

Complaint about failure to delete

Date: 10-09-2018

Decision

Private companies

The decision states that a model agreement was in the nature of a contract and not a consent within the meaning of the Data Protection Regulation which can be withdrawn.

J.nr. 2018-31-0118

Summary

The Danish Data Protection Agency has dealt with a complaint in which a photographer refused to delete images, including images of a more intimate nature, on the grounds that the parties had entered into a valid agreement.

On 10 September 2018, the Danish Data Protection Agency made a decision in the case. The Danish Data Protection Agency found, among other things, that the processing of information in the form of images took place on the basis of a contract and not a data protection law consent that can be withdrawn. In the Authority's view, the photographer thus had a legal basis for processing the information, and complainants were therefore not entitled to have the images deleted.

The Danish Data Protection Agency also noted in the case that breach of an agreement falls under the courts, as the Authority has no competence to decide on the validity of an agreement.

Decision

1. The Danish Data Protection Agency hereby returns to the case where you have by e-mail from [...] contacted the Authority about [the defendant]'s processing of information about you.

The Danish Data Protection Agency has understood the inquiry as a complaint that [the defendant] has refused to delete information about you, including photos of you, and to inform any recipients of the information about this.

The Danish Data Protection Agency finds that [defendants] must delete information about your social security number. On the other hand, in the opinion of the Danish Data Protection Agency, there is no basis for concluding that [defendant]'s processing of the other information in the case can be required to be deleted pursuant to the data protection law rules.

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

## 2. Circumstances of the case

2.1. It appears from the case that [defendant] as a photographer has taken pictures of you, including pictures of a more intimate nature, and that in this connection you entered into a written agreement, which states how the pictures could later be used. The agreement states, among other things, that [defendants] can use the images (use) and publish these (publish). It also appears from the case that the pictures were subsequently published for stock use, i.a. on the website [...]. Finally, it appears from the case that [defendant] has offered you to terminate the agreement if you pay a consideration of 5,000 kroner.

### 2.2. Your comments

In particular, you stated that in [...] you acted as a model for [defendants]. You neither received payment for the pictures, nor paid for them, but [defendant] has nevertheless obtained a financial gain on the pictures.

You have also stated that by contacting [...] on Facebook, you have revoked your consent, and that you have several times before tried to get [defendant] to delete the photos, which he did not want to comply with without payment of 5,000 kroner. .

You have stated in this connection that the consent declaration, which was signed in [...], where you were 18 years old, was prepared in English, which in your opinion is deliberately due to [defendant]'s attempt to make it difficult to fully understand its contents , which does not meet the requirement that declarations of consent must be available in an easy-to-understand and easily accessible form and in a single language.

You have further stated that the contract will not be valid under Danish law, as it does not meet the most basic contract law criteria under Danish law. In this connection, you have stated that the contract has been prepared on American terms, which means that it operates on "Common Law terms", which is why the majority of the points stated in the contract are largely invalid under Danish law, where we operate with "Civil Law".

In addition, you have stated that it is your opinion that the intimate photos that [defendant] took of you were not intended for redistribution, as he has previously taken more common photos of you that you thought were the photos that would be made available. In this connection, you have stated that you have subsequently been able to establish that [defendants] have redistributed very intimate image, which i.a. has been used by unknown third parties in the context of escort ads and prostitution as well as other highly infringing contexts.

### 2.3. [defendant]'s remarks

[defendant] has in particular stated that you did not want to be a model for [...], but instead chose to perform a task in the form of Stock images (online archives of images). In that regard, [Defendant] stated that you agreed that the images, including images of a more intimate nature, were taken and used as stock images.

[defendant] has further stated that the contract you have filled out in that context clearly states that it is for business purposes. In this connection, [the defendant] has stated that it is a normal contract in the area and that everything has taken place according to the rules - you have in short provided a service, which in this context is images for use in online archives, where people can pull them out and use them.

Furthermore, [defendant] has stated that contracts relating to images to be used worldwide have been drawn up in English. In this connection, [defendant] has stated that it is not a contract that he has drawn up himself, but that the contract has been drawn up by lawyers and that this is the same one that is used for 90-95% of the stock images that exist online today. If the contract is rejected, the entire foundation of the stock industry will be gone worldwide.

[defendant] has finally stated that the contract will be terminated if you pay a consideration of 5,000 kroner.

#### Decision of the Danish Data Protection Agency

3.1. The Personal Data Act is per. 25 May 2018 has been replaced by new data protection rules in the form of a general EU regulation on the protection of personal data, which applies in both the private and public sectors [1], and the Data Protection Act [2], which supplements the rules in the regulation.

The Data Protection Regulation applies to all processing of personal data carried out in whole or in part by means of automatic data processing and to other non-automatic processing of personal data which is or will be contained in a register, in accordance with Article 2 (1) of the Regulation. 1.

Processing of general, non-sensitive information may take place if one of the conditions of Article 6 (1) of the Regulation 1, letters a-f, are met.

Treatment can then i.a. if the data subject has given consent to the processing of his personal data for one or more specific purposes, in accordance with Article 6 (1) of the Regulation. 1, letter a, or whose processing is necessary for the purpose of fulfilling a contract to which the data subject is a party, or for the purpose of implementing measures taken at the data subject's request prior to the conclusion of a contract., Cf. Article 6, paragraph 1, letter b.

According to the Data Protection Act, section 11, subsection 2, process personal identity number information when

it follows from the law,

the data subject has given his consent in accordance with Article 7 of the Data Protection Regulation,

the processing only takes place for scientific or statistical purposes, or in the case of disclosure of information on social security numbers, when the disclosure is a natural part of the normal operation of companies, etc. of the kind in question and when the disclosure is essential to ensure the unambiguous identification of the data subject or the disclosure is required by a public authority or

the conditions of § 7 are met.

Personal identity number must - notwithstanding the provision in para. 2, no. 3 - shall not be published unless consent has been given in accordance with Article 7 of the Data Protection Ordinance, cf. section 11 (1) of the Data Protection Act. 3.

According to Article 17 (1) of the Regulation 1, 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 following conditions applies:

The personal information is no longer necessary to fulfill the purposes for which it was collected or otherwise processed.

The data subject shall withdraw the consent on which the processing is based, in accordance with Article 6 (1). 1, letter a, or Article 9, para. 2, letter a, back, and there is no other legal basis for the processing.

The data subject objects to the processing pursuant to Article 21 (1). And there are no legitimate reasons for the processing which precedes the objection or the data subject objects to the processing pursuant to Article 21 (1). 2.

The personal data has been processed illegally.

The personal data must be deleted in order to comply with a legal obligation to which the data controller is subject.

The personal data have been collected in connection with the provision of information society services as referred to in Article 8 (1). 1.

Article 17 (1) of the Regulation 3, a number of exceptions are provided for the data subject's right to delete.

3.2. As the case is stated, the Danish Data Protection Agency has assumed that you have not given consent to [defendant]'s processing of information about your social security number, that it does not follow from law that [defendant] must process information about your social security number and that the conditions in the Data Protection Act § 7 is not met.

It is against this background that the Danish Data Protection Agency is of the opinion that the conditions for requiring the

deletion of information about your social security number pursuant to Article 17 (1) of the Data Protection Regulation. 1, has been fulfilled, and the Danish Data Protection Agency therefore finds that [defendants] must delete information about your social security number.

However, the Danish Data Protection Agency finds that there is no basis for concluding that [defendant]'s processing of the other information in the case can be required to be deleted pursuant to the data protection law rules.

The Danish Data Protection Agency has hereby emphasized that the agreement entered into does not, in the Authority's opinion, have the character of a data protection law consent, but has the character of a contract. In assessing this, the Danish Data Protection Agency has emphasized that it appears from the agreement that this is a "Universal Adult Model Release for all Agencies", that the agreement "Shall be binding on my heirs, legal representatives and assigns", and that you by signing the agreement have confirmed that "I hereby affirm that I am over the age of majority and have the right to contract in my own name".

The Danish Data Protection Agency is thus of the opinion that this is not a consent within the meaning of the Data Protection Regulation, which can be withdrawn, but a contract that forms the basis for [defendant]'s processing, including publication, of the information in question.

With reference to this, the Danish Data Protection Agency finds that [the defendant] has a legal basis in Article 6 (1) of the Data Protection Regulation. 1 (b) to process the information.

Infringement of an agreement between two parties falls outside the Data Inspectorate's competence, as the Authority cannot go into a more detailed interpretation of the validity of an agreement.

If such an agreement is to be infringed, this issue must instead be brought before the courts.

As this is not a data protection law consent that can be withdrawn, and at the same time there is no basis for concluding that [defendant]'s processing of the information in question about you takes place in violation of the data protection law rules, the Danish Data Protection Agency finds that the conditions to request that the information in question be deleted pursuant to Article 17 (2) of the Data Protection Regulation; 1 is not met.

On this basis, the Danish Data Protection Agency does not take any further action in the case.

[defendant] is today informed of this 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).