection with city council meetings. Furthermore, the data protection adviser is always informed about security breaches. In addition, the municipality involves the data protection adviser when otherwise relevant.

It is the Data Inspectorate's opinion that the data protection adviser must be involved in all the considerations and assessments that it is assumed that the data controller or data processor has made and made in order to comply with the data protection law rules. This implies, among other things, that the data protection adviser should be involved in considerations regarding compliance with the data subjects' rights and the determination of appropriate security measures. The data protection adviser must be involved in as good a time as possible and relevant, prior to initiating processing activities.

After a review of the case information, it is the Data Inspectorate's assessment that the municipality's data protection adviser is sufficiently and timely involved in all issues concerning data protection.

The Danish Data Protection Agency has placed special emphasis on the data protection adviser regularly and regularly participating in a number of meetings with the municipality, whereby the data protection adviser is kept informed about data protection law issues in the municipality and thus has the opportunity to provide input on data protection measures and issues. The Danish Data Protection Agency has also emphasized that the data protection adviser is always involved in connection with security breaches, and that employees in the municipality ensure that the data protection adviser is otherwise involved when relevant.

On the basis of the above, the Danish Data Protection Agency finds that the municipality complies with the requirement in Article 38 (1) of the Data Protection Regulation. 1.

4. The data subject's contact to the data protection adviser

Article 38 (1) of the Data Protection Regulation 4, requires that data subjects be able to contact the Data Protection Adviser regarding all matters concerning the processing of their information and the exercise of their rights under the Data Protection

Regulation.

It appears from the information in the case that the data subjects have the opportunity to contact the data protection adviser at any time, and that the data protection adviser's task is to handle inquiries from the data subjects which relate to issues of a data protection law nature.

The Danish Data Protection Agency has noted that the municipality has organized itself in such a way that incoming inquiries are to a certain extent received and processed by municipal employees. In this connection, the Danish Data Protection Agency assumes that it is only a matter of the data protection adviser being assisted by the municipality's employees in relation to carrying out an initial screening of inquiries in order to ensure that only relevant inquiries are answered by the data protection adviser.

It also appears that all citizen inquiries must be answered within 7 working days, where the citizen must as a minimum be informed of when he or she can expect a response to his or her inquiry. No specific periods have been agreed during which the data protection adviser must be available to the data subjects.

It also appears that despite the fact that there has not yet been a peak situation where many data subjects want to get in touch with the data protection adviser, the municipality and the data protection adviser have discussed a number of measures that can be taken in this case.

The Danish Data Protection Agency is of the opinion that a data protection adviser in accordance with Article 38 (1) of the Data Protection Regulation 4, may cooperate with selected and qualified employees in the data controller's or data processor's organization to handle the task of answering inquiries from data subjects in order to ensure efficient handling of the inquiries. However, there must be a real possibility that the data subject can contact the data protection adviser when the situation so requires.

On the basis of the information in the case, it is the Data Inspectorate's immediate assessment that the municipality complies with the requirement in Article 38 (1) of the Data Protection Regulation. 4.

The Danish Data Protection Agency has emphasized that the municipality has organized itself in a way where the data subjects have the opportunity to contact the data protection adviser about the processing of their information and the exercise of their rights under the Data Protection Ordinance, and that the request is answered within a reasonable time. time.

Finally, the Danish Data Protection Agency notes that Article 38 (1) of the Data Protection Regulation 4 is linked to the

requirement of Article 37 (2) of the Data Protection Regulation. 7 that contact information for the data protection adviser must be published.

The purpose of the requirement for publication is, among other things, that the data subjects must be able to get in touch with the data controller or data processor's data protection adviser.

The data subject must have the opportunity to contact the data protection adviser - as an independent party - among other things to make the data protection adviser aware of a processing activity that does not comply with the rules.

If other employees in the data controller's or a data processor's organization assist the data protection adviser in handling inquiries from the data subjects, such assistance should therefore only be accessory in relation to the data protection adviser's handling of the task, and the full responsibility for examining incoming inquiries from data subjects should not be assigned. the employees.

5. Informing and advising the municipality and the municipality's employees

It follows from Article 39 (1) of the Data Protection Regulation Article 1 (1) (a) provides that the data protection adviser is responsible for informing and advising the controller or processor and the staff processing personal data of their obligations under the Data Protection Regulation and other Union or national law of the Member States on data protection. In doing so, the data protection adviser shall take due account of the risk associated with processing activities, taking into account the nature, scope, coherence and purpose of the processing in question, in accordance with Article 39 (2). 2.

Article 39 (1) of the Data Protection Regulation Article 38 (1) (a) must be read in conjunction with Article 38 (1). 1, according to which the data controller ensures that the data protection adviser is involved sufficiently and in a timely manner in all matters concerning the protection of personal data.

Article 39, para. 1, letter a implies, in the opinion of the Danish Data Protection Agency, that the data protection adviser must to the necessary extent be available to the organization and the organisation's employees in order to be able to provide the necessary advice. It is thus required that the data protection adviser is available to the organization and the employees.

In the case of an external data protection adviser who plays the role of several different organizations, special consideration should be given to the fact that the data protection adviser is able to be available to the individual organization despite the appointment of several organizations.

As part of this supervision, the Danish Data Protection Agency has therefore also had a special focus on whether the data

protection adviser is available to the municipality's employees (section 5.1) and the municipality (section 5.2), and whether the data protection advisers assist the municipality in implementing key elements in the data protection regulation. .

5.1. Municipal employees

Based on what is stated in the Danish Data Protection Agency's supervision of the data protection adviser's function in the two municipalities, it appears that the data protection adviser is available to the municipality's employees when the employees need the data protection adviser's contribution and that the employees have been informed.

It also appears that the data protection adviser must only answer inquiries of a data protection law nature if a qualified employee in the municipalities cannot answer the question himself.

Employees are therefore encouraged to initially contact a selected and qualified employee in the municipality to reduce the number of inquiries where it is necessary to involve the data protection adviser. However, the municipality has stated that the data protection adviser himself can choose to take up an inquiry, and that every employee has the right to contact the data protection adviser directly if there is a need for this.

The communication thus takes place by the qualified employee at the municipality initially handling the inquiry. If the employee has questions about the inquiry, the employee contacts the data protection adviser about this, after which the employee's inquiry is answered by the employee.

It is the Data Inspectorate's opinion that data controllers and data processors themselves are closest to assessing how the collaboration with the data protection adviser can be implemented most appropriately in the organization. It is possible and in some cases an advantage to have employees assist the data protection adviser. In relation to employee inquiries, for example, there may be cases where, for organizational reasons, it may be advantageous to have staff - who otherwise assist the data protection adviser - assist the data protection adviser if the employees in question are qualified for this. However, there must be a real possibility that employees can contact the data protection adviser when the situation requires it.

The Danish Data Protection Agency finds that the municipality's organization in connection with the data protection adviser's handling of employee inquiries is in accordance with Article 39 (1) of the Data Protection Ordinance. 1, letter a, and that the data protection adviser is thus, to the extent necessary, available to the municipality's employees.

The Danish Data Protection Agency has hereby emphasized what the municipality stated that the data protection adviser is assisted by selected and qualified employees in employee inquiries, and that these selected and qualified employees have the

opportunity to involve the data protection adviser to the necessary extent. In addition, the Authority has emphasized that every employee has the right to contact the data protection adviser directly if there is a need for this.

5.2. The local authority

Based on what is stated in the Danish Data Protection Agency's supervision of the data protection adviser's function in the two municipalities, it appears that the data protection adviser has a general task of advising the municipality when questions of a data protection nature arise, including in connection with the organization's procurement of IT systems. requirements specifications for suppliers, preparation of the municipality's personal data policies, implementation of processing of personal data and considerations as to whether a given processing of personal data complies with the general processing rules.

At the same time, it appears that a number of tasks fall outside the mandatory part of the service, and that the municipality can instead purchase these tasks. Advice and sparring in connection with the purchase of new IT systems fall outside the mandatory part of the service. However, the municipality has noted that the data protection adviser should be included in the discussions regarding the purchase / commissioning of new systems or business procedures, which involve the processing of personal data.

Specific training and courses also fall outside the compulsory part of the service. The municipality is thus primarily responsible for information campaigns and staff training. However, the data protection adviser has supervised and trained selected key employees in the municipality.

On the basis of what is stated in the case, the Danish Data Protection Agency has assumed that the data protection adviser must continuously advise the municipality on the need for adaptations and changes to prepared material, but that the actual preparation and quality assurance of the material falls outside the mandatory service.

In this connection, the Danish Data Protection Agency has also assumed that the data protection adviser only to a very limited extent participates in the administrative case processing, preparation of concepts / guidelines, handling of the data subjects' rights or breaches of personal data security and the like. The municipality is primarily responsible for these tasks.

However, the municipality uses the data protection adviser for sparring in relation to content and other issues that arise in connection with the municipality's preparation of the material, etc., just as the data protection adviser is involved for information in several different contexts, including significant security breaches.

At the data protection adviser's checks, the data protection adviser also has the opportunity to review and comment on

selected written procedures, etc.

The Danish Data Protection Agency is of the opinion that the data protection adviser plays a central role in promoting a data protection culture within the data controller's and data processor's organization, but that it is only a requirement that the data protection adviser assists with the implementation of key elements in the data protection regulation. The concrete and practical task in connection with the implementation of the initiatives can thus be delegated to staff who are qualified for this. In this connection, the Danish Data Protection Agency must emphasize that the data controller and the data processor are closest to assessing how the practical part of the collaboration with the data protection consultant can take place most efficiently and appropriately in the organization. Data controllers and data processors can therefore to a large extent organize the practical part of the collaboration with their data protection adviser, as long as this takes place within the framework of Chapter 4 of the Data Protection Regulation. these employees pass on the content of the training to the other employees in the organization and carry out the practical preparation of guidelines, etc.

In relation to the purchase of new IT systems, it is - in accordance with what is stated in the case - the Data Inspectorate's opinion that if the systems are used for the processing of personal data, the data protection adviser should always be involved, among other things, to decide whether the security level in the systems is sufficient.

On the basis of the above, the Danish Data Protection Agency finds that Mariagerfjord Municipality's organization of the task of the data protection adviser's task of providing assistance in the form of advising the municipality on the data protection law rules is in accordance with the Data Protection Ordinance. 1, letter a.

The Danish Data Protection Agency has hereby emphasized the information that the data protection adviser plays an advisory role vis-à-vis the municipality when questions of a data protection nature arise, and that the municipality can obtain assistance from the data protection adviser in connection with the municipality's specific preparation of material etc.

5.3. Summary

On the basis of the above, the Danish Data Protection Agency is of the opinion that Mariagerfjord Municipality complies with the requirement in Article 39 (1) of the Data Protection Ordinance. 1, letter a.

6. Monitoring compliance with data protection law rules

It follows from Article 39 (1) of the Data Protection Regulation Article 1 (1) (b) states that the Data Protection Adviser is responsible for monitoring compliance with the Data Protection Regulation, other EU or national law of the Member States on

data protection and the data controller's or data processor's policies on the protection of personal data, including responsibilities, information campaigns and training. staff involved in treatment activities and the associated audits. In doing so, the data protection adviser shall take due account of the risk associated with processing activities, taking into account the nature, scope, coherence and purpose of the processing in question, in accordance with Article 39 (2). 2.

The Danish Data Protection Agency notes that as part of these tasks with monitoring compliance with data protection law rules, the data protection adviser must in particular collect information that identifies data processing activities, analyze and check the data processing activities' compliance with the regulations and inform, advise and correct recommendations to the data controller [or data controller] .

6.1.

It appears from the information in the case that the data protection adviser's task is to monitor compliance with the data protection law rules and the procedures adopted. It is thus the data protection adviser's responsibility to make the municipality aware of any non-compliance with the rules.

Furthermore, it appears from the case that the data protection adviser is continuously informed about the preparation of new guidelines and procedures through participation in meetings with the municipality. The data protection adviser has the opportunity to check whether the guidelines and procedures in the municipality are in accordance with the data protection law rules.

It also appears from the case that the data protection adviser is twice a year obliged to monitor the municipality's compliance with the data protection law rules. In connection with this, the data protection adviser has sent a control sheet to the municipality with a general overview of the areas that the data protection adviser expects to supervise. The controls, including the subsequent reporting to the municipality's city council, are also discussed on an ongoing basis between the data protection adviser and the municipality.

It has also been stated that the data protection adviser is not bound by a specific control method and that she can use, among other things, written checks, random checks and oral checks. For the purpose of the audit, the municipality has sent a copy of this control form as well as an example of a questionnaire to the Danish Data Protection Agency.

In addition, it appears that the data protection adviser is the lead on the input from the inspections, but that the municipality itself carries out a number of the inspections and registers the findings. Some of the inspections are thus carried out by the

data protection adviser to a lesser extent, whereas the municipality is responsible for the inspections, including the executive part.

It also appears from the case that the municipality itself carries out general inspections. If the checks stated in the inspection form are already carried out by the municipality, the municipality must inform the data protection adviser accordingly, after which the data protection adviser will note a confirmation that the inspection has been carried out and when and by whom. The municipality is also obliged to document the execution of the control task. The control is subsequently reviewed at a separate meeting between the data protection adviser and an employee from the municipality. The controls and the subsequent reporting are also discussed regularly between the data protection adviser and the municipality.

It also appears from the case that the data protection adviser must contribute to the annual review of the municipality's information security policy, and that the data protection adviser thereby checks that the municipality carries out relevant internal controls and revises other policies and procedures.

It also appears that information campaigns in the municipality must be discussed with the data protection adviser, and that the data protection adviser can thereby exercise control over the fact that the information campaigns are in accordance with the data protection law rules.

The Data Protection Adviser had not yet carried out unplanned checks at the time of the Danish Data Protection Agency's inspection - ie. inspections that fall outside the agreed contractual inspections twice a year, as well as inspections that otherwise relate to issues that fall beyond issues dealt with in the information security committee - with the municipality.

Furthermore, there are no separate agreed fixed procedures between the data protection adviser and the municipality for how, how often or under what conditions this type of control should be performed

With regard to the data protection adviser's follow-up on inspections, it appears from the case that the data protection adviser is obliged to inform the municipality if the data protection adviser finds a non-compliance with the data protection law rules and / or the policies and procedures adopted by the municipality.

6.2.

The Danish Data Protection Agency must note that the task of supervising the municipality's compliance with the data protection law rules must not be delegated to other employees in the municipality to a significant extent. According to the audit, this is related to the special position of the data protection adviser, including the independence of the data protection adviser.

The task of monitoring compliance with the Regulation is made possible precisely by the fact that the data protection adviser, by virtue of his position, can act independently and enjoys sufficient protection in the performance of the task.

The Danish Data Protection Agency also finds that the requirement to monitor compliance with the data protection law rules in Article 39 (1) 1, letter b, must be seen in connection with the fact that the data protection adviser must have knowledge of the processing activities that take place in the organization. The data protection adviser may hereby notify the data controller or data processor in the event that the data protection adviser finds a non-compliance with the rules with a view to correcting the error. The data protection adviser can, among other things, ensure such lasting knowledge and overview of the data controller's or data processor's organization at regular meetings, quality checks of guidelines and standard templates, reporting, random checks, etc.

At the same time, the Danish Data Protection Agency is of the opinion that the data protection adviser's contact with the data subjects and guidance generally support the data protection adviser's tasks, including the task of monitoring compliance with the data protection rules, cf. Article 39 (1). 1, letter b. In contact with the data subjects, the data protection adviser may be made aware of treatments that do not comply with the rules or procedures that do not work as intended.

Furthermore, the Danish Data Protection Agency is of the opinion that the control that the data protection adviser must carry out by the data controller or data processor pursuant to Article 39 (1) of the Data Protection Regulation. 1, letter b, depends on the internally chosen organization of the tasks of the data protection adviser. If the organization to a greater extent leaves the specific execution of tasks to employees other than the data protection adviser, the Data Inspectorate is of the opinion that the data protection adviser should in principle have a greater degree of control over how these tasks are designed and whether this is done in accordance with data protection law. rules.

In the event that the data controller or data processor to a significant extent assists itself in advising employees in relation to data protection law issues, there is, according to the Danish Data Protection Agency, a stricter requirement in relation to the other control measures that the data protection adviser must take. The data protection adviser must thus ensure that the control - which could have been carried out in connection with employee inquiries - is secured in another way.

After a review of the case information, however, the Data Inspectorate's assessment is that the municipality's organization of the data protection adviser's obligation to monitor the municipality's compliance with the data protection law rules takes place within the framework of Article 39 (1) of the Data Protection Regulation. 1, letter b.

The Danish Data Protection Agency has placed special emphasis on the data protection adviser carrying out a fixed, planned, semi-annual inspection of the municipality, and that the data protection adviser - despite the municipality itself carrying out the inspection to a certain extent - is responsible for the inputs.

In addition, the Danish Data Protection Agency has emphasized that the data protection adviser contributes to the annual review of the municipality's information security policy, and that the data protection adviser thereby checks that the municipality carries out relevant internal controls and revises other policies and procedures.

The Danish Data Protection Agency has also emphasized that the data protection adviser has the opportunity to carry out inspections to a further extent, among other things as part of the data protection adviser's participation in meetings in the municipality, where the data protection adviser is presented with data protection issues.

7. Conclusion

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Mariagerfjord Municipality's use of an external data protection adviser is within the framework of the Data Protection Ordinance. In this connection, the Danish Data Protection Agency has noted the following:

That Mariagerfjord Municipality has appointed a lawyer from the law firm HjulmandKaptain as data protection adviser, and that her function is performed on the basis of a service contract.

That Mariagerfjord Municipality's data protection adviser has the necessary professional qualifications to handle the role, cf. Article 37 (1) of the Data Protection Regulation. 5.

That Mariagerfjord Municipality in accordance with Article 38 (1) of the Data Protection Regulation 1, has ensured that the data protection adviser is adequately and timely involved in all matters concerning the protection of personal data.

To be registered in Mariagerfjord Municipality in accordance with Article 38 (1) of the Data Protection Regulation. 4, may contact the Data Protection Adviser regarding any questions concerning the processing of their information and the exercise of their rights under the Data Protection Regulation.

That Mariagerfjord Municipality's data protection adviser in accordance with Article 39 (1) of the Data Protection Regulation 1, letter a, notifies and advises the municipality and employees in the municipality about their data protection law obligations.

That Mariagerfjord Municipality in accordance with the Data Protection Ordinance Article 39, paragraph. 1, letter b, has ensured that the data protection adviser monitors the municipality's compliance with the data protection law rules, cf. Article 39

(1) of the Data Protection Regulation. 1, letter b.

[1] Article 29 Working Party Guidelines on Data Protection Advisers, adopted on 13 December 2016, last revised and adopted on 5 April 2017, p. 12. [2] Article 29 Working Party Guidelines on Data Protection Advisers, adopted on 13 December 2016, last revised and adopted on 5 April 2017, p. 18

Annex: Relevant legal rules in Chapter 4 of the Data Protection Regulation

Article 37

Appointment of a data protection adviser

The Data Controller and Data Processor shall always appoint a Data Protection Adviser when:

- (a) proceedings are conducted by a public authority or body, with the exception of courts acting in their capacity as courts;
- (b) the core activities of the controller or processor consist of processing activities which, by virtue of their nature, scope and / or purpose, require regular and systematic monitoring of data subjects on a large scale; or
- (c) the core activities of the data controller or processor shall consist of a large - scale processing of specific categories of information referred to in Article 9 and personal data relating to criminal offenses and offenses referred to in Article 10.

A group may appoint a common data protection adviser, provided that all establishments have easy access to the data protection adviser.

If the controller or processor is a public authority or body, a joint data protection adviser may be appointed for several such authorities or bodies in accordance with their organizational structure and size.

4. In cases other than those in para. Or, where required by Union or national law of the Member States, the controller or processor or associations and other bodies representing categories of controllers or processors shall designate a data protection adviser. The Data Protection Adviser may act on behalf of such associations and other bodies representing data controllers or processors.

The Data Protection Adviser shall be appointed on the basis of his / her professional qualifications, in particular expertise in data protection law and practice, as well as his / her ability to carry out the tasks referred to in Article 39.

The Data Protection Adviser may be the employee of the Data Controller or Data Processor or may perform the task on the basis of a service contract.

7. The data controller or data processor shall publish the contact details of the data protection adviser and communicate them

to the supervisory authority.

Article 38

The position of the Data Protection Adviser

The data controller and the data processor shall ensure that the data protection adviser is adequately and timely involved in all matters relating to the protection of personal data.

The Data Controller and the Data Processor shall assist the Data Protection Officer in carrying out the tasks referred to in Article 39 by providing the resources necessary for performing those tasks and maintaining the Data Protection Officer's expertise, as well as access to personal data and processing activities.

The data controller and the data processor shall ensure that the data protection adviser does not receive instructions regarding the performance of these tasks. The person in question must not be dismissed or punished by the data controller or the data processor in order to perform his tasks. The data protection adviser reports directly to the top management level of the data controller or data processor.

Data subjects may contact the data protection adviser on any matter concerning the processing of their data and the exercise of their rights under this Regulation.

5. The Data Protection Adviser shall be bound by professional secrecy or confidentiality in the performance of his / her duties in accordance with Union or national law.

6. The Data Protection Advisor may perform other tasks and have other duties. The data controller or data processor ensures that such tasks and duties do not lead to a conflict of interest.

Article 39

Task of the Data Protection Advisor

The data protection adviser has at least the following tasks:

(a) to inform and advise the controller or processor and the staff processing personal data of their obligations under this Regulation and other Union or national law of the Member States on data protection;

(b) to monitor compliance with this Regulation, with other Union or national law of the Member States on data protection and with the data controller's or data processor's policies on the protection of personal data, including the allocation of responsibilities, information campaigns and the training of staff involved in processing activities; and the associated audits

(c) to advise, when requested, on the data protection impact assessment and to monitor its compliance in accordance with Article 35;

(d) to cooperate with the supervisory authority

(e) to act as the contact point of the supervisory authority in matters relating to processing, including the prior consultation referred to in Article 36, and to consult the supervisory authority, where appropriate, on any other matters.

2. In carrying out his duties, the Data Protection Adviser shall take due account of the risks associated with processing activities, taking into account the nature, scope, coherence and purpose of the processing in question.