Complaint about sharing information between branches of insurance company

Date: 20-11-2019

Decision

Private companies

The Danish Data Protection Agency has processed a complaint from a trade union which, on behalf of a member, complained that an insurance company had exchanged information between the company's department for occupational injury insurance and the department for liability insurance.

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Summary

The Danish Data Protection Agency has processed a complaint from a trade union which, on behalf of a member, complained that an insurance company had exchanged information between the company's department for occupational injury insurance and the department for liability insurance.

The Danish Data Protection Agency found that the processing was in accordance with the rules in the Data Protection Regulation and the Financial Business Act.

The Danish Data Protection Agency also found that the insurance company had sufficiently complied with the company's duty to provide information.

The decision also illustrates the Danish Data Protection Agency's new perception of Article 6 of the Data Protection Regulation in the processing of sensitive information covered by Article 9 of the Regulation, which was previously announced by the Authority, just as the decision illustrates the interplay between the general data protection rules and the Financial Business Act.

Decision

The Danish Data Protection Agency hereby returns to the case where [Trade Union X], as the party representative for (complaints) on 20 November 2018, has contacted the Authority about [Y Forsikring A / S '] processing of personal data.

The Danish Data Protection Agency has treated the inquiry as a complaint that [Y Forsikring A / S] has without consent shared information about complaints between the company's department for occupational injury insurance and the department for liability insurance, and that [Y Forsikring A / S] in connection with this internal processing of information on complaints has not

sufficiently complied with the company's disclosure obligation.

Decision

After an examination of the case, the Danish Data Protection Agency finds that the processing of information on complaints has taken place in accordance with the rules in the Data Protection Regulation [1], cf. Article 9 (1). 2, letter f, and § 117, para. Article 6 (1) of the Financial Business Act [2], cf. 1, cf. 2, cf. 3.

The Danish Data Protection Agency also finds that [Y Forsikring A / S] has sufficiently complied with the company's duty to provide information, cf. Article 14 of the Data Protection Ordinance.

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

2. Case presentation

2.1.

The case concerns the fact that [Ys]'s department for liability insurance has obtained information on complaints from [Ys]'s department for occupational injuries.

It appears in connection with the case that [Ys] liability insurance department by letter from [Date] informed [X] as party representative for complaints that the department via [Ys] department for occupational injuries on [Date] had received a notification from the company customer about the claim for damages from complainants. The letter also stated:

Submit medical information

As documentation of how [complainant's] injury occurred, we ask that you send us a copy of [complainant's] emergency room record or your own doctor's record from the first doctor's visit after the injury. If you would like us to obtain the records instead, please make sure that [complainants] sign the enclosed consent form and send it to us. In this connection, we ask you to provide the name and address of the hospital and / or your own general practitioner.

[…]

We may disclose personal information

In connection with the processing of [complainant's] personal injury, we need to collect and receive personal information. We use the information to assess the personal injury in the departments in [Y] that process the injury. We can pass on the information to our lawyers and the National Board of Industrial Injuries if it is necessary to determine the personal injury. You can be informed at any time what information has been registered about [complainant's] personal injury with us.

If you have any questions, you are of course welcome to contact us. We ask you to provide our claim number so we can find the case more quickly. If you contact us by e-mail, we ask you to write the claim number in the subject field. ”

Attached to [Ys] letter of [Date] was also a statement of consent - FP602.

It further appears from the case file that [X] by letter of [Date] sent a copy of […].

During the period [Date] to [Date], [X], on behalf of the complainants, sent a number of compensation statements with appendices to [Y] and in this connection [Y] informed about e.g. following:

“If you also believe that there are no documents to be able to assess the size of the claim for compensation, these can be obtained through my office. In that case, please inform me as soon as possible which specific annexes you think are missing and for what period, together with an indication of the reason why these are considered relevant. ”

It also appears from the case that the case officer in [Ys] department for liability insurance by letter from [Date] informed [X] that the department from the company's department for occupational injury insurance had obtained supplementary municipal documents for use in assessing the case.

The [Date] subsequently sent [X] an e-mail to the caseworker in question containing the following:

“I have taken note of your statement that you have obtained and processed personally sensitive information about injured parties from your occupational injury insurance. I ask you to please send a copy of the consent form of the injured party in this regard, or alternatively state another legal basis for this. In addition, I note that when sending all compensation statements, we have informed you that any additional information would need to be obtained through my office. ”

In response, in a letter dated [Date], [Y] stated:

“According to the Personal Data Ordinance, we are obliged to inform about how we process our personal data. I can refer to our letter of [Date], where we have informed about the processing of the case, including we have fulfilled our duty to provide information about the use of information in the departments that process the damage. "

2.2. [X’s] remarks

[X] has stated that the complaint concerns the fact that [Ys] Department of Liability Insurance for the purpose of assessing a claim under the Liability Act - without consent and without any prior or simultaneous information to the injured party - has obtained sensitive personal information about complaints from [Ys ] department for occupational injury insurance, which as a party to a case under the Occupational Injuries Insurance Act had a basis for being in possession of the information.

In this connection, [X] has generally stated in particular that [Ys]'s liability insurance department by letter of [Date] requested complaints to give consent to the collection and processing of sensitive personal data, but that such consent was not given.

[X] further states that Article 9 (1) of the Data Protection Regulation 2, letter f, does not apply in the specific situation, as [Y] did not have a legal claim to determine.

As a reason for this, [X] has explained in more detail what the role of insurance companies is in connection with cases under the Liability Act, including the access for insurance companies to obtain information.

[X] has stated in this connection, among other things, that personal injury cases are a 'common' financial matter between two private parties, the injured party and the tortfeasor, respectively.

It is the injured party who must calculate and document his claim. If the tortfeasor does not consider the claim to be sufficiently documented, the tortfeasor must submit a proposal for what additional information he considers relevant, after which the injured party can assess whether he or she can and / or will comply with the request.

When / if the tortfeasor considers the claim to be documented, this is done on a voluntary and contractual basis, and there is thus no question of any legal claim being or to be determined during the proceedings.

[X] has further stated that the processing of personal injury cases by its nature means that the injured party will have to inform the tortfeasor of a plurality of information about the injured party's financial, business and health conditions.

However, on this basis, the tortfeasor cannot simply obtain and process any information that he wishes. The derogation provided for in Article 9 (1) 2, letter f, presupposes a concrete necessity of obtaining precisely the specific information and for a predefined and objective purpose.

In addition, when the information is obtained outside the injured party's and against his or her refused consent and instruction to obtain information through the injured party's representative, there must also be an urgent need for this procedure.

Finally, [X] has referred to the Danish Financial Supervisory Authority's decision in the case with j.nr. […], Where the Danish Financial Supervisory Authority ordered [TA / S] to cease the company's practice, which consisted of [Ts] then subsidiary [IA / S] passing on log-on ID to the National Board of Industrial Injuries' "See case" to [T] .

2.3. [Ys] remarks

[Y] has generally stated that it is the company's opinion that the processing is lawful under both the data protection rules and the Financial Business Act, and that the company has fulfilled its duty to provide information to complainants.

[Y] has stated in this connection that sensitive information pursuant to Article 9 (1) of the Data Protection Regulation 2, letter f, may be processed if the processing is necessary for a legal claim to be determined, asserted or defended, which i.a. includes insurance companies' processing of health information in order to assess whether the data subject is entitled to compensation.
Furthermore, [Y] has stated that the complainant's employer is responsible for his injury, which is why the company treats the personal injury on the employer's liability insurance. In addition, the complainant's employer has taken out statutory occupational injury insurance in [Y], which means that the complainant's personal injury is also dealt with in the company's occupational injury department on behalf of the employer.
[Y] has also stated that there is a close connection between work injury cases and liability cases, as work injuries are treated according to a two-tier system, which together must cover all the injured party's losses in connection with an occupational injury that has occurred. In the event of an occupational injury, an injured party will often have to go ahead with both the Occupational Injuries Insurance Act and the Liability Act in order to have his full total loss covered. Compensation under the Liability Act will often require knowledge of the occupational injury case and vice versa, as the occupational injury insurance covers any lasting consequences of the injury such as permanent injury and loss of earning capacity, while the liability insurance covers temporary losses such as burns and pain and lost earnings. The exchange of information in the cases is therefore necessary and helps to ensure that a materially correct decision is made and that the injured party is paid the correct compensation for all losses incurred in connection with the work accident.
[Ys] department for liability insurance has regularly received statements of lost earnings from [X], but has also pointed out that the claim could only be calculated when there was a temporary / final decision from Arbejdsmarkedets Erhvervssikring in the occupational injury case.
The [Date] sent the [X] decision from Arbejdsmarkedets Erhvervssikring to [Ys]'s department for liability insurance together with a claim for lost earnings until [Date].
Before [Y] can calculate a legal claim regarding lost earnings for the injured party, it is necessary to make an overall assessment of the injury situation, including assessing whether the sick leave is due to the injury in question or whether it is due to other circumstances concerning the injured party. [Ys]'s department for liability insurance therefore obtained a copy of the municipal files from the occupational injury case in order to be able to take a position on the claim, which the company notified [X] on [Date], when the lost earnings were otherwise settled.

[Y] therefore considers that all the information in the case, including the municipal files, has been necessary to determine and establish the legal claim.

In relation to what was stated by [X] about the relationship between the tortfeasor and [Y], [Y] has stated that the company's customer (tortfeasor) has taken out business liability insurance in [Y], and it is in this connection that the company looks after the customer's interests . This handling implies that [Y] on behalf of the customer defends the tortfeasor in relation to any unjustified legal claims, determines legal claims, including deciding on the amount of compensation, if there may be a liability, and whether there is a causal link between the damage and the subsequent period of illness. Furthermore, it follows from the insurance agreement that [Y] has entered into with the customer that recognition of liability and approval of claims may only take place with the company's consent, and that the company otherwise decides on the processing of the case. This means that it is [Y] who assesses what information is needed to inform a case and not the customer. Furthermore, it is [Y] who bears any expenses in connection with payment to an injured party in connection with a liability damage.

Regarding the question of consent, [Y] has stated that the consent attached to the complaint is a standard consent prepared by Forsikring & Pension in collaboration with the Danish Medical Association. This consent is used when the insurance companies have to obtain personal information from healthcare professionals subject to a duty of confidentiality. The consent statement therefore does not constitute the processing authority for [Ys] processing of personal data for use in the compensation statement. It is therefore irrelevant for the assessment of the personal data processing in [Y], including the internal disclosure between the claims, whether this statement of consent has been accepted by the injured party.

In relation to the question of the duty to provide information, [Y] has stated that the company by letter of [Date] to [X] (attached to the complaint) has provided information in accordance with the current Personal Data Act and adapted in accordance with the Danish FSA's instructions.

Furthermore, the [Ys] Liability Insurance Department drew attention by letter of [Date] that municipal files had been obtained in accordance with Article 14 of the Data Protection Regulation.

2.4. Statement from the Danish Financial Supervisory Authority

In connection with the processing of the case by letter of 25 April 2019 - stating the most important fact of the case in a non-immediately attributable form - the Danish Data Protection Agency has obtained a statement from the Danish Financial Supervisory Authority that is supplementary supervision in relation to the rules in the Financial Business Act. § 117, para. 1.

By letter dated 23 May 2019, the Danish Financial Supervisory Authority has issued an opinion in the case with the following wording:

“The Danish Financial Supervisory Authority has received the Danish Data Protection Agency's inquiry of 25 April 2019. In the inquiry, the Danish Financial Supervisory Authority is requested to issue an opinion for the Danish Data Protection Agency's decision on a specific complaint that an insurance company's liability insurance department has obtained and processed information from the injured party's work injury case.

The Danish FSA can initially confirm that the matter is covered by section 117, subsection 1 of the Financial Business Act, as the insurance company has utilized information from a pending work injury case for the purpose of processing a pending compensation case. It is thus a question of utilization of confidential information pursuant to section 117, subsection 1 of the Financial Business Act.

As the Danish Data Protection Agency has noted, the case is similar to the case that the Danish Financial Supervisory Authority has previously decided in accordance with the rules section 117, subsection. 1, cf. No. 5019-0025. However, this was an exchange of information from the civil compensation case for use in deciding the associated work injury case. The Danish FSA finds that the considerations on which the Danish FSA's previous decision was based are relevant to the Danish Data Protection Agency's decision in the present case.

It should be noted, however, that the Danish Financial Supervisory Authority's decision in the previous case, j.nr. 5019-0025, was taken at a time when the rules in Chapter 9 of the Financial Business Act were considered to be lex specialis to the personal data rules. Following the introduction of the Data Protection Regulation, the Ministry of Justice's report on this and the legal comments on the new Data Protection Act, the Danish Financial Supervisory Authority has been given the role of supplementary supervision to special rules issued pursuant to the regulation.

Therefore, the Danish Financial Supervisory Authority does not find it possible to take a specific position on whether there is a justified use of information in the case submitted, but the Danish Financial Supervisory Authority proposes that the following matters be included in the Danish Data Protection Agency's decision:

The clear starting point for the application and interpretation of the rules on utilization / disclosure of confidential information in the Financial Business Act, Chapter 9, is that an utilization / disclosure requires the customer's consent. Customers who provide confidential information to financial companies should be able to trust that their information does not flow freely and

that confidentiality thus exists. The Danish FSA's practice is therefore that it takes a lot to deviate from this starting point and allow utilization / disclosure without consent.

However, a concrete assessment may lead to a justified exploitation / transfer. In a specific assessment, a balance is made between the customer's interest in the information being kept secret and the financial undertaking's interest in utilizing or passing on the information.

The special scheme for compensation in work injury cases can be taken into account. There is a close connection between work injury cases and compensation cases, as work injuries are treated according to a two-tier system, which together must cover all the injured party's losses in connection with an occupational injury that has occurred.

Thus, in the event of an occupational injury, an injured party will have to proceed under both the Occupational Injuries Insurance Act and the Liability Act in order to have his full total loss covered. The compensation under the Liability Act will often require knowledge of the occupational injury case and vice versa, which is why exchange of information between the two cases may be necessary.

An exchange of information can thus help to ensure that a materially correct decision is made and that the injured party is paid the correct compensation for all losses that have occurred in connection with the work accident.

In conclusion, it should be noted that the Danish Financial Supervisory Authority has not assessed the fact that the injured party's lawyer has repeatedly approached the insurance company and offered to send any additional material. ”

Justification for the Danish Data Protection Agency's decision

3.1.

On the basis of the information in the case, the Danish Data Protection Agency assumes that the processing of information on complaints in question must be assessed in accordance with the rules that apply to the processing of sensitive personal data.

Pursuant to Article 9 (1) of the Data Protection Regulation 1, there is a ban on the processing of sensitive personal data, including health data.

However, the prohibition does not apply if one of the exceptions in Article 9 (1) of the Data Protection Regulation 2, or provisions implementing Article 9 of the Regulation are met.

The exceptions do not in themselves constitute a legal basis for processing, but are intended to ensure that sensitive data enjoying special protection are not processed in cases other than those justified by the exceptions.

The prohibition in Article 9 (1) of the Data Protection Regulation 1, against the processing of sensitive information does not apply, i.a. if processing is necessary for legal claims to be established, asserted or defended in accordance with Article 9 (1) of the Regulation. 2, letter f.

The provision deals with both processing with a view to determining legal claims, etc., which takes place in the interest of the data controller, and processing that takes place in the interests of the data subject. The processing of information that is necessary for a third party's legal claim to be determined, etc., will also have to be considered covered by the provision.

The requirement of necessity in Article 9 (1) of the Data Protection Regulation 2, letter f, implies that treatment must be more than just a practical way of fulfilling the purpose, just as the requirement of necessity implies that the purpose must objectively not be reasonably achievable by less intrusive means.

The Danish Data Protection Agency finds that the processing of information on complaints in question was not covered by the prohibition in Article 9 (1) of the Data Protection Regulation. 1, as [Ys] processing of the information in question was necessary in order to establish a legal claim, in accordance with Article 9 (1) of the Regulation. 2, letter f.

The Danish Data Protection Agency has hereby emphasized that [X] submitted a claim for compensation to [Arbejdsgiver A / S], which has taken out liability insurance with [Y], in accordance with the Liability Act, and that [X] regularly sent compensation statements to [Ys]'s department for liability insurance, which necessitated [Ys]'s department for liability insurance's position on this, partly in relation to the complainant's claim for compensation, and partly in relation to the company's customer's liability.

Furthermore, the Danish Data Protection Agency finds that there is no basis for overriding the insurance law assessment made by [Y] that all information in the case was necessary to determine and calculate the legal claim, including the plaintiff's claim for compensation under the Liability Act, which is processed by [Ys] Department of Liability Insurance.

3.2.

The provision of Article 9 (1) of the Data Protection Regulation As mentioned, Article 2 (2) (f) does not in itself constitute a basis for the processing of (sensitive) personal data, as any processing of personal data, including sensitive personal data, must take place on a legal basis in accordance with Article 6 (2) of the Data Protection Regulation. 1, letter a-f.

It follows from Article 6 (1) of the Data Protection Regulation That Member States may maintain or introduce more specific provisions in order to adapt the application of the provisions of the Regulation to treatment in order to comply with Article 6 (2) of the Regulation. 1 (c) and (e), by laying down more precisely specific processing requirements and other measures to ensure

lawful and equitable processing, including for other specific data-processing situations referred to in Chapter IX.

In the present case, the Danish Financial Supervisory Authority has stated that the matter is covered by section 117, subsection 1 of the Financial Business Act, which states that board members, members of local boards and the like, members of the board of directors of a financial company that is not a savings bank, auditors and auditors and their deputies, founders, appraisers, liquidators, directors , actuaries, general agents and administrators in charge of an insurance company as well as other employees may not unjustifiably disclose or utilize confidential information with which they have become aware during the performance of their duties. The provision applies correspondingly to financial holding companies and insurance holding companies.

The Ministry of Justice and the Ministry of Business Affairs [3] have assessed that Chapter 9 of the Financial Business Act on the disclosure of confidential information, including section 117 (1) of the Act. Article 6 (1) falls within the national scope of Article 6 (1) of the Data Protection Regulation. 2-3.

To the extent that special rules for the processing of personal data are laid down within the national scope of Article 6 (1) of the Data Protection Regulation. 2-3, the legality of a treatment must be assessed according to this legal basis and not directly according to Article 6 (1) of the Regulation. 1, letter a-f.

It is against this background that the Danish Data Protection Agency is of the opinion that the legality of the processing of information in the case in question, which [Y] carried out, must be assessed in accordance with section 117, subsection. 1 of the Financial Business Act.

For the purpose of the case, the Danish Financial Supervisory Authority has stated that the clear starting point is that the utilization / disclosure of confidential information requires the data subject's consent. However, a concrete assessment of the financial undertaking's interest in utilizing or disclosing the information held against the data subject's interest in keeping the information confidential may lead to an utilization / disclosure being justified without consent.

In this connection, the Danish Financial Supervisory Authority has stated a number of factors that may be included in the assessment of whether a transfer without consent was justified. These are set out in section 2.4 above.

After an overall assessment, the Danish Data Protection Agency finds that the processing in question was not unjustified pursuant to section 117, subsection 1 of the Financial Business Act.

In this connection, the Danish Data Protection Agency has placed decisive emphasis on the fact that an injured party in the

event of an occupational injury has to comply with both the Occupational Injuries Insurance Act and the Liability Act in order to cover his full total loss. [Ys] treatment must therefore also be regarded as having been in the complainant's interest, as the purpose of the processing was to enable the complainants to be paid the correct compensation for all losses incurred in connection with the accident at work.

In the assessment, the Danish Data Protection Agency has included the fact that [X] in connection with the requests for compensation informed [Y] that further relevant files could be obtained through [X], but does not find that this could lead to a different result in the case.

Nor can what [X] has stated lead to a different assessment. This also applies to the reference to the Danish FSA's case with j.nr. […], As the case in question concerned the disclosure of a general log-on ID to the injured party's case file, which is not the case here.

On this basis, the Danish Data Protection Agency finds that [Ys] processing of personal data on complaints has taken place in accordance with the rules in the Data Protection Regulation, cf. Article 9 (1). 2, letter f, and § 117, para. 1 of the Financial Business Act, cf. Article 6, para. 1, cf. 2, cf. 3.

3.3.

The question then is whether [Y] has adequately complied with the company's disclosure obligation under Article 14 of the Data Protection Regulation.

In cases where information is not collected from the data subject, it follows from Article 14 (2) of the Data Protection Regulation 1, that it is the responsibility of the data controller to provide the data subject with a number of pieces of information. In addition, under Article 14 (1) of the Regulation, the data controller must: 2, provide a number of additional information necessary to ensure fair and transparent processing as regards the data subject.

Finally, it follows from Article 14 (1) of the Data Protection Regulation 4, that if the data controller intends to further process the personal data for a purpose other than that for which it was collected, the data controller prior to this further processing provides the registered information about this other purpose as well as other relevant additional information, cf. 2.

It appears from the case that [Y] by letter of [Date] in accordance with - and in accordance with - the rules in the previously applicable Personal Data Act § 29 informed [X] as party representative that the company processed information about complaints.

[Ys] different departments, including [Ys] department for occupational injury insurance and [Ys] department for liability insurance, are not considered different data controllers in terms of data protection law.

Therefore, there was no new obligation to notify under Article 14 of the Data Protection Regulation solely on the grounds that [Ys]'s liability insurance department obtained information from [Ys]'s occupational injury insurance department.

Furthermore, the Danish Data Protection Agency is of the opinion that the close connection between the complainant's occupational injury case and the compensation case implies that the processing that consisted of the sharing of information about complaints between [Ys] department for occupational injury insurance and department for liability insurance, in order to complain could obtain the materially correct compensation, can not be considered as a processing for a purpose other than that for which they were originally [t] collected, so that [Y] was obliged to re-notify, in accordance with Article 14 of the Data Protection Regulation; , PCS. [4].

With reference to this, the Danish Data Protection Agency finds that [Y] has complied with the company's duty to provide information, cf. Article 14 of the Data Protection Regulation.

[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] Statutory Order no. 457 of 24 April 2019 on financial activities with subsequent amendments

[3] Report no. 1565/2017 on the Data Protection Regulation - and the legal framework for Danish legislation, part 1, volume 1, p. 161 ff. and Part 2, p. 27.