

Prohibition to TDC to record telephone conversations without consent

Date: 08-04-2019

Decision

Private companies

The Danish Data Protection Agency has notified TDC A / S of a temporary ban on recording telephone conversations for internal training use until a technical solution has been created which makes it possible to obtain consent in accordance with the data protection rules.

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Summary

The Danish Data Protection Agency has processed a complaint in which a person complained about YouSee A / S 'recording of a telephone conversation that he or she had with one of YouSee A / S' customer consultants, without consent having been given for the recording.

On 8 April 2019, the Danish Data Protection Agency made a decision in the case. In the opinion of the Danish Data Protection Agency, there were no circumstances in relation to the specific case that could justify a deviation from the Authority's long-standing practice that recording and storing telephone conversations for educational purposes as a clear starting point can not take place without the consent of those who register information. , why the Authority expressed serious criticism. Based on TDC's response in the case, the Danish Data Protection Agency has assumed that at present it is not technically possible to obtain consent from the persons about whom information is registered in connection with telephone calls. The Danish Data Protection Agency therefore found grounds for notifying TDC A / S of a temporary ban on recording telephone conversations for internal training use until a technical solution that makes it possible to obtain consent in accordance with the data protection rules has been provided.

Decision

The Danish Data Protection Agency hereby returns in the case, where [complainant] on 5 November 2018 has contacted the Authority about YouSee A / S 'processing of information about him.

According to CVR, YouSee A / S is a secondary name for TDC A / S and thus the same legal entity. YouSee A / S is therefore hereinafter referred to as TDC A / S.

Decision

After a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that TDC A / S 'processing of personal data on complaints has not taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation [1]. 1.

2. Prohibition

The Danish Data Protection Agency announces TDC A / S a temporary ban on recording telephone conversations for internal training use until a technical solution that makes it possible to obtain consent in accordance with the data protection rules has been provided. The prohibition is notified pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter f.

The announced ban means that TDC A / S must stop recording telephone conversations for internal training use within 2 weeks from today, until a technical solution that makes it possible to obtain consent in accordance with the data protection rules has been provided.

TDC is asked to notify the Danish Data Protection Agency no later than the same date of what TDC has done in connection with the announced ban.

The Danish Data Protection Agency draws attention to the fact that according to the Data Protection Act [2], section 41, subsection 2, no. 4, it is a criminal offense to fail to comply with a temporary or definitive restriction of processing notified by the Danish Data Protection Agency pursuant to Article 58 (1) of the Regulation. 2, letter f.

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

3. Case presentation

It appears from the case that a telephone conversation that the complainant had with one of TDC's customer consultants was recorded without the complainants having given consent to the recording.

It also appears from the case that the recorded conversation has since been deleted.

3.1. Complainant's remarks

Complainants have generally stated that he has been in contact with TDC's customer service, where he is met on the phone by the information that the call can be recorded for internal training use. In this connection, complainants have stated that he has not given consent to the admission nor was he asked for consent.

Complainants have further stated that when he spoke to the customer consultant, he first asked that the recording of the conversation be turned off as he did not want information stored. The customer consultant stated that the recording could not be stopped.

Complainants have further stated that he was informed by telephone that the recording could be used to establish what the customer consultant had promised in the call if he were to complain later, ie. for documentation purposes and not for internal training use.

Finally, the complainants have stated that TDC's processing of information (the recording) cannot take place on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter f.

3.2. TDC A / S 'comments

TDC A / S has generally stated that the company has processed information about complaints in the form of a recorded telephone conversation. The personal data on complaints were processed for internal training use on the basis of Article 6 (1) of the Personal Data Regulation. 1, letter f.

Furthermore, TDC has stated that the company is of the opinion that it does not constitute a sufficient consent from a customer that the customer chooses to continue a telephone conversation with a customer consultant after the customer has been informed that the telephone conversation will be recorded for internal training use. . TDC has therefore weighed the consideration of the importance of continuously being able to improve the general customer satisfaction with the individual customer's fundamental rights and freedoms.

Finally, TDC states that, although the personal data contained in a conversation between a customer and a customer consultant are generally not of such a nature that the recording of the telephone conversation could threaten the customer's fundamental rights and freedoms, and a legal basis in Article 6 pieces. According to the wording of the Personal Data Regulation, Article 6 (1) (f) constitutes as good a legal basis as consent under Article 6 (1). 1, letter a, there is no doubt that it is the legislator's wish that consent is obtained as far as possible.

Against this background, it is TDC's intention, as soon as a technical solution is in place, to obtain consent to record the telephone conversation when a customer calls a customer consultant.

Justification for the Danish Data Protection Agency's decision and the announced ban

The Danish Data Protection Agency assumes that the telephone conversation was recorded without the complainant's

consent.

It is the opinion of the Danish Data Protection Authority - just as it was the Authority's practice under the previously applicable Personal Data Act [3] - that recording and storage of telephone conversations for educational purposes should in principle be based on the consent of the persons registered information, cf. Article 6 of the Data Protection Regulation. PCS. 1, letter a.

The Danish Data Protection Agency is thus of the opinion that the recording and storage of telephone conversations for educational purposes as a starting point cannot take place without the consent of those for whom information is registered.

The Danish Data Protection Agency cannot rule out the possibility that in very special circumstances there may be a legitimate interest which necessitates recording without consent and where processing may take place on the basis of the balancing of interests rule in Article 6 (1) of the Data Protection Regulation. 1, letter f.

However, the Danish Data Protection Agency finds that TDC has not stated such special circumstances that may justify the recording and further processing of the telephone conversation in question for internal training use without the consent of the complainants.

As the complainants in the specific case did not consent to the recording, the Danish Data Protection Agency finds that TDC A / S 'recording of the telephone conversation in question did not take place in accordance with Article 6 (1) of the Data Protection Ordinance. 1, which gives the Authority the opportunity to express serious criticism.

The Danish Data Protection Agency has also understood TDC's response to the audit in such a way that consent is not currently obtained for the recording and storage of telephone conversations for educational purposes, as it is not technically possible to obtain consent.

The Danish Data Protection Agency therefore finds that there are grounds for granting TDC A / S a temporary ban on recording telephone conversations for internal training use until a technical solution that makes it possible to obtain consent in accordance with the data protection rules has been provided. The prohibition is notified pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter f.

The announced ban means that TDC A / S must stop recording telephone conversations for internal training use within 2 weeks from today, until a technical solution that makes it possible to obtain consent in accordance with the data protection rules has been provided.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals

with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General data protection regulation).

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

[3] Reference is made i.a. to the Data Inspectorate's statement of 27 January 2004 (j.nr. 2002-215-0103), which is published on the Authority's website www.datatilsynet.dk under the item "Supervision and decisions" -> "Historical decisions".