

GDPR-policy at DMJX: Is the student or the educational institution responsible for the data?

This question has been debated in the profession high schools and universities DPO network. The assessment is that, as a starting point, it is the student that is responsible as it is the student that generally makes a number of independent choices on both purpose and method and is not subject to direct instruction from the institution.

However, Datatilsynet's decision of 19.8.2019 (theft of camera at Copenhagen University) challenges this assessment as the university in this case was considered to be responsible for the data, solely because the data processing occurred in connection with an actual teaching event. The DPO network also assesses that the institution might be responsible for the data if the student's data processing is regulated to a greater degree by the institution, for example, by the student fulfilling an assignment formulation which requires that personal data is processed in a specific way, for example, with video or photo recording. In practice, this will often be the case on the profession bachelor education where minor assignments, in particular, will often be more tightly regulated and/or controlled by the institution. It will thus depend on the concrete circumstances whether the student or the institution is responsible for the data.

Even though the student is responsible for the data in relation to the actual collection and processing of personal information when completing the assignment, the institution assumes an independent data responsibility when the assignment is submitted. When storing and sharing data in connection with assessment and collective feedback the institution will be responsible for the data.

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Against this background, as a general rule, DMJX should act as if the school were responsible for the students' data processing. This does not mean that DMJX assumes responsibility for all students' existing data processing – only that the institution displays due diligence by informing and guiding students, and is aware that in specific circumstances liability may be imposed on the school which needs therefore to minimise the risk of a breach of data protection. Datatilsynet has stated that an educational institution is not in itself responsible for data because students are guided and informed on correct data processing by the institution. Correspondingly, it is possible to place demands on correct data processing in relation to the submission of assignments by students in the same way that demands can be made on correct data processing in relation to other legal and professional standards without the school thus becoming responsible for the work of the students.

Even though processing of personal information may occur on another legal basis than consent, express and specific consent will be necessary in practice when the student processes personal information in connection with completing assignments during their education (apart from journalism products that are exempted from the Data Protection Act). This consent should not only cover the students' processing in connection with completing the assignment but also the school's processing in connecting with assessment and feedback. Datatilsynet makes no demands to the form of consent but as the school, in any event, must ensure that consent exists for assessment and feedback, it would be

problematic to base this solely on oral consent. A written, standardised, consent form, is therefore preferable.

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