

Publishing audio recording on YouTube

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Decision

In a specific case, the publication of an audio recording on YouTube did not fall within the scope of the Data Protection Regulation, as the publication had to be regarded as a treatment carried out by a natural person as part of purely personal or family activities.

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Summary

The Danish Data Protection Agency has made a decision in a case in which a municipality, on behalf of two employees, had complained about a person's publication of an audio recording of a meeting in the municipality in which the two employees participated.

After an overall assessment, the Danish Data Protection Agency found that the Data Protection Regulation did not apply in the case, as the publication in question of the information had to be regarded as a processing carried out by a natural person as part of purely personal or family activities.

In this connection, the Danish Data Protection Agency emphasized that the publication had taken place as part of statements about the relationship between citizens and decision-makers / authorities, and that it was as a representative of a public authority that the employees had been admitted.

The Danish Data Protection Agency also emphasized that the context in which the audio file was published was otherwise characterized by subjective assessments and value-laden statements, and that the information complained of was included as part of the statements of opinion, which must also be clear to the users of the website.

Decision

The Danish Data Protection Agency hereby returns to the case where X Municipality (hereinafter the municipality) on 20 September 2019 - on behalf of two of the municipality's employees (hereinafter the complainants) - has contacted the audit.

The Danish Data Protection Agency has understood the inquiry as a complaint that YY (hereinafter the defendant) has published a (hidden) audio recording, which the defendant recorded at a meeting in the municipality on 15 July 2019, where the complainants participated as caseworkers.

By letter dated 20 February 2020, the Danish Data Protection Agency stated that the audit did not take any further action, as - e.g. due to lack of response from the respondent - there was not sufficient information in the case for the supervision to make a decision, which the municipality on 20 May 2020 has objected to.

In light of the municipality's inquiry in the case of 20 May 2020, and since the Danish Data Protection Agency has since the Authority's letter of 20 February 2020 had occasion to adjust its perception of the scope of the exemption provision in Article 2 (1) of the Data Protection Regulation. 2, letter c, the Authority has decided to resume processing of the case.

Decision

The Danish Data Protection Agency finds that the Data Protection Regulation does not apply in the case, cf. Article 2 (1) of the Regulation. 2, letter c, as the publication in question of the complaints in question must be regarded as a treatment carried out by a natural person as part of purely personal or family activities.

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 information about the complainants has been published in an audio recording published on YouTube under the title "X" on the user "YY". It appears from the video that it is only available to people who have linked to the video.

It also appears from the case that the link to the video will be shared through the Facebook profile "YY" on a post of 17 August 2019. The post also states:

[...]

Finally, it appears from the case that the municipality - prior to the municipality's complaint to the Danish Data Protection Agency - has unsuccessfully contacted the respondent to have the audio recording deleted.

The municipality has stated in the case that the audio recording contains the voices of the two employees, and it is therefore the municipality's opinion that this is a processing of personal data that is covered by the data protection rules. The two employees have not been asked to give consent to the publication of their personal data, nor can the municipality see that the publication should be compatible with data protection legislation for other reasons. In addition, the two employees have not been informed about the collection and processing of their personal data or informed about their rights in the context that is required by Article 13 of the Data Protection Regulation.

Regarding the background to the complaint, the municipality has stated that the municipality is increasingly experiencing that citizens record and - in the municipality's assessment - unjustifiably publish telephone conversations and conversations from meetings with the municipality's case officers. The municipality refuses - in accordance with rules and practices in the area - admission, unless there are some very special considerations in the citizen that make admission a necessary tool for him. It is especially a small group of citizens and assistants who consistently record and partially publish the conversations, although the municipality specifically advises them that the municipality does not find special reasons why they may record the conversations, and that the municipality therefore refuses this.

The municipality has also stated that the publication of the audio recordings is just a small part of a general harassment of employees, which has also included hanging posters with derogatory and gross publicity of named employees and derogatory and gross publicity of named employees in Facebook groups. The harassment affects the employees and their working environment in a negative direction, and the municipality as an employer has a duty under the working environment to ensure that the municipality's employees work under safe and healthy conditions.

Justification

3.1.

According to Article 2 (1) of the Data Protection Regulation, 1, applies 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.

However, the Data Protection Regulation does not apply to the processing of personal data carried out by a natural person as part of purely personal or family activities, cf. Article 2 (1). 2, letter c.

Whether the provision appears from recital 18 in the preamble to the Data Protection Regulation is as follows:

This Regulation shall not apply to the processing of information by a natural person during a purely personal or family activity and thus without any connection to a commercial or commercial activity. Personal or family activities may include correspondence and keeping a directory or social networking activities and online activities carried out as part of such activities. However, this Regulation shall apply to data controllers or data processors who provide the means for the processing of personal data for such personal or family activities. "

In light of the recital's reference to "social networking activities", it is the Data Inspectorate's view - after the practice has been

submitted to the Data Council - that a natural person's processing of personal data, which consists of publication on the Internet, may be considered a purely personal or family activity.

Thus, it is not in itself decisive for the application of Article 2 (1) of the Data Protection Regulation. 2, letter c, whether there has been publication on the Internet, as an overall assessment of the publication must be made, including the purpose of the publication and the nature of the information published.

3.2.

After an overall assessment, the Danish Data Protection Agency finds that the Data Protection Regulation does not apply in the case, cf. Article 2 (1) of the Regulation. 2, letter c, as the publication in question of the complaints in question must be regarded as a treatment carried out by a natural person as part of purely personal or family activities.

In this connection, the Danish Data Protection Agency has emphasized that the publication has taken place as part of statements about the relationship between citizens and decision-makers / authorities, and that it is as a representative of a public authority that the complaints have been received.

The Danish Data Protection Agency has also emphasized the context in which the audio file has been published, which is otherwise characterized by subjective assessments and value-laden statements, and that the information complained of is included as part of the statements, which must also be clear to users of the website.

3.3.

The Danish Data Protection Agency notes that the Authority has not taken a position on whether the publication of information on the website is contrary to other legislation, including Chapter 27 of the Criminal Code on breaches of the peace and honor. Furthermore, the Danish Data Protection Agency has not taken a position on whether the municipality can lay down (internal) rules on the recording of meetings with the municipality, including whether the municipality can prohibit citizens from recording meetings.

The Danish Data Protection Agency does not have the competence to make the assessment of the above questions.