

Serious criticism and injunction to Rejsekort A / S

Date: 16-04-2019

Decision

Private companies

In a complaint, the Danish Data Protection Agency expresses serious criticism of Rejsekort A / S and issues an order to come up with a plan to have the travel card system brought into line with the Data Protection Ordinance and the Data Protection Act.

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Summary

The Danish Data Protection Agency has processed a complaint in which a traveler has complained about Rejsekort A / S 'failure to correct personal information in the form of location data.

In connection with the processing of the case, it has emerged that the lack of correction is due to the way in which Rejsekort A / S - as data controller - has chosen to IT-support the processing of location information during trips made.

On 16 April 2019, the Danish Data Protection Agency made a decision in the case and expressed serious criticism of both the specific lack of correction in relation to complaints and the general conditions regarding the way location information is registered and subsequently can be corrected in Rejsekort A / S 'IT systems.

In addition, Rejsekort A / S has received an order to correct the complainant's information as well as a further order to, before 15 July 2019, provide a description of how and when the IT support of the travel card will be brought in accordance with the Data Protection Ordinance and the Data Protection Act.

In the opinion of the Danish Data Protection Agency, according to the wording of Article 16, second sentence of the Data Protection Regulation, a right for the data controller to refrain from rectification by adding additional information instead.

As Rejsekort A / S can not make corrections in any other way, and during the processing of the case has not proved circumstances that could lead to a different result, it is the Data Inspectorate's opinion that the processing performed does not comply with Article 5 (1) of the Data Protection Regulation. Article 16 (1) (d) and, moreover, in specific cases, will not be able to comply with Article 16 of the Regulation.

In addition, the Danish Data Protection Agency is of the opinion that the processing of location data is not adequately processed in accordance with Article 5 (1) of the Data Protection Regulation. 1, letters a, c and d.

Decision

The Danish Data Protection Agency hereby returns to the case where X (hereinafter “complaints”) by e-mail of 21 April 2017 has complained to the Danish Data Protection Agency about how Rejsekort A / S has handled the complainants' request for correction of personal information about complaints in Rejsekort A / S 'system.

The Danish Data Protection Agency has understood the complainants' inquiry as a complaint that Rejsekort A / S has not corrected incorrect personal information about complaints in connection with bus travel.

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.

Decision on injunction

1.1. Following a review of the case, the Danish Data Protection Agency finds grounds for expressing serious criticism that Rejsekort A / S has not processed the complainant's request for rectification in accordance with Article 16 of the Data Protection Ordinance.

The Danish Data Protection Agency also finds grounds for expressing serious criticism that Rejsekort A / S 'general processing of location information in connection with bus travel is not in accordance with Article 12, as Rejsekort A / S does not facilitate the exercise of the data subjects' rights, and that the processing of Location information in connection with bus travel does not comply with the basic principles of Article 5 of the Data Protection Regulation on the processing of personal data.

1.2. On that basis, the Danish Data Protection Agency finds grounds for issuing an injunction pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter c, that Rejsekort A / S must comply with the complainant's request for rectification in accordance with Article 16 of the Data Protection Ordinance, 1st sentence.

1.3. As it is assumed that this is not technically possible, the Danish Data Protection Agency also issues pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter d, order that Rejsekort A / S must before 15 July 2019 provide a description of how Rejsekort A / S will bring the general processing of location information in relation to natural persons' bus travel in accordance with the provisions of the Data Protection Ordinance. This description must include a timetable for the implementation of the changes.

If Rejsekort A / S as data controller, also after an assessment of e.g. data minimization, will in future process location

information in relation to natural persons, the description must contain the functional corrections in the necessary IT systems that ensure a correct registration of a natural person's actual travel activity as well as the data subjects' right to have incorrect information corrected, whether have complained about this or not.

The Danish Data Protection Agency draws attention to the fact that according to the Data Protection Act, section 41, subsection 2, nr. 5, it is a criminal offense to fail to comply with an order issued pursuant to Article 58, para. 2, letters c and d.

2. Case presentation

It appears from the case that Rejsekort A / S processes information about complaints in connection with the complainants' use of travel cards. Complainants have stated to Rejsekort A / S that in three cases there has been an error in location information regarding the complainant's bus journeys on the following dates:

May 12, 2015: Registered trip X Square to Y Station.

January 9, 2016: Registered trip X Station to Yvej.

February 8, 2017: Registered trip X Station to Yvej.

Rejsekort A / S has by e-mail of 20 February 2017 stated the following to complaints regarding the trip on 8 February 2017:

...

Unfortunately, it is not possible to edit your travel history, so even if the error has been corrected in terms of price, it will still appear with incorrect registrations. Editing travel history is not a feature that is in the travel card system.

Therefore, please ignore the error locations on this trip.

It is correct that the customers themselves must find out this type of error and contact us to correct the error. There is no automatic refund.

... ”

By e-mail of 7 April 2017, Rejsekort A / S has further stated the following for complaints:

...

As we have previously stated, it is unfortunately not technically possible in the travel card system to correct information about the location of the bus, even if a wrong trip has been chosen. We can therefore unfortunately not meet your desire to have the three trips corrected. In return, we have now registered your information about where you have rightly traveled, why this information will be available on your case.

In connection with the processing of the case, the Danish Data Protection Agency requested an opinion from Rejsekort A / S on 31 October 2017 and 30 July 2018. On 23 November 2017 and 21 September 2018, Rejsekort A / S submitted statements to the Danish Data Protection Agency.

It appears from Rejsekort A / S 'statement of 21 September 2018 that Rejsekort A / S on the same day has confirmed to complainants that Rejsekort A / S' own investigations have shown that the bus routes in question - on the basis of a human error committed by the bus drivers - was set incorrectly and that Rejsekort A / S has made the corrections in question by having used the comment field in the correction lines in Rejsekort A / S 'system.

2.1. Complainant's remarks

Complainants have stated that Rejsekort A / S incorrectly registers location data at check-in and check-out in buses, and that complainants in several cases have made demands for correction of incorrect information so that the system shows the complainant's correct position and journey.

Rejsekort A / S has repeatedly stated that it is not possible to correct the information in question, as it is not technically possible for Rejsekort A / S to correct information about the bus' location once the driver has set the bus incorrectly. All location errors registered in the system are reported by Rejsekort A / S 'own customers, so that Rejsekort A / S does not make an active correction for other potentially affected customers.

2.2. Travel card remarks

Rejsekort A / S has stated, among other things, that Rejsekort A / S already in April 2017 corrected the complainant's information, as Rejsekort A / S noted the information which, according to the complainants, was correct. Rejsekort A / S does not have the technical possibility to determine whether the complainant's own information about the travel history was correct and was not in possession of the correct information.

As the travel card system is set up, neither Rejsekort A / S nor Rejsekort Customer Center can change the transaction data for check-in and check-out that is in the travel history, as the information is based on the bus' location information.

In the autumn of 2017, Rejsekort A / S implemented a change to the travel card system, which ensures that the drivers in the travel card system cannot register a route that deviates from the bus' current location according to the bus's GPS system, and that this change is expected to make a significant contribution. to minimize the number of error registrations.

Rejsekort A / S is in the process of investigating what technical possibilities there are for ascertaining incorrect registrations and correcting with valid data. This can possibly be done on the basis of the transport companies' real-time data, where the buses continuously report their geographical position. Rejsekort A / S will investigate whether using this data will automatically be able to detect incorrect registrations and correct both price and travel history.

Rejsekort A / S has also stated that the majority of customers who travel by bus using the travel card with the wrong choice of route direction are not financially affected by the incorrect registration, as the vast majority of bus journeys are shorter journeys in two zones where the price will be the same regardless of which route the bus is set for in the travel card system.

Rejsekort A / S 'website regularly publishes which buses that Rejsekort A / S is familiar with that have been incorrectly logged on to the travel card system on specific journeys. Customers are encouraged to check the price of a trip and contact customer service if they experience incorrect prices.

Information about incorrect check-in and check-out is mainly due to the individual travelers contacting them with the correct information, which is then used as a basis for a correction and registration of the bus journey / departure on Rejsekort A / S 'website.

Rejsekort A / S has also stated that an improved procedure has been introduced, after which a correction line will be inserted on the customer's travel history in connection with a customer's request for errors. This correction indicates that it is a correction of a specific trip and the correct location data provided by the customer is recorded without undue delay and no later than one month after receipt of the request in accordance with Article 12 (2) of the Data Protection Regulation. 3.

In its statement of 21 September 2018, Rejsekort A / S referred to the fact that lawyer X, on the basis of section 10 of the Accounting Act in conjunction with section 3, has concluded that Rejsekort A / S is obliged to store information about customers' payment transactions for 5 years. , but not to keep the travel history during that period.

Rejsekort A / S has also referred to the fact that report 1565/2017 states that rectification according to the circumstances can be done by writing down that the originally listed information was incorrect. Rejsekort A / S has stated in this connection that this applies, for example, in the event of disagreement about the accuracy of the information, and that the same may apply where it can not be determined with certainty which information is correct.

Relevant legal rules

The Danish Data Protection Agency may state about the Data Protection Regulation that the Regulation, in accordance with

Article 2 (1) thereof, 1 shall apply to the 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.

It is clear from Article 12 (1) of the Data Protection Regulation 2, inter alia, that the data controller shall facilitate the exercise of the data subject's rights under Articles 15-22.

Article 12 (1) of the Regulation 3, it appears that the data controller without undue delay and in all cases no later than one month after receipt of the request must inform the data subject of measures taken on the basis of a request in accordance with i.a. Article 16.

This period may be extended by two months, if necessary taking into account the complexity and number of the request. The controller shall notify the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay.

There is thus an absolute deadline for responding to requests from a data subject of three months. However, the vast majority of requests must be assumed not to be complicated, which is why they must be answered within one month of receipt.

In cases where a request from a data subject is rejected, the refusal must be substantiated and guidance must be given that the person in question can complain to the Danish Data Protection Agency or bring the case before the courts.

Under Article 16 of the Regulation, the data subject has the right to have incorrect information about himself rectified by the data controller without undue delay. The data subject has the right to have incomplete personal data completed, taking into account the purposes of the processing, e.g. by submitting a supplementary statement.

In addition, the processing of personal data must always be carried out in accordance with the basic principles set out in Article 5 of the Data Protection Regulation.

This means i.a. that the information must be processed lawfully, reasonably and in a transparent manner ("legality, reasonableness and transparency") in accordance with Article 5 (1); The information must be sufficient, relevant and limited to what is necessary in relation to the purposes for which it is processed ("data minimization"), cf. Article 5 (1) of the Regulation. 1, letter c. The information must be correct and, if necessary, updated. In addition, every reasonable step must be taken to ensure that personal data which are inaccurate in relation to the purposes for which they are processed are immediately deleted or rectified ("accuracy"), in accordance with Article 5 (1) of the Regulation. 1 liter d.

It follows from Article 5 (1) of the Regulation 2, that the data controller is responsible for and must be able to demonstrate that

the conditions in para. 1, is complied with.

It is clear from recital 39 in the preamble to the Data Protection Regulation that the data controller should take all reasonable steps to ensure that personal data which are inaccurate are corrected or deleted.

Pursuant to Article 58 (1) (2), each supervisory authority shall have all of the following corrective powers:

[...]

(c) to instruct the controller or processor to comply with the data subject's requests to exercise his rights under this Regulation;

(d) to instruct the controller or processor to bring processing activities into conformity with the provisions of this Regulation and, where appropriate, in a specified manner and within a specified time limit;

[...]

It follows from section 41 of the Data Protection Act that unless a higher penalty is due under the other legislation, the person who violates the provisions of [...] shall be punished by a fine or imprisonment for up to 6 months.

It follows from the provision's paragraph. 2, that in the same way the person who:

[...]

5) fails to comply with an order from the supervisory authority within the meaning of Article 58 (1) of the Data Protection Regulation; 2,

[...]

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

On the basis of Rejsekort A / S 'information, the Danish Data Protection Agency has assumed that incorrect information about check-in and check-out is processed in connection with bus journeys made by complainants, and that Rejsekort A / S has added the correct location data provided by complainants as a supplementary statement, as it is not technically possible in Rejsekort A / S 'system to correct the information.

The Danish Data Protection Agency has further assumed that Rejsekort A / S does not have the correct location information regarding the complainant's travels, and that Rejsekort A / S has considered the complainant's information to be correct.

It follows from Article 16, first sentence, of the Data Protection Regulation that the data subject has the right to have incorrect information corrected. Of the provision's 2nd clause. it appears that the data subject has the right to have incomplete personal data completed, taking into account the purposes of the processing, e.g. by submitting a supplementary statement.

Location information must be regarded as factual information, the accuracy of which is usually objectively ascertainable. To the extent that information is incorrect, Article 16 of the Data Protection Regulation gives the data subject the right for the controller to make a correction.

Thus, according to its wording, Article 16 of the Data Protection Regulation does not entail a right for the data controller to choose not to rectify by adding additional information in accordance with the second paragraph of the provision.

It is against this background that the Danish Data Protection Agency's assessment is that Rejsekort A / S has not corrected the incorrect information about complaints in accordance with Article 16 of the Data Protection Ordinance by adding the complainants' travel information in the correction line.

In addition, it follows from Article 5 (1) of the Data Protection Regulation 1, letter d, that it is a basic condition for the processing of personal data that the information is correct and, if necessary, updated, and that every reasonable step must be taken to ensure that personal data that are incorrect in relation to the purposes for which they are processed immediately, deleted or corrected.

With regard to a general assessment of Rejsekort A / S 'processing, the Danish Data Protection Agency has also assumed that Rejsekort A / S processes incorrect information about data subjects to an unspecified extent in connection with registration of incorrect information about customers' check-in and check-out. out on bus journeys, and that Rejsekort A / S can not determine which information is correct regarding the position of the buses.

In this connection, the Danish Data Protection Agency has noted that Rejsekort A / S has initiated measures with a view to limiting the number of incorrect registrations, e.g. by training drivers, and that Rejsekort A / S is in the process of investigating what technical possibilities there are for ascertaining incorrect registrations and correcting with valid data.

With reference to the published lists of incorrect registrations on specific bus routes on Rejsekort A / S 'website, the Data Inspectorate finds, however, that despite Rejsekort A / S' efforts to limit incorrect registration of site information, it must be assumed that there is large-scale incorrect registration. and that this may affect a significant number of travelers.

Rejsekort A / S has referred to the fact that on Rejsekort A / S 'website you can look at which departures have been registered in the wrong locations. It thus appears from Rejsekort A / S 'website that errors continue to occur to a significant extent regarding buses that have not been logged correctly on the travel card system. [3] The listed bus routes / departures operated by Movia show in the period from November 2018 to and including March 2019 that a not insignificant number of bus journeys

/ departures per. month that has been incorrectly logged in. In addition, there are errors on routes run by NT's buses.

It appears from Rejsekort A / S 'comments on the case that Rejsekort A / S' knowledge of and registration of information about incorrect location information regarding the data subjects' check-in and check-out is mainly due to the fact that the customers - the data subjects - report errors to Rejsekort A / S, which can then correct any price difference in relation to what the customer stated about the trip. Rejsekort A / S only makes corrections in relation to the registered persons, who themselves inquire about the accuracy of the location information.

With regard to the correction of incorrect location information, the Danish Data Protection Agency is of the opinion that Rejsekort A / S 'inability to correct incorrect personal information about bus passengers means that Rejsekort A / S does not comply with the requirements for a data controller's compliance with the obligations applies to the data subjects' rights in Article 16 of the Data Protection Regulation on rectification, and that Rejsekort A / S 'technical system is also not in accordance with Article 12 of the Regulation on supporting compliance with the data subjects' rights.

On the basis of the information in the case, it is also the opinion of the Danish Data Protection Agency that Rejsekort A / S cannot be considered to fulfill the basic conditions in Article 5 of the Data Protection Ordinance in connection with the processing of location information on bus journeys. Rejsekort A / S thus does not sufficiently ensure that the information is processed legally, fairly and in a transparent manner ("legality, reasonableness and transparency"), cf. Article 5, subsection. 1 (a) that the information is sufficient, relevant and limited to what is necessary in relation to the purposes for which it is processed ("data minimization"), cf. Article 5 (1) of the Regulation. And that the information is correct and, if necessary, updated ("correctness"), in accordance with Article 5 (1) (c) of the Regulation. 1, letter d.

In this connection, the Danish Data Protection Agency has emphasized that a significant number of incorrect information about the data subjects is processed in connection with bus travel, and that the layout of the travel card system means that checking the accuracy of the processed location information is based on the data controllers checking and correcting contact Rejsekort A / S.

The Danish Data Protection Agency has also attached importance to the fact that Rejsekort A / S only makes corrections for the registered persons who apply, and that other registered persons on buses who have logged in incorrectly can only on their own initiative obtain correction of incorrect location information and thus possibly also correction of the price of the trip.

In the opinion of the Danish Data Protection Agency, Rejsekort A / S 'reference to the Public Access to Information Act's rules

on the obligation to take notes and journaling in the public sector cannot lead to a changed assessment, as the considerations behind the Public Access to Information Act's provisions on the obligation to keep records and notes the travel card system, which is unable to establish accurate information and which does not allow for the correction of incorrect personal data, The Danish Data Protection Agency is aware that Rejsekort A / S states that an improved procedure has been introduced that gives data subjects a better overview of the correction of location information, and that Rejsekort A / S will process requests for registration of errors without undue delay.

However, the Danish Data Protection Agency finds that Rejsekort A / S, both in relation to the complainant's case and as regards the processing of location information on bus journeys, generally does not meet the conditions in the Data Protection Ordinance.

5.

Following a review of the case, the Danish Data Protection Agency thus finds grounds for expressing serious criticism that Rejsekort A / S has not corrected information about the complainant's travel locations.

Furthermore, the Danish Data Protection Agency finds grounds for expressing serious criticism that the travel card system is not in accordance with Article 12 of the Data Protection Ordinance, as incorrect location information cannot be corrected in accordance with Article 16, and that Rejsekort A / S does not sufficiently comply with the basic principles of Article 5 (1) of the Data Protection Regulation. 1, letter a, letter c and letter d.

The Danish Data Protection Agency finds grounds for issuing an injunction pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter c, that Rejsekort A / S must comply with the complainant's request for rectification in accordance with Article 16 of the Data Protection Ordinance, 1st sentence.

The Danish Data Protection Authority also issues pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter d, order that Rejsekort A / S must before 15 July 2019 provide a description of how Rejsekort A / S will bring the general processing of location information in relation to natural persons' bus travel in accordance with the provisions of the Data Protection Ordinance. This description must include a timetable for the implementation of the changes.

If Rejsekort A / S as data controller, also after an assessment of e.g. data minimization, will in future process location information in relation to natural persons, the description must contain the functional corrections in the necessary IT systems that ensure a correct registration of a natural person's actual travel activity as well as the data subjects' right to have incorrect

information corrected, regardless of these have complained about this or not.

[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] <https://www.rejsekort.dk/kundeservice/tidligere-driftsinformationer/fejl-i-busser.aspx>,