

Disclosure of customer information for direct marketing purposes

Date: 11-06-2020

Decision

Private companies

On the basis of a complaint, the Danish Data Protection Agency finds that it is in accordance with the data protection law rules that Stofa A / S has passed on customer information about a citizen to Syd Energi, who has then contacted the citizen with an offer for an electricity agreement.

Journal number: 2019-31-2211

Summary

The Danish Data Protection Agency has made a decision in a case where a citizen has complained to the Authority that Stofa A / S has passed on customer information about the citizen to Syd Energi, which has then contacted the citizen with an offer for an electricity agreement.

In the decision, the Danish Data Protection Agency has established that Stofa A / S has acted in accordance with the data protection law rules by passing on information about the citizen's name, address, telephone number and customer number to Syd Energi. In the assessment, the Danish Data Protection Agency has emphasized the nature of the information, including that information about name, address, telephone number and customer number is general customer information, and that Stofa A / S 'interest in passing on the information about the citizen to Syd Energi exceeded the citizen's interest in the information not was passed on.

Decision

After a review of the case, the Danish Data Protection Agency finds that Stofa's processing of personal data has taken place in accordance with the rules in the Data Protection Act [1], section 13, subsection. 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 Stofa has passed on information about you, and that as a result you have been contacted by SE with an offer for an electricity agreement.

2.1. Your comments

You have generally stated that you have not given your consent to or shown interest in Stofa passing on personal information about you to SE and TCC with a view to an offer for an electricity agreement.

2.2. Stofa's remarks

Stofa has generally stated that Stofa has passed on information about your name, address, customer number and telephone number to SE in order for SE to be able to contact you with an offer for an electricity agreement.

Regarding the transfer of your information to TCC, Stofa has stated that TCC has received information about you from SE, as TCC is the data processor for SE and therefore processes information on behalf of SE for SE's purposes and according to documented instructions from SE. A data processor agreement has been concluded between SE and TCC in accordance with Article 28 (2) of the Data Protection Regulation [2]. 3.

Stofa has stated that in connection with a telephone conversation between you and a customer service employee at Stofa on 18 June 2019, you have given a telephone consent to be contacted by SE in order to receive an offer for an electricity agreement.

In connection with this, Stofa has stated that your consent was obtained in accordance with Stofa's written guidelines for obtaining consent, and that it has been noted in Stofa's consent database. Your consent and your information have been revoked and deleted as a result of a later dialogue between you and SE.

Stofa has also stated that notwithstanding that you have given consent, Stofa has passed on your personal information in accordance with the rules in the Data Protection Act, section 13, subsection. Stofa has emphasized that the disclosure only concerns general customer information and that the balance of interests rule in Article 6 (1) of the Data Protection Regulation 1, letter f (the balance of interests rule) falls in favor of Stofa and SE.

In this connection, Stofa has stated that Stofa has a legitimate interest in passing on information about you - which takes precedence over your interests or fundamental rights and freedoms - as you have shown interest in being contacted for the purpose of an electricity agreement, which could possibly lead to a saving in you.

In addition, Stofa has stated that the disclosure of information about you has not been a disadvantage for you, as the disclosure only relates to ordinary personal information, and as the information has only been disclosed to SE for a very specific and limited purpose.

Justification for the Danish Data Protection Agency's decision

The Danish Data Protection Agency assumes that Stofa has passed on information about your name, address, customer number and telephone number to SE with a view to SE contacting you with an offer for an electricity agreement. The Danish Data Protection Agency also assumes that TCC is the data processor for SE.

Furthermore, on the basis of what Stofa has stated, the Danish Data Protection Agency assumes that the disclosure of your information has taken place on the basis of section 13 (1) of the Data Protection Act. 2, and not on the basis of a consent given by you.

It follows from the Data Protection Act, section 13, subsection 1, that a company may not pass on information about a consumer to another company for the purpose of direct marketing or use the information on behalf of another company for this purpose, unless the consumer has given his express consent.

Disclosure and use as mentioned in para. 1 may, however, take place without consent in the case of general customer information which forms the basis for division into customer categories, and if the transfer follows the balance of interests provided for in Article 6 (1) of the Data Protection Regulation. 1, letter f (the balance of interests rule), cf. the Data Protection Act, section 13, subsection 2.

Pursuant to Article 6 (1) of the Data Protection Regulation 1, letter f, disclosure of information may take place if it 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 that require the protection of personal data take precedence.

It follows from the preparatory work for section 13 of the proposal for the Data Protection Act that the requirement that disclosure must follow the balance of interests rule ensures that disclosure of general customer information for marketing purposes cannot take place if the balancing of interests exceptionally speaks against it.

An example of a situation where the balance of interests rule may exceptionally speak against is the situation where a company has informed its customers that it will not pass on information about the customers to other companies for marketing purposes. If the company nevertheless decides to pass on the information, consideration for the customers will, depending on the circumstances, be able to argue against such a transfer being possible without the customers' prior consent.

The Danish Data Protection Agency initially finds that information on name, address, telephone number and customer number is general customer information covered by section 13 (1) of the Data Protection Act. 2.

The Danish Data Protection Agency also finds that the transfer of information about your name, address, customer number

and telephone number from Stofa to SE has taken place in accordance with the balance of interests rule in Article 6 (1) of the Data Protection Regulation. 1, letter f, cf. the Data Protection Act § 13, para. 2.

In its assessment, the Danish Data Protection Agency has emphasized the preparatory work for section 13 of the proposal for the Data Protection Act, according to which the balance of interests rule will only exceptionally fall to the customer's benefit when applying section 13 (1) of the Data Protection Act. 2. The Danish Data Protection Agency does not find that there are such circumstances in the case that cause the balancing of interests rule to fall to your advantage. In connection with this, the Danish Data Protection Agency has emphasized the nature of the information that has been passed on, including that it is not information of a particularly worthy of protection nature, and that the passing on has taken place in order to be able to offer you an electricity agreement. will be able to lead to a saving in you.

On this basis, the Danish Data Protection Agency does not find it necessary to override Stofa's assessment that the disclosure of information about your name, address, customer number and telephone number to SE has taken place in accordance with the Data Protection Act, section 13, subsection. 2.

The Danish Data Protection Agency must note that section 13 (1) of the Data Protection Act 4 states that before a company passes on customer information to other companies for the purpose of direct marketing, the company must check in the CPR register whether the registered person has declined inquiries for marketing purposes. If this is the case, the information may not be disclosed for this purpose in accordance with Article 21 (2) of the Data Protection Regulation. 3.

In cases where the data subject has not declined inquiries for marketing purposes in the CPR register, the company must at the latest at the time of the first communication with the data subject explicitly inform the data subject of the right to object under Article 21 (1) of the Data Protection Regulation. Article 21 (2) against the processing of personal data for direct marketing, in accordance with Article 21 (2) of the Data Protection Regulation. 4. The information must be communicated clearly and separately from all other information.

[1] Act No. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).

[2] 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).