

Regarding Herning Municipality's questions about the workplace's crisis letters and relatives' telephone numbers

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On 23 July 2021, Herning Municipality contacted the Danish Data Protection Agency about the legal basis (legal basis) for processing information about relatives of employees in connection with crisis letters and about the duty to provide information in this regard.

The Danish Data Protection Agency assumes that crisis letters refer to a note on the employee's personnel case or the like, e.g. a list where Herning Municipality's employees can enter - or have - a relative's telephone number entered with a view to the relative being contacted (by the municipality) in the event of an accident involving the employee.

The Danish Data Protection Agency also assumes that Herning Municipality is data responsible for the processing of information about the employee's relatives, ie. that the municipality determines the purpose and aids, and that it is therefore not a treatment that takes place (exclusively) at the request of - and for purposes determined by - the municipality's employees [1].

The information that will be processed about the employee's relatives in this context cannot be assumed to be of such a nature that the information will be covered by Article 9 of the Data Protection Regulation.

It follows from Article 6 of the Data Protection Regulation that the processing of personal data is lawful only if at least one of the following conditions in paragraph 1 of that provision. 1, letters a-f, applies:

The data subject has given consent to the processing of his personal data for one or more specific purposes.

Processing is necessary for the performance of a contract to which the data subject is a party or for the implementation of measures taken at the request of the data subject prior to the conclusion of a contract.

Processing is necessary to comply with a legal obligation incumbent on the data controller.

Processing is necessary to protect the vital interests of the data subject or another natural person.

Processing is necessary for the purpose of performing a task in the interest of society or which falls within the exercise of public authority, which has been imposed on the data controller.

Processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the data subject's

interests or fundamental rights and freedoms requiring the protection of personal data take precedence, in particular if the data subject is a child.

Article 6, paragraph 1 (f) shall not apply to processing operations carried out by public authorities in the performance of their tasks.

In relation to the choice of processing basis, the data controller must always - in the light of the context in which personal data is processed - before the commencement of processing, it must be made clear which processing basis in Article 6 of the Data Protection Regulation is most appropriate.

Herning Municipality has stated that the municipality assesses that the relative's consent in accordance with the Data Protection Ordinance Article 6, paragraph 1, letter a, is the most appropriate basis for treatment. Herning Municipality mentions, however, that obtaining a consent seems very bureaucratic when considering that only information about the relative's telephone number is processed.

The Danish Data Protection Agency agrees that Herning Municipality will, depending on the circumstances, be able to process information about the relative's telephone number on the basis of the relative's consent, cf. Article 6 (1) of the Data Protection Ordinance. 1, letter a.

However, it is also the Data Inspectorate's assessment, which Herning Municipality has also referred to, that it will involve certain difficulties, including that Herning Municipality - to the extent that the municipality is responsible for obtaining consent - must have a legal basis for processing the information necessary to be able to contact the relative and ask for their consent. Furthermore, there is the risk that the employee - if he is responsible for obtaining consent - will never obtain (prior) consent from his relative, e.g. because it's too cumbersome.

As consent is thus hardly a real possibility in practice, Herning Municipality can therefore consider Article 6 (1) of the Data Protection Regulation. 1, letters e and f.

Article 6, paragraph 1, letter f, does not apply, as previously mentioned, to treatments carried out by public authorities as part of the performance of their tasks.

On this restriction on the application by the public authorities of Article 6 (1) of the Data Protection Regulation Article 47 (1) (f) of the Regulation states:

"... As it is up to the legislator to determine by law the legal basis for the processing of personal data by public authorities, this

legal basis should not apply to processing carried out by public authorities in the performance of their tasks ..."

The restriction on the possibility for public authorities to process personal data on the basis of Article 6 (1) of the Data Protection Regulation 1, letter f, must thus be seen in connection with the fact that public authorities should as a rule only process personal data as part of the performance of their tasks if they have been granted the necessary powers by law, in which cases the processing can take place on the basis of Article 6 (1) of the Data Protection Regulation 1, letter e.

However, the Danish Data Protection Agency is of the opinion that there is a narrow space for public authorities to process personal data on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter f.

This will be the case where the processing does not concern the performance of the public authority's tasks, but where the processing is nevertheless necessary in order for the authority to function in a satisfactory and appropriate manner, including in relation to the day - to - day operation of the authority and the activity, which causes the processing of personal data, moreover, is both factual and lawful for the authority to perform.

Herning Municipality's processing of information about the municipality's relatives' relatives is not seen as necessary for Herning Municipality's performance of its tasks as a public authority, as the municipality - regardless of whether the information is processed - will be able to perform its tasks in the manner intended by the legislation. regulates the municipality's activities.

The processing can therefore not take place on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter e.

However, the Data Inspectorate is of the opinion that Herning Municipality's processing of information about the municipality's relatives in the present situation is legal, factual and must be characterized as a (processing) activity that - regardless of whether it is not necessary for the municipality's tasks - can be considered necessary for Herning Municipality to function as a public authority in an appropriate manner, including with a view to safeguarding the interests of its employees.

It is thus the opinion of the Danish Data Protection Agency that Herning Municipality's processing of information about the municipality's relatives in the present situation can take place on the basis of Article 6 (1) of the Data Protection Ordinance. 1, letter f.

In this connection, the Danish Data Protection Agency notes that the application of Article 6 (1) of the Data Protection Regulation 1, letter f, will give the relative the opportunity to request Herning Municipality to delete the information, cf. Article 17 of the Data Protection Regulation, which in theory will not be the case if the processing takes place on the basis of Article 6 (1) of the Regulation. Article 17 (1) (e), the right of erasure under Article 17 of the Regulation does not apply if treatment is

necessary, inter alia. to perform a task in the interest of society or which falls within the exercise of public authority, which has been imposed on the data controller in accordance with Article 17 (1) of the Regulation. 3, letter b.

For the sake of good order, the Danish Data Protection Agency draws Herning Municipality's attention to the fact that any processing of personal data - in addition to having a legal basis - must take place in accordance with the principles for processing personal data in Article 5 of the Data Protection Regulation.

treated lawfully, fairly and in a transparent manner in relation to the data subject ('legality, fairness and transparency');

collected for explicitly stated and legitimate purposes and may not be further processed in a manner incompatible with those purposes ('purpose limitation');

be adequate, relevant and limited to what is necessary for the purposes for which they are processed ('data minimization');

be correct and, if necessary, updated; every reasonable step must be taken to ensure that personal data which are inaccurate in relation to the purposes for which they are processed are immediately deleted or rectified ('accuracy');

stored in such a way that it is not possible to identify the data subjects for a longer period than is necessary for the purposes for which the personal data in question are processed ('storage restriction');

processed in a manner that ensures adequate security of the personal data concerned, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures ('integrity and confidentiality').

In relation to the duty to provide information, which Herning Municipality has also asked about, this will be a situation covered by Article 14 of the Data Protection Regulation, as the information is not collected from the data subject (the relative). As a starting point, Herning Municipality must therefore, within a reasonable period of time after the collection of personal data, but no later than within one month, provide the information set out in Article 14 (1) of the Data Protection Regulation. 1 and 2.

However, Herning Municipality may specifically consider, in view of the purpose of the processing and the limited amount of personal data processed about the relative, whether it will require a disproportionate effort to observe the duty to provide information so that this can be omitted under Article 14 of the Data Protection Regulation. PCS. 5, letter b.

The Danish Data Protection Agency hereby considers Herning Municipality's inquiry to be answered.

[1] Such a list - e.g. a cake or breakfast list - will fall outside the scope of the Data Protection Regulation in accordance with Article 2 (1). 2, letter c.