

Denial of access to television surveillance footage from the stadium was justified

Date: 22-06-2022

Decision

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TV surveillance

The Danish Data Protection Authority has made a decision in a case where DBU and the Divisions' Association refused to provide a registered insight into television surveillance recordings made in connection with a match at the Blue Water Arena in Esbjerg.

Journal number: 2020-832-0028

Summary

The Danish Data Protection Authority has made a decision in a case where DBU and the Divisions' Association refused to provide a registered insight into television surveillance recordings made in connection with a match at the Blue Water Arena in Esbjerg.

1. Decision

After a review of the case, the Danish Data Protection Authority finds that there is a basis for expressing criticism that DBU and the Divisionsforeningen's processing of personal data has not taken place in accordance with the rules in Article 5 of the Data Protection Regulation[1].

The Danish Data Protection Authority finds no basis for finding that DBU's and the Divisional Association's handling of the complainant's request for access has been in breach of Article 15 of the Data Protection Regulation and Section 22, subsection 2 of the Data Protection Act[2]. 1 and 2.

The Danish Data Protection Authority has, however, recommended that DBU and the Association of Divisions carry out a

concrete assessment of incoming access requests, including the data subject's concrete interest in receiving all or part of the information.

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 the complainant attended the cup final between Aab and Sønderjyske in July 2020 at the Blue Water Arena in Esbjerg. In connection with this, the complainants were reportedly administratively detained by the police when disturbances occurred at the Blue Water Arena.

As a result, on 7 July 2020, the complainant requested EfB Elite A/S to access information about him that may appear from the arena's television surveillance images.

On 9 July 2020, EfB Elite A/S responded to his inquiry and stated that the complainant should address the request to the Divisionsforeningen, which was the data controller for the event in question and thus also for the television monitoring that had been carried out in connection with it.

The complainant then contacted the Divisional Association on 9 July 2020 and requested insight. The request for insight revealed, among other things, following:

"I have asked for a recording that shows me on the day when I have to use them in a compensation case regarding unjustified deprivation of liberty. I am not trying to direct the focus towards you or Blue Water Arena, but simply want to know if there have been video recordings on the day that can be used in this case. For this I have called Jan and met very little cooperation.

Therefore, I have been forced to make use of my right to have them handed over in accordance with the GDPR legislation. I have tried to be educational and referred Jan directly to the articles at the Danish Data Protection Authority, and applicable legislation, which gives me the right to request and have these recordings handed over in connection with private considerations. I have done that without success, until today he replied that you, as organizers of the cup final, were responsible for the event on the day.

(...)

I do not want to hang anyone out, but simply to have the data handed over, and it is therefore essential for me to know who has been the data controller for the event and who has been the data processor. From what Jan has said and written, they are the data processors, and the responsibility for the use and storage of the data, including monitoring, lies with you, and

therefore it is you that I must turn to in order to have it handed over.

The data I want handed over is described in the first email and is as follows:

I am contacting you today 7/7-2020 in connection with ongoing post-evaluation and preparation of legal material for the episodes that unfolded at the entrance to section B10 at the Blue Water Arena. I would like to ask you to hand over surveillance material from video surveillance in the lobby, which is aimed at the entrance area, as well as video surveillance outside the stadium that is aimed at the entrance area. The episodes took place in the time period 20:10-22:00, and therefore recording is desired at this time. You are asked to hand over all video recordings or still images that are directed at the group of AaB fans outside the stadium, both before and after they are deprived of their freedom and handcuffed, also outside the time period stated above. I ask you to hand it over in accordance with current GDPR rules, which require these to be handed over as I know I am on the recordings during this time, and must use for a legal purpose. I have attached a copy of one of my tickets for you to confirm that I was present at the Blue Water Arena on the day in question. If you do not provide these, the data protection authority will be notified and a case will be started against you for breach of applicable legislation in the area in accordance with LOV no 506 of 23/05/2018 §3.b, as well as the data protection regulation articles 13, 14 and 15.

In addition, I would like to ask you to inform me whether you filmed section B10, the entrance area of the hall to section B10, and the area outside the stadium at the entrance to section B10, who you shared or share these surveillance images with, how long you keep the footage, which cameras you have or has aimed at the entrance to section B10 outside and inside the stadium, as well as section B10 in the stadium. If you do not hand these over either, the data protection authority will be notified and a case will be started against you for breach of applicable legislation in the area in accordance with LOV no 506 of 23/05/2018 §3.b and §4.c and data protection regulation article 13 and 14.

Finally, I would like to ask you to hand over video recordings aimed at section B10 in the time period 19:30-20:30. If you do not provide these, the data protection authority will be notified and a case will be started against you for breach of applicable legislation in the area in accordance with LOV no 506 of 23/05/2018 §3.b, as well as the data protection regulation articles 13, 14 and 15. "

The divisional association asked for additional identification information, which complaint appeared on 10 July 2020 in the form of a driver's license.

On 5 August 2020, the Divisional Association responded to the complainant's request for insight. The following appeared i.a. of

the answer:

"It can be stated that Blue Water Arena is owned by Esbjerg Municipality, but surveillance equipment is owned by EfB and has been used during the cup final by agreement between EfB and DBU/Divisionsforeningen, which was the organizer of the match. There is shared data responsibility.

As the subject of rights, you are not entitled to know which agreements, including data processing agreements, may have been made with EfB. However, we can inform you that the necessary and appropriate technical and organizational security measures have been taken to handle the processing of personal data in connection with the running of the cup final.

(...)

We consider that insight into video surveillance footage inside and outside the stadium is likely to compromise the security of the stadium for controllers and others, as it i.a. will reveal the location of surveillance equipment and blind spots and make video surveillance counterproductive, just as the release of surveillance material hampers the ability of inspectors to perform their security duties. We have, among other things, been in dialogue with the National Police about this, and they agree with our considerations.

Therefore, we unfortunately have to reject your request to hand over the image sequences in question, just as we can neither confirm nor deny that video surveillance was carried out outside the stadium directed at the entrance area, in the vestibule directed at the entrance area, in section B10 and outside the stadium directed at the group of AaB fans who came into police custody."

On 17 August 2020, the Data Protection Authority sent the complainant's complaint for hearing and requested the Divisional Association for an opinion on the matter.

Dansk Boldspil-Union A/S (DBU) appeared on 14 September 2020 on behalf of DBU and the Divisionsforeningen with a statement on the matter. The following emerged from this regarding data responsibility:

"The video recordings the case is about took place in connection with the cup final in football on 1 July 2020. The cup final was jointly organized by DBU, DBU Bredde and the Divisionsforeningen, and it is therefore our assessment that the Divisionsforeningen is the joint data controller. with DBU."

The opinion was forwarded to the complainant on 21 September 2020. The complainant submitted comments on the opinion on the same day, after which his comments were forwarded to the Divisional Association on 6 October 2020.

DBU forwarded comments on this on 23 October 2020 on behalf of DBU, the Divisionsforeningen and EfB. The following emerged from this in relation to data responsibility:

"However, we would like to regret that in our rejection of 5 August 2020 we came to state that EfB was a joint data controller with DBU and the Divisionsforeningen, as this was an internal misunderstanding, which was corrected when we delved more closely down in the case in connection with our joint response to the Norwegian Data Protection Authority.

However, it has never been stated that we shared data responsibility with DBU Bredde. DBU Bredde is officially a co-organizer of the cup final, but had no practical functions in connection with the preparation or execution of the cup final, which is why the joint data responsibility was solely between DBU and the Divisionsforeningen, as stated in the reply to the Danish Data Protection Authority of 14 September.

It can also be stated that it is internally described how data responsibility and data processors must be handled in different situations, which is why we can confirm that there is control over the applicable procedures. However, we would like to admit that it could have been more clearly stated to the data subjects who was the data controller in the given situation, and this will be rectified in the future.

We can also refer again to our reply to the Danish Data Protection Authority of 14 September 2020, from which it was stated that the Divisionsforeningen is the elite football clubs' trade association, and that EfB, as a member thereof, referred to the Divisionsforeningen, which responded to the complainant's inquiry on its own, DBU's and EfB's behalf."

The complainant was sent the comments on 10 November 2020, to which he made comments by telephone on the same day.

2.1. Complainant's comments

About data responsibility

The complainant has also stated that, in connection with his request for access, it has generally been challenging to obtain information about who was the data controller for the TV monitoring in connection with the cup final - and thus responsible for answering his request for access.

Ad insight into television surveillance recordings

The complainant has generally stated that DBU and the Divisionsforeningen are obliged to hand over information about him in the form of the television surveillance recordings, and that by refusing to hand over the television surveillance recordings, DBU and the Divisionsforeningen have acted in violation of Article 15 of the Data Protection Regulation.

The complainant has also stated that the television surveillance recordings are to be used in connection with a compensation case regarding the police's unjustified deprivation of his liberty. In this connection, the complainant has stated that he was not part of the unrest and that, among several others, during the cup final unrest, he had gone out of the stadium to tell people who were standing outside the stadium to calm down, find their ticket and seats, and go in and sit in the seats during the match.

It is the complainant's view that handing over the television surveillance material in question will not identify the location of the video cameras and thus reveal blind spots and compromise security. This is justified, among other things, by in that several of the cameras at the stadium in question are already fully visible. In addition, complainants claim that these concerns can be addressed by, for example, using simple photo editing software.

In conclusion, the complainant has stated that the present case is not comparable to the Data Protection Authority's decision in the case with j. no. 2018-832-0009, as it was stated in that case that the complainant had not stated a special justification for the interest in gaining insight into the television surveillance recordings.

In the present case, the complainant has stated a special justification, and reference is made in this connection to, among other things, to the Data Protection Authority's decision in the case with j. no. 2018-832-0004, in which television surveillance material was handed over in connection with a compensation case.

2.2. DBU and the Divisional Association's comments

About data responsibility

DBU and the Divisionsforeningen have stated in relation to data responsibility that it is DBU and the Divisionsforeningen that are responsible for the processing of personal data, including in connection with TV surveillance, which was carried out in connection with the performance of the cup match between Aab and SønderjyskE at Blue Water Arena.

In this connection, DBU and the Association of Divisions have regretted that different information was given to complainants and to the Data Protection Authority, which was due to an internal misunderstanding.

Ad insight into television surveillance recordings

DBU and the Divisionsforeningen have also stated that video surveillance is carried out in connection with the conduct of matches in the 3F Superligaen and in the cup final. Information about this, as far as the cup final between Aab and SønderjyskE is concerned, was printed on the tickets with reference to the Superliga's Common Rules of Procedure, which apply to the match in question.

DBU and the Divisionsforeningen have also stated that during the match there were a number of spectators who – despite repeated calls from the stadium speaker – did not follow the applicable guidelines; especially in relation to Covid-19. As a consequence, the match was – in accordance with security protocols – interrupted and only resumed after 14 minutes, when the spectators in question left the stadium after, among other things, threatening and chasing the stadium controllers who handled the situation out of the stadium. Afterwards, a number of these spectators were arrested by the police outside the stadium.

The monitoring material is normally deleted after 14 days. However, the surveillance material, which is the subject of the present case, is stored for a longer period of time due to the complainant's request for access. The material is destroyed when the case is concluded.

There are three overall important considerations for the use of video surveillance in football stadiums:

Monitoring of equipment, i.e. protection of stadium facilities

Monitoring of spectator behavior in order to ensure compliance with football's own laws and regulations, e.g. ban on pyrotechnics as regulated in the Circular on safety and order at the stadium, and for use by the police in connection with cases of violence at the stadium

Protection of individuals and groups at the stadium, i.a. security guards and spectators

In order to fulfill the purpose of the video surveillance, it is sought to the greatest extent possible to place surveillance equipment hidden or discreet.

On the basis of i.a. cases where spectators who have violated the rules for behavior at the stadium have been sentenced to quarantine, the DBU, the Divisions Association and the clubs have experience that disturbances at football matches are most often caused by a limited group of people who are not influenced by sanctions, and who are willing to go even to great lengths to partly gain access to the stadium, and to engage in unwanted and illegal behaviour.

It is therefore the DBU and the Association of Divisions' assessment that it will lead to a compromise of security if those concerned - through insight into precisely the footage from the surveillance cameras - will be able to determine the location of the cameras, since in the opinion of the DBU and the Association of Divisions there is a imminent risk that this will lead to the use of cameras' blind spots or other measures to prevent recording, for example the placement of banners or other large objects to thereby create areas that will not be visible on the recordings. As a result, both stadium controllers and other

spectators will be exposed to significant danger.

DBU and the Divisionsforeningen have noted in this connection that the considerations, as described above, have been the subject of discussion with the National Police, which has agreed with the DBU and the Divisionsforeningen's considerations. DBU and the Divisional Association have also stated that DBU and the Divisional Association are in continuous dialogue with FIFA, and DBU and the Divisional Association follow their guidelines for security etc., which is why the security protocols are directly consistent with this. FIFA's Data Protection Network also recommends, and for the reasons stated above, that you do not hand over surveillance material to anyone other than the local authorities. In addition, it can be stated that, according to the DBU and the Divisional Association's information, there is a definite ban on handing over surveillance material to anyone other than the authorities in countries such as Portugal and Germany, and that a similar practice is followed in e.g. Spain and France.

Based on the above, DBU and the Divisionsforeningen have stated that the surveillance system at the Blue Water Arena was activated during the cup final between Aab and SønderjyskE, and that DBU and the Divisionsforeningen have therefore processed personal data about the participants, including probably also complaints, as DBU and the Divisionsforeningen base , that the complainant participated as a spectator at the cup final.

DBU and the Divisionsforeningen have also stated that it is their opinion that it is justified to reject the complainant's request for access to the video surveillance footage from the cup final with reference to section 22, subsection of the Data Protection Act. 1, and section 22, subsection of the Data Protection Act. 2, no. 3 and 4.

In support of this, DBU and the Association of Divisions have referred to the Danish Data Protection Authority's decision in the case with j. No. 2018-832-0009.

The video surveillance at the stadiums is, among other things, established to support the police's investigation and processing of cases about, among other things violence, as well as to create security for football spectators in general and make it possible for parents and children to have a good experience together by attending football matches, whether it is in the club or national team.

It is the DBU and the Divisional Association's assessment that consideration of these purposes must precede the interest of the registered, including the complainant, in gaining insight into the information, as notification of insight will entail a risk that the video surveillance will not be able to fulfill the stated purposes.

In addition, DBU and the Divisionsforeningen have added that the release of video surveillance material in the present case will create an inappropriate precedent at events in general, and that video surveillance material has been released to the police in connection with their investigation of the circumstances at the cup final, why complain as a party to a possible case will be entitled to be provided with case material by the police, cf. the rules of the Administration of Justice Act.

3. Reason for the Data Protection Authority's decision

3.1. Data responsibility

3.1.1. The general principles for processing personal data, which appear in Article 5 of the Data Protection Regulation, must in all cases be observed when personal data is processed. This means, among other things, that personal data must be processed legally, fairly and in a transparent manner in relation to the data subject, cf. Article 5, paragraph 1, letter a.

3.1.2. After a review of the case, the Danish Data Protection Authority finds that DBU and the Divisional Association's processing of personal data has not taken place in accordance with Article 5, paragraph 1 of the Data Protection Regulation. 1, letter a.

Emphasis has been placed on the fact that different, contradictory information about data responsibility has been given to the complainant and to the Danish Data Protection Authority during the processing of the case.

Based on this, the Danish Data Protection Authority finds reason to express criticism of DBU and the Divisional Association's processing of personal data.

The Danish Data Protection Authority has noted that this was an internal misunderstanding, which has now been corrected.

3.2. Request for insight

3.2.1. This appears from the data protection regulation's article 15, subsection 1, that the data subject has the right to obtain confirmation from the data controller as to whether personal data relating to the person in question is being processed, and, if applicable, access to the personal data and the information set out in points a-h.

Furthermore, it follows from Article 15, subsection 3, that the data controller must hand over a copy of the personal data that is processed.

However, certain exceptions to the right of access apply. It appears, among other things, of the Data Protection Act § 22, subsection 1, that i.a. Article 15 of the data protection regulation does not apply if the data subject's interest in the information is found to be overriding decisive considerations of private interests.

Furthermore, it appears from section 22, subsection 2, that exception from i.a. Article 15 of the data protection regulation can also be done if the data subject's interest in getting to know the information is found to be outweighed by decisive considerations of public interest, including in particular to:

- 1) state security,
- 2) the defence,
- 3) public safety,
- 4) prevention, investigation, detection or prosecution of criminal acts or enforcement of criminal sanctions, including protection against and prevention of threats to public safety,
- 5) other important objectives in connection with the protection of the general public interests of the European Union or a Member State, in particular the essential economic or financial interests of the European Union or a Member State, including currency, budget and tax matters, public health and social security,
- 6) protection of the independence of the judiciary and legal proceedings,
- 7) prevention, investigation, disclosure and prosecution in connection with breaches of ethical rules for legally regulated professions,
- 8) control, supervisory or regulatory functions, including tasks of a temporary nature that are connected to the exercise of public authority in the cases referred to in nos. 1-5 and 7,
- 9) protection of the rights and freedoms of the data subject or others and
- 10) enforcement of civil law claims.

3.2.2. The Danish Data Protection Authority bases its decision on the case on the fact that the television surveillance recordings, which the complainant wanted handed over, were to be used in connection with a possible compensation case where the complainant believes that he has been unjustifiably deprived of his liberty.

As a general rule, a data subject has the right to access information about the person concerned, cf. Article 15 of the Data Protection Regulation. Restrictions on the right to access should therefore only be made on the basis of a concrete assessment of the information available at the time of receipt of a request for access . This applies particularly in cases where the data subject states a special (and legitimate) reason for the access request.

DBU and the Divisional Association have generally indicated that insight into the TV surveillance material could compromise

the safety of the stadium for spectators, inspectors and others, as i.a. the location of the cameras and blind spots will be able to be revealed, and that the data subject's right to access may therefore be limited due to decisive considerations for public safety, cf. section 22, subsection of the Data Protection Act. 1 and 2.

The Danish Data Protection Authority finds no basis for overriding DBU's and the Divisional Association's assessment that the above considerations - after a concrete assessment - could justify restrictions on the data subject's right to access.

The Danish Data Protection Authority also finds that DBU and the Divisional Association were entitled to reject the complainant's request for access.

The Danish Data Protection Authority has thereby emphasized that the complainant's interest in gaining insight into television surveillance recordings - for use in a compensation case against the police for unjustified deprivation of liberty - in the specific case should give way to decisive considerations of public safety, as this is a larger stadium, where many people will be gathered in a limited space, and where disturbances can typically arise, whereby i.a. spectators may be exposed to significant danger.

The Danish Data Protection Authority also notes that, in connection with the submission of a possible compensation case for unjustified deprivation of liberty before the courts, they will be able to apply for access to the recordings via the rules of the Administration of Justice Act.

However, the Danish Data Protection Authority must emphasize that, in accordance with Section 22 of the Data Protection Act, DBU and the Divisional Association are obliged to carry out a concrete assessment of the data subject's interest in receiving the information against the decisive considerations which may justify that the access request is not accommodated.

The Data Protection Authority recommends that DBU and the Association of Divisions carry out such a specific assessment of received access requests, including the data subject's specific interest in receiving the information in whole or in part.

[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).

[2] Act No. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (Data Protection Act).