

# Supervision of the processing of personal data in the Danish Prison and Probation Service

Date: 12-12-2018

## Decision

### Public authorities

On the basis of an inspection by the Danish Prison and Probation Service, the Danish Data Protection Agency concludes, among other things, that no final decision had been made on the distribution of data responsibility.

J.nr. 2018-421-0001

## Summary

In April 2018, the Danish Data Protection Agency carried out a planned inspection at the Danish Prison and Probation Service with a focus on the data subjects' rights, which is found in section 3 of the Law Enforcement Act.

On the basis of the inspection visit, the Danish Data Protection Agency has concluded that at the time of the inspection visit to the Danish Prison and Probation Service, including the Directorate of Correctional Services, no final decision had been made on the distribution of data responsibility.

Furthermore, the Danish Data Protection Agency has concluded that the Danish Prison and Probation Service has not fully complied with the requirements for the duty to provide information and notification of insight.

## Decision

At the request of the Danish Data Protection Agency, the Directorate of Corrections in the spring of 2018, in connection with the inspection visit, filled in a questionnaire and submitted this together with additional material to the inspection. The inspection visit took place on 4 April 2018.

Following the audit of the Danish Prison and Probation Service, the Danish Data Protection Agency finds reason to conclude: That the Danish Prison and Probation Service, including the Directorate of Correctional Services, had not taken a final position on the distribution of data responsibility at the time of the inspection.

That the Directorate of Correctional Services has not complied with the requirements of the Law Enforcement Act, section 13, subsection. 1 and 2 (duty to provide information).

That the Directorate of Correctional Services has not complied with the requirements of the Law Enforcement Act, section 15, subsection. 2 (notice of insight).

Overall, the Danish Data Protection Agency finds reason to express serious criticism that the Danish Prison and Probation Service has not complied with the requirements of the Law Enforcement Act in relation to the above points.

At the request of the Danish Data Protection Agency, the Danish Prison and Probation Service stated on 19 October 2018 that no final decision has yet been made on the distribution of data responsibility in the Danish Prison and Probation Service.

The Danish Prison and Probation Service must therefore, as soon as possible, take a final decision on which processing of personal data under the Law Enforcement Act, for which the Danish Prison and Probation Service is data responsible.

In this connection, the Directorate of Correctional Services is asked to send the Danish Data Protection Agency a statement of the final distribution of data responsibility, including the distribution of data responsibility throughout the Danish Prison and Probation Service. The information is requested to be received by the Danish Data Protection Agency no later than 16 January 2019.

The Danish Prison and Probation Service is also asked to send an account of what steps have been taken - or will be taken - to ensure that the directorate complies with the Law Enforcement Act in future in relation to points 2 and 3 on the duty to provide information and right of access. The statement is also requested to be received by the Danish Data Protection Agency no later than 16 January 2019.

A more detailed review of the Danish Data Protection Agency's conclusions follows below.

#### 1. Data responsibility in the Prison and Probation Service

The Danish Data Protection Agency announced its audit with a warning letter of 19 February 2018.

In the letter, the Danish Data Protection Agency had stated that the Authority assumed that the Danish Prison and Probation Service was data responsible for the processing of personal data in the various institutions belonging to the Danish Prison and Probation Service, including prisons, prisons, etc., and that the Directorate .

The Danish Prison and Probation Service did not contact the Danish Data Protection Agency about this and sent a completed questionnaire with accompanying material to the Authority.

However, the responses received and the accompanying material indicated that the Danish Prison and Probation Service had more data controllers in relation to the processing of personal data about clients.

During a later actual inspection visit on 4 April 2018, the Directorate of Correctional Services stated that the construction for the distribution of data responsibilities in the Danish Prison and Probation Service was not yet in place. In this connection, the

directorate stated that in particular the question of who is data responsible for the processing of personal data about clients, which takes place in the individual institutions, remains unresolved. During the inspection visit, the Directorate of Correctional Services stated that the directorate expected that the construction for the distribution of data responsibility would be in place before the summer of 2018.

The submitted material was then reviewed, and the Danish Prison and Probation Service confirmed that the directorate is data responsible for the treatments described in the submitted examples and templates, with the exception of one example, where the question still persisted. In this connection, the Danish Data Protection Agency stated that the latter example would not be included in the Danish Data Protection Agency's supervision.

At the request of the Danish Data Protection Agency, the Directorate of Corrections on 19 October 2018 - as mentioned - stated that no final decision has yet been made on the distribution of data responsibilities in the Danish Prison and Probation Service.

The Danish Data Protection Agency must note that the Authority finds it extremely worrying and far from satisfactory that the Danish Prison and Probation Service did not take a final position on the distribution of data responsibility at the time of the inspection visit, and that no final decision was made 6 months after the inspection visit. of the fact that the Directorate of Correctional Services stated during the inspection visit that the directorate expected that the distribution would be in place before the summer of 2018.

In connection with the audit, the Danish Data Protection Agency has been able to establish that the lack of a position on data responsibility, e.g. has meant that the Danish Prison and Probation Service, including the Directorate of Correctional Services, has not been able to state the identity (es) of the correct data controller (s) in various messages to the data subjects.

#### Duty to provide information

##### 2.1. The duty to provide information pursuant to section 13 (1) of the Law Enforcement Act 1

The Law Enforcement Act, section 13, subsection 1, requires the data controller to make a number of information available to the data subject.

This is the following information:

Identity and contact information of the data controller.

Contact information for the data protection adviser and information about its function in relation to the data subjects.

The purposes of the processing for which the personal data are to be used.

The right to lodge a complaint with a supervisory authority and contact details of the supervisory authority.

The data subject's rights under Chapters 5 and 6 of the Act.

The right to have the competent supervisory authority exercise the data subject's rights in relation to the competent authorities'

decisions on omission, postponement, restriction or refusal pursuant to Chapters 4-6, cf. section 40 (1) of the Act. 1, No. 10.

As an example, the Directorate of Corrections has sent a text that was publicly available on [www.kriminalforsorgen.dk](http://www.kriminalforsorgen.dk) at the time of the inspection visit.

#### 2.1.1. Identity and contact information of the data controller

It appears from the example submitted that the "Prison and Probation Service" processes information about clients, relatives, visitors, witnesses and victims.

During the inspection visit, the Directorate referred to the outstanding situation regarding the data responsibility structure in the Danish Prison and Probation Service.

In view of the ambiguities in this regard, the Danish Data Protection Agency cannot assess how the data responsibility structure should have been described in the example.

However, the Data Inspectorate is of the opinion that - if there are several data controllers for the processes described - it must appear from the example which authority is data controller for which processes.

#### 2.1.2. Information on the data subject's rights

The example does not provide guidance on the data subject's right to restriction.

In addition, the example shows that the data subject can have his information deleted if the information is not relevant to the execution of a sentence.

The Danish Data Protection Agency is of the opinion that the description of the right to deletion is misleading, as it may give the data subject the impression that he or she can request deletion to a more limited extent than is the case.

#### 2.1.3. The right to let the Danish Data Protection Agency exercise the data subject's rights

The submitted example does not contain a description of the right to let the Danish Data Protection Agency exercise the data subject's rights.

#### 2.1.4. Information that is not required under section 13 (1) of the Act. 1

The example contains i.a. information that the processing of the data subject's information takes place in accordance with the rules of the Law Enforcement Act.

The Law Enforcement Act, section 13, subsection 1, (contrary to section 13, subsection 2) does not require the data controller in connection with his duty to provide information to provide information about the legal basis for the processing.

If the data controller still chooses to provide the information, the data controller should provide information about the correct legal basis.

It is the Data Inspectorate's assessment that the law enforcement authorities' authority to process personal data must in principle be found elsewhere than in the Law Enforcement Act.

The Directorate of Correctional Services has stated that the correct legal basis is the Execution of Sentences Act, the Administration of Justice Act and also a number of other laws, etc.

#### 2.1.5. Summary

It is the Data Inspectorate's assessment that the example does not live up to the requirements of section 13 (1) of the Law Enforcement Act. 1, Nos. 1, 5 and 6.

#### 2.2. The duty to provide information pursuant to section 13 (1) of the Law Enforcement Act 2

The Law Enforcement Act, section 13, subsection 2, requires that the data controller, when necessary for the data subject to be able to safeguard his interests, must at least notify the data subject of the following:

The legal basis for the treatment.

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

The categories of any recipients of the personal data, including in third countries or international organizations.

Additional information if necessary, in particular if personal data are collected without the knowledge of the data subject.

The Directorate of Correctional Services has submitted a template and three concrete examples of a notification pursuant to section 13 (1) of the Law Enforcement Act. 2.

##### 2.2.1. The legal basis for the treatment

The template does not contain a description of the legal basis, and the three examples contain information that the processing of the data subject's information takes place in accordance with the rules of the Law Enforcement Act.

It is thus the opinion of the Danish Data Protection Agency that the submitted template and the three examples do not contain

information about the legal basis for the processing.

#### 2.2.2. Period of storage

The three examples do not contain a description of the period of storage or the criteria for determining the period of storage.

On the other hand, the template states that the data subject's behavior, etc. is continuously assessed and that the registration is revoked if, after a period, it is assessed that there is no cause for concern.

It is the Data Inspectorate's assessment that the wording in the template does not meet the requirement in section 13 (1) of the Act. 2, no. 2, as the description of the criteria is not sufficiently precise.

#### 2.2.3. The categories of recipients of the personal data

It appears from the template that the information is shared with the info house located in the police district where the data subject lives. It also appears from the template that the info house is an interdisciplinary authority collaboration between municipalities, the police and the Danish Prison and Probation Service.

When asked about this, the Directorate of Correctional Services has stated that the information house is not an independent recipient, but that it is a collaboration in which connection the municipalities, the police and possibly other institutions in the Danish Prison and Probation Service receive the information.

It is the opinion of the Danish Data Protection Agency that the description in this template is not sufficiently accurate, as it cannot be deduced from the description to a sufficient degree that the recipients, among other things, are the municipalities and the police and thus not the info house.

#### 2.2.4. Information pursuant to section 13, subsection 1

The Law Enforcement Act, section 13, subsection 2, relates (contrary to § 13, subsection 1) to the situations where the data controller must specifically inform the data subject in order to ensure the data subject a fair processing of the information.

It is the Data Inspectorate's opinion that in cases where the data controller must specifically inform the data subject pursuant to section 13 (1) of the Act. 2, the data controller will at the same time have to provide the information mentioned in section 13 (1) of the Act. 1, available to the data subject. It can e.g. This can be done by enclosing a booklet with the information, by writing it in the message itself or by e.g. to insert a direct link to the website address where the information appears.

The "Prison and Probation Service" is stated as the data controller in the template and the three examples. If the Danish Prison and Probation Service is data responsible for the described treatments, this will have to appear from the submitted

texts.

In addition, the template does not contain contact information for the data protection adviser and information about its function in relation to the data subjects, just as the template's description of the data subject's rights is written in accordance with the Personal Data Act and not the Law Enforcement Act.

#### 2.2.5. Summary

It is the Data Inspectorate's opinion that the template does not comply with the requirements of section 13 (1) of the Law Enforcement Act. 2, nos. 1-3 and § 13, para. 1, Nos. 1, 2 and 5.

In addition, the Danish Data Protection Agency is of the opinion that the three examples do not comply with the requirements of section 13 (1) of the Law Enforcement Act. 2, nos. 1-2 and § 13, para. 1, No. 1.

The right of access

#### 3.1. Communication of insights

The rules on the data subject's right of access are set out in Chapter 5 of the Law Enforcement Act.

Pursuant to section 15, subsection 1, the data subject has the right to receive the data controller's confirmation of whether personal data about the person in question is being processed.

If the data controller processes personal data about the data subject, the data controller must give the data subject access to the personal data and a notification with a number of data, cf. section 15 (1) of the Act. 2.

This is the following information:

The purposes and legal basis of the treatment.

The affected categories of personal data.

The recipients or categories of recipients to whom the personal data have been transferred, including in particular recipients in third countries or international organizations.

If possible, the intended period of storage or, if that is not possible, the criteria used to determine that period.

The right to request the data controller to rectify or delete personal data or to limit the processing of the data subject.

The right to lodge a complaint with the supervisory authority and the contact details of the supervisory authority.

What personal information is covered by the processing, and any available information on where it comes from.

Prior to the inspection visit, the Danish Data Protection Agency had asked the Danish Prison and Probation Service to submit

two examples of notification of insight.

The Danish Prison and Probation Service only provided an example and has justified this on the grounds that the directorate had only provided insight into a case. In addition, the directorate has stated that requests from data subjects most often relate to access to documents under the Public Administration Act.

After a review of the submitted example, the Danish Data Protection Agency can state that the example does not contain information about the legal basis for the processing (no. 1), the affected categories of personal data (no. 2), and the intended period of storage or, if this is not possible, the criteria used to determine this period (No 4). In addition, the example contains - just as in the notification pursuant to section 13, subsection 2 - an inaccurate description of what it means for the info house to receive the data subject's information (no. 3).

In the example provided, the Directorate of Correctional Services has also instructed the data subject that the Danish Data Protection Agency can exercise the data subject's rights.

In this connection, the Danish Data Protection Agency must note that the data subject's right to have the Data Inspectorate exercise the data subject's rights pursuant to section 40 (1) of the Act, no. 10, does not apply when the data subject is notified of full insight, which (according to the information) was the case here.

It is then the Data Inspectorate's assessment that the submitted example does not comply with the requirements of section 15 (1) of the Law Enforcement Act, no. 2, Nos. 1-4.

### 3.2. Postponement, restriction or denial of insight

It follows from the Law Enforcement Act § 16, paragraph 1, that the data controller may postpone, limit or refuse to grant insight if the data subject's interest in gaining knowledge of the information is found to should give way to the considerations of public interest mentioned in section 14 (1) of the Act, no. 1.

A decision that the data subject's access is suspended, restricted or denied shall be notified to the data subject in writing and shall be accompanied by a statement of reasons and a complaint guide, and the decision shall include information on the data subject's right to exercise the data subject's rights. § 40, sec. 1, no. 10. This follows from the Law Enforcement Act § 16, para. 2.

The Danish Prison and Probation Service has stated that section 16 (1) of the Law Enforcement Act, no. 1, has been used to deny access pursuant to section 15 of the Act, and the directorate has submitted an example of such a decision.



In the example provided, the Directorate of Correctional Services has referred to the fact that the data subject's interest in obtaining the information must give way to considerations of public interests, cf. section 16 (1) of the Law Enforcement Act. 1, cf. § 14, para. 1 No. 2.

It follows from the Law Enforcement Act, section 14, subsection. 1 no. 2, that the considerations which may justify a denial of insight, e.g. is to avoid prejudice to the prevention, detection, investigation or prosecution of criminal offenses or the enforcement of criminal sanctions.

It is the Data Inspectorate's assessment that the submitted example complies with the requirements of section 16 (1) of the Law Enforcement Act. 2. It is, however, the Data Inspectorate's opinion that the Directorate of Correctional Services should have referred to which of the considerations in section 14 (1) of the Act. 1, no. 2, which in the specific example justified the refusal of insight, just as the description of the right to let the Danish Data Protection Agency exercise the data subject's rights could advantageously be clarified.

#### 4. Right to rectification, erasure and limitation of treatment

The data subject's right to rectification, deletion and limitation of processing is stated in Chapter 6 of the Law Enforcement Act. It follows from the Law Enforcement Act § 17, paragraph. 1, that the data controller must correct information that turns out to be incorrect. In addition, it is clear from the same provision that the data controller must similarly complete incomplete information if this can be done without jeopardizing the purpose of the processing. In addition, the data controller must notify the competent authority from which the data originates of the correction of incorrect personal data.

Pursuant to section 17, subsection 2, the data controller shall, at the request of the data subject, delete information that has been processed in violation of the processing rules in Chapter 3 of the Act, or if it is required to comply with a legal obligation to which the data controller is subject.

It follows from section 17 (1) of the Act. 3, that the data controller must instead of deletion limit the processing of personal data if 1) the accuracy of the personal data is disputed by the data subject and their accuracy or inaccuracy cannot be established or 2) the personal data must be retained as evidence. To the extent that a processing is limited, the data controller notifies the data subject before the restriction is lifted, cf. section 17 (1) of the Act. 4.

If the data controller rejects a request for rectification, deletion or restriction of processing, this must be notified to the data subject in writing and must be accompanied by a justification and a complaint guide, as well as information about the data

subject's right to have the data subject's competent authority exercise rights in accordance with section 40 (1) of the Act. 1, no.

10. This follows from section 17 (1) of the Act. 5.

The Danish Prison and Probation Service has stated that the directorate has announced a refusal of rectification and deletion and has submitted an example of a refusal of rectification and an example of a refusal of deletion.

It is the Data Inspectorate's assessment that the two submitted examples comply with the requirements of section 17 (1) of the Law Enforcement Act. 5. However, the Danish Data Protection Agency is of the opinion that the description in the decision on the right to let the Danish Data Protection Agency exercise the data subject's rights could be clarified to advantage.

## 5. Conclusion and forward-looking initiatives

Following the audit of the Danish Prison and Probation Service, the Danish Data Protection Agency finds reason to conclude:

That the Danish Prison and Probation Service, including the Directorate of Correctional Services, had not made a final decision on the distribution of data responsibility at the time of the inspection.

That the Directorate of Correctional Services has not complied with the requirements of the Law Enforcement Act, section 13, subsection. 1 and 2 (duty to provide information).

That the Directorate of Correctional Services has not complied with the requirements of the Law Enforcement Act, section 15, subsection. 2 (notice of insight).

Overall, the Danish Data Protection Agency finds reason to express serious criticism that the Danish Prison and Probation Service has not complied with the requirements of the Law Enforcement Act in relation to the above points.

At the request of the Danish Data Protection Agency, the Danish Prison and Probation Service stated on 19 October 2018 that no final decision has yet been made on the distribution of data responsibility in the Danish Prison and Probation Service.

The Danish Prison and Probation Service must therefore, as soon as possible, take a final decision on which processing of personal data under the Law Enforcement Act, for which the Danish Prison and Probation Service is data responsible.

In this connection, the Directorate of Correctional Services is asked to send the Danish Data Protection Agency a statement of the final distribution of data responsibility, including the distribution of data responsibility throughout the Danish Prison and Probation Service. The information is requested to be received by the Danish Data Protection Agency no later than 16 January 2019.

The Danish Prison and Probation Service is also asked to send an account of what steps have been taken, or will be taken, to

ensure that the directorate complies with the Law Enforcement Act in future in relation to points 2 and 3 on the duty to provide information and right of access. The statement is also requested to be received by the Danish Data Protection Agency no later than 16 January 2019.

[1] Act No. 410 of 27 April 2017 on law enforcement authorities' processing of personal data with subsequent amendments.