

Decision

Diary no

2019-11-04

DI-2019-5558

Your diary no

204 219 727-19/113

Tax Agency

171 94 Solna

Supervision according to the Criminal Data Act (2018:1177) –

The Tax Agency's list of treatments

The Swedish Data Protection Authority's decision

1.

The Data Inspectorate states that the Tax Agency's list of treatments, for each category of treatment, indicates the legal basis for processing according to ch. 3 § 1 of the Criminal Data Ordinance (2018:1202) in an unclear way.

The Swedish Data Protection Authority orders according to ch. 5. 7 § 2 of the Criminal Data Act

The Tax Agency that in the list of treatments, for each category of processing, specify the legal basis for the processing in so way stated in the justification for this decision, no later than April 30 2020.

2. The Swedish Data Protection Authority notes that the Swedish Tax Agency's list of treatments, for a category of treatment, indicates the categories of registered persons who are affected by the processing according to ch. 3 § 5 of the criminal data regulation in an unclear manner.

The Swedish Data Protection Authority orders according to ch. 5. 7 § 2 of the Criminal Data Act

The Tax Agency that in the list of treatments, for each category of processing, specify the categories of data subjects concerned the processing in the manner specified in the justification for this decision, no later than April 30, 2020.

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3. The Tax Agency is ordered to submit a written statement by 30 April 2020 at the latest reporting to the Data Inspectorate of the measures taken by the Swedish Tax Agency taken due to the orders in points 1-2.

Account of the supervisory matter

On 7 May 2019, the Swedish Data Protection Authority started supervision of the Swedish Tax Agency with the aim of review the Swedish Tax Agency's list of personal data processing is in accordance with ch. 3 Section 3 of the Criminal Data Ordinance.

The Swedish Data Protection Authority visited the Swedish Tax Agency as part of the supervisory matter

14 June 2019. The Tax Agency has shown the list of

treatments. During the inspection, the Data Inspectorate has examined certain selected ones categories of treatments in the list of treatments. The selection passed

of central systems in the Swedish Tax Agency's crime-fighting activities as well as one

number of randomly selected categories of treatments. The Swedish Data Protection Authority has

asked questions about the Swedish Tax Agency's list of treatments and the Swedish Tax Agency

has been given the opportunity to comment on the inspection protocol drawn up in

connection with the inspection occasion.

The Swedish Tax Agency has, among other things, stated the following. The column "legal basis for treatment" will be reworked and specified. The Swedish Tax Agency will review whether the writing "All" should be replaced or developed so that categories of registered regarding a category of treatment is described more clearly.

A general description of security measures taken has been added to the header on the list.

In its review of the Swedish Tax Agency's list of treatments observed mainly the following. The list of treatments include the following columns.

- Purpose,
- legal basis for processing,
- categories of registered,
- categories of personal data that may be processed,
- contains sensitive personal data,
- categories of sensitive personal data,
- category of recipient,
- transferred to a third country or international organization,

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categories of officials who have access to the personal data that treated,
use of profiling as well as
deadlines for processing personal data.

Furthermore, security measures taken are described in the head of the list

over treatments.

Justification of the decision

What the Swedish Data Protection Authority has to decide on

In the supervisory matter, the Data Inspectorate has to take a position on the Tax Agency's

list of treatments, meets the requirements in ch. 3. Section 3 of the Criminal Data Ordinance. The inspectorate has chosen to

limit supervision by selecting

certain categories of treatment in the list for special review.

Applicable regulations

On August 1, 2018, the Criminal Data Act entered into force with supplementary

provisions of the Criminal Data Ordinance. The Criminal Data Act applies

according to ch. 1 Section 2 for the processing of personal data carried out for the purpose of

prevent, prevent or detect criminal activity, investigate or prosecute

crime or enforce criminal penalties. It also applies to treatment

of personal data carried out for the purpose of maintaining public order and

security. For the Swedish Tax Agency, in addition to the Criminal Data Act, it applies since 1 January

2019 also the law (2018:1696) on the Tax Agency's processing of personal data

within the area of the Criminal Data Act (Skatteverket's Criminal Data Act) with

supplementary provisions in the regulation (2018:1877) on the Tax Agency

processing of personal data within the scope of the Criminal Data Act.

According to ch. 3 § 3 of the Criminal Data Ordinance, the personal data controller must keep

a list of the categories of processing of personal data which

he is responsible for. The list must contain the name and contact details of the personal data controller, jointly personal data controllers

and data protection officer. The list must also, for each category of

treatment, contain the following information:

1. the legal basis for the processing,
2. the purposes of the processing,
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3. the categories of officials who have access to the personal data which treated,
4. the categories of recipients to whom the data may be disclosed, also in third countries or international organizations,
5. the categories of data subjects affected by the processing,
6. the categories of personal data that may be processed,
7. collections of transfers of personal data to third countries or international organizations,
8. use of profiling,
9. if possible, deadlines for how long the categories of personal data may be processed, and
10. if possible, a general description of which security measures are has been taken.

According to ch. 5 Section 7 of the Criminal Data Act allows the Data Inspectorate to use the corrective powers if it is established that personal data is being processed in violation by law or other constitution or that the person in charge of personal data or the personal data processor does not fulfill its obligations in any other way.

The Tax Agency's list of treatments

The Tax Agency for a list according to ch. 3. Section 3 of the Criminal Data Ordinance above the categories of personal data processing for which the authority is responsible for according to the Criminal Data Act. For each category of treatment, according to the provision specifies certain enumerated information (items 1-10).

The Tax Agency's list of treatments contains for each category of treatment points 1-10.

The Swedish Data Protection Authority does not have any views regarding points 2-4 as well 6-10. Collections of transfers of personal data to third countries or international organizations (item 7) are listed as a separate column i

The Tax Agency's list of treatments. According to the preparations for

The Criminal Data Act takes ch. 3. 3 § 7 of the criminal data regulation aimed at certain transfers that have been made to third countries or international organisations

(see SOU 2017:29 p. 323 and p. 621-624). The Swedish Data Protection Authority assumes that such transfers, if they occur, will be listed in the Tax Agency list of treatments.

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Point 1 – the legal basis for the processing

The Swedish Data Protection Authority's assessment

The Data Inspectorate states that the Tax Agency's list of treatments, for each category of treatment, indicates the legal basis for the treatment in an unclear way.

The reasons for Datainspektionen's assessment are as follows

According to ch. 3 3 § 1 of the criminal data regulation must a list of treatments, for each category of treatment, contain information about it the legal basis for the processing.

In the Swedish Tax Agency's list of treatments, the legal basis for

the treatment, for each category of treatment, either with four SFS numbers or with reference to a provision in the law (1997:1024) on

the Tax Agency's law enforcement activities and certain regulations in "SBDL". The Tax Agency has stated that the column "legal basis for processing" will be reworked and specified.

In the preparatory work for the Criminal Data Act, it is stated that the legal basis is meant the constitutional support for the treatment, i.e. the regulation of the work task which causes the processing of personal data (see SOU 2017:29 p. 322).

The Data Inspectorate considers, on the basis of what appears from the preparatory work, that it is not enough to only state the SFS number as the legal basis for the treatment. It further appears that the references to provisions of the "SBDL" in the column "legal basis for processing" do not apply provisions in the Swedish Tax Agency's crime data act. The inspection notes against this background that the Tax Agency's list of treatments, for each category of processing, indicates the legal basis for the processing on one unclear way. Because of this, the inspection has found reasons to use the corrective powers in ch. 5 Section 7 of the Criminal Data Act.

The Swedish Data Protection Authority orders according to ch. 5. § 7 § 2 of the Criminal Data Act Swedish Tax Agency that in the list of treatments, for each category of treatment, specify the legal basis for the processing.

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Point 5 – the categories of data subjects affected by the processing

The Swedish Data Protection Authority's assessment

The Data Inspectorate states that the Tax Agency's list of treatments, for a category of treatment, indicates the categories of data subjects who are affected by the processing in an unclear way.

The reasons for Datainspektionen's assessment are as follows

According to ch. 3 § 3 § 5 of the criminal data regulation must a list of treatments, for each category of treatment, contain information about them categories of data subjects affected by the processing.

It appears from the preparatory work for the Criminal Data Act that categories of registered persons can be a group of people who have a specific role, e.g. suspects, plaintiffs, witnesses or relatives of any of these (see SOU 2017:29 p. 322).

The Data Inspectorate considers, on the basis of what appears from the preparatory work, that it is not sufficient to specify "All" as categories of registrants.

The inspection therefore states that the Tax Agency's list of treatments, for a category of treatment, indicates the categories of data subjects who are affected by the processing in an unclear way. The inspection has due to this found reason to use the correctives the powers in ch. 5 Section 7 of the Criminal Data Act.

The Swedish Data Protection Authority orders according to ch. 5. § 7 § 2 of the Criminal Data Act Swedish Tax Agency that in the list of treatments, for each category of treatment, specify the categories of data subjects affected by the processing.

This decision has been made by unit manager Charlotte Waller Dahlberg after presentation by lawyer Max Blidberg.

Charlotte Waller Dahlberg

Max Blidberg

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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 the decision was announced. 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.