



OFFICE OF THE DATA PROTECTION OMBUDSMAN

Taxation data and mass media

Veropörssi -case

XIX Case Handling Workshop

12 March 2009, Prague

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Protection of privacy and freedom of expression

- both are fundamental rights
- the Personal Data Act
 - doesn't prevent the processing of personal data for purposes of journalism (only few Sections regulate the processing of personal data for the journalistic purpose)

The objectives of this Act are to implement, in the processing of personal data, the protection of private life and the other basic rights which safeguard the right to privacy, as well as to promote the development of and compliance with good processing practice.

- doesn't apply to personal data files containing, solely and in unaltered form, data published by the media



Part of taxation data is public

- taxation data on individuals such as name, year of birth, place of domicile, annual income and amount of property is public
- according to the Personal Data Act public taxation data can be processed for purposes of journalism



Veropörssi -case (“Tax exchange” -case)

- a company (Satakunnan Markkinapörssi Oy) collects public taxation data on individuals and publishes it in regional “newspapers” called *Veropörssi*
 - the main content is list of people and their taxation data
 - data on people whose income is over a certain amount (12 000 euros)/various amounts
 - also a couple of short articles about taxation



- personal data published in the *Veropörssi* newspaper is transferred in the CD-ROMS to Satamedia Oy (owned by the same individuals) for SMS service
 - > data is distributed also via SMS service (approximately 2 €/search)
- personal data may be removed on request from newspaper and SMS service



Data Protection Ombudsman considered these services illegal

1. data is not processed for purposes of journalism
2. data in SMS service differs from the data published in *Veropörssi* newspaper
 - data has been further processed in order to make single searches possible
 - the result of single SMS search is targeted to one person, not to public in general
3. attention should be paid on the ownership of the companies



- DPO didn't question the transfer of information by the Finnish authorities nor the public nature of the taxation data
- DPO first asked the controllers to stop the data processing and then referred the case to the Data Protection Board

Data Protection Board

- has the right to stop illegal processing of personal data or grant permissions



Data Protection Board's decision

- data is processed for purposes of journalism
- the Personal Data Act doesn't apply
- didn't apply Data Protection Act on the SMS Service
- The DPO appealed the decision to the administrative court



Decision of the administrative court

- Administrative Court rejected DPO's application
 - the data has been processed for journalistic purposes
 - the Personal Data Act doesn't apply
 - > the data processing is legal



- The DPO appealed the decision of the administrative court to the Supreme Administrative Court

DPO saw that the court should request preliminary ruling from the Court of Justice of the European Communities (the same was requested from the Administrative Court)

- The Supreme Administrative Court asked the Court of Justice of the European Communities to rule on the correct interpretation of the Data Protection Directive (95/46/EC).



Decision of the Court of Justice of the European Communities (C-73/07, 16 December 2008)

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-73/07>

- the Court of Justice holds that the activities of Satakunnan Markkinapörssi Oy and Satamedia Oy constitute data processing within the meaning of the Data Protection Directive

(otherwise the directive would be largely deprived of its effect)



- the Court considered that activities which concern data from public documents may be classified as ‘journalistic activities’ if their object is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them.
- Activities are not limited to mass communication companies and may be carried on for profit-making purposes.
- It is for the national Supreme Administrative Court to determine whether the activities have as their sole object the disclosure of information, opinions or ideas to the public.



Conclusions:

- concept of journalistic purpose was not defined in detail in the judgement of the Court of Justice
- need to amend national legislation
- freedom of expression - publicity - data protection
- Supreme Administrative Court either makes a decision or returns the case to the Data Protection Board