

Complaint about the lawyer's processing of personal data

Date: 16-11-2022

Decision

Private companies

No 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 subsequent use of the information received.

Journal number: 2020-31-3066

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).

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.

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 [B] has processed information about complaints contained in the State Administration's decision of [...] on contact and [Y] Municipality's child welfare investigation of [...], for use as evidence in a lawsuit.

The Danish Data Protection Authority has dealt with the complaint about [A's] disclosure of information about complaints separately under reference number: 2020-31-2882.

## 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 Lawyer [B's] processing of information about complaints has taken 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 [B], as lawyer for [client D], received a copy of the State Administration's decision of [...] on contact and [Y] Municipality's child welfare investigation of [...] from lawyer [A], who is attorney for complainant's ex-spouse, [client C].

Lawyer [B] has subsequently presented the documents to the Court in [Y's] handling of a defamation case brought by [complainant] and [complainant's father] against [client D] (friend of client C).

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 [B's] processing of information about him, which, according to the complainant, she had improperly received from lawyer [A].

Lawyer [E] appeared on 27 April 2021 on behalf of his client, lawyer [B], with a statement in the case, to which [complainant] made his comments on 11 May 2021.

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 [B's] comments

Lawyer [E] has stated that the purpose of [B's] processing of information about complaints was to provide evidence of the truth of his client's, [client D's], statements in the defamation case brought by [complainant]. [B] thus tried, via his role as a lawyer, to defend his client against [complainant's] allegations of libelous statements.

In this connection, lawyer [E] has argued that [B] was authorized to process the information about complaints in Article 6, paragraph 1 of the data protection regulation, respectively. 1 letter d (vital interests) and f (legitimate interest).

## 2.2. [complainant's] comments

[complainant] has stated that [B] – despite trying to protect her client's interests – has acted in breach of data protection rules by presenting information about him, which she had improperly received from lawyer [A], during legal proceedings.

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

The Danish Data Protection Authority assumes that the information referred to in the case about complaints that have been processed – as contained in the decision on contact and the child specialist investigation – constitutes information covered by Article 6 of the Data Protection Regulation.

It is the opinion of the Danish Data Protection Authority that the authority for [B's] processing of information about complaints should, if applicable, be found in Article 6, paragraph 1 of the Data Protection Regulation. 1, letter f.

According to the provision, processing of personal data can take place if the processing is necessary for the data controller or a third party to pursue a legitimate interest, unless the interests of the data subject take precedence.

In its statement to the Danish Data Protection Authority, the Bar Association has, among other things, stated the following:

"A lawyer who receives information that may benefit the client's case can legally use this information to benefit the client. Thus, it must be assumed that it will be contrary to good legal practice if the lawyer does not use such information, if the use otherwise takes place as part of a legitimate safeguarding of the client's interests."

In light of this, the Danish Data Protection Authority's assessment is that lawyer [B's] processing of information about complaints has taken place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter f.

The Danish Data Protection Authority has hereby emphasized that lawyer [B's] processing of information about complaints took place in her capacity as lawyer for [client D] in the defamation case brought by the complainant, and that the processing

of the information must be considered to have taken place as part of a legitimate safeguarding her client's interest in defending himself in the said case.

[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).