

The former employer could refuse to comply with the request for access

Date: 31-03-2022

Decision

Public authorities

No criticism

Complaint

The right to access

Exercise of rights

In a concrete complaint, the Danish Data Protection Authority has found no basis for overriding a municipality's rejection of a former employee's request for access on the grounds that the request was excessive.

Journal number: 2021-32-2438

Summary

In the case, a former employee of a municipality had, after employment ended, requested access to all communications in which the former employee was mentioned.

The municipality then tried to get the former employee to specify his request, as the requested material after several years of employment was extensive. However, this was rejected by the former employee.

The Danish Data Protection Authority is of the opinion that a data controller can refuse to provide registered insight into information about letters, notes and e-mails, etc., which have been signed by or sent to the data subject in connection with the performance of the tasks concerned, citing that the inquiry is excessive.

In the assessment, the Danish Data Protection Authority emphasizes that, even though it may be personal data (information that the data subject in a given situation has signed a letter, sent an email, etc.), first and foremost a function is described which the person in question has taken care of.

1. Decision

On 12 August 2021, you contacted the Data Protection Authority regarding [X] Municipality's handling of your request for access.

The Danish Data Protection Authority has understood your inquiry as a complaint that [X] Municipality has refused to give you

insight into notes and e-mails etc., which were signed by or sent to you in connection with your previous employment at the municipality.

After a review of the case, the Norwegian Data Protection Authority finds that the Norwegian Data Protection Authority has no basis for overriding [X] Municipality's assessment that the processing of your access request has taken place in accordance with the rules in the data protection regulation[1] article 15, cf. article 12, subsection 5, letter b.

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 on 26 July 2021 you requested [X] Municipality for document access to all communications in connection with your personnel case, all information regarding your person in [X] Municipality and "document access to your document access".

[X] On 2 August 2021, the Municipality provided a number of information in accordance with the rules on access to documents, and then stated on 4 August 2021 that the remaining part of your request – regarding material created in connection with your employment – would be processed in accordance with the rules in the data protection regulation.

On 9 August 2021, you emphasized that your request should be understood as: "all my communications through [X] municipality's means of communication".

[X] The municipality subsequently refused to hand over additional material, cf. the data protection regulation's article 15, cf. article 12, subsection 5, with reference to the fact that the requested material constituted an extensive amount of information in the form of notes and e-mails, etc., which you had drawn up or sent in connection with your duties in [X] Municipality.

It appears from [X] Municipality's response to the consultation of 25 October 2021 that the municipality also tried to guide you in relation to your request, particularly about how your request could possibly be clarified, but that you did not respond to the municipality's inquiry.

### 2.1. Your comments

You have generally stated that all material should be handed over, and that the municipality's rejection cuts off the opportunity for you to obtain evidence against the municipality in connection with your dismissal.

### 2.2. [X] The municipality's comments

[X] Municipality has generally stated that the remaining material involves a very large amount of e-mails that you have sent in

connection with your duties in [X] Municipality. In this connection, the municipality has stated:

"[X] Municipality initially assesses that this is an excessive request, as it involves a disproportionately large amount of information in the form of all the complainant's communications through [X] Municipality's means of communication for several years. [X] The municipality is therefore aware of the guidance obligation that follows from Section 7 of the Administration Act, and informs complainants that the request must be understood as limited to the year 2020 (cf. document access request of 26 July 2021) and that complainants must speak up if this limitation is not the case. [X] Municipality no longer hears from complaints.

The complainant's request to have all his communications handed over through [X] Municipality's means of communication involves a very large amount of e-mails that the complainant has sent in connection with his duties in [X] Municipality. [X] The municipality therefore refuses the access request, citing that the request is excessive, cf. Article 12, subsection of the Data Protection Regulation. 5."

The municipality has thereby maintained its refusal of your request for insight.

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

It follows from the data protection regulation article 15, subsection 1, and subsection 3, that the data subject basically has the right to access and information about the processing of the personal data that the data controller processes about the data subject.

However, the right to receive a copy of the personal data being processed is not absolute.

It thus follows from the data protection regulation's article 12, subsection 5, letter b, a data controller may refuse to comply with a request for access if the request from a data subject is manifestly unfounded or excessive.

#### 3.1.

In this connection, the Danish Data Protection Authority is of the opinion that a data controller in accordance with the data protection regulation, article 12, subsection 5, letter b, will be able to refuse to provide a registered insight into information about letters, notes and e-mails, etc., which are signed by or sent to the person concerned in connection with the performance of the person's tasks, citing that the inquiry is excessive.

When assessing this, it is important that, even though it may be personal data (information that the data subject in a given situation has signed a letter, sent an email, etc.), first and foremost a function is described which the person in question has

taken care of.

However, in the opinion of the Danish Data Protection Authority, cases may exceptionally occur where such information does not only describe a function that the person in question has carried out, or simply ascertains the presence of the person in question, but where the registration also contains information "about" the person in question, e.g. . a description of a course of action which is an expression of a personal choice made by the person concerned, and which may therefore be covered by his right of access pursuant to Article 15 of the Data Protection Regulation.

The application of the above provision, according to which the data subject's right to access is limited, therefore requires that the data controller makes a concrete assessment.

### 3.2.

It appears from the information in the case that [X] Municipality has provided a number of information about you in accordance with the rules on access to documents and has tried to have your request for access clarified and, if possible, limited.

The Danish Data Protection Authority has therefore understood the matter to mean that [X] Municipality has given you the widest possible access to the information that the municipality processes about you, and has only failed to grant your request for access as regards notes and e-mails which are signed by or sent to you in connection with your previous assignment at the municipality.

After a review of the case, the Danish Data Protection Authority therefore finds that the Danish Data Protection Authority has no basis for overriding [X] Municipality's assessment that the processing of your access request has taken place in accordance with the rules in Article 15 of the Data Protection Regulation, cf. Article 12, subsection 5, letter b.

In the decision, the Danish Data Protection Authority has emphasized that, according to the information provided, you have requested access to an extensive amount of information, which extends over several years, and that information included in notes and e-mails, etc., which are signed by or sent to you in connection with your previous performance of tasks at the municipality, must first of all be assumed to describe the function that you performed during your employment, and thus to no further extent is information "about" you.

[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).