

Criticism and injunction to Cryos for lack of insight

Date: 26-11-2021

Decision

Private companies

Criticism

Injunction

Complaint

The right to access

Exercise of rights

The Danish Data Protection Authority has expressed criticism that Cryos International ApS failed to give a citizen insight into the information on the number of donor children who were conceived with the help of sperm donation from the citizen. The supervisory authority has further given the company an order for insight.

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1. Decision

After a review of the case, the Danish Data Protection Authority finds that there are grounds for expressing criticism that Cryos International ApS has not sufficiently given the complainant access to personal data about himself, cf. Article 15 of the data protection regulation [1].

The Danish Data Protection Authority also finds grounds to notify Cryos International ApS of an order to give the complainant insight into the information on the number of donor children conceived through sperm donation from the complainant.

Complainants must be given access as soon as possible and no later than Tuesday 7 December 2021.

The order is announced in accordance with the data protection regulation, article 58, subsection 2, letter c.

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

2. Case presentation

It appears from the case that the complainant, by e-mails of 11 and 12 May 2020, addressed Cryos International ApS with questions about, among other things, how many donor children were conceived through sperm donation from the complainant and how many of their mothers , who were single.

In a letter of 15 May 2020, Cryos International ApS wrote i.a. to the complainant that it was against Cryos International ApS's business policy to provide information on how many children had been created using his donated sperm, just as Cryos International ApS did not register information on the parentage of these children, including whether they were allowed to have a single mother.

By e-mail of 15 May 2020, the complainant requested access pursuant to Article 15 of the Data Protection Regulation into the personal data that Cryos International ApS processed about him, including information about the number of donor children who were conceived through sperm donation from the complainant.

By letter of 15 June 2020, Cryos International ApS responded to the complainant's request for insight. It emerged from this that Cryos International ApS could not give the complainant insight into e.g. information on reported pregnancies recorded using his donations. This was because the disclosure of this information would infringe the rights of others, including that decisive considerations for other private interests outweighed the complainant's interest in the information, cf. the data protection regulation's article 15, subsection 4, and the Data Protection Act[2] § 22, subsection 1.

2.1. Cryos International ApS' comments

Cryos International ApS has stated that the right of access according to Article 15 only relates to access to personal data about the data subject himself.

The information on the number of children conceived using donor reproductive cells is not personal information about complaints. Section 28 of the Children's Act[3] makes it clear that a sperm donor is not the father of any children born using donated reproductive cells. Each donor waives all rights and obligations regarding donor children resulting from artificial insemination using that donor's reproductive cells.

The information regarding the number of donor children, as a result of reproductive cells from a donor used in connection with artificial insemination, is a description of the number of biological siblings. This information thus concerns the siblings who may be about and not the male donor.

For biological "donor siblings", the information about how many biological siblings they have can be very sensitive and difficult emotional information to handle, which they do not want at all. Donor children often have a higher number of biological siblings than what is normal in a "traditional" family, which for many will cause a significant psychological burden - especially for children.

Information about how many of these possible children may have a single mother must also be information that does not relate to the donor but rather possibly donor children who do have a relationship with their mother. In addition, this is information about the mothers' completely personal circumstances. It is further noted that information on this is not available to Cryos International ApS at all.

Cryos International ApS has stated that, to the extent that the Danish Data Protection Authority believes that personal data about complaints is involved, insight should not be given to complainants, i.a. because the information to which insight is sought relates to people other than complainants, and the information is, as mentioned, of a very sensitive nature for people other than complainants. The complainant's right of access must therefore be waived due to significant considerations for other persons, cf. section 22, subsection of the Data Protection Act. 1.

2.2. Complainant's comments

The complainant stated that he had been approached by a girl who claimed he was her father. [Sentence removed]. The girl informed the complainant that she knew of three children who had the same donor number as the complainant, and that one of the children had a need to meet with the complainant.

The complainant then chose to slow down the relationship with the girl, as he could not create a relationship with her without having an overview of how many children he was the biological father of. If complainant initiated a relationship with the girl, he would also feel that he should offer the same to other donor children who may at some point contact him.

The complainant has stated that he himself has no intention of seeking out more donor children, but he wants to know the number of children and how many of them have officially registered a father. The information would be relevant to the complainant in assessing how many children could potentially have a need to contact him, as the complainant assumes that children born to a single mother, other things being equal, will have a greater need to seek out their biological father.

Furthermore, the information would in no way enable complainants to seek out the children.

The complainant has further stated that it is correct that he is not the father in the legal sense, but that he has still been identified on the basis of [word removed] and information which has been passed on by Cryos International ApS to the buyer of his semen. This is identifiable information, and consideration for his rights should weigh more heavily than the Children's Act. Especially in this case, where it is not him who has sought out or has tried to seek out potential donor children.

3. Reason for the Data Protection Authority's decision

It follows from the data protection regulation article 15, subsection 1, that the data subject has the right to obtain confirmation from the data controller as to whether personal data relating to the person in question is being processed, and, if applicable, access to the personal data and the information in letter a-h of the provision. It is thus only personal data about the registered person himself that must be disclosed, cf. Article 15.

It follows from the data protection regulation's article 4, subsection 1, no. 1, that "personal information" means any type of information about an identified or identifiable natural person ("the registered person"); identifiable natural person means a natural person who can be directly or indirectly identified, in particular by an identifier such as e.g. a name, an identification number, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person.

As far as the information about how many of the children may have a single mother is concerned, the Danish Data Protection Authority finds that this does not constitute personal data about complainants, and information about this is thus not covered by the complainant's right of access.

The Danish Data Protection Authority has therefore emphasized that the information about the mother's marital status more precisely constitutes personal information about the mother, and that the information cannot be said to relate to complaints. However, the information on the number of donor children conceived through sperm donation from complainants must be considered to relate to complaints. The Danish Data Protection Authority is of the opinion that this information is personal information about the complainant, which is therefore covered by the complainant's right of access pursuant to Article 15 of the Data Protection Regulation.

The Danish Data Protection Authority also finds that information on the number of donor children conceived through sperm donation from complainants cannot be exempted from the right to access, cf. section 22, subsection of the Data Protection Act. 1.

This follows from Section 22, subsection 1 of the Data Protection Act. 1, that i.a. Article 15 of the data protection regulation does not apply if the interest of the data subject in the information is found to be overriding decisive considerations of private interests, including consideration of the data subject himself.

With the use of the term "crucial" in the provision, it is understood that if there is a imminent danger that private interests will suffer significant damage, an exception to the right of access may be made.[4]

In this assessment, the Danish Data Protection Authority has emphasized that it is only a question of information about the number of donor children, which does not enable complainants to seek out the children.

With regard to the considerations for the children stated by Cryos International ApS, if they were to become aware of the number of "donor siblings", the Danish Data Protection Authority finds that the information on the number of donor children does not entail such an imminent danger that private interests will be harmed by significant importance. The Danish Data Protection Authority therefore assesses that the information on the number of donor children cannot be exempted according to section 22, subsection of the Data Protection Act. 1.

In the opinion of the Danish Data Protection Authority, Cryos International ApS is thus obliged to provide complainants with insight into the number of donor children conceived through sperm donation from complainants.

On the basis of the above, the Danish Data Protection Authority finds reason to express criticism that Cryos International ApS has not provided the complainant with sufficient insight, cf. Article 15 of the Data Protection Regulation.

The Danish Data Protection Authority also finds grounds to notify Cryos International ApS of an order to give the complainant insight into the information on the number of donor children conceived through sperm donation from the complainant.

Complainants must be given access as soon as possible and no later than Tuesday 7 December 2021.

The order is announced in accordance with the data protection regulation, article 58, subsection 2, letter c.

According to the Data Protection Act § 41, subsection 2, no. 5, anyone who fails to comply with an order issued by the Danish Data Protection Authority pursuant to Article 58, subsection of the Data Protection Regulation shall be fined or imprisoned for up to 6 months. 2.

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

[2] Act No. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (the Data Protection Act).

[3] Legislative Decree No. 772 of 7 August 2019 on the promulgation of the Children's Act (the Children's Act).

[4] Proposal for law no. 502 of 23 May 2018, proposal for law no. L 68, the special comments on section 22, subsection 1.