

Decision

Diariennr

2020-12-14

DI-2020-4534

Ert diariennr

Uppsalahem AB

Box 136

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Uppsalahem AB - Supervision according to

the Data Protection Regulation

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The Data Inspectorate's decision

The Data Inspectorate states that Uppsalahem AB has processed personal data in breach of Article 6 (1) (f) the Data Protection Regulation¹ by: conduct camera surveillance of common areas in an apartment building and parts of dwellings in the same house 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 on the ground.

The Data Inspectorate decides on the basis of Articles 58 (2) and 83 the Data Protection Ordinance for violation of Article 6 (1) f) that Uppsalahem AB shall pay an administrative sanction fee of SEK 300,000.

Report on the supervisory matter

On 9 March 2020, the Data Inspectorate received a complaint about camera surveillance in an apartment building. The complaint alleges that Uppsalahem AB conducts camera surveillance in an apartment building with one camera mounted in such a way that it films directly towards the complainant's apartment door. The Data Inspectorate has initiated supervision of Uppsalahem AB for the purpose to investigate the extent of the surveillance and whether it personal data processing that the monitoring entails (hereinafter

"Surveillance") has legal support under Article 6 of the Data Protection Regulation.

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

The company is responsible for personal data for monitoring. The camera has been mounted in the residential building in the manner claimed in the complaint and filmed the floor where the appellant lives. In the shooting area of the camera, two are visible apartment doors clearly in the picture, one of which belongs to the complainant and the other belongs to a resident of the house who has been exposed to disturbances and harassment.

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

If the complainant opens his apartment door, a narrow angle of the hall is filmed in the apartment. If the other tenant opens his apartment door 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 individuals with regard to the processing of personal data and on that free flow of such data and repealing Directive 95/46 / EC (General Data Protection Regulation).

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The camera was installed in the apartment building on 25 February 2020 and

The surveillance has been going on around the clock since then until 14 May 2020. Surveillance only takes place with image recording, without real-time surveillance or listening or recording sound. Access to the material is restricted to five executives within the company - one lawyer, one trustee, two housing supporter and a housing consultant - and the material is stored only locally in the camera. Housing coordinator, housing consultant and manager

need access to the material in their work of handling

disturbance cases. A lawyer needs access to the material in cases where 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 must load

download the media in place from the camera to an external device. In the meantime then

the surveillance was ongoing, 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 in the beginning

of 2019. It has been about 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

the one who is responsible for the problems. The camera has been aimed 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 monitoring on the legal basis of balancing interests

pursuant to Article 6 (1) (f) of the Data Protection Regulation. In its balance of interests has

the company weighed its own interest in conducting surveillance against the individuals

interest in the protection of privacy. The company has stated that

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

their interest in surveillance.

□

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

to cause disturbances in the rental property to cease as well as tenants

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

□

the existing problems and the incidents that have occurred

the place,

□

the importance of identifying the perpetrator or perpetrators,

□

the potentially deterrent effect that surveillance could have

future incidents as well

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□

the security-creating function the surveillance could have for them

residents who have been subjected to harassment and vandalism.

The company has stated that it has weighed its interest in surveillance against them

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

stated that it has been assessed that the invasion of privacy that the surveillance entails

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 interest in surveillance outweighs

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

6.1 f the Data Protection Regulation.

Justification of decision

What is covered by the Data Inspectorate'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 framework of this supervisory matter deals

The Data Inspectorate does not have all the rules and issues that can

becomes relevant in such a processing of personal data as the current one

the surveillance entails. The test is limited to the question of whether the company has

supported the treatment in any of the legal bases set out in

Article 6 of the Data Protection Regulation. The Data Inspectorate thus does not take

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

the provisions of the Data Protection Regulation in the context of this case, such as

for example, the provisions on the rights of data subjects under the Articles

12-22 Data Protection Ordinance. Supervision does not cover either

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

duty of permission, duty of disclosure or duty of confidentiality.

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The Data Inspectorate's assessment

Article 6 (1) (f) - balancing of interests

The company has stated that the current monitoring is supported by Article 6 (1) f)

the Data Protection Regulation. There are three conditions that must be met

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

interests that the guardian intends to protect must be justified

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

protect the current interest or interests. The third condition is that the data subject's fundamental freedoms and rights do not outweigh the legitimate interest that the surveillance intends to protect. These props should therefore be tried separately in the context of this case.

Is the company's security interest justified?

The first part of the assessment concerns the nature of the interests that the surveillance should protect. Not all conceivable interests could achieved or protected by camera surveillance may be considered justified.

A legitimate interest is an interest that, in general, is enjoyed protection of the legal system or is otherwise considered legitimate, ethical or defensible. An interest that is protected by EU law or relevant national right must, for example, be considered justified. The Data Inspectorate must therefore take a position on whether the company's security interest can be considered justified in this case.

The purpose of the surveillance in this case has been to come to fruition with the disturbances that have occurred in the property during a longer time. The disturbances have largely consisted of potentially criminal ones attacks on residents' freedom, peace, health or property. The interest of that prevent, prevent or detect crime is normally considered to be one legitimate interest. The European Court of Justice has further ruled in case C-708/183 that a tenant-owner association has a legitimate interest according to the elderly data protection legislation to protect tenants' property, health and life. There is no reason to assume that the entry into force of

The Data Protection Regulation has led to a change in the legal situation in that area.

It may further be assumed that a landlord has the same interest in relation to their tenants that a tenant-owner association has in relation to theirs

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Judgment of the European Court of Justice in Case C-13/16 Riga's Saticism, paragraph 28.

Judgment of the European Court of Justice in Case C-708/18 TK paragraph 42.

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members. The Data Inspectorate therefore assesses that the company's interest in conducting on-site surveillance has constituted a legitimate interest.

Is surveillance necessary to safeguard the interest in surveillance?

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

In this assessment, the Data Inspectorate must check that it is justified

the interest that has emerged in the case cannot reasonably be protected on an equal footing

effectively by other means which to a lesser extent interfere with the

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

for privacy and the right to the protection of personal data under Articles 7 and

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

be necessary shall be further tested together with the principle of

data minimization, as set out in Article 5 (1) (c) of the Data Protection Regulation.⁴

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

less privacy-sensitive measures for camera surveillance before the camera

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

installed, the disturbances in the stairwell ceased in principle completely and

the direction. This suggests that the surveillance was necessary to protect the company

and the legitimate interests of tenants.

It must also be taken into account in the examination of whether the monitoring was necessary or

not if the camera has been used in a way that limits its intrusion
the privacy that surveillance entails without compromising that matter
would jeopardize the effectiveness of surveillance.⁵ In the present case,
the invasion of privacy is limited by the measures that the company has taken
applies to access to the recorded material. The company has also chosen to operate
surveillance only with a camera and at the place where it was judged that
the surveillance had the potential to give the greatest effect, which is consistent with
the principle of data minimization. At the same time, it could have been minimized
further data collection by masking parts of the camera
catchment area, especially the apartment doors that are clearly visible in the picture. MAN
had also for the same reason been able to consider mounting the camera so that
you filmed from a different angle or in some other way adjust the camera
catchment area. This would have made it possible to avoid filming in

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

C-708/18 TC points 47-48.

C-708/18 TC, point 50.

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the dwellings on the ground floor, which has most likely happened below
the time the camera was in operation.

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

however, the camera was mounted without effect, the Data Inspectorate assesses, however

overall that the monitoring was necessary to take advantage of the company's and the legitimate interests of the residents.

Do the interests of the data subjects outweigh the interests of the security guards?

Initially, it can be stated that camera surveillance by definition

entails a restriction of the right to protection of personal data, which

guaranteed by Article 8 of the Statute of Rights. Because the surveillance in this

the case has been conducted in close proximity to individuals' private homes, it has

also entailed a restriction of the right to respect for private and

family life and own housing guaranteed by Article 7 of the

the Charter of Rights. Because the surveillance has taken place on the property's first

floor level, all residents in the house have been subject to surveillance on the way to

and from his residence throughout the period when the camera was on. This applies

especially for the complainant and the accommodation in the apartment next to the complainant, because

their apartment doors are so clearly included in the camera's recording area.

It should also be taken into account that case law regarding the monitoring of common

spaces in apartment buildings have been restrictive. It has been described, for example

that guarding of entrances to apartment buildings - where the interest in privacy can

assumed to be slightly lower than in the present case - can be accepted only in pure

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 living environments.⁷ These circumstances mean that

the interest in privacy at the site as a starting point weighs very heavily.

However, the interest in integrity is weakened somewhat by the fact that the surveillance

partly aimed at protecting the persons who have been the subject of surveillance

and by the fact that staff at the company did not have direct access to

the recorded material. In this context, the Data Inspectorate would like to remind

that it arrives at it in all personal data processing

personal data controller to implement routines that involve access

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See the Data Inspectorate's decision of 21 June 2011 in case no. 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 are reasons for it. That the company in

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

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

overall assessment, the Data Inspectorate considers that the integrity interest in

the place weighs very heavily.

As regards the interest in surveillance, the Data Inspectorate finds no reason to

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

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

the interest in surveillance at the site weighs relatively heavily.

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

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

that the interest in privacy outweighs. The Data Inspectorate therefore finds that

Uppsalahem AB has violated Article 6 of the Data Protection Ordinance by:

one has conducted camera surveillance to protect an interest that does not weigh

heavier than the interests of the data subjects as well as fundamental freedoms and

rights on the spot.

Choice of intervention

Article 58 of the Data Protection Regulation lists all the powers that:

The Data Inspectorate 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, the supervisory authority shall impose administrative penalty fees in accordance with Article 83. Pursuant to Article 83 (2), administrative penalty fees, depending on the circumstances of the individual case, applied in addition to or in instead of the measures referred to in Article 58 (2) (a) to (h) and (j)

Article 83 (2) (n) the factors to be taken into account in administrative decisions penalty fees in general shall be imposed and in determining the size of the fee.

Instead of penalty fees, in certain cases according to recital 148 to data protection regulation a reprimand is issued instead of penalty fees if it is a matter of a minor infringement. The assessment must be taken into account 8 (12)

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taken into account circumstances such as the nature of the infringement, the degree of difficulty and duration.

Penalty fee

The Data Inspectorate has above assessed 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 fact that the processing of personal data by this supervision includes has involved illegal camera surveillance concerning private individuals in its

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

As the surveillance has ceased, it is not relevant to ban it in the future the surveillance. For the same reason, it is also not relevant to impose the company to limit the processing in a way that would make it legal.

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

Determination of penalty fee

According to Article 83 (1) of the Data Protection Regulation, each supervisory authority shall: ensure that the imposition of administrative penalty fees in each individual cases are effective, proportionate and dissuasive. The administrative the penalty fee may not, in accordance with Article 83 (3), exceed the amount thereof the most serious violation if it is a question of one or the same data processing or interconnected data processing.

Article 83 (2) of the Data Protection Regulation sets out all the factors that must: taken into account when determining the size of the penalty fee. In the assessment the size of the penalty fee shall take into account, inter alia, Article 83 (2) a (nature, severity and duration of the infringement), b (intent or negligence), g (categories of personal data), h (how the breach came about The Data Inspectorate's knowledge) and k (other aggravating or mitigating factor such as direct or indirect financial gain)

the Data Protection Regulation.

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Pursuant to Article 83 (5) (a) of the Data Protection Regulation, in the event of infringements of the basic principles of treatment, including the conditions 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, up to 4 % of total global annual turnover for the previous financial year, depending on which value is highest. According to the company's annual report for In 2019, the company had sales of approximately 1,450,000,000 (one billion four hundred and fifty million) during that financial year. 4% of that amount is 58,000,000 (fifty-eight million) kronor. Because this amount is less than 20,000,000 EUR, the penalty fee shall be set at an amount between 0 and EUR 20,000,000.

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

☐

The violation has come to the Data Inspectorate's knowledge through a complaint from an individual affected by the infringement.

☐

Camera surveillance has been provided by tenants in their home environment, who is dependent on the company.

The following factors have been considered in a mitigating direction.

☐

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 out of negligence rather than intentionally.

□

The infringement has been going on for a short time.

Overall, the Data Inspectorate finds that an efficient, proportionate and

The deterrent penalty fee for the infringement found is 300,000

(three hundred thousand) kronor.

Uppsalahem AB must therefore pay an administrative penalty fee of 300

000 kronor.

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This decision was made by the Director General Lena Lindgren Schelin after

presentation by Gustav Linder. At the final processing has also

unit manager Charlotte Waller Dahlberg participated.

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

Appendix

Appendix - How to pay a penalty fee

Copy for information to:

Uppsala municipality

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How to appeal

If you want to appeal the decision, you must write to the Data Inspectorate. Enter i

the letter which decision you are appealing and the change you are requesting.

The appeal must have been received by the Data Inspectorate no later than three weeks from

the day you received the decision. If the appeal has been received in due time

The Data Inspectorate forwards it to the Administrative Court in Stockholm

examination.

You can e-mail the appeal to the Data Inspectorate if it does not contain

any privacy-sensitive personal data or data that may be covered by

secrecy. The authority's contact information can be found on the first page of the decision.