

The Danish Cancer Society's processing of personal data in connection with recruitment

Date: 02-03-2021

Decision

Private companies

The Danish Data Protection Agency has completed a planned audit of the Danish Cancer Society, which dealt with the processing of information about applicants who had not been offered a position after completing the recruitment process.

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Decision

1. Written supervision of the Danish Cancer Society

Kræftens Bekæmpelse was among the data controllers that the Danish Data Protection Agency had chosen in the autumn of 2019 to supervise in accordance with the Data Protection Ordinance [1] and the Data Protection Act [2].

The Danish Data Protection Agency's inspection was a written inspection which focused on the Danish Cancer Society's storage and deletion of personal data about applicants - after completing the recruitment process - collected in connection with recruitment for employment where the applicant has not been employed, cf. Article 5 (1) (e) ("storage restriction"); 2 ("liability"), Article 6, Article 9 and the Data Protection Act §§ 8 and 11.

By letter dated 20 August 2019, the Danish Data Protection Agency notified the Authority of the Danish Cancer Society and requested an opinion in this connection.

By letter dated 10 September 2019, the Danish Cancer Society sent a statement for use in the case. Following a renewed consultation from the Danish Data Protection Agency on 4 November 2019, the Danish Cancer Society sent a further statement on 25 November 2019, and at the request of the Danish Data Protection Agency on 18 May 2020, the Danish Cancer Society sent additional information on 19 May 2020.

2. The Danish Data Protection Agency's decision

With regard to the Danish Cancer Society's processing of personal data about applicants who have not been employed, for the purposes of documenting a recruitment process and giving applicants feedback, it is the Data Inspectorate's assessment that it is inappropriate if the processing of information for these purposes is based on consent if the organization can instead base the processing on other relevant provisions.

Against this background, the Danish Data Protection Agency must recommend that the Danish Cancer Society instead base its processing on other provisions, in particular Article 6 (1) of the Data Protection Regulation. Article 9 (1) (c) and (f) 2, letter f, and the Data Protection Act § 8, para. 5, and § 11, para. 2, no. 4, cf. the Data Protection Act, section 7, subsection Article 9 (1) of the Data Protection Regulation 2, letter f.

In addition, the Danish Data Protection Agency finds that the Danish Cancer Society's processing of personal data on applicants who have not been employed for the purpose of offering possible subsequent employment has taken place in accordance with Article 6 (1) of the Data Protection Regulation. Article 9 (1) (a) 2, letter a, and the Data Protection Act § 8, para. 3, and § 11, para. Article 2 (2) (2) 1, and Article 7, para. 3, as the consent on which the processing of personal data is based fulfills the conditions for a valid consent in Article 4, no. 11 of the Data Protection Regulation, and as the Danish Cancer Society states in the consent text that the consent can be withdrawn at any time.

The Danish Data Protection Agency also finds that Kræftens Bekæmpelse's processing of information about where applicants have heard about the specific position, for the purpose of maximizing the benefit of the organization's expenses for advertising vacancies, has taken place in accordance with Article 6 (1) of the Data Protection Regulation. 1, letter f.

In addition, the Danish Data Protection Agency finds no basis for overriding the Danish Cancer Society's assessment that the organization's processing of personal data from applicants' publicly available social media profiles has taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation. Article 9 (1) (f) and Article 9 (1) 2, letter e.

In conclusion, the Danish Data Protection Agency finds that Kræftens Bekæmpelse's storage and deletion of personal data about applicants collected in connection with recruitment for employment where the applicant has not been employed, is seen to have taken place in accordance with the rules in Article 5, para. Article 5 (1) (e) (storage restriction) and Article 5 (1) 2 ("liability"), cf. Article 5, para. 1, letter e.

3. The Danish Cancer Society's remarks

3.1. Basis for treatment

Kræftens Bekæmpelse has stated that the company's purpose of storing information about applicants who have not been hired, after completing the recruitment process, is partly to provide relevant feedback to applicants who should want it, partly to be able to document the process of the recruitment process and partly to be able to contact applicants if the recruiting department intends to recruit additional staff to positions where the applicant in question could be suitable. Furthermore,

applicants are also asked where the applicants have seen the job advertisement, so that the Danish Cancer Society can maximize the return on the company's expenses for advertising vacancies.

Kræftens Bekæmpelse has also stated that information about applicants who are processed for the purpose of informing about other job opportunities in Kræftens Bekæmpelse, to ensure documentation of correct recruitment process and to provide feedback, is processed on the basis of a consent, cf. Article 6 (1) of the Data Protection Regulation. . Article 9 (1) (a) 2, letter a, and the Data Protection Act § 8, para. 3, and § 11, para. 2, No. 2.

Kræftens Bekæmpelse has submitted an anonymised example of the organization's declaration of consent, which all applicants who want to apply for a position with the organization must submit. Kræftens Bekæmpelse has also sent an anonymised example of the consent text that the organization sends to applicants who have not been hired, for the purpose of processing the applicant's information in order to possibly be able to offer the applicant a position other than the one originally applied for.

Kræftens Bekæmpelse has stated that consent is obtained from the applicant via the HR Manager system. When the applicant submits an application via HR Manager, the applicant is also asked to give his consent to the processing of personal data. The organization has also stated that separate consent will be obtained if the organization will process an applicant's information to possibly offer the applicant a position other than the one the applicant originally applied for.

Kræftens Bekæmpelse has stated that the organization - in connection with processing an application submitted via HR Manager - requests information about name, address, telephone number, e-mail address, date of birth, citizenship, gender, educational background, previous employment and current position. The organization can also obtain information from the applicants' profiles on social media, including e.g. LinkedIn, Facebook and Instagram. In addition, the applicant can submit further information in the application without the Danish Cancer Society asking for it, including information on social security number (for example in connection with copies of diplomas), marital status, information on criminal offenses, health information, information on sexual orientation, race, ethnic origin , political, religious or philosophical beliefs as well as trade union affiliation. Kræftens Bekæmpelse requests separate consent for further processing of the same information if the organization wishes to store the applicant's information in order to be able to offer the applicant another position.

Kræftens Bekæmpelse thus processes information covered by Article 6 of the Data Protection Regulation, including special categories of information covered by Article 9, information on criminal offenses covered by Article 10 and section 8 of the Data

Protection Act and personal identity number information pursuant to section 11 of the Data Protection Act.

Finally, the Danish Cancer Society has stated that information on where applicants have heard about the position and information collected from applicants' profiles on social media is processed on the basis of Article 6 (1). Article 9 (1) (f) (the balance of interests rule) and Article 9 (1) 2, letter e.

3.2. Storage, deletion and liability

Kræftens Bekæmpelse has stated that the organization's retention period for information about applicants in the HR Manager system after commenced recruitment process is three months, after which the information processed in connection with the specific recruitment process is automatically deleted in the system. If the organization has obtained separate consent for the processing of information for the purpose of possibly offering another position, the information is stored for another three months in the HR Manager. Employees in the organization who continuously work in the system monitor and control the deletion, e.g. when reviewing logs in the system. Applicants can always delete information themselves in HR Manager, and the Danish Cancer Society can, at the request of registered persons, also delete the information before the period of three or six months has passed.

In addition, the organization processes information in the mail program Outlook when the organization obtains references and performs personality tests. The storage period in Outlook is also three months, after which the individual employees perform manual deletion of the information in accordance with the organization's internal guidelines, as there is no automatic deletion in the system.

Kræftens Bekæmpelse has assessed that three months of storage of information after the commencement of the recruitment process is necessary if the organization is to be able to provide feedback to applicants and document a recruitment process. If the organization has obtained separate consent for the purpose of offering an applicant another position, the organization has assessed that an additional three months of retention of the information is necessary. The organization has i.a. based this assessment on previous experience with applicants who, several months after the start of the recruitment process, asked for feedback on their application, or were interested in another position that the organization could offer.

Kræftens Bekæmpelse has sent the Danish Data Protection Agency an anonymised deletion log as well as the organization's written procedures, statements and similar documentation regarding storage and deletion of information about applicants.

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

4.1. Basis for treatment

4.1.1. Article 6, paragraph Article 9 (1) (f) and Article 9 (1) 2, letter e

It appears from the case that applicants are asked from where they have heard about the specific position when the application is submitted via HR Manager. This information is processed by the Danish Cancer Society with the aim of maximizing the benefit of the organization's expenses for advertising vacancies. According to the organization, the information is processed on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter f.

The Danish Data Protection Agency is of the opinion that it is basically a factual purpose when employers process information about where the applicant has heard about the position, as the employer may have a legitimate interest in advertising effectively.

On this basis, the Danish Data Protection Agency finds that the Danish Cancer Society's processing of this information, with the aim of maximizing the benefit of the organization's expenses for advertising vacancies, is in accordance with Article 6 (1) of the Data Protection Regulation. 1, letter f.

It also appears from the case that the Danish Cancer Society can, in connection with a recruitment process, obtain information from the applicants' profiles on social media, including, for example, Facebook, LinkedIn and Instagram.

It is the opinion of the Danish Data Protection Agency that employers can collect and, to the relevant extent, use publicly available information that an applicant has published about himself, e.g. on social media, based on Article 6 (1) of the Data Protection Regulation. Article 6 (1) (f) (for private employers); Article 9 (1) (e) (public employers) and Article 9 (1) 2, letter e [3]. Even if the information is published by the applicant himself, the collection and storage of the information must always be limited to information that is factual and proportionate to the purpose of the collection, in accordance with Article 5 of the Regulation.

On the basis of what is stated in the case, the Danish Data Protection Agency does not find grounds to override the Danish Cancer Society's assessment that the organization's processing, including storage for a specified period after the recruitment process has ended, of personal information published by the applicant on social media, the principles set out in Article 5 of the Regulation have taken place in accordance with Article 6 (2) of the Data Protection Regulation. Article 9 (1) (f) and Article 9 (1) 2, letter e.

4.1.2. Information processed on the basis of consent in accordance with Article 6 (1) Article 9 (1) (a) 2, letter a, the Data

Protection Act § 8, para. 3, and § 11, para. 2, No. 2.

Kræftens Bekæmpelse has - as mentioned - stated that the organization processes information about applicants who have not been hired after completing the recruitment process in order to provide feedback, document the recruitment process and provide information about similar positions at the company on the basis of a consent, cf. the Data Protection Ordinance Article 6, paragraph Article 9 (1) (a) 2, letter a, and the Data Protection Act § 8, para. 3, and § 11, para. 2, No. 2.

Initially, the Danish Data Protection Agency should note that the processing of personal data about applicants who have not been employed after the recruitment process has ended for the purpose of giving applicants feedback on their applications is a processing that does not require an independent processing basis in the specific case. the information is already processed for the purpose of documenting a recruitment process, and the opportunity to provide feedback to applicants must be considered closely related to this.

The Danish Data Protection Agency assumes that Kræftens Bekæmpelse's consent texts at the time of the Authority's notification of 20 August 2019 were the documents submitted by Kræftens Bekæmpelse "Notification to job applicants from HR Manager" and "Consent for storage of personal data for possible later employment".

In connection with the processing of an application submitted via HR Manager, the Danish Cancer Society requests consent for the processing of information about name, address, telephone number, e-mail address, date of birth, citizenship, gender, educational background, previous employment and current position. If Kræftens Bekæmpelse, after completing the recruitment process, wants to process the information that an applicant has given consent to in connection with the recruitment process, for the purpose of offering the applicant a position other than the one the applicant originally applied for, the organization asks for separate consent.

In addition, the applicant can submit additional information in the application without the Danish Cancer Society asking for it, including information about social security number (for example in connection with copies of diplomas), marital status, information about criminal offenses, health information, information about sexual orientation, race, ethnic origin , political, religious or philosophical beliefs as well as trade union affiliation.

It is the opinion of the Danish Data Protection Agency that an employer may have a factual interest in storing information about applicants with a view to offering possible later employment, and that storage for this purpose can take place with the applicant's consent. [4]

Article 6 (1) of the Data Protection Regulation Article 9 (1) (a) 2, letter a, the Data Protection Act § 8, para. 3 and § 11, para. 2, no. 2, deals with consent as a legal basis for the processing of personal data.

Article 4 (11) of the Regulation defines a valid consent. It follows that a consent is "[...] any voluntary, specific, informed and unequivocal expression of will [...]".

It is also clear from Article 7 (1) of the Data Protection Regulation 3, that the data subject has the right to withdraw his consent at any time, and that the data subject must be informed of this before the consent is given.

After a review of the consent text submitted by the Danish Cancer Society "Consent for storage of personal data for possible later employment", the Danish Data Protection Agency finds that the Danish Cancer Society's processing of personal data about applicants who have not been employed, for the purpose of offering possible later employment has taken place in accordance with Article 6 (2) of the Data Protection Regulation. Article 9 (1) (a) 2, letter a, and the Data Protection Act § 8, para. 3, and § 11, para. Article 2 (2) (2) 1, and Article 7, para. 3, as the consent on which the processing of personal data is based fulfills the conditions for a valid consent in Article 4, no. 11 of the Data Protection Regulation, and the Danish Cancer Society states in the consent text that the consent can be withdrawn at any time.

In this connection, the Danish Data Protection Agency's assessment is that the consent used by the Danish Cancer Society is sufficiently specific and informed, as the consent states a precise purpose for the processing of personal data (to be able to contact the applicant for another position), and in the consent is given to the applicants information about the identity of the data controller, what information is processed and the right to withdraw the consent.

In addition, the Danish Data Protection Agency's assessment is that the consent is given unambiguously and voluntarily, as an applicant is requested to give the consent by a written answer based on the Danish Cancer Society's inquiry, and that an applicant has the option not to give consent if the applicant does not wish to be contacted. regarding other positions in the organization.

In connection with the Danish Cancer Society's processing of information about applicants who have not been hired, for the purpose of documenting a recruitment process, the Danish Data Protection Agency must note that processing of data subjects' personal data must cease if the processing is based on the data subject's consent. in accordance with Article 7 (2) of the Data Protection Regulation 3.

The data controller can thus in principle not change the basis of processing if the data subject withdraws his consent. It is

therefore important that the data controller, before obtaining consent, considers whether consent is the most appropriate basis for processing.

If the data controller has a legal basis for processing other than consent for an independent purpose - for example, storage of information in order to comply with the rules on non-discrimination - this processing will also continue to take place.

However, it will not be reasonable or transparent for the data subject if the data controller subsequently bases the processing on a processing basis other than consent when a consent has been revoked. In this situation, the data controller should have initially used this basis for processing rather than asking the data subject for consent [5].

In the Data Inspectorate's assessment, it is therefore not appropriate for a data controller to use consent as a legal basis for the processing of personal data in connection with documentation of a specific recruitment process, if the data controller can or must use another legal basis for the processing.

It is the Data Inspectorate's assessment that the Danish Cancer Society's processing of applicants' personal data, which takes place for the purpose of documenting a specific recruitment process, should take place on the basis of Article 6 (1) of the Data Protection Regulation. Article 9 (1) (c) 2, letter f, the Data Protection Act § 8, para. 5, and § 11, para. 2, no. 4, cf. the Data Protection Act, section 7, subsection Article 9 (1) of the Data Protection Regulation 2, letter f, and must also note in this connection that when the processing takes place on the basis of these provisions, the information that the Danish Cancer Society must provide to the data subjects pursuant to Article 13 of the Data Protection Regulation must also reflect this.

With this supervision, the Danish Data Protection Agency has therefore not taken a position on whether the Danish Cancer Society's consent text complies with the data protection law requirements in relation to this purpose.

4.2. Storage period

The Danish Data Protection Agency has reviewed the Danish Cancer Society's statements of 10 September and 25 November 2019 and the appendices submitted by the organization. Kræftens Bekæmpelse has stated in this connection that information is deleted after a period of three months after the commencement of recruitment, and after a maximum of six months, if the organization has obtained separate consent for storage for the purpose of offering the applicant another position. Kræftens Bekæmpelse has assessed that up to six months is a reasonable retention period, as the organization considers an applicant to continue to have an interest in Kræftens Bekæmpelse's feedback and other positions at Kræftens Bekæmpelse. The organization has also assessed that the period is reasonable with regard to the organization's need to document recruitment

processes.

The Danish Data Protection Agency does not find grounds to override Kræftens Bekæmpelse's assessment that information about applicants after completing the recruitment process is necessary to keep for up to six months, regardless of whether the purpose of the processing is to offer the applicant another position in Kræftens Bekæmpelse or to document how the selection has happened in the recruitment process.

In this connection, the Danish Data Protection Agency has emphasized that a period of up to six months appears objective, and that the purposes in question for the processing of personal data must in most cases be assumed to safeguard the data subject's own interests.

It is thus the Data Inspectorate's assessment that the retention period in question is in accordance with the principle of "retention restriction" in Article 5 (1) of the Data Protection Regulation. 1, letter e.

4.3. Deletion of personal data

The Danish Data Protection Agency has reviewed the Danish Cancer Society's statements of 10 September and 25 November 2019 and the documents submitted by the organization, including an anonymised deletion log, written down procedures for deletion and the Danish Cancer Society's description of the organisation's control of deletion.

The Danish Data Protection Agency finds that the Danish Cancer Society has sufficiently documented that the organization deletes information about applicants in the HR Manager system after a period of up to six months after the commencement of recruitment. Furthermore, given the extent of personal data that is processed, the Danish Data Protection Agency finds no basis for concluding that the Danish Cancer Society should have taken further technical or organizational security measures to ensure that personal data about applicants who have not been employed after the recruitment process has actually ended. deleted from employee Outlook and own drives.

Kræftens Bekæmpelse's storage and deletion of personal data about applicants collected in connection with recruitment for employment where the applicant has not been employed is thus seen to have taken place in accordance with the rules in Article 5 (1) of the Data Protection Regulation. Article 5 (1) (e) (storage restriction) and Article 5 (1) 2 ("liability"), cf. Article 5, para. 1, letter e.

5. Conclusion

With regard to the Danish Cancer Society's processing of personal data about applicants who have not been employed, for the

purposes of documenting a recruitment process and giving applicants feedback, it is the Data Inspectorate's assessment that it is inappropriate if the processing of information for these purposes is based on consent if the organization can instead base the processing on other relevant provisions.

Against this background, the Danish Data Protection Agency must recommend that the Danish Cancer Society instead base its processing on other provisions, in particular Article 6 (1) of the Data Protection Regulation. Article 9 (1) (c) and (f) 2, letter f, and the Data Protection Act § 8, para. 5, and § 11, para. 2, no. 4, cf. the Data Protection Act, section 7, subsection Article 9 (1) of the Data Protection Regulation 2, letter f.

In addition, the Danish Data Protection Agency finds that the Danish Cancer Society's processing of personal data on applicants who have not been employed for the purpose of offering possible subsequent employment has taken place in accordance with Article 6 (1) of the Data Protection Regulation. Article 9 (1) (a) 2, letter a, and the Data Protection Act § 8, para. 3, and § 11, para. Article 2 (2) (2) 1, and Article 7, para. 3, as the consent on which the processing of personal data is based fulfills the conditions for a valid consent in Article 4, no. 11 of the Data Protection Regulation, and as the Danish Cancer Society states in the consent text that the consent can be withdrawn at any time.

The Danish Data Protection Agency also finds that Kræftens Bekæmpelse's processing of information about where applicants have heard about the specific position, for the purpose of maximizing the benefit of the organization's expenses for advertising vacancies, has taken place in accordance with Article 6 (1) of the Data Protection Regulation. 1, letter f.

In addition, the Danish Data Protection Agency finds no basis for overriding the Danish Cancer Society's assessment that the organization's processing of personal data from applicants' publicly available social media profiles has taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation. Article 9 (1) (f) and Article 9 (1) 2, letter e.

In conclusion, the Danish Data Protection Agency finds that Kræftens Bekæmpelse's storage and deletion of personal data about applicants collected in connection with recruitment for employment where the applicant has not been employed, is seen to have taken place in accordance with the rules in Article 5, para. Article 5 (1) (e) (storage restriction) and Article 5 (1) 2 ("liability"), cf. Article 5, para. 1, letter e.

Concluding remarks

It appears from the consent text that the Danish Cancer Society has sent to the Danish Data Protection Agency and the organization's privacy policy that the organization also, on the basis of a consent, processes information about applicants for

use in the recruitment process itself. It appears from the consent text that the applicants' information is generally processed for the purpose that the applicant can be considered for a position with the Danish Cancer Society.

In this connection, the Danish Data Protection Agency must recommend that the Danish Cancer Society fails to base the processing of personal data in connection with a recruitment process on consent in accordance with Article 6 (1) of the Data Protection Regulation. Article 9 (1) (a) and Article 9 (1) 2, letter a, and the Data Protection Act § 8, para. 3, and § 11, para. 2, nr. 2, to the extent that the organization can or must instead base the processing on other relevant provisions of the Data Protection Regulation, in particular Article 6 (2) of the Data Protection Regulation. Article 9 (1) (c) and (f) 2, letter f, and the Data Protection Act § 8, para. 5, and § 11, para. 2, no. 4, cf. the Data Protection Act, section 7, subsection Article 9 (1) of the Data Protection Regulation 2, letter f.

In addition, the legal basis must be clear from the information that the Danish Cancer Society must provide applicants in connection with a recruitment process, cf. Article 13 of the Data Protection Regulation.

The Danish Data Protection Agency then considers the audit to be completed and does not take any further action in the case.

The Danish Data Protection Agency's decisions can be brought before the courts, cf. section 63 of the Constitution.

[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] The Danish Data Protection Agency's guide on data protection in connection with employment relationships, December 2020, section 4.2.4, pp. 19-20

[4] The Danish Data Protection Agency's guide on data protection in connection with employment relationships, December 2020, section 4.3, p. 20.

[5] The Danish Data Protection Agency's guide to consent, September 2019, section 3, page 15