

Fredericia Gymnasium's processing of personal data using the Examcookie program

Date: 16-05-2019

Decision

Public authorities

The Danish Data Protection Agency expresses serious criticism that Fredericia Gymnasium had not sufficiently explained that the processing of the information collected using the Examcookie program was sufficient, relevant and limited to what was necessary in relation to the purpose.

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Summary

In August 2018, the Danish Data Protection Agency initiated a case of its own motion against Fredericia Gymnasium, as the Danish Data Protection Agency had become acquainted with Fredericia Gymnasium's and a number of other high schools' use of Examcookie through media coverage.

Examcookie is a program that aims to monitor students' computer activity during an exam to ensure that the exam takes place according to the applicable rules.

The Danish Data Protection Agency made a decision in the case on 16 May. The Danish Data Protection Agency found that Fredericia Gymnasium had not sufficiently explained that the processing of the collected information about all examinees was sufficient, relevant and limited to what was necessary in relation to the purpose of detecting and preventing examination fraud. Furthermore, the Danish Data Protection Agency found that Fredericia Gymnasium had not complied with the duty to provide information.

The Danish Data Protection Agency noted that the case left an impression that Fredericia Gymnasium was not aware of the scope of the processing and the way in which the students' personal data was processed, and that it was not clear to the Danish Data Protection Agency whether Fredericia Gymnasium had considered using Examcookie before within the framework of data protection law rules. This, the Danish Data Protection Agency found in itself could have given rise to criticism.

Decision

The Danish Data Protection Agency hereby returns to the case where the Authority on 23 August 2018 initiated a case of its

own motion against Fredericia Gymnasium, when the Danish Data Protection Agency had become acquainted with Fredericia Gymnasium's and a number of other high schools' use of Examcookie through media coverage.

The Danish Data Protection Agency notes that the Personal Data Act per. 25 May 2018 has been repealed and replaced by the Data Protection Regulation [1] and the Data Protection Act [2]. This decision has therefore been taken in accordance with the rules of the Data Protection Regulation and the Act.

The decision has been made taking into account that part of the case concerns matters that are prior to the date on which the Data Protection Regulation took effect and the Data Protection Act came into force.

Decision

After a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that Fredericia Gymnasium's processing of personal data has not taken place in accordance with the rules in Article 5 (1) of the Data Protection Regulation. 1 (c) and Article 13.

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

2. Circumstances of the case

2.1. Case presentation

The Danish Data Protection Agency became aware through media coverage that Fredericia Gymnasium and a number of other high schools made use of Examcookie, after which the Authority initiated an investigation of its own operations regarding Fredericia Gymnasium's processing of personal data in connection with its use.

Examcookie is a program that aims to monitor students' computer activity during an exam to ensure that the exam takes place according to current rules. The program is downloaded to the student's computer before the exam starts. It appears from Examcookie's website that the program is terminated and, as a rule, deleted after the exam.

The program records all activity on the computer, including active URLs, network accesses, processors, clipboards, and takes screenshots of major screen changes.

According to Examcookie's website, a school's exam supervisor gets a full overview of the activity that takes place on the students' computers during the exam. After the exam, the program automatically sorts the students' data, and it shows any communication with the outside world or the use of unauthorized aids.

For the purpose of processing the case, the Danish Data Protection Agency requested a letter from Fredericia Gymnasium by

letter dated 23 August 2018. Fredericia Gymnasium issued such a statement by letter dated 6 September 2018.

Subsequently, the Danish Data Protection Agency found a need for further statements from Fredericia Gymnasium, as the upper secondary school had not answered the Authority's questions in the first statement. Fredericia Gymnasium issued further statements on 25 October and 4 December 2018 and 7 February 2019.

2.2. Fredericia Gymnasium's remarks

Fredericia Gymnasium has stated that the high school is data responsible for the processing of personal data that takes place in connection with the monitoring of examinees' computers during examinations, and that Examcookie is Fredericia Gymnasium's data processor.

The information processed in Examcookie is divided into two groups: the students' master data and the information recorded in connection with the exam. Master data is stored encrypted and the other information unencrypted with Microsoft Azure for 3 months on servers in the Netherlands and Germany.

Fredericia Gymnasium has stated that the following personal information is processed in connection with the use of Examcookie:

The student's full name

The student's class and team

The student's school and year

The student's UNI login user ID

The student's social security number

Fredericia Gymnasium has stated that there is only one person who can log in to an administrator function and thus see information about the students.

The administrator has the option to set a filter in Examcookies through which the information is displayed. The filter is set up by the administrator himself. There are various parameters in the filter that can be used, e.g. keywords like Facebook and Google.

An overview of the students who fall under the criteria is then displayed. Fredericia Gymnasium has stated that from the administrator module it is possible to print and download data to a local computer.

Fredericia Gymnasium has used Examcookie to conduct term tests and summer exams in the school year 2017/2018.

Fredericia Gymnasium has stated that the high school's basis for processing ordinary personal data is Article 6 (1) of the Data

Protection Ordinance. 1, letter e. The upper secondary school has also referred to sector-specific rules on preventing and detecting cheating in connection with examinations [3].

Fredericia Gymnasium has also stated that, as a rule, sensitive personal data is not processed. However, it can not be ruled out that sensitive personal data will be processed in connection with the use of Examcookies. Fredericia Gymnasium finds that the high school's processing basis for the processing of this sensitive personal data is the Data Protection Act, section 7, subsection. 4.

Fredericia Gymnasium has stated that the processing of personal data that takes place through the use of Examcookie takes place in accordance with the basic principles in Article 5 of the Data Protection Regulation.

Regarding information for the students, Fredericia Gymnasium has stated that the students at a joint meeting received information about the use of Examcookie. Furthermore, before each exam, the students have been made aware of what Examcookie does. For the information, the high school has via PowerPoint referred to Examcookie's website for more information.

In this connection, Fredericia Gymnasium has regretted that the information provided does not meet the requirements of Article 13 of the Data Protection Regulation.

Justification for the Danish Data Protection Agency's decision

3.1.

The Danish Data Protection Agency finds that the processing of personal data about the school's students in question is covered by the Data Protection Ordinance and the Data Protection Act, cf. Article 2 (1), respectively. 1, and § 1, para. 2.

On the basis of Fredericia Gymnasium's statement, the Danish Data Protection Agency assumes that Fredericia Gymnasium is data responsible for the processing of personal data that takes place in connection with the monitoring of examinees' computers during examinations.

In addition to the students' name, class, team, school, year, year, UNI login user ID and social security number, information in the form of registrations of all activity on the student's computer during the exam is also processed. The Danish Data Protection Agency thus assumes that Fredericia Gymnasium processes general personal data covered by Article 6 of the Data Protection Ordinance and information on personal identity numbers covered by section 11 of the Data Protection Act on the examinees.

The Danish Data Protection Agency considers the purpose of the processing of personal data to be solely to detect and avoid examination fraud.

Ordinary non-sensitive personal data may, in accordance with Article 6 (1) of the Data Protection Regulation, 1, letter e, shall be processed if the processing is necessary for the purpose of performing a task in the interest of society or which falls within the exercise of public authority, which has been imposed on the data controller.

It is the opinion of the Danish Data Protection Agency that Fredericia Gymnasium, pursuant to Article 6, subsection 1, letter e, may process ordinary non-sensitive personal data in order to avoid exam fraud.

The Danish Data Protection Agency also finds that Fredericia Gymnasium can process the students' personal identity numbers in accordance with the Data Protection Act, section 11, subsection. 1, as these are processed for the purpose of uniquely identifying the students.

3.2.

The basic principles for the processing of personal data, which follow from Article 5 of the Data Protection Regulation, must be observed in any processing of personal data.

This means, inter alia, that personal data must always be sufficient, relevant and limited to what is necessary in relation to the purposes for which they are processed, in accordance with Article 5 (1). 1 (c) (principle of data minimization).

The Danish Data Protection Agency finds that Fredericia Gymnasium has not sufficiently reported that the processing of the collected information about all examinees has been sufficient, relevant and limited to what is necessary in relation to the purpose of detecting and preventing cheating, cf. the Data Protection Ordinance Article 5, paragraph 1, letter c.

The Danish Data Protection Agency finds that Fredericia Gymnasium has only explained that there is a need to be able to prevent exam cheating, but that it has not been proven that there is a need for monitoring of the students' private computers to the extent that this is done using Examcookie.

The Danish Data Protection Agency has hereby emphasized that Fredericia Gymnasium has not made a specific assessment of what information is processed in relation to the purposes for which the information is processed. The Danish Data Protection Agency has also emphasized that Fredericia Gymnasium has not explained that all the personal information collected has been necessary to fulfill Fredericia Gymnasium's purpose of detecting and preventing fraud.

3.3.

The Danish Data Protection Agency notes that Fredericia Gymnasium has stated that it cannot be ruled out that information covered by Article 9 of the Regulation can be processed, for example by registering a screenshot of a student's activities on the student's computer during an examination.

Fredericia Gymnasium has referred to the fact that this information is processed in accordance with the Data Protection Act, section 7, subsection. 4.

This provision has the character of a collection provision with a narrow area of application, which is namely assumed to be used for e.g. processing of personal data for the purpose of health security, monitoring and alerting, prevention or control of communicable diseases and other serious threats to health.

In this connection, the Danish Data Protection Agency notes that section 7 (1) of the Data Protection Act 4, may not constitute a basis for the processing of sensitive personal data when using Examcookie. The Danish Data Protection Agency also finds that Fredericia Gymnasium has not otherwise demonstrated that the high school has a basis for processing sensitive personal data covered by Article 9 of the Regulation.

3.4.

When Fredericia Gymnasium collects personal information from students, the high school has a duty to provide students with a range of information, cf. Article 13 of the Data Protection Ordinance.

The Danish Data Protection Agency finds that Fredericia Gymnasium has not complied with Article 13 of the regulation.

The Danish Data Protection Agency hereby submits e.g. emphasis that the students have only received a general introduction to the program at a joint meeting as well as a reference to the information that follows from Examcookie's own website.

The Danish Data Protection Agency has noted that Fredericia Gymnasium has stated that the upper secondary school is aware that the duty to provide information pursuant to Article 13 of the Ordinance has not been complied with, and that Fredericia Gymnasium will ensure that the provision's requirements are met in the future.

3.5.

A data controller has an obligation to be able to document his compliance with the Data Protection Regulation and the Data Protection Act.

On the basis of incomplete and sometimes conflicting information from Fredericia Gymnasium, the Danish Data Protection Agency notes that the case leaves an impression that Fredericia Gymnasium has not been aware of the scope of the

processing and the way in which students' personal data is processed when using the Examcookie program.

Furthermore, it is not clear whether Fredericia Gymnasium has actually considered whether the use of Examcookie could take place within the framework of the data protection law rules, which the Danish Data Protection Agency finds may in itself give rise to criticism.

3.6.

On the basis of the above, the Danish Data Protection Agency thus finds grounds for expressing serious criticism that Fredericia Gymnasium's processing of personal data has not taken place in accordance with the rules in Article 5 (1) of the Data Protection Ordinance. Article 13 (1) (c) and Article 13.

Concluding remarks

It is noted that with this decision, the Danish Data Protection Agency has not taken a position on whether Fredericia Gymnasium's data processor agreement with Examcookie meets the requirements of Article 28 of the Data Protection Ordinance.

In conclusion, the Danish Data Protection Agency must state that during the processing of the case, the Authority has considered reporting Fredericia Gymnasium to the police with a view to the police being able to investigate the case further, as Fredericia Gymnasium's response was incomplete and as Fredericia Gymnasium has provided conflicting information. After several hearings of Fredericia Gymnasium, however, the Danish Data Protection Agency finds that the case is sufficiently informed for the Authority to be able to make a decision.

[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] Executive Order no. 1276 of 27 November 2017 on certain rules on examinations and examinations in upper secondary education