

## Publication of personal information on Facebook profile

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### Decision

Publication of personal information in postings on a Facebook profile was covered by the data protection rules, as the postings were closely linked to the person's sole proprietorship.

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### Summary

The Danish Data Protection Agency has made a decision in a case where a citizen had complained about the publication of personal information in posts on a Facebook profile. Defendant argued that the treatment had taken place in purely private contexts and without connection to her business.

The Danish Data Protection Agency found that the postings on the defendant's Facebook profile were not a processing of personal data that had been made as part of purely personal activities.

The Danish Data Protection Agency hereby emphasizes that the postings on the Facebook profile were closely related to the defendant's business and that they related to a lawsuit which at that time was pending between the defendant's business and complaints. The Danish Data Protection Agency thus emphasized that this was information that related to the defendant's and complainant's business relationship.

Regardless of whether it was a posting on a Facebook profile, which the respondent also used privately, it was thus the Data Inspectorate's assessment that the respondent had published information on complaints in the postings, which fell within the scope of the data protection rules.

The Danish Data Protection Agency then found that the defendant's publication of information on complaints could take place pursuant to the balancing of interests rule. In this connection, the Danish Data Protection Agency emphasized that the defendant had a legitimate interest in commenting on complaints and her dispute. Furthermore, the Authority emphasized the nature of the information and the consideration for freedom of information and expression, which had to be included with considerable weight, as these were statements of opinion and subjective assessments, which in the Authority's view must be clear to the readers of the notice. The Danish Data Protection Agency also emphasized that the consideration of complaints did not speak against the publication.

As the processing was covered by the scope of the data protection rules, the Danish Data Protection Agency found that the complainant had the right to request insight into the information that the respondent processed about her to the extent that the processing of the information took place as part of the respondent's business. Against this background, the Danish Data Protection Agency asked the respondent to take a position on and against complainants to decide whether the conditions for granting access pursuant to Article 15 of the Data Protection Regulation were met.

#### Decision

The Danish Data Protection Agency hereby returns to the case, where [lawyer] on 19 November 2019 on behalf of XX (hereinafter complainants) has contacted the Authority regarding your processing of information about complaints.

The Danish Data Protection Agency has understood the inquiry as a complaint about:

that you have published information about complaints in a number of posts on your Facebook profile, as well that you have not responded to the complainant's request for insight, including what information you have registered about complaints, what information you have passed on about complaints, and to whom you have passed on information about complaints.

#### Decision

Following an examination of the case, the Danish Data Protection Agency finds that the processing of personal data has taken place within the framework of Article 6 (1) of the Data Protection Regulation [1]. 1, letter f.

Against this background, the Danish Data Protection Agency must ask you to take a position on and against complainants, decide whether the conditions for granting access pursuant to Article 15 of the Data Protection Regulation are met and, if applicable, provide complainants with access to the information you process about her. unless the information can be exempted under Article 15 (1) of the Data Protection Regulation. 4, or section 22 of the Data Protection Act.

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 that you and the complainant have had a dispute over the ownership of a horse. It also appears that you make a living by riding and selling horses through your one-man company YY v / ZZ (hereinafter company v / defendant). On November 12, 2019, you made a post on your Facebook profile with a reference to an article from [...] entitled "[...]" and with the following text:

“Del del del del del del del del

Then the story of [the horse's name] came to light. On the front page of the newspaper. A somewhat edited and gentle version of reality. But still watery grotesque. She is an unscrupulous, ungrateful deceiver. She possesses neither morality nor ethics. But cheating and deceiving it she is master of.

(...)

All further info can be found in PB ”

Later that day, you made another post on your Facebook profile with a reference to an article [...] titled “[...]” and the following text:

“Share share share like

read the article on [horse name]. And about a female deception without a conscience ”

On November 14, 2019, complainants contacted you regarding the postings on your Facebook profile. Complainants pointed out in this connection that in her opinion there was an unjustified disclosure of personal data, and that the notices should therefore be removed "no later than the end of today". Complainants also requested insight into the information you processed about her, including a complete list of the persons to whom you had sent information about complaints, as well as what information you had sent to those persons.

On November 16, 2019, you shared your post from November 12, 2019 with the following text:

"I'd better share again so everyone is warned."

On 19 November 2019, the complainant contacted the Danish Data Protection Agency, as she had not heard from you.

On 4 December 2019, the Danish Data Protection Agency forwarded the complainant's inquiry to you with a view to you taking a position on the inquiry and responding to it.

Complainants directed a new inquiry to the Danish Data Protection Agency on 6 January 2020, as you had not responded to the inquiry.

On the basis of the Danish Data Protection Agency's hearing of 21 January 2020, you appeared on 5 March 2020 with a statement on the matter, which complaints on 18 March 2020 have made comments.

## 2.1. Your comments

You have stated the following:

"(...) I must state that I do not have any information recorded regarding the complainant's personal circumstances. Thus, I have neither used nor passed on matters that are included in the provisions of the Personal Data Ordinance.

I allow myself to assume that the background for your inquiry on behalf of your client has taken place after I have chosen to speak to a local media about a number of matters. The personal information that may be mentioned in this context is otherwise fully publicly available through public databases.

I can additionally state that all the information I have otherwise used is anchored in a previous private friendship with your client. It also appears from case files from a current lawsuit between your client and the undersigned that our previous cooperation has been orally based, which the court has made several decisions on the basis of.

All inquiries on social media and the like. as a result of the mentioned newspaper article, has happened in purely private contexts and has nothing to do with my company, as as I said, there is no relevant personal information about your client in registers, documents or the like. which relates to the operation of my business.

[...] Has chosen not to mention the complainant's name in the article in question. That there are a number of posts on my private Facebook profile, I take full responsibility for and I ensure - as in all other matters - that all statements are made in accordance with applicable law, but it does not make the case commercial law in relation to the use of personal data , as it only takes place on my private profile, and as, as I said, no information from my professional work is used.

In conclusion, I would like to point out that I have the full right to speak to local, regional as well as state media about matters that I consider to be in the public interest.

Name ban in the mentioned article or not, then I can state that there are several other people who have experienced similar behavior and questionable business practices from your client. You can not expect this to be censored or silenced in the future through letters to supervisory authorities or judicial bodies.

The free exchange of opinions that takes place between a large number of people who have in common that they feel cheated and deceived by your client, is based solely on private individuals' own personal experiences. Thus, no one needs to use registered data in their companies to talk about your client and her doings and barn (...) ”

## 2.2. Complainant's remarks

Complainants have in their complaint to the Danish Data Protection Agency stated, among other things, the following:

"(...) Company v / defendant is a personally run sole proprietorship which is covered by the Personal Data Ordinance.

Defendant must therefore, in terms of his ownership and as an employee of the company, comply with the rules of the regulation in relation to the transfer of personal data.

The fact that the defendant passes on his version of the proceedings to the press is not the matter to which the complaint relates.

The complaint only concerns the fact that the defendant passed on incorrect and criminal information about complaints to several thousand people, which is in clear violation of the Personal Data Ordinance's rules on the transfer of personal data.

At the same time, complainants have still not gained insight into who the respondent has passed on personal data to, and what personal data has been passed on despite the request.

As the respondent in no way respects the complainant's rights, this complaint is necessary. ”

In its comments of 18 March 2020, the complainant stated, inter alia, the following:

”(...) All accusations of personal and incorrect statements - to several thousand people - that my client should have committed criminal offenses by taking home his own horse, are all information and circumstances that solely arise from the pending lawsuit between company v / defendant and complainant.

Company v / defendant is data responsible and thus obliged to comply with the Personal Data Ordinance's rules on the transfer of personal data.

It is argued that the defendant's "personal" statements must be assessed in aggravating circumstances. As the owner / owner, the respondent should be limited in her freedom of expression and thus in her disclosure of personal information, which arises from her personally owned company, company v / defendant.

If an owner / owner of a company is entitled to comment in “private accounts” on pending cases that the company in question has against a private person, any owner / holder will be able to circumvent the Personal Data Ordinance's rules on unauthorized disclosure of personal data. The protection purpose of the Personal Data Regulation may thus lose its significance and, in the worst case, become redundant. ”

Justification for the Danish Data Protection Agency's decision

#### 1.1. Scope of data protection rules

It follows from Article 2 (1) of the Data Protection Regulation 2, letter c, that the regulation does not apply to the processing of personal data carried out by a natural person as part of purely personal or family activities.

The Danish Data Protection Agency finds that the postings on your Facebook profile are not a processing of personal data that has been made as part of purely personal activities.

The Danish Data Protection Agency has hereby emphasized that the postings on the Facebook profile are closely related to your company, company w / defendant and relate to the lawsuit that was pending between your company and complainants at that time. The Danish Data Protection Agency has thus emphasized that this is information that relates to your and the complainant's business relationship. In addition, the Danish Data Protection Agency has emphasized that the transfer has taken place to a wide and indefinite circle of people, as you have over 1,000 friends on your Facebook profile, and as the profile is public.

Regardless of whether it is a posting on a Facebook profile that you also use in private, it is thus the Data Inspectorate's assessment that you have published information about complaints in the postings, which falls within the scope of the data protection rules.

#### 1.2. Publication of information on complaints

On the basis of the information in the case, the Danish Data Protection Agency's assessment is that no information is processed about criminal offenses, cf. section 8 of the Data Protection Ordinance, as the accusations in the notices of fraud are not seen to be sufficiently substantiated.

Processing, including publication, of the information may then take place if one of the conditions of Article 6 (1) of the Data Protection Regulation 1, letters a-f, are met.

As the complainants have not consented to the publication of the information, the Danish Data Protection Agency is of the opinion that the relevant processing rule in this situation is Article 6 (1). According to this provision, the processing of personal data may take place if the 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. for this.

This is a treatment condition that requires a concrete balancing of interests.

The Danish Data Protection Agency considers that the publication of the information on complaints has taken place within the framework of Article 6 (1) of the Data Protection Regulation. 1, letter f.

In this connection, the Danish Data Protection Agency has emphasized that you had a legitimate interest in expressing

yourself about complaints and your dispute. Furthermore, the Authority has emphasized the nature of the information and the consideration for freedom of information and expression, which must be included with considerable weight, as these are statements of opinion and subjective assessments, which in the Authority's view must be clear to the readers of the notice. The Danish Data Protection Agency has also emphasized that the consideration of complaints does not speak against publication.

### 3.3. Access to complaint information

It follows from Article 15 (1) of the Data Protection Regulation<sup>1</sup>, that the data subject has the right to receive the data controller's confirmation of whether personal data concerning the person in question is processed, and if applicable access to the personal data and the information mentioned in the provision letter a-h.

It appears from the information in the case that you have rejected the complainant's request for access on the grounds that the data protection rules do not apply.

As mentioned in pkt. 3.1, the Danish Data Protection Agency's assessment is that the data protection rules apply with regard to the processing of personal data that is related to your company - regardless of whether the data is processed e.g. via your Facebook profile.

On that basis, the Danish Data Protection Agency finds that complainants have the right to request insight into the information that you process about her to that extent, and that the processing of the information takes place as part of the operation of your company. It will depend on a specific assessment whether you process information about complaints that are covered by the rules on insight.

Against this background, the Danish Data Protection Agency must ask you to take a position on and against complainants, decide whether the conditions for granting access pursuant to Article 15 of the Data Protection Regulation are met and, if applicable, provide complainants with access to the information you process about her. unless the information can be exempted under Article 15 (1) of the Data Protection Regulation. 4, or section 22 of the Data Protection Act.

If the complainants do not agree with your decision on insight, complainants can again contact the Danish Data Protection Agency with a view to obtaining the Authority's position on the matter.

[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).