

Placed/Foursquare

Case officer:

Ailo Krogh Ravna

E-mail:

ailo.krogh.ravna@forbrukerradet.no

Our date:

12.05.2020

Our case:

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Your date:

Your case:

Concerning Placed collection of personal data through the app MyDays

Dear madam/sir,

We would like to address a number of issues related to FourSquare's subsidiary Placed collecting personal data through the app MyDays, as detailed in our report "Out of Control".¹ We find the data collection that we observed Placed engaging in to be alarming from a data protection and consumer rights perspective.

As far as we are aware, Placed has not responded to the findings of the report. Therefore, we want to take this opportunity to outline several problematic practices that we have observed through our work. We understand that VeraSafe Ireland has been appointed as Foursquare's representative in the EU for data protection matters, and therefore this letter is also addressed to VeraSafe.

We would like to start by saying that throughout our report and this letter, we refer to "personal data" as set forth in GDPR Article 4(1). This includes any information relating to an identified or identifiable natural person, including identifiers such as Android Advertising IDs and IP addresses. As described in chapter 6.1 of our report, location data can be used to identify individuals, and is therefore considered personal data.

We would also like to emphasize that the Norwegian Consumer Council is not a regulatory body or supervisory authority. We are a governmentally funded interest organization working for consumer rights.

When the report was published on January 14th 2020, the Norwegian Consumer Council did not formally file complaints to data protection authorities against the data collection we observed from Placed. However, as far as we understand, the data collection that we observed Placed engaging in lacks a valid legal basis for processing, and consequently does not comply with the GDPR.

¹ "Out of Control" <https://www.forbrukerradet.no/out-of-control/>



On the same day, the Norwegian Consumer Council and other consumer organisations asked data protection authorities to take action regarding all processing activities and sharing of personal data described in the report.² Additionally, on March 4th 2020, eleven digital and human rights organizations sent letters to their national data protection authorities, voicing concern about the data collection practices from a human rights perspective.³ This call for investigation includes our findings regarding Placed.

As described in chapter 6.1.6 of 'Out of Control', during our testing of the app MyDays, we observed transmissions of personal data such as GPS coordinates and the Android Advertising ID to Placed. During the testing period, Placed was observed receiving the GPS coordinates more than 250 times, giving a very detailed picture of the consumer.

We acknowledge that third party service providers may need to collect some data in order to provide various in-app functionalities. However, as far as we can understand from the Placed (Foursquare) privacy policy, Foursquare reserves the right to use the data collected from MyDays for a variety of its own purposes.

We, our partners, and advertising service providers receive Data from unaffiliated apps and websites, advertising exchanges, ad platforms, ad networks or from our partners, which we, our partners and advertising service providers may use to send interest-based advertising. The Data collected for this purpose includes Data such as activity when using the Consumer Services or on unaffiliated websites and apps, or Data received from web browsers or operating systems such as browser types and settings, the operating systems, device models, carriers, location information, IP address, mobile device and advertising identifiers (e.g. Apple IDFA or Google Advertising ID), as well as cookie information, pixel or other similar technology.⁴

The consumer is not in a position to know how this information may be used or shared, and how to meaningfully be in control. As described in the report, consumers have no way to understand how their personal data is shared with third parties for commercial purposes. In short, consumers expect that personal data stays between them and the apps that they use.

Under the GDPR, the processing of personal data requires a valid legal basis. As described in the legal analysis in chapter 8 of 'Out of Control', the collection, compilation and use of personal data for advertising and other commercial purposes is often impossible for consumers to understand, and therefore data controllers such as Placer cannot rely on consent for this processing.

² "Consumer organisations call to stop online advertising companies' massive surveillance practices infringing EU laws" https://www.beuc.eu/publications/beuc-x-2020-002_letter_to_executive_vice-president_vestager.pdf

³ "Rights Organizations Warn about Unlawful Data Exploitation in Popular Apps" <https://www.liberties.eu/en/news/7-eu-countries-warn-about-unlawful-data-exploitation-of-popular-apps/18864>

⁴ Foursquare privacy policy [accessed 05.05.2020] <https://foursquare.com/legal/privacy>



Furthermore, the extent of tracking that we observed constitutes a major breach of the rights and freedoms of the individual data subject, which outweighs any legitimate interest Placed may claim to have to process this data for commercial purposes.

Therefore, we cannot see that Placed fulfils any of the relevant legal bases for the processing of personal data that we observed. We expect that Placer changes its practices to bring it into compliance with the GDPR, and delete any data that has been collected without a valid legal basis.

Please do not hesitate to get back to us if we have misunderstood anything about the practices of Placed.

This letter will also be forwarded to Datatilsynet, which is the relevant data protection authority investigating the issues highlighted in our report.

Best regards
The Norwegian Consumer Council

Inger Lise Blyverket
Director General

Gro Mette Moen
Acting Director of Digital Services

CC: Datatilsynet
Att: Tobias Judin
Tobias.Judin@Datatilsynet.no

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