

Burda Nordic's recording of telephone conversations

Date: 21-11-2019

Decision

Private companies

The Danish Data Protection Agency expresses serious criticism that Burda Nordic's processing of personal data in connection with telephone conversations concerning the sale and marketing of the publisher's magazines has taken place without the valid consent of the data subjects, and that Burda Nordic has not complied with the publisher's disclosure obligation.

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Summary

In January 2019, the Danish Data Protection Agency initiated a case of its own motion against Burda Nordic, as the Danish Data Protection Agency, through a number of citizen inquiries, had become acquainted with Burda Nordic's recording of telephone conversations when selling and marketing Burda Nordic's magazines.

On 21 November, the Danish Data Protection Agency made a decision in the case. The Authority found that Burda Nordic's processing of personal data in connection with the recording of telephone conversations has taken place without a valid consent. The Danish Data Protection Agency also found that Burda Nordic had not complied with the publisher's disclosure obligation pursuant to Articles 13 and 14 of the Data Protection Regulation.

Burda Nordic has stated that the recordings are only used to document agreements. In this connection, the Danish Data Protection Agency noted that there must always be a factual purpose for recording telephone conversations, and that companies must thus consider whether the pursued purpose can be achieved with less intrusive means, e.g. by sending order confirmations via email.

Decision

The Danish Data Protection Agency hereby returns to the case of Burda Nordic A / S 'processing of personal data in connection with telephone conversations concerning the sale and marketing of Burda Nordic's magazines.

The Danish Data Protection Agency must note that the Authority can only take a position on data protection law issues. The Danish Data Protection Agency has therefore not taken a position on consumer law issues in connection with the processing of the case.

Decision

Following an examination of the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that Burda Nordic's processing of personal data has not taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation [1]. 1, as well as Articles 13 and 14.

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

2. Case presentation

Following a number of specific inquiries, the Danish Data Protection Agency has become aware of the processing of personal data in connection with telephone conversations regarding the sale and marketing of Burda Nordic's magazines.

By letter dated 9 January 2019, the Danish Data Protection Agency has asked Burda Nordic a number of questions with a view to the Danish Data Protection Agency's processing of the case. On 2 February 2019, Burda Nordic submitted its comments to the Authority, including a screenshot of statements of consent for use in the collection of personal data in connection with competitions.

It appears that telephone conversations are recorded in connection with inquiries from the sales agencies on the basis of the consent given by the data subject in connection with participation in a competition.

Burda Nordic processes information about potential new customers, e.g. by leading agencies collecting contact information through competitions, where the registered, as part of the competition conditions, agree that Burda Nordic may contact by phone, e-mail, letter and sms. Participation in the lead agencies' competitions presupposes that the data subjects accept the conditions of the competition, including accepting that a number of partners may subsequently approach the data subjects for the purpose of selling and marketing their products.

It also appears that the registered - before accepting the conditions of the competition - can click in and see which partners can subsequently contact the registered. In the list of partners, it is possible to unsubscribe from the individual companies. Thus, if the registrants do not actively unsubscribe from the companies, they agree, according to the terms of the competition, to be contacted by all the competition's partners.

2.1. Burda Nordic's comments

Burda Nordic has stated in the case, among other things, that in connection with the sale and marketing of subscriptions to their magazines, the publisher only processes non-sensitive personal information, including information about name, address,

telephone number and e-mail address. The information is processed on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter a, on consent.

The consent is obtained through lead agencies, which collect contact information on registrants via competitions. When the registered participants in the lead agency's competition and accept the competition conditions, they give their consent to be contacted by e.g. Burda Nordic. It appears from the declaration of consent that Burda Nordic can contact the data subject regarding subscriptions to sewing and fashion magazines.

Burda Nordic has also stated that they use external sales agencies to contact the registrants via the contact information purchased from the lead agencies. The external sales agencies contact the potential customers by telephone on behalf of Burda Nordic in order to sell subscriptions to the publisher's magazines. Data processor agreements have been entered into with the sales agencies.

Regarding the recording of telephone conversations, Burda Nordic has stated that parts of the conversation between the sales agencies and the registered person are recorded and saved if a purchase agreement is entered into. Burda Nordic has stated that the registrants, when they accept the terms of the competition, are informed that the interview can be recorded.

The recording is used solely as documentation that an agreement has been entered into between the publisher and the registered person. Burda Nordic also sends an order confirmation to the registered person by e-mail. In continuation of this, Burda Nordic has stated that an order confirmation by e-mail is not as good documentation of an agreement as an audio recording, as an order confirmation e.g. may end up in a spam filter.

Regarding the duty to provide information, Burda Nordic has stated that the publisher buys contact information on potential customers through lead agencies, and that it is the lead agencies that comply with the duty to provide information pursuant to Article 14 of the Data Protection Regulation. , and that the information is subsequently purchased by Burda Nordic, which becomes data responsible for the publisher's processing of the personal information.

Justification for the Danish Data Protection Agency's decision

3.1. The treatment basis for recording telephone conversations

The Danish Data Protection Agency initially notes that it is the Authority's practice that recording and storage of telephone conversations should in principle take place on the basis of the consent of the persons about whom information is processed, cf. Article 6 (1) of the Data Protection Regulation. 1, letter a.

The Danish Data Protection Agency has based its decision on the recording of the telephone conversations in question only on non-sensitive personal data covered by Article 6 of the Data Protection Regulation, and that Burda Nordic processes data on data subjects on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter a.

Furthermore, the Danish Data Protection Agency has assumed that Burda Nordic processes personal data about the data subjects on the basis of the declaration of consent stated in the competition conditions in lead agencies' competitions, which is attached in a copy in Appendices 7, 8 and 9 to Burda Nordic's consultation response of 20 February 2019.

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

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. The data controller must thus provide the data subject with a series of information which must ensure that the data subject can make his decision on an informed basis.

A consent must also be an expression of an unequivocal expression of will. The consent given must therefore not give rise to any doubt as to why silence or inaction is not sufficient to constitute an unequivocal statement.

Following an examination of the case, the Danish Data Protection Agency finds that the submitted consent statement does not meet the conditions of Article 4 (11) and Article 7 of the Data Protection Regulation.

The Danish Data Protection Agency has emphasized that inactivity, including already checked boxes, is not sufficient to constitute an unambiguous statement, and such pre-checked boxes therefore do not meet the conditions of Article 4 (11) of the Data Protection Regulation.

The Danish Data Protection Agency further finds that the submitted consent statement, according to its wording, only concerns Burda Nordic's processing of personal data in connection with the telephone contact with the data subjects for the purpose of selling and marketing the publisher's titles. In the opinion of the Danish Data Protection Agency, the declaration of consent cannot be extended to include other processing of personal data, including e.g. recording telephone conversations.

In the light of the above, the Danish Data Protection Agency finds reason to express serious criticism that Burda Nordic's processing of personal data has not taken place in accordance with Article 6 (1) of the Data Protection Regulation. 1, letter a, as the telephone conversations with the data subjects in connection with the sale have not been recorded with a valid consent.

3.1.2. Basic treatment principles

The Danish Data Protection Agency should also note that Article 5 of the Data Protection Regulation contains a number of basic principles that data controllers must always adhere to when processing personal data.

Pursuant to Article 5 (1) of the Data Protection Regulation 1, letter b, personal data must be collected for explicitly stated and legitimate purposes. Subsequent treatment must not be incompatible with those purposes ('purpose limitation').

Pursuant to Article 5 (1) For the purposes of paragraph 1 (c), personal data must be adequate, relevant and limited to what is necessary for the purposes of the processing of the data ('data minimization').

Thus, there must always be a factual purpose for recording telephone conversations, and companies must consider whether the pursued purpose can possibly be achieved with less intrusive means.

In view of the information that the conversations are recorded solely in order to be able to document that an agreement has been entered into between the publisher and the customer in the event of a dispute regarding payment, and that an order confirmation is also sent to the registered person by e-mail, The Danish Data Protection Agency's view that documentation of Burda Nordic's entering into agreements can be made with less intrusive means that do not necessitate the processing of information in the form of recording telephone conversations.

The Danish Data Protection Agency points out that the basic conditions in Article 5, as described above, also apply even if there was a valid processing authority in Article 6 (1) (a) of the Data Protection Regulation on consent.

3.2 The duty to provide information

When collecting personal data on data subjects, data controllers must comply with the disclosure obligation under Articles 13 and 14 of the Data Protection Regulation.

In cases where personal data have been collected from the data subject, it follows from Article 13 (1) of the Data Protection Regulation 1 and 2, that it is the responsibility of data controllers to provide data subjects with a number of pieces of information. In cases where the personal data have not been collected from the data subject, it follows from Article 14 (1) of the Regulation. 1-3, that it is the responsibility of the data controller to provide the data subject with a number of information.

It is the Danish Data Protection Agency's assessment that Burda Nordic has an independent obligation as data controller to observe the duty to provide information pursuant to Articles 13 and 14 of the Regulation.

The Danish Data Protection Agency has emphasized that there is no data processor relationship between the lead agencies

and Burda Nordic, but that it is a matter of transferring personal data between two independent data controllers. Thus, in the Authority's view, Burda Nordic is obliged to comply with the duty to provide information pursuant to Article 14 of the Data Protection Regulation when the publisher collects personal data in connection with the purchase of leads.

The Danish Data Protection Agency has also emphasized that Burda Nordic has not stated that the company complies with the duty to provide information when the sales agencies contact the registered persons by telephone and collect personal information through this. In the Authority's view, Burda Nordic is obliged to comply with the duty to provide information pursuant to Article 13 of the Data Protection Regulation and in this connection on its own initiative, among other things, to inform that the interview will be recorded. Thus, it is not sufficient to state that the interview may be recorded if the interview is actually recorded.

In the light of the above, the Danish Data Protection Agency finds reason to express serious criticism of Burda Nordic's failure to comply with Articles 13 and 14 of the Data Protection Regulation.

4. Insight

For the sake of good order, the Danish Data Protection Agency should note that, pursuant to Article 15 of the Data Protection Regulation, data subjects have, as a starting point, the right to access personal data about themselves. The right of access also includes recorded telephone conversations.

Registered persons can in principle demand a written copy of the recording, ie a transcript of the interview. However, the right of access can also be fulfilled by Burda Nordic handing over the recording as an audio file. Such an audio file must be sent to the data subject in a commonly used standard format.

Burda Nordic has stated that data subjects can gain insight into the audio recordings, including having a copy of the audio file sent to them, if the customer identifies himself in advance by submitting an ID with a picture.

In this connection, the Danish Data Protection Agency should note that pursuant to Article 12 (1) of the Data Protection Regulation 6, it follows that, if there is reasonable doubt as to the identity of a data subject submitting a request for access, data controllers may request additional information necessary to verify the identity of the data subject. Article 12, paragraph 6, implies that the data controller has a duty to make a concrete assessment of whether there is reasonable doubt about the identity of a data subject, in connection with each individual request for access. Thus, a general procedure for ID validation prior to replying to access requests is not in accordance with Article 12.

A request for additional information in order to identify a data subject must also be proportionate, in accordance with Article 5 (1) of the Regulation. 1, letter c, and the data controller must therefore not demand more information than is necessary in the specific situation.

The Danish Data Protection Agency recommends that Burda Nordic consider whether a picture of a data subject is necessary to ensure the identity of the person in question in specific cases of doubt.

[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.