

No data processing agreement

The Danish Data Protection Agency has been presented with the question of whether a company like Whistle Tools is a data controller or a data processor. The Danish Data Protection Agency has concluded that a company such as Whistle Tools is a data controller when the following tasks are performed:

- 1) Receiving reports from whistleblowers via "regular" communication channels such as email, physical mail, phone and possibly in person
- 2) Assess whether the report falls within the scope of the whistleblowing scheme and then forward the report to the employer if it does and reject the report if it does not
- 3) Handling all communication with the whistleblower, including confirming receipt of the report, providing feedback to the whistleblower, etc.
- 4) If necessary, assist the employer with advice on how the report should be handled

Our service includes the above and we are therefore the data controller.

As we are not a data processor, you do not need to enter into a data processing agreement with us, as it - as the title also says - only needs to be entered into with a data processor. There is no similar requirement for a data controller.

It is important to emphasise that the rules imposed on us by GDPR are in many ways similar to what a data processor must comply with. In fact, the rules are stricter because we don't just process data for our customer. We have an independent responsibility.

If we only provided a system that the customer's employees could use to report offences, then we would be a data processor. Most whistleblowing systems that you can subscribe to today only provide a system and not any administration, monitoring and processing. Therefore, you will often find that you need to enter into data processing agreements when looking at the systems on the market.

The technical explanation of why we are a data controller reads:

In its assessment, the Danish Data Protection Agency has particularly emphasised the importance of the fact that an external whistleblower administrator usually has a certain degree of autonomy in relation to independently deciding how to handle the processing of reports, including rejecting reports that fall outside the scope of the whistleblower scheme, etc. and that, as a result, there will typically be vague or non-existent instructions from the employer on how personal data should be processed.

In this situation, it is not decisive that the employer has "initiated" the processing of personal data by purchasing a service. It is thus for the employer's purpose - to comply with a legal obligation incumbent on the employer under the Whistleblower Act - that the whistleblower scheme is administered, but for the whistleblower administrator's purpose that personal data is processed in order to provide the service.

The Danish Data Protection Agency's decision is available here:

<https://www.datatilsynet.dk/afgoerelser/afgoerelser/2021/okt/hvem-er-dataansvarlig-ved-outsourcing-af-en-intern-whistleblowerordning>