

Complaint about failure to delete

Date: 05-07-2019

Decision

Public authorities

A municipality first responded to a citizen's request for deletion after five months and 21 days and therefore broke the rules on the exercise of the data subjects' rights. However, it was not in violation of the rules that the municipality refused to delete the information.

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Summary

On 5 July 2019, the Danish Data Protection Agency made a decision in a case in which a citizen complained that a municipality had refused to delete information about the citizen in connection with the citizen's closed case with the municipality.

The Danish Data Protection Agency found that the municipality, by only responding to the citizen's request for deletion after five months and 21 days, had not complied with Article 12 (1) of the Data Protection Regulation. According to this provision, the data controller must process a request from the data subject for deletion without undue delay and within one month of receipt of the request. However, this period may be extended by two months if necessary, taking into account the complexity and number of requests.

In the Data Inspectorate's view, on the other hand, there was no basis for overriding the municipality's assessment that an exception to the right to deletion applied in this case. In the assessment, the municipality referred to Article 17 (1) of the Data Protection Regulation. According to this provision, the right to deletion does not apply if the continued processing of information about the data subject is necessary to 1) comply with a legal obligation or 2) perform a task in the interest of society or 3) perform a task, which falls under the exercise of public authority, which the data controller, ie the municipality, has been imposed.

In the case in question, the municipality had stated that the municipality as a public authority has a duty to comply with the duty to note and journalize, and that there have been no documents that have been incorrectly journalized in the case.

On the basis of the circumstances of the case, the Danish Data Protection Agency found that the municipality's refusal to

delete the information had not been in breach of the rules in Article 17 of the Data Protection Regulation.

Decision

The Danish Data Protection Agency hereby returns to the case where X (hereinafter complains) on 25 June 2018 has complained to the Authority about Y Municipality's processing of personal data about her.

The rules on data protection are contained in a general EU regulation on the protection of personal data, which applies in both the private and public sectors [1], and the Data Protection Act [2], which supplements the rules in the regulation.

Decision

Following an examination of the case, the Danish Data Protection Agency finds grounds for expressing criticism that Y Municipality's processing of personal data has not been in accordance with Article 12 (1) of the Data Protection Regulation. 3. In addition, the Danish Data Protection Agency finds that Y Municipality's processing of information has been in accordance with Article 17 and Article 5 (1) of the Data Protection Regulation. 1, letter e.

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

2. Circumstances of the case

It appears from the case that complainants on 25 May 2018 have asked Y Municipality to delete information about her in connection with her closed case with the municipality.

It also appears from the case that on 15 November 2018, Y Municipality refused to delete the information on complaints with reference to Article 17 (1) of the Data Protection Regulation. 3, and the municipality's reporting obligation.

2.1. Complainant's remarks

Complainants have stated that complainants on 25 May 2018 requested Y Municipality to have its information deleted in connection with its case with the municipality. According to complainants, the information was no longer necessary for the municipality to store when the case was closed.

Complainants have further stated that Y Municipality initially did not confirm receipt of her inquiry, and that complainants therefore again addressed the municipality on 1 June 2018. On 4 June 2018, the municipality replied that the municipality was aware of the complainant's inquiry.

Complainants have finally stated that she subsequently did not hear more from the municipality, and that complainants therefore on 19 June 2018 contacted the municipality again, but that the municipality still did not respond to her request.

2.2. Y Municipality's comments

Y municipality has stated that the municipality by a regrettable error has not processed the complainant's request for deletion of 25 May 2018 in a timely manner.

Y Municipality has also stated that the municipality on 15 November 2018 rejected the complainant's request for deletion on the grounds that the municipality as a public authority has a duty to comply with the duty to note and journaling, and that there have been no documents that have been incorrectly journaled On the case.

Y Municipality has also stated that the processing of the information has taken place in accordance with the requirement for retention of storage in Article 5 (1) (e) of the Data Protection Regulation.

Justification for the Danish Data Protection Agency's decision

3.1. Late response to delete request

It follows from Article 12 (1) of the Data Protection Regulation 3, 1st sentence, that the data controller must respond to a request from the data subject for deletion pursuant to Article 17 of the Data Protection Regulation without undue delay and no later than one month after receipt of the request. This period may be extended by two months, if necessary, taking into account the complexity and number of requests. The data controller shall also notify the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay.

The Danish Data Protection Agency finds that Y Municipality, by first responding to the complainant's request 5 months and 21 days after the request, has not acted in accordance with Article 12 (1) of the Data Protection Regulation. 3.

The Danish Data Protection Agency has hereby emphasized that complainants on 25 May 2018 requested Y Municipality to delete the information, and that Y Municipality only responded to complainants' request on 15 November 2018.

The Danish Data Protection Agency has also emphasized that, according to the information, this was not a comprehensive and complex request, and that Y Municipality should thus have responded to the request within the deadline in the data protection law rules.

3.1. Rejection of deletion for information

According to Article 17 (1) of the Regulation 1, the data subject has the right to have personal data about himself deleted by the data controller without undue delay, and the data controller has a duty to delete personal data without undue delay if one of the following conditions applies:

The personal information is no longer necessary to fulfill the purposes for which it was collected or otherwise processed.

The data subject shall withdraw the consent on which the processing is based, in accordance with Article 6 (1). 1, letter a, or Article 9, para. 2, letter a, back, and there is no other legal basis for the processing.

The data subject objects to the processing pursuant to Article 21 (1). And there are no legitimate reasons for the processing which precedes the objection or the data subject objects to the processing pursuant to Article 21 (1). 2.

The personal data has been processed illegally.

The personal data must be deleted in order to comply with a legal obligation to which the data controller is subject.

The personal data have been collected in connection with the provision of information society services as referred to in Article 8 (1). 1.

Article 17 (1) of the Regulation 3, a number of exceptions are provided for the data subject's right to delete.

It follows from Article 17 (2) 3, letter b, that the right to deletion does not apply if the continued processing of information about the data subject is necessary to comply with a legal obligation or is necessary to perform a task in the interest of society or a task that falls within the exercise of public authority , which has been imposed on the data controller.

This means, among other things, that a public authority is not obliged to delete personal data about the data subject if other rules mean that the authority may not delete them. It can e.g. be the rules of the Public Access to Information Act on the duty to take notes and the duty to keep records. These rules mean that a public authority will only be able to delete a document in a few cases. Deletion can usually only take place where there is legal authority for it, or where a document has by mistake been journalised on a wrong case, and where the document is then journalised on the correct case.

On the basis of the above, the Danish Data Protection Agency finds that there is no basis for concluding that Y Municipality is processing information on complaints that may be required to be deleted in accordance with Article 17 of the Data Protection Regulation.

The Danish Data Protection Agency has emphasized that a public authority is generally not entitled to delete certain documents that are part of a case, with reference to the Public Access to Information Act's rules on note and journaling obligation and the Archives Act's rules, and that deletion can normally only take place. if there is legal authority to do so. The reason for this is, among other things, that the authority later - e.g. in connection with complaints or resumption - must be able to document what has happened in a case.

On the basis of the above, the Danish Data Protection Agency also finds that the processing of the information has not gone beyond what can be done in accordance with the principle of retention of storage, cf. Article 5 (1) of the Data Protection Regulation. 1, letter e.

[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] Act No. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).