The Municipality of Copenhagen's processing of personal data in connection with a lawyer's investigation

Date: 29-11-2022

Decision

Public authorities

Criticism

Complaint

Basis of treatment

Obligation to provide information

Exercise of rights

The Danish Data Protection Authority has made a decision in two cases concerning the same lawyer investigation, where a person complained about the processing of information about him in connection with the initiation and implementation of a lawyer investigation.

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Summary

In July and August 2021, complainants complained that Copenhagen Municipality and Bech-Bruun Advokatpartnerselskab processed information about him in a legal investigation.

The investigation was carried out by Bech-Bruun on behalf of the Municipality of Copenhagen with the aim of uncovering whether there had been offensive behavior at the educational institution Sankt Annæ Gymnasium, as well as how such behavior had been handled.

Copenhagen Municipality's processing of information about complaints

In the one case, which concerned the Copenhagen Municipality's processing of information about complaints in connection with the launch of the lawyer's investigation, the Data Protection Authority found that the Copenhagen Municipality's processing of information about complaints took place within the framework of the data protection regulation.

However, the Data Protection Authority has found grounds to criticize that the Municipality of Copenhagen did not sufficiently fulfill the duty to provide information under data protection law.

Bech-Bruun's processing of information about complaints

In the second case, which concerned Bech-Bruun's processing of information about complaints in connection with the implementation of the legal investigation, the Danish Data Protection Authority found that Bech-Bruun's processing of information about complaints, including information about sexual relationships, took place within the framework of the Data Protection Regulation and the Data Protection Act.

However, the Danish Data Protection Authority has found grounds to criticize that Bech-Bruun failed to fulfill the duty to provide information under data protection law.

The Danish Data Protection Authority has also found grounds for expressing serious criticism of Bech-Bruun's handling of a request for access from complainants. In this connection, the Data Protection Authority has notified Bech-Bruun of an order to take a new position on the complainant's access request.

The Danish Data Protection Authority has not dealt with this

The cases - like two of the authority's previous decisions - are part of a debate that goes far beyond data protection law. In the assessment of the cases, the Danish Data Protection Authority has exclusively considered the legal aspect in relation to the collection and further processing of information about complaints.

Decision

The Data Protection Authority hereby returns to the case, where [X] (hereafter complainant) on 11 August 2021 complained to the Authority that the Municipality of Copenhagen processed information about him in connection with the initiation of a legal investigation, which was carried out by Bech-Bruun Advokatpartnerselskab .

The Norwegian Data Protection Authority notes that with this decision the supervisory authority has only dealt with the Copenhagen Municipality's processing of information about complaints in connection with the initiation of the legal investigation in question. The Danish Data Protection Authority has thus not dealt with Bech-Bruun Advokatpartnerselskab's processing of information about complaints, which are dealt with separately in the case with j. No. 2021-31-5307.

1. Decision

After a review of the case, the Danish Data Protection Authority finds that the Copenhagen Municipality's processing of information about complaints could not be carried out on the basis of Article 6, subsection 1 of the Data Protection Regulation[1]. 1, letters c and d.

However, the Danish Data Protection Authority finds that the Municipality of Copenhagen's processing of information about

complaints has taken place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e.

Finally, it is the opinion of the Data Protection Authority that the Municipality of Copenhagen has not sufficiently complied with Article 14 of the Data Protection Regulation, cf. Article 12, subsection 1, and the Danish Data Protection Authority finds, on the basis of this, a basis for expressing criticism of the Municipality of Copenhagen.

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 a number of media, including Dagbladet Politikken, published articles which reported on a "cross-border and sexualized environment" in Danmarks Radio's girls' choir.

Subsequently, Sankt Annæ Gymnasium received inquiries from former students who reported on a similar culture during their time at Sankt Annæ Gymnasium back in the 1980s and 1990s, which particularly concerned experiences in the high school choir.

Sankt Annæ Gymnasium decided against this background – in cooperation with the Children and Youth Administration in the Municipality of Copenhagen – to initiate an external legal investigation, which the law firm Bech-Bruun was to conduct. The purpose of the investigation was to discover whether offensive behavior has been shown in relation to the choirs at Sankt Annæ Gymnasium, and how this was handled, if applicable.

On 30 June 2021, the complainants were contacted by telephone by the principal of Sankt Annæ Gymnasium, who informed the complainants about the initiation of the legal investigation and that the high school's students, parents and employees would be informed about this.

On the same day, Sankt Annæ Gymnasium sent out a letter, including the following appeared:

"Lawyer investigation of violations at SAG

For students, parents and staff

A number of media, including Dagbladet Politiken has recently mentioned that there used to be a cross-border and sexualized environment in DR's girls' choir. Former girl choir singers have reported on highly objectionable conditions in the choir.

Within the past week, Sankt Annæ Gymnasium has received a number of inquiries from former students who have experienced a similar culture during their time at Sankt Annæ Gymnasium back in the 1980s and 1990s. The inquiries mainly concern experiences in the school choir.

The accounts we have heard bear witness to a culture that transcends borders. There are examples of sexually abusive behavior and relationships that have not been in order at all.

We take this very seriously at Sankt Annæ Gymnasium.

Therefore, together with the Children and Youth Administration, we are launching an external legal investigation. It must reveal whether offensive behavior has been shown in relation to the choirs at Sankt Annæ Gymnasium, as well as how this has been handled.

I would like to encourage anyone with knowledge of failure or violations in relation to Sankt Annæ Gymnasium to contact the law firm.

[…]"

In addition to the letter from Sankt Annæ Gymnasium, the complainant received a separate information letter from the Municipality of Copenhagen on the same day with the heading Obligation to provide information - [X], which contained a number of information about the Municipality of Copenhagen's processing of information about complaints.

Subsequently, the complainant contacted Copenhagen Municipality on 5 July 2021 and objected to any processing of information about him that may be carried out in connection with the notified legal investigation.

The Municipality of Copenhagen responded to the complainant's inquiry on 23 July 2021. The following emerged from the municipality's response:

"Hereby, the GDPR function in the Children and Youth Administration (Copenhagen Municipality) must respond to your objection of 5 July 2021, which was originally sent to the municipality's data protection advisor.

First of all, it must be noted that the legal investigation at Sankt Annæ Gymnasium is overseen by an external party (Bech Bruun), which is why we as a public authority (administration) cannot go into the details of the case in depth.

Instead, reference is made to Bech Bruun's response of 7 July 2021, in which a more in-depth response to your objection is provided. In the letter from Bech Bruun, it is stated, among other things, that the investigation is "necessary to protect the vital interests of current and former students", which is why any consent from registered parties will not be required.

The lawyer's investigation therefore takes place in a completely legitimate way, and in that context Article 21 of the Data Protection Regulation will not be relevant or possible to invoke as a registered party.

[…]"

In its response to the law firm Bech-Bruun's letter of 7 July 2021, Copenhagen Municipality referred to complaints. The letter from Bech-Bruun stated, among other things, following:

"[…]

Below we review our comments on your objection.

You have claimed that you do not consent to the processing of your personal data and that, in your opinion, there are no other provisions in Article 6, subsection 1 of the Data Protection Act. 1, which may constitute a basis for processing information about you.

If the legal examination involves the processing of personal data about you, you will be "registered" in the sense of data protection law and thus get the statutory rights that accrue to registered persons in that connection (they are found in particular in Chapter III of the Data Protection Regulation).

Bech-Bruun acts in accordance with data protection law as an independent data controller in connection with carrying out the investigation (incl. collection and processing of personal data), but is bound by the framework for processing personal data to which SAG is subject.

The rules on the data subject's possibility to object to a data controller's processing of their personal data are found in the data protection regulation, article 21, subsection 1, from which it follows that you, as a data subject, have the right at any time - for reasons relating to your particular situation - to object to the processing of your personal data, if the processing is based on Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e or f. The mentioned provisions only concern the processing of general personal data, which must be separated from other types of information, e.g. on criminal matters, cf. further below.

Your opportunity to object is therefore only relevant in relation to the processing of personal data about you, which is based on the two provisions mentioned, and you cannot therefore object to the processing of your personal data based on other relevant provisions of the Data Protection Regulation or the Data Protection Act . Even in the situation where a processing of personal data takes place on the basis of the data protection regulation, article 6, subsection 1, letters e or f, both SAG and Bech-Bruun as data controllers may continue to process your personal data despite your objection if we demonstrate compelling legitimate reasons for the processing that take precedence over your interests, rights and freedoms, or the processing is necessary so that legal claims can be established, asserted or defended. This is the case in relation to the investigation of possible offensive behavior or unwanted sexual attention towards students at SAG. There are therefore both weighty legitimate reasons for the

processing, which take precedence over your interests at the same time that legal requirements must be determined, see further below.

We can further inform you that, in our opinion, the legal investigation is necessary to comply with a legal obligation incumbent on the data controller (SAG and the Municipality of Copenhagen), cf. the data protection regulation, article 6, subsection 1, letter c. The investigation is carried out to clarify whether there is or has been a harassing environment at the high school (and thus not a harassment-free environment). It is not specifically directed at you, at other teachers or staff, or at the choir. The survey concerns upper secondary school students in general.

The duty to ensure a harassment-free environment follows from § 4 of the Equal Treatment Act. "Equal working conditions" also includes prohibition of sexual harassment, cf. § 4, subsection 2. It appears from the preliminaries to § 4 that "the provision also entails a duty for the employer to provide a harassment-free environment, and the employer is obliged to reasonably protect its employees against harassment". In this relation, the law also applies to public authorities. Public authorities must therefore work for equality within their area and incorporate equality into all planning and administration in the areas covered by the Equal Treatment Act, cf. § 1a of the Act.

Furthermore, the investigation is necessary to protect the vital interests of current and former students who have been or believe they have been subjected to violations, cf. the data protection regulation article 6, subsection 1, letter d and necessary for legal claims to be established, asserted or defended, cf. data protection regulation article 9, subsection 2, letter f. Sexual harassment may entitle to compensation, and a sexual relationship between a teacher and a student may be a criminal offence, cf. the Criminal Code section 222 (sexual relationship with a child under 15) and section 223 (sexual relationship for a student under the age of 18), possibly Section 232 (violation of defamation). In this connection, a compensation claim may have arisen for the students who have been exposed to violations.

SAG and the Municipality of Copenhagen have an obligation to protect students from abuse, and this also applies to abuse that dates back a long time. It follows from Section 93b of the Criminal Code that violations of, among other things Sections 222 and 223 do not become statute-barred, just as special statutes of limitation apply to violations of § 232 in relation to children.

If in the course of the investigation it turns out that any of the above conditions have taken place, the data protection legal basis for processing the information in question will be Section 8, subsection of the Data Protection Act. 1 and 2, no. 2,

because a possible processing will be necessary for the performance of the authority's tasks, or because a possible disclosure takes place for the protection of private or public interests, constitutes consideration that clearly exceeds the consideration of the interests that justify secrecy, including the consideration of the person to whom the information relates.

For the sake of clarity, we can inform you that at this time it cannot be ruled out that part of the general personal data that is collected and processed in connection with the legal investigation will take place on the basis of the data protection regulation article 6, subsection 1, letter e (SAG) and letter f (Bech-Bruun), but a, the nature of the case and consideration for the affected persons do not mean that an objection regarding processing of your personal data must be taken into account, cf. above regarding Article 21 of the Data Protection Regulation.

[…]

In our assessment, there are none of these considerations that speak strongly against SAG and the Municipality of Copenhagen choosing to try to uncover, via the lawyer's investigation, whether violated or criminal acts have taken place against the students. The investigation has not been initiated on the basis of rumours, but because SAG and the Municipality of Copenhagen have received specific reports about circumstances that may be in breach of

the legislation.

[…]"

On 11 August 2021, the complainant contacted the Data Protection Authority and complained about Copenhagen Municipality's processing of information about him.

On 30 August 2021, the Data Protection Authority sent the complainant's complaint for hearing and requested the Municipality of Copenhagen for an opinion on the matter.

On 4 October 2021, the Municipality of Copenhagen sent a statement to the case, after which the Danish Data Protection Authority requested a supplementary statement on 6 October 2021.

Copenhagen Municipality issued a supplementary statement on 29 October 2021, after which the supervisory authority sent the municipality's statements to complainants on 1 November 2021.

The complainant submitted his comments on the statements on 15 November 2021.

2.1. Complainant's comments

The complainant has explained that he was associated with Sankt Annæ Gymnasium in the period 1979 to 2000, where in the

first years he was a part-time teacher, while from 1984 he was employed permanently as an assistant professor. The complainant has therefore not been employed at Sankt Annæ Gymnasium since 2000.

It is therefore the overall view of the complainant that there is no authority in either the Data Protection Regulation or the Data Protection Act to collect or process information about him as part of the legal investigation that Copenhagen Municipality initiated.

The complainant has not given consent for information about him to be processed, and the other grounds for processing in the Data Protection Regulation, Article 6, subsection 1, letters b-f, in the complainant's view, could not form the basis for processing information about him.

As far as the data protection regulation's article 6, subsection 1, letter f, the complainant has elaborated that the provision cannot possibly justify the fact that information was obtained, including sensitive information and information about potentially dishonorable circumstances that took place 20-40 years ago, and about which it otherwise had to be is considered extremely difficult to provide clear evidence for.

The complainant notes in this connection that at no time have there been any complaints against him about the type of matter which the lawyer's investigation sought to uncover.

In the complainant's view, initiating and carrying out an investigation such as the one in question contravenes Sankt Annæ Gymnasium's personal data policy, which does not mention that former employees can be the subject of such investigations.

2.2. Copenhagen Municipality's comments

The Municipality of Copenhagen has generally stated that Sankt Annæ Gymnasium and the Municipality of Copenhagen, on the basis of the media coverage and a number of inquiries from former students, decided to initiate an investigation into whether during the period when, among other things, complaints were choirmasters, abusive and sexualized behavior took place.

The Municipality of Copenhagen therefore entered into a collaboration with the law firm Bech-Bruun, according to which Bech-Bruun – as an external, impartial and objective party on behalf of the municipality – was to oversee the initiation and implementation of the investigation in question.

The Municipality of Copenhagen has stated that the municipality's processing of information about complaints in connection with the legal investigation in question has only continued until the legal investigation was initiated by Bech-Bruun.

The purpose of processing information about complaints has been to uncover the extent of possible violations of former students at Sankt Annæ Gymnasium, as the high school received several inquiries from former choir members who reported abusive conditions during their time at the high school.

The information on complaints was limited to what former students and staff have described in their inquiries to Copenhagen Municipality. According to the municipality, the information therefore mainly consisted of information about the complainant's name, contact details and the complainant's previous employment.

Copenhagen Municipality has therefore only processed information about complaints which are covered by Article 6 of the Data Protection Regulation.

The processing basis is the data protection regulation, article 6, subsection 1, letter c, d and e, and the complainant's consent has therefore not been necessary, i.a. because the investigation was necessary to protect the vital interests of current and former students.

The Municipality of Copenhagen has explained in detail that the treatment basis stems from the Municipality of Copenhagen's obligation to combat sexual harassment, cf. Section 4 of the Equal Treatment Act and Section 1 of the Education Environment Act.

Furthermore, the Municipality of Copenhagen has stated that pursuant to Section 58 of the Act on Institutions for General Secondary Education and General Adult Education and Sections 2 and 36 of the Primary School Act, the Municipality of Copenhagen runs secondary education and primary school at Sankt Annæ Gymnasium. As a result, the Municipality of Copenhagen is of the opinion that the municipality can process information from former students that employees at Sankt Annæ Gymnasium should have behaved offensively towards the students.

As far as the obligation to provide information is concerned, the Municipality of Copenhagen has stated that on 30 June 2021, complainants were separately informed about the intended legal investigation. The letter contained the information that the Municipality of Copenhagen is obliged to provide to complaints under Article 14 of the Data Protection Regulation, and it is on this basis that the Municipality of Copenhagen believes that the obligation to provide information has been complied with.

3. Reason for the Data Protection Authority's decision

3.1. Copenhagen Municipality's processing of personal data

3.1.1. Application of the data protection regulation, article 6, subsection 1, letters c and d

3.1.1.1. Article 6 of the Data Protection Regulation, subsection 1, letter c

This appears from the data protection regulation's article 6, subsection 1, letter c, that processing of personal data can take place if processing is necessary to comply with a legal obligation incumbent on the data controller.

From preamble consideration no. 41 to the data protection regulation, it appears that:

“Where this Regulation refers to a legal basis or a legislative measure, it does not necessarily require a law passed by a Parliament, subject to requirements under the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise, and its application should be predictable for persons covered by its scope, cf. the jurisprudence of the Court of Justice of the European Union ('the Court of Justice' «) and the European Court of Human Rights.”

It also appears from preamble consideration no. 45 to the data protection regulation that:

"If processing is carried out in accordance with a legal obligation incumbent on the data controller, or if processing is necessary to carry out a task in the public interest, or which is part of the exercise of public authority, the processing should have a legal basis in EU law or the national law of the Member States. This regulation does not imply that a specific law is required for each individual processing. It may be sufficient to have a law as a basis for several data processing activities which are based on a legal obligation incumbent on the data controller, or whose processing is necessary to carry out a task in the public interest, or which pertains to the exercise of public authority.”

From report no. 1565/2017 on the data protection regulation, page 117, the following appears about the provision:

"The register committee has stated in report no. 1345 that the term legal obligation, according to a purely literal interpretation, covers any kind of legal obligation. The committee further states that, regardless of this, it can hardly be assumed that the term must be understood as including all forms of legal obligations.

It follows from the comments to the Personal Data Act that the term legal obligation includes obligations that result from the legislation or from administrative regulations laid down pursuant thereto. The term also includes obligations arising from international rules, including EU legal rules. Just as obligations arising from a court decision or from a decision made by an administrative authority are also covered.”

Furthermore, the following appears from the report, page 130:

"There may, however, be reason to consider whether the parties to the labor market in collective agreements can create a

"legal obligation" in the sense in which the term is used in the regulation's article 6, subsection 1, letter c. As mentioned above, the Danish Data Protection Authority has stated that provisions in collective agreements cannot be considered covered by the rule in section 6, subsection of the Personal Data Act. 1, no. 3, cf. the authority's j.no.: 2011-313-0474.

However, it is clear from the Data Protection Regulation preamble No. 41 that when the Regulation refers to a legal basis or a legislative measure, it does not necessarily require a law passed by a parliament, subject to requirements under the constitutional order of the Member State concerned . Such a legal basis or such a legislative measure should, however, as is apparent from the preamble, be clear and precise, and its application should be predictable for persons covered by its scope, cf. case law from the EU -The Court and the European Court of Human Rights.

Collective agreements and the industrial dispute resolution system constitute a central, legally binding framework for the organization of the Danish labor market. Collective agreements are also recognized at European level for their special status. The EU's Charter of Fundamental Rights thus recognizes in Article 28 the social partners' right to negotiate and the right to collective action. At the same time, it is established that EU directives can be implemented via collective agreements for employee groups that are covered by the agreement.

Against this background, it seems that it cannot be ruled out in advance that collective agreements can possibly establish a "legal obligation" in the sense in which the term is used in the regulation's Article 6, subsection 1, letter c, cf. in this connection also Peter Blume and Jens Kristiansen: Personal data rights in employment relationships, 1st edition, 2011, p. 189.

Finally, it must be assumed that Article 6, subsection 1, letter c, is directly applicable as a basis for processing, as long as the legal obligation follows from e.g. National dish. The use of Article 6, subsection 1, letter c, as a basis for processing, thus does not require national, implementing legislation on the actual processing of personal data in connection with the determination of a legal obligation. Refer to section 3.4. on the regulation's article 6, subsection 2-3."

It thus appears from the preamble considerations and report no. 1565/2017 that a legal obligation pursuant to the data protection regulation, article 6, subsection 1, letter c, i.a. should be clear and precise and should be predictable to persons within its scope.

The Municipality of Copenhagen has stated that the processing of information about complaints, which is carried out on the basis of the data protection regulation, article 6, subsection 1, letter c, occurred as a result of legal obligations imposed on the Municipality of Copenhagen pursuant to the Equal Treatment Act, the Teaching Environment Act, the Act on Institutions for

General Secondary Education and General Adult Education and the Primary School Act.

It is the opinion of the Data Protection Authority that Copenhagen Municipality's processing of personal data could not take place within the framework of the Data Protection Regulation, Article 6, subsection 1, letter c.

In the assessment, the Danish Data Protection Authority has placed emphasis on the fact that the legal obligations arising from the legal basis that the Municipality of Copenhagen has referred to, including in particular the Equal Treatment Act and the Education Environment Act, in the opinion of the Danish Data Protection Authority, do not appear sufficiently clear and precise to be used as a basis for treatment in the present case according to article 6, paragraph 1, letter c.

It is thus the Danish Data Protection Authority's assessment that the processing of information about complaints could not take place on the basis of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter c.

3.1.1.2. Article 6 of the Data Protection Regulation, subsection 1, letter d

This appears from the data protection regulation's article 6, subsection 1, letter d, that processing of personal data can take place if processing is necessary to protect the vital interests of the data subject or another natural person.

The following appears from preamble consideration no. 46 to the data protection regulation on Article 6, subsection 1, letter d:

"Processing of personal data that is necessary to protect a consideration of fundamental importance to the life of the data subject or another natural person should also be considered lawful. Processing of personal data on the basis of the vital interests of another natural person should in principle only take place if the processing clearly cannot be based on another legal basis. Some types of processing may serve both important societal interests and the data subject's vital interests, e.g. when treatment is necessary for humanitarian reasons, including for the purpose of monitoring epidemics and their spread or humanitarian emergencies, in particular in the case of natural and man-made disasters."

From report no. 1565/2017 on the data protection regulation, page 131, the following also appears about the provision:

"It appears from the regulation's article 6, subsection 1, letter d, that processing is lawful if processing is necessary to protect the vital interests of the data subject or another natural person.

The provision in the regulation's article 6, subsection 1, letter d, corresponds according to the wording to the provision in Article 7, letter d of the Data Protection Directive, and Section 6, subsection of the Personal Data Act. 1, No. 4.

However, in the regulation's article 6, subsection 1, letter d, now an addition, from which it follows that the necessity of a treatment to protect the vital interests of another natural person will also make a treatment legal.

As an example of when it will be legal to process information about a person for the sake of the vital interests of another natural person, the situation where it is not possible for a hospital to come into contact with a patient who is waiting for a new organ at the time the hospital comes into possession of the organ, which is why the hospital has to process personal data about the patient's girlfriend in order to get in touch with the patient.

Regarding the regulation's article 6, subsection 1, letter d, it appears from preamble consideration no. 46 that processing of personal data that is necessary to protect a consideration of fundamental importance to the life of the data subject or another natural person should also be considered lawful. Processing of personal data on the basis of the vital interests of another natural person should in principle only take place if the processing clearly cannot be based on another legal basis. Some types of processing may serve both important societal interests and the data subject's vital interests, e.g. when processing is necessary for humanitarian reasons, including for the purpose of monitoring epidemics and their spread or in humanitarian emergencies, in particular in the case of natural and man-made disasters.

The interpretation contribution in the recital is seen to be in accordance with what follows from applicable law.

The regulation's article 6, subsection 1, letter d, is thus in accordance with what follows from applicable law - however, Article 6, paragraph 1, letter d, will henceforth also apply in connection with the vital interests of another person, which is a change in relation to current law."

The Municipality of Copenhagen has informed the case that the processing of information about complaints, which is carried out on the basis of the data protection regulation, article 6, subsection 1(d) occurred when the investigation was necessary to protect the vital interests of current and former students.

It is the opinion of the Data Protection Authority that Copenhagen Municipality's processing of personal data could not take place within the framework of the Data Protection Regulation, Article 6, subsection 1, letter d.

In the assessment, the Danish Data Protection Authority has emphasized that the application of the data protection regulation, Article 6, subsection 1, letter d, - as appears from preamble consideration no. 46 and report no. 1565/2017 - does not refer to the processing of personal data that Copenhagen Municipality has carried out in the present case.

It appears that the provision should in principle only apply if the processing clearly cannot take place on another legal basis. The provision thus has the character of an exception provision/safety valve, and it should (and can) therefore only be used in situations where the processing of personal data is (vital) necessary - as, for example, may be the case within the hospital

system and/or for humanitarian reasons.

This is not the case as far as the specific processing of information about complaints is concerned, and it is therefore the Danish Data Protection Authority's assessment that the processing of information about complaints could not take place on the basis of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter d.

3.1.2. Application of the data protection regulation, article 6, subsection 1, letter e

According to the regulation's article 6, subsection 1, letter e, processing of personal data may be carried out if 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.

From preamble consideration no. 45 to the data protection regulation, it appears from the provision that:

"If processing is carried out in accordance with a legal obligation incumbent on the data controller, or if processing is necessary to carry out a task in the public interest, or which is part of the exercise of public authority, the processing should have a legal basis in EU law or the national law of the Member States. This regulation does not imply that a specific law is required for each individual processing. A law may be sufficient as a basis for several data processing activities which are based on a legal obligation incumbent on the data controller or whose processing is necessary to carry out a task in the public interest or which is part of the exercise of public authority. It should also fall under EU law or the national law of the Member States to determine the purpose of the processing. Furthermore, this legal basis may clarify this Regulation's general conditions for the lawful processing of personal data and specify more precisely who the data controller is, what type of personal data is to be processed, the data subjects concerned, which entities the personal data may be disclosed to, purpose limitations, storage period and other measures to ensure legal and fair treatment. It should also fall under EU law or the national law of the Member States to determine whether the data controller who performs a task in the public interest or in connection with the exercise of public authority must be a public authority or another natural or legal person covered by public law, or, if this is in the interest of society, including health purposes, such as public health and social security as well as the management of health services, by private law such as a business association."

The provision also appears in, among other things, the following from report no. 1565/2017, page 132:

"After a literal interpretation, the provision in the regulation's article 6, subsection 1, letter e, generally in accordance with applicable law, cf. the description above. However, see regarding disclosure to third parties who have been ordered to

exercise authority and to coordinate for control purposes in separate sections on this.

In this connection, it must be assumed that Article 6, subsection 1, letter e, is directly applicable as a basis for processing, as long as the data controller performs a task in the interest of society or which falls under the exercise of public authority, which the data controller has been assigned. The use of Article 6, subsection 1, letter e, as a basis for processing, thus does not require national, implementing legislation on the actual processing of personal data in connection with the performance of tasks in the interest of society or as part of the exercise of public authority.

The use of Article 6, subsection 1, letter e, does not necessarily require that the task, which requires the processing of personal data, is expressly assigned to the authority in the legislation. […]"

From the above, it thus appears that processing of information according to the data protection regulation, article 6, subsection 1, letter e, must have a legal basis in EU law or the national law of the Member States.

However, this does not mean that a specific law is required for every single processing, and it will thus be sufficient to have a law as a basis for several processing activities - to the extent that the processing is necessary to carry out a task in the interest of society.

Based on the information in the case, the Danish Data Protection Authority assumes that the Municipality of Copenhagen has only processed information about complaints that are covered by Article 6 of the Data Protection Regulation.

The Danish Data Protection Authority finds that the Municipality of Copenhagen's processing of information about complaints has taken place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e.

In the assessment, the Data Protection Authority emphasized that Copenhagen Municipality and Sankt Annæ Gymnasium have a general obligation to ensure a good teaching environment in accordance with the rules on the operation of the educational institution, including rules in the Act on institutions for general secondary education and general adult education, etc., the Primary School Act and the Education Environment Act, so that the teaching can take place in a fully responsible way in terms of safety and health.

As a result, the Data Protection Authority has found no basis for overriding the Copenhagen Municipality's assessment of the necessity of - on the basis of the media coverage and the specific inquiries and with the collection of necessary personal data about e.g. complaints - to investigate more closely the teaching environment at Sankt Annæ Gymnasium now and back in time with a view to investigating whether there is or has been a (sexually) transgressive culture at the high school, and if so, the

extent of this culture.

It is against this background that the Danish Data Protection Authority's assessment is that the Municipality of Copenhagen could process information about complaints on the basis of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e.

3.2. Copenhagen Municipality's compliance with the duty to provide information

3.2.1. The general principles for processing personal data, which appear in Article 5 of the Data Protection Regulation, must in all cases be observed when processing personal data. This means, among other things, that the processing must be legal, fair and transparent, cf. Article 5, paragraph 1, letter a.

It follows from the data protection regulation's article 14, subsection 1, that the data controller must provide the data subject with the following information if personal data has not been collected from the data subject himself:

identity and contact details of the data controller and his/her representative, if any

contact details for any data protection advisor

the purposes of the processing for which the personal data is to be used, as well as the legal basis for the processing

the categories of personal data concerned

any recipients or categories of recipients of the personal data

where relevant, that the controller intends to transfer personal data to a recipient in a third country or an international organisation, and whether the Commission has taken a decision on the adequacy of the level of protection, or in the case of transfers under Article 46 or 47 or Article 49 , PCS. 1, second paragraph, letter h), reference to the necessary or appropriate guarantees and how a copy thereof can be obtained or where they have been made available.

In addition to the information pursuant to para. 1, the data controller must according to the data protection regulation article 14, subsection 2, provide the data subject with the following information that is necessary to ensure fair and transparent treatment as far as the data subject is concerned:

the period for which the personal data will be stored or, if this is not possible, the criteria used to determine this period

the legitimate interests pursued by the data controller or a third party, if the processing is based on Article 6, paragraph 1, letter f)

the right to request from the data controller access to and rectification or deletion of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability

when processing is based on Article 6, subsection 1, letter a), or Article 9, subsection 2 letter a), the right to withdraw consent at any time, without prejudice to the lawfulness of processing based on consent prior to its withdrawal

the right to lodge a complaint with a supervisory authority

which source the personal data originates from, and possibly whether they originate from publicly available sources

the occurrence of automatic decisions, including profiling, as referred to in Article 22, paragraph 1 and 4, and in these cases at least meaningful information about the logic therein as well as the meaning and expected consequences of such processing for the data subject.

Data controllers must, according to the data protection regulation, article 12, subsection 1, take appropriate measures to e.g. to provide any information referred to in Articles 13 and 14 about processing to the data subject in a concise, transparent, easily understandable and easily accessible form and in clear and simple language.

3.2.2. On 30 June 2021, Copenhagen Municipality sent a separate information letter to complainants, which contained information about Copenhagen Municipality's processing of information about complaints. The letter stated the following about the legal basis of the processing:

"The legal basis for our processing of your personal data follows from:

Act on institutions for general upper secondary education and general adult education etc. (LBK no. 1246 of 17/08/2020).

The Public Schools Act (LBK no. 1396 of 28/09/2020)."

The Norwegian Data Protection Authority notes in general that processing of personal data, as is the case in the present case, in the opinion of the Norwegian Data Protection Authority – given the extent of the processing, the intrusive nature and the age of the data – imposes stricter requirements on the clarity and transparency of the information that data controllers, according to Article 14 of the Data Protection Regulation, are obliged to provide registered.

The Danish Data Protection Authority finds that the Municipality of Copenhagen has not observed article 14 of the data protection regulation, cf. article 12, subsection 1.

In the assessment, the Danish Data Protection Authority emphasized that the complainant received insufficient and unclear information about the legal basis which was the basis for Copenhagen Municipality's processing of information about him.

In the Data Protection Authority's opinion, it is insufficient that the Municipality of Copenhagen - considering the extent of the processing, the intrusive nature and the age of the personal data - generally refers to the Act on institutions for general

secondary education and general adult education, etc. as well as to the Public Schools Act.

The Danish Data Protection Authority has also emphasized that Copenhagen Municipality's letter of 30 June 2021 – combined with the municipality's reply of 23 July 2021 – gave the complainant reason to believe that the processing of information about him was based on a legal obligation, cf. the data protection regulation article 6, subsection 1, letters c and d, and not – as reviewed in section 3.1. – for reasons of carrying out a task in the interest of society, cf. the data protection regulation, article 6, subsection 1, letter e.

This meant that the complainant – as a consequence of the information about the unclear legal basis – was informed that the right to object did not apply, and that the complainant's right under Article 21 of the Data Protection Regulation was thereby cut off.

Overall, the Danish Data Protection Authority finds that the Municipality of Copenhagen has not sufficiently complied with Article 14 of the Data Protection Regulation, cf. Article 12, subsection 1, and the Danish Data Protection Authority therefore finds grounds for expressing criticism of the Municipality of Copenhagen.

[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).