

## The Danish Prison and Probation Service's handling of requests for insight

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### Decision

#### Public authorities

The Danish Data Protection Agency criticizes the Danish Prison and Probation Service's handling of a prison officer's request for insight. In connection with the case, the Danish Data Protection Agency took e.g. position on the importance of information describing a function that an employee has performed in the workplace, rather than describing the employee's behavior.

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### Summary

A prison officer had asked the Danish Prison and Probation Service for access to documents that could confirm that he (as part of his employment) had participated in violent episodes, including reports of use of force, observation cell placements, security cell placements and reports of threats and possible reports of suicide attempts or other violent self-harm. .

The Prison and Probation Service initially refused the prison officer's request for insight on the grounds that for technical reasons it was not possible to search all the episodes in which he had participated and that it was only possible to search for reports by the prison officer himself. had written.

The prison officer then complained about the Danish Prison and Probation Service's refusal of access to the Danish Data Protection Agency.

At the request of the Danish Data Protection Agency, the Danish Prison and Probation Service stated that with the system supplier's assistance it was still possible to search for specific reports in which the prison officer's name must be registered, and that the Danish Prison and Probation Service had thus informed the prison officer of this.

At the same time, however, the Danish Prison and Probation Service stated that it was not possible to make searches in the free text fields of reports in the system in question in order to clarify whether the prison officer's name had to appear in it, as this would require a search of DKK 8-10 million. documents in the system's document server, which could not be technically supported in the system.

After a review of the case - and after the case has been submitted to the Data Council - the Danish Data Protection Agency criticized the fact that the Danish Prison and Probation Service had not provided complainants with insight in accordance with

section 15 of the Law Enforcement Act.

As regards the part of the complaint which concerned insight into any information in free text fields and which would require a search of 8-10 million. documents in the system's document server, the Danish Data Protection Agency found that the request could be rejected with reference to section 19 of the Law Enforcement Act.

In this connection, the Danish Data Protection Agency assumed that the free text fields predominantly only described a function that the prison officer had performed in the workplace and not actions that are an expression of his personal choices and reactions, or actions to which he had been subjected.

The Danish Data Protection Agency also emphasized, among other things, that the Danish Prison and Probation Service had already made significant efforts to obtain information about the prison officer, and that the Danish Prison and Probation Service had to be assumed to use not insignificant resources to obtain any further information about him. In connection with this, the Authority also emphasized that the prison officer had not been able to clarify his request in order to identify further information about him.

The case is the first case in which the Danish Data Protection Agency has made a decision regarding section 19 of the Law Enforcement Act (corresponding to the provision in Article 12 (5) of the Data Protection Regulation).

#### Decision

The Danish Data Protection Agency hereby returns to the case, where XX on behalf of XX (hereinafter complaints) on 8 January 2019 has complained to the Authority about the Danish Prison and Probation Service's refusal of the complainant's request for insight.

#### Decision

Following a review of the case, the Danish Data Protection Agency finds that there are grounds for expressing criticism that the Danish Prison and Probation Service's processing of personal data has not taken place in accordance with the rules in section 15 of the Law Enforcement Act [1].

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 the complainants on 17 September 2018 requested access to all registrations with the Danish Prison and Probation Service, where the complainants are mentioned by name, for use in a pending work injury case.

On 4 October 2018, the Danish Prison and Probation Service requested complainants to clarify which reports are, in the complainants' opinion, relevant for the processing of the person's work injury case.

In response to the Danish Prison and Probation Service's request, the complainant clarified his request for insight and stated that he was primarily interested in documents that can confirm that he has participated in violent episodes, including reports of use of force, observation cell placements, security cell placements and reports of threats and any reports of suicide attempts or other violent self-harm.

The Danish Prison and Probation Service stated on 12 November 2018 that, after a further investigation, no further information had been registered than that which the complainants had already received in connection with the Danish Prison and Probation Service's response to the complainant's request for access to the file on 18 June 2018.

Complainant again clarified his request on 13 November 2018 and stated that he wants insight into reports from which his name appears. In this connection, the complainant informed the Danish Prison and Probation Service that, to his knowledge, there are a larger number of reports - in which he is mentioned - than those which he had already received.

On 6 December 2018, the Danish Prison and Probation Service announced complaints rejecting his request for insight with the following wording:

"[...] [Complainant] requests access to all documents where your name appears. Access has previously been granted in registrations regarding violence and threats. The area office has understood that this request relates to all reports of use of force, obscene placements, security cell placements as well as reports of suicide attempts where you are mentioned by name. According to Article 15 of the GDPR on 'The data subject's right of access', the data subject has the right to access the personal data that the employer processes regarding the person in question and, where applicable, access to this personal data.

Thus, according to the GDPR, it is only possible to apply for insight into the personal data that the probation service processes about you.

Access to documents (reports) arising from a specific case must, however, be sought in accordance with the rules of the Public Administration Act and the Public Access to Information Act, which you did in an email of 7 June 2018.

The area office in Ringsted answered your original request on 18 June 2018 and the security unit in the area office has investigated the case further and the answer again on 12 November 2018. The area office can state that access to documents

has been limited, as the area office in Ringsted can not seek all reports from the Client System . It is not possible for purely technical reasons to search for all episodes in which you have participated. We can only search for the reports that you have written yourself.

As you know, it is not possible in the Client System to search in free text in an employee's name or across this system.

If you want insight into personal information, please specify in which specific cases you want the information from and provide information about the time, so that the information can be found. ”

On 7 December 2018, the complainant contacted the Danish Prison and Probation Service again, as he continued to request access to "all documents in which [the complainant's] name is registered".

The Danish Prison and Probation Service responded to this inquiry on 20 December 2018 and maintained the refusal with the same wording as last time. It appears from the reply that two additional reports have been handed out to complainants on the same date.

#### 2.1. The Prison and Probation Service's remarks

On 1 March 2019, the Danish Prison and Probation Service issued a statement in the case. The Danish Prison and Probation Service has generally stated the following:

“The Directorate can initially state that when the Danish Prison and Probation Service processes personal data about employees, this is done as a starting point in the Danish Prison and Probation Service's HR systems, which are covered by the Data Protection Ordinance. In the Directorate's view, this does not in principle constitute processing that takes place with a view to preventing, investigating, revealing or prosecuting criminal acts or enforcing criminal sanctions, including to protect against or prevent threats to public security, cf. the Law Enforcement Act. § 1.

However, it may happen that the probation service processes information about employees with a view to enforcing criminal sanctions, according to which the information will be covered by the Law Enforcement Act. This may be the case, for example, if an employee is employed as a prison officer and has used force against one of the probation service's clients, after which the employee's name is registered in a use of force report, which is created in the probation service's client case system.

Against this background, it can be stated that the Directorate treats the complainant's inquiry as a request for insight in accordance with the rules in Chapter 5 of the Law Enforcement Act, Chapter 3 of the Data Protection Regulation and Chapter 3 of the Data Protection Act.

The Directorate may state that the Prison and Probation Service processes information about complaints that are covered by the Data Protection Ordinance in the Prison and Probation Service's HR systems by virtue of the complainants' employment conditions.

The Danish Prison and Probation Service processes general personal data on complaints pursuant to Article 6 of the Data Protection Regulation, including name, position, number of sick days, salary, work telephone number and work e-mail.

The Danish Prison and Probation Service also processes sensitive personal data on complaints pursuant to Article 9 of the Data Protection Regulation, including information on the trade union affiliation of complainants.

The Danish Prison and Probation Service can also state that in the client case system it is only possible to search for reports based on an employee's name, which this employee has created himself. Thus, in principle, it is not technically possible to search for other reports regarding episodes in which an employee's name may appear.

Against this background, the Directorate will enter into a dialogue with the provider of the client system in order to clarify whether there are ways in which such a search can be made in order to meet the complainant's request for access to reports covered by the Law Enforcement Act.

The Directorate may state that the Prison and Probation Service intends to accede to the complainant's request for access under the Data Protection Ordinance and the Act to the extent that the complainant may request access to information covered by these rules.

With regard to the complainant's request for insight under the Law Enforcement Act, the Directorate is clarifying in more detail how and to what extent the probation service can technically meet the complainant's request, cf. above. ”

In response to the Danish Data Protection Agency's request, the Danish Prison and Probation Service issued a supplementary statement on 3 May 2019. The statement states i.a. following:

“The Danish Prison and Probation Service can state that the client system is designed with a view to processing information about the Danish Prison and Probation Service's clients, which means that information can be sought on a specific client in the system. It is therefore possible to accommodate a request for insight from a client by conducting a search in the system.

When a report is created during a case in the client system - e.g. in connection with the use of force against a client - the name of the employee who made the detention will be registered in the report. If there is subsequently a need to search in which reports an employee's name is registered, this cannot be done on the basis of a search of the employee's name directly in the

system.

In order to meet requests for insight into the client case system from employees, the probation service has been in dialogue with the supplier of the client system. On that basis, the Danish Prison and Probation Service can state that with the supplier's assistance it is possible to search for specific reports in which an employee's name may be registered, and that it is thus possible to meet employees' requests for insight into the client system. On that basis, the Danish Prison and Probation Service submitted information covered by the complainant's request for access to complaints on 3 April 2019.

The Danish Prison and Probation Service can thus state that clients 'and employees' requests for access to information in the client system can be granted.

The Danish Prison and Probation Service must apologize for the long case processing time and that the complainant's request for insight was not granted in the first instance. ”

In addition, the Danish Prison and Probation Service issued a further statement on 15 August 2019, of which, among other things, it appears that:

“The Danish Prison and Probation Service can state that with regard to the personal data processed about complaints pursuant to the Data Protection Ordinance, the Danish Prison and Probation Service has provided full insight into information covered by the complainants' request.

The Directorate can also state that with regard to the part of the Prison and Probation Service's information on complaints that is covered by the Law Enforcement Act, insight has currently been provided into some of the reports covered by the complainants' request, which has unfortunately happened on several occasions. The remaining part of the reports covered by the complainant's request, the Prison and Probation Service is working to hand over to complainants as soon as possible.

In order to meet the complainant's request for insight, the Prison and Probation Service obtained information in March from the supplier of the Client System on which reports the complainant's name was registered. On that basis, the Prison and Probation Service complied with the complainant's request.

Subsequently, however, the Prison and Probation Service became aware that so-called ordinary reports can also be searched in the client system, so in July the supplier was asked to make another search to clarify whether there were ordinary reports covered by the complainant's request. The search carried out in July included a number of general reports, but also a number of reports on the use of force, security cell and observation cell, which unfortunately did not appear in the supplier's search

carried out in March.

The inconsistent results in the searches performed by the supplier in March and July, respectively, are due to the supplier having adapted and expanded the search criteria in order to include all relevant reports.

The Directorate has been in dialogue with the supplier with a view to ensuring, both retrospectively and in the future, that all relevant reports appear in the search results that the supplier provides to the Danish Prison and Probation Service. The Directorate most recently held a meeting with the supplier on 14 August 2019, where the supplier stated that changes have now been made to the procedure for the searches in the Client System, so that discrepancies in the future can be avoided.

The supplier specifically ensures this by reviewing the scripts on which the searches are based and at the same time ensuring that the search criteria used are clearly stated in the search result when sent to the probation service.

The Directorate may also - in relation to what is stated by complainants - state that neither of the searches made in March nor July do reports of suicide appear in which the complainant's name appears.

In conclusion, the Directorate must note that the Prison and Probation Service does not currently have the opportunity to search the free text fields of reports in the Client System in order to clarify whether the complainant's name may appear in it. This is because searches in free text fields require searches to be performed throughout the Client System's document server, which is estimated to include between 8 and 10 million documents. Such a search is theoretically possible, but can currently not be technically supported in the Client System - neither by the probation service nor by the supplier.

The Directorate can finally state that when data subjects can gain insight into information about themselves according to the rules in section 8 of the Public Access to Information Act and the rules in section 15 of the Law Enforcement Act, the Prison and Probation Service's assessment is that section 15 of the Law Enforcement Act gives the data subject a better legal position. as the right of access under the Law Enforcement Act - in contrast to the rules in the Public Access to Information Act - also gives the right to certain contextual information, including i.a. information on the purpose of the processing, the categories of recipients of the information, other rights under the Law Enforcement Act and - if possible - the intended period of time during which the information will be stored. "

The Danish Prison and Probation Service has finally informed by telephone on 8 October 2019 that complainants on 10 September 2019 have been informed of insight into the reports that were found in the search made in July 2019.

## 2.2. Complainant's remarks

Complainants have generally stated that the Danish Prison and Probation Service has not given him full insight into the requested personal information.

Complainants have further stated that he has gained access to information about him that appears from reports on the use of force, security cell placements, observation cell placements and handcuff use, but that on the other hand no access has been given to information that appears from reports of possible suicide attempts and general reports.

In the complainants' opinion, information on complaints may also be found in these types of reports, just as there may be other types of reports in which information on complaints is included.

In addition, the complainants have stated that in principle no insight has been given into all the information about complaints which the Danish Prison and Probation Service processes, as e.g. it is not clear which reports have been omitted.

Complainants have in this connection referred to another case of insight, where it turned out that not all documents had been handed over, as it could be established that a report was "missing".

Complainants have finally stated that as an employee you do not have the opportunity to know what type of reports you are mentioned / registered in, and when the Danish Prison and Probation Service can not finally confirm that full insight has been given, it is the complainant's view that the Danish Prison and Probation Service has not notified him of full insight.

Justification for the Danish Data Protection Agency's decision

### 3.1. Scope of the Law Enforcement Act

As complaints have, according to the information, been notified of full insight into the information that appears in the Danish Prison and Probation Service's HR systems, in the present case only the Danish Prison and Probation Service's processing of information about complaints in the client system is considered.

In this connection, the Danish Data Protection Agency assumes that the Danish Prison and Probation Service processes information about complaints in the Danish Prison and Probation Service's client system, as complainants are employed as prison officers in the Danish Prison and Probation Service.

The Danish Data Protection Agency finds that the processing of information about complaints that appear in the client system is covered by the Law Enforcement Act, cf. section 1 (1) of the Act. 1. The Danish Data Protection Agency has emphasized in particular that the Danish Prison and Probation Service's processing of information about employees in the client system is inextricably linked to the execution of criminal sanctions and the exercise of powers through coercive intervention and the use



of force against prisoners.

### 3.2. The Prison and Probation Service's response to the complainant's request for insight

Based on the information provided, the Danish Data Protection Agency assumes that the Danish Prison and Probation Service has initially notified complainants of access to documents that can confirm that he (as a prison officer) has participated in violent episodes, with reference to the client system's structure, and that the Danish Prison and Probation Service subsequently - following the Danish Data Protection Agency's inquiry regarding the case - has continuously provided complainants with insight into the reports that could be sought in the client system.

As a starting point, data subjects have the right to receive the data controller's confirmation of whether personal data concerning the person in question is processed, and if applicable access to the personal data, cf. section 15 of the Law Enforcement Act. insight.

After a review of the case, the Danish Data Protection Agency finds that the Danish Prison and Probation Service - by initially refusing complaints to access documents that can confirm that he (as a prison officer) has participated in violent episodes - has not acted in accordance with section 15 of the Law Enforcement Act , which provides the supervisor with a basis for expressing criticism.

The Danish Data Protection Agency has emphasized that it is the data controller's responsibility to respond to requests for insight, including meeting these to the greatest possible extent. In this connection, the Authority has also emphasized that the Danish Prison and Probation Service did not involve the system supplier in order to seek the information in question to begin with, and that this only happened after the Danish Data Protection Agency had contacted the Danish Prison and Probation Service regarding the case.

### 3.3. Additional insight into information provided by reports' free text fields

#### 3.3.1.

In addition to HR systems, both public and private employers will to a large extent process information about the employees in case processing systems, etc., where the registration of information about the employee primarily depends on the work function that the person in question performs.

This information will in principle be personal information, and the employee will thus have the right to insight, etc. according to the rules of data protection law. However, taking into account the nature of the information and the purpose of its registration,

the exemption provision in section 19 of the Law Enforcement Act (and the corresponding provision in Article 12 (5) of the Regulation) will be relevant in a number of cases.

### 3.3.2.

According to the wording of section 19 of the Law Enforcement Act, the data controller can only refuse to grant manifestly unfounded or excessively repeated requests for insight. It is clear from the special remarks to the provision [2]:

"It appears from section 33 of the Personal Data Act that a registered person who has been notified pursuant to section 31, subsection 1, on the data subject's right of access, is not entitled to a new notification until 6 months after the last notification, unless a special interest is demonstrated therein.

It is proposed in § 19 that the data controller may refuse to grant manifestly unfounded or excessively repeated requests made in accordance with the provisions of Title III.

It is the data controller who bears the burden of proving that the conditions for rejection to be met are met. Thus, it is not up to the data subject to prove a legitimate interest, but to the extent that the data subject provides information on such an interest, there will presumably be no basis for rejecting the request pursuant to the proposed provision. "

Section 19 of the Law Enforcement Act is laid down on the basis of Article 12 (1) of the Law Enforcement Directive. 4, which states:

"Member States shall provide that information provided pursuant to Article 13 and any notification and action taken pursuant to Articles 11, 14 to 18 and 31 shall be free of charge. If requests from a data subject are manifestly unfounded or exaggerated, in particular because they are repeated, the controller may either:

- (a) charge a reasonable fee, taking into account the administrative costs of providing information or communications or taking the requested action; or
- (b) refuse to comply with the request.

The burden of proving that the request is manifestly unfounded or excessive lies with the data controller. "

As it does not appear from the comments on section 19 of the Law Enforcement Act that a derogation from Article 12 (1) of the Directive is intended. 4, the Danish Data Protection Agency assumes that a directive-compliant interpretation of the provision must be applied. It is against this background that the Danish Data Protection Agency's assessment is that section 19 of the Law Enforcement Act applies both in situations with repeated requests and situations with exaggerated requests in the same

way as Article 12 (1) of the Directive. 4.

### 3.3.3.

The Danish Data Protection Agency's guidelines on data protection in employment relationships (2018) [3] state the following example, which has been prepared on the basis of the Danish Data Protection Agency's decision in a specific case:

“A resigned employee asks his former employer for insight into the information that the employer has registered about him.

After gaining insight, the employee complains that no insight has been given into letters he has signed, and notes and e-mails, etc., which he has prepared or sent in connection with his performance of duties.

As the purpose of the right of access is to create transparency regarding the processing of personal data, so that the data subject has the opportunity to check the legality of the processing and the accuracy of the processed personal data, information about letters, notes and e-mails etc. prepared or sent in a work context not information covered by the right of access, and it is therefore justified that the previous employer has not provided access to this information. ”

The example concerns information that may be considered to be personal information about the employee (information that the employee in a given situation has signed a letter, sent an email, etc.), but the information basically only describes a function that the person in question has taken care of in the workplace. The information, on the other hand, does not in itself say anything about the employee, nor is it registered for the purpose of processing information about the person in question.

### 3.3.4.

The decision that formed the basis for the example was made pursuant to the previous legal basis, but it is the Data Inspectorate's opinion that in cases such as the one mentioned - at least in the case of a large amount of information - it will be possible to provide refusal of access pursuant to section 19 of the Law Enforcement Act (corresponding to Article 12 (5) of the Data Protection Regulation), or on the grounds that the request for access is “excessive”. Furthermore, it must be attached that, even if it is personal information about the employee (information that the employee in a given situation has signed a letter, sent an email, etc.), first and foremost a function is described, which the person in question has taken care of in the workplace.

At the same time, however, the Danish Data Protection Agency is of the opinion that there may be cases where information registered about an employee not only describes a function that the person in question has performed, or merely establishes the person's presence, but where the registration also to a greater extent contains information "about" the person in question,

e.g. a description of a course of action which is an expression of a personal choice made by the person concerned or a reaction on his part.

### 3.3.5.

In this connection, the Danish Data Protection Agency must note that the Authority does not have knowledge of the detailed content of the reports, etc., which the Danish Prison and Probation Service has not been able to identify in the specific case and therefore has not been able to provide complainants with insight. It is information about the fact that complaints have been present, or whether the documents may also contain more detailed information about or descriptions of actions that complainants have performed or have been subjected to.

However, the Danish Data Protection Agency assumes that more detailed information about complaints or descriptions of actions that the person in question has performed or has been subjected to appears from the specific reports on the use of force, security cell placement, etc., which complainants have already been informed of, and that any information that appears in the free text fields to a greater extent only describes a function that complainants have performed in the workplace. In the case of information that could also be used in connection with e.g. consideration of disciplinary reactions or other measures in relation to the employee, the Danish Data Protection Agency must thus assume that the information is (also) registered in another context, e.g. in the personnel case of the employee in question.

With regard to information that is only registered in the client system, the Danish Data Protection Agency finds that complaints in these contexts must be regarded as a secondary person, which must be taken into account when assessing whether section 19 of the Law Enforcement Act can be applied in the situation.

### 3.3.6.

A data controller who has registered a large amount of information about the person requesting insight may ask him or her to clarify his or her request in order to facilitate case processing and shorten case processing time in favor of the data subject. A data controller, on the other hand, cannot reject a request for access if the data subject does not wish to clarify his request. In that case, insight must be provided into all information processed about the data subject.

However, if the data subject is a secondary person, in cases where it is not possible to search for other than the main persons, the data controller may be entitled to request a secondary person to provide the necessary information for the data controller to find any processing of information about the secondary person. The same will apply if an identification of the secondary person

is not possible without a complete review of a significant amount of recorded information.

### 3.6.7.

It appears from the available information that the Danish Prison and Probation Service in the current case - in connection with the Danish Data Protection Agency's processing of the case - has made significant efforts to obtain information about complaints, even though complainants have not been able to provide further information about the events or inmates. relation to which complaints are believed to be registered.

The Danish Prison and Probation Service has reportedly given complainants insight into the reports that were sought on 19 July 2019. However, the Danish Prison and Probation Service has not given complainants insight into reports' free text fields in the client system, as this will presumably require a search of DKK 8-10 million. documents, which p.t. will not be technically supported in the client system.

On the basis of the information provided, the Danish Data Protection Agency assumes that it cannot be ruled out that information on complaints is processed in the above-mentioned free text fields, in which complainants have not been given access.

As the Danish Data Protection Agency presupposes that the free text fields predominantly only describe a function that the person in question has performed in the workplace and not actions that are an expression of the complainant's personal choices and reactions, or actions to which the complainant has been subjected, the Data Inspectorate's assessment request for further insight into any remaining information in free text fields may be rejected with reference to section 19 of the Law Enforcement Act.

In this assessment, the Danish Data Protection Agency has thus placed special emphasis on the nature of information about complaints in the client system's free text fields. The Authority has also emphasized that the Danish Prison and Probation Service has already made significant efforts to obtain information on complaints, and that the Danish Prison and Probation Service must be assumed to have to use not insignificant resources to obtain any further information on complaints. Finally, the Authority has emphasized that complainants have not been able to provide the Danish Prison and Probation Service with further information about the events or the inmates in relation to which complaints are believed to have been registered.

However, the Danish Data Protection Agency must encourage the Danish Prison and Probation Service to assess whether there is a basis for drawing up guidelines with a view to limiting or avoiding the registration of personal data in non-searchable

free text fields in the client system.

#### Concluding remarks

Finally, the Danish Data Protection Agency refers to the Authority's guidelines on data subjects' rights [4], which state that a public authority must be aware of the interplay between the Data Protection Regulation (and the Law Enforcement Act) on access and the Public Administration Act and the Public Access to Information Act. as a starting point, the registered insight and / or access to documents must be granted in accordance with the rules that in the specific case are most favorable to the registered person.

In this connection, the Danish Data Protection Agency must note that the Authority can only assess whether insight has been provided in accordance with the Law Enforcement Act. The Danish Data Protection Agency can thus not assess which rules in a specific case give the data subject the most favorable result, as in the Authority's view this is an administrative law issue.

[1] Act No. 410 of 27 April 2017 on law enforcement authorities' processing of personal data.

[2] Bill no. 168, FT 2016/17, the special remarks to section 19 of the bill.

[3] The guidance can be accessed on the Danish Data Protection Agency's website:

<https://www.datatilsynet.dk/generelt-om-databeskyttelse/vejledninger/>

[4] The Danish Data Protection Agency's guide on the rights of data subjects, p. 27.