

Decision

Diary no

2020-12-14

DI-2020-4534

Your diary no

Uppsalahem AB

Box 136

751 04 Uppsala

Uppsalahem AB - Supervision according to

data protection regulation

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The Swedish Data Protection Authority

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The Swedish Data Protection Authority's decision

The Data Inspection Authority states that Uppsalahem AB has processed personal data in violation of Article 6.1 f) the data protection regulation¹ by carry out camera surveillance of common areas in an apartment building as well as parts of homes in the same building between 25 February 2020 and 14 May 2020 when the interest in monitoring does not outweigh those registered interests as well as fundamental freedoms and rights at the site.

Datainspektionen decides with the support of articles 58.2 and 83 data protection regulation for violation of article 6.1 f) that Uppsalahem AB must pay an administrative sanction fee of SEK 300,000.

Account of the supervisory matter

On 9 March 2020, the Data Protection Authority received a complaint about camera surveillance in an apartment building. The complaint alleges that Uppsalahem AB conducts camera surveillance in an apartment building with a camera that is mounted in such a way that it films directly at the complainant apartment door. The Swedish Data Protection Authority has started supervision of Uppsalahem AB for this purpose to investigate the scope of the surveillance and whether it personal data processing that the monitoring entails (henceforth

"the surveillance") has legal support according to Article 6 of the data protection regulation.

Uppsalahem AB (hereinafter "the company") has essentially stated the following.

The company is responsible for personal data for the monitoring. The camera has been mounted in the residential building in the manner alleged in the complaint and films the floor where the appellant lives. Two are visible in the camera's recording area apartment doors clearly in picture, one of which belongs to the appellant and the other belongs to a resident of the house who has been subjected to disturbances and harassment.

The appellant's door is filmed from the side and the other door is filmed from the front.

If the appellant opens his apartment door, a narrow angle of the hall is filmed the apartment. If the other tenant opens their apartment door, it is filmed the hall in the apartment.

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on that free flow of such data and on the repeal of Directive 95/46/EC (general data protection regulation).

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The camera was installed in the apartment building on February 25, 2020 and the surveillance has been going on around the clock since then until 14 May 2020. Monitoring takes place only with image recording, without real-time monitoring or interception or recording of sound. Access to the material is limited to five executives within the company – one lawyer, one trustee, two resident supporter and a resident consultant - and the material is only stored locally in the camera. Housing coordinator, housing consultant and manager

need access to the material in their work to manage

disturbance cases. Lawyers need access to the material in the cases of a legal

assessment needs to be made and whether materials need to be used as

evidence in disputes. To be able to take part in the material, you have to load

download the footage on location from the camera to an external drive. Meanwhile then

monitoring was in progress, no access to the material has actually taken place, and

material has also not been shared with any external actor.

The purpose of the surveillance is to deal with the disturbances

which has been going on in the stairwell for a long time, but which escalated at the beginning

of 2019. It has involved potentially criminal behavior in the form of

vandalism and harassment as well as other types of disruptive behavior that do not

are necessarily criminal. The appellant has been singled out by other residents as

whoever is responsible for the problems. The camera has been pointed at one

apartment door belonging to a resident who has been particularly exposed to harassment

in order to identify the perpetrator when he is at the door.

The company supports its surveillance on the legal basis of balance of interests

according to article 6.1 f) of the data protection regulation. In its balance of interests has

the company has weighed its own interest in conducting the surveillance against that of the individuals

interest in the protection of personal integrity. The company has stated that

the following circumstances have essentially been taken into account in a strengthening direction for

its surveillance interest.

□

The landlord's obligation according to the Land Code ch. 12. to take action

to have disturbances in the rental property cease and that of the tenants

right to compensation if the landlord does not take such measures,

□

the existing problem and the incidents that occurred on

the place,

□

the importance of identifying the perpetrator or perpetrators,

□

the potential deterrent effect that surveillance could have on

future incidents as well

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□

the safety-creating function the surveillance could have had for them

residents who have been subjected to harassment and vandalism.

The company has stated that it has weighed its security interest against them

individuals' interest in not being monitored at the site. The company has at the same time

stated that it has been assessed that the breach of privacy that the surveillance involves

has been limited by the following measures taken in connection with

the surveillance.

□

The fact that staff at Uppsalahem do not have direct access to

recorded material as well

□

that access to material should only take place when there are strong reasons.

With this in mind, the company considers that the security interest is more important

than the privacy interest and that the surveillance is therefore permitted according to article

6.1 f of the data protection regulation.

Justification of decisions

What is covered by the Swedish Data Protection Authority's examination of the case?

The Data Protection Regulation contains a large number of rules that must be followed

processing of personal data, including that which takes place through

camera surveillance. Within the scope of this supervisory matter treats

The Swedish Data Protection Authority not all rules and issues that can

updated in the event of such personal data processing as the current one

the monitoring means. The examination is limited to the question of whether the company has

had support for the processing in any of the legal bases that appear from

Article 6 of the Data Protection Regulation. The Swedish Data Protection Authority therefore does not take

position on whether the company has followed or not followed any others of

the provisions of the data protection regulation within the framework of this case, such as

for example, the provisions on the rights of the data subjects according to the articles

12-22 of the data protection regulation. Supervision does not include either

the provisions of the Camera Surveillance Act (2018:1200), for example about

permit obligation, disclosure obligation or confidentiality obligation.

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The Swedish Data Protection Authority's assessment

Article 6.1 f) - balance of interests

The company has stated that the current monitoring is supported by Article 6.1 f)

data protection regulation. There are three prerequisites that must be

fulfilled for this to be the case.² The first condition is that they

interests that the surveillance intends to protect must constitute legitimate ones

interests. The second condition is that the surveillance is necessary in order to

protect the relevant interest or interests. The third condition is that the data subject's fundamental rights and freedoms do not outweigh the legitimate interest that the surveillance intends to protect. These props shall therefore, each is examined separately within the framework of this case.

Is the company's surveillance interest justified?

The first part of the assessment concerns the nature of the interests which the guard must protect. Not every conceivable interest that could achieved or protected by camera surveillance may be considered justified.

A legitimate interest is an interest which, in general, is enjoyed the protection of the legal order or is otherwise considered legitimate, ethical or defensible. An interest protected by EU or relevant national law right, for example, must be regarded as justified. The Swedish Data Protection Authority must therefore decide whether the company's security interest can be considered to be justified in this case.

The purpose of the surveillance in this case has been to get things right with the disturbances that occurred in the property over a longer period time. The disturbances have largely consisted of potentially criminals attack on residents' freedom, peace, health or property. The interest of preventing, deterring or detecting crime is normally considered one legitimate interest. The EU Court has further determined in case C-708/183 that a

The housing association has a legitimate interest according to the elderly data protection legislation to protect condominium owners' property, health and life. There is no reason to assume that the entry into force of the data protection regulation brought about any change in the legal situation in that part.

It may further be assumed that a landlord has the same interest in relation to its tenants that a condominium association has in relation to its own

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Judgment of the European Court of Justice in case C-13/16 Rigas Satikisms point 28.

The judgment of the European Court of Justice in case C-708/18 TK paragraph 42.

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members. The Swedish Data Protection Authority therefore assesses that the company's interest in carrying out surveillance at the site has constituted a legitimate interest.

Is the surveillance necessary to safeguard the surveillance interest?

Furthermore, the surveillance must be necessary to protect the aforementioned interests.

In this assessment, the Swedish Data Protection Authority must check that it justified

the interest that emerged in the case cannot reasonably be protected in an equal way

effective way through other means that intrude on them to a lesser extent

fundamental freedoms and rights were registered, in particular the right to protection

for privacy and the right to protection of personal data according to articles 7 and

8 of the EU Charter of Rights³. The condition that the processing of personal data shall

be necessary must further be tested together with the principle of

data minimization, which appears from article 5.1 c of the data protection regulation. ⁴

It appears from the investigation into the case that the company has taken alternative and

less privacy-sensitive measures to camera surveillance before the camera

was mounted. However, these measures have not had the intended effect. Then the camera

was installed, the disturbances in the stairwell basically stopped completely and

held. This suggests that the surveillance was necessary to protect the company's

and the tenants' legitimate interests.

It must also be taken into account in the assessment of whether the surveillance was necessary or not

not if the camera has been used in a way that limits the intrusion into it
the personal integrity that the surveillance entails without for that matter
in order to jeopardize the effectiveness of the surveillance.⁵ In the present case, has
the breach of privacy has been limited by the measures the company has taken
applies to access to the recorded material. The company has also chosen to conduct
the surveillance only with a camera and in the place where it has been judged that
the surveillance had the potential to produce the greatest effect, which is consistent with
the principle of task minimization. At the same time, it could have been minimized
data collection further by masking parts of the camera
catchment area, especially the apartment doors that are clearly visible in the picture. MAN
could also for the same reason have considered mounting the camera so that
you filmed from a different angle or adjusted the camera in some other way
catchment area. By doing so, it would have been possible to avoid filming in

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Charter of Fundamental Rights of the European Union (2010/C 83/02).

C-708/18 TK paragraphs 47-48.

C-708/18 TK, paragraph 50.

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the dwellings on the first floor, which has very likely happened below
the time the camera has been in operation.

Taking into account that the alternative measures taken by the company before

however, the Data Inspectorate assesses that the camera was installed without effect

overall, that the surveillance was necessary to safeguard the company's and the residents' legitimate interests.

Do the interests of the data subjects outweigh the surveillance interest?

Initially, it can be stated that camera surveillance by definition means a restriction of the right to protection of personal data, which guaranteed by Article 8 of the Charter of Rights. Because the coverage in this the case has been conducted in close proximity to individuals' private residences, it has also meant a restriction of the right to respect for private and family life and own residence guaranteed by Article 7 i the charter of rights. Because the surveillance has taken place on the property's first floor, all residents of the house have been subject to surveillance on the way to and from his residence during the entire period when the camera was running. This applies especially for the appellant and residents of the apartment next to the appellant, because their apartment doors are so clearly included in the camera's coverage area.

It must also be taken into account that jurisprudence regarding monitoring of common spaces in apartment buildings have been restrictive. It has been described, for example that guarding entrances to apartment buildings - where the interest in privacy can assumed to be somewhat lower than in the present case - can only be accepted in pure form exceptional cases.⁶ The European Data Protection Board (EDPB) has further stated that the data subject should not reasonably expect to be subject to surveillance on private land or in residential environments.⁷ These circumstances mean that the interest in privacy at the site as a starting point weighs heavily.

However, the interest in privacy is somewhat weakened by the fact that the surveillance partly aims to protect the persons who have been the subject of the surveillance as well as the fact that personnel at the company did not have direct access to the recorded material. In this context, the Swedish Data Protection Authority would like to remind you of

that it is up to it in all personal data processing

personal data controller to implement routines that involve access

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See Datainspektionen's decision of 21 June 2011 in case number 1745-2010.

EDPB Guidelines 3/2019 on processing of personal data through video devices, p. 13

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to personal data only takes place when there is a reason for it. That the company i

the present case has had such a routine in place therefore does not affect

the privacy interest in either a strengthening or weakening direction. By a

overall assessment, the Data Inspectorate considers that the privacy interest on

the place weighs very heavily.

As far as the surveillance interest is concerned, the Swedish Data Protection Authority finds no reason to

make any other assessment of the circumstances to be weighed than what

the company has done. In light of these, the Data Inspection Authority assesses that

the surveillance interest at the site weighs relatively heavily.

The company has thus had a significant surveillance interest, but with consideration

to the very weighty interest in privacy, the Data Inspectorate assesses

that the privacy interest weighs more heavily. The Swedish Data Protection Authority therefore notes that

Uppsalahem AB has violated Article 6 of the data protection regulation by

camera surveillance has been carried out to protect an interest that has no weight

outweigh the interests of the data subjects as well as fundamental freedoms and

rights on site.

Choice of intervention

In article 58 of the data protection regulation, all powers are specified as

The Swedish Data Protection Authority has According to Article 58.2, the Data Inspectorate has a number of corrective powers, including warnings, reprimands or limitations of treatment.

According to Article 58.2 (i) of the data protection regulation, it appears that the supervisory authority shall impose administrative penalty fees in accordance with Article 83. According to Article 83.2, administrative penalty fees, depending on the circumstances of the individual case, imposed in addition to or in instead of the measures referred to in article 58.2 a-h and j. Furthermore, it appears from article 83.2 n which factors must be taken into account when deciding on administrative penalty fees at all shall be imposed and upon determination of the amount of the fee.

Instead of penalty fees, in certain cases according to reason 148 to data protection regulation a reprimand is issued instead of penalty fees if it is a question of a minor violation. Consideration must be given in the assessment

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are taken into account such as the nature of the violation, degree of severity and duration.

Penalty fee

The Swedish Data Protection Authority has assessed above that the company through its camera surveillance of a floor in an apartment building, including apartment doors and parts of housing, has violated Article 6.1 f) of the data protection regulation.

In view of the personal data processing as this supervision includes has meant illegal camera surveillance concerning private individuals in its

home environment, it is not a question of a minor violation. The Swedish Data Protection Authority wants in this context emphasize that the guarding of residents' apartment doors and parts of their homes have formed a particularly privacy-sensitive part of the surveillance and that because of this there is no reason to replace it the penalty fee with a reprimand.

Since the surveillance has ended, it is not appropriate to ban it in the future the surveillance. For the same reason, it is also not relevant to submit the company to limit the processing in a way that would make it legal.

There is therefore no corrective action other than penalty fees current for the treatment that has taken place. The company must therefore be imposed a administrative penalty fee.

Determination of penalty fee

According to Article 83.1 of the Data Protection Regulation, each supervisory authority must ensure that the imposition of administrative penalty charges in each individual case is effective, proportionate and dissuasive. The administrative according to Article 83.3, the penalty fee may not exceed the amount for it grossest violation if it is the question of one or the same data processing or connected data processing.

In article 83.2 of the data protection regulation, all factors that must taken into account when determining the size of the penalty fee. At the assessment of the size of the penalty fee, among other things, Article 83.2 must be taken into account a (nature, severity and duration of the offence), b (intention or negligence), g (categories of personal data), h (how the breach came about Datainspektionen's knowledge) and k (other aggravating or mitigating factor such as direct or indirect financial gain) data protection regulation.

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According to article 83.5 a of the data protection regulation, in the event of violations of the basic principles of processing, including the terms of consent, according to articles 5, 6, 7 and 9, administrative penalty fees are imposed on up to EUR 20,000,000 (twenty million) or, in the case of companies, of up to 4 % of the total global annual turnover in the previous financial year, depending on which value is the highest. According to the company's annual report for In 2019, the company had a turnover of approx. 1,450,000,000 (one billion four hundred and fifty million) kroner during that budget year. 4% of that amount is 58,000,000 (fifty-eight million) kroner. Because this amount is less than 20,000,000 EUR, the penalty fee must be determined at an amount between 0 and EUR 20,000,000.

The penalty fees must be effective and proportionate in the individual case and discouraging. In the Data Inspectorate's assessment of the breach character, the following factors have been taken into account in the aggravating direction.

□

The breach has come to the attention of the Swedish Data Protection Authority through a complaint from an individual affected by the violation.

□

Camera surveillance has taken place of tenants in their home environment, which is dependent on the company.

The following factors have been considered in mitigation.

□

The interest that the surveillance has been intended to protect has

assessed as a legitimate interest and the surveillance has been necessary to safeguard this interest.

□

The violation was committed negligently rather than intentionally.

□

The violation has been going on for a shorter period of time.

Overall, the Data Inspection Authority finds that an efficient, proportionate and dissuasive penalty fee for the established violation is 300,000 (three hundred thousand) kroner.

Uppsalahem AB must therefore pay an administrative sanction fee of 300 000 kroner.

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This decision has been made by the director general Lena Lindgren Schelin after presentation by Gustav Linder. In the final processing also has unit manager Charlotte Waller Dahlberg participated.

Lena Lindgren Schelin, 2020-12-14 (This is an electronic signature)

Appendix

Appendix – How to pay penalty fee

Copy for the attention of:

Uppsala municipality

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How to appeal

If you want to appeal the decision, you must write to the Swedish Data Protection Authority. Enter in the letter which decision you are appealing and the change you are requesting.

The appeal must have been received by the Swedish Data Protection Authority no later than three weeks from the day you were informed of the decision. If the appeal has been received in time the Swedish Data Protection Authority forwards it to the Administrative Court in Stockholm for examination.

You can e-mail the appeal to the Swedish Data Protection Authority if it does not contain any privacy-sensitive personal data or information that may be covered by secrecy. The authority's contact details appear on the first page of the decision.