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Decision

Private companies

The publication of personal data on past and current teachers 'and students' forms in Lectio has not taken place in accordance with the data protection law rules.

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Summary

In the autumn of 2018, the Danish Data Protection Agency decided to initiate an investigation into the publication of personal data in the study administration system Lectio, which is used by the majority of upper secondary schools. For the purpose of conducting the investigation, the inspectorate selected a random high school, which was to answer a series of questions. During the Danish Data Protection Agency's processing of the case, MaCom A / S, which provides Lectio, decided to put all information in Lectio behind a login.

On 4 July 2019, the Authority made a decision in the case. In the Authority's view, the publication of personal data on former and current teachers 'and students' forms in the study administration system Lectio - despite the Authority's previous practice - had not taken place in accordance with the data protection law rules.

Overall, the Danish Data Protection Agency found that the publication of personal data went beyond what was necessary in relation to the purpose of the processing, and therefore the publication could not be accommodated within the data protection law rules. This applied to both the publication as such and the temporal extent of the publication.

In its assessment, the Danish Data Protection Agency emphasized that the previous openness to Lectio did not immediately pursue purposes that sufficiently justified its publication. That the information at publication was readily available to students and teachers did not change this. In continuation of this, the Authority emphasized that the publication to a certain extent entailed the possibility of abuse, which could consequently entail certain risks for the data subjects.

Finally, the Danish Data Protection Agency stated that the basic principles for the processing of personal data must continue to be complied with in connection with the processing of information behind login. This means, among other things, that the information placed behind the login must be sufficient, relevant and limited to what is necessary in relation to the purpose (s)

for which it is processed. The upper secondary school will thus have to limit access to the information as far as possible both in relation to the content and the time extent, just as in this connection it must be considered what information the individual groups of persons must have access to.

## The opinion

The Data Inspectorate hereby returns to the case, which the Authority has initiated of its own motion, where the Authority by letter of 9 October 2018 requested Rungsted Gymnasium for an opinion on the publication of personal information via the Internet on the website [www.Lectio.dk](http://www.Lectio.dk) (hereinafter Lectio), which is offered by MaCom A / S.

Rungsted Gymnasium has by letter of 6 November 2018 issued a statement on the matter.

### 1. The Danish Data Protection Agency's opinion

After a review of the case, the Danish Data Protection Agency finds that the publication of personal information about former and current teachers 'and students' forms in the study administration system Lectio has not taken place in accordance with the data protection law rules.

However, the Danish Data Protection Agency has noted that MaCom A / S - during the processing of the case - has decided to put all information in Lectio behind a login. Against this background, the supervision does not take any further action in the case.

Below is a review of the case and a more detailed account of the Danish Data Protection Agency's conclusion.

### 2. Case presentation

It appears from the case that on Rungsted Gymnasium's open page on Lectio [1], personal information about former and current teachers 'and students' forms, including information about teachers 'leave of absence and students' probationary dates, was published. At the time of initiating this case, it was possible to access information back from the school year 2005/06 until the school year 2018/19.

Rungsted Gymnasium has stated in the case that the gymnasium is data responsible for the processing of personal data, which is described above.

Rungsted Gymnasium has also stated that personal information covered by Article 6 of the Data Protection Ordinance is only published via Lectio. Article 6 (1) (b), while information on pupils is provided in accordance with Article 6 (1) of the Regulation.

1, letter e.

Rungsted Gymnasium has stated that MaCom A / S is in the high school's opinion also responsible for the publication of personal information, as MaCom A / S has not previously met the high school's needs and demands for closing access to personal information on Lectio's front page without login, just like MaCom A / S S has previously denied the high school's request to remove the high school from the front page of Lectio's website.

Rungsted Gymnasium has in continuation of this stated that after receiving the Data Inspectorate's letter of 9 October 2018, Rungsted Gymnasium succeeded in getting MaCom A / S to remove forms from previous school years from the open part of the website. The high school also removed the link to Lectio on the high school's own website to restrict access to the publicly available information and has endeavored to manually minimize the amount of information in the forms for the current school year.

Rungsted Gymnasium has also generally provided information about the initiatives that the high school has initiated in order to increase data protection for both students and teachers.

During the Danish Data Protection Agency's processing of this case, MaCom A / S has decided to put all information in Lectio behind a login. Rungsted Gymnasium has stated that MaCom will in future create "partitions" behind the login function, and that Rungsted Gymnasium - until MaCom A / S has made all necessary changes - has established its own procedures for the processing of information in Lectio.

#### Relevant legal rules

The Data Protection Regulation applies to the processing of personal data carried out in whole or in part by means of automatic data processing and to other non-automatic processing of personal data which is or will be contained in a register, in accordance with Article 2 (1) of the Regulation. 1.

Processing of general, non-sensitive information may take place if one of the following conditions in Article 6 (1) of the Data Protection Regulation 1, letters a-f, are met:

The data subject has given consent to the processing of his personal data for one or more specific purposes.

Processing is necessary for the performance of a contract to which the data subject is a party or for the implementation of measures taken at the request of the data subject prior to the conclusion of a contract.

Processing is necessary to comply with a legal obligation incumbent on the data controller.

Processing is necessary to protect the vital interests of the data subject or another natural person.

Processing is necessary for the purpose of performing a task in the interest of society or which falls within the exercise of public authority, which has been assigned to the data controller.

Processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the data subject's interests or fundamental rights and freedoms requiring the protection of personal data take precedence, in particular if the data subject is a child.

Article 6, paragraph Paragraph 1 (f) shall not apply to processing operations carried out by public authorities in the performance of their tasks.

In addition, the processing of personal data must always be carried out in accordance with the basic principles set out in Article 5 of the Data Protection Regulation.

This means, among other things, that information must:

treated lawfully, fairly and in a transparent manner in relation to the data subject ('legality, fairness and transparency');  
collected for explicitly stated and legitimate purposes and must not be further processed in a way incompatible with those purposes ('purpose limitation');

be adequate, relevant and limited to what is necessary for the purposes for which they are processed ('data minimization');  
stored in such a way that it is not possible to identify the data subjects for a longer period than is necessary for the purposes for which the personal data in question are processed ('storage restriction').

#### 4. The background for the Danish Data Protection Agency's conclusion

In the following, the Danish Data Protection Agency will only take a position on the publication of personal data that took effect at the time the Authority initiated this case.

The Danish Data Protection Agency finds - in accordance with Rungsted Gymnasium's statement to this effect - that the high school was data responsible for the publication of personal data on Lectio, cf. the definition in Article 4, no. 7 of the Regulation, while MaCom A / S acts as data processor for the high school, cf. Article 4, point 8.

The Danish Data Protection Agency notes that Rungsted Gymnasium's comments on MaCom A / S 'unwillingness to change the system in accordance with the high school's wishes do not, in the Data Inspectorate's opinion, have any bearing on the present case concerning the high school's obligations as data controller for the processing of personal data.

On the basis of the information in the case, the Danish Data Protection Agency assumes that no personal data was published

covered by Article 9 of the Data Protection Regulation, which concerns the processing of special categories of personal data (sensitive data). This means that only a basis for treatment must be found in Article 6 of the Regulation.

As described above, Rungsted Gymnasium has stated that the processing basis for the high school's publication of personal data about the high school's employees takes place pursuant to Article 6 (1) of the Data Protection Ordinance. Article 6 (1) (b), while information on pupils is provided in accordance with Article 6 (1) of the Regulation. 1, letter e.

Pursuant to Article 6 (1) of the Regulation (1) (b), the processing of personal data is lawful if the processing is necessary for the performance of a contract to which the data subject is a party or for the implementation of measures taken at the data subject's request prior to the conclusion of a contract. It is the opinion of the Danish Data Protection Agency that this provision cannot form the basis for the publication of personal data on upper secondary school teachers in question. This is because, in the Authority's view, it cannot be considered necessary in the specific case to publish personal data for the purpose of fulfilling an employment contract.

The Danish Data Protection Agency considers that the processing should be assessed in accordance with Article 6 (1) of the Regulation. 1, letter e, according to which a processing of personal data is lawful if the processing is necessary for the purpose of performing a task in the interest of society, or which falls within the exercise of public authority, which the data controller has been instructed to do.

The provision of Article 6 (1) of the Regulation Article 5 (1) (e) must be seen in the context of the basic principles for the processing of personal data contained in Article 5 of the Regulation. 1, letter c, the processing of personal data is thus subject to a principle of proportionality, while a processing pursuant to letter e of the provision is subject to a general retention restriction.

Overall, the Danish Data Protection Agency finds that the publication of personal data in question went beyond what was necessary in relation to the purpose of the processing, which is why the publication cannot be seen as falling within the data protection law rules. This applies to both the publication as such and the temporal extent of the publication.

In this connection, the Danish Data Protection Agency has emphasized that the previous openness to Lectio did not immediately pursue such purposes that sufficiently justified its publication. The fact that the information was easily accessible to students and teachers at the time of publication does not change this. In continuation of this, the Authority has emphasized that the publication to a certain extent entailed the possibility of abuse, which could consequently entail certain risks for the

data subjects.

The Danish Data Protection Agency notes that the Authority has previously commented on the processing of personal data in Lectio. [2] In the most recent opinion (j.nr. 2009-24-0028), the Authority found that the upper secondary school in question had a legitimate interest in being able to publish teacher forms on Lectio, and that the consideration for the registered person did not exceed this interest, so the treatment could be accommodated before for the Personal Data Act [3] § 6, para. 1, no. 7 (the balance of interests rule).

Despite this, the Danish Data Protection Agency finds - for the reasons stated above - that the publication could not be accommodated within the framework of the Data Protection Regulation and the Data Protection Act. This opinion thus reflects a reassessment of the publication of personal data on Lectio.

In conclusion, the Danish Data Protection Agency draws attention to the fact that i.a. the basic principles for the processing of personal data contained in Article 5 of the Data Protection Regulation must continue to be respected in the processing of login data.

This means, among other things, that the information placed behind the login must be sufficient, relevant and limited to what is necessary in relation to the purpose (s) for which it is processed. Rungsted Gymnasium will thus have to limit access to the information to the greatest possible extent both in relation to the content and the time extent, just as in this connection it must be considered what information the individual groups of persons must have access to.

## 5. Concluding remarks

The Danish Data Protection Agency hereby considers the case closed and does not take any further action in the case.

[1] <https://www.lectio.dk/lectio/59/default.aspx>.

[2] Respectively j.nr. 2004-312-0045 and 2009-24-0028.

[3] Act No. 429 of 31 May 2000 on the processing of personal data with subsequent amendments (repealed).