

The Digital Trial Guard

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Decision

Public authorities

The Danish Data Protection Agency expresses serious criticism that the Danish Agency for IT and Learning (STIL) had not implemented measures that were appropriate for the subsequently identified risk level in a test of the monitoring program Den Digitale Prøvevagt.

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Summary

The Danish Data Protection Agency expresses serious criticism that the Danish Agency for IT and Learning (STIL) as a data processor did not meet the requirements of Article 32 of the Data Protection Regulation, as STIL had not implemented measures appropriate to the subsequently identified risk level in a test of the monitoring program. .

In the spring of 2019, the Danish Data Protection Agency chose i.a. on the basis of media coverage, to examine the monitoring program Den Digitale Samplevagt of own operation.

On 7 March 2019, a dress rehearsal was conducted by Netprøver.dk containing the program Den Digitale Prøvevagt, where approx. 8,000 students chose to install and test the Digital Trial Watch, which processed personal information about these students.

It is the Data Inspectorate's assessment that STIL had not implemented measures at the general examination that were appropriate for the subsequently identified level of risk. STIL thus did not live up to Article 32 of the Data Protection Regulation, which the Danish Data Protection Agency expresses serious criticism of.

The Danish Data Protection Agency must generally emphasize that in connection with the development and testing of programs, the necessary attention must be paid if personal data is processed. If production data is used as part of the development, an assessment must be made of the risk to the data subjects' rights, and in accordance with this, appropriate security must be established before the processing begins. Furthermore, in all cases where the risk to the data subject may be high, an impact assessment must have been carried out before the processing of personal data begins.

As the development of the program The Digital Trial Watch is currently put on hold, and as STIL based on the risk assessment

has decided that before any commissioning, a new separate risk assessment and an impact assessment must be carried out, the Danish Data Protection Agency finds that the Authority does not currently have a basis for taking a position on the processing of personal data when using the program in the future.

It appears from the decision that the Danish Data Protection Agency expected to hold a meeting with STIL and the Ministry of Children and Education with a view to discussing the data protection law issues in more detail in connection with a possible continued development of the Digital Probation Service. This meeting has not been held due to the special circumstances surrounding COVID-19.

Decision

The Danish Data Protection Agency hereby returns to the case, where the Danish Data Protection Agency on 5 March 2019 on the basis of e.g. media coverage decided to investigate The Digital Sample Watch of its own accord.

By letters dated 5 March 2019 and 10 May 2019, the Danish Data Protection Agency requested the Ministry of Children and Education (hereinafter the Ministry) and the Danish Agency for IT and Learning (hereinafter STIL), respectively, for opinions for the purpose of processing the case. The Ministry of Education has by letters of 9 April 2019 and 5 September 2019 issued two statements.

Below is a more detailed review of the case and the Danish Data Protection Agency's decision. Point 1 of the decision concerns the processing of personal data that has taken place in connection with a general examination on 7 March 2019.

Point 2 of the decision concerns the development of the Digital Exam Watch program.

The dress rehearsal

In connection with the development of the program The Digital Rehearsal Guard, a general rehearsal was held on 7 March 2019. In connection with this general examination, personal data on approx. 8,000 high school students.

Following an examination of the case, the Danish Data Protection Agency finds that there are grounds for expressing serious criticism that STIL's processing of personal data has not taken place in accordance with the rules in Article 32 of the Data Protection Regulation [1].

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

1.1. Case presentation

The Digital Exam Watch is a monitoring system developed by STIL, which according to the information will be made available

free of charge to the upper secondary institutions as an add-on program to the website Netprøver.dk with the aim of ensuring that exams and exams are objective and fair.

The intention is for the program to be able to document a series of actions that students perform on their computer during exams, in order to be able to detect and prevent students from cheating during exams.

It appears from the case that on 7 March 2019, a dress rehearsal was conducted by Netprøver.dk containing the program Den Digitale Prøvevagt. It was voluntary for the students whether they wanted to participate in the test of the Digital Exam Watch, and thus whether they wanted to activate the monitoring system during the exam. There were approx. 8,000 students who chose to install and test the Digital Trial Guard. In connection with this general examination, personal data about the students who had voluntarily installed and tested the system were processed.

The personal information collected during the dress rehearsal was deleted on March 14, 2019.

Comments from the Ministry of Children and Education

The Ministry of Children and Education has stated that the data responsibility for the processing of personal data using the program The Digital Exam Watch will be with the individual institutions for upper secondary education, as the processing of students' information takes place solely for the institution's purposes and on behalf of the institution. In the same way, it was the individual institutions that were data responsible for the processing of personal data at the general examination. However, STIL is responsible for the development of the program and makes this available to the educational institutions. STIL also processes personal data on behalf of the individual institutions in connection with the program being made available, which is why STIL acts as a data processor.

The Ministry has also stated that the purpose of the general examination was to test Netprøver.dk with the Digital Examination Guard prior to the planned commissioning of the program at the exams in the summer of 2019, including primarily whether the monitoring function worked technically and had the capacity to handle many thousands of students using the solution. at the same time. At the same time, the purpose was to give the students the opportunity to try an exam-like situation with the Digital Exam Watch, but without control of the individual student.

Both the Ministry and STIL were aware that there were processes in the sample settlement system that could be tested without the processing of personal data. Such tests had taken place prior to the dress rehearsal. However, it was also necessary to test the system with real students and real staff, as experience from recent years' load tests has shown that it is extremely

difficult to predict user behavior in the system, which is why it was necessary to perform a load test with personal data collection.

The Ministry's statement of 5 September 2019 also states:

"The processing security of DDP is and will be in accordance with Article 32 of the Data Protection Regulation, cf. Article 5 (1). 1, letter f, be determined taking into account the current technical level, the implementation costs, the nature of the treatment, scope, coherence, purpose, risks and students' rights.

[...]

As part of the development of DDP, ongoing testing of DDP takes place, including the mentioned general examination on 7 March 2019. In this context, STIL had already planned prior to the general examination to carry out a risk assessment of Netprøver.dk, including DDP, in week 13 2019. The time was i.a. chosen in order to be able to take into account the experience from the general examination to identify and decide on the need for additional security measures of a technical and organizational nature. "

It has been stated that the risk assessment has been carried out in accordance with the above on 27 March 2019. Regarding the result of this risk assessment, the following is stated in the Ministry's opinion:

"The result of the risk assessment has given rise to a review of the existing logging in order to ensure that the logging is sufficient, just as the result has identified a need for a further tightening of access control for some roles, as access to personal information in Netprøver.dk, including DDP, is based on a role model. For elucidation of initiated technical and organizational initiatives regarding DDP, reference is made to the Ministry's statement of 9 April 2019, p. 6. "

During the dress rehearsal, STIL was also able to establish that the supplier had not deactivated a keylogger function in the Mac client as agreed. Students with Mac computers therefore had their keystrokes logged during the dress rehearsal. The challenge was handled by deleting all data from this source on an ongoing basis during the dress rehearsal. The keylogger function is subsequently completely removed from the program.

Finally, the Ministry has stated that the functionality of the Digital Trial Watch has not been fully developed and that the dress rehearsal showed that the program did not work well enough. Based on a risk assessment, STIL has also decided that a new separate risk assessment must be carried out before any implementation of the program, and that an impact assessment must be prepared if it is decided that the program must be fully developed.

1.2. Justification for the Danish Data Protection Agency's decision

Pursuant to Article 32 of the Data Protection Regulation, the controller and processor shall, taking into account the current state of the art, implementation costs and the nature, scope, coherence and purpose of the processing, ensure a level of safety appropriate to these risks.

In order to establish adequate security and prevent processing in breach of the Data Protection Regulation, the controller or processor must assess the risks involved in processing and implement measures that can limit those risks. This risk assessment must be carried out before the processing of personal data begins.

On the basis of the information in the case, it is assumed that STIL processes personal data as a result of the program Den Digitale Prøvevagt as a data processor and thus on behalf and under the instruction of the individual upper secondary institutions.

The Danish Data Protection Agency also assumes that the level of safety in the test environment, which was used in the general examination, according to STIL, should be the same as in the expected production environment.

In addition, it is assumed that STIL during the general examination and a subsequent risk assessment has identified several security issues, including that a keylogger function was turned on and that there was inappropriate user control and thus unintentional access to the information. Furthermore, STIL has carried out a reassessment and has come to the conclusion that a renewed risk assessment must be performed and that the criteria for carrying out an impact assessment have been met. Finally, it is assumed that STIL only carried out a risk assessment after the general examination had been completed, and thus after the processing of personal data using the program had begun.

The Danish Data Protection Agency finds - as stated by STIL - that the subsequent risk assessment showed a number of factors where the implemented security was insufficient. On this basis, the Danish Data Protection Agency finds that STIL did not implement measures that were appropriate for the subsequently identified risk level at the general examination. STIL has thus not complied with Article 32 of the Data Protection Regulation, which provides the Danish Data Protection Agency with a basis for expressing serious criticism.

In addition, the Danish Data Protection Agency must emphasize that a risk assessment with a view to identifying the appropriate level of security must be carried out before the processing of personal data begins. In cases where the conditions of Article 35 (1) of the Data Protection Regulation 1, is complied with, a corresponding impact assessment must be carried out

before the processing of personal data begins.

On the basis of the information, the Danish Data Protection Agency has noted that STIL assessed that it was necessary at the relevant development stage of the program to test the system with real students and the right employees, as stress tests without the use of personal data have previously proved insufficient. STIL had thus assessed that it was necessary to carry out a test with personal data in a realistic set-up with approx. 50,000 concurrent users.

At the same time, the Danish Data Protection Agency has noted that it was decided that the general examination in question - and thus the necessary stress test of the program The Digital Examination Guard - was voluntary for the students, and that only 8,000 students participated in the general examination. As a result of the somewhat lower participation in the general examination than assumed by STIL, it must then be assumed that the purpose of a stress test was not achieved.

In this connection, the Danish Data Protection Agency notes that it is the Authority's view that it is not possible for a data subject to agree or consent to a lower level of security than required by Article 32 of the Regulation, so the Data Protection Regulation's rules on processing security must always be observed. regardless of whether the data subject himself or herself expresses that he or she accepts a lower than appropriate level of security.

2. Development of the function The Digital Examiner

It appears from the Ministry of Children and Education's statement of 5 September 2019 that the development of the Digital Probation Watch as a new functionality for Netprøver.dk is currently put on hold.

On the basis of the statements submitted, the Danish Data Protection Agency has noted that at present there is no question of a fully developed program, and that STIL, based on a risk assessment, has decided to carry out a new separate risk assessment before any commissioning, and that in the event of a decision on further development of the Digital Trial Guard, an impact assessment will also have to be prepared.

On the basis of this, the Danish Data Protection Agency finds that at present there is no basis for the Authority to take a position on the processing of personal data when using this program when it has been fully developed. However, the Danish Data Protection Agency intends to hold a meeting with STIL and the Ministry of Children and Education on 30 March 2020 at 13 at the Danish Data Protection Agency with a view to discussing the data protection law issues in more detail in connection with a possible continued development of the Digital Probation Service.

At this meeting, the Danish Data Protection Agency wishes to discuss the following points in particular:

The principle of data minimization according to Article 5 (1) of the Data Protection Regulation 1, letter c,
processing of specific categories of data covered by the prohibition on processing in Article 9 (1) of the Data Protection
Regulation 1,
preparation of an impact assessment in accordance with Article 35 of the Data Protection Regulation,
processing security in accordance with Article 32 of the Data Protection Regulation

[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).