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COUNCIL OF EUROPE

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COMMITTEE OF EXPERTS ON DATA PROTECTION

Act No. 294, 8 June 1978

PUBLIC AUTHORITIES' REGISTERS ACT, 1978

(Denmark)

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PUBLIC AUTHORITIES' REGISTERS ACT, 1978

WE MARGRETHE THE SECOND by the grace of God Queen of Denmark do hereby make known:

The Folketing have passed and WE have given Our Royal Assent to the following Act:

Part 1

Scope of the Act

1.1 This Act shall apply to EDP registers that are operated on behalf of the public administration and contain personal data.

1.2 By EDP registers shall be understood registers or other systematic records for which electronic processing of data is used.

1.3 For the purpose of this Act "personal data" shall mean data that are referable to any identifiable individual even if such referral presupposes knowledge of the personal number, registration number or any like particular means of identification of such individual.

2. The minister concerned may after consultation with the Data Surveillance Authority (in this Act referred to as the "DSA") order that this Act shall apply to registers kept for specified companies, institutions, associations and the like that cannot be classified as part of the public administration, provided that the greater part of the operational expenses of such companies etc are covered out of central or local government funds.

3.1 The minister concerned may after consultation with the DSA order that this Act shall apply to other registers containing personal data and kept for the authorities and companies etc referred to in subsection (1) of Section 1 and in Section 2 of this Act.

3.2 The minister concerned may after consultation with the DSA order that the whole or part of this Act shall apply correspondingly to EDP registers kept for the authorities and companies etc referred to in subsection (1) of Section 1 and in Section 2 of this Act, and which contain data on business enterprises.

Part 2

Establishing of registers

4.1 Establishing of registers to be kept for a central government authority shall be subject to approval given by the minister concerned in consultation with the Minister of Finance.

4.2 Prior to a register becoming operative, directions on the structure and operation of the register in question conforming with the provisions laid down thereon in Parts 3 to 6 of this Act shall be given by the minister concerned or by any party authorised by him to give such directions.

4.3 The provisions of subsections (1) and (2) hereof shall apply correspondingly to linking of registers compiled for different purposes, except where such linking is effected solely for extraction for statistical or scientific purposes.

5.1 Prior to approval or directions being given as referred to in Section 4 of this Act, the DSA shall be heard.

5.2 Where a subordinate authority has been authorised to give directions as referred to in subsection (2) of Section 4, and the DSA has not seen fit to accede to draft directions submitted, the matter shall be referred to the minister concerned, who shall make the final administrative decision.

6.1 Establishing of registers to be kept for a local government authority including the Metropolitan Council, shall be subject to decision made at a meeting of the local council concerned.

6.2 Prior to a register becoming operative, directions on the structure and operation of the register in question conforming with the provisions laid down thereon in Parts 3 to 6 of this Act shall be given by the local council or by the local government authority concerned.

6.3 Prior to decision or directions being made or given as referred to in subsections (1) and (2) hereof, the DSA shall be heard. Where the DSA does not see fit to accede to a proposal submitted, the matter shall be referred to the Minister of Finance, who shall make the final administrative decision.

6.4 The provisions of subsections (1) to (5) hereof shall apply correspondingly to linking of registers compiled for different purposes, except where such linking is effected solely for extraction for statistical or scientific purposes.

7.1 Participation in a register or a system of registers established to serve local government authorities of more than one local district shall be subject to the register or system of registers being approved by the Minister of Finance and to directions on the structure and operation of the register or system of registers in question conforming with the provisions laid down thereon in Parts 3 to 6 of this Act being given by the Minister of Finance or by another minister as decided by the Minister of Finance.

7.2 Prior to approval or directions being given as referred to in subsection (1) hereof, the DSA shall be heard.

7.3 The provisions of subsections (1) and (2) hereof shall apply correspondingly to linking of registers established for different purposes, except where such linking is effected solely for extraction for statistical or scientific purposes.

7.4 Participation in a register or a system of registers as referred to in subsection (1) hereof by a local government authority shall be subject to decision made at a meeting of the local council concerned. Any such decision by a local council shall forthwith be reported to the DSA, stating any special terms and conditions governing such participation.

8.1 Any direction given pursuant to subsection (2) of Section 4, subsection (2) of Section 6, or subsection (1) of Section 7 of this Act, and any amendment made thereto, shall without delay be submitted to the DSA.

8.2 Any direction given in respect of a register or a system of registers shall be accessible to members of the general public on application at the offices of the authority or authorities responsible for registers and of the DSA, except where secrecy shall be required for reasons of implementation of prescribed checking, control, and safeguarding measures or where other public interest is the over-riding consideration.

Part 3

Storage of data and safe custody

9.1 Only such data shall be registered as are clearly relevant to the purposes of the authority concerned. Other data relevant to the purposes of another authority may be registered provided the register is blocked in such a manner that these other data can be used only by that other authority.

9.2 Data on political matters not accessible to members of the general public shall not be registered. Other data on purely personal matters, including data on race, religious belief, or colour of skin; on sexual or criminal matters; and on health or excessive use of intoxicants and the like, shall not be registered except where required for the purposes of the register in question.

9.3 Any data registered that because of obsolescence or otherwise has lost its relevancy for the purposes of the register in question, shall be deleted. Continually operated registers shall be adapted for updating of data as required.

9.4 The Minister of Justice may after consultation with the DSA permit copies of registers to be deposited for safe custody in archives subject to specific conditions laid down by the minister.

10. Directions applying to a register may lay down that a party registered shall be advised of his registration. Such notification shall advise the party registered of his right to obtain information from the register by virtue of the provisions of Sections 13 to 15 of this Act.

11. Checking and control shall be implemented as required to ensure that incorrect or misleading data are not registered. Data that prove to be incorrect or misleading shall be deleted or corrected as soon as possible.

12.1 Safeguards shall be implemented as required to ensure that no data registered be wrongfully used or brought to the notice of an unauthorised party.

12.2 Such safeguards shall, where required, apply also to copies and transcripts (extracts) of the register; including such copies and transcripts (extracts) as have been handed over to other authorities.

12.3 In the case of registers containing data of special interest to foreign powers, measures shall be taken to ensure that such registers can be removed or destroyed in the event of war or warlike circumstances.

Part 4

A registered party's freedom of access
to data on himself

13.1 Upon application made by a party registered, the authority responsible for the register in question shall as soon as possible inform him of the data registered on him.

13.2 Directions applying to a register may lay down that the party registered shall, at specified intervals, be sent transcripts (extracts) of the data registered on him, or that the party registered shall be entitled to make request to that effect. Rules may be laid down on fees payable for such transcripts (extracts).

13.3 In the event that a party registered in a hospital register or other register of patients or of ill-health or diseases, wants to be apprised of the data registered on him, he shall file application to that effect with his physician, who shall as soon as possible after receipt of the application apply to the authority responsible for the register in question. The authority concerned shall as soon as possible advise the physician of the data registered on the patient, so that the physician can pass on the data to him.

13.4 The provision of subsection (1) hereof shall not apply if it is found that the registered party's interest in knowing the data in question ought to be overridden by public or private interests. Where such considerations apply to only part of the data in question, the party registered shall be apprised of the remaining data.

13.5 The provisions of subsections (1) to (3) hereof shall not apply to registers that are compiled solely for extraction for statistical purposes. In the case of other registers, provision for exemption from the freedom of access to data by virtue of subsection (1) hereof may be laid down if the provision of subsection (4) hereof may be assumed to result in applications as referred to in subsections (1) to (3) hereof being generally rejected.

13.6 Where a party registered has been apprised of data by virtue of the provisions of subsections (1) to (3) hereof, he shall not be entitled to apply again for a period of twelve months from the most recent date of giving of information, except where he can prove any special interest in such renewed application.

14.1 Information given pursuant to subsection (1) of Section 13, of subsection (4) of Section 13 of this Act, shall on demand be given in writing, always provided that where the circumstances of the party registered so indicate, it may be given in the form of oral information on the contents of the data.

14.2 Information on data as provided for in subsection (3) of Section 13, shall always be given the party registered by the physician concerned and may be given in the form of oral information. The provision of subsection (4) of Section 13 shall apply correspondingly.

15. Any dispute arising as to the right to obtain information by virtue of subsections (1), (3), (4), and (6) of Section 13, of Section 14, and under directions laid down pursuant to subsections (2) and (5) of Section 13, may be submitted to the DSA. Decision made by the DSA cannot be submitted for review to other administrative authority.

Part 5

Passing-on of data to private individuals, enterprises, etc

16.1 No data referable to an identifiable individual shall be passed on to any private individual or enterprise etc, except where such passing-on is permitted under the provisions of Sections 17 to 19 of this Act or where the data in question are already accessible to members of the general public or where the party registered or any other party authorised to act on his behalf has consented to such passing-on.

16.2 Consent as above referred to shall be given in writing and shall specify:

1. the types of data that may be passed on,
2. to whom the data may be passed on, and
3. how the data may be applied by the recipient specified.

16.3 Consent given as above shall lapse at the latest upon the expiration of a twelve month period.

17. Data on an identifiable individual may be passed on to any private enterprise etc that pursuant to statutory provision or under agreement made assists in pursuing the purpose of the authority concerned, always provided that only such data shall be passed on as are necessary for the work undertaken by the recipient enterprise on behalf of the public authority. The data passed on shall not be applied to purposes other than those stipulated by the authority responsible for the register in question.

18.1 Data on an identifiable individual registered in a hospital register or other register of patients or of ill-health or diseases, may be passed on to a physician or a dentist by whom the individual concerned is being treated. The data passed on to a physician may comprise also data on persons other than the individual concerned, including data on dependants, provided such data may be of relevancy to the treatment given the party registered.

18.2 Also identification data and information on diagnoses etc may be passed on from the registers mentioned to physicians for use on particular research projects. Subsequent inquiries shall be made with the parties registered only to the extent that permission is obtained from the physicians by whom the party concerned has been treated.

18.3 In addition, data for use in research or planning projects may be passed on from the register mentioned subject to approval and conditions given and stipulated by the Medical and Health Board. Passing-on of data for the purpose of linking with registers to which this Act does not apply, shall be approved only after prior consultation with the DSA.

19.1 For use in any specific legal matter, isolated data may be passed on to private individuals or enterprises etc who can prove that their legal interest in obtaining the data in question clearly overrides the considerations of secrecy otherwise applicable to such data, always provided that data that are subject to specific statutory rules on secrecy shall not be passed on.

19.2 Data may be passed on for use in research subject to terms and conditions as specified. The provision of clause 2 of subsection (3) of Section 18 of this Act shall apply correspondingly.

20. The minister concerned may lay down rules on fees payable for handing over of data.

Part 6

Passing-on of data to public authorities

21.1 Registered data may be passed on to public authorities to the extent mentioned in Part 5 and also in cases where pursuant to statutory provisions the authorities concerned have freedom of access to the data in question.

21.2 Otherwise, passing-on to other public authority shall be effected only where the data in question are of material importance to the activity of the authority concerned or are of material importance to the making of a decision by that authority, of however clause 2 of subsection (1) of Section 9 of this Act, always provided that data shall not be passed on in contravention of specific statutory rules on secrecy.

21.3 Data referable to an identifiable individual shall not without special authority be passed on from registers compiled solely for extraction for statistical purposes or as part of a scientific investigation, always provided that the DSA upon application made in each particular instance may permit such data to be passed on to registers compiled solely for statistical or scientific purposes. Decision by the DSA on passing-on as herein referred to shall not be submitted for review to other administrative authority.

Part 7

Data Surveillance Authority

22.1 The Data Surveillance Authority (in this Act referred to as the "DSA"), which consists of a council and a secretariat, shall exercise surveillance over any register to which this Act applies. The DSA shall further exercise the functions assigned to it by the provisions of the Private Registers' (etc) Act.

22.2 The DSA shall of its own motion or upon complaint made by a party registered, ensure that any register as referred to in subsection (1) hereof has been established and is operated in conformity with the provisions of this Act and of the directions given pursuant to this Act.

23. The council, which shall be established by the Minister of Justice, shall consist of a chairman who shall have the qualifications required for appointment as judge, and of six other members. Members and alternates for these shall be appointed to hold office for periods of four years at a time.

24. The day-to-day business of the DSA shall be attended to by the Secretariat, which shall be headed by a manager.

25. The Minister of Justice shall lay down rules of procedure for the council and detailed rules on distribution of work for council and secretariat.

26.1 The authority or authorities responsible for any register falling under this Act and the keeper of such register shall upon demand furnish the DSA with all particulars of importance to the DSA.

26.2 Members and staff of the DSA shall at all times against production of proper identification papers and without court warrant be admitted to any and all premises from which the register in question is administered or can be used and to premises where the register in question or the technical facilities for its use are installed, stored, or used.

26.3 The DSA shall report to the authority or authorities responsible for a register falling under this Act and to the minister concerned on any contravention of this Act or of the directions given, and generally on any defect found. The DSA shall be informed of any measure taken by the authority concerned as a consequence of the report made by the DSA.

27. The DSA shall be entitled at all times to submit to the authority by whom directions have been given, proposals for amendments to existing directions. The provisions of subsection (2) of Section 5, and clause 2 of subsection (3) of Section 6 of this Act shall apply correspondingly.

28.1 The DSA shall submit an annual report on its activities to the Folketing. The report shall be publicised.

28.2 The DSA shall further be entitled to publicise any opinion given by the DSA pursuant to subsection (1) of Section 5, subsection (3) of Section 6, subsection (2) of Section 7, subsection (3) of Section 18, and subsection (2) of Section 19; any report made by virtue of subsection (3) of Section 26; and any proposal submitted by virtue of Section 27. The provision of clause 2 of subsection (2) of Section 8 shall apply correspondingly.

Part 8

Offence and Penalty Provisions

29.1 Where other enactment does not prescribe more severe punishment, any person who commits an offence as stated in the list set out below shall be liable on conviction to a fine or to lenient imprisonment:

1. disregard of terms and conditions stipulated in any consent given pursuant to s.16(2),
2. infringement of s.17 clause 2 or s.18(2) clause 2,
3. disregard of conditions stipulated by virtue of s.18 (3) or s.19.

29.2 Any direction given by virtue of Part 2 of this Act may provide that infringement of any provision of such direction shall be punishable by a fine.

29.3 Where an offence as hereinbefore listed is committed by a limited liability company, a co-operative society or the like liability to a fine may be imposed on the company etc as such.

Part 9

Commencement and transitional provisions

30.1 This Act shall come into force on 1 January 1979.

30.2 In the case of registers and systems of registers the operation of which dates from before the commencement of this Act, the provisions of this Act shall not apply until twelve months after the commencement of this Act. At the latest six months after the commencement of this Act, draft directions on the structure and operation of any register as hereinbefore referred to, conforming with the provisions of Parts 3 to 6 of this Act, shall be submitted to the DSA. The provisions of subsection (2) of Section 5, and of clause 2 of subsection (3) of Section 6 of this Act shall apply correspondingly. The Minister of Justice may extend the above time-limits for specified registers.

30.3 In the case of any register which is operative or in the process of being compiled at the commencement of this Act and from which it is not possible without substantial alteration to technical systems to provide transcripts (extracts) of registered data, the provisions of subsections (1) and (3) of Section 13 of this Act shall not have effect until three years after the commencement of this Act.

31. This Act shall not apply to registers kept for intelligence agencies of the police and the military defence.

32. This Act shall not apply to registers kept for local Authorities or for National Government Authorities in the Faeroe Islands. This Act may by Royal Decree be made to apply to registers kept for the National Government Authorities in the Faeroe Islands, subject to such variations as circumstances peculiar to the Faeroe Islands may require.

Given at Christiansborg Palace, Copenhagen, Denmark, this eighth day of June One thousand nine hundred and seventy-eight.

Under our Royal Hand and Seal

MARGRETHE R

L S

/ Erling Jensen