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J.No. 2020-7320-1827
Doc.no. 478508
Caseworker
Rasmus Martens

Complaint about processing of personal data

1. The Danish Data Protection Agency (Danish DPA) returns to the case, where you on 10 February 2020 have complained to the Berliner Beauftragte für Datenschutz und Informationsfreiheit (DPA, Berlin) about Trustpilot A/S' response to your request for access.

In accordance with Article 56 of the General Data Protection Regulation, the Data Protection Agency has been designated as the lead supervisory authority in relation to Trustpilot A/S.

2. Facts of the case

It is apparent from the file that on 11 May 2019 you made an online purchase of an item from the company Asus on Ebay's website. The e-mail you provided in connection with the purchase from Asus was ebay@levaria.de.

On 3 February 2020, you received an email from noreply.invitations@trustpilot.com to your address ebay@levaria.de, where Asus Online Shop appeared as the sender. You were asked in the email to evaluate the buying experience at Asus.

On 4 February 2020, you contacted Trustpilot from another email address (service@levaria.de) and requested access to the personal data Trustpilot may process about you. In addition to the e-mail address, the inquiry included your name and address.

Trustpilot replied on 6 February 2020 and stated that Trustpilot could not locate an active user for the email service@levaria.de and that Trustpilot therefore did not process any information about you.

On 8 February 2020, you again received an email from noreply.invitations@trustpilot.com on behalf of the Asus Online Shop sent to ebay@levaria.de, in which you were again asked to evaluate your purchase from Asus.

You subsequently complained on 10 February 2020 about Trustpilot's response to your request for access to the German supervisory authority (Bavaria DPA), which forwarded the complaint to the Berlin supervisory authority.

As the lead supervisory authority in relation to Trustpilot, the Danish Data Protection Agency subsequently took over the case from the Berlin supervisory authority, after which on 14 July 2020 the Danish Data Protection Agency sent your complaint to Trustpilot and asked Trustpilot for a statement on the case.

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Trustpilot issued a statement on the matter on 19 August 2020. The statement was sent to you on 8 September 2020.

The Berlin supervisory authority informed the Danish Data Protection Agency on 12 January 2021 that you had not commented on the statement.

On 10 September 2021, the Danish Data Protection Agency asked Trustpilot for an additional statement on the case, which Trustpilot submitted on 1 November 2021 as regards to the role of Trustpilot when sending invitation emails.

At meetings between Trustpilot and the Danish Data Protection Agency on 25 February and 9 March 2022, Trustpilot explained the company's ability to identify data subjects in general and how Trustpilot in the case in question had tried to uniquely identify you.

2.1. Your comments

You have generally stated that Trustpilot is not allowed to process information about you and that Trustpilot has not responded to your request for access in accordance with the data protection rules

2.2. Comments from Trustpilot

Trustpilot has generally explained that Trustpilot is an open platform where everyone can read, write and collect reviews. Customers can rate a company at any time, and companies with an online presence can — independently or with Trustpilot's help — invite customers to rate the company.

Trustpilot has further explained that Trustpilot is the data controller for information collected when data subjects use Trustpilot's website, create user profiles, or submit and/or respond to reviews.

However, Trustpilot considers itself a data processor in relation to sending invitation emails. This is based, among other things, on the fact that companies, such as Asus Online Shop, assess whether or not they want to use Trustpilot's invitation software, just as the companies decide whether and when invitations are sent out via Trustpilot's invitation software. In addition, it is the companies that provide the personal data used in connection with the invitations.

Trustpilot has stated in relation to your complaint that Trustpilot neither as a data controller nor as a data processor processes personal data associated with the email address service@levaria.de. Trustpilot processes information associated with the email address ebay@levaria.de as data processor for Asus Online Shop. As this email was not used or disclosed in connection with the access request, Trustpilot could not conduct a search in Trustpilot's systems based on the enquiry. If the email address ebay@levaria.de had been provided, Trustpilot would have referred you to the Asus Online Shop, which Trustpilot processed the personal data about you on behalf of.

Trustpilot explained in detail that Trustpilot did a search on the e-mail service@levaria.de, the first and second time you contacted Trustpilot, and that Trustpilot could not identify you on that basis, as Trustpilot had not registered the email service@levaria.de.

When Trustpilot became aware of your complaint, Trustpilot also conducted a search by your name. As a result, Trustpilot found that Trustpilot could not uniquely identify you when searching your name (either alone or in conjunction with the e-mail service@levaria.de), as Trustpilot has several registered names with the same name as you.

Trustpilot states, however, that on the basis of the present case, the company has rethought Trustpilot's communications, so that Trustpilot — when communicating with data subjects — has even more focus on providing guidance on Trustpilot's different roles in the processing of personal data.

3. The Data Protection Agency's assessment

According to Article 4(7) of the GDPR, the controller is a natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of the processing of personal data.

Furthermore, Article 4(8) of the Regulation provides that a 'processor' means a natural or legal person, public authority, institution or other body which processes personal data on behalf of the controller.

Article 15 of the GDPR provides that the data subject has the right to obtain confirmation from the controller as to whether personal data relating to him or her are being processed and, where applicable, access to the personal data and the information referred to in points (a) to (h) of paragraph 1 of that provision. It is thus the responsibility of the controller that a request for access by a data subject is handled in accordance with Article 15 of the GDPR.

Based on the information in the case, the Danish Data Protection Agency assumes that Trustpilot, when sending the notification invitation on behalf of Asus Online Shop, processed information about you as a data processor for the Asus Online Shop.

On the basis of the facts of the case, the Danish Data Protection Agency therefore does not consider it necessary to override Trustpilot's assessment that the company acts as a data processor in connection with the sending of notification invitations.

As pursuant to Articles 12 and 15 it is not the responsibility of the processor, but the data controller, to handle and respond to a request for access, the Danish Data Protection Agency considers that Trustpilot has not acted in breach of these provisions.

However, from paragraphs 20 and 21 of Trustpilot's Data Processing Agreement:

"Trustpilot A/S will promptly assist you with the handling of any requests from data subjects under Chapter III of the GDPR and, where commercially practicable, under any other Applicable Data Protection Law, including requests for access, rectification, blocking or deletion, which relates to our processing of the Relevant Data.

If Trustpilot A/S receives such a request, Trustpilot A/S will not respond to it other than to inform the requesting data subject:

-) whether a review invitation email has been sent to the data subject on your behalf; and
-) that he/she should submit his/her request to you, given that you will be responsible for responding to these requests."

The Danish Data Protection Agency finds it regrettable that, in a case such as the case, Trustpilot did not have a consistent practice to search relevant information, including the name and address, which the data subject had submitted in connection with his request under Article 15 of the GDPR, so that Trustpilot exhaustively explored the possibility of uniquely identifying

the data subject and thus, in its role as processor, could assist the controller to the extent agreed in the data processing agreement.

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This has been informed to Trustpilot by the Danish Data Protection Agency today.

4. Final remarks

The Danish Data Protection Agency notes that the supervisory authority's decisions cannot be brought before another administrative authority, cf. Section 30 of the Danish Data Protection Act. However, the Data Protection Agency's decisions may be brought before the courts, cf. section 63 of the Danish Constitution.

The Danish Data Protection Agency have sent a copy of this letter to Trustpilot. A/S.

The Danish Data Protection Agency hereby considers the case to be closed and won't take any further action in connection with the inquiry.

Kind regards

Rasmus Martens