

Processing of access request and personal data

Date: 02-06-2020

Decision

Private companies

On the basis of a complaint, the Danish Data Protection Agency has taken a position on a number of companies in the TDC Group's processing of personal data.

Journal number: 2019-31-1713

Summary

On 2 June 2020, the Danish Data Protection Agency made a decision in the case, which concerned TDC A / S, Nuuday A / S and Dansk Kabel TV A / S.

The Danish Data Protection Agency found grounds for criticizing TDC A / S 'handling of the complainant's request for insight, as TDC A / S only responded to the inquiry at the Data Inspectorate's request 5 months after the request was made.

The Danish Data Protection Agency assessed that the Authority did not have the competence to take a position on TDC A / S 'processing of position data on complaints, as the processing took place in accordance with section 23 (1) of the Executive Order on Public Procurement. 1, which does not fall under the Data Inspectorate's supervisory competence.

Furthermore, the Danish Data Protection Agency did not find a sufficient basis for expressing criticism of Nuuday A / S 'preparation of predictive models with a view to targeting any subsequent marketing. The processing ceased when complainants objected to the processing of the personal data.

Furthermore, the Authority found no basis for expressing criticism of Nuuday A / S 'handling of the complainant's request for insight, as the Authority emphasized that it registered in accordance with Article 15 (1) of the Data Protection Regulation. 1, letter c, has the right to be informed of the recipients or categories of recipients to whom personal data about him is or will be transferred, but that according to Article 15 (1) of the Data Protection Regulation. 1, a right to be informed specifically which information has been passed on applies.

Finally, the Danish Data Protection Agency found reason to express criticism of Dansk Kabel TV A / S 'continued processing of information on complaints after the termination of the customer relationship, as Dansk Kabel TV A / S processed information in the form of account statements that extended beyond the storage period in section 10 of the Accounting Act. PCS. 1.

Decision

The Danish Data Protection Agency hereby returns to the case, where [X] on 18 April 2019 complained to the Authority about a number of companies' processing of personal data about him.

The Danish Data Protection Agency has understood the complaint as concerning:

TDC A / S 'handling of the complainant's request for insight of 14 November 2018

TDC A / S 'processing of information on complainant's position data

Nuuday A / S 'profiling of information about complaints

Nuuday A / S 'information about recipients or categories of recipients of information about complaints

Dansk Kabel TV A / S 'continued processing of information on complaints after the end of the customer relationship

It appears from the case that the complainant is a subscriber at Telmore A / S and a former subscriber at YouSee A / S and

Dansk Kabel TV A / S. The companies are all affiliated with TDC Group.

It appears from Telmore A / S 'website and from Yousee A / S' website that Nuuday A / S is data responsible for Telmore A / S 'and Yousee A / S' processing of personal data, and that Nuuday A / S is also affiliated TDC Group.

Finally, it appears from Dansk Kabel TV A / S 'personal data announcement that Dansk Kabel TV A / S is data responsible for the company's processing of personal data.

Decision

Following a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing criticism that TDC A / S has not handled the complainant's request for insight in accordance with the rules in Article 15 of the Data Protection Regulation. [1]

With regard to TDC A / S 'processing of information on the complainant's position data, the Danish Data Protection Agency finds that the Authority has no competence to assess whether TDC A / S' has processed information on the complainant's traffic data in accordance with the rules in section 23 of the Executive Order [2]. , PCS. 1, cf. 2.

The Danish Data Protection Agency does not find it necessary to express criticism of Nuuday A / S 'processing pursuant to Article 22 of the Data Protection Regulation.

Furthermore, the Danish Data Protection Agency does not find sufficient grounds for expressing criticism of Nuuday A / S 'processing of information pursuant to Article 6 (1) of the Data Protection Regulation. 1, letter f, until the complainant's

objection.

In connection with the complainant's comments on disclosure to business partners, the Danish Data Protection Agency finds that there is no basis for assuming that Nuuday A / S 'processing of the complainant's request for access should have taken place in violation of Article 15 (1) of the Data Protection Regulation. 1, letter c.

Finally, the Danish Data Protection Agency finds that there are grounds for expressing criticism that Dansk Kabel TV A / S 'continued processing of information on complaints after the end of customer relationships has not been in accordance with Article 6 (1) of the Data Protection Ordinance. 1, smh. Article 5 (1) of the Data Protection Regulation 1, letter e.

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

2. TDC A / S 'handling of the complainant's request for insight

Complainants sent on 14 November 2018 a request for insight to the e-mail address dpo@tdc.dk. The complainant's request was a reply to a marketing email from YouSee A / S.

As the complainant did not receive a reply to his request, he contacted the Danish Data Protection Agency, which on 21 February 2019 forwarded the request to TDC A / S with a view to TDC A / S responding to the complainant's request.

TDC A / S then responded to the complainant's request on 11 April 2019.

2.1. Complainant's remarks

Complainants have stated that TDC A / S responded to his request pursuant to Article 15 of the Data Protection Regulation for insight too late, as almost four months elapsed from his request of 18 November 2018 to TDC's response of 11 April 2019.

2.2. TDC A / S 'comments

TDC A / S has generally stated that the company is not seen to have received the complainant's e-mail of 14 November 2018.

TDC A / S has stated that the company does not thereby rule out having received the e-mail in question.

TDC A / S has stated that YouSee A / S on 14 November 2018 accidentally sent a very large number of unfinished e-mails to current and former customers whose e-mail addresses were contained in a temporary broadcast database, which should have been "Cleaned" of old e-mail addresses before a later mailing. The incident has previously been dealt with by the Danish Data Protection Agency in connection with the Danish Data Protection Agency's decision of 28 March 2019, j.nr. 2018-431-0017. In this connection, TDC A / S received an extraordinary number of inquiries about the e-mail, just as many asked for insight into their personal information.

On this basis, TDC A / S has assessed that the complainant's inquiry must unfortunately have been overlooked due to the large number of inquiries.

2.3. The Danish Data Protection Agency's decision and justification

The Danish Data Protection Agency assumes that complainants on 14 November 2018 requested TDC A / S for insight into what information YouSee A / S and the TDC Group as a whole processed about him.

The Danish Data Protection Agency also assumes that TDC A / S responded to the complainant's request on 11 April 2019. It follows from Article 12 (1) of the Data Protection Regulation 3, that a request for access must be answered without undue delay and no later than one month after receipt. If the request is complicated, the data controller may extend the response deadline by a further two months. There is thus an absolute deadline for responding to requests from a data subject of three months.

The Danish Data Protection Agency thus finds that TDC A / S has not responded to the complainant's request for insight within the time limit in Article 12 (1) of the Data Protection Regulation. 3, cf. Article 15.

On this basis, the Danish Data Protection Agency criticizes the fact that TDC A / S has not responded to the complainant's request for insight in accordance with Article 12 (1) of the Data Protection Regulation. 3, cf. Article 15.

3. TDC A / S 'processing of information on position data

In the response to the complainant's request for insight, TDC A / S stated that TDC had registered logs of position data on the complainant's SMS and voice activity.

TDC A / S thus submitted two appendices entitled "Position data on SMS and voice (detailed)" and "Position data on SMS and voice (summarized)". The attachments contain a range of information about phone calls and text messages, including locations, phone number, provider, and call length or megabytes.

The latest logging was from March 2019 and the oldest from 2016.

3.1. Complainant's remarks

Complainants have generally stated that TDC A / S has no authority to process information about his traffic and position data.

3.2. TDC A / S 'comments

TDC A / S has confirmed that the company processes information about complaints in the form of logging of traffic data. TDC A / S processes traffic data in order to be able to transfer communication in an electronic communication network and to be

able to charge the subscriber for this use and settle interconnection with other providers.

The treatment is based on section 23, subsection 2, in Executive Order no. 715 of 23 June 2011 on the provision of electronic communications networks and services (the "Procurement Order").

TDC A / S has stated that the processing is thus in accordance with Article 5 (1) of the Data Protection Regulation. Article 5 (1) (c) and Article 5 (1) 1, letter e, as the processing and storage of traffic data for the purpose of debiting and settling interconnections is permitted until the expiry of the statutory limitation period for the debt obligations and settlement in question.

3.3. The Danish Data Protection Agency's decision and justification

Telecommunications providers' processing of personal data is regulated in both the Data Protection Regulation and the Data Protection Act, as well as the telecommunications legislation, including the Procurement Executive Order [3].

It follows from section 23, subsection 1, that providers of public electronic communications networks or services must ensure that traffic data concerning subscribers or users are deleted or anonymised when they are no longer necessary for the transmission of the communication.

It further appears from section 23, subsection 1 of the Executive Order on Public Procurement. 2, that, notwithstanding para. 1, a provider as mentioned in para. 1 process and store traffic data for the purpose of charging subscribers and settling for interconnection. Such processing and storage is permitted until the expiry of the statutory limitation period for the debt obligations and settlements in question.

The rules in the contract notice are considered to be *lex specialis* in relation to the data protection regulation, *lex generalis*. That is, to the extent that the rules regulate the same issues as the Data Protection Regulation, they take precedence over the Data Protection Regulation.

As section 23, subsection 1, regulates how long data may be stored, this rule thus takes precedence over the general provision on storage restriction in Article 5 (1) of the Data Protection Regulation. 1, letter e.

The same applies to the extent that TDC A / S processes information in order to fulfill section 23 (1) of the Executive Order on Public Procurement. 2.

In this connection, the Danish Data Protection Agency finds that there is no basis for disregarding what TDC A / S stated that the information contained in the appendices "Position data on SMS and voice (detailed)" and "Position data on SMS and voice

(summarized) ”, Are necessary to store for the sake of debiting the subscriber and to settle interconnection with other providers in accordance with section 23 (1) of the Executive Order on Public Procurement. 2.

The Danish Data Protection Agency can thus not make a decision on TDC A / S 'processing of traffic data on complaints, as this is assumed to take place in accordance with section 23 (1) of the Executive Order on Public Procurement. 1, cf. 2, which does not fall under the Data Inspectorate's supervisory competence.

4. Nuuday A / S 'profiling of information about complaints

With the response to the complainant's request for insight, TDC A / S submitted two documents entitled “Predictive models explanation” and “Predictive models”. The documents state that the complainant's tendency to terminate his subscription with Telmore A / S has been assessed, just as it has been assessed whether the complainant has been more or less inclined to buy a number of mobile phone models.

4.1. Complainant's remarks

Complainants have generally stated that TDC A / S has not been authorized to process the relevant information about him because it is a question of profiling for marketing purposes.

Complainants have claimed that an automatic decision has been taken under Article 22 (1) of the Data Protection Regulation. 1, in relation to the degree of marketing, which products are to be marketed and which websites the marketing is to take place from. For this reason alone, complainants do not consider Article 6 (1) of the Data Protection Regulation 1, letter f, as a sufficient legal basis, as profiling and automatic decisions require consent.

In addition, the complainants have disagreed with what TDC A / S has stated that targeted banner advertising is not direct marketing.

Finally, complainants have maintained that TDC A / S has processed traffic data covered by section 23 (1) of the Executive Order on Public Procurement. 1, for the purpose of direct marketing.

4.2. TDC A / S 'comments

TDC A / S has stated that Nuuday A / S does not process information about complaints with a view to profiling for use in direct marketing. However, Nuuday A / S has processed personal data on complaints about other marketing activities following a balancing of interests on the basis of Article 6 (1) of the Data Protection Regulation. Has ceased to process the data for this purpose after the complainant has objected to this processing in accordance with Article 21 (1) (f) of the Data Protection

Regulation. 1.

Personal information that is normally used for profiling has either been obtained from the customer himself or has been generated in Nuuday A / S 'systems in connection with the customer's use of Nuuday A / S' services. TDC A / S also processes information about the customer's possible telephone subscriptions with other telecommunications providers, if these are available via the directory inquiry service 118, which receives this information directly from the telecommunications providers.

As the Data Protection Ordinance does not further define the term "direct marketing", Nuuday A / S has chosen to adhere to the corresponding concept in marketing law, cf. the Consumer Ombudsman's Spam Guide from 2018 [4], which contains an exhaustive list of the marketing channel types that require a consent.

Appendix 1 of the guide contains a number of examples of what can constitute direct marketing on social media, including private messages, notifications, comments and tags.

TDC A / S has finally emphasized that Nuuday A / S does not use "traffic data", cf. section 2 (1) of the Executive Order on Public Procurement. 1, no. 2, for marketing purposes.

4.3. The Danish Data Protection Agency's decision and justification

The Danish Data Protection Agency assumes that Nuuday A / S has processed information about complainants to prepare predictive models with a view to targeting any subsequent marketing, and that the information has been collected in connection with the complainant's subscription with Telmore A / S.

Furthermore, the Danish Data Protection Agency assumes that Nuuday A / S no longer processes the information on complaints, after complaints objected to the processing.

The Danish Data Protection Agency finally assumes that Nuuday A / S has not obtained consent from complaints for the specific purpose of the processing.

The Danish Data Protection Agency does not find it necessary to express criticism of Nuuday A / S 'processing pursuant to Article 22 of the Data Protection Regulation.

It follows from Article 22 (1) of the Data Protection Regulation 1, that the data subject has the right not to be the subject of a decision that is based solely on automatic processing, including profiling, which has legal effect or in a similar way significantly affects the person in question.

The Danish Data Protection Agency finds that Nuuday A / S 'processing for the purpose in question cannot be considered to be covered by the complainant's right not to be the subject of an automatic individual decision pursuant to Article 22 (1) of the Data Protection Regulation. 1, as the predictive models prepared by Nuuday A / S cannot be considered to have had legal effect or in a similar way to have significantly affected complaints.

As regards the basis for the processing, the Danish Data Protection Agency is of the opinion that the processing of information on complaints with a view to the preparation of the models in question in order to have been lawful must have been based on Article 6 (1) of the Data Protection Regulation. 1, letter f ("the balance of interests rule").

In order for a processing to be considered lawful under the balancing of interests rule, the processing must have been 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 protection of personal data precede it.

When processing is based on Article 6 (1) of the Data Protection Regulation, the controller shall: In addition, at any time, take a position on the data subject's objection pursuant to Article 21 (1) of the Data Protection Regulation. 1.

In this connection, the Danish Data Protection Agency has noted that Nuuday A / S ceased to process the information after complainants had objected to the processing in accordance with Article 21 (1) of the Data Protection Regulation. 1.

With regard to the question of the extent to which the processing of the data could take place in the light of Article 6 (1) of the Data Protection Regulation. 1, letter f, the Danish Data Protection Agency may state that at the time of this decision, work is underway under the European Data Protection Council on the application of Article 6 (1) of the Data Protection Regulation. 1, letter f, including the processing of personal data in connection with marketing.

The Danish Data Protection Agency has also noted that there is no information that Nuuday A / S has used the predictive models in question to carry out marketing.

Furthermore, the Danish Data Protection Agency has noted that Nuuday A / S has stated that the information has not been passed on.

On that basis, the Danish Data Protection Agency does not find sufficient grounds for expressing criticism of Nuuday A / S 'processing of information until the complainant's objection.

Insight into Nuuday A / S 'disclosure of information on complaints to business partners

It appears from the document "TELMORE partners - data processor" that Nuuday A / S passes on information to a number of

partners in order to provide the best possible service for complaints. The following is a list of Telmore A / S 'partners, where it is stated for each unit whether it is a data processor or an independent data controller.

5.1. Complainant's remarks

Complainants have alleged that personal data about him has been passed on to a number of business partners whose purpose is marketing and profiling, and that he has not received insight into what information has been handed over to the list of recipients who TDC A / S has stated, presumably, has received information about complaints.

5.2. TDC A / S 'comments

TDC A / S has stated that personal information is transferred to business partners either in the form of transfer to data processors, with which data processor agreements have been entered into, or transfer to independent data controllers.

TDC A / S has stated that information on complaints has been passed on to the following companies, if the individual conditions are met, with the stated purposes and legal bases:

Bookmate Ltd

Information: Name, e-mail address and customer number

Purpose: Establishment of customer relationship with Bookmate Ltd

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter a

Prerequisite: The customer has opted for the Telmore Play advantage "Bookmate"

C More Entertainment AB

Information: Name, e-mail address and customer number

Purpose: Establishment of customer relationship with C More Entertainment AB

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter a

Prerequisite: The customer has opted for the Telmore Play advantage "C-More"

Department of the Ministry of Economic and Business Affairs

Information: Name and address

Purpose: Lookup in CPR to verify a customer's identity

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter f

Prerequisite: Passed on in connection with the creation of a subscription

Docktricks AB

Information: E-mail address

Purpose: Sending emails to customers

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter f

Prerequisite: Passed on if the IT platform is responsible for the actual sending of e-mails

Egmont

Information: Name, e-mail address and customer number

Purpose: Creating customer relationships

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter a

Prerequisite: The customer has opted for the Telmore Play advantage "Flipp"

Ericsson / MetraTech

Information: Identification information and invoices

Purpose: Supplier of invoicing system. Information is passed on in order to make the correct collection and when the supplier has to make error corrections in the system

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter f

Prerequisite: Passed on in cases where the supplier has had access to the system

Google Ltd

Information: Online data collected using first-party cookies on "My Telmore"

Purpose: Statistics, marketing and optimization of user experience on the site using Google Analytics

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter f

Prerequisite: The customer has used the website "My Telmore"

HBO Nordic Services Denmark ApS

Information: Name, e-mail address and customer number

Purpose: Establishment of customer relationship with HBO Nordic

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter a

Prerequisite: The customer has opted for the Telmore Play advantage "HBO Nordic"

Nets Denmark A / S

Information: Customer information required to complete payments

Purpose: Implementation of payments via Nets' solutions

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter a

Prerequisite: The customer has chosen to pay TDC via Nets' payment solutions

PostNord A / S

Information: Name, address and order number

Purpose: To send letters and parcels to TDC's customers

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter f

Prerequisite: TDC has sent letters or packages to the customer

TV2 Danmark A / S

Information: Name, e-mail address and customer number

Purpose: Establishment of customer relationship with TV2

Legal basis: Article 6 (1) of the Data Protection Regulation 1, letter a

Prerequisite: The customer has opted for the Telmore Play advantage "TV2 Play"

TDC A / S has stated that Nuuday A / S has not, as stated by the complainants, passed on information about complaints to partners other than the specified partners, about whom the complainants were all informed in connection with the response to his request for insight.

5.3. The Danish Data Protection Agency's decision and justification

The Danish Data Protection Agency finds that Nuuday A / S has complied with Article 15 (1) of the Data Protection Ordinance with the appendix "TELMORE partners - data processor". 1, letter c.

The Danish Data Protection Agency has emphasized that the data subject pursuant to Article 15 (1) of the Data Protection Regulation 1, letter c, has the right to be informed of the recipients or categories of recipients to whom personal data about him is or will be transferred, but that, however, according to Article 15 (1) of the Data Protection Regulation. 1, does not apply to a right to be informed specifically which information has been passed on.

The Danish Data Protection Agency then finds that there is no basis for Nuuday A / S 'processing of the complainant's request

for insight to have taken place in violation of Article 15 of the Data Protection Regulation.

Continued processing of information about complaints after the end of customer relations at Dansk Kabel TV A / S

In answering his request for insight, the complainant received an overview of account statements from Dansk Kabel TV A / S.

The overview shows a number of collections and payments from the period 15 June 2012 to 27 May 2013. The same items appear in an overview called "Debtor file".

It is stated that the complainant's customer relationship with Dansk Kabel TV A / S ended on 30 April 2013. Following the termination, there was a complaint relationship between the complainant and Dansk Kabel TV A / S, which was terminated on 28 May 2013.

6.1. Complainant's remarks

Complainants have stated that the retention of information dating back to 2012 goes far beyond the period authorized by the Accounting Act.

6.2. TDC A / S 'comments

TDC A / S has stated that Dansk Kabel TV A / S no longer processes personal data in relation to the terminated customer relationship. All personal information related to the customer relationship is deleted or anonymized per. April 30, 2019.

The information that was processed by Dansk Kabel TV A / S until 30 April 2019 was general personal information, including basic information for identifying complaints, and the products that were covered by the customer relationship, as well as bookkeeping and accounting data.

The personal data was processed in order to fulfill Dansk Kabel TV A / S 'obligation to be able to independently and unambiguously document an audit trail for 5 years from the end of the year to which the accounting material relates.

Personal data were thus processed on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter c.

TDC A / S does not consider Dansk Kabel TV A / S 'processing of personal data to have been in accordance with Article 5 (1) of the Data Protection Regulation. 1, letter e, on storage limitation, as data in the total temporal extent of the customer relationship was processed for the purpose of fulfilling the above purpose, where the processing authority to fulfill this purpose only applies for five years from the end of the year to which the accounting material relates.

Dansk Kabel TV A / S should therefore have deleted the accounting material on the customer relationship when it was older than five years from the end of the year to which the accounting material relates, instead of deleting the total accounting

material for the customer relationship five years after the end of the financial year in which the customer relationship ended. .

On this basis, Dansk Kabel TV A / S has changed its policy for deleting personal data in this regard.

6.3. The Danish Data Protection Agency's decision and justification

The Danish Data Protection Agency assumes that Dansk Kabel TV A / S until 30 April 2019 processed information on complaints from the period 15 June 2012 to 27 May 2013.

TDC A / S has stated that the information was only processed in order for the company to be able to independently and unambiguously document audit tracks for five years from the end of the year to which the accounting material relates.

It follows from the Accounting Act [5] § 10, para. 1, that the person required to keep accounts must keep the accounting material in a secure manner for five years from the end of the financial year to which the material relates. The storage must be done in a way that during the entire storage period enables an independent and unambiguous retrieval of the accounting material in question.

It follows that the personal information that Dansk Kabel TV A / S stored about complaints could not be stored pursuant to section 10 (1) of the Accounting Act. 1, in addition to the period 2017-2018.

The Danish Data Protection Agency therefore finds reason to express criticism that Dansk Kabel TV A / S has processed information on complaints in violation of Article 6 of the Data Protection Ordinance, cf. Article 5 (1) of the Data Protection Regulation 1, letter e.

[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).

[2] Executive Order no. 715 of 23 June 2011 on the provision of electronic communications networks and services

[3] Executive Order no. 715 of 23 June 2011 on the provision of electronic communications networks and services

[4] Spam Prohibition Guide, Consumer Ombudsman, December 2018

[5] Executive Order no. 648 of 15 June 2006 of the Accounting Act