

Failure to comply with the duty to provide information

Date: 22-05-2020

Decision

Private companies

On the basis of a complaint, the Danish Data Protection Agency has expressed criticism of the Bar Council's failure to fulfill its duty to provide information to a lawyer against whom the board had received a complaint.

Journal number

Summary

The Danish Data Protection Agency made a decision in the case on 22 May 2020. The Authority found that the Bar Council, by first informing lawyer xx more than five months after receiving a complaint about the person in question, had not complied with the Board's duty to provide information within a reasonable time pursuant to Article 14 (1) of the Data Protection Regulation. 3, letter a, cf. 1 and 2.

The Board of Advocates had stated that the Board's briefing of lawyer xx on the complaint received was postponed because the Board wished to have the case sufficiently informed, e.g. in view of the lawyer's ability to comment on the complaint. The Danish Data Protection Agency noted in this connection that this reasoning could not exempt the Board from fulfilling its duty to provide information, cf. Article 14 (1) of the Data Protection Regulation. 5, letters a - d.

Decision

The Danish Data Protection Agency hereby returns to the case, where lawyer xx on 28 November 2019 has complained to the Authority that the Bar Council has not complied with its duty to provide information in connection with the board's processing of his personal data.

Decision

Following a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing criticism that the Bar Council's processing of personal data has not taken place in accordance with the rules in the Data Protection Regulation [1], Article 14 (1). 3, letter a, cf. 1 and 2.

Below is a more detailed review of the case and a justification for the Danish Data Protection Agency's decision.

2. Case presentation

It appears from the case that the lawyer in December 2018 received a letter from the Bar Council dated 28 November 2018, in which it was stated that the board had received a complaint against him on 14 June 2018.

It also appears from the case that in the period between the Bar Council's receipt of the complaint on 14 June 2018 and the Board's briefing of the lawyer on 28 November 2018, further correspondence took place between the board and the person who had complained about the lawyer.

On 10 January 2020, the Bar Council issued a statement on the case, which the lawyer has had the opportunity to comment on.

2.1. The Bar Council's remarks

The Board of Advocates has generally stated that the Board's briefing of the lawyer on the complaint received was postponed because the Board wished to have the case sufficiently informed, e.g. in view of the lawyer's ability to comment on the complaint. However, the process turned out to be more time consuming than first assumed due to a number of circumstances on the part of the person complaining about the lawyer.

2.2. The lawyer's remarks

The lawyer has generally stated that the Bar Council, by only informing him after five and a half months about the existence of the case, and that the board processed personal data about him, has violated the data protection rules.

In this connection, the lawyer has argued that in the period from receipt of the complaint to the briefing of him, the Bar Council had repeatedly corresponded with the person who had complained, guided the person and asked for further information without informing the lawyer about this or his rights.

Justification for the Danish Data Protection Agency's decision

The Danish Data Protection Agency assumes that the Bar Council received a complaint against the lawyer on 14 June 2018, and that the Board processed personal data about him in this connection.

It follows from Article 14 (1) of the Data Protection Regulation 1 and 2, that the data controller must provide the data subject with a number of information when personal data is collected from other than the data subject.

According to Article 14 (1) of the Data Protection Regulation 3 (a), this information must be provided within a reasonable time after the collection of the personal data, but no later than within one month, taking into account the specific circumstances under which the personal data are processed.

The Danish Data Protection Agency finds that the Bar Council has not provided the lawyer with the information referred to in Article 14 (1) of the Data Protection Regulation. 1 and 2, within a reasonable time after receipt of the information, in accordance with Article 14 (2) of the Data Protection Regulation. 3, letter a, as the lawyer was only informed more than five months after the board had received the complaint.

The Danish Data Protection Agency also finds that the Bar Council's justification for not informing the lawyer on 28 November 2018 cannot exempt the board from having fulfilled its duty to provide information, cf. Article 14 (1) of the Data Protection Ordinance. 5, letters a – d.

The Danish Data Protection Agency has also noted that the Bar Council has stated that the specific case has given the Board an opportunity to consider how a situation such as the present one can be avoided in the future.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General data protection regulation).