

Complaint about a lawyer's disclosure of information

Date: 16-11-2022

Decision

Private companies

Criticism

Complaint

Processed by the Data Council

Basis of treatment

The Danish Data Protection Authority has made a decision in two cases where complaints have been made about the disclosure and subsequent use of information by lawyers. This decision concerns a lawyer's disclosure of information to another lawyer.

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Summary

The Danish Data Protection Authority has dealt with two appeals from the same complaints about the disclosure of personal data between two self-employed lawyers, Lawyer A and Lawyer B.

Lawyer A represented the complainant's former spouse, and Lawyer B represented a friend of the complainant's former spouse.

One complaint concerned the fact that Lawyer A had passed on information of a confidential nature about complaints to Lawyer B for use in a defamation case brought by the complainant against Lawyer B's client.

The second complaint concerned Lawyer B's use of the information in the defamation case.

For the case, the Data Protection Authority has obtained an opinion from the Norwegian Association of Lawyers.

As the Danish Data Protection Authority has not previously taken a position on the legality of passing on and subsequently using personal data between independent lawyers, including the interaction between the data protection rules and the lawyer's ethical rules, the decisions in the two cases have been made by the Data Council.

Advokat A's disclosure of the information

As far as the case concerning Lawyer A's disclosure of information to Lawyer B is concerned, the Data Council assessed,

among other things, that the processing basis for the disclosure in the specific case was the balancing of interests rule (Article 6, subsection 1, letter f). At the same time, the Data Council found that the complainant's interest in the information about him not being passed on outweighed the consideration of lawyer A's client's interest in the information being passed on.

In addition, the Data Council found that the complainant's interest in the information about him not being passed on also outweighed the consideration that Lawyer B's client could protect his interests in connection with the pending defamation case - brought by the complainant against her.

On this basis, the Data Council found that the disclosure could not take place within the framework of the data protection regulation.

The Danish Data Protection Authority then expressed criticism of Advocate A.

Advokat B's subsequent processing of the information

As far as Lawyer B is concerned, the Data Council found that the person concerned's processing of information about complaints had taken place within the framework of the balancing of interests rule (Article 6, subsection 1, letter f).

Decision

The Danish Data Protection Authority hereby returns to the case where [X] (hereafter complainant) contacted the Danish Data Protection Authority on 30 January 2020.

The Danish Data Protection Authority has understood the inquiry as a complaint that lawyer [A] has passed on information about complaints, which is contained in the State Administration's decision of [...] on contact and [Y] Municipality's child welfare investigation of [...], to lawyer [B].

The Danish Data Protection Authority has dealt with the complaint about [B's] processing of information about complaints separately under reference number: 2020-31-3066.

## 1. Decision

After a review of the case – and after the case has been dealt with by the Data Council – the Danish Data Protection Authority finds that there is a basis for expressing criticism that lawyer [A's] disclosure of information about complaints did not take place within the framework of the data protection regulation[1] article 6, 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 lawyer [A], who is the lawyer for the complainant's former spouse, [client C], has passed on a copy of the State Administration's decision of [...] on contact and [Y] Municipality's child welfare investigation of [...] to lawyer [B].

Lawyer [B] subsequently, as lawyer for [client D] - during the Court in [Y's] handling of a defamation case brought by [complainant] and [complainant's father] against [client D] (friend of client C) - presented the mentioned documents.

From the State Administration's decision, it appears, among other things, that [complainant] had requested the State Administration to amend a visitation agreement regarding [complainant] and [client C's] joint child, that the police experienced that the parents were reporting each other, and that the municipality was concerned about the high level of conflict between the parents.

From [Y] Municipality's study on children, it appears, among other things, information about various conflicts between [complainant] and [client C] as well as [complainant's] parenting skills, behavior and family relationships. Furthermore, the study contains a number of notifications and concerns regarding the common child.

In addition, there is information about a notification received from [client D]. The notification shows, among other things, that [client D] suspects that [complainant] [.....]. The previously mentioned defamation case relates to the allegations in this notification.

It appears from the website [...] that both lawyer [A] and lawyer [B] are partners associated with [Z] Law Firm, but each has its own CVR number. [...].

On 30 January 2020, the complainant addressed the Danish Data Protection Authority with a complaint about lawyer [A's] disclosure of information about him.

Lawyer [E] appeared on 12 March 2020 on behalf of his client, lawyer [A], with a statement in the case, to which [complainant] made his comments on 17 March 2020.

The Danish Data Protection Authority also requested on 2 June 2021 the Bar Association for an opinion on what considerations the course of events in the case gave rise to. The Bar Association issued a statement on 17 December 2021.

The Bar Association's statement is attached as an appendix.

## 2.1. Lawyer [A's] remarks

Lawyer [E] has confirmed that lawyer [A] has passed on information about complaints in the form of the State Administration's

decision on visitation and [Y] Municipality's child welfare investigation to lawyer [B].

The purpose of the disclosure was to use the information as documentation in a defamation case, where lawyer [B] represented the defendant [client D]. The disclosure took place on instructions and with the consent of [client C], whom lawyer [A] represented in a pending residence case concerning [complainant] and [client C's] common child. [E] has attached a copy of an e-mail in which [client C] indicates that she has given consent to the disclosure of the documents in question.

It appears from the e-mail that [client C] confirms that she has "given consent to [that A] could hand over the following documents to [B] for use in a defamation case heard at the court in [Y] [...]".

The e-mail was prepared on 11 March 2022 in connection with the Danish Data Protection Authority's hearing of [A].

Lawyer [E] has stated that the disclosure took place on the basis of the data protection regulation's article 6, subsection 1, letter c (legal obligation), since lawyer [A] was obliged to pass on the information on instructions from her client, and Article 6, paragraph 1, letter f (legitimate interest), as the disclosure of the information was necessary for lawyer [B's] client to pursue his legitimate interest in presenting documentation for his views in the libel case.

## 2.2. [complainant's] comments

[complainant] has stated that lawyer [A] has passed on information about him in violation of the data protection rules, as lawyer [A] had not, at the time of passing on the State Administration's decision and [Y] Municipality's child welfare investigation, obtained consent from those to whom the information concerned.

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

The information on complaints referred to in the case, which is contained in the decision on visitation and in the child welfare investigation, has been passed on from lawyer A, who handled [client C's] residence case regarding the complainant's and [client C's] common child, to lawyer B, who handled [client D's] libel case – and not directly from [client C] to [client D].

The Danish Data Protection Authority assumes that the information in question about complaints constitutes information covered by Article 6 of the Data Protection Regulation.

There is consent from client C to the disclosure, but no consent from the complainant. The disclosure could therefore not take place on the basis of the processing rule in Article 6, subsection 1, letter a.

This appears from the data protection regulation's article 6, subsection 1, letter c, that processing, including disclosure, of personal data can take place if the processing is necessary to comply with a legal obligation incumbent on the data controller.

The term "legal obligation" includes obligations arising from legislation or from administrative regulations laid down pursuant thereto.

The legal obligation must be sufficiently clear as to the processing of personal data that it requires, and the legal obligation must expressly refer to the nature and object of the data processing. The data controller must not have undue discretion as to how the legal obligation must be complied with.[2]

These conditions do not appear to have been met in the present case, and the Danish Data Protection Authority considers, on this basis, that the disclosure of information about complaints could not take place pursuant to the regulation's Article 6, subsection 1, letter c.

Processing of personal data can also take place if the processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the data subject's interests take precedence, cf. the data protection regulation, article 6, subsection 1, letter f.

In its statement to the Norwegian Data Protection Authority, the Bar Association has dealt with the situation where a client asks their lawyer to pass on certain personal data. In this regard, the Bar Association has stated that the lawyer - if it is only information about the client - will be obliged to pass this on. If, on the other hand, it is also about information about a third party, the lawyer is, in accordance with good legal practice, obliged to meet the client's request as far as is necessary for the legitimate protection of the client's interests. According to the Bar Association, it will depend on a concrete assessment of whether a disclosure of information takes place for the legitimate protection of the client's interests, including whether the client's interests outweigh a reasonable consideration of the other party.

In the present case, it is the Danish Data Protection Authority's assessment that the complainant's interest in the information about him not being passed on outweighs the interest of lawyer [A's] client in the information being passed on

In addition, the Danish Data Protection Authority assesses that the complainant's interest in the information about him not being passed on also outweighs the consideration that [client D] could protect his interests in connection with the pending defamation case - brought by the complainant against her.

The Danish Data Protection Authority has emphasized that the State Administration's decision on visitation and the child specialist investigation were included in the residence case, and that the documents contain detailed information about the complainant's family circumstances and other information about his purely private circumstances, which he could reasonably

expect was not passed on from a lawyer [A] to lawyer [B] for presentation in the libel case. It is hereby noted that the complainant's former spouse is not a party to the defamation case, and there is no information that the outcome of the defamation case should have any bearing on the residence case.

On this basis, the Danish Data Protection Authority finds that the disclosure could not take place within the framework of the Data Protection Regulation, Article 6, subsection 1, letter f.

None of the other grounds for processing in the data protection regulation, Article 6, subsection 1, authorizes the transfer that has taken place.

On the basis of the above, the Danish Data Protection Authority finds that there is a basis for expressing criticism that lawyer [A's] disclosure of information about complaints to lawyer [B] has not taken place within the framework of Article 6, subsection of the Data Protection Regulation. 1.

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

[2] See Report on the Data Protection Regulation (2016/679) – and the legal framework for Danish legislation, part I, volume 1 p. 118

The Data Council emphasized that lawyer B's processing of information about complaints had taken place in his capacity as a lawyer for his client in the libel case in question, and that the processing of the information must be considered to have taken place as part of a legitimate safeguarding of the client's interest in defending himself in the said case.