

Serious criticism of TV 2 and Norrbom Vinding

Date: 03-02-2022

Decision

Private companies

Serious criticism

Complaint

Obligation to provide information

Sensitive information

Basis of treatment

The Danish Data Protection Authority has made a decision in a case of principle where the complainant has complained about the processing of information about him in connection with a lawyer's investigation.

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Summary

In February 2021, [complainant] complained to the Data Protection Authority that TV 2 and Norrbom Vinding had processed information about him in connection with a legal investigation. The investigation was carried out by Norrbom Vinding on behalf of TV 2 with the aim of uncovering and investigating cases of possible infringing acts.

The Danish Data Protection Authority has reviewed the case carefully, and as it is considered to be of principle, the decision has been made by the Data Council.

The central points in the Danish Data Protection Authority's assessment of the case are the following:

TV 2 pursued a legitimate interest by launching the investigation, and TV 2's legitimate interest took precedence over the interests of the data subjects, including the complainant. In other words, there was basically a legal basis for collecting personal data.

However, the survey was organized in such a way that information could be reported on e.g. sexual relations, i.e. sensitive information. There is a prohibition against processing sensitive information if a valid exception cannot be identified. TV 2 and Norrbom Vinding had not limited the collection of information in such a way that they had the necessary assurance that they could process the collected sensitive information.

Even if the Danish Data Protection Authority generally finds the organization of the investigation to be criticised, there is - due to the complainant's association with TV 2 at the time - insufficient grounds for criticizing TV 2's and Norrbom Vinding's handling of information about the complainant's sexual relationship.

TV 2 and Norrbom Vinding have not complied with the obligation to provide information, which consists in making people aware of the fact that their information is being processed on their own initiative - including why it is being done and how the information will be processed.

Based on these circumstances, the Danish Data Protection Authority expresses serious criticism of TV 2 and Norrbom Vinding. The case is part of a debate that goes far beyond data protection law. In the assessment of the case, the Danish Data Protection Authority has exclusively considered the legal aspect in relation to the collection and further processing of personal data, including the processing of information about complaints.

The Norwegian Data Protection Authority has also not considered whether TV 2 had a legal basis for stopping cooperation with complainants, as this is outside the authority's competence.

## Decision

The Danish Data Protection Authority hereby returns to the case where the complainant complained to the Danish Data Protection Authority on 16 February 2021 that TV2/Danmark A/S (hereafter TV 2) and Norrbom Vinding I/S processed information about him in connection with a legal investigation.

The Danish Data Protection Authority must – after the case has been dealt with in the Data Council – state the following:

### 1. Decision

After a review of the case, the Danish Data Protection Authority is of the opinion that TV 2 pursued a legitimate interest in connection with the launched investigation.

The Danish Data Protection Authority finds no basis for overriding TV 2's and Norrbom Vinding's assessment, according to which it was necessary to collect information on a wide range of people in order to investigate (the development of) the culture at TV 2, and that TV 2's legitimate interest in this took precedence over those registered, including the complainant's interests. It is against this background that the Danish Data Protection Authority's assessment is that TV 2 and Norrbom Vinding could collect information on the basis of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter f.

However, it is the Danish Data Protection Authority's assessment that TV 2 and Norrbom Vinding, when collecting personal

data - including the collection of information about sexual relationships - for use in the investigation in question did not have the necessary security to be authorized in Article 9 of the Data Protection Regulation to process the collected personal data .

Based on this, the Data Protection Authority finds that TV 2's and Norrbom Vinding's approach to the collection of personal data was not in accordance with Article 25 of the Data Protection Regulation, cf. also Article 5 of the Regulation.

It is the Danish Data Protection Authority's assessment that the processing of information about complaints, including information about the complainant's sexual relationship, could not – as claimed by TV 2 and Norrbom Vinding – be carried out within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter c, section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b, or section 12 of the Data Protection Act. Taking into account that the complainant continued to be connected to TV 2, the Data Protection Authority does not, on the other hand, find grounds to override TV 2's and Norrbom Vinding's assessment of the necessity to process information about the complainant's sexual relationship in order to be able to establish a legal claim, cf. Article 9 of the Data Protection Regulation, PCS. 2, letter f.

Regardless of the fact that the Danish Data Protection Authority generally finds the organization of the investigation – and the resulting collection of personal data – to be criticised, the Danish Data Protection Authority does not find grounds to criticize TV 2's and Norrbom Vinding's processing of information about the complainant's sexual relationship.

Finally, the Danish Data Protection Authority is of the opinion that TV 2 and Norrbom Vinding have not notified complaints in accordance with Article 12 and Article 14 of the Data Protection Regulation.

Collectively, TV 2's and Norrbom Vinding's collection of personal data and non-observance of the disclosure obligation give the Data Protection Authority grounds for expressing serious criticism.

The Danish Data Protection Authority notes that the Danish Data Protection Authority has not considered whether TV 2 had a legal basis for ceasing cooperation with complainants, as the decision to do so does not fall within the authority's purview.

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, in September 2020, TV 2 decided to launch a two-part investigation into the culture at TV 2, which on the one hand was to uncover the culture more generally at TV 2, and which, on the other hand, was also to uncover and investigate cases of possible infringing acts.

In this connection, TV 2 requested Norrbom Vinding to assist with the implementation of the investigation in question, and a reporting system was established – via Norrbom Vinding – where former and current employees could report both offensive actions and more general matters related to the culture and cooperation in TV 2.

Due to this, TV 2's managing director stated the following on 22 September 2020 in an internal communication to employees of TV 2:

"To the extent that an inquiry can be considered to relate to an offensive act, Norrbom Vinding will assist TV2 with the further investigation of and advice on the handling of this."

On 24 September 2020, TV 2's director also announced to the public that the investigation would also include "old cases", and that no time limit had been set for how far back in time the investigation could go.[1] TV 2 and Norrbom Vinding have stated that the assessment of this:

"... Among other things. [was] a consequence of the fact that, in connection with the massive criticism from the employees and in the media during September 2020, information had come to light which created a suspicion that there had also previously been an unhealthy culture in the organization that had led to violations by employees of TV2 - violations that had not previously been reported and dealt with [...]

It was therefore assessed that it was necessary to provide the opportunity for reporting and investigation of any "old cases" as well in order to have a real confrontation with the (possibly) abusive culture - including also with a view to ensuring a healthy working environment in the future. At the same time, however, it was the case that only reports on "old cases" were investigated, to the extent that the person who was reported on was still employed by TV 2 or in some other way still part of/connected to TV 2's activities – for example through a business partner.”[2]

TV2 and Norrbom Vinding prepared a process description as part of the investigation. The process description was published on TV 2's intranet and was made available to all employees of TV 2.

The process description initially revealed the following:

"What is the further process when you have sent a report or inquiry to Norrbom Vinding or TV 2?

We have tried to briefly describe what happens when you have sent a report or inquiry to TV 2 via Norrbom Vinding. It is important to say that there is no "one-size-fits-all". Depending on the nature and development of the individual case, other steps may be needed.”

In addition, it appeared that all reports that TV 2 and Norrbom Vinding might receive in connection with the initiated reporting system would initially be screened to see if the reported incidents could constitute offensive actions – such as harassment or sexual harassment – or whether the reports concerned an unhealthy culture at TV 2, which TV 2 wanted to do away with.

In connection with the reporting scheme, TV 2 and Norrbom Vinding received two reports about complaints, both of which contained information about complaints. One report contained information about the complainant's sexual relationship.

Based on this, Norrbom Vinding contacted the complainant on 18 November 2020 via text message, in which the complainant was asked to provide his e-mail.

The complainant forwarded his e-mail, after which he received an e-mail with a letter and the process description that Norrbom Vinding and TV 2 had prepared in connection with the initiation of the investigation. The following appeared from the attached letter:

"As you may have heard, there is currently a major investigation into the culture at TV 2 Danmark A/S (hereafter TV 2), and in this connection TV 2 has, in cooperation with Norrbom Vinding, established a procedure for reporting and investigating cases about possible infringing acts.

I am writing to you because, in connection with the ongoing investigation, inquiries have been received about two episodes which, according to the information, took place at a time when you were employed by TV 2. According to the information, you should have expelled in connection with these episodes a behavior that was experienced as offensive by two former employees of TV 2.

I am – as stated – aware that you are no longer employed by TV 2. However, TV 2 has found it relevant to initiate an investigation into the two episodes, as you work as a host on productions produced by an external supplier for TV 2 .

The organization of the investigation process is described in more detail in the process description attached to this letter, and basically consists of Norrbom Vinding interviewing the employees and former employees of TV 2 who consider themselves exposed to violations, and possibly also other persons who had to be involved.

As part of the ongoing investigation into the two episodes, I hereby invite you to an interview, where you will be informed about the detailed content of the reports received, and you will have the opportunity to comment on the information received. You are therefore invited to a meeting

Friday, 20 November 2020, at 10:00 a.m

The meeting will be held at my office, Norrbom Vinding, Dampfærgevej 26, 2100 Copenhagen Ø. The meeting will be attended by me and [...].

At the meeting, we will inform you in more detail about the content of the inquiries that have been received, and you will have the opportunity to make your comments on these.

You are encouraged to bring an assistant to the meeting, e.g. a lawyer or a friend.

When the investigation process is finally completed, I will make an assessment of whether there is a basis for concluding that offensive actions have been carried out in violation of the legislation. TV 2 will then assess on this basis whether there is any basis for a further course of action.

[...]"

On 19 November 2020, the complainant's lawyer contacted Norrbom Vinding and requested information about the two reported episodes, so that the complainant and the complainant's lawyer were given the opportunity to prepare for the upcoming meeting.

Norrbom Vinding answered the inquiry on 20 November 2020. The following appeared from this:

"With reference to your letter of 19 November 2020, I hereby clarify that the investigation my client has initiated is basically intended to give former and current employees of TV 2 Danmark A/S (hereafter TV 2) the opportunity to report behavior (exercised by employees of or business partners to TV 2) which according to the legislation must be considered an offensive act (in the work environment law primarily defined as harassment, sexual harassment or bullying.)

The purpose of the investigation, as is clear from the prepared process description, is thus to clarify whether it can be established in terms of evidence that behavior has been carried out which, according to the legislation at the time in question, must be considered offensive.

If this is the case, an assessment will then have to be made as to whether there is a basis for drawing employment law/contractual consequences from what happened. As is well known, typical sanctions in an employment law/contractual relationship will be prosecution/warning, termination or termination of the employment/collaboration relationship.

The purpose of the investigation, however, is not to establish whether a violation of the Criminal Code has been committed, as this will be a task for the police and the courts. To the extent that, in connection with an investigation, information may emerge that indicates that this is the case, TV 2 will, however, quite naturally consider whether there are grounds for making a police

report.

In relation to the two reports we have received in relation to your client, however, I can inform you that both of them are so far back in time that the criminal statute of limitations will have started. It will therefore already for this reason not be relevant to consider a police report.

As can be seen from the prepared process description for the course of the investigation, a decision has been made on the part of my client that the best basis for an assessment of a given report is obtained by carrying out meetings with/interviews respectively of the persons who have made the report, and the employee/collaborator to whom the report is directed. It will therefore not be sufficient for a thorough and proper investigation process to review a written statement from the person the report is directed against.

However, I of course fully understand that, in order to be able to prepare for the meeting, your client will need more detailed information about the content of the two reports, and I am therefore attaching a brief overview that indicates the temporal location of that episode/ the episodes that have been reported, as well as a brief description of the content of the two reports. In order to ensure as high a degree of confidentiality as possible in the process, I would first like to disclose the names of the two people who made the report in connection with our meeting, where your client will of course also be provided with the detailed information about the content of the two reports.

I must emphasize that the sole purpose of the meeting will be to give your client the opportunity to comment on the two reports, and that thus no decision will be made in connection with the meeting as to whether there is a basis for drawing any consequences in the case. Minutes of the meeting will be drawn up, which your client will have the opportunity to review and provide his comments on, just as your client will also have the opportunity to provide additional information that he may have thought of only after the meeting .

I must emphasize that your client – as he is not employed by TV 2 – is of course not obliged to participate in the meeting. If, however, your client should decide that he does not wish to participate in the meeting, I must also emphasize that TV 2 will in that case be obliged to assess the matter and make a decision on the present basis.

In this connection, I must - for the sake of order - clarify that my client does not intend to inform the production company where your client is employed about the specific reason for any decision communicated to the production company that it does not want your client continues as host of productions for TV2...”

The plaintiff's lawyer and Norrbom Vinding then had further correspondence between 21 and 26 November 2020, which included related to discussions about the organization of the process and the provision of (more detailed) information about the two reports that related to complaints.

On 27 November 2020, Norrbom Vinding, representatives from TV 2, the complainant's lawyer and the complainant held a meeting. At the meeting, Norrbom Vinding initially reviewed the two reports, which originated from 2001 and 2003 respectively, for complaints, after which the complainant and the complainant's lawyer were given the opportunity to comment on the reports.

On 14 December 2020, Norrbom Vinding invited the complainant and the complainant's lawyer to participate in an (online) meeting, where Norrbom Vinding would provide the results of the lawyer's investigation, including the assessment of the two reports that concerned complaints.

On 17 December 2020, the complainant's lawyer received - upon request - an advance notice from Norrbom Vinding. Norrbom Vinding stated that the result of the lawyer's investigation was that the complainant's behavior during the reported episodes from 2001 and 2003 constituted offensive acts, and that TV 2 had therefore assessed that the complainant was no longer worthy of being a host on TV 2's channels.

At the subsequent meeting, which was held on 18 December 2020, the result of the investigation and TV 2's decision that the complainant could not continue as a host on TV 2's programs were reviewed in more detail.

Subsequently, on 16 February 2021, the Data Protection Authority received a complaint from complainants about TV 2's and Norrbom Vinding's processing of information about him, including information about his sexual relationship.

On 18 March 2021, the Danish Data Protection Authority sent the complaint for hearing and requested TV 2 and Norrbom Vinding for an opinion on the case.

Norrbom Vinding appeared respectively on 22 and 29 April 2021 with a statement on the case, after which the complainant forwarded his comments on this on 4 May 2021.

Prompted by the complainant's remarks, the Danish Data Protection Authority requested on 26 May 2021 TV 2 and Norrbom Vinding for a supplementary opinion on the matter, which the Danish Data Protection Authority received on 7 July 2021.

On 9 July 2021, the complainant submitted comments on the supplementary opinion.

### 3. The parties' general considerations



### 3.1. TV2's and Norrbom Vinding's general comments

TV 2 and Norrbom Vinding have generally stated that TV 2 had a legitimate purpose and authority to initiate and carry out the investigation with a view to uncovering possible sexism and violations, and that the information about complaints that have been processed in connection with this has been in accordance with the data protection regulation and law.

It is TV 2's and Norrbom Vinding's opinion that there were weighty reasons which made it necessary for TV 2 to initiate and carry out an investigation into the culture at TV 2.

In connection with this, TV 2 and Norrbom Vinding have referred to (the former) Section 9 a of the Norwegian Working Environment Authority's order on the performance of work and the Norwegian Working Environment Authority's order of 26 September 2020 on the psychological working environment, which obliges the employer - including TV 2 - to ensure the physical and psychological work environment.

TV 2 and Norrbom Vinding have stated that in the light of this obligation and as a result of conditions uncovered by the media in autumn 2020 about an unhealthy culture in TV 2, TV 2 believed that it was necessary to carry out an investigation into the culture in TV 2, and TV 2 therefore requested Norrbom Vinding to assist with the implementation of such an investigation.

It was TV 2's and Norrbom Vinding's assessment that it was necessary to carry out the investigation with the inclusion of personal data, as TV 2 wanted to achieve a real confrontation with the unhealthy culture which immediately prevailed in TV 2, and it had therefore not been sufficient to carry out the survey anonymously - as, for example, Kvinno had done in relation to a survey carried out on behalf of Det Radikale Venstre.

TV 2 and Norrbom Vinding therefore set up a reporting system, and a process description was drawn up for how incoming reports should be handled. It appeared, among other things, of the process description, that an assessment had to be made of each individual report. If it was assessed that a report did not contain potentially offensive actions, the report was anonymized and passed on to TV 2, so that the report (in anonymized form) could be included in the work with the culture at TV 2. Reports that potentially contained actions that violated working environment law were further processed and handled by Norrbom Vinding and TV 2's HR department.

As a result, TV 2 and Norrbom Vinding received two reports concerning complaints. The reports concerned two episodes from the autumn of 2001 and the spring of 2003, respectively, in which the complainant was said to have displayed offensive behavior towards the two women who made the reports.

Both episodes were therefore screened, as was apparent from the process description, and the assessment was that both episodes possibly constituted offensive acts.

TV 2 and Norrbom Vinding decided to launch a closer investigation into the two reported episodes, as the complainant at the time of the two episodes was employed as a host at TV 2 Nyhederne in Odense, and as the complainant was working as a host at the time of the reporting scheme and the subsequent investigation on one of TV 2's programs produced by an external supplier. The complainant therefore also cooperated at the time of the investigation both with employees employed by Nordisk Film and employees employed by TV 2; and since the complainant generally had a close connection to TV 2, its employees and facilities, TV 2 was entitled and (in terms of working environment law) obliged to investigate the reports of complaints in more detail.

### 3.2. Complainant's general comments

The complainant has generally stated that TV 2's and Norrbom Vinding's processing of information about him, including information about his sexual relationship, has not taken place in accordance with the data protection rules, and that he has not received sufficient information about the processing.

### 4. TV2's and Norrbom Vinding's processing of personal data

TV 2 and Norrbom Vinding have stated that Norrbom Vinding has assisted TV 2 in launching and carrying out the investigation, and that Norrbom Vinding's processing of information about complaints therefore stems from instructions from TV 2.

Norrbom Vinding has stated that Norrbom Vinding must of course independently have a processing basis for the processing that Norrbom Vinding carries out, but that this will arise from TV 2's interests, including providing the client TV 2 with legal assistance. Norrbom Vinding's processing basis must therefore be seen in the context of TV 2's.

TV 2 and Norrbom Vinding have processed information about complaints, including information about the complainant's sexual relationship. In the case of TV 2, the processing of this information has taken place in accordance with Article 6, subsection of the data protection regulation. 1, letters c and f, Article 9, subsection 2, letters b and f, section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b, and section 12 of the Data Protection Act. Norrbom Vinding's processing basis has concretely been the data protection regulation's article 6, subsection 1, letter f, and Article 9, subsection 2, letter f, as TV 2 has "handed over" personal data about e.g. complaints to Norrbom Vinding with a view to carrying out the investigation and obtaining legal advice. The complainant's information has at no time been processed on

the basis of the complainant's consent.

As regards Norrbom Vinding's basis for processing in Article 6, subsection 1, letter f, Norrbom Vinding has stated that the legitimate interest has consisted in providing TV 2 with assistance in carrying out the investigation, and that in this case Norrbom Vinding thus "adopts" TV 2's legitimate interest.

Norrbom Vinding has referred to i.a. The Bar Association's guide[3] and Danske Advokater's guide[4], from which it appears that lawyers will be able to process information on behalf of their clients on the basis of e.g. the regulation's article 6, subsection 1, letter f and Article 9, subsection 2, letter f.

It is Norrbom Vinding's opinion that Norrbom Vinding, as a lawyer for TV 2, had a legitimate purpose and authority to assist TV 2 in initiating and carrying out a reporting scheme and an investigation process with a view to uncovering possible sexism and offensive acts.

Processing of the personal data, including information about complaints, has taken place in accordance with the general principles for the processing of personal data in Article 5 of the Data Protection Regulation.

The complainant has stated that he does not agree that the media in autumn 2020 covered stories about specific descriptions of objectionable conditions at TV 2 in the past and present. The complainant believes that the media's coverage was solely on studio host Sofie Linde's statement on TV 2 Zulu about conditions in Danmarks Radio - and thus not TV 2. Therefore, in the complainant's opinion, there were no concrete circumstances that justified the investigation involving "old cases".

TV 2 and Norrbom Vinding therefore had no "suspects" when the investigation was launched. There was only a presumption that cases would appear, and thus a form of "free rent scheme" was established for reviewers without knowing what this scheme would entail.

The investigation could have been carried out in the same way as Kvinfo did for Det Radikale Venstre, where all reports were anonymised.

In relation to the specific processing of information about him, the complainant has stated that he has at no time given consent to the processing of information about him.

The complainant has also stated that none of the treatment homes listed by TV 2 and Norrbom Vinding can form a basis for processing information about him and his sexual relationship. In this connection, the complainant notes that none of the other processing bodies in the data protection regulation – and the law in general – can justify the processing of information about

him that TV 2 and Norrbom Vinding have carried out in connection with the investigation.

4.1. Article 6 of the Data Protection Regulation, subsection 1, letter c, section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b, and section 12 of the Data Protection Act

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

4.1.1.1. The parties' comments

TV 2 and Norrbom Vinding have stated that TV 2 has been authorized to process personal data about complaints, cf. the data protection regulation's article 6, subsection 1, letter c, as TV 2 is subject to legal obligations, which i.a. instructs TV 2 to ensure that no offensive actions take place under TV 2's auspices.

The legal obligations follow from the working environment legal regulations, the Equal Treatment Act, the Discrimination Treatment Act and the Equality Act, and TV 2 was covered by these obligations when the episodes took place, just as TV 2 is still covered by these obligations.

As a result, TV 2 was obliged and entitled to investigate matters of importance for TV 2's duty to ensure that employees, partners, etc. not be exposed to offensive actions in connection with carrying out TV 2's activities.

It was therefore also necessary for TV 2 and Norrbom Vinding to process information about complaints as part of the investigation.

In TV 2's opinion, the investigation could not be carried out without the women in question naming alleged perpetrators. Had the investigation been carried out without processing information about complaints, TV 2 would not have been able to assess whether the behavior shown was incompatible with a continued association with TV 2.

In support of this, Norrbom Vinding and TV 2 have referred to the data protection regulation preamble consideration no. 45 and report no. 1565/2017 on the data protection regulation, page 130 f, from which it follows that the use of article 6, subsection 1, letter c, does not presuppose a national implementing legislation on the actual processing of personal data in connection with the determination of a legal obligation.

TV 2 and Norrbom Vinding have also noted that the Norwegian Working Environment Authority stated in November 2020 that the Norwegian Labor Inspection Authority would make an unannounced inspection visit within 12 months.

The Norwegian Working Environment Authority carried out an inspection on 24 February 2021, where psychological working environment was the primary theme of the inspection. In this connection, the Norwegian Working Environment Authority noted

that the Norwegian Working Environment Authority was aware of TV 2's ongoing work with a view to ensuring a safe psychological working environment, including, among other things, by carrying out the study in question.

The complainant has stated that the labor and employment law obligations, including the Norwegian Working Environment Authority's order on the performance of the work § 9 a, which TV 2 and Norrbom Vinding have referred to as the basis for treatment, obviously relate to the current working environment.

In connection with this, the complainant has noted that there are no rumors that the Arbeidstilsynet's unannounced visit in January/February 2021 also concerned the historical working environment, which is why it is unimportant information that should not be given any value.

Furthermore, the complainant has stated that the personal data concerned circumstances in the complainant's private home and in a context that had nothing to do with TV 2. Neither employment law nor working environment law regulations therefore applied, as the situations did not have a work-related purpose. In addition, the complainant has noted that he did not assume any leadership role towards the two women involved.

In support of this, the complainants have further stated that the reports relate to conditions from or 2001 and 2003, and the age of the episodes alone therefore makes official or other legal reactions impossible. The result of the investigation cannot therefore be verified either under criminal law or under employment law. Criminal law because the conditions for which the complainant - wrongly - is accused, date back 17 and 19.5 years. Employment law, because the complainant was not employed by TV 2 at the time of the investigation. The relevant processing of information about complaints, including information about the complainant's sexual relationship, therefore had to require very special reasons before these could be included in the investigation and brought forward now.

It is the complainant's opinion that there were no concrete reasons of this kind why neither TV 2 nor Norrbom Vinding was entitled to or could reasonably include information about him in the investigation.

Thus, in the complainant's view, TV 2 did not have a legitimate interest in obtaining and processing the information. Nor did the public or TV 2's viewers have any legitimate interest in this.

Furthermore, the complainant has noted that he has never been confronted with the matters reported, and that, moreover, at no time have complaints been submitted regarding him while he was employed at TV 2. The complainant therefore did not pose an actual, concrete or latent danger to TV 2's employees when the investigation was initiated and carried out.

In this connection, according to the complainants, it is noteworthy that TV 2 and Norrbom Vinding have not received a single report about him from current TV 2 employees. The reports about him have only been submitted by two former journalist trainees who have long since left TV 2 – in 2004 and 2005 respectively.

Furthermore, the complainant has stated that he was not employed at TV 2 – and is therefore not part of the employee group at TV 2 – when the legal investigation was carried out. The complainant therefore also does not agree that he had a close collaboration with employees from TV 2, since there were actually two separate newsrooms. He also did not have access to TV 2 without a guest pass, which required an agreement with an employee, just as there was no employee overlap between the two workplaces - except in relation to two hosts who were on loan to Nordisk Film for periods.

In addition, the complainant has only once a year participated in an event for hosts from the production companies, where a small number of executives from TV 2 also participated, and in his 5 years at Nordisk Film he has only visited TV 2's headquarters in Copenhagen twice, where he each time carried a visible guest pass.

Finally, Nordisk Film was visited 2-3 times a year by a boss from TV 2, who gave post-criticism. The complainant therefore did not have close contact with TV 2 or TV 2's employees during his employment at Nordisk Film.

The complainant has stated that TV 2 and Norrbom Vinding have nevertheless tried to connect the complainant personally and at work with TV 2, and they have tried to describe him as a current, concrete or latent danger for the employees at TV 2 and for a safe and harassment-free working environment in general, which based on the above is not correct.

#### 4.1.1.2. The Danish Data Protection Authority's assessment regarding the application of Article 6, 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.

It 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 belongs to 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 interest of society, or which is part of 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 legislation or from administrative regulations laid down pursuant thereto. The term also covers 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 appears 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 clear 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 of Justice 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 report no. 1565/2017 on the data protection regulation that a legal obligation according 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.

TV 2 and Norrbom Vinding have stated that the processing of information about complaints, which is carried out pursuant to the data protection regulation's article 6, subsection 1, letter c, occurs as a result of the legal obligation imposed on TV 2 in accordance with working environment legal regulations, the Equal Treatment Act, the Discrimination Treatment Act and the Equality Act to ensure a safe working environment in terms of safety and health - including protecting employees against abusive acts such as sexual harassment.

It is the opinion of the Data Protection Authority that TV 2's and Norrbom Vinding's processing of information about complaints could not take place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter c.

The Danish Data Protection Authority has thereby emphasized that the legal obligations in the working environment and discrimination laws to which TV 2 and Norrbom Vinding refer, 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 under Article 6, PCS. 1, letter c.

The Norwegian Data Protection Authority is aware that Section 9 a of the Norwegian Working Environment Authority's executive order on the performance of work[5] has been repealed and replaced by the Norwegian Norwegian Working Environment Authority's executive order on the psychological working environment[6], which came into force on 1 November 2020. However, it is the Norwegian Data Protection Authority's assessment that neither this executive order contains sufficiently clear and precise rules on the employer's legal obligations, which can form the basis for the processing of personal data in the present case.

In summary, it is the Danish Data Protection Authority's assessment that the collection and 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.

4.1.2. Section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b



#### 4.1.2.1. The parties' comments

TV 2 and Norrbom Vinding have, in relation to the Data Protection Act § 7, subsection 2, cf. the regulation's article 9, subsection 2, letter b, largely repeated what is stated in relation to the data protection regulation's article 6, subsection 1, letter c.

It is additionally added and elaborated that TV 2 is subject to labor law obligations to ensure a healthy and safe working environment free from sexual harassment and other types of offensive actions. The obligations also apply in relation to collaborators' employees who work with the production of TV 2's programs and who sometimes work together with employees from TV 2.

It was therefore necessary that information covered by the regulation's Article 9 on complaints was also processed in relation to the assessment of whether the behavior on the part of the complainant constituted offensive actions, which TV 2 is obliged to respond to in accordance with the work and employment rules.

In this connection, TV 2 refers to the "Data Protection Regulation and the Data Protection Act with comments" [7], of which the Data Protection Act section 7, subsection 2, it appears that the expression "labor law obligations or specific rights" must be understood in a broad sense. Covered by the term are all kinds of obligations and rights which rest on a labor law basis, and this applies regardless of whether the basis is legislation or an agreement.

TV 2 and Norrbom Vinding state that the fact that the episodes took place in the complainant's private apartment is irrelevant to the application of the employment law discrimination rules or the rules of the working environment law. In support of this, reference has been made to two decisions[8], whereby an employee's actions towards other employees at a private party justified labor law sanctions (respectively expulsion and termination).

Furthermore, TV 2 and Norrbom Vinding have stated that in the two specific cases the invitation to the events where the episodes took place took place at the workplace between colleagues, where experienced and high-profile employees invited two young, female interns to a "four evening event" with colleagues after occupation.

The complainant, even though he had not been employed by TV 2 for several years, continued to have a close connection with TV 2, as he acted as host for TV 2 and in that connection worked together and met with employees from TV 2.

As a result, it was necessary for TV 2 and Norrbom Vinding to investigate the reported episodes with a view to assessing whether there could potentially be a risk associated with the complainant continuing to have an association with TV 2 and TV

2's employees.

Overall, it is therefore TV 2's and Norrbom Vinding's view that there was authority to process information about the complainant's sexual relationship, cf. section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b.

The complainant has noted that the decisions to which TV 2 and Norrbom Vinding refer, in relation to the fact that behavior at private events can result in employment law sanctions, in no way fit the current situation. This is because the temporal perspective and the solidity of the evidence differ significantly from the present case.

The complainant, on the other hand, believes that the decisions speak for his pleas that the starting point must be that conditions exhibited during social interaction cannot lead to employment law sanctions, if they do not subsequently negatively affect the performance of the work.

4.1.2.2. The Danish Data Protection Authority's assessment regarding the application of Section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b

This appears from the data protection regulation's article 9, subsection 1, that the processing of information about racial or ethnic origin, political, religious or philosophical beliefs or trade union affiliation as well as the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, health information or information about a natural person's sexual relationship or sexual orientation is prohibited.

Of the regulation's article 9, subsection 2, it appears that subsection 1 does not apply if one of the conditions in letter a-j applies.

According to the data protection regulation's article 9, subsection 2, letter b, the data controller can process information as mentioned in subsection 1, if processing is necessary to comply with the data controller's or the data subject's labor, health and social law obligations and specific rights, insofar as it is based on EU law or the national law of the Member States or a collective agreement pursuant to the national law of the Member States, which provides necessary guarantees for the data subject's fundamental rights and interests.

Furthermore, it appears from Section 7, subsection of the Data Protection Act. 2, that processing of information covered by the data protection regulation, article 9, subsection 1, can take place if processing is necessary to comply with the labor law obligations and specific rights of the data controller or the data subject, cf. the data protection regulation, article 9, subsection

2, letter b.

TV 2 and Norrbom Vinding have stated that the processing of information about the complainant's sexual relationship, which is carried out on the basis of the data protection regulation, article 9, subsection 2, letter b, has taken place on the basis of the legal obligations which have also been asserted in relation to Article 6, subsection 1, letter c.

It is the opinion of the Danish Data Protection Authority that TV 2's and Norrbom Vinding's processing of information about the complainant's sexual relationship could not have taken place within the framework of Section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b.

In assessing this, the Danish Data Protection Authority has placed emphasis on the fact that the legal obligations arising from the Data Protection Act's section 7, subsection 2, and the rules of working environment law, which TV 2 and Norrbom Vinding refer to, are, in the opinion of the supervisory authority, not sufficiently clear and precise to be able to form a basis for processing information about the complainant's sexual relationship in the present case.

The Danish Data Protection Authority notes that, as a result of the protection considerations in relation to the information listed in the data protection regulation, article 9, subsection 1, stricter requirements must be placed on the assessment of necessity and on the clarity and precision of the legal obligation.

#### 4.1.3. Section 12 of the Data Protection Act

##### 4.1.3.1. The parties' comments

TV 2 and Norrbom Vinding have further stated that Section 12 of the Data Protection Act authorizes them to process information about the complainant's sexual relationship.

In this connection, TV 2 and Norrbom Vinding have referred to the data protection regulation's article 88, subsection 1, which constitutes the legal framework for § 12 of the Data Protection Act. Furthermore, reference is made to the special comments to § 12[9], from which the following appears:

"With section 12 of the bill, the intention is to bring complete certainty that personal data can be legally processed on the public and private labor market before, during and after the employment relationship to the same extent as before."

Reference is also made to the fact that processing of personal data pursuant to section 12, subsection 2, can take place on the basis of an interest balancing rule when the legitimate interest is in connection with employment.

TV 2 and Norrbom Vinding have stated that it is not a requirement that the employment relationship is current, just as it is not a

requirement that the processing relates to the data subject's own employment relationship.

TV 2 was therefore entitled to process information about complaints which relate to both Article 6 and Article 9, cf. Section 12 of the Data Protection Act. This is justified by the fact that TV 2 has (and had) an obligation under working environment law and employment law rules to ensure a safe and sound mental working environment.

As support for this point of view, TV 2 and Norrbom Vinding have referred to a decision from the Eastern High Court[10], where the high court determined that the employer's obligations under the working environment regulations not only concern protection against violations by other employees, but also violations by others, e.g. . employees from other companies or citizens.

The decision further emphasizes that an employer will be at risk of incurring legal and financial liability under the Equal Treatment Act if the employer fails to act on the knowledge that a former employee, who has subsequently been employed by a business partner of the employer, during his employment committed abusive acts towards colleagues, and it later turned out that the former employee (again) commits abusive acts towards employees employed by the employer.

Based on this, TV 2's and Norrbom Vinding's opinion is that TV 2 had a legitimate interest in processing information about complaints, and that the complainant's rights and interests did not precede this, which is why TV 2 was authorized to process information about complaints in accordance with the Data Protection Act Section 12, subsection 1 and 2.

The complainant has disputed that the processing of information about him could have taken place on the basis of Section 12, subsection 1 of the Data Protection Act. 1 and 2.

#### 4.1.3.2. The Danish Data Protection Authority's assessment regarding the application of Section 12 of the Data Protection Act

This follows from Section 12, subsection 1 of the Data Protection Act. 1, that processing of personal data in connection with employment covered by Article 6, subsection 1, and Article 9, subsection 1, of the data protection regulation may take place if the processing is necessary to comply with the data controller's or the data subject's labor law obligations or rights as stipulated in other legislation or collective agreements.

It appears from the provision's paragraph 2, that processing of information as mentioned in subsection 1 may also take place if the processing is necessary for the data controller or a third party to pursue a legitimate interest arising from other legislation or collective agreements, unless the data subject's interests or fundamental rights and freedoms take precedence.

The following appears from the general comments to bill L 68[11], section 2.3.8.3. in relation to Section 12 of the Data

Protection Act:

"Collective agreements and agreements as well as 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 in the EU Charter of Fundamental Rights. In the charter, Article 28 thus recognizes the negotiation rights of the social partners 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.

Collective agreements may, on this basis, establish a "legal obligation" in the sense in which the term data protection law is used in the regulation's Article 6, subsection 1, letter c. Reference is made to the report, pages 118, 130 and 971.

However, there is some uncertainty associated with the question of whether a "legal obligation" in a data protection legal context can be established in a collective agreement. In addition, employers in the public sector, unlike in the private sector, can no longer use the "balancing of interests rule" in the regulation's article 6, subsection 1, letter f, which from now on only applies to private individuals. The corresponding processing authority in the Personal Data Act § 6, subsection 1, no. 7, has so far been widely used as processing authority by both public and private employers.

In light of the above and with the aim of ensuring a solid legal basis for the processing of personal data in the entire Danish labor market as a "full protection" going forward, it is proposed that section 12 of the bill introduces a supplementary authority provision, according to which personal data can also be processed on the basis of collective agreements, both where the agreement prescribes an obligation for the processing – e.g. a duty to notify the trade union representative or the professional organization in the event of redundancies – and where the collective agreement allows for or requires the processing of personal data, e.g. if the collective agreement allows the employer to monitor employees' use of the internet in specific circumstances or to require them to take a urine sample, or if the collective agreement requires the disclosure of personal data to the trade union representative or the professional organization as part of salary negotiations or industrial dispute resolution, etc.

The proposed provision ensures that processing of personal data can take place regardless of whether the data subject is a member of a trade union, as long as the data subject's employment is covered by the collective agreement in question.

The proposed provision has its background in the Regulation's Article 88, which allows Member States to adopt specific provisions on the processing of employees' personal data in employment. Article 88 is a statutory supplement that ensures that

there is at least no doubt that national processing rules can be laid down in laws and collective agreements in the field of employment with regard to the processing of all types of personal data - subject to compliance with the requirements for such national legislation in e.g. article 9, subsection 2, letter b, and Article 88, subsection 2. Reference is made to the report pages 970-980 on Article 88 of the regulation.

The proposed section 12 does not, of course, change the legal situation today that collective agreements must be within the framework of the other legislation. The collective agreements that form the basis for processing according to section 12 of the bill must also meet the requirements for this according to article 88, subsection 2.

It should be noted that under the auspices of the Labor Court and the professional arbitration, relevant questions about the data protection regulation and this bill can be decided, cf. §§ 10, subsection 2, and 24, par. 1, in the Act on labor law and professional arbitration (Legislative Order No. 1003 of 24 August 2017), according to which a decision can be taken on a case, even if the decision on legislation is of importance to the decision of the case."

In addition, the following appears from the special comments to Bill L 68 to § 12 of the Act:

"The wording of subsection 1 relates to the regulation's article 9, subsection 2, letter b, and with the provision it is thus completely established that both information covered by Article 6, subsection 1, and of Article 9, subsection 1, can be processed according to the same provision, namely the bill's section 12, subsection 1, when there is an employment law obligation or right.

With the proposal for paragraph 2, it is proposed that the processing of information as mentioned in subsection 1 may also take place if the processing is necessary for the data controller or a third party to pursue a legitimate interest arising from other legislation or collective agreements, unless the data subject's interests or fundamental rights and freedoms take precedence.

Today, processing of personal data in employment relationships often takes place legally on the basis of the balancing of interests rule in section 6, subsection 1 of the Personal Data Act. 1, no. 7, even if the processing is not necessitated by a labor law obligation, but which otherwise has its background in e.g. a collective agreement. Such processing can continue on the basis of this proposed balancing of interests rule in subsection 2, which corresponds to the rule in the regulation's article 6, subsection 1, letter f. With the proposed provision, it is also ensured that such a balancing rule can also be used in connection with employment in the public sector, even though the regulation's article 6, subsection 1, letter f, 2nd paragraph, states that the balancing of interests rule does not apply to processing carried out by public authorities as part of the performance of their

tasks."

It is the opinion of the Danish Data Protection Authority that TV 2's and Norrbom Vinding's processing of information about complaints, including information about the complainant's sexual relationship, could not take place within the framework of Section 12 of the Data Protection Act.

It appears from the general comments to Bill L 68 and from the special comments to Section 12 of the Data Protection Act that the provision is predominantly intended as a supplementary provision in relation to the Data Protection Regulation's Article 6, subsection 1, letter c, and Article 9, subsection 2, letter b.

Furthermore, it appears that § 12 is predominantly aimed at processing personal data resulting from collective agreements and agreements, and that the provision has the character of a "full protection", as there is uncertainty about whether obligations arising from collective agreements and agreements, constitutes a legal obligation in relation to the data protection regulation, article 6, subsection 1, letter c, and Article 9, subsection 2, letter b.

Based on this, the Danish Data Protection Authority's assessment is that the provision is not intended to have an independent or broader meaning in relation to the data protection regulation's article 6, subsection 1, letter c, and Article 9, subsection 2, letter b, and that it is a prerequisite for the application that labor law obligations, which are laid down in other legislation or collective agreement, must be clear and precise.

In this connection, the Data Protection Authority refers to the reasons under section 4.1.1.2. and 4.1.2.2. above in relation to Article 6, subsection 1, letter c and Article 9, subsection 2, letter b, concerning the question of whether the legal obligations under working environment law and discrimination law rules can be considered to be sufficiently clear or precise to be able to form a basis for processing information about complaints.

Based on this, the Danish Data Protection Authority finds that TV 2 and Norrbom Vinding's processing of information about complaints, including information about the complainant's sexual relationship, could not take place on the basis of section 12, subsection of the Data Protection Act. 1.

As far as the Data Protection Act § 12, subsection 2, it appears from the comments to the provision that this corresponds to the balancing of interests rule in the regulation's article 6, subsection 1, letter f. This implies that such a balancing rule can also be used in connection with employment in the public sector.

With reference to this and to what was stated above about the nature of the provision as a "full protection", it is the Danish

Data Protection Authority's assessment that section 12, subsection 1 of the Data Protection Act. 2, cannot constitute the legal basis for processing information about complaints, including information about the complainant's sexual relationship.

4.1.4. Article 6 of the Data Protection Regulation, subsection 1, letter f, and Article 9, subsection 2, letter f

4.1.4.1. The parties' comments

TV 2 and Norrbom Vinding have in relation to article 6, subsection 1, letter f, asserted that TV 2 – as a result of TV 2's obligations under working environment law and obligations under the Equal Treatment Act, the Discrimination Act and the Equality Act – has a legitimate interest in conducting an investigation into possible infringing acts under TV 2's auspices, and that in which personal data may be processed.

It is TV 2's and Norrbom Vinding's opinion that the legitimate interest applies both in relation to any current situations and in relation to previous situations/episodes where the person who has been reported is still employed by TV 2 or via a business partner is affiliated with or appears for TV 2.

In support of TV 2's legitimate interest, TV 2 and Norrbom Vinding have stated that TV 2 launched the investigation on the basis of serious criticism in the media from both current and former employees; that the employees of TV 2 at a meeting on 21 September 2020 demanded an investigation; that the inclusion of "old cases" was due to suspicion of an earlier "unhealthy" culture with possible abusive actions; that it was necessary to include "old cases" in order to have a real confrontation with the "unhealthy" culture; and that TV 2 was aware of limiting the investigation, which is why reports about former employees who were no longer employed by TV 2 or otherwise linked to TV 2 should not form part of the investigation.

Furthermore, TV 2's legitimate interest was supported by a wider public interest or societal interest in putting an end to offensive acts, which, according to the Article 29 group's opinion 6/2014, page 37 f., must be given weight.

Norrbom Vinding and TV 2 have also referred to the Ministry of Justice's joint guidance for whistleblower schemes in the state, according to which it is the Ministry of Justice's view that reporting schemes/whistleblower schemes i.a. must be able to handle and process information related to sexual harassment.

In this connection, TV 2's and Norrbom Vinding's opinion is that the guidelines (and the now adopted law on the protection of whistleblowers) do not give "carte blanche" to investigate possible infringing actions and thereby process personal data.

However, it shows that both the Ministry of Justice and the Danish Parliament are of the opinion that investigations into abusive acts constitute a central and legitimate purpose – also when the investigations concern matters that go back a long



way.

TV 2 and Norrbom Vinding are of the opinion that the complainant's interests and fundamental rights do not take precedence over TV 2's legitimate interest in processing information about him in relation to the investigation. This is also because consideration for the two women who have reported the episodes should also be given weight in the consideration thereof. At the time of the investigation, the complainant was a host on Go' Aften Live, and there was therefore consideration to be given to TV 2 and to TV 2's employees, just as TV 2 was entitled to assess whether the complainant should continue as host – a decision as TV 2 assessed was necessary.

TV 2 notes in this connection that it was the complainants themselves who published TV 2's decision and that it was the complainants who chose to share the details of the case. It was therefore also the complainant himself – and not TV 2 or Norrbom Vinding – who was to blame for the damage the complainant's career has suffered as a result of the public becoming aware of the reason why the complainant was no longer hosting TV 2's programmes.

Furthermore, TV 2 and Norrbom Vinding believe that the course of the investigation has been transparent, as the complainant was encouraged from the start to hire a lawyer - which he did - just as the course of the investigation was described in the process description that the complainant was given in connection with the initial exchange of letters .

Overall, it is TV 2's and Norrbom Vinding's opinion that the complainant's interests and rights did not take precedence over TV 2's legitimate and justified interest in investigating two serious reports of alleged infringing acts with a view to ensuring that no infringing acts take place, and TV 2 therefore finds that there was authority to process general personal data about complaints, cf. the data protection regulation, article 6, subsection 1, letter f.

In relation to TV 2's and Norrbom Vinding's considerations about the whistleblower guidelines, the complainant has noted that, among other things, information about sexual harassment after a specific assessment may involve serious matters that may be the subject of a whistleblower scheme. However, it also appears from the guidance that it is the general data protection rules that apply when information about sexual harassment is to be handled in a whistleblower scheme.

The complainant has also stated the same views as stated in section 4.1.1.1.

In relation to the data protection regulation's article 9, subsection 2, letter f, TV 2 and Norrbom Vinding have stated that TV 2 could process information about the complainant's sexual relationship, cf. the data protection regulation, article 9, subsection 2, letter f, since TV 2 in connection with the investigation had to assess whether a legal claim could be established, asserted or

defended.

In this connection, TV 2 and Norrbom Vinding have referred to the data protection regulation's preamble consideration no. 52, from which it appears that: "A derogation should also make it possible to process such personal data, if necessary, in order for legal claims to be established, asserted or defended, regardless of whether it is in connection with a court case or an administrative or extrajudicial procedure."

TV 2 and Norrbom Vinding have stated that according to the basis of the contract with Nordisk Film - by which the complainant was employed - TV 2 had to approve the studio hosts and that TV 2 had the right to demand changes in the programs that Nordisk Film produced for TV 2. This applied – in TV 2's opinion – to possible replacements of hosts on TV 2's programmes. In this connection, the conclusion of Norrbom Vinding's investigation was that TV 2 did not want complaints to continue as host of Go' Aften Live, and that TV 2 thus wanted to activate its right to ask Nordisk Film to provide another host for available for the program.

Furthermore, it appeared from the contract with Nordisk Film that if changes caused by TV 2 entailed additional costs for Nordisk Film, Nordisk Film could demand additional payment for the additional costs that TV 2 had caused.

Nordisk Film thus had a potential legal claim that TV 2 cover any (additional) costs, e.g. notice of termination and compensation for an unjustified termination of the complainant, as a result of TV 2's demand that the complainant should no longer host TV 2's programmes.

TV 2 and Norrbom Vinding have also stated that they were aware that, due to the course and result of the investigation, a dispute could arise between the complainant and TV 2, and that in this connection it could not be ruled out that the complainant would try to raise a compensation claim against TV 2.

It is noted that the complainant, in connection with his complaint to the Norwegian Data Protection Authority, has reserved the right to raise claims for compensation against TV 2 and Norrbom Vinding.

Finally, TV 2 and Norrbom Vinding state that the processing of information about the complainant's sexual relationship was aimed at obtaining legal advice from Norrbom Vinding in order to assess whether the reported episodes constituted a violation according to current legislation, and whether there was a legal basis for employment law/contractual reactions/sanctions.

TV 2 and Norrbom Vinding have also referred to the data protection regulation's article 9, subsection 2, letter f, according to the ICO[12] also applies to potential but not yet actualized legal claims, as the following appears from the ICO's guidelines on

the processing of special categories of information:

"You must show that the purpose of the processing is to establish exercise or defend legal claims. 'Legal claims' in this context are not limited to current legal proceedings. It includes processing necessary for:

actual or prospective court proceedings;

obtaining legal advice; or

establishing, exercising or defending legal rights in any other way."

Complainant has, in relation to the data protection regulation, article 9, subsection 2, letter f noted that at the time of Norrbom Vinding's establishment of a reporting system - and thereby collection of information about e.g. complainant's sexual relationship – no case was found. There was simply a desire on TV 2's part to clarify whether there were problems with the "culture" at TV 2.

At the start of the investigation, TV 2 and Norrbom Vinding thus had no "suspects" and no reviewers to deal with, advise on or defend against. TV 2 and Norrbom Vinding only had a presumption that through the reporting system, cases would possibly appear that could be dealt with. But TV 2 and Norrbom Vinding knew nothing about them in advance, and therefore a form of "free rental scheme" was created for reviewers without knowing what the reporting scheme would entail.

In relation to this, the complainants have also noted that the pleas in relation to the defense of legal claims from Nordisk Film and the complainants themselves will have completely unacceptable consequences, as data controllers who commit a breach will in that case be able to process information covered by a breach , and thus go beyond the regulation's general rules.

Furthermore, complaints with regard to what Norrbom Vinding stated regarding the legal office's independent authority in the regulation's article 9, subsection 2, letter f, states that if these assumptions are followed, lawyers will have a completely unique opportunity to carry out similar investigations without having to observe the data protection rules. Such an assumption would also give lawyers a competitive advantage, for which there is no support, and which does not seem to be in line with the Danish Competition and Consumer Authority's report from 14 January 2021, according to which there is a desire to equate lawyers with other advisers in the competition.

4.1.4.2. The Danish Data Protection Authority's assessment of the application of the Data Protection Regulation, Article 6, subsection 1, letter f, and Article 9, subsection 2, letter f.

4.1.4.2.1.

The Danish Data Protection Authority notes at the outset that, in the Danish Data Protection Authority's opinion – in the present case and in similar lawyer investigation cases – the data protection regulation's article 6, subsection 1, letter f, and Article 9, subsection 2, letter f, which, depending on the circumstances, may form the basis for processing under data protection law, if a data controller wishes to initiate and carry out an investigation into whether or not (sexually) offensive acts have been committed or have been committed at the workplace, etc.

Of the data protection regulation, article 6, subsection 1, letter f, it appears that processing of personal data can be carried out if the processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the interests of the data subject or fundamental rights and freedoms that require the protection of personal data go prior to this.

The provision thus sets out three conditions, all of which must be met for the provision to apply:

The processing must pursue the legitimate interest of the data controller or a third party.

The treatment must be necessary in relation to the purpose.

The data subject's interests or fundamental rights and freedoms, which require the protection of personal data, must be weighed against the legitimate interest of the data controller, and must not precede this interest.

In relation to the application of the provision, in the Data Protection Authority's opinion, it is important whether the investigation is initiated on the basis of a presumption of violations, or whether it is a more "open" investigation which is initiated without such a presumption.

The balancing of interests in Article 6, subsection 1, letter f, in the opinion of the Danish Data Protection Authority, will most often fall on the side of the data controller when, prior to the collection of personal data, there is information which creates a presumption that infringing acts have been committed.

If an investigation is initiated without such presumptions existing, based on a concrete assessment based on the present circumstances, there may be authority to process personal data covered by Article 6 of the Data Protection Regulation. In this connection, it will be a prerequisite that the data controller can demonstrate that the three-step test, as Article 6, subsection 1, letter f, contains, is fulfilled.

If there is no basis for processing in the data protection regulation, article 6, paragraph 1, letter f, the data controller will only be able to carry out an investigation anonymously.

This appears from the data protection regulation's article 9, subsection 2, letter f, that information covered by Article 9,

subsection 1 – e.g. information about sexual relationships – can be processed when processing is necessary for legal claims to be established, asserted or defended. The legal requirement could, for example, arise from any employment law requirements or sanctions that registered persons may face in an employment relationship.

It is noted that information about sexually offensive behavior does not necessarily constitute information covered by Article 9, and that processing of information about violations in a large number of cases will only be possible on the basis of Article 6.

It is in relation to the data protection regulation's article 9, subsection 2, letter f, the Danish Data Protection Authority's view that, as a result of the special protection that information covered by Article 9, subsection 1, enjoys, stricter requirements must be placed on the necessity of including such personal data, including in relation to the group of persons about whom information is processed.

If the data controller considers that it has the necessary authority to collect personal data according to Article 6, subsection 1, letter f, but does not have the necessary basis for processing information covered by Article 9, the Danish Data Protection Authority is of the opinion that the data controller must organize the collection in such a way that no personal data covered by Article 9 is collected, cf. also the principle in the Data Protection Regulation article 5 pieces. 1, letter f.

The Danish Data Protection Authority notes that, in connection with such an investigation, information may emerge which necessitates further investigation, and where subsequent collection of information covered by Article 9 will be possible on the basis of the Regulation's Article 9, subsection 2, letter f, cf. above.

#### 4.1.4.2.2

In the present case, TV 2, in collaboration with Norrbom Vinding, established a reporting system, whereby current and former employees of TV 2 were given the opportunity to report both offensive actions and more general matters related to the culture and cooperation at TV 2, so that the reports could be included in the implementation of an investigation of the culture in TV 2 – including in the investigation of cases of possible sexism and offensive actions.

It also appears that no limit was set for how far the investigation could go back in time.

TV 2 and Norrbom Vinding prepared a process description, which showed how reported incidents would be dealt with. From this it emerged, as stated earlier, that all reports received were screened and divided into two different types.

One type was reports that dealt with offensive actions that could be in violation of the law, while the other type were reports that were not obviously in violation of the law, but could relate to the unhealthy culture at TV 2, which TV 2 wanted to do away

with.

Reports divided into the first type were investigated in more detail, while reports in the second type were anonymised and passed on to TV 2's management.

TV 2 and Norrbom Vinding have informed the case that an investigation was only initiated into reports about "old cases", to the extent that the person who was reported on was still employed by TV 2 or was otherwise still part of /linked to TV 2's activities – for example through a business partner.

#### 4.1.4.2.3.

The Danish Data Protection Authority initially notes that it is the Danish Data Protection Authority's opinion that TV 2 was pursuing a legitimate interest when TV 2 tried to do away with an "unhealthy culture" and when TV 2 wanted to protect TV 2's employees against offensive actions.

Furthermore, the Data Protection Authority finds no basis for overriding TV 2's and Norrbom Vinding's assessment, according to which it was necessary to collect information on a wide range of people in order to investigate (the development of) the culture at TV 2, and that TV 2's legitimate interest in this preceded that of the registered , including the interests of the complainant.

It is against this background that the Danish Data Protection Authority's assessment is that TV 2 and Norrbom Vinding could collect information pursuant to Article 6, subsection 1, letter f.

However, it is the Danish Data Protection Authority's assessment that TV 2 and Norrbom Vinding, when collecting personal data - including the collection of information about sexual relationships - for use in the investigation in question did not have the necessary security to be authorized in Article 9 of the Data Protection Regulation to process the collected personal data .

Based on the information in the case, the Danish Data Protection Authority must therefore assume that TV 2 and Norrbom Vinding have not attempted to limit the collection, so that the collection of information covered by Article 9 only concerned persons for whom TV 2 and Norrbom Vinding had grounds to process information whether, because the persons in question (still) had such an association with TV 2 that a legal claim (in the form of an employment or contractual sanction) could become relevant, cf. the data protection regulation's article 9, subsection 2, letter f.

In that context, TV 2 and Norrbom Vinding have invited TV 2's current and former employees to come forward with information covered by Article 9 of the Data Protection Regulation about a larger group of people than TV 2 and Norrbom Vinding would

necessarily have the necessary basis to process such information about.

In this connection, the Danish Data Protection Authority notes that it appears that information could be reported, including information covered by Article 9, about persons who were no longer employed by or associated with TV 2.

Based on this, the Data Protection Authority finds that TV 2's and Norrbom Vinding's approach to the collection of personal data was not in accordance with Article 25 of the Data Protection Regulation, cf. also Article 5 of the Regulation.

Taking into account that the complainant continued to be associated with TV 2, the Data Protection Authority finds no basis for overriding TV 2's and Norrbom Vinding's assessment of the necessity to process information about the complainant's sexual relationship in order to be able to establish a legal claim, cf. the data protection regulation's article 9, subsection . 2, letter f.

Regardless of the fact that the Danish Data Protection Authority generally finds the organization of the investigation – and the resulting collection of personal data – to be criticised, the Danish Data Protection Authority does not find grounds to criticize TV 2's and Norrbom Vinding's processing of information about the complainant's sexual relationship.

## 5. TV 2's and Norrbom Vinding's fulfillment of the obligation to provide information

### 5.1. The parties' comments

TV 2 and Norrbom Vinding have stated that it is both TV 2's and Norrbom Vinding's opinion that the duty to provide information according to Article 14 of the Data Protection Regulation has been observed in relation to complaints, and that the complainant (and the complainant's lawyer) have received sufficient information that the information about complaints; what information was processed; and how the information was processed.

In this connection, TV 2 and Norrbom Vinding have stated that, in relation to the investigation, a mailbox was set up to which reports could be sent. The mailbox was monitored by Norrbom Vinding, and Norrbom Vinding was therefore in charge of the contact with the complainant and the complainant's lawyer. It is TV 2's and Norrbom Vinding's opinion that, given the way in which the investigation was organised, it was natural that Norrbom Vinding fulfilled the disclosure obligation for both TV 2 and Norrbom Vinding. It would appear unnatural and unnecessarily formalistic if both Norrbom Vinding and TV 2 had to fulfill the obligation to provide information independently.

The complainant was first contacted by Norrbom Vinding on 18 November 2020 via SMS, whereby the complainant was asked to provide his email address.

The complainant provided his email address and on the same day (November 18, 2020) received an email with a letter from

Norrbom Vinding and a copy of the process description that TV 2 and Norrbom Vinding had prepared for use in the investigation. The process description showed how personal data was processed as a result of the investigation. The email's autosignature also revealed the following:

"Norrbom Vinding processes personal data in connection with our advice and other legal assistance. Further information on data protection and our processing of personal data is available here."

In the above auto-signature, a link appeared which led to Norrbom Vinding's data protection policy, which appears on Norrbom Vinding's website. As a result of the present case, the data protection policy has been presented to the Danish Data Protection Authority.

According to Norrbom Vinding, the data protection policy contains the information that the regulation's article 14 requires that the data subject - including complainants - must have when information about the person in question is processed. Norrbom Vinding notes in this connection that the link also appeared in all emails that Norrbom Vinding sent to the complainant and the complainant's lawyer respectively.

TV 2 and Norrbom Vinding have also stated that it is normal for the obligation to provide information to be fulfilled by, for example, an e-mail containing a link to where the information according to Article 14 can be found on a website. The following appears from Danske Advokater's "Guide on the handling of personal data in lawyers' case processing", page 14, regarding this:

"The obligation to provide information can be fulfilled by the lawyer inserting in his auto-signature a link to a text on the law firm's website that describes the general conditions that include all processing (contact information, deletion policy, rights, etc.)."

TV 2 and Norrbom Vinding have stated that the data protection policy must also be seen in the context of the information that the complainant and the complainant's lawyer received in connection with the correspondence leading up to the initial meeting on 27 November 2020.

Norrbom Vinding and TV 2 have stated that the complainant's lawyer on 20 November 2020 per e-mail received an elaboration of the purpose of the study, of which, among other things, appeared:

"With reference to your letter of 19 November 2020, I hereby clarify that the investigation my client has initiated is basically intended to give former and current employees of TV 2 Danmark A/S (hereafter TV 2) the opportunity to to report behavior



(performed by employees of or business partners to TV 2) which according to the legislation must be considered an offensive act (in the working environment law primarily defined as harassment, sexual harassment or bullying).

The purpose of the investigation, as is clear from the prepared process description, is to clarify whether it can be established in terms of evidence that behavior has been carried out which, according to the legislation at the time in question, must be considered offensive."

The complainant and the complainant's lawyer were also given an overall description of the content of the two reported episodes prior to the meeting on 27 November 2020.

At the meeting on 27 November 2020, the purpose, process and content of the investigation were also discussed and explained orally. In this connection, TV 2 and Norrbom Vinding have presented (parts of) the minutes from the meeting in question.

In connection with this, TV 2 and Norrbom Vinding have referred to the data protection regulation's preamble consideration no. 39 and no. 60 as well as the Article 29 group's "Guidelines for transparency according to regulation 2016/679", from which it appears that transparency is a well-established part of the EU - the right, and that it is about creating trust in the processes that affect citizens by giving them the opportunity to understand and, if necessary, challenge these processes.

Reference is also made to the Data Protection Authority's "Guidance on the rights of data subjects", page 5, from which the following appears:

"The purpose of the data subject's rights is, among other things, 1) to create transparency about who processes information about the data subject, 2) to give the data subject the opportunity to gain insight into what information is processed about them and 3) to give the registered the opportunity to demand that incorrect information be deleted, corrected, etc.

In TV 2's and Norrbom Vinding's view, the primary purposes of the duty to provide information must therefore be that the data subject must be able to understand that personal data about him/her is being processed; why personal data about the person concerned is processed; and how personal data about that person is processed.

It is TV 2's and Norrbom Vinding's opinion that the complainant (and the complainant's lawyer) received information about the processing of information about complaints, which enabled him to fully understand what was being investigated, including how information about him was processed.

Finally, it is TV 2's and Norrbom Vinding's opinion that TV 2 could in all cases fail to fulfill the obligation to provide information,

cf. the data protection regulation's article 14, subsection 5, letter a, since the complainant – via Norrbom Vinding – was aware of the information that the complainant was required to have pursuant to Article 14, subsection 1-4.

In conclusion, TV 2 and Norrbom Vinding note that in employment law cases - both in the private and public sector - it is usual practice that when the employee is called for a formal interview, only the overall themes are informed before the interview, but only during the meeting it is presented to more detailed content of the conditions that form the basis for the invitation.

In relation to the duty to provide information, the complainant has stated that at no time – neither at his summons nor during the later meeting on 27 November 2020 – was the complainant made aware of the treatment centers and the legal basis that TV 2 and Norrbom Vinding have stated as the background for the execution of the study.

In relation to this, the complainant has elaborated that he has never received any information or information that it was obligations according to working environment legal regulations, the Equal Treatment Act or the Discrimination Act, which TV 2 and Norrbom Vinding refer to, that were the basis for the processing of information about him. Nor was the complainant's lawyer made aware of the legal basis for the investigation at any time.

The complainant has also stated that at no time did he receive complete information about the progress of the investigation, and that he was therefore not aware of what he participated in/was involved in when he agreed to participate in the meeting with TV 2 and Norrbom Vinding on 27 November 2020.

Finally, the complainant has stated that he and his lawyer only received information that concerned him, including particular information about the reported episodes, because the complainant's lawyer insisted on this.

## 5.2. The Danish Data Protection Authority's assessment of TV 2's and Norrbom Vinding's fulfillment of the obligation to provide information

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

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.

According to the regulation's article 14, subsection 2, the data controller must, in addition to the information that appears in subsection 1, provide 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.

Of the regulation's article 14, subsection 3, it also follows that the data controller must provide the information pursuant to subsection 1 and 2:

within a reasonable period of time after the collection of the personal data, but no later than within one month, taking into account the specific conditions under which the personal data is processed,

if the personal data is to be used to communicate with the data subject, at the latest at the time of the first communication with the data subject, or

if the personal data is intended to be passed on to another recipient, at the latest when the personal data is passed on for the

first time.

According to the data protection regulation, article 12, subsection 1, the data controller takes appropriate measures to provide any information as referred to in i.a. the regulation's article 14 on processing to the data subject in a concise, transparent, easily understandable and easily accessible form and in clear and simple language. The information must also be provided in writing or by other means, including, if appropriate, electronically. When the data subject requests it, the information can be given orally, provided that the identity of the data subject can be confirmed by other means.

It is the opinion of the Data Protection Authority that, in the specific case, TV 2 and Norrbom Vinding could organize the cooperation in such a way that Norrbom Vinding could fulfill the obligation to provide information pursuant to Article 14 of the regulation on behalf of TV 2 and Norrbom Vinding itself.

However, in the Danish Data Protection Authority's assessment, setting up a collaboration like this places additional demands on the transparency and comprehensibility of the duty to provide information in particular.

It is the Danish Data Protection Authority's assessment that TV 2 and Norrbom Vinding have not observed the obligation to provide information to complainants in accordance with Article 12, paragraph 1 of the Data Protection Regulation. 1, and Article 14.

In relation to Article 14 of the regulation, the Danish Data Protection Authority has emphasized that the complainant did not receive sufficient information for TV 2's and Norrbom Vinding's obligations under Article 14, subsection 1-4, can be considered fulfilled.

In this connection, the Data Protection Authority has emphasized that the process description, which the complainant received via e-mail on 18 November 2020, was not addressed to the complainant, but rather to the persons who reported information to Norrbom Vinding and TV 2. This can be seen, among other things, .a. know that the process description begins with the sentence: "What is the further process when you have sent a report or inquiry to Norrbom Vinding and TV 2?"

The process description thus only contained information on how reports received and information about the reporting parties in question were to be handled, just as the process for how Norrbom Vinding and TV 2 would investigate reported matters was outlined.

Regardless of the fact that the process description contained general information about the investigation process, it did not contain information which concerned or addressed the complainant specifically, or which otherwise could clarify to the

complainant the purpose of the investigation, including why information had been collected about him as part of the investigation .

The process description thus did not contain information that could constitute a notification according to Article 14 of the Data Protection Regulation in relation to complaints - or in relation to others who were the subject of the investigation.

The Danish Data Protection Authority has also emphasized that Norrbom Vinding's data protection policy, which was referred to via a link in Norrbom Vinding's email auto-signature, could, in the Danish Data Protection Authority's assessment, neither independently nor in conjunction with the process description, be considered to constitute an Article 14 notification in relation to complaints.

When assessing this, emphasis is placed on the fact that the data protection policy has been drawn up in a general and general manner, and that the policy only in short, general terms affects the basis(s) of processing that underlies Norrbom Vinding's processing of personal data in general - and thereby neither TV 2's or Norrbom Vinding's processing of information about complaints, including information about the complainant's sexual relationship.

As a result, complainants received e.g. not sufficient information about the legal basis for the processing, cf. Article 14, subsection 1, letter c, since Norrbom Vinding in the initial inquiries to complainants only referred to what according to the "legislation" can be considered offensive actions.

In the Data Protection Authority's view, it is irrelevant in this connection that the complainant's lawyer on 20 November 2020 received a (partially) elaborating email in relation to the legal basis, from which it appeared that "... which according to the legislation must be considered an offensive act (in the occupational health and safety law primarily defined as harassment, sexual harassment and bullying)". The Danish Data Protection Authority notes in this connection that the information was given at the request of the complainant's lawyer - and thus not actively by either Norrbom Vinding or TV 2 - just as the legal basis was only clarified to a lesser extent.

The extent of the processing, the intrusive nature and the age of the personal data place, in the opinion of the Danish Data Protection Authority, stricter requirements for the clarity and transparency of the information.

In the Data Protection Authority's view, this implies, among other things, that complainants should have received detailed information in accordance with Article 14, subsection 2, letter b, so that the complainant had the opportunity to familiarize himself with which legitimate interests TV 2 and Norrbom Vinding based the processing of information about him on, just as the

complainant should have received information about the balance of interests that TV 2 and Norrbom Vinding had carried out in accordance with the data protection regulation article 6, subsection 1, letter f.

The Danish Data Protection Authority notes that a consequence of the missing and/or insufficient information about the legal basis and the related balancing of interests, i.a. was that the complainant was prevented from making use of his right to object under the data protection regulation's article 21, paragraph 1.

Finally, the Danish Data Protection Authority emphasized that the subsequent email correspondence with the complainant's lawyer only contained a (minor) elaboration of the legal basis. The email correspondence, which mainly concerned practical considerations in relation to the meeting on 27 November 2020, did not give the complainant any further information about how information about him was processed and what legitimate interests etc. which formed the basis of the study.

In summary, it is the Danish Data Protection Authority's assessment that the process description, Norrbom Vinding's data protection policy and the subsequent e-mails to the complainant's lawyer, neither collectively nor individually meet the requirements for the duty to provide information according to Article 14 of the Data Protection Regulation.

In relation to the Data Protection Regulation, Article 12, subsection 1, emphasized that the information was not given in clear and simple language, as it i.a. was unclear what the precise purpose of the investigation was, and that it was therefore not clear what possible consequences the investigation could have.

Overall, it is the Danish Data Protection Authority's assessment that Norrbom Vinding's approach cannot be considered to be in accordance with the requirement in Article 12, paragraph 1 of the Data Protection Regulation. 1, that any information pursuant to Article 14 must be provided in a concise, transparent, easily understandable and easily accessible form and in clear and simple language.

In conclusion, it is noted that since neither the complainant nor the complainant's lawyer received information as required by Article 14 of the regulation, TV 2 could not fail to fulfill the obligation to provide information pursuant to Article 14, paragraph 5, letter a.

## 6. The Danish Data Protection Authority's overall assessment

In summary, the Danish Data Protection Authority is of the opinion that TV 2 pursued a legitimate interest in connection with the launched investigation.

The Danish Data Protection Authority finds no basis for overriding TV 2's and Norrbom Vinding's assessment, according to

which it was necessary to collect information on a wide range of people in order to investigate (the development of) the culture at TV 2, and that TV 2's legitimate interest in this took precedence over those registered, including the complainant's interests. It is against this background that the Danish Data Protection Authority's assessment is that TV 2 and Norrbom Vinding could collect information on the basis of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter f.

However, it is the Danish Data Protection Authority's assessment that TV 2 and Norrbom Vinding, when collecting personal data - including the collection of information about sexual relationships - for use in the investigation in question did not have the necessary security to be authorized in Article 9 of the Data Protection Regulation to process the collected personal data .

Based on this, the Data Protection Authority finds that TV 2's and Norrbom Vinding's approach to the collection of personal data was not in accordance with Article 25 of the Data Protection Regulation, cf. also Article 5 of the Regulation.

It is the Danish Data Protection Authority's assessment that the processing of information about complaints, including information about the complainant's sexual relationship, could not – as claimed by TV 2 and Norrbom Vinding – be carried out within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter c, section 7, subsection of the Data Protection Act. 2, cf. the data protection regulation, article 9, subsection 2, letter b, or section 12 of the Data Protection Act. Taking into account that the complainant continued to be connected to TV 2, the Data Protection Authority does not, on the other hand, find grounds to override TV 2's and Norrbom Vinding's assessment of the necessity to process information about the complainant's sexual relationship in order to be able to establish a legal claim, cf. Article 9 of the Data Protection Regulation, PCS. 2, letter f.

Regardless of the fact that the Danish Data Protection Authority generally finds the organization of the investigation – and the resulting collection of personal data – to be criticised, the Danish Data Protection Authority does not find grounds to criticize TV 2's and Norrbom Vinding's processing of information about the complainant's sexual relationship.

Finally, the Danish Data Protection Authority is of the opinion that TV 2 and Norrbom Vinding have not notified complaints in accordance with Article 12 and Article 14 of the Data Protection Regulation.

Collectively, TV 2's and Norrbom Vinding's collection of personal data and non-observance of the disclosure obligation give the Data Protection Authority grounds for expressing serious criticism.

[1] The article Sexism investigation on TV 2 will also be able to include old cases which were published on [journalisten.dk](http://journalisten.dk) on 24 September 2020.

- [2] TV2's and Norrbom Vinding's statement of 22 April 2021 to the Norwegian Data Protection Authority, page 5 f.
- [3] The Bar Association's guidance "Lawyer's processing of personal data", revised February 2019, page 16.
- [4] Danske Advokater's "Guide on handling personal data in lawyers' case processing", page 5.
- [5] The Norwegian Working Environment Authority's executive order no. 1234 of 29 October 2018 on the execution of the work, with later amendments.
- [6] The Norwegian Working Environment Authority's Executive Order No. 1406 of 26 September 2020 on the mental working environment.
- [7] Korfits Nielsen and Lotterup, 2020, page 1019
- [8] U.2016.3097V and the Vestre Landsret judgment of 12 May 2009 in case 2528-08.
- [9] LFF No. 68 of 25 October 2017.
- [10] U.2019.3302Ø
- [11] Legislative proposal no. L 68, Proposal for an Act on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (the Data Protection Act).
- [12] The UK Data Protection Authority.