

Invalid consent and failure to delete

Date: 18-05-2020

Decision

Private companies

The Danish Data Protection Agency expresses serious criticism that a company's processing of personal data has taken place without valid consent from the data subjects, and that the company refused to delete personal data about one of the complainants, even though the person in question had withdrawn the consent.

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Summary

The Danish Data Protection Agency has processed a complaint from a number of data subjects that company X had published information about two of the complaints in the form of five pictures, and that the company had refused to delete the published information as well as all other information - including unpublished - about all the complaints. , which the company was in possession of.

Regarding the publication, company X has stated that the company had published pictures of two of the complaints on the Internet and that the company had obtained consent to this. The company stated that written consent had been obtained for the publication of the first image, while oral consent had been obtained for the publication of the remaining ones.

Regarding deletion, company X first stated that the company could not comply with the deletion request for the first photo, as the company had a written consent to the publication. The company subsequently deleted the image because the company became aware that consent can be withdrawn. The company also stated that photo two-four had not been deleted by mistake, that the company would not delete photo five because none of the complaints are seen in the picture, and that the company could not otherwise agree to delete unpublished information about all the complaints, including names and contact details, due to a pending case between the parties i.a. regarding non-payment.

The Danish Data Protection Agency found that company X 'processing of personal data took place without valid consent because the company could not demonstrate that oral consent had been given and because the written consent did not live up to the conditions for a valid consent. The Danish Data Protection Agency also found that the conditions for deleting image one were met because the complainant in the image withdrew his consent to the publication. The Danish Data Protection Agency

also found that company X could continue to process information about the complainants' names and contact information due to the pending case.

Decision

The Danish Data Protection Authority hereby returns to the case, where complainant A on 20 June 2019 has approached the Authority on behalf of herself, complainant B, complainant C and complainant D (hereinafter the complainants) regarding company X 'processing of personal data.

The Danish Data Protection Agency has understood the inquiry as a complaint about publication of photos of complainants D and C as well as failure to delete these photos and other information about all five complainants, including information about name, address, telephone number, e-mail address and unpublished photos of complainants.

The Danish Data Protection Agency notes that the Authority can only take a position on data protection law issues. With this decision, the Danish Data Protection Agency has therefore not taken a position on questions about possible financial balances between the parties. Furthermore, the Danish Data Protection Agency has not taken a position on questions concerning the submission of marketing material regarding new courses sent to complainants' email addresses and via Facebook messenger.

Decision

After reviewing the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that company X 'processing of personal data has not taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation [1]. 1 and Article 17, para. 1.

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

2. Case presentation

It appears from the case that Company X has published a number of images of Complaints D and C on the Company's website and YouTube channel. It also appears from the case that there is disagreement between the parties as to whether the company has consented to publish the images in question.

It also appears that the complainants have requested the deletion of the photos and all other information in the company's possession about all five complainants, including other unpublished photos, and information on names, addresses, telephone numbers and e-mail addresses.

2.1. Complainants' remarks

The complainants have generally stated that Company X has published five photos of complainants D and C on the company's website and YouTube channel without consent.

The complainants further state that the complainants have requested the company to delete the photos and all other information concerning all the complaints in the company's possession, including photo and video material, names, addresses, telephone numbers and e-mail addresses, but that the company has refused to comply with the deletion requests.

In addition, the complainants have stated that according to complainant C's own statement, she is the one seen in photo 5, and unless the company can document that this is not correct, this photo is still to be deleted.

2.2. Company X's comments

Company X has generally stated that pictures of complaints D and C have been published on the basis of the consent of these two. The company has further stated that written consent has been obtained from complainant D for the publication of the photo 1 referred to in the complaint. The company has sent a copy of the consent statement in question. The declaration of consent contains the following text:

The undersigned participates in a filming as an advertisement for Company X, which is owned by X.

The undersigned hereby gives X permission to use the film as she wishes and on all platforms.

The undersigned renounces his opportunity to in some way stop the film in which the undersigned participates with his signature on this document. "

As far as photos 2, 3 and 4 are concerned, company X has stated that these have been published on the basis of oral consent.

The company has stated in the case that at all events in the company, oral consent has been obtained from all participants that pictures and video material were recorded for use in marketing the company. As far as photo 5 is concerned, the company has stated that the photo is not of complainant C.

Regarding deletion of the published photos, the company has generally stated that in June 2019 the company complied with the complainants' requests for deletion, but that in this connection she had overlooked photos 2, 3 and 4. The company has stated that these have now been deleted.

Regarding the deletion of photo 1, the company initially stated that the company would not accede to the request for deletion of this, as the company had obtained written consent for the publication of this photo. the company has subsequently stated that

photo 1 has also been deleted as the consent has been withdrawn. The company continues to maintain the refusal of the deletion request of photo 5, as in the company's opinion it is not the complainant C who is seen in the picture.

Regarding the deletion of all other information about the complaints, including unpublished photos and videos as well as names, addresses, telephone numbers and e-mail addresses, the company has stated that the company is not in possession of other image and / or video material. The company also refuses to delete the other information about the complainants, citing the fact that a case is pending between the parties with questions about breach of contract, non-payment and libel.

Justification for the Danish Data Protection Agency's decision

3.1. Publication of photos

On the basis of what was stated in the case, the Danish Data Protection Agency assumes that the photo 1 in the complaint has been published on the basis of a (written) consent, cf. Article 6 (1) of the Data Protection Regulation. 1, letter a.

The Danish Data Protection Agency also assumes that photos 2-4 have been published on the basis of (oral) consent from the data subjects pursuant to Article 6 (1) of the Data Protection Regulation. 1, letter a.

The conditions for a valid consent are set out in Article 4 (11), [2] and Article 7 of the Regulation.

In order to be valid, a consent must be voluntary, specific and informed, and an expression of an unequivocal expression of will. A consent can be given both orally and in writing. However, it is a requirement that the data controller can demonstrate that the data subject has given consent to the processing of his personal data, in accordance with Article 7 (1) of the Regulation. In other words, it is the data controller who bears the burden of proving that the data subject has given the necessary consent.

It is also a requirement that the data subject must be informed before consent is given that the consent can be withdrawn. The data subject may withdraw his consent at any time, and it must be as easy to withdraw his consent as to give it, in accordance with Article 7 (1) of the Regulation. 3.

A specific consent implies that the consent must not be generally formulated or without a precise indication of the purposes of the processing of personal data and which personal data will be processed.

A consent must also be informed so that the data subject is aware of what consent is given for. In other words, the data controller must provide the data subject with a number of pieces of information which must ensure that the data subject can make his decision on an informed basis.

In addition, a consent must be an expression of an unequivocal expression of will. The consent given must therefore not give rise to doubt, and silence or inaction is therefore not sufficient to constitute an unequivocal statement.

Following an examination of the case, the Danish Data Protection Agency finds that the consents obtained in this case do not meet the conditions of Article 4 (11) and Article 7 of the Data Protection Regulation.

With regard to the written consent obtained prior to the publication of photo 1, the Danish Data Protection Agency has, among other things, emphasized that the declaration of consent does not meet the condition of being informed, as the information in the declaration of consent is, in the opinion of the Authority, of such an overall and general nature that it does not provide sufficient information about which personal data is to be processed, in what form and where the publication takes place and for what purpose (s) the treatment takes place.

The Danish Data Protection Agency has also emphasized that no prior information has been provided that the consent can be withdrawn. On the contrary, it appears from the declaration of consent that the data subjects waive any possibility of "stopping the film".

On the basis of the above, the Danish Data Protection Agency finds that the consent does not meet the conditions for a valid consent in Article 4, no. 11 and Article 7 (1) of the Data Protection Regulation. 1, 2 and 3.

With regard to the oral consents for the publication of photos 2, 3 and 4, the Danish Data Protection Agency has emphasized that company X is not in a position to demonstrate that complainants D and C have given consent for the publication of the photos on various media, why the consents in question do not meet the conditions for a valid consent in Article 7 (1) of the Data Protection Regulation. 1.

On the basis of the above, the Danish Data Protection Agency finds reason to express serious criticism that company X 'processing of personal data has not taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation. 1, letter a, as the publication of the pictorial material of the complainants has not taken place with valid consents.

As far as photo 5 is concerned, it appears from the case that there is disagreement between the parties to the case as to whether it is complainant C who is seen in the photo. The Danish Data Protection Agency notes in this connection that the Authority only processes cases on a written basis. The Authority therefore does not have the opportunity to take a final position on who is depicted in the photo in question when there is a disagreement between the parties to the case. The final assessment of such evidentiary issues can be made by the courts, which in contrast to the Danish Data Protection Agency

have the opportunity to shed more light on the matter, including by questioning witnesses, etc.

3.2. Deletion

Following a review of the case, the Danish Data Protection Agency finds that company X 'processing of personal data has not taken place in accordance with Article 17 of the Data Protection Regulation on deletion.

It follows from Article 17 (1) of the Data Protection Regulation 1, that the data subject has the right to have personal data about himself deleted by the data controller without undue delay, and the data controller has a duty to delete personal data without undue delay if one of the circumstances in Article 17, para. 1, letters a-f, applies.

Article 17 (1) of the Data Protection Regulation Article 6 (1) (b) states that data subjects have the right to have personal data about themselves deleted if the data subject withdraws the consent on which the processing is based, in accordance with Article 6 (1). 1, letter a, back, and there is no other legal basis for the processing.

Following an examination of the case, the Danish Data Protection Agency finds reason to express serious criticism that Company X 'processing of personal data has not taken place in accordance with Article 17 of the Data Protection Regulation. The Danish Data Protection Agency has hereby emphasized that the conditions for requiring the deletion of photo 1 pursuant to Article 17 (1) of the Data Protection Regulation. 1, letter b, has been fulfilled, as complainant D has withdrawn this consent and there is no other basis for the processing. However, the Danish Data Protection Agency has noted that the image has subsequently been deleted. The Danish Data Protection Agency has also noted that the company has no other image and video material of the complaints.

The Danish Data Protection Agency finds no basis for expressing criticism of the company's continued processing of information about names, addresses, telephone numbers and e-mail addresses, as it appears from the case that a case is pending, among other things. regarding non-payment. The processing of this information may then continue to take place on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter b.

[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] See recital 32 of the Data Protection Regulation.