

Aalborg municipality receives criticism for passing on personal data

Date: 02-11-2021

Decision

Public authorities

Criticism

Complaint

Basis of treatment

The Data Protection Authority hereby returns to the case where [x] (hereafter complainant) has complained to the Data Protection Authority about Aalborg Municipality's disclosure of her e-mail address.

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Summary

The Danish Data Protection Authority has criticized the fact that Aalborg Municipality - in connection with an online course on Teams organized by the job center - has passed on the e-mail address of one of the participants to the other participants in the course on the basis of a consent which, in the opinion of the Danish Data Protection Authority, could not be considered voluntary .

The Danish Data Protection Authority placed particular emphasis on the fact that the e-mail address was disclosed in connection with a job search course, where participation was a prerequisite for receiving unemployment benefit. The course participant thus did not have a real free choice in relation to giving consent to the treatment, if he or she wanted to retain the right to unemployment benefits.

1. Decision

After a review of the case, the Danish Data Protection Authority finds grounds to express criticism that Aalborg Municipality has passed on the complainant's e-mail address on the basis of a consent which does not meet the conditions of the data protection regulation[1] Article 4, No. 11.

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 job center in Aalborg Municipality – in connection with the complainant's participation in an

online job search course on Teams – has passed on the complainant's e-mail address to the other participants in the course, as the complainant's e-mail address was visible to the other course participants.

2.1. Aalborg Municipality's comments

Aalborg Municipality has stated that the municipality is obliged to offer courses to unemployed citizens, and that the unemployed are obliged to participate in these courses in order to have the right to receive unemployment benefit, which follows from the Act on active employment efforts. Due to the special situation with Covid-19, the job center in Aalborg Municipality has offered the courses online via Teams as an alternative to physical attendance.

In this connection, Aalborg Municipality has stated that the municipality has used the complainant's e-mail address to be able to invite the complainant to the meeting online via Teams, and that the e-mail address has been visible to the other 24 participants in the meeting as a result of the layout of Teams. Aalborg Municipality has stated that the complainant has given verbal consent to the disclosure, and that the complainant has been informed of the purpose of the processing, and that the e-mail will be visible to the other participants.

Aalborg Municipality has finally stated that the complainant has been informed that she could create an unidentifiable e-mail address for the meetings, which the complainant has done, and that the municipality finds that there is no further exposure of personal data when participating in the online course .

2.2. Complainant's comments

The complainant has stated that, as an unemployed person, in connection with participation in the mentioned job search course, she was sent material from Jobcenter Aalborg, of which, among other things, stated that her private e-mail address would be visible to the other participants in the course.

The complainant subsequently contacted Jobcenter Aalborg and stated that she did not want her e-mail address to be passed on to the other course participants. The job center stated that it was not possible to obscure her e-mail address and that she could alternatively appear in person and participate in an attendance course, which, according to the complainant, was not an option as she is the risk group for Covid-19.

The complainant has also stated that she was sent a declaration of consent when she had to create a profile on Teams in order to participate in the course, and that she could not read more about Aalborg Municipality's processing of information about her.

Finally, the complainant has stated that she believes that many people accept what is sent from the municipality without questioning it, because it comes from the Jobcentre, and that it goes beyond your daily allowance if you do not participate.

3. Reason for the Data Protection Authority's decision

Personal data covered by Article 6 of the Data Protection Regulation may be processed, including passed on, if one of the conditions in the Regulation's Article 6, subsection 1, letters a–f apply.

This means, among other things, that personal data can be processed if the data subject has given consent to the processing, cf. Article 6, subsection 1, letter a.

A consent to the processing of personal data must meet a number of requirements to be valid, as it i.a. must be informed, voluntary and specific, cf. the data protection regulation, article 4, no. 11.

The requirement of voluntariness implies that the data controller must give the data subject a free choice and control over information about himself. Consent will not be given voluntarily if the data subject does not have a real free choice. Any form of inappropriate pressure or influence on the data subject's free will means that the consent is invalid.

It is the Danish Data Protection Authority's assessment that the consent given by the complainant to participate in an online course organized by the job center is not voluntary, and that the conditions in Article 4, No. 11 of the Data Protection Regulation are therefore not met. Aalborg Municipality cannot then use the consent to pass on the complainant's e-mail address in accordance with Article 6, paragraph 1 of the Data Protection Regulation. 1, letter a.

The Danish Data Protection Authority has thereby emphasized that the disclosure of the complainant's e-mail address took place in connection with a job search course, where the complainant's participation was a prerequisite for receiving unemployment benefit, and that the complainant thus did not have a real free choice in relation to giving consent for the treatment, if she wanted to retain her right to unemployment benefits.

In the Data Protection Authority's view, the possibility of personal attendance cannot be considered such an alternative that the complainant has really had a free choice.

The Danish Data Protection Authority adds that public authorities must generally be reluctant to use consent as a basis for processing, as there is an unequal relationship between the parties, which is why the condition that consent must be voluntary will typically not be met. The Norwegian Data Protection Authority refers to the Norwegian Data Protection Authority's guidance on consent[2].

The Danish Data Protection Authority then finds grounds to criticize the fact that Aalborg Municipality has passed on information about complaints on the basis of a consent that cannot be considered voluntary.

It is added that the Danish Data Protection Authority has not taken a decision in this decision as to whether the conditions in Article 4, No. 11 and Article 7 of the Data Protection Regulation on consent have otherwise been met.

With this decision, the Norwegian Data Protection Authority has also not taken a position on whether the disclosure could have taken place on a basis other than Article 6, subsection 1, letter a.

[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] Guidance on consent, May 2021, section 2.3.1.