

Late deletion

Date: 08-07-2020

Decision

Public authorities

The Danish Data Protection Agency expresses serious criticism that it took almost a year before a municipality's data processor deleted a citizen's information.

Journal number: 2019-32-0704

Summary

In a complaint case, the Danish Data Protection Agency has expressed serious criticism of Høje-Taastrup Municipality in a case of deletion.

A citizen had complained to the supervision that Høje-Taastrup Municipality did not delete the patient's patient record. The municipality agreed with the citizen that the patient record should be deleted, as the information had been sent to the municipality by mistake. Høje-Taastrup Municipality stated that the municipality had tried to get its data processor to delete the information, and that it was the data processor's circumstances that made it difficult to have the deletion carried out.

In its decision, the Danish Data Protection Agency has emphasized that almost a year passed from the time the complainants requested that Høje-Taastrup Municipality request that the information be deleted until this was implemented, and that the municipality as data controller must ensure that the data subject's rights are observed. This means, among other things, that the data controller must use a data processor who can provide the necessary guarantees that appropriate technical and organizational measures can be implemented to ensure the protection of data subjects' rights.

Decision

The Danish Data Protection Agency hereby returns to the case where [X] (hereinafter complains) on 18 March 2019 complained to the Authority that Høje-Taastrup Municipality has refused to delete personal data about [X] in the form of a patient record, which Rigshospitalet inadvertently has passed on to the municipality.

Decision

After a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that Høje-Taastrup Municipality's processing of personal data has not taken place in accordance with the rules in the Data

Protection Regulation [1] Article 5, Article 17, para. 1, and Article 12, para. 3.

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

## 2. Case presentation

It appears from the case that Rigshospitalet by mistake passed on the complainant's patient record to Høje-Taastrup Municipality. Complainants then requested Høje-Taastrup Municipality to delete the patient record at the beginning of May 2018 by contacting the municipality's Jobcenter. On 30 July 2018, Høje-Taastrup Municipality requested its data processor - EG - to delete the document in question in Netforvaltning Sundhed.

On 18 March 2019, complainants approached the Danish Data Protection Agency about Høje-Taastrup Municipality's processing of [X] 's personal data. As part of its processing of the appeal case, the Data Inspectorate requested on 28 March 2019 Høje-Taastrup Municipality for an opinion, which the Authority received on 6 August 2019.

On 30 April 2019, EG deleted the patient record on behalf of Høje-Taastrup Municipality.

### 2.1. Complainant's remarks

Complainants have in connection with the complaint to the Danish Data Protection Agency stated that Høje-Taastrup Municipality has refused to delete this record, as deletion of the record was not immediately possible as a result of the municipality's system design.

Complainants have also stated that the Danish Agency for Patient Safety has made a decision on Rigshospitalet's disclosure of the medical record.

### 2.2. Høje-Taastrup Municipality's comments

In connection with the Danish Data Protection Agency's processing of the complaint, Høje-Taastrup Municipality has stated that the municipality has not rejected the complainant's request for deletion of the patient record in question.

Høje-Taastrup Municipality has further stated that the municipality itself does not have the opportunity to delete files in cases where major actors such as a region are a party. The municipality has done what it could to have the information deleted. The slow deletion was not caused by the municipality, but by the data processor. It has been difficult to get EG to delete the record, and the municipality has been in constant contact with EG regarding the matter. The municipality's citizen counseling was finally involved in the case.

Justification for the Danish Data Protection Agency's decision

The Danish Data Protection Agency has assumed that Rigshospitalet by mistake sent a patient record to Høje Taastrup Municipality, and that the patient record has not been included in or was necessary for Høje Taastrup Municipality's performance of its authority tasks in relation to complaints.

The Danish Data Protection Agency has also assumed that Høje Taastrup Municipality agreed with complainants that complainants had the right to have the information deleted.

In its decision, the Danish Data Protection Agency has emphasized that it follows from Article 5 (1) of the Regulation. 1, letter a, that personal data must be processed legally, fairly and in a transparent manner in relation to the data subject. Furthermore, it follows from Article 5 (1) of the Data Protection Regulation That the data controller is responsible for and must be able to demonstrate that Article 5, para. 1, is complied with. This means that the data controller i.a. must ensure and be able to demonstrate that personal data is processed for lawful and reasonable purposes - even when the data controller asks another party (a data processor) to process the data on his behalf.

Pursuant to Article 12 (1) 3, a registrar's request for i.a. deletion is made without undue delay and no later than one month after receipt of the request. This period may be extended by two months, if necessary taking into account the complexity or number of requests.

Article 17 of the Data Protection Regulation deals with the data subject's right to delete and the data controller's obligation to delete if the conditions of that provision are met.

On the basis of the information in the case that Høje Taastrup Municipality requested the data processor to make deletion more than two months after the municipality received the complainant's request for deletion, and that the deletion was subsequently made by the municipality's data processor 9 months after the municipality had requested it. and almost a year after the complainant's request for deletion, the Danish Data Protection Agency is of the opinion that Høje-Taastrup Municipality has not complied with the complainant's right to delete the complainant's personal data pursuant to Article 17 (1) of the Data Protection Regulation. 1, and Article 12, para. 3.

Regarding the information about the data processor's delayed deletion, the Danish Data Protection Agency notes that the municipality, as data controller pursuant to Article 24 (1) of the Data Protection Regulation, 1, must ensure that the rights of the data subjects are observed.

Furthermore, according to Article 28, para. 1, obliged to use a data processor who can provide the necessary guarantees that

the data processor will implement appropriate technical and organizational measures in such a way that processing meets the requirements of the Regulation and ensures protection of the data subject's rights, just as the data controller must how the data processor's obligations are met in practice.

The Danish Data Protection Agency has taken note of the municipality's information that the municipality repeatedly contacted the data processor with a view to the deletion in question being carried out, but that it was not until the end of March 2019 when the municipality's citizen counseling stepped in and put pressure on the data processor. , that the information was subsequently deleted on 30 April 2019.

In the light of the circumstances of the case, however, the Danish Data Protection Agency considers that Høje-Taastrup Municipality, as data controller, has not sufficiently ensured compliance with the provisions of the regulation, and that the municipality has therefore not acted in accordance with Article 5, Article 17 (1). 1, and Article 12, para. 3, which gives the Danish Data Protection Agency the opportunity to express serious criticism.

[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).