

Publication of image on a company's Instagram profile

Date: 01-07-2020

Decision

Private companies

Criticism

Complaint

Pictures and video

Basis of treatment

It was against the rules when a company published a picture of complaints on the company's Instagram profile.

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Summary

The Danish Data Protection Authority has made a decision in a case where a citizen has complained that Sophienberg Slot v/Nomada Group ApS (Sophienberg Slot) has published a picture of him on the company's Instagram profile.

The Danish Data Protection Authority found in the decision that Sophienberg Castle was not entitled to publish the image of complaints on the company's Instagram profile.

In connection with the case, Sophienberg Castle stated that the publication of the image was based on a verbal permission, but the company could not demonstrate to the Danish Data Protection Authority that a consent had been obtained which fulfilled the validity conditions in the data protection regulation.

In addition, the Data Protection Authority assessed that Sophienberg Castle's interest in publishing the image of the complainant did not precede the complainant's interest in the image not being published on Instagram. In this connection, the supervisory authority emphasized that complainants could reasonably expect that the image would not be exposed on the internet in a commercial context. The Danish Data Protection Authority included in the assessment that publication on the internet implies disclosure to a wide circle of people.

Decision

The Danish Data Protection Authority hereby returns to the case, where (complainant) complained to the supervisory authority on 29 October 2019 that Sophienberg Slot v/Nomada Group ApS (Sophienberg Slot) has published a picture of him on the

company's Instagram profile.

The Danish Data Protection Authority must note that the Danish Data Protection Authority can only take a position on data protection legal issues. The Danish Data Protection Authority has therefore not taken a position on marketing law issues with this decision.

## 1. Decision

After a review of the case, the Danish Data Protection Authority finds that there are grounds for expressing criticism that Sophienberg Castle's processing of personal data has not taken place in accordance with the rules in Article 6 of the Data Protection Regulation[1].

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

## 2. Case presentation

It appears from the case that the complainant was married at Sophienberg Castle and that Sophienberg Castle subsequently published a picture of the complainant from the wedding on the company's Instagram profile.

### 2.1. Complainant's comments

The complainant has generally stated that Sophienberg Slot has used a picture of him for marketing on the company's Instagram profile without his consent, and that the picture is not a mood picture, as it was taken close to him and his spouse in a very personal moment, and that it only he and his spouse appear in the picture.

The complainant has also stated that he has informed Sophienberg Castle that the company has not received permission to use the image on Instagram, to which Sophienberg Castle has not responded.

### 2.2. Sophienberg Castle remarks

Sophienberg Castle has stated that the company has posted a mood picture of complaints on the company's Instagram profile, that there is no information about the people appearing in the picture, that the picture was taken on private land and that it was not a secret event .

In this connection, Sophienberg Castle has stated that the photo was taken and published with "verbal permission" from the couple.

Sophienberg Castle has also stated that the purpose of the publication was to share a happy event, and that the image has now been removed from the company's Instagram profile.

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

It appears from the information in the case that Sophienberg Castle has published a wedding photo of complaints on the company's Instagram profile.

Processing, including publication of personal data, can take place if one of the conditions in the data protection regulation, article 6, subsection 1, letter a-f, is fulfilled.

It appears from Article 6, subsection 1, letter a, that processing can take place if the data subject has given consent to the processing of information about him/her for one or more specific purposes.

Consent is understood as any voluntary, specific, informed and unequivocal expression of intent by the data subject, whereby the data subject, by declaration or clear confirmation, consents to the processing of information about the person concerned, cf. Article 4, No. 11 of the Data Protection Regulation.

If processing is based on consent, the data controller must be able to demonstrate that the data subject has given such consent, cf. the data protection regulation, article 7, subsection 1.

According to the data protection regulation, article 6, subsection 1, letter f, processing of personal data may also take place 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 take precedence ( the balancing of interests rule).

Sophienberg Castle has stated that verbal permission has been obtained for the publication, which the complainant disputes.

After this, the Data Protection Authority assumes that Sophienberg Slot has pointed to the data protection regulation's article 6, subsection 1, letter a, as a legal basis for processing.

The Danish Data Protection Authority finds that Sophienberg Castle has not demonstrated to the Danish Data Protection Authority that a consent has been obtained that meets the validity conditions in the data protection regulation, and the data protection authority assesses on this basis that publication of the image of the complainant was not in accordance with the data protection regulation's Article 6, subsection . 1, letter a.

The Danish Data Protection Authority also finds that the image of the complainant could not be published within the framework of Article 6, subsection 1, letter f.

The Danish Data Protection Authority thus assesses that Sophienberg Castle's interest in publishing the image of the

complainant did not precede the complainant's interest in the image not being published on Instagram. The Danish Data Protection Authority has thereby emphasized that complainants could reasonably expect that the image was not exposed on the internet in a commercial context. In this connection, the supervisory authority has placed emphasis on the fact that publication on the internet implies disclosure to a wide range of persons.

Against this background, the Danish Data Protection Authority finds grounds to express criticism that Sophienberg Castle's publication of the image of the complainant has not been done in accordance with the data protection regulation's article 6, subsection 1, letters a and f.

The Danish Data Protection Authority has noted that Sophienberg Castle has subsequently deleted the image.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).