Bech-Bruun's processing of personal data in connection with legal research

Date: 29-11-2022

Decision

Private companies

Criticism

Serious criticism

Injunction

Complaint

Basis of treatment

Sensitive information

Obligation to provide information

The right to access

Exercise of rights

Punishable conditions

The Danish Data Protection Authority has made a decision in two cases concerning the same lawyer investigation, where a person complained about the processing of information about him in connection with the initiation and implementation of a lawyer investigation.

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Summary

In July and August 2021, complainants complained that Copenhagen Municipality and Bech-Bruun Advokatpartnerselskab processed information about him in a legal investigation.

The investigation was carried out by Bech-Bruun on behalf of the Municipality of Copenhagen with the aim of uncovering whether there had been offensive behavior at the educational institution Sankt Annæ Gymnasium, as well as how such behavior had been handled.

Copenhagen Municipality's processing of information about complaints

In the one case, which concerned the Copenhagen Municipality's processing of information about complaints in connection

with the launch of the lawyer's investigation, the Data Protection Authority found that the Copenhagen Municipality's processing of information about complaints took place within the framework of the data protection regulation.

However, the Data Protection Authority has found grounds to criticize that the Municipality of Copenhagen did not sufficiently fulfill the duty to provide information under data protection law.

Bech-Bruun's processing of information about complaints

In the second case, which concerned Bech-Bruun's processing of information about complaints in connection with the implementation of the legal investigation, the Danish Data Protection Authority found that Bech-Bruun's processing of information about complaints, including information about sexual relationships, took place within the framework of the Data Protection Regulation and the Data Protection Act.

However, the Danish Data Protection Authority has found grounds to criticize that Bech-Bruun failed to fulfill the duty to provide information under data protection law.

The Danish Data Protection Authority has also found grounds for expressing serious criticism of Bech-Bruun's handling of a request for access from complainants. In this connection, the Data Protection Authority has notified Bech-Bruun of an order to take a new position on the complainant's access request.

The Danish Data Protection Authority has not dealt with this

The cases - like two of the authority's previous decisions - are part of a debate that goes far beyond data protection law. In the assessment of the cases, the Danish Data Protection Authority has exclusively considered the legal aspect in relation to the collection and further processing of information about complaints.

Decision

The Data Protection Authority hereby returns to the case where [X] (hereafter complainant) complained to the authority on 9 July 2021 that Bech-Bruun Advokatpartnerselskab (hereafter Bech-Bruun) – on behalf of the Municipality of Copenhagen – has processed information about him in in connection with the initiation and implementation of a legal investigation.

The Danish Data Protection Authority notes that this decision only relates to Bech-Bruun's processing of information about complaints. The Danish Data Protection Authority has thus not taken a position on the further organization or implementation of the lawyer investigation in general.

The Danish Data Protection Authority also notes that the present decision does not relate to the Copenhagen Municipality's

processing of information and complaints in connection with the initiation of the legal investigation in question. Copenhagen Municipality's processing of information about complaints is dealt with separately under the case with j. No. 2021-32-2463.

1. Decision

After a review of the case, the Danish Data Protection Authority finds that the Bech-Bruun law firm's processing of information about complaints has taken place within the framework of the data protection regulation[1] article 6, subsection 1, letter e, Article 9, subsection 2, letter f, and the Data Protection Act[2] § 8, subsection 3 and 4.

On the other hand, it is the Danish Data Protection Authority's assessment that the processing of information about complaints, including information about the complainant's sexual relationship, could not be carried out within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letters c and d, or the data protection regulation, article 9, subsection 2, letter b.

The Danish Data Protection Authority also finds grounds to express criticism that Bech-Bruun has failed to fulfill the obligation to provide information in Article 14 of the Data Protection Regulation.

Finally, the Data Protection Authority finds that there are grounds for expressing serious criticism that Bech-Bruun's handling of the complainant's request for access has not been done in accordance with the data protection regulation's article 15, subsection 3.

In this connection, the Norwegian Data Protection Authority informs Bech-Bruun of an order to:

to decide whether the conditions for handing over a copy of information about complaints according to the data protection regulation, article 15, subsection 3 is fulfilled, and

to notify complaints whether the provision of a copy of information about complaints is granted or refused.

If Bech-Bruun considers that the provision of a copy of information about complaints (in whole or in part) must be rejected, Bech-Bruun must, as part of the order, provide the complainant with information about the reason for this.

The decision must be notified as soon as possible and no later than 4 weeks from today's date.

The order is announced in accordance with the data protection regulation, article 58, subsection 2, letter c.

According to the Data Protection Act § 41, subsection 2, no. 5, anyone who fails to comply with an order issued by the Data Protection Authority pursuant to Article 58, subsection of the Data Protection Regulation shall be punished with a fine or imprisonment for up to 6 months. 2.

Below follows a closer review of the case and a rationale for the Data Protection Authority's decision.

2. Case presentation

It appears from the case that a number of media, including Dagbladet Politiken, published articles which reported on a "cross-border and sexualized environment" in Danmarks Radio's girls' choir.

Sankt Annæ Gymnasium subsequently received inquiries from former students who reported on a similar culture during their time at Sankt Annæ Gymnasium back in the 1980s and 1990s, which particularly concerned experiences in the high school choir. It appears from e-mails between the Municipality of Copenhagen, Sankt Annæ Gymnasium and Bech-Bruun that the inquiries received concern, among other things, complaints.

As a result, Sankt Annæ Gymnasium decided – in collaboration with the Children and Youth Administration in the Municipality of Copenhagen – to initiate an external legal investigation. Bech-Bruun was chosen to oversee the investigation.

On 30 June 2021, Sankt Annæ Gymnasium sent out a letter, the following of which i.a. appeared:

"Lawyer investigation of violations at SAG

For students, parents and staff

[…]

Therefore, together with the Children and Youth Administration, we are launching an external legal investigation. It must reveal whether offensive behavior has been shown in relation to the choirs at Sankt Annæ Gymnasium, as well as how this has been handled.

I would like to encourage anyone with knowledge of failure or violations in relation to Sankt Annæ Gymnasium to contact the law firm.

[…]"

The commission for the legal investigation as well as a guide for reports and witnesses were also made available on the websites of Sankt Annæ Gymnasium and Bech-Bruun. From the commission, which formed the basis for Bech-Bruun's assignment, it appeared, among other things, following:

"Lawyer investigation - CASE

The Municipality of Copenhagen has requested us to carry out a legal investigation into possible cases of sexual harassment towards students at Skt. Annæ Gymnasium (SAG), including to the members of the choir at Skt. Annæ Gymnasium.

The purpose of the study

The investigation must uncover and explain the extent and nature of possible offensive behavior or unwanted sexual attention towards students at SAG, including towards the members of the choir and others connected to the choir. If it is assessed that offensive behavior or unwanted sexual behavior has been exhibited, Bech-Bruun must make recommendations to SAG's board of directors and Copenhagen Municipality about actions that the results of the investigation may give rise to.

Bech-Bruun must also investigate whether SAG, managers/teachers at the school or other relevant persons associated with SAG and/or the choir have received complaints from students or others who have been associated with SAG, about sexual harassment or other offensive behaviour. If this is the case, Bech-Bruun must investigate how inquiries have been handled, and possibly come up with proposals for an improved procedure for handling reports of sexual harassment and other offensive behavior in the future.

The background to the study

SAG has received several inquiries from e.g. former members of one of SAG's choirs who have reported that they have been subjected to offensive actions during their time in SAG. The inquiries have had such a content that SAG, in consultation with Copenhagen Municipality, has found it necessary to uncover the extent and nature of possible sexual harassment.

SAG and the municipality of Copenhagen distance themselves from any form of offensive actions. Teachers, conductors and other employees at the school must not have relationships of a private sexual nature with students and must not expose students to violations/unwanted sexual attention. It is crucially important that SAG is a safe environment for students and parents, and that both students and parents have confidence that reports or complaints about sexual harassment are taken seriously - and that all reports are acted upon. Therefore, SAG and the Municipality of Copenhagen have found it necessary to carry out an investigation that may include conditions that go back a long way.

Guidance for reviewers and witnesses

You can contact Bech-Bruun if you, as a student, have been exposed to sexually offensive behavior or unwanted sexual attention. This applies to current students, and it also applies to former students. If not, we have set a time limit for the possibility of reporting.

[…]"

On July 5, 2021, the complainant contacted Bech-Bruun and objected to any inclusion of information about him in the

proposed legal investigation.

On 7 July 2021, Bech-Bruun responded to the complainant's objection. The response stated:

"We have received your email of 5 July 2021, in which you object to Bech-Bruun processing personal data about you in connection with the implementation of a legal investigation into possible offensive behavior or unwanted sexual attention towards students at Sankt Annæ Gymnasium (hereinafter " CASE"). I am the responsible partner for the legal investigation.

It appears from your inquiry that you believe you have reason to suspect that the legal investigation that SAG has initiated regarding possible infringements on SAG, will involve the processing of personal data about you. If your guess is correct, we naturally understand that this is an uncomfortable situation for you. We have not yet reviewed the reports received so far. At the same time, we can assure that all information will be treated confidentially and that everyone will receive fair and proper treatment in connection with the conduct of the legal investigation.

Below we review our comments on your objection.

You have claimed that you do not consent to the processing of your personal data and that, in your opinion, there are no other provisions in Article 6, subsection 1 of the Data Protection Act. 1, which may constitute a basis for processing information about you.

If the legal examination involves the processing of personal data about you, you will be "registered" in the sense of data protection law and thus get the statutory rights that accrue to registered persons in that connection (they are found in particular in Chapter III of the Data Protection Regulation).

Bech-Bruun acts in accordance with data protection law as an independent data controller in connection with carrying out the investigation (incl. collection and processing of personal data), but is bound by the framework for processing personal data to which SAG is subject.

The rules on the data subject's possibility to object to a data controller's processing of their personal data are found in the data protection regulation, article 21, subsection 1, from which it follows that you, as a data subject, have the right at any time - for reasons relating to your particular situation - to object to the processing of your personal data, if the processing is based on Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e or f. The mentioned provisions only concern the processing of general personal data, which must be separated from other types of information, e.g. on criminal matters, cf. further below.

Your opportunity to object is therefore only relevant in relation to the processing of personal data about you, which is based on

the two provisions mentioned, and you cannot therefore object to the processing of your personal data based on other relevant provisions of the Data Protection Regulation or the Data Protection Act . Even in the situation where a processing of personal data takes place on the basis of the data protection regulation, article 6, subsection 1, letters e or f, both SAG and Bech-Bruun as data controllers may continue to process your personal data despite your objection if we demonstrate compelling legitimate reasons for the processing that take precedence over your interests, rights and freedoms, or the processing is necessary so that legal claims can be established, asserted or defended. This is the case in relation to the investigation of possible offensive behavior or unwanted sexual attention towards students at SAG. There are therefore both weighty legitimate reasons for the processing, which take precedence over your interests at the same time as legal requirements must be determined, see further below.

We can further inform you that, in our opinion, the legal investigation is necessary to comply with a legal obligation incumbent on the data controller (SAG and the Municipality of Copenhagen), cf. the data protection regulation, article 6, subsection 1, letter c. The investigation is carried out to clarify whether there is or has been a harassing environment at the high school (and thus not a harassment-free environment). It is not specifically directed at you, at other teachers or staff, or at the choir. The survey concerns upper secondary school students in general.

The duty to ensure a harassment-free environment follows from § 4 of the Equal Treatment Act. "Equal working conditions" also includes prohibition of sexual harassment, cf. § 4, subsection 2. It appears from the preliminaries to § 4 that "the provision also entails a duty for the employer to provide a harassment-free environment, and the employer is obliged to reasonably protect its employees against harassment". In this relation, the law also applies to public authorities. Public authorities must therefore work for equality within their area and incorporate equality into all planning and administration in the areas covered by the Equal Treatment Act, cf. § 1a of the Act.

Furthermore, the investigation is necessary to protect the vital interests of current and former students who have been or believe they have been subjected to violations, cf. the data protection regulation article 6, subsection 1, letter d and necessary for legal claims to be established, asserted or defended, cf. data protection regulation article 9, subsection 2, letter f. Sexual harassment may entitle to compensation, and a sexual relationship between a teacher and a student may be a criminal offence, cf. the Criminal Code section 222 (sexual relationship with a child under 15) and section 223 (sexual relationship for a student under the age of 18), possibly Section 232 (violation of defamation). In this connection, a compensation claim may

have arisen for the students who have been exposed to violations.

SAG and the Municipality of Copenhagen have an obligation to protect students from abuse, and this also applies to abuse that dates back a long time. It follows from Section 93b of the Criminal Code that violations of, among other things Sections 222 and 223 do not become statute-barred, just as special statutes of limitation apply to violations of § 232 in relation to children.

[…]

For the sake of clarity, we can inform you that at this time it cannot be ruled out that part of the general personal data that is collected and processed in connection with the legal investigation will take place on the basis of the data protection regulation article 6, subsection 1, letter e (SAG) and letter f (Bech-Bruun), but a, the nature of the case and consideration for the affected persons do not mean that an objection regarding processing of your personal data must be taken into account, cf. above regarding Article 21 of the Data Protection Regulation.

[…]

In our assessment, there are none of these considerations that speak strongly against SAG and the Municipality of Copenhagen choosing to try to uncover, via the lawyer's investigation, whether violated or criminal acts have taken place against the students. The investigation has not been launched on the basis of rumours, but because SAG and the Municipality of Copenhagen have received specific reports about conditions that may be in breach of the legislation.

You are of course very welcome to call me if we need to discuss the above"

The complainant contacted Bech-Bruun again on 9 July 2021. The contact showed, among other things, that the complainant did not believe that Bech-Bruun had the right to process information about him that might be covered by Article 6, Article 9 of the Data Protection Regulation, or Section 8 of the Data Protection Act. Furthermore, it appeared that the complainant would submit a complaint about Bech-Bruun to the Data Protection Authority.

On the same day, the Danish Data Protection Authority received a complaint about Bech-Bruun's handling of information about complaints in connection with the initiation of the legal investigation in question.

On 27 July 2021, the Data Protection Authority sent the complainant's complaint for hearing and requested Bech-Bruun for an opinion.

On 24 August 2021, Bech-Bruun submitted a statement, after which the supervisory authority requested Bech-Bruun for a

supplementary statement.

Bech-Bruun made further statements on the case respectively on 28 September and 24 November 2021, while the complainant submitted comments on the case on 9 October, 26 November 2021 and 6 December 2021 respectively.

The complainant also contacted Bech-Bruun on 1 December 2021 and requested access to information about himself.

Bech-Bruun responded to the access request on 14 December 2021. The response showed that, in relation to Article 15, para. 3 the following:

"[…]

Regarding your request according to the regulation's article 15, paragraph 3, about receiving a copy of the information we process about you, we can inform you that we are currently unable to comply with the request. It is our assessment that disclosure of the information at this time may complicate or prevent the completion of the investigation, as we have not completed interviews with all relevant persons.

In this connection, we refer to § 22, subsection of the Data Protection Act. 1 and 2. A copy would thus be contrary to public interests linked to the municipality's solution of educational tasks and the municipality's public and private interests as a public employer in relation to making legal reactions as an employment authority and by making civil law claims. We also point out that a copy - at least at the present time - could conflict with private interests, including because it concerns confidential, purely private information about other registered users, as well as information that it has not yet been possible to verify.

I can state that, in connection with the conclusion of the investigation, we will give you the opportunity to comment on the general conclusions of the report, and that at this time you will have access to familiarize yourself with the information relating to you within the framework of data protection legislation ."

Based on this, on 4 January 2022, the complainant sent further comments to the case, whereby the complainant wanted to expand the complaint as far as Bech-Bruun's response to his request for insight was concerned.

As a result, the Danish Data Protection Authority requested Bech-Bruun for an opinion on the matter on 17 January 2022. Bech-Bruun sent a statement in this regard on 22 February 2022. Complainants made comments on the statement on 17 March 2022.

On October 3, 2022, CO:PLAY Advokatpartnerselskab submitted closing remarks on behalf of the complainants, which were sent to Bech-Bruun on October 11, 2022. The Danish Data Protection Authority then received final comments from

Bech-Bruun on 15 November 2022.

2.1. Bech-Bruun's general remarks

Bech-Bruun has generally stated that Bech-Bruun – in agreement with Sankt Annæ Gymnasium and Copenhagen Municipality – has carried out an external legal investigation regarding possible cases of abusive behavior towards students at Sankt Annæ Gymnasium, including towards members of the high school's choir.

The investigation was not initiated on the basis of rumours. On the other hand, the investigation was initiated when Sankt Annæ Gymnasium and Copenhagen Municipality received specific reports from former students - including choir members - about conditions that could be in breach of the legislation. Sankt Annæ Gymnasium and Copenhagen Municipality therefore found it necessary to uncover the extent and nature of these conditions, which, among other things, concerned possible sexual harassment.

Bech-Bruun was asked to oversee the initiation and completion of the legal investigation. At the end of the investigation, Bech-Bruun had to prepare a confidential report for the Municipality of Copenhagen on possible violations of students at Sankt Annæ Gymnasium.

Bech-Bruun, in its role as a law firm, was the independent data controller for the collection and subsequent processing of information about data subjects in connection with the investigation of possible violations at Sankt Annæ Gymnasium. The basis for Bech-Bruun's processing of personal data in connection with the legal investigation, however, stems from the directive from the Municipality of Copenhagen. The task is described in more detail in the terms of reference which form the basis of the investigation.

It appears from this that the purpose of the study was to:

"... uncover and explain the extent and nature of possible offensive behavior or unwanted sexual attention towards students at SAG, including towards the members of the choir and others connected to the choir. If it is assessed that offensive behavior or unwanted sexual behavior has been exhibited, Bech-Bruun must make recommendations to SAG's board of directors and Copenhagen Municipality about actions that the results of the investigation may give rise to.

Bech-Bruun must also investigate whether SAG, managers/teachers at the school or other relevant persons associated with SAG and/or the choir have received complaints from students or others who have been associated with SAG, about sexual harassment or other offensive behaviour. If this is the case, Bech-Bruun must investigate how inquiries have been handled,

and possibly come up with proposals for an improved procedure for handling reports of sexual harassment and other offensive behavior in the future."

Bech-Bruun has referred to the data protection regulation's article 6, subsection 1, letters c, d and e.

Processing of information about criminal offenses has taken place on the basis of section 8, subsection of the Data Protection Act. 1 piece. 2, no. 2, subsection 3, second point, and subsection 4, second point

Bech-Bruun's processing of information about the complainant's sexual relationship is carried out on the basis of Article 9, paragraph 1 of the Data Protection Regulation. 2, letters b and f.

In relation to the obligation to provide information pursuant to Article 14 of the Data Protection Regulation, Bech-Bruun has stated that Bech-Bruun is aware of this, but that Bech-Bruun failed to fulfill the obligation to provide information to complainants, cf. Section 22 of the Data Protection Act.

As regards the complainant's request for access from 1 December 2021, Bech-Bruun has stated that the request was answered on 14 December 2021 and that the complainant received all the information required under Article 15, paragraph 1 of the Data Protection Regulation. 1.

However, Bech-Bruun did not provide a copy of the information on complaints - as is required under Article 15, paragraph 1 of the Data Protection Regulation. 3 – as decisive considerations for private and public interests spoke against it, cf. section 22, subsection of the Data Protection Act. 1 and 2.

Furthermore, it is Bech-Bruun's opinion that the processing of information about complaints in connection with the implementation of the legal investigation in question has taken place in accordance with Article 5 of the Data Protection Regulation.

2.2. Complainant's general comments

The complainant has stated that he was associated with Sankt Annæ Gymnasium from 1979 to 2000. In the first years, the complainant was a part-time teacher, while from 1984 he became a permanent assistant professor.

According to the complainant, the legal investigation was initiated to counter pressure from the media, which arose on the basis of Dagbladet Politikken's articles about a cross-border and sexualized environment in Danmarks Radio's girls' choir.

From its start, the investigation has focused on complaints - as well as one other former employee - and the investigation therefore lacked a legitimate purpose from the start. This is because the information on complaints dates back at least 20

years, and that the vast majority of the reported cases are second-hand accounts, and thus not from people who themselves believe they have been subjected to offensive acts.

As a result, it is the complainant's general opinion that the lawyer's investigation is in violation of the general principles in Article 5 of the Data Protection Regulation and that there has been no authority to process information about him in Article 6, Article 9 of the Data Protection Regulation, or Section 8 of the Data Protection Act.

The complainant has also stated that he has not received information about Bech-Bruun's processing of information about him in accordance with Article 14 of the Data Protection Regulation, and that in connection with his request for access he was not given a copy of the information about him, which is in contrary to the data protection regulation, article 15, subsection 3.

3. Article 6 of the Data Protection Regulation

3.1. The parties' comments

Bech-Bruun has stated that the processing of information about complaints in connection with the legal investigation has been carried out on the basis of the Data Protection Regulation, Article 6, subsection 1, letters c, d and e. Processing of information about complaints therefore does not require the complainant's consent.

The processing was based on Sankt Annæ Gymnasium's (and Copenhagen Municipality's) legal obligations under the Equal Treatment and Education Environment Act, as Sankt Annæ Gymnasium has an obligation to ensure a harassment-free environment and to actively combat sexual harassment.

Bech-Bruun notes in this connection that the duty to ensure a harassment-free environment follows from Section 4 of the Equal Treatment Act, as "equal working conditions" also includes the prohibition of sexual harassment, cf. Section 1, subsection of the Act. 4. From the preamble to Section 4 of the Equal Treatment Act, it appears that the provision also entails a duty for the employer to provide a harassment-free environment, and that the employer is obliged to reasonably protect its employees against harassment. The obligations of the Equal Treatment Act also apply to public authorities, cf. § 1 a of the Act.

Bech-Bruun also notes that, although the Education Environment Act only came into force in 2001, the law's appeals rules do not contain any specific deadline for appeals, which means that the appeals body – the Danish Center for Education Environment – is obliged to assess the timeliness of all complaints received.

Finally, Bech-Bruun has stated that the processing of information about complaints has taken place pursuant to Article 6, paragraph 1 of the Data Protection Regulation. 1, letters d and e, as the investigation was necessary to protect the vital

interests of current and former students who have been or believe they have been subjected to violations.

The complainant has stated that the complainant has not consented to the collection and processing of information about him in connection with the legal investigation in question.

It is also the complainant's opinion that none of the other grounds for processing in the data protection regulation's article 6, subsection 1, letters b-f, can form the basis for processing information about him. The complainant notes in this connection that Bech-Bruun has changed/changed the basis of treatment several times during the processing of the case.

The complainant has also stated that the rules in Article 6 of the regulation cannot possibly justify the fact that today it is sought to obtain personal data about sensitive and potentially dishonorable matters that took place 20-40 years ago, and about which it could be considered particularly difficult in advance to provide clear evidence of.

The complainant does not disagree that Sankt Annæ Gymnasium (and the Municipality of Copenhagen) has a duty to comply with working environment law and/or other regulations regarding sexual harassment. However, it is the complainant's opinion that the obligation only makes it legal to process personal data that is of such relevance that the employer can use the information to fulfill its duties according to the relevant regulations as far as the current working and/or teaching environment is concerned.

Furthermore, the complainants have stated that there can be no public interest in conducting a lawyer's investigation - with the option of anonymous reporting - to investigate whether a couple of employees have been subjected to sexual harassment many years ago.

3.2. Application of the data protection regulation, article 6, subsection 1, letter c

This appears from the data protection regulation's article 6, subsection 1, letter c, that processing of personal data can take place if processing is necessary to comply with a legal obligation incumbent on the data controller.

From preamble consideration no. 41 to the data protection regulation, it appears that:

“Where this Regulation refers to a legal basis or a legislative measure, it does not necessarily require a law passed by a Parliament, subject to requirements under the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise, and its application should be predictable for persons covered by its scope, cf. the jurisprudence of the Court of Justice of the European Union ('the Court of Justice' «) and the European Court of Human Rights.”

From report no. 1565/2017 on the data protection regulation, page 117, the following appears about the provision:

"The register committee has stated in report no. 1345 that the term legal obligation, according to a purely literal interpretation, covers any form of legal obligation. The committee further states that, regardless of this, it can hardly be assumed that the expression must be understood as including all forms of legal obligations.

It follows from the comments to the Personal Data Act that the term legal obligation includes obligations that result from legislation or from administrative regulations laid down pursuant thereto. The term also includes obligations arising from international rules, including EU legal rules. Just as obligations arising from a court decision or from a decision made by an administrative authority are also covered."

It thus appears from preamble consideration no. 41 and report no. 1565/2017 that a legal obligation pursuant to the data protection regulation, article 6, subsection 1, letter c, i.a. should be clear and precise and should be predictable to persons within its scope.

Bech-Bruun has stated that the processing of information about complaints, which is carried out on the basis of the data protection regulation, article 6, paragraph 1, letter c, has occurred as a result of Sankt Annæ Gymnasium's (and Copenhagen Municipality's) legal obligations under the Equal Treatment Act and the Education Environment Act to ensure a harassment-free working and teaching environment.

It is the opinion of the Danish Data Protection Authority that Bech-Bruun's processing of personal data could not take place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter c.

In the assessment, the supervisory authority has placed emphasis on the fact that the legal obligations arising from the legal basis to which Sankt Annæ Gymnasium and the Municipality of Copenhagen are obliged according to Bech-Bruun, in the opinion of the Danish Data Protection Authority, do not appear sufficiently clear and precise for the present case to be able to be used as a basis for processing according to Article 6, subsection 1, letter c.

As a result, it is the Danish Data Protection Authority's assessment that the processing of information about complaints could not be based on Article 6, paragraph 1 of the Data Protection Regulation. 1, letter c.

3.3. Application of the data protection regulation, article 6, subsection 1, letter d

This appears from the data protection regulation's article 6, subsection 1, letter d, that processing of personal data can take place if processing is necessary to protect the vital interests of the data subject or another natural person.

The following appears from preamble consideration no. 46 to the data protection regulation on Article 6, subsection 1, letter d: "Processing of personal data that is necessary to protect a consideration of fundamental importance to the life of the data subject or another natural person should also be considered lawful. Processing of personal data on the basis of the vital interests of another natural person should in principle only take place if the processing clearly cannot be based on another legal basis. Some types of processing may serve both important societal interests and the data subject's vital interests, e.g. when treatment is necessary for humanitarian reasons, including for the purpose of monitoring epidemics and their spread or humanitarian emergencies, in particular in the case of natural and man-made disasters."

From report no. 1565/2017 on the data protection regulation, page 131, the following also appears about the provision:

"It appears from the regulation's article 6, subsection 1, letter d, that processing is lawful if processing is necessary to protect the vital interests of the data subject or another natural person.

The provision in the regulation's article 6, subsection 1, letter d, corresponds according to the wording to the provision in Article 7, letter d of the Data Protection Directive, and Section 6, subsection of the Personal Data Act. 1, No. 4.

However, in the regulation's article 6, subsection 1, letter d, now an addition, from which it follows that the necessity of a treatment to protect the vital interests of another natural person will also make a treatment legal.

As an example of when it will be legal to process information about a person for the sake of the vital interests of another natural person, the situation where it is not possible for a hospital to come into contact with a patient who is waiting for a new organ at the time the hospital comes into possession of the organ, which is why the hospital has to process personal data about the patient's girlfriend in order to get in touch with the patient.

Regarding the regulation's article 6, subsection 1, letter d, it appears from preamble consideration no. 46 that processing of personal data that is necessary to protect a consideration of fundamental importance to the life of the data subject or another natural person should also be considered lawful. Processing of personal data on the basis of the vital interests of another natural person should in principle only take place if the processing clearly cannot be based on another legal basis. Some types of processing may serve both important societal interests and the data subject's vital interests, e.g. when processing is necessary for humanitarian reasons, including for the purpose of monitoring epidemics and their spread or in humanitarian emergencies, in particular in the case of natural and man-made disasters.

The interpretation contribution in the recital is seen to be in accordance with what follows from applicable law.

The regulation's article 6, subsection 1, letter d, is thus in accordance with what follows from applicable law - however, Article 6, paragraph 1, letter d, will henceforth also apply in connection with the vital interests of another person, which is a change in relation to current law."

Bech-Bruun has informed the case that the processing of information about complaints is carried out on the basis of, among other things, the Data Protection Regulation, Article 6, subsection 1, letter d, as the investigation was necessary to protect the vital interests of Sankt Annæ Gymnasium's current and/or former students.

It is the opinion of the Danish Data Protection Authority that Bech-Bruun's processing of information about complaints could not take place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter d.

In the assessment, the Danish Data Protection Authority has emphasized that the data protection regulation's article 6, subsection 1, letter d's application - as appears from preamble consideration no. 46 and report no. 1565/2017 - does not aim at a processing of personal data that Bech-Bruun has carried out in the present case regarding complaints.

It appears that the provision should in principle only apply if the processing clearly cannot take place on another legal basis. The provision thus has the character of an exception provision/safety valve, and it should (and can) therefore only be used in situations where the processing of personal data is (vital) necessary - as, for example, may be the case within the hospital system and/or for humanitarian reasons.

This is not the case in the present case, and it is therefore the Danish Data Protection Authority's assessment that the processing of information about complaints could not be carried out on the basis of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter d.

3.4. Application of the data protection regulation, article 6, subsection 1, letter e

According to the regulation's article 6, subsection 1, letter e, processing of personal data may be carried out if processing is necessary for the performance of a task in the interest of society or which falls under the exercise of public authority that the data controller has been assigned.

From preamble consideration no. 45 to the data protection regulation, it appears from the provision that:

"If processing is carried out in accordance with a legal obligation incumbent on the data controller, or if processing is necessary to carry out a task in the public interest, or which is part of the exercise of public authority, the processing should have a legal basis in EU law or the national law of the Member States. This regulation does not imply that a specific law is required for each

individual processing. A law may be sufficient as a basis for several data processing activities which are based on a legal obligation incumbent on the data controller or whose processing is necessary to carry out a task in the public interest or which is part of the exercise of public authority. It should also fall under EU law or the national law of the Member States to determine the purpose of the processing. Furthermore, this legal basis may clarify this Regulation's general conditions for the lawful processing of personal data and specify more precisely who the data controller is, what type of personal data is to be processed, the data subjects concerned, which entities the personal data may be disclosed to, purpose limitations, storage period and other measures to ensure legal and fair treatment. It should also fall under EU law or the national law of the Member States to determine whether the data controller who performs a task in the public interest or in connection with the exercise of public authority must be a public authority or another natural or legal person covered by public law, or, if this is in the interest of society, including health purposes, such as public health and social security as well as the management of health services, by private law such as a business association."

The provision also appears in, among other things, the following in report no. 1565/2017, page 132:

"After a literal interpretation, the provision in the regulation's article 6, subsection 1, letter e, generally in accordance with applicable law, cf. the description above. However, see regarding disclosure to third parties who have been ordered to exercise authority and to coordinate for control purposes in separate sections on this.

In this connection, it must be assumed that Article 6, subsection 1, letter e, is directly applicable as a basis for processing, as long as the data controller performs a task in the interest of society or which falls under the exercise of public authority, which the data controller has been assigned. The use of Article 6, subsection 1, letter e, as a basis for processing, thus does not require national, implementing legislation on the processing of personal data itself in connection with the performance of tasks in the interest of society or as part of the exercise of public authority.

The use of Article 6, subsection 1, letter e, does not necessarily require that the task, which requires the processing of personal data, is expressly assigned to the authority in the legislation. […]"

From the above, it thus appears that processing of information according to the data protection regulation, article 6, subsection 1, letter e, must have a legal basis in EU law or the national law of the Member States.

However, this does not mean that a specific law is required for every single processing, and it will thus be sufficient to have a law as a basis for several processing activities – to the extent that the processing is necessary to carry out a task in the

interest of society.

The Danish Data Protection Authority finds that the processing of information about complaints has taken place within the framework of the Data Protection Regulation, Article 6, subsection 1, letter e.

The Data Protection Authority has hereby emphasized that Sankt Annæ Gymnasium and the Municipality of Copenhagen - on whose behalf Bech-Bruun supervises the investigation in question - in accordance with the rules on the operation of the educational institution, including rules in the Act on institutions for general secondary education and general adult education, etc., the Primary Schools Act and the Education Environment Act , has a general obligation to ensure a good teaching environment, so that teaching can take place in a fully responsible manner in terms of safety and health.

As a result, the Data Protection Authority has found no basis for overriding Sankt Annæ Gymnasium's and Copenhagen Municipality's assessment of the necessity of - on the basis of the media coverage and the specific inquiries - collecting information about complaints and, with the involvement of Bech-Bruun, investigating the teaching environment at Sankt Annæ in more detail High school now and back in time in order to assess whether there is or has been a (sexually) cross-border culture at the high school, and if so, the extent of this culture.

On this basis, the Danish Data Protection Authority finds that Bech-Bruun could process information about complaints to the extent mentioned above in accordance with Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e, and within the framework of the terms of reference that Bech-Bruun had agreed with Copenhagen Municipality.

4. Section 8 of the Data Protection Act

4.1. The parties' comments

Bech-Bruun has stated that Bech-Bruun – to the extent that information collected about complaints constitutes information about criminal matters – has processed the information pursuant to section 8, subsection of the Data Protection Act. 3, as it was necessary to take care of the legitimate interest that persons who made a report had in having the culture at Sankt Annæ Gymnasium investigated in more detail, including possible offensive behavior and unwanted sexual attention.

It is Bech-Bruun's opinion that this legitimate interest clearly exceeded the consideration of complaints, which the reports, among other things, concerned.

In Bech-Bruun's assessment, any disclosure of information about criminal offenses to the Municipality of Copenhagen could take place on the basis of section 8, subsection 1 of the Data Protection Act. 4, when the disclosure took place to serve both

public and private interests, which clearly exceeded consideration of the interests that justify secrecy.

Bech-Bruun also notes that it appears from the preparations for Section 8 of the Data Protection Act that not all direct or indirect information about a criminal offense is covered by Section 8. "Ordinary personal data" must be substantiated in one form or another - eg. must information from a report to the police be the subject of further investigation – before it is information about criminal matters.

The complainant has stated that Bech-Bruun has not been authorized to process information about any criminal offences.

Complainants have – in addition to that in section 3.1. stated – noted that any criminal matters are usually investigated by the police, and since no complaints have been lodged against him to the complainant's knowledge, it is the complainant's opinion that Bech-Bruun could not process information about criminal matters.

It is also the complainant's opinion that Bech-Bruun could not process information about criminal matters, as neither Sankt Annæ Gymnasium nor Copenhagen Municipality - for which Bech-Bruun carried out the investigation - had any authority-related reasons to investigate criminal matters back in time.

The complainant has also stated that any possible criminal liability has long since expired, as the complainant left Sankt Annæ Gymnasium in 2000.

The complainant has also referred to the Article 29 group's "opinion 1/2006 (WP117) and the legal comments to the whistleblower act, which entered into force on 17 December 2021, from which it appears that data controllers - in internal whistleblower arrangements - must be careful to receive reports that are not serious offenses or other serious matters. In this connection, the complainant has stated that this was not the case in the present case, and that the interest pursued by Sankt Annæ Gymnasium and Copenhagen Municipality in connection with the investigation does not legitimize the collection of information which is 20-40 years old.

4.2. The Danish Data Protection Authority's assessment

This appears from Section 8, subsection of the Data Protection Act. 3, that private persons may process information about criminal offenses if the registered person has given his express consent to this. In addition, processing of information about criminal matters can take place if it is necessary to safeguard a legitimate interest and this interest clearly exceeds the consideration of the registered person.

Section 8 of the Act, subsection 4, it appears that the information mentioned in subsection 3, may not be passed on without the

express consent of the data subject. Disclosure may, however, take place without consent when it is done to safeguard public or private interests, including consideration for the person concerned, which clearly exceeds consideration for the interests that justify secrecy.

Bech-Bruun has informed the case that it could not be rejected in advance that information about complaints collected for the legal investigation could constitute information about criminal matters.

The Danish Data Protection Authority finds that – to the extent that information about complaints may constitute information about criminal matters – Bech-Bruun's processing of information about complaints could take place within the framework of Section 8, subsection of the Data Protection Act. 3, 2nd point

In the assessment, the Danish Data Protection Authority emphasized that, in the opinion of the Danish Data Protection Authority, the Municipality of Copenhagen had a legitimate interest in – as a result of the inquiries to Sankt Annæ Gymnasium regarding an offensive environment – more closely investigating the working and teaching environment at Sankt Annæ Gymnasium.

The Danish Data Protection Authority has found no basis for overriding the assessment that it might be necessary for Bech-Bruun to process information about (possible) criminal matters about complaints in order to safeguard this legitimate interest.

The Danish Data Protection Authority also finds that Bech-Bruun's disclosure of information about criminal offenses about complaints could take place within the framework of Section 8, subsection 1 of the Data Protection Act. 4, 2nd point

In the assessment, emphasis has been placed on the fact that the disclosure of information about criminal matters about complaints was made only to the Municipality of Copenhagen, and that the disclosure was made to safeguard public and/or private interests.

The Norwegian Data Protection Authority has – in light of the purpose of the investigation – found no basis for overriding this assessment, and in this connection it is the opinion of the Norwegian Data Protection Authority that these interests clearly exceeded the consideration of complaints and the interests that justify the secrecy of the information in question.

In summary, it is the Danish Data Protection Authority's assessment that Bech-Bruun's processing of information about criminal offenses regarding complaints has taken place within the framework of section 8, subsection of the Data Protection Act. 3 and 4.

5. Article 9 of the Data Protection Regulation

5.1. The parties' comments

Bech-Bruun has stated that the processing of information about the complainant's sexual relationship has taken place on the basis of the data protection regulation's article 9, subsection 2, letter b and letter f.

In this connection, Bech-Bruun stated that processing information about the complainant's sexual relationship was necessary for legal claims to be established, asserted or defended.

The possible legal claims that Bech-Bruun examined in more detail - and which formed the basis for processing information about the complainant's sexual relationship - stemmed from the fact that the aggrieved persons were potentially entitled to compensation and/or compensation for violations that may have occurred place at Sankt Annæ Gymnasium.

Sankt Annæ Gymnasium and the Municipality of Copenhagen have (and had) an obligation to protect students from abuse - including those that constitute violations of §§ 222, 223 or 232 of the Criminal Code.

If these obligations are disregarded towards a person under the age of 18 – and in this context failure on the part of the authority can be demonstrated – the person in question may be entitled to compensation and/or compensation.

Bech-Bruun notes that, in this connection, it is irrelevant that any criminal liability in relation to the offending party is time-barred, as the right to compensation and/or compensation is not time-barred. It follows from section 2, no. 1, cf. section 5, subsection 3 of Amendment Act No. 140 of 28 February 2018 to i.a. Limitation Act, that claims for compensation or compensation arising from the fact that an administrative authority, cf. the Administrative Act § 1, subsection 1 and 2, has disregarded statutory obligations towards a person under 18 years of age in connection with abuse committed against him, not time-barred – notwithstanding that the claim was time-barred before the law came into force.

It is also Bech-Bruun's opinion that processing of information about sexual relationships could take place in accordance with the regulation's article 9, subsection 2, letter b, as the Municipality of Copenhagen is subject to legal obligations under the Equal Treatment Act, the Education Environment Act as well as Denmark's obligations under international law to protect children and young people, which arise from e.g. Article 19 of the UN Convention on the Rights of the Child, Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children, and Article 3 of the European Convention on Human Rights - as well as special conventions on sexual abuse of children, including the Lanzarota Convention.

Complainants have – in addition to that in section 4.1. stated - stated that there were no legal claims to investigate, as all

possible legal claims - criminal and civil - against him have long since expired. Bech-Bruun could therefore not process information about his sexual relationship in accordance with the Data Protection Regulation, Article 9, subsection 2, letter f.

In relation to former students' possible claims for compensation and/or compensation, it is the complainant's opinion that such claims must have been raised before the data protection regulation's article 9, subsection 2, letter f, applies. However, such claims have not immediately been raised.

An opposite understanding would mean that public authorities, referring to a theoretical prospect that (former) minors might raise completely unknown claims which are not time-barred, would be able to remove the fundamental and essential protection against the processing of information about sexual relationships that is authorized in the data protection regulation's article 9, subsection 1.

The complainant also notes that such a far-reaching interpretation must require reliable evidence, which is not the case.

In addition, the complainant is of the opinion that any legal claims from former students could not form a basis for processing information about the complainant's sexual relationship, among other things because the exception to the statute of limitations referred to in the Amendment Act is obviously inapplicable, since it concerns harmful acts that are caused by disregard of the authorities' "statutory obligations", and it must have seemed inconceivable in advance that the Municipality of Copenhagen, in connection with the conditions at Sankt Annæ Gymnasium, should have come close to violating any "statutory obligations", which the exception is aimed at.

The complainant has also noted that none of the reported circumstances gave former students a claim for compensation and/or compensation.

In relation to the data protection regulation's article 9, subsection 2, letter b, have complaints - in addition to that in section 3.1. and 4.1. stated - asserted that it is obvious that Sankt Annæ Gymnasium and the Municipality of Copenhagen are not subject to any "legal obligation" to carry out an investigation into circumstances that took place more than 20 years ago in relation to employees and choir members who has long since left Sankt Annæ Gymnasium. Should there be such a "legal obligation", it would have to presuppose a certain form of actuality, e.g. relatively recent assaults against employees or choir members, etc.

5.2. Application of the data protection regulation, article 9, subsection 2, letter b

This appears from the data protection regulation's article 9, subsection 1, that the processing of information about racial or ethnic origin, political, religious or philosophical beliefs or trade union affiliation as well as the processing of genetic data,

biometric data for the purpose of uniquely identifying a natural person, health information or information about a natural person's sexual relationship or sexual orientation is prohibited.

Of the regulation's article 9, subsection 2, it appears that subsection 1 does not apply if one of the conditions in letter a-j applies.

According to the data protection regulation, article 9, subsection 2, letter b, the data controller can process information as mentioned in subsection 1, if processing is necessary to comply with the data controller's or the data subject's employment, health and social law obligations and specific rights, insofar as it is based on EU law or the national law of the Member States or a collective agreement pursuant to the national law of the Member States , which provides necessary guarantees for the data subject's fundamental rights and interests.

Bech-Bruun has stated that the processing of information about the complainant's sexual relationship, which is carried out on the basis of the data protection regulation, article 9, subsection 2, letter b, took place on the basis of the legal obligations, which are also asserted in relation to Article 6, subsection 1, letter c.

The Danish Data Protection Authority is of the opinion that Bech-Bruun's processing of information about the complainant's sexual relationship could not take place within the framework of Article 9, paragraph 1 of the Data Protection Regulation. 2, letter b.

In the assessment, the Danish Data Protection Authority has emphasized that the legal obligations arising from the rules of the Equal Treatment Act and the Education Environment Act are, in the opinion of the Danish Data Protection Authority, not sufficiently clear and precise to be able to form a basis for processing information about the complainant's sexual relationship in the present case.

The Danish Data Protection Authority notes in this connection that, as a result of the protection considerations in relation to the information listed in the data protection regulation, article 9, subsection 1, stricter requirements must be placed on the assessment of necessity and on the clarity and precision of the legal obligation.

5.3. Application of the data protection regulation, article 9, subsection 2, letter f

According to the data protection regulation, article 9, subsection 2, letter f, information that is covered by the prohibition in subsection 1, is processed if processing is necessary in order for legal claims to be established, asserted or defended.

The following appears from preamble consideration no. 52 to the regulation on Article 9, subsection 2, letter f:

” […] A derogation should also make it possible to process such personal data if it is necessary for legal claims to be established, asserted or defended, regardless of whether it is in connection with a legal proceeding or an administrative or extrajudicial procedure.”

The Danish Data Protection Authority specifically finds that Bech-Bruun's processing of information about the complainant's sexual relationship has taken place within the framework of the Data Protection Regulation, Article 9, subsection 2, letter f.

In the assessment, the Data Protection Authority has emphasized that Bech-Bruun's processing of information about the complainant's sexual relationship, according to the information provided, took place with a view to being able to assess whether Copenhagen Municipality - as a result of the working and teaching environment at Sankt Annæ Gymnasium - could be met with claims from former students for reimbursement and/or compensation, cf. section 3, subsection of the Limitation Act. 5, for having disregarded statutory obligations towards persons under the age of 18 in connection with abuse committed against them.

Of the general comments on section 3 of the Limitation Act, subsection 5[3], it appears that:

"A compensation claim against an administrative authority in these cases could consist of a claim for compensation for personal injury. For example, it can be compensation for medical expenses or compensation for loss or impairment of working capacity. A claim for compensation against an administrative authority in these cases could be raised as a claim for compensation in connection with the authority's violation of the ECHR."

Furthermore, it appears that:

"The proposed repeal of the limitation periods must apply to compensation and compensation claims in connection with an administrative authority's disregard of statutory obligations. Thus, for example, it may be a question of statutory obligations under the Service Act [...] or an administrative authority's disregard of obligations under the ECHR."

On the basis of this, the Data Protection Authority finds that it cannot override Bech-Bruun's assessment of the necessity to collect information about the complainant's sexual relationship in order to assess whether the Municipality of Copenhagen could be met with a claim for compensation and/or compensation pursuant to section 3, subsection of the Statute of Limitations. 5.

6. Article 14 of the Data Protection Regulation

6.1. The parties' comments

Bech-Bruun has stated in relation to the duty to provide information that Bech-Bruun is aware of this, but that Bech-Bruun did not comply with the duty to provide information to complaints based on the exception provision in Section 22 of the Data Protection Act.

Bech-Bruun has referred the processors to Section 22 of the Data Protection Act, from which it appears that the private interests which must justify secrecy, i.a. can be decisive considerations for other involved parties and the registered as well as decisive considerations for the prosecution of legal offenses (L68, page 191, 2nd column).

In this connection, Bech-Bruun has stated that it was crucial to take into account the persons who, in connection with the completion of the legal investigation, had approached Sankt Annæ Gymnasium, as these persons experience having been exposed to abusive behaviour.

In addition, it was crucial to take into account the conduct of the legal investigation, and the purpose of the investigation would be lost if, at the time of the collection of personal data or at a later time in the early stage of the investigation, Bech-Bruun had to inform, among other complaints, about whom a report had been made, that - as part of the investigation - information had been collected about him.

In addition, the specific content of the reports had not been the subject of an in-depth investigation, which is why it was necessary to review the reports first - among other things, in accordance with Article 5, to ensure the accuracy of the information and the principle of data minimization.

In this connection, Bech-Bruun has claimed that a lawyer's investigation, where the determination of the facts is a decisive element, in Bech-Bruun's opinion, requires a working method where it is possible to verify the correctness of disputed information and information that is provided in the process. This structure, in which Bech-Bruun must verify a disputed fact in a way that ensures legal protection for those involved corresponding to the guarantees of the administration of justice, is a special feature of lawyer investigations.

At the same time, the rights of those involved in accordance with data protection legislation must be secured to the fullest extent possible. In practice, in Bech-Bruun's opinion, this means, among other things, that it may be necessary to supplement the disclosure obligation in relation to some persons, because new information appears, while in relation to other persons it may be necessary to limit or temporarily postpone fulfillment of the obligation to provide information along the way.

In relation to complaints, it has been necessary to apply the exceptions to the duty to provide information during the

investigation; partly because Bech-Bruun has been unsure whether the information on complaints was correct; partly because Bech-Bruun wanted to rule out the risk that complaints (or others involved) could influence witness statements – and thus the course of the investigation.

It is Bech-Bruun's opinion that Bech-Bruun has correctly observed the duty to provide information to the complainant by giving the complainant access to review the explanations that concern him and by giving him the opportunity to submit his comments on the information received , before Bech-Bruun completed his report.

The complainant has stated that Bech-Bruun has not complied with the obligation to provide information in a timely or sufficient manner towards him, and that Bech-Bruun has therefore not complied with the data protection regulation's Article 5, subsection 1, letter a, article 12, or article 14.

6.2. The Danish Data Protection Authority's assessment

This appears from the data protection regulation's article 14, subsection 1, that the data controller must provide a range of information to the data subject, if personal data has not been collected from the data subject himself.

In addition to the information pursuant to Article 14, para. 1, letters a-f, the data controller must provide the data subject with the information that appears in Article 14, subsection 2, letters a-g, if necessary to ensure fair and transparent treatment as far as the data subject is concerned.

The data subject's right to receive information pursuant to Article 14 may, however, be limited in whole or in part if the data subject's interest in the information is found to give way to decisive considerations of private interests, including consideration of the data subject himself, cf. the Data Protection Act section 22, subsection 1.

Correspondingly, the right to receive information can be limited in whole or in part if the data subject's interest in getting to know the information is found to give way to decisive considerations of public interests, cf. section 22, subsection of the Data Protection Act. 2, including in particular the consideration of the public interests, which appears in subsection 2, No. 1-10.

About the provision appears, among other things, the following of the special comments to § 22[4]:

"The limitation of the data controller's or his representative's obligation to provide information pursuant to section 22, subsection 1 and 2, can only be done on the basis of a concrete balancing of the opposing interests, which are mentioned in the provisions. The balance must be carried out for each individual piece of information separately, with the effect that, if such considerations only apply to part of the data protection regulation's article 13, subsection 1-3, and Article 14, subsection 1-4,

the information mentioned, the registered notice of the other information must be given.

[…]

According to the provision in subsection 1 can be an exception to the provisions of the data protection regulation, article 13, subsection 1-3, Article 14, subsection 1-4, and Article 15, is done if the data subject's interest in getting to know the information is found to give way to decisive considerations of private interests, including consideration of the person in question himself.

As mentioned, the balance includes, on the one hand, the data subject's interest in becoming aware of the data protection regulations in Article 13, subsection 1-3, and Article 14, subsection 1-4, mentioned information. Against this, on the other hand, is the consideration of private interests, including the person in question himself. The private interests that can be protected under the provision are the interests of both the data controller and third parties.

As private interests that, among other things, will be able to justify non-disclosure, decisive considerations for trade secrets, decisive considerations for other involved persons than the registered person can be mentioned – e.g. a minor child of the data subject – and crucial considerations for the prevention, investigation and prosecution of offenses as well as the protection of witnesses.

Furthermore, i.a. decisive considerations for a data controller who collects information about the data subject could justify secrecy, for example if the purpose of the collection is lost if the data subject becomes aware of the collection.

[…]

With the use of the term "crucial" in the provision, it is indicated that an exception to the duty to provide information and the right of access can only be made where there is an imminent danger that the interests of private individuals will suffer significant damage."

Bech-Bruun has stated that, pursuant to Section 22 of the Data Protection Act, Bech-Bruun has not observed the obligation to provide information to complainants, as Bech-Bruun has been unsure whether the information about complaints was correct, and as Bech-Bruun wanted to exclude the risk so that complainants (or others involved) could influence witness statements - and thus the course of the investigation.

It is the Danish Data Protection Authority's assessment that Bech-Bruun's failure to comply with the duty to provide information to complainants could not be done on the basis of Section 22 of the Data Protection Act.

In the assessment, emphasis has been placed on the fact that Bech-Bruun's uncertainty about the accuracy of the information

does not, in the Data Protection Authority's view, constitute an interest that must be decisively taken into account, and which can therefore in itself justify the complete or partial omission of the obligation to provide information.

However, the Danish Data Protection Authority is of the opinion that the interest in preventing complainants (or others involved) from influencing witness statements constitutes an interest which, depending on the circumstances, can be decisively taken into account, and which can therefore concretely justify fulfilling the obligation to provide information in whole or in part is omitted.

In this connection, the Danish Data Protection Authority has found no basis for overriding Bech-Bruun's assessment that there was a decisive consideration to be taken when launching the investigation, and it is thus the Danish Data Protection Authority's opinion that Bech-Bruun could (for a certain period of time) refrain from fulfill the obligation to provide information to complainants.

Data controllers who – due to decisive considerations of private or public interests – fail to fulfill the obligation to provide information must, in the opinion of the Danish Data Protection Authority, observe this (in whole or in part) when the prerequisites for failing to fulfill the obligation to provide information have (fully or partially) ceased to apply.

If there is therefore no longer decisive consideration to be given to the private or public interest(s) which justified (full or partial) omission, the data controller must observe the duty to provide information.

In the Data Protection Authority's opinion, Bech-Bruun should therefore have made an ongoing assessment of whether the obligation to provide information to complainants could be fully or partially observed.

Likewise, Bech-Bruun should, at the time when it was no longer decisive, take into account that complaints (or others involved) could influence witness statements – e.g. when all interviews with the investigation's witnesses, which complaints would potentially influence, had been completed – having observed the obligation to provide information to complainants.

Bech-Bruun has failed to do so, and as a result the Danish Data Protection Authority finds grounds to express criticism that Bech-Bruun has not observed the obligation to provide information pursuant to Article 14 of the Data Protection Regulation to complaints.

7. Insight according to Article 15 of the Data Protection Regulation

7.1. The parties' comments

Bech-Bruun has stated that on 14 December 2021 Bech-Bruun responded to the complainant's request for insight, which

appeared on 1 December 2021.

In the response, the complainant received the information that Bech-Bruun, in accordance with the data protection regulation's article 15, paragraph 1, is obliged to provide the registered.

However, Bech-Bruun did not provide a copy of the information that Bech-Bruun processed about complaints, as Bech-Bruun considered that providing a copy of the information at the time in question could make it difficult or prevent the completion of the investigation, as Bech-Bruun did not have completed interviews with all relevant persons.

Bech-Bruun has referred to section 22, subsection 2 of the Data Protection Act as the basis for the failure to hand over a copy of the information on complaints. 1 and 2. As justification, Bech-Bruun has also stated that disclosure of the information would be contrary to public interests linked to the municipality's solution to teaching tasks and the municipality's public and private interests as a public employer in relation to being able to make legal reactions as an employment authority and by make civil claims.

In addition, Bech-Bruun has stated that a copy - at least at the time of the response on 14 December 2021 - could conflict with private interests, as it was confidential, purely private information about other data subjects, and that at the time it was not yet had been possible to verify the information.

Bech-Bruun has also stated that at the end of January 2022 the investigation was so advanced that the complainant (and the complainant's lawyer) were invited for an interview. The interview was held on 2 February 2022, where the complainant was presented with the information received about him as part of the interview, and where the complainant was given the opportunity to review and comment on the information.

However, the complainant was also not given a copy of the information in that connection, as the information also concerned third parties, which is why Bech-Bruun, based on a concrete assessment, only submitted the information to him.

The complainant has stated that Bech-Bruun has refused to hand over a copy of information about him, as is otherwise required under Article 15, subsection 3.

7.2. The Danish Data Protection Authority's assessment

This appears from the data protection regulation's article 15, subsection 1, that the data subject has the right to obtain the data controller's confirmation as to whether personal data relating to the person in question is being processed, and, if applicable, access to the personal data and the information that follows from letter a-h.

Of the data protection regulation, article 15, subsection 3, it appears that the data controller must also provide a copy of the personal data that is processed about the data subject.

The right to receive a copy of the personal data must, according to Article 15, paragraph 4, however, do not violate the rights and freedoms of others.

The data subject's right to access may, however, be limited in whole or in part, if the data subject's interest in the information is found to give way to decisive considerations of private interests, including consideration of the data subject himself, cf. section 22, subsection of the Data Protection Act. 1.

Correspondingly, the right to access can be restricted in whole or in part if the data subject's interest in gaining knowledge of the information is found to give way to decisive considerations of public interests, cf. section 22, subsection of the Data Protection Act. 2, including in particular the consideration of the public interests, which appears in subsection 2, No. 1-10.

About the provision appears, among other things, the following of the special comments to section 22[5]:

"The balancing of the opposing interests in connection with the limitation of the right of access must also be carried out for each individual piece of information separately, with the effect that the registered person, if decisive considerations for private or public interests only apply to part of the information that is processed with the data controller, must be made aware of the other information. According to the provision, there is no access to generally exempt certain types of processing of information from the right of access.

According to the provision in subsection 1 can be an exception to the provisions of the data protection regulation, article 13, subsection 1-3, Article 14, subsection 1-4, and Article 15, is done if the data subject's interest in getting to know the information is found to give way to decisive considerations of private interests, including consideration of the person in question himself.

As mentioned, the balance includes, on the one hand, the data subject's interest in becoming aware of the data protection regulations in Article 13, subsection 1-3, and Article 14, subsection 1-4, mentioned information. Against this, on the other hand, is the consideration of private interests, including the person in question himself. The private interests that can be protected under the provision are the interests of both the data controller and third parties.

As private interests that, among other things, will be able to justify non-disclosure, decisive considerations for trade secrets, decisive considerations for other involved persons than the registered person can be mentioned – e.g. a minor child of the data subject – and crucial considerations for the prevention, investigation and prosecution of offenses as well as the protection of

witnesses.

Furthermore, i.a. decisive considerations for a data controller who collects information about the data subject could justify secrecy, for example if the purpose of the collection is lost if the data subject becomes aware of the collection.

In paragraph 1, it is also determined to what extent the data controller can refrain from giving the data subject the right to access according to Article 15 of the regulation. It follows from the provision that the data subject does not have a right to access if the person concerned's interest in getting to know the information is found to be waived for decisive consideration of private interests, including consideration of the person in question himself.

After a concrete assessment, it will be possible to refuse access to information if this will cause the company's business basis, business practices or know-how to suffer significant damage. Furthermore, after a concrete assessment, it will be possible to refuse insight into internal assessments of whether the company will, on the basis of available information, enter into a contractual relationship, change an existing contractual relationship, set special conditions for continuation, possibly completely terminate a contractual relationship and similar cases. In the same way, depending on the circumstances, it will be possible to deny access to e.g. a memo assessing whether a particular lawsuit against a customer is likely to be won, or an internal memo in a case that points out possible signs that a customer has attempted to commit insurance fraud against an insurance company or attempted to evade the obligation pursuant to e.g. a loan contract.

[…]

With the use of the term "crucial" in the provision, it is indicated that an exception to the duty to provide information and the right of access can only be made where there is an imminent danger that the interests of private individuals will suffer significant damage."

Based on the information in the case, the Danish Data Protection Authority finds that Bech-Bruun's failure to hand over a copy of information about complaints could not take place within the framework of Section 22, subsection of the Data Protection Act. 1 and 2.

The Danish Data Protection Authority has found no basis for overriding Bech-Bruun's assessment that a copy of information about complaints could not be provided at the time of the response to the complainant's request for access (on 14 December 2021), as crucial considerations for the completion of the investigation - particularly completion of interviews with relevant witnesses – spoke against extradition.

Bech-Bruun, however, could not, in the Data Protection Authority's opinion, continue to refuse to hand over a copy of information about complaints with reference to this at the time when decisive considerations for conducting interviews no longer applied.

In the Data Protection Authority's opinion, this time occurred at the time when Bech-Bruun had completed all (in relation to the complainant) relevant interviews and at the latest, when the complainant was invited on 27 January 2022 to participate in an interview, where the complainant, among other things, gained access to the information about him.

In the assessment, the Danish Data Protection Authority has also emphasized that the lack of verification of the information does not constitute either a private or public interest, which in itself can justify the exclusion of personal data according to Section 22 of the Data Protection Act. registered (including complaints) access to check the correctness of the information and the legality of the processing.[6]

In addition, the Data Protection Authority has given weight to the fact that Bech-Bruun has not sufficiently demonstrated that decisive considerations for the interests of the Municipality of Copenhagen – with regard to the organization of teaching tasks or as a public employer – should necessitate that the complainant could not receive a copy of the information about himself, as is the starting point according to the data protection regulation's article 15, subsection 3.

In this connection, the Data Protection Authority notes that – as stated above – the use of the term "decisive" indicates that an exception from, among other things, the right of access can only be exercised where there is a imminent danger that private interests will suffer significant damage. Bech-Bruun has not demonstrated such an imminent danger that Copenhagen Municipality would suffer significant damage.

Finally, based on the information in the case, the Danish Data Protection Authority is of the opinion that Bech-Bruun - given that the information relating to complaints, in light of the purpose of the investigation, must be assumed to predominantly relate to the complainant's (alleged) behavior as a teacher at Sankt Annæ Gymnasium - not to a sufficient extent has explained why the complainant could not (to a certain extent) receive a (partial) copy of the information about him.

In this connection, the Danish Data Protection Authority refers to the above-cited special comments to Section 22, from which it appears that a specific assessment must be made of each individual piece of information, with the effect that only parts of the information may be excluded from the right to access.

The Danish Data Protection Authority then finds grounds to express serious criticism of Bech-Bruun's handling of the

complainant's access request in terms of Article 15, paragraph 1 of the Data Protection Regulation. 3.

The Norwegian Data Protection Authority also informs Bech-Bruun of an order to:

to decide whether the conditions for handing over a copy of information about complaints according to the data protection regulation, article 15, subsection 3 is fulfilled, and

to notify complaints whether the provision of a copy of information about complaints is granted or refused.

If Bech-Bruun considers that the provision of a copy of information about complaints (in whole or in part) must be rejected, Bech-Bruun must, as part of the order, provide the complainant with information about the reason for this.

The decision must be notified as soon as possible and no later than 4 weeks from today's date.

The order is announced in accordance with the data protection regulation, article 58, subsection 2, letter c.

According to the Data Protection Act § 41, subsection 2, no. 5, anyone who fails to comply with an order issued by the Data Protection Authority pursuant to Article 58, subsection of the Data Protection Regulation shall be punished with a fine or imprisonment for up to 6 months. 2.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).

[2] Act No. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (Data Protection Act).

[3] L 31 of 4 October 2017, Proposal for an Act on Amendments to the Penal Code, Act on Prescription of Claims, Act on Tort Liability and Act on Compensation from the State to Victims of Crime, section 2.2.3. (Adopted by Act No. 140 of 28 February 2018 on amendments to the Criminal Code, Act on Limitation of Claims, Act on Tort Liability and Act on Compensation from the State to Victims of Crime).

[4] L 68 of 25 October 2017, Proposal for a law on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (data protection law), page 190 f.

[5] L 68 of 25 October 2017, Proposal for a law on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (data protection law),

page 190 f.

[6] See e.g. preamble recital no. 63 to the data protection regulation.