

Serious criticism of the Civil Service Agency for passing on personal data

Date: 19-01-2022

Decision

Public authorities

Serious criticism

Complaint

Sensitive information

The Danish Data Protection Authority has expressed serious criticism that, in a specific case, the Civil Agency passed on unnecessary information about an injured party to the perpetrator.

Journal number: 2021-32-2096

Summary

The Danish Data Protection Authority has made a decision in a complaint case where the Civil Agency, in connection with the processing of a recourse case, passed on information about the injured party to the perpetrator in the case.

The Civil Agency stated to the Danish Data Protection Authority that the Civil Agency must be able to prove to the tortfeasor that there is a legal claim for compensation against him, and that there is a causal connection between the criminal act committed by the tortfeasor and the compensation paid to the injured party, including the amount of compensation. It was therefore necessary to pass on information about the victim to the perpetrator.

However, the Civil Agency stated at the same time that certain information had not been necessary to be disclosed in order for the tortfeasor to comply with the claim and should therefore have been exempted.

The Danish Data Protection Authority agreed with this assessment and noted that in a case such as this it is particularly important to be aware that only information about the injured party is passed on to the perpetrator, which is necessary for the processing of the recourse case.

Against this background, the Data Protection Authority found - after the case had been dealt with by the Data Council - reason to express serious criticism of the fact that the Civil Agency had passed on information about victims to perpetrators, which was not necessary to pass on.

As far as the other information about the injured party which had been passed on to the tortfeasor was concerned, the Danish

Data Protection Authority did not find sufficient grounds to override the Danish Civil Services Agency's assessment that the information was necessary to be passed on in order for the tortfeasor to comply with the recourse claim.

## 1. Decision

The Danish Data Protection Authority finds, after the case has been dealt with by the Data Council, that there is a basis for expressing serious criticism that the Civil Agency disclosed certain information to perpetrators of damage which was not necessary to disclose, and that the disclosure thereby did not take place within the framework of the data protection regulation[1].

The Danish Data Protection Authority, on the other hand, does not find sufficient grounds to override the Civil Agency's assessment that the other information could be passed on to perpetrators within the framework of the data protection regulation.

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

## 2. Case presentation

### Processing of compensation cases

As a result of the Victim Compensation Act[2], the state provides compensation and compensation for personal injury and in certain cases for damage to property caused by violation of the Civil Penal Code or the Act on restraining orders, residence bans and deportation. The decision on compensation etc. made by the Compensation Board.

If the Compensation Board makes a decision to award compensation, the case is forwarded to the Civil Agency, which then oversees the payment of the compensation amount to the injured party on behalf of the state. The state also enters into the injured party's claim against the tortfeasor (claim for recourse), cf. Section 17 of the Victim Compensation Act, and the state can therefore make a claim against the tortfeasor with a view to the latter finally paying all or part of the expenses that the state treasury has paid for the time being. The Civil Agency makes a decision on all questions regarding recourse with the tortfeasor, cf. circular letter of 21 December 2021[3].

In a circular letter of 24 February 1998 on the handling of cases of recourse when compensation is paid by the state to victims of crimes, the Ministry of Justice dealt with some administrative law issues in connection with recourse cases and described in more detail how recourse cases against a tortfeasor must be handled. The circular letter is addressed to the police, who were responsible for processing recourse cases before the Civil Services Agency took over the area, but according to the Civil

Services Agency, the letter still forms the basis for processing recourse cases. The following appears i.a. of the circular letter:

"[...] it is the Ministry of Justice's opinion that the police chief (police director) - in cases where the injured party's claim for compensation from the tortfeasor has not been decided by judgment - is neither obliged nor entitled to leave the compensation assessment made by the Compensation Board untested basis in the recourse case. This applies regardless of whether the tortfeasor has objected to the board's compensation assessment or not. The police chief (police director) is thus obliged to make an individual assessment of whether recourse claims should be made against the perpetrator.

When the chief of police (police director) decides whether the case should be pursued in relation to the tortfeasor, the general rules of Danish law on the tortfeasor's liability for damages apply, cf. section 6 a of the law.

In the view of the Ministry of Justice, cases of recourse against the tortfeasor are not decision cases in the sense of the Public Administration Act, which is why the provision on hearing parties in Section 19 of the Public Administration Act does not apply. In the Ministry of Justice's guidance on the Administration Act (1986), section 105, however, it is stated that parties should also be heard in cases where there is no legal obligation to do so. This applies "where the party is deemed to have an interest in having the opportunity to see and possibly comment on the basis of the decision, unless considerations of public or other private interests speak against it".

The tortfeasor is not considered a party to the Compensation Board's case and, according to what has been stated as the overriding general rule, is also not given the opportunity in practice on any other basis to make a statement before the board. On that basis, it must be assumed that the tortfeasor is usually not aware that a case has been pending before the Compensation Board.

The Chief of Police (Director of Police) should therefore generally give the perpetrator the opportunity to make a statement before the Chief of Police (Director of Police) decides whether recourse claims should be made against the perpetrator.

If the chief of police (director of police) in this connection finds it necessary to disclose confidential information about the injured party, such disclosure cannot, in the Ministry of Justice's view, be considered unjustified under Section 152 of the Criminal Code.

Cases of recourse against the tortfeasor should therefore be processed according to the following guidelines:

"1. If the injured party's claim for compensation and compensation from the tortfeasor has been determined by judgment, and the Compensation Board has made a decision to grant compensation in the amount determined by the judgment, the claim is

sought to be recovered - if necessary with the help of the bailiff, cf. section 478, subsection of the Administrative Procedure Act . 1, No. 1.

If the decision on compensation for the injured party has been made by the compensation board, the tortfeasor is generally asked for an opinion before the chief of police (police director) decides after a concrete assessment whether recourse claims should be raised against the tortfeasor. For the police chief's decision on the issue of recourse, the Compensation Board sends a copy of the case files that the police already have in their possession.

The decision on full or partial remission of a recourse claim based on information about the tortfeasor's financial situation is made as before by the chief of police (director of police). In general, as in the past, remission should only take place if, through exhaustive prosecution, it has been established that recovery is completely or partially excluded, or if it has been established through financial questioning of the tortfeasor by the police or in some other reassuring way that the recourse claim must be considered fully or partially irrecoverable.”

The facts of the case

It appears from the case that [the injured party] was awarded compensation by the Compensation Board on 29 January 2021.

The Civil Agency then dealt with the question of recourse from the tortfeasor.

In this connection, the Civil Agency sent a letter to the perpetrator of the damage on 10 February 2021, in which he was informed about the case.

The tortfeasor requested on 12 February 2021 to receive documentation for the recourse case.

On 18 February 2021, the Civil Agency accepted the request for disclosure of information. The board handed over – in addition to 135 pages of judgment and court records – 68 pages from the recourse case. In the 68 pages, a number of information had been excluded, but there was still information about, among other things, the victim's new school, her conversations with a psychologist and the forensic examination of her.

On 22 February 2021, the tortfeasor applied for access to documents in the overall recourse case. The Civil Agency announced on 3 March 2021 that this request was rejected.

By letter of 22 March 2021, the Civil Agency notified the tortfeasor that the agency had decided to collect the compensation amount paid to the injured party from the tortfeasor.

## 2.1. Complainant's comments

The complainant has generally stated that deeply confidential information about her and her family has been passed on to the perpetrator. In the complainant's view, consideration of the state's recourse action cannot override consideration of the injured party.

In connection with the recourse case, the tortfeasor has received information about the injured party and his family, to which the tortfeasor should never have had access, including with reference to the nature of the case and what the tortfeasor has exposed the injured party to. In addition, the perpetrator has a police restraining order against the entire family for five years, and the victim wears an assault alarm.

The complainant has stated that information about the injured party's absence records and general information about school changes, that she is receiving trauma therapy and has had crisis talks, and that there were no competing causes of injury, would have been enough to document the Civil Agency's requirements. It was therefore not necessary to pass on all the other information.

The complainant has also stated that conversations with a psychologist and conversations in connection with pediatric investigations are deeply confidential conversations, which the perpetrator is not entitled to learn about. In addition, information about e.g. name and address of psychologists, the name of the victim's new school, the name of the street where the family lives, forensic examination and information about the family, including the parents' workplace, not having been handed over to the perpetrator.

Furthermore, according to the complainants, the injured party's case is exceptionally serious, and for this reason the Civil Administration should have deviated from giving the tortfeasor the opportunity to make a statement, as decisive considerations for the injured party had to take precedence over the interests of the tortfeasor.

The complainant has finally stated that the tortfeasor's lawyer was refused access to the remaining documents in the case, referring to the fact that the information was not relevant to the case and that the tortfeasor's interest in learning about the information was found to be overriding decisive considerations for private interests. The remaining documents, however, had as private a content as the information that the Civil Services Agency had already provided, which is why it is striking that the Civil Services Agency suddenly refused.

## 2.2. The Civil Administration's comments

The Civil Agency has stated that, in recourse cases, the agency must carry out an independent legal assessment of whether

the compensation legal conditions for asserting a claim against the tortfeasor have been met, and this must be able to be documented to the tortfeasor. The Civil Service Agency must, among other things, be able to prove to the tortfeasor why the agency asserts the claim against him (the tort liability basis) and that there is a causal connection between the tortfeasor's actions (the criminal act) and the compensation paid to the injured party, including the amount of the compensation paid and compensation .

The Civil Agency handles the cases of recourse in a two-tiered process. In the first contact with the tortfeasor, the Civil Agency presents the state's requirements and the documentation in a report format, i.e. without providing the specific information. Only if the tortfeasor then requests to receive underlying documentation, this will be provided depending on the circumstances. In this connection, only the confidential information about the injured party that the Civil Administration assesses is necessary to be able to lift the burden of proof in a civil court case must be disclosed.

The Civil Agency has also referred to the fact that it follows from the Ministry of Justice's circular letter of 24 February 1998 that the disclosure of confidential information cannot be considered unjustified under Section 152 of the Criminal Code if the recourse authority considers that the disclosure was necessary. Disclosure of confidential information is thus justified if it is considered necessary to be able to document the claim and thereby lift the burden of proof in tort law against the tortfeasor. The Civil Agency excludes confidential and sensitive personal data to the extent that the information is not necessary to lift the burden of proof. Thus, in the present case, the Civil Agency has excluded several pieces of information which the agency assessed as confidential, sensitive and/or unnecessary for the agency's ability to lift the burden of proof in the recourse case against the tortfeasor.

In addition, the Civil Agency has stated that the agency - in cases where the tortfeasor does not pay the presented recourse claim or enters into a voluntary settlement - decides whether the tortfeasor must be summoned with a view to judgment for the recourse claim. In the civil action, it will be necessary for the Civil Administration to present the evidence that forms the basis of the state's recourse claim, including sensitive information about the injured party, as this information is of decisive importance for the nature and size of the claim.

By circular letter of 21 December 2020 from the Ministry of Justice, the Civil Agency is authorized to make a decision on all questions regarding recourse from a tortfeasor. It is against this background that the Agency for Civil Affairs assesses that the Agency can legally process personal data, cf. Article 6, subsection 1, letter e, as the processing is necessary for the

performance of a public authority task. It is also the Civil Agency's assessment that the agency can process special categories of information, including health information, when the processing is necessary in order for a legal claim to be established, asserted or defended, cf. the data protection regulation's article 9, subsection 2, letter f.

It is the Civil Agency's assessment that, overall, there has been legal processing of personal data in the present case.

The Civil Agency has stated that the injured party was awarded [x] by the Compensation Board's decision of 29 January 2021, and it therefore requires a lot of material and information before such a claim based on a long sick leave is sufficiently documented.

The Civil Agency handed over to perpetrators, among other things, a final note from the Children's Home [x], a psychological opinion, a pediatric examination, information that the family received family therapy, and information about the victim's ability to function at school.

In the documents handed over, a number of information was omitted which was not necessary for the tortfeasor to comply with the recourse claim.

It is the Civil Agency's assessment that the agency's release of the documentation was necessary in order to lift the burden of proof for the tortfeasor's liability. The documents thus contained relevant information about the injured party's period of illness as well as information that the injured party had undergone treatment and was part of a family treatment course solely as a result of the incidents. Information about the injured party's ability to function at school as a result of the incidents and the forensic examination was also included as part of the injured party's overall medical picture. The provision of information about the victim's life and state of health before the incident was also necessary in order to lift the burden of proof for the tortfeasor's liability as well as the causal link between the incidents and the victim's sick report. The information indicated that the injured party was functioning normally before the incident. The Civil Agency thus assessed that, on the basis of the information, it could be concluded that the victim's period of illness and treatment were solely a result of the perpetrator's actions.

It is also the Civil Agency's assessment that information about the injured party's absence history and that she received crisis assistance would not in itself be sufficient documentation that the injured party's sick leave was solely a consequence of the perpetrator's actions. An absence record documents that the injured party has been on sick leave, but not that the injured party has only been on sick leave as a result of the incident in question. It is therefore the Civil Agency's assessment that the agency would not be able to lift the burden of proof for the tortfeasor's liability, including the causal link between the injured party's sick

report and the tortfeasor's actions, as well as the size of the compensation amount, if only this information had been disclosed.

The name and address information of the victim's psychologists and the name of the victim's new school were not excluded from the documents handed over to the perpetrator. Based on the context of the case, including in particular if, in connection with the case processing, the Civil Agency had been in possession of information about the injured party's police arrest against the perpetrator, the agency considers that the information should have been excluded, as it was not necessary for the perpetrator to comply with the recourse claim . The Civil Agency notes that it was not aware that the tortfeasor had a police order against the injured party until the agency received an inquiry about this from Jyllands-Posten in May 2021, and after the documentation for the recourse claim had been sent to the tortfeasor in mid-February 2021.

Likewise, it is the Civil Administration's assessment that information about the victim's mother's and sister's first name, information about the parents' positions and information about the mother being on sick leave were not necessary for the tortfeasor to comply with the recourse claim. The Civil Agency therefore considers that the information should have been excluded from the documents that were handed over to the perpetrator.

The material handed over to the perpetrator also shows the name of the street where the victim's family lives. From [x], however, it appears at the same time that the scene of the crime was near the victim's residence with mention of the specific address. It is against this background that the Civil Services Agency's assessment is that the information about the injured party's residence could have been deleted from the material provided, as it was not necessary for the tortfeasor's position on the recourse claim, but the agency found no reason to do so, as the tortfeasor was already familiar with the address when the criminal case was being processed .

The Civil Agency has also stated that, as a result of the present case, it has subsequently changed its internal guidelines for processing a tortfeasor's request for the provision of documentation for the state's recourse claim against him. Henceforth, the agency will have an increased focus on only providing the information to the tortfeasor that is necessary for the tortfeasor to respond to the claim raised. The board will also focus on ensuring that certain types of information that are not in themselves confidential or sensitive are always excluded. This applies, among other things, to addresses, e-mail addresses and telephone numbers of e.g. professionals and minors.

In addition, the Civil Administration has updated the notice on the processing of personal data in victim compensation cases to ensure that there is no doubt about the legal basis for handing over documentation to the tortfeasor, and to ensure that victims



who apply for compensation are aware that the state can be forced to provide personal data to the tortfeasor in order to document the state's claims against the tortfeasor, e.g. documentation that you have been ill in the form of medical records and statements, notes from psychologist interviews, etc.

### 3. Reason for the Data Protection Authority's decision

#### 3.1.

According to the data protection regulation's article 9, subsection 1, a prohibition applies to the processing of special categories of personal data, including health information. If one of the conditions in Article 9, subsection 2, letter a-j applies, the prohibition does not apply, however.

As a result of the data protection regulation's article 9, subsection 2, letter f, information covered by Article 9, subsection 1, is processed if the processing is necessary for legal claims to be established, asserted or defended.

In this connection, it appears from the regulation's preamble recital no. 52 that the derogation should make it possible to process such personal data if it is necessary for legal claims to be established, asserted or defended, regardless of whether it is in connection with a lawsuit or a administrative or extrajudicial procedure.

Processing of personal data is, according to the data protection regulation, article 6, subsection 1, only legal if and to the extent that at least one of the conditions in letter a-f applies.

It follows from the data protection regulation's article 6, subsection 1, letter e, that personal data can be processed if the processing is necessary for the performance of a task in the interest of society, or which falls under the exercise of public authority that the data controller has been assigned.

The Danish Data Protection Authority assumes that the Civil Services Agency had a need to pass on information about the injured party to the tortfeasor in order to assess whether a recourse claim should be raised against the tortfeasor.

However, the Civil Agency has – in connection with the processing of the complaint at the Data Protection Authority – assessed that several of the information that was passed on was not really necessary for the perpetrator to comply with the compensation claim, including certain information about the victim's family and information about the victim's new school .

The Danish Data Protection Authority agrees that it was not necessary to disclose this information in order for the tortfeasor to comply with the recourse claim.

In this connection, the Danish Data Protection Authority notes that in the present case – where sensitive information is involved

and where the perpetrator had a police order against the injured party and her family – it is particularly important to be aware that only information about the injured party is passed on to tortfeasors, which are necessary for the processing of the recourse case.

Against this background, the Danish Data Protection Authority finds occasion to express serious criticism that the Civil Agency passed on information to perpetrators that was not necessary to pass on, and that the passing on therefore did not take place within the framework of the Data Protection Regulation[4] Article 9, subsection 2, and Article 6, subsection 1.

In this connection, the Danish Data Protection Authority has noted that the Civil Agency has stated that, on the basis of the present case, it has changed its internal guidelines for handling a tortfeasor's request for the provision of documentation for the state's recourse claim against the person in question, and that in future the agency will have an increased focus on , that only the information is provided to the tortfeasor that is necessary for the tortfeasor to deal with the claim raised.

The Danish Data Protection Authority has also noted that the Civil Agency has stated that the agency has clarified its notification on the processing of personal data in victim compensation cases, i.a. to ensure that victims who apply for compensation are aware that there is a probability that the state will be forced to provide personal data about victims to the tortfeasor.

### 3.2.

As far as the other information that the Civil Agency passed on to the tortfeasor is concerned, the Danish Data Protection Authority does not find sufficient grounds for overriding the agency's assessment that the information was necessary to pass on in order for the tortfeasor to comply with the recourse claim.

In this connection, the Data Protection Authority has placed emphasis on the fact that the Civil Agency has stated that the agency must be able to prove to the perpetrator that there is a legal claim for damages against him and that there is a causal connection between the criminal act and the compensation that has been paid, including the amount of the compensation with which the disclosure of the information was necessary so that the Civil Agency could assess whether a legal claim could be established, asserted or defended, cf. the data protection regulation, article 9, subsection 2, letter f.

The Danish Data Protection Authority has also emphasized that, by circular letter of 21 December 2020, the Danish Civil Agency is required on behalf of the state to make a decision on recourse against the tortfeasor, including so that the injured party does not have to have contact with the tortfeasor himself in order to pursue the claim against him, which is why the

processing of the information was necessary for the performance of this task, cf. the data protection regulation's article 6, subsection 1, letter e.

[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] Legislative Decree No. 1209 of 18 November 2014, as last amended by Act No. 486 of 30 April 2019 (Victim Compensation Act)

[3] Circular letter no. 10059 of 21 December 2021 concerning a circular letter to the Civil Administration and the police on changed business scope regarding the payment and recourse of compensation from the state to victims of crimes.

[4] 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).