

# Criticism of the Conservative People's Party's failure to fulfill the obligation to provide information

Date: 22-12-2021

Decision

Private companies

Criticism

Supervision / self-management case

Obligation to provide information

Basis of treatment

The Danish Data Protection Authority has assessed that the Conservative People's Party did not fulfill its obligation to provide information when collecting personal data about potential voters.

Journal number: 2019-431-0031

Summary

The Danish Data Protection Authority has made a decision in a case where, after a number of specific inquiries in 2019, the Danish Data Protection Authority became aware of the Conservative People's Party's processing of personal data in connection with the party sending letters to selected households regarding the elections to the European Parliament 2019 and the 2019 parliamentary elections. The Data Protection Authority decided therefore to investigate the matter more closely on its own initiative.

The Conservative People's Party had collected the names and addresses of selected recipients in order to send letters about the party's special issues. The Conservative People's Party had stated as its justification for not providing information to the registered – the letter recipients – that fulfillment of the obligation to provide information could be omitted because the collection of name and address with a view to sending a letter constitutes an expressly established right according to Danish practice, which does not disregard the consideration of the data subject.

The Danish Data Protection Authority found that the Conservative People's Party had not fulfilled its obligation to provide information according to the data protection regulation and expressed criticism of the party, as the authority did not find that there was a basis for failing to fulfill the obligation to provide information.

1. Decision

After a review of the case, the Danish Data Protection Authority finds that the Conservative People's Party's processing of personal data has taken place within the framework of the data protection regulation[1], article 6, subsection 1.

At the same time, however, the Data Protection Authority finds that there is a basis for expressing criticism that the Conservative People's Party's processing of personal data has not taken place in accordance with the rules in Article 14 of the regulation.

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 the Conservative People's Party sent out a number of letters to private citizens in the lead-up to the elections to the European Parliament and the Danish Parliament in May/June 2019 about the party's special issues.

### 2.1. The Conservative People's Party's remarks

NJORD Advokatpartnerselskab (hereinafter "Njord") has stated, on behalf of the Conservative People's Party, that the case is largely identical to a previous case, which the Data Protection Authority decided on 8 June 2016 (Data Protection Authority's reference no. 2014-219-0516) [2]. As in the previous case, the Conservative People's Party has collaborated with the data distributor Geomatic A/S.

Njord has stated that, in connection with the elections to the European Parliament, letters were sent to 130,210 people, and that in connection with the elections to the Folketing, letters were sent to 149,339 people. It is not known with certainty whether and to what extent there was a coincidence of persons for the receipt of letters in the two campaigns. It is likely that there has been a coincidence of persons to some extent.

Njord has generally stated that the letters were sent using a generally recognized method for sending political messages.

The Conservative People's Party entered into collaboration with Geomatic with a view to running a so-called "direct mail campaign". The campaign consisted of sending letters to potential voters with a presentation of the party's political highlights.

The letters were distributed via the printing house Degn Grafisk A/S

The recipients of the letters were selected on the basis of a segmentation carried out by Geomatic. The segmentation was created based on statistical data from Statistics Denmark, publicly available data from e.g. polling station data, BBR and CVR, geographic variables on population density and the product conzoom®.

The product conzoom® is a data-driven segmentation that uncovers traits or trends in the population and consists of

segmenting nine groups and 36 types.

The specific names and addresses that were used for the direct mail campaign were identified on the basis of selected geographical areas from the segmentation via Geomatic's "decision maker variable".

The decision-maker variable is a product that Geomatic supplies by virtue of its status as a distributor of teledata (www.118.dk), where, via a distributor agreement with TDC A/S, they receive and validate names, addresses and telephone numbers for subsequent distribution to e.g. direct mail campaigns.

The validation is carried out using a CPR quick check and the publicly available data from the telephone information in order to verify which person at a given address opens letters at home.

The decision maker variable must ensure that letters are not addressed to deceased persons or children. This is a very common procedure in direct mail campaigns.

The Conservative People's Party was the data controller for the processing of the name and address of private individuals in connection with the sending of letters with information about the party's political issues. The Conservative People's Party regards Geomatic as an independent data controller for the company's own processing of information from the telecommunications data. The same applies to Degn Grafisk A/S, which handled printing and postal delivery of the letters. The information about name and address was collected from the telephone information of Geomatic as teledistributor and passed on to the Conservative People's Party for the purpose of the party sending the letters.

The processing basis was the data protection regulation, Article 6, subsection 1, letter f. The Conservative People's Party's interest in spreading its political messages in the run-up to the general election was not suitable for infringing the fundamental rights and freedoms of the recipients of the letter. In this connection, please note that it is legal to send letters to residents at private addresses using name and address.

Against this background, the principle of legality, reasonableness and transparency in the regulation's article 5, paragraph 1, letter a, fulfilled.

Njord has noted about the fulfillment of the obligation to provide information in connection with the sending of the letters, that the Conservative People's Party stayed within best practice in direct mail campaigns. It is thus not usual to send a privacy policy together with the fulfillment of the disclosure obligation in Article 13 of the Data Protection Regulation exclusively for the activity that concerns the sending of a letter. The failure to provide information is justified by the exception in the regulation's

article 14, subsection 5, letter c, based on the consideration that the collection of name and address for the purpose of sending a letter constitutes an expressly established right according to Danish practice, which does not override the consideration of the registered person (the recipient of the letter) himself.

After the letters were sent, there were a number of inquiries from citizens to the Conservative People's Party, and Jyllands-Posten wrote an article mentioning the letters. This resulted in the Conservative People's Party publishing an information page about the letters on its website. The information page is available at <https://konservative.dk/brev-fra-os/> and is an expression of a general explanation of the function of the letters and not a privacy policy to comply with Article 13 or 14 of the Data Protection Regulation.

Njord has stated that all information about the recipients of the letters has been deleted immediately after the sending of the letters in each campaign.

The Conservative People's Party has not in practice had access to the personal data (name and address) of the recipients of the letters. Geomatic provided a list of letter recipients to the Conservative People's Party. In agreement with the party, the list was sent directly from Geomatic to Degn Grafiks A/S. Degn Grafisk A/S deleted the list immediately after printing and sending out the letters, as they no longer needed the data. There has not been a question of an instruction, as the term is used in the data protection rules towards a data processor.

As part of the overall agreement for the provision of services, the Conservative People's Party and Geomatic have also entered into a data processing agreement. However, the data processing agreement does not regulate the processing of personal data in connection with the sending of letters to selected households. Njord has forwarded a copy of the data processing agreement to the Danish Data Protection Authority.

Njord has forwarded a letter sample from the European Parliament campaign and from the Folketing election campaign to the Danish Data Protection Authority. The letter samples did not contain information about letter recipients.

### 3. Reason for the Data Protection Authority's decision

#### 3.1.

It appears from the case that the Conservative People's Party had collected address information from Geomatic for use in sending out the letters with the party's signature issues, which, prior to passing on the information to the Conservative People's Party, had carried out a segmentation on the basis of information from Statistics Denmark, publicly available information e.g.

.a. from BBR and polling station data and when using the product conzoom®.

With reference to the Norwegian Data Protection Authority's previous case concerning the Conservative People's Party's distribution of election material[3], the authority has found no basis for including Geomatic's collection and disclosure of address information to the Conservative People's Party during the processing of the case.

In deciding the present case, the Danish Data Protection Authority assumed that Geomatic was the data controller for processing information from the telecommunications information in the form of names and addresses of private individuals. Furthermore, the Data Protection Authority has assumed that the Conservative People's Party was the data controller for the processing of the name and address of private individuals in connection with the collection of this information and the sending of letters with information about the party's political matters.

### 3.2. Processing of personal data in connection with marketing

In the Data Protection Act[4] Section 13, subsection 1-7, more detailed conditions have been laid down for the processing of personal data in connection with marketing.

A company may not pass on information about a consumer to another company for use in direct marketing or use the information on behalf of another company for this purpose, unless the consumer has given his express consent to this.

Consent must be obtained in accordance with the rules in Section 10 of the Marketing Act[5], cf. Section 13, subsection of the Data Protection Act. 1.

According to the Danish Data Protection Authority's practice[6], the Conservative People's Party cannot be perceived as a business operator that has collected the data of the data subjects with a view to selling goods or services to the data subjects. The processing of personal data referred to in the case is therefore not covered by Section 13 of the Data Protection Act. The decision must then be made in accordance with Article 6 of the Data Protection Regulation.

### 3.3. Processing authority for personal data

In connection with the Conservative People's Party's sending of letters to potential voters, the party has processed information covered by Article 6 of the Data Protection Regulation in the form of the name and address of the recipients collected from Geomatic.

Processing of personal data covered by Article 6 can, among other things, take place when the processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the data subject's interests or fundamental rights and

freedoms that require the protection of personal data take precedence, cf. the data protection regulation, article 6, paragraph 1, letter f.

The Danish Data Protection Authority finds that the Conservative People's Party's processing of personal data has taken place within the framework of Article 6, subsection 1, letter f.

The Data Protection Authority has emphasized that the processing of personal data that took place in connection with the sending of the letters was necessary so that the Conservative People's Party could pursue a legitimate interest in informing potential voters about the party's special matters in the run-up to the election.

The Danish Data Protection Authority has also given the meaning that the information about name and address is generally publicly available information, and that the processing thereof in connection with the sending of letters cannot be regarded as interfering with the data subjects. The interests or fundamental rights and freedoms of the data subjects therefore, in the opinion of the Data Protection Authority, do not take precedence over the Conservative People's Party's processing of the personal data of the data subjects.

#### 3.4. Obligation to provide information if the information is not collected from the registered person

It appears from the case that the Conservative People's Party has collected personal data for use in sending letters, and that the information has not been collected from the registrants themselves.

If the personal data has not been collected from the data subject, the data controller must of its own accord provide the data subject with a range of information which is listed in the Data Protection Regulation, Article 14, subsection 1. In addition to the information referred to in subsection 1, the data controller must provide the data subject with a range of information pursuant to Article 14, subsection 2, which are necessary to ensure fair and transparent treatment.

The data controller must provide the information referred to in subsection 1 and 2, within a reasonable period after the collection of the personal data, but no later than within one month, taking into account the specific conditions under which the personal data is processed, cf. Article 14, paragraph 3, letter a. The maximum period within which the information must be provided to the data subject is in any case one month.

Article 14, subsection of the Data Protection Regulation 1-4, does not apply if and to the extent that collection or disclosure is expressly stipulated in EU law or the national law of the Member States to which the data controller is subject and which lays down appropriate measures to protect the legitimate interests of the data subject, cf. article 14, subsection 5, letter c.

It follows from the former Article 29 Group's transparency guidelines under Regulation 2016/679[7] that:

"Article 14, subsection 5, letter c) allows for a repeal of the information requirements in Article 14, subsection 1, 2 and 4, insofar as the collection or disclosure of personal data "is expressly provided for in EU law or the national law of the Member States to which the data controller is subject". This exception is conditional on the legislation in question providing for "appropriate measures to protect the legitimate interests of the data subject". Such legislation must be directed directly at the data controller, and the collection or disclosure in question must be mandatory for the latter. Accordingly, the data controller must be able to demonstrate how the relevant legislation applies to them and obligates them to either collect or pass on the personal data in question."

In the opinion of the Danish Data Protection Authority, the regulation's article 14, subsection 5, letter c, does not apply, as the processing of information in connection with the sending of letters about the party's special matters is not expressly stipulated in the legislation.

Furthermore, the Danish Data Protection Authority is of the opinion that publication of a text on the website of the Conservative People's Party with information about the sending of the letters does not meet the conditions in Article 14 of the Data Protection Regulation, as the information neither meets the requirements for the content as stated in Article 14, paragraph 2, or can be considered as "given" to the registered person, as he or she must find the information on the party's website.

As there is otherwise no justification for failing to fulfill the obligation to provide information in Article 14 or in Section 22 of the Data Protection Act, the Data Protection Authority finds grounds to criticize the Conservative People's Party, as the party has not fulfilled its obligation to provide information according to Article 14 of the Data Protection Regulation.

#### Appendix: Legal basis

Extract from Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with 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).

Article 4. In this regulation is understood by:

"personal data": any type of information about an identified or identifiable natural person ("the data subject"); identifiable natural person means a natural person who can be directly or indirectly identified, in particular by an identifier such as e.g. a name, an identification number, location data, an online identifier or one or more elements specific to the physical,

physiological, genetic, psychological, economic, cultural or social identity of that natural person

"processing": any activity or series of activities — with or without the use of automatic processing — to which personal data or a collection of personal data is made the subject, e.g. collection, registration, organization, systematization, storage, adaptation or modification, retrieval, search, use, disclosure by transmission, dissemination or any other form of transfer, compilation or combination, restriction, deletion or destruction

[...]

"data controller": a natural or legal person, a public authority, an institution or another body which, alone or together with others, decides for which purposes and with which aids the processing of personal data may be carried out; if the purposes and means of such processing are laid down in EU law or the national law of the Member States, the data controller or the specific criteria for appointing this may be laid down in the EU law or the national law of the Member States

"data processor": a natural or legal person, a public authority, an institution or another body that processes personal data on behalf of the data controller

[...]

Article 6. Processing is only lawful if and to the extent that at least one of the following conditions applies:

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

Processing is necessary for the performance of a contract to which the data subject is a party, or for the implementation of measures taken at the data subject's request prior to entering into a contract.

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

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

Processing is necessary for the performance of a task in the interest of society or which falls under the exercise of public authority, which the data controller has been tasked with.

Processing is necessary for the controller or a third party to pursue a legitimate interest, unless the data subject's interests or fundamental rights and freedoms requiring the protection of personal data take precedence, in particular if the data subject is a child.

The first paragraph, letter f) does not apply to processing carried out by public authorities as part of the performance of their tasks.



Article 14. If the personal data has not been collected from the data subject, the data controller provides the data subject with the following information:

identity and contact details of the data controller and his/her representative, if any

contact details for any data protection advisor

the purposes of the processing for which the personal data is to be used, as well as the legal basis for the processing

the categories of personal data concerned

any recipients or categories of recipients of the personal data

where relevant, that the controller intends to transfer personal data to a recipient in a third country or an international

organisation, and whether the Commission has taken a decision on the adequacy of the level of protection, or in the case of

transfers under Article 46 or 47 or Article 49 , PCS. 1, second paragraph, letter h), reference to the necessary or appropriate guarantees and how a copy thereof can be obtained or where they have been made available.

PCS. 2. In addition to the information referred to in subsection 1, the data controller provides the data subject with the following information that is necessary to ensure fair and transparent processing in relation to the data subject:

the period for which the personal data will be stored or, if this is not possible, the criteria used to determine this period

the legitimate interests pursued by the data controller or a third party, if the processing is based on Article 6, paragraph 1, letter f)

the right to request from the data controller access to and rectification or deletion of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability

when processing is based on Article 6, subsection 1, letter a), or Article 9, subsection 2 letter a), the right to withdraw consent at any time, without prejudice to the lawfulness of processing based on consent prior to its withdrawal

the right to lodge a complaint with a supervisory authority

which source the personal data originates from, and possibly whether they originate from publicly available sources

the occurrence of automatic decisions, including profiling, as referred to in Article 22, paragraph 1 and 4, and in these cases at least meaningful information about the logic therein as well as the meaning and expected consequences of such processing for the data subject.

PCS. 3. The data controller provides the information referred to in subsection 1 and 2:

within a reasonable period of time after the collection of the personal data, but no later than within one month, taking into account the specific conditions under which the personal data is processed,

if the personal data is to be used to communicate with the data subject, at the latest at the time of the first communication with the data subject, or

if the personal data is intended to be passed on to another recipient, at the latest when the personal data is passed on for the first time.

PCS. 4. If the data controller intends to further process the personal data for a purpose other than that for which it was collected, the data controller provides the data subject prior to this further processing with information about this other purpose as well as other relevant additional information, cf. subsection 2.

PCS. 5 pieces. 1-4 do not apply if and to the extent that:

the data subject is already familiar with the information

communication of such information proves impossible or will require a disproportionately large effort, in particular in connection with processing for archival purposes in the interest of society, for scientific or historical research purposes or for statistical purposes subject to the conditions and guarantees referred to in Article 89, paragraph 1, or to the extent that the obligation referred to in this article's paragraph 1, is likely to make it impossible or will seriously hinder the fulfillment of the purposes of this processing. In such cases, the data controller takes appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including by making the information publicly available

collection or disclosure is expressly provided for in EU law or the national law of the Member States to which the data controller is subject and which lays down appropriate measures to protect the data subject's legitimate interests, or the personal data must remain confidential as a result of confidentiality obligations under EU law or the national law of the Member States, including statutory confidentiality obligations.

Extract from 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 (the Data Protection Act).

13. A company must not pass on information about a consumer to another company for use in direct marketing or use the information on behalf of another company for this purpose, unless the consumer has given his express consent to this.

Consent must be obtained in accordance with the rules in Section 10 of the Marketing Act.

PCS. 2. Disclosure and use as mentioned in subsection 1 can, however, be done without consent if it is general customer information that forms the basis for division into customer categories, and if the conditions in the data protection regulation's article 6, subsection 1, letter f, is fulfilled.

PCS. 3. Pursuant to subsection 2 information is not passed on or used as mentioned in the data protection regulation, article 9, subsection 1, or § 8 of this Act.

PCS. 4. Before a company passes on information about a consumer to another company for the purpose of direct marketing or uses the information on behalf of another company for this purpose, it must check in the CPR whether the consumer has opted out of inquiries for marketing purposes.

PCS. 5. Data controllers who, for the purpose of direct marketing, sell lists of groups of persons, or who address or send messages to such groups for third parties, may only process

1) information about name, address, position, profession, e-mail address, telephone and fax number,

2) information included in business registers which, according to law or regulations laid down according to law, are intended to inform the public, and

3) other information, if the data subject has given express consent thereto.

PCS. 6. A consent according to subsection 5 must be obtained in accordance with Section 10 of the Marketing Act.

PCS. 7. Processing of information as mentioned in subsection 5 may not include information as mentioned in the data protection regulation, article 9, subsection 1, or § 8 of this Act.

PCS. 8. The Minister of Justice may set further restrictions on the access to pass on or use certain types of information pursuant to subsection 2.

PCS. 9. The Minister of Justice can set further restrictions than those in subsection 7 mentioned in the access to process certain types of information.

22. The provisions of the data protection regulation, article 13, subsection 1-3, Article 14, subsection 1-4, Article 15 and Article 34 do not apply 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.

PCS. 2. Exemption from the provisions of the data protection regulation, article 13, subsection 1-3, Article 14, subsection 1-4, Article 15 and Article 34 can also be done if the data subject's interest in gaining knowledge of the information is found to be

overriding decisive considerations of public interest, including in particular to

- 1) state security,
- 2) the defence,
- 3) public safety,
- 4) prevention, investigation, detection or prosecution of criminal acts or enforcement of criminal sanctions, including protection against and prevention of threats to public safety,
- 5) other important objectives in connection with the protection of the general public interests of the European Union or a Member State, in particular the essential economic or financial interests of the European Union or a Member State, including currency, budget and tax matters, public health and social security,
- 6) protection of the independence of the judiciary and legal proceedings,
- 7) prevention, investigation, disclosure and prosecution in connection with breaches of ethical rules for legally regulated professions,
- 8) control, supervisory or regulatory functions, including tasks of a temporary nature that are connected to the exercise of public authority in the cases referred to in nos. 1-5 and 7,
- 9) protection of the rights and freedoms of the data subject or others and
- 10) enforcement of civil law claims.

PCS. 3. Information that is processed for the public administration as part of administrative proceedings may be exempted from the right of access pursuant to Article 15, paragraph 1 of the Data Protection Regulation. 1, to the same extent as according to the rules in sections 19-29 and 35 of the Act on public disclosure in the administration.

PCS. 4. Articles 13-15 of the Data Protection Regulation do not apply to the processing of personal data carried out before the courts when these act in their capacity as courts.

PCS. 5. Articles 15, 16, 18 and 21 of the Data Protection Regulation do not apply if the information is processed exclusively for scientific or statistical purposes.

PCS. 6. Article 34 of the Data Protection Regulation does not apply as long as notification of data subjects can be concretely assumed to make the investigation of criminal matters more difficult. Application of the 1st point can only be decided by the police.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with 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] In the case, in connection with the elections to the European Parliament in May 2014, the Conservative People's Party had sent a letter to a registered person stating that his address was in the risk zone for burglary. The party had sent similar letters to a number of other selected addresses in areas with an increased statistical risk of burglary. The party had received information about names and addresses from Geomatic A/S. The Danish Data Protection Authority assessed, among other things, that the Conservative People's Party could not be considered a business operator that had collected the data subject's personal data for the purpose of selling goods or services, and that Geomatic A/S's disclosure of personal data had not taken place with a view to marketing, which is why the disclosure was not covered by the current regulations in section 6, subsection of the Personal Data Act. 2-4, and § 36 on marketing.

[3] In case 2014-219-0516 – also referred to in note 2 – the Danish Data Protection Authority took the position that, prior to the sending of letters with the Conservative People's Party's marked cases, a segmentation of Geomatic A/S had been carried out using statistical information, publicly available information as well as when using conzoom®.

[4] 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 (the Data Protection Act).

[5] Act no. 426 of 3 May 2017 on marketing with subsequent amendments (the Marketing Act).

[6] The Danish Data Protection Authority stated in j.no. 2000-139-0002, that the concept of "marketing" in §§ 6, subsection of the Personal Data Act. 2-4, and 36, must generally be understood as a trader's approach to a consumer with a view to selling goods or services.

[7] Article 29-Group on Data Protection, WP 260 rev. 01, guidelines for transparency according to Regulation 2016/679, adopted on 29 November 2017, last revised and adopted on 11 April 2018, p. 35 (Danish language version). The European Data Protection Board has confirmed at its first meeting on 25 May 2018 that this is also an expression of the Council's position.