

Complaint about the school obtaining a reference about an applicant

Date: 05-05-2022

Decision

Public authorities

The case revolved around the fact that a primary school – in continuation of a conversation with the complainant about a possible internship – had obtained a reference from the complainant's previous place of internship.

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Summary

The Danish Data Protection Authority has made a decision in two cases about obtaining references from the same complainant.

The case concerned that a primary school (school A) – following a conversation with the complainant about a possible internship – had obtained a reference from the complainant's previous internship (school B).

The complainant thus complained about two matters: 1) that school A obtained a reference about complaints from school B, 2) that school B passed on a reference about complaints to school A.

School A's collection of reference

It appears from the case that School A regarded the interview as non-binding, as it was about a position that had not yet been advertised. For that reason, School A did not record anything in connection with the interview – nor the reference obtained from School B.

The Danish Data Protection Authority thus found that school A's collection of information about complaints was not covered by the data protection rules, as the collected information was not - or was intended to be - processed electronically or included in a register.

School B's passing on of reference

The Danish Data Protection Authority also found that school B's disclosure of the reference in the specific case could be accommodated within the authority's narrow space in order to make use of the balancing of interests rule (article 6, subsection 1, letter f).

In this connection, the Danish Data Protection Authority emphasized that school B was of the opinion that the complainant had

agreed that the reference could be passed on, since school A had informed them of this. Due to the nature of the information, school B had no special duty to take further steps to ensure the complainant's acceptance.

You can read the Danish Data Protection Authority's decision on the passing on of reference [here](#).

The practice reflected in the decisions will be incorporated in the Danish Data Protection Authority's update of the guidance on data protection in connection with employment, which the Danish Data Protection Authority expects to publish before the end of 2022.

## 1. Decision

After a review of the case, the Data Protection Authority finds that school A's collection of information about you from school B was not covered by the data protection rules, cf. the data protection regulation<sup>[1]</sup> article 2, subsection 1

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 you were terminated in your previous internship at school B and after the termination had an interview with school A with a view to possible continuation of the internship there.

In this connection, you gave verbal consent for school A to contact an employee at school C, where you were an on-call substitute, with a view to obtaining a reference.

After the interview, you became aware that school A – in addition to contacting school C for a reference – had also contacted school B, as school A informed you after the interview that you were not offered an internship at the school due to feedback from school B.

On that basis, you addressed Y Municipality with a complaint about what passed and with a request for access to documents. Y Municipality informed you that the interview at school A was of a non-binding nature and that it was about a position that had not yet been advertised. As there had only been one non-binding interview, no notes were kept, and there was therefore no material to give access to.

You then contacted the Danish Data Protection Authority and complained that school A - without your consent - had contacted school B.

### 2.1. Your comments

You have stated that you did not give school A permission to contact school B, and that during the interview you only gave

consent for school A to contact a named colleague from school C, whose phone number you gave to school A during the internship interview. You have also stated that school A must have believed that employee Z worked at school B, but that this cannot justify the contact with school B, to which you had not given consent.

You have further stated that you have spoken to the headmaster from school B, who has confirmed that school A has contacted him, just as school B has stated in another complaint with the supervisory authority that school A has contacted school B and told that the school had your consent for the exchange of information between school A and school B.

You have complained to Y Municipality about the situation, and sent Y Municipality's response to the complaint to the Data Protection Authority. The response from Y Municipality shows, among other things, following:

"I take note of your complaint and have now investigated the matter in more detail, just as school A has briefed me on the process from their perspective. The meeting at school A was of a non-binding nature, and it was about a position that had not yet been advertised.

The school had agreed to meet with you for an initial discussion about the possible possibility of a continuation of your remaining internship period. In this connection, internship coordinator Æ wrote to the school that he could not provide further details about why you had an urgent need for a new internship - you would tell that yourself to a possible conversation.

As there has only been one non-binding interview, no notes have been saved, and there is therefore no material to provide access to. Unfortunately, it happened that your contact details were lost, and therefore it was not possible for the school to contact you immediately after the interview. There was no match between you and school A. They have spoken to your old workplace where you gave them a contact. Afterwards, someone from the management of the school in question was spoken to. I have emphasized to the school that there is a duty to consult when obtaining information."

You have also stated that you find it objectionable that Y Municipality has not made notes as a public administration and has also thrown away your contact information.

Finally, you have stated that, due to school A's decision, you have half a year left in your education, and are without income for four months before you can start a new internship.

## 2.2. Y Municipality's comments

Y Municipality has submitted an account of the case from school A. The account includes, among other things, following:

"On Friday 7 August 2020, we had a non-binding conversation with the complainant about the possibility of continuing his

internship period.

On 7 August, deputy headteacher Ø obtains information from school B from the pedagogue, to whom the complainant has given contact details and given permission to contact. She then contacts the headteacher at school B as more information is needed.

As there has only been one non-binding interview, no notes have been saved, and there is therefore no material to give access to.

School A subsequently stated the following in the case:

"We are surprised by the complainant's letter. Since in our most recent reply we explain what is the basis for our decision not to offer the complainant an internship.

In response to the Danish Data Protection Authority's question:

On Friday, August 7, we had a non-binding conversation with the complainant about the possibility of continuing his internship period

Legal authority: complainant gives consent for us to obtain information by contacting pedagogue Z at school C, this is done by Deputy Headmaster Ø on 7 August with the aim of gaining more information about which person it is that we have just had a non-binding conversation with in relation to the possibility that the complainant can continue his internship period.

Z (pedagogue – school C) gives Ø, among other things information about the complainant's employment at school C, first as a work placement and subsequently as an on-call substitute. She also receives information about how the complainant has entered into the job tasks and about him as a person. On the basis of this information and the complainant's own narrative for the non-binding interview, more information/knowledge is needed, therefore she contacts the headteacher at school C.

After this, we used the weekend of August 8-9 to think about possible employment, August 10 is the first day of school and on August 11 we talk to TR for the educators about the possibility, and agree that there is not a match, here we discover that the contact information is gone, on 12 August the UCL internship coordinator is contacted to get the information, he does not manage to return before complaining on 13 August contacts the deputy head of school Ø.

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

The Danish Data Protection Authority assumes that school A – after the conversation with you about the possible continuation of the internship – contacted school B by telephone, where you had previously been dismissed, with a view to obtaining a

reference.

However, the Danish Data Protection Authority also assumes that the information collected at the time of collection was not - or was destined to be - processed electronically or included in a register, as it has been stated by Y Municipality that no notes were made of the conversation with school B.

On this basis, the Danish Data Protection Authority finds that school A's collection of information about you from school B was not covered by the data protection rules, cf. the data protection regulation, article 2, subsection 1, from which it appears that the Data Protection Regulation applies to processing of personal data that is carried out in whole or in part by means of automatic data processing, and to other non-automatic processing of personal data that is or will be contained in a register, cf. Article 2 of the Data Protection Regulation, PCS. 1.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general data protection regulation)