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Aktiebolaget Storstockholms Lokaltrafik

Diary number:

DI-2018-21487

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2021-06-21

Decision after supervision according to

data protection regulation Greater Stockholm Local Traffic

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The Privacy Protection Authority's decision

The Swedish Privacy Protection Agency (IMY) states that Aktiebolaget Storstockholms

Local traffic with org. No. 556013-0683 since December 10, 2018 and until the time

for the IMY's decision by using body-worn cameras in connection with

ticket control, processes personal data in violation of

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article 5.1 a of the data protection regulation<sup>1</sup> because the camera surveillance, with

both image and sound recording, took place in violation of the principle of legality

because it took place without a legal basis and contrary to the principle of openness

by not providing sufficient information to data subjects,

Article 5.1 c of the data protection regulation by processing more personal data

than was necessary for the purposes contrary to the principle of

task minimization,

Article 6.1 of the Data Protection Regulation by processing personal data without

to have some legal basis for it, as well

Article 13 of the Data Protection Regulation by not providing sufficient

information to the registered.

The Privacy Protection Authority decides with the support of articles 58.2 and

83 of the data protection regulation that Aktiebolaget Storstockholms Lokaltrafik must pay a

administrative sanction fee of SEK 16 million (sixteen million), of which:

a)

b)

SEK 4,000,000 (four million) refers to Aktiebolaget Storstockholms

Local traffic's use of body-worn cameras to prevent and

document threats and violence (purposes A and B), through the use of

pre-recording technology for one minute, which lacked a legal basis according to Article

6.1 f and has been in violation of the principle of legality and the principle of

data minimization in Article 5.1 a and c of the data protection regulation,

SEK 8,000,000 (eight million) refers to Aktiebolaget Storstockholms

Local traffic's use of body-worn cameras to ensure identity

on travelers who must pay a surcharge (destination C), which is not legal

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 the free flow of such data and on

repeal of Directive 95/46/EC (General Data Protection Regulation).

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basis according to Article 6.1 f and has been in conflict with the principle of legality and

the principle of data minimization in Article 5.1 a and c i

the data protection regulation and

SEK 4,000,000 (four million) refers to Aktiebolaget Storstockholms

Lokaltrafik's lack of information to the registered which is contrary to article

13 and the principle of transparency in Article 5.1 a of the data protection regulation.

Account of the supervisory matter

Background

The Norwegian Data Protection Authority (IMY), formerly the Data Protection Authority, was noticed

through information in the media that Aktiebolaget Storstockholms Lokaltrafik (SL) planned

to equip its ticket inspectors with body-worn cameras and therefore began enforcement

against SL.

The purpose of the supervision has been to review SL's personal data processing with them

the body-worn cameras have taken place in accordance with the rules on legal basis in Article 6

and applicable information to the data subjects in Article 13 of the Data Protection Regulation. IMY

has also investigated whether SL followed the principles of legality and transparency in Article 5.1 a

and the principle of data minimization in Article 5.1 c.

What emerged in the case

SL, in conjunction with IMY, supervises the company's use of body-worn devices

cameras, and the personal data processing that takes place as a result, stated in essence

following.

Initially, it was planned that the body-worn cameras would be used in

Stockholm's subway during a test period of two months from 10 December

2018 through February 10, 2019. However, the test period was extended to May 9

2019 and then another period to end on January 8, 2020. During

during the test period, there were 4-10 ticket inspectors who wore the body worn ones

the cameras.

The body-worn cameras would be used to film the missing travelers

valid ticket in connection with ticket control and which receives a surcharge issued.

The purpose of the treatment was to:

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prevent threatening situations in connection with ticket control,

documenting incidents that have occurred to facilitate investigation afterwards, as well as

ensure the identity of travelers who must pay surcharges.

During the course of the inspection, SL has decided to introduce the body-worn cameras

permanent. This means that the body-worn cameras are mostly used by about 55

a few ticket inspectors on weekdays and about 20 ticket inspectors on

holidays. SL has also expanded the geographical area of use for them

the body-worn cameras, from initially only being used in Stockholm's

subway, to be used in all types of traffic within SL's entire traffic network.

SL has stated that they have extensive problems with cheating. Of the investigation in

the case reveals that the loss of revenue in 2017 linked to fraudulent driving was 254

million kroner and in 2018 the corresponding figure was 280 million kroner. The

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however, according to the company, the financial loss is not the primary reason for working

actively with ticket checks, as it costs more than what SL receives in additional fees. SL has

as a principle that everyone who travels with the company must pay for their journey and it is SL who

must ensure that this happens. In addition, the loss of income from cheating must always be taken into account

when pricing tickets. The most common forms of cheating are to buy

discounted ticket without being entitled to the discount and traveling without a ticket. SL also has problems with cheating travelers stating someone else's identity at ticket control, which leads to difficulties in connection with demanding compensation for non-payment of surcharge in court.

According to SL, the use of the body-worn cameras has meant that approx 90 percent of the travelers show proof of identity, compared to around 60 percent without a body camera, that fewer additional charges are disputed and that four cases were dismissed during the test period due to the recorded material. Furthermore, SL has stated that the ticket inspectors feel that fewer travelers get upset in connection with the issuance of a surcharge and that the ticket inspectors feel safer.

SL has stated that the ticket inspectors wear the cameras during the entire work shift and control the camera themselves. The camera and microphone continuously record video with picture and sound. The cameras have a so-called circular memory, which means that there is a continuous automatic cleaning of all video material older than 2 minutes. After the cleaning is the recorded material, including personal data, deleted.<sup>3</sup> IMY hereinafter refers to the technique of continuous recording and erasure as pre-recording technology.

SL has described that the ticket inspector, in various situations, can activate a recording by pressing a record button. That information is then added to the recording which is stored in the camera through the pre-recording technology. SL has indicated that there is need to be able to preserve material that shows the sequence of events just before the issuing of a surcharge or in threatening/violent situations. Initially the material was stored for two minutes but this has been changed to one minute during supervision walk. IMY refers to the continued recording that takes place after the controller button press as activated recording.

SL has entered into an additional agreement with the personal data assistant who is responsible for

the ticket controls. It follows from the supplementary agreement that the cameras must be on for filming during the entire shift. When a ticket inspector has to issue a surcharge, he is instructed to record material. All situations where a surcharge is issued will thus to be documented. Furthermore, the ticket controller must document situations then threats arise.

After the controller finishes his work shift, the camera is placed in a communication doll that is stored in a locked area. The camera then uploads the material to a server for review by evidence administrators at SL and the footage becomes available to a few evidence administrators as soon as it is uploaded.

When a ticket inspector issues a surcharge, a paper is printed at the same time information about the company's personal data processing. The information shows among other that SL will process photos and/or films of the person served

The storage time of one minute has been applied since October 2019, before that the circular memory lasted for two minutes.

See

SL's final statement of 17 December 2020.

3 See p. 5 of SL's final statement from 17 December 2020.

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the surcharge. Furthermore, SL refers to its website for complete information on the processing of personal data.

SL has carried out an impact assessment regarding the processing of personal data when recording with the body-worn cameras. Of the impact assessment it appears that SL considers that the personal data processing that takes place during recording



are either of "acceptable level" or of "monitoring level", and that the risks are not high enough to require prior consultation.<sup>4</sup>

The Data Protection Regulation contains a large number of rules that must be followed in conjunction with the processing of personal data. Within the scope of this supervisory matter treats IMY not all the rules and issues that may arise in such a case personal data processing such as the current use of body-worn cameras implies.

IMY's examination is limited to the questions of whether SL has fulfilled the requirement on a legal basis for the current use of the body-worn cameras, if SL lives up to them the basic principles of legality, transparency and data minimization for processing of personal data and whether SL has provided that information to them registered as required by the data protection regulation.

Justification of the decision

Personal data controller

SL has stated that Aktiebolaget Storstockholms Lokaltrafik is responsible for personal data for the processing of personal data that took place in connection with ticket control. IMY does no other assessment.

What rules apply to SL's use of the cameras?

Camera surveillance is a form of personal data processing. If and in which the extent to which camera surveillance is permitted is regulated in the data protection regulation and the camera surveillance act (2018:1200) which supplements the data protection regulation.

Does the camera surveillance law apply?

Section 4 of the Camera Surveillance Act states that the law applies to camera surveillance according to Section 3 takes place with equipment available in Sweden. According to § 3 § 1 of the Camera Surveillance Act is intended with camera surveillance that a television camera, another optical-electronic instrument or a comparable equipment, without being operated on the site is used on such

means that involve long-term or regularly repeated personal surveillance.

The body-worn cameras used in the current case are operated at the scene by the ticket inspectors. The Camera Surveillance Act therefore does not apply to SL's use of body-worn cameras.

Does the data protection regulation apply?

According to Article 2.1, the Data Protection Regulation shall, among other things, be applied to the processing of personal data that is fully or partially processed automatically.

Acceptable level means a risk that has been assessed as low and that does not require any action. Monitoring level means risks that need to be analyzed more deeply and that the risks must be monitored in order to be able to quickly implement a measure

the event occurs. See SL's impact assessment, appendix 5, Assessment of threats and risks, p. 12.

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Article 4.1 of the data protection regulation states that any information relating to a identified or identifiable natural person is personal data. According to Article 4.2 refers with processing an action or combination of actions regarding personal data, for example collection, registration, storage, reading and deletion.

If a surveillance camera captures an identifiable person or someone else personal data in a picture must therefore follow the rules in the data protection regulation. Because SL films, and records sound, from identifiable people with their cameras applies data protection regulation.

Basic principles for processing personal data (Article 5)

In Article 5 of the Data Protection Regulation there are a number of basic principles like that

personal data controller must take into account when processing personal data.

It follows from Article 5.1 a that personal data must be processed in a legal, accurate and transparent manner way in relation to the registered.

It follows from Article 5.1 c that personal data must be adequate, relevant and not for extensive in relation to the purposes for which they are processed (the principle of task minimization).

It follows from Article 5.2 that the person in charge of personal data must be responsible for and be able to demonstrate that the principles arising from Article 5.1 are complied with (principle of responsibility).

From reason 39 of the data protection regulation it follows that personal data should only be processed if the purpose of the processing cannot reasonably be achieved by other means.

The assessment of whether SL processes personal data in accordance with the principles of legality and transparency in Article 5.1 a and the principle of data minimization in Article 5.1 c will take place in connection with the assessment of articles 6 and 13.

Legal basis for processing personal data (Article 6)

For the use of the body-worn cameras to be considered legal, it is required that at least one of the conditions in Article 6.1 of the Data Protection Regulation is met.

SL has stated that the legal basis on which they support their personal data processing is balancing of interests according to Article 6.1 f of the data protection regulation.

Initially, SL also stated that the company intended to change the legal basis to an article 6.1 b of the data protection regulation (fulfilment of contracts), but that they must first change its general conditions. However, it appears from SL's final statement that it is an article 6.1 f (balancing of interests) on which the company bases its treatment. IMY therefore comes to test the personal data processing that is now subject to supervision according to Article 6.1 f.

In order for the processing of personal data to be legal according to Article 6.1 f i the data protection regulation requires that SL can demonstrate that 1) there is a legitimate interest, 2) the processing of personal data is necessary for a purpose relating to it

legitimate interest pursued and 3) that the basic freedoms and rights of the data subjects do not outweigh the legitimate interest.<sup>56</sup>

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See the judgment of the European Court of Justice in case C-708/18 TK, paragraph 40.

See recital 47 of the data protection regulation.

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Test project

SL has initially stated that the personal data processing carried out with them

the body-worn cameras took place within the framework of a test project. IMY notes that

the data protection regulation does not contain any exceptions for test projects. of the regulation

requirements therefore need to be met even if the person in charge of personal data names

the processing of personal data as a test activity.

SL's use of body-worn cameras to prevent and

document threats and violence (purposes A and B)

SL has stated that the company processes personal data for the purpose of:

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prevent threatening situations in connection with ticket control, below

called "purpose A",

document incidents that have occurred, hereinafter referred to as "purpose B", as well as

ensure that it is the right person who pays the surcharge, below

called "purpose C".

The company states that all types of recording that take place with the body-worn cameras constitutes a (IMY's italics) processing of personal data, because the purposes for the recordings often overlap and are closely connected.

IMY considers that SL's three purposes are of different nature, where purposes A and B are one different character from purpose C. Purposes A and B both aim to improve the security of the ticket inspectors, while objective C aims to improve SL's possibility of achieving success in the collection of surcharge. Each purpose therefore requires an own assessment, and can thus also lead to different conclusions as to how extensive personal data processing may be to achieve a certain purpose.

SL's ticket inspectors use the body-worn cameras to prevent and document threats and violence affecting the controllers (purposes A and B) and to ensure the identity of the person receiving a surcharge in connection with ticket control (purpose C).

IMY will initially examine the personal data processing that takes place at the use of the body-worn cameras for purposes A and B is compatible with article 6.1 f and the principle of legality in article 5.1 a and the principle of data minimization in Article 5.1 c of the data protection regulation. When balancing interests according to Article 6.1 f of the data protection regulation, it is tested whether there is a legitimate interest, if the processing is necessary to achieve stated purposes and if it the interests of the controller of personal data outweigh the privacy interests of individuals.

Does SL have a legitimate interest in purposes A and B

SL has stated that there is an extensive problem picture regarding threats and violence against the ticket inspectors in the subway. SL has also submitted statistics regarding incidents and damages during the years 2018, 2019 and parts of 2020.

In 2018, a total of 62 incidents were reported (which includes verbal assaults, threats of violence

and violence), 21 cases of injury without absence and three cases of injury with sick leave.

The statistics are based on reports from approximately 60 ticket inspectors. Year 2019

a total of 110 incidents were reported. Of these, 101 incidents were less serious incidents

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(eg verbal abuse, insults and threats) and 9 were incidents of serious or

very serious nature (incidents of a serious nature include e.g. pushing and

incidents of a very serious nature include e.g. kicks, punches and strangleholds).

During the year 2020 up to and including November 2020, a total of 226 incidents were reported.

Of these incidents, 221 were of a less serious nature and 5 incidents were

serious or very serious nature. The statistics for 2019 and 2020 are based on approx

100 inspectors, corresponding to 84 full-time positions, and refers to incidents throughout

public transport.

SL has established that verbal threats and violations have more than doubled from the year 2019

until the year 2020, despite the restrictions on travel caused by Covid-19. SL notes

also a large percentage reduction in the serious or very serious incidents

from the year 2019, which SL believes shows the effects of the body-worn cameras.

IMY states that SL has shown that there is a legitimate interest for the company to

use body-worn cameras, with activated image and sound recording, to

prevent and document threats and violence (purposes A and B). IMY also notes that

SL has a legitimate interest in using pre-recording technology for these

purpose.

Is SL's treatment necessary to achieve purposes A and B?

As IMY noted above, the authority considers that SL has a legitimate interest in

use body-worn cameras in connection with threats and violence.

The next question then is about SL's use of body-worn cameras with image and sound recording as well as pre-recording technology is necessary to achieve the entitled the interest?

The necessity criterion must be seen in the light of the fact that exceptions and limitations of the protection of personal data shall be limited to what is absolutely necessary.<sup>7</sup> Furthermore it follows from reason 39 of the data protection regulation that personal data should only be processed if the purpose of the processing cannot reasonably be achieved by other means. At the same time it follows from practice that the necessity criterion can be considered fulfilled if it contributes to streamlining.<sup>8</sup>

It also follows from practice that the requirement of necessity must be tested together with the principle on data minimization according to article 5.1 c of the data protection regulation which prescribes that the personal data collected must be adequate, relevant and not for extensive in relation to the purposes for which they are processed.<sup>9</sup>

The investigation into the matter has shown that SL has taken alternative measures to those the body-worn cameras. The ticket inspectors have received training in low affectivity reception and during certain work shifts the ticket inspectors are also accompanied by security guards. However, according to SL, these measures have not proven to be sufficient, why the company decided to use body-worn cameras and to record with mobile picture and sound.

IMY considers that SL has taken reasonable alternative measures to achieve the objectives i connection with threats and violent situations.

C-13/16 Rīgas satiksme, paragraph 30.

C-524/06 Huber, paragraph 62.

<sup>9</sup> C-708/18 TK, paragraph 48.

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In what follows, IMY examines SL's personal data processing with body worn cameras is necessary to achieve objectives A and B, i.e. to prevent and document threatening or violent situations.

IMY will divide the examination into one concerning activated image recording and noise in connection with threats and violence is necessary to achieve purposes A and B, and partly determine whether SL's continuous use of pre-recording technology is necessary to achieve purposes A and B.

Is SL's activated recording in connection with ongoing threatening situations necessary?

Regarding SL's recordings of threatening situations, it can be stated that the crime directed at SL's ticket inspectors is often verbal. A personal data processing shall be effective in relation to its purpose, which in this case is partly to investigate threats or violence against ticket inspectors. To achieve such a purpose, the access to a recording of moving images, of the person who uttered threats or acted violently as well as recording audio from what was said during the situation, be able to help facilitate the investigation.

IMY therefore states that activated recording of sound and image during an ongoing threatening or violent situation is necessary to achieve SL's purpose of prevention and document threats and violence (objectives A and B).

Is SL's use of pre-recording technology in the context of threatening situations necessary?



SL has stated in its impact assessment that it is difficult in threatening situations to determine when a recording should start, which is why pre-recording takes place for one minute (initially under supervision for two minutes).

IMY states that there is a problem picture with threats and violence in connection with ticket checks and that there may be a need to, when an incident occurs, be able to have access to visual and audio material that includes what preceded the event itself. It can be achieved with the type of pre-recording technology that SL uses.

At the same time, IMY states that the pre-recording technology entails an extensive personal data processing including both image and sound recording of travelers who neither behaves threateningly nor violently towards the ticket inspectors. That's the question about a large number of travelers who thus risk being watched in an environment where they are dependent on to be able to get to, for example, work, school or activities for recreation. Although the pre-recorded videos can be useful to achieve purposes in cases where a threatening or violent situation suddenly arises, IMY believes that it is the question of a large-scale invasion of the personal integrity of a large number of travelers. Necessity requisites must, as mentioned, be tested together with the principle of data minimization which stipulates that the personal data collected must be adequate, relevant and not too extensive in relation to the purposes for which they are treated.

IMY states that the use of pre-recording technology in and of itself fulfills the requirement of necessity to counteract threats and violence. IMY notes at the same time that the SL's personal data processing that takes place through the use of pre-recording technology widely exceeds what is necessary for the purpose. Use of

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the pre-recording technique for one minute is too extensive in relation to the threats and risk situations that arise in connection with ticket controls.

IMY notes that the use of pre-recording technology in the way it is now used is not necessary to achieve objectives A and B, which means that the processing of personal data lacks a legal basis according to Article 6.1 f and is contrary to the principles of legality and data minimization in Article 5.1 a and c.

In case the pre-recording technique had only been in place for a short time the processing of personal data, given the problem picture that exists, could be considered to be necessary to achieve objectives A and B. IMY considers in this specific case that a shorter time span of a maximum of 15 seconds, could have been accepted to achieve the purpose.

IMY is now testing as a final step in the balancing of interests that must be done according to article 6.1 f if the interests of the data subjects weigh more heavily in SL's recordings of threats situations as well as the use of pre-recording technology for purposes A and B.

Do the interests and rights of the data subjects outweigh purposes A and B?

IMY states at the outset that camera surveillance with fixed cameras is relative common in the subway environment. Camera surveillance in a subway car and of a metro station with fixed cameras are exempt from the permit requirement for some purpose<sup>10</sup>. When subway cars and subway stations were exempted from the permit obligation, the government stated as the reason for the exception that individuals can expect themselves to be monitored when they are there because there are a large number of cameras where. Furthermore, the government stated that those who were monitored were also those who normally do was protected by the surveillance.<sup>11</sup> This suggests that the privacy interest in the use of cameras that record footage in the subway are relatively light. IMY states however, that SL has now expanded the area for the use of body-worn cameras

to apply to SL's entire traffic network and all types of traffic and that the same conclusion applies

the privacy interest cannot be drawn in all places and for all types of traffic.

From the preparatory work for the camera surveillance law, it appears that recording or interception of audio has long been regarded as particularly sensitive to privacy and that such personal data processing in the future should also be the subject of a careful examination in that regard individual case.<sup>12</sup>

By the European Data Protection Board's (EDPB) guidelines for the processing of personal data through video devices<sup>13</sup> it appears that if one assumes that video surveillance is necessary to protect the legitimate interests of a data controller, receives a video surveillance system is only put into operation if the data controller's or a legitimate interests of third parties (eg protection of property or physical integrity) not overrides the data subject's interests or fundamental rights and freedoms.

The data controller must consider; 1) to what extent the monitoring affects the interests, fundamental rights and freedoms of individuals and 2)

See section 9 point 6 of the Camera Surveillance Act.

Prop. 2012/13:115 p. 66.

<sup>12</sup> Prop. 2017/18:231 p. 67.

<sup>13</sup> EDPB Guidelines 3/2019 for the processing of personal data through video devices, version 2.0, adopted on 29 January 2020.

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if this causes violations or negative consequences with respect to it

data subject's rights. A balancing of these interests is mandatory.<sup>14</sup>

Even when assessing the interests and rights of the data subjects, IMY will share up the examination to partly refer to SL's activated recordings of threatening or violent situations, partly refer to SL's pre-recording technology which is used continuously for to record preschool to threatening or violent situations.

Weighs the interests and rights of the data subjects more heavily in connection with ongoing threatening or violent situations (purposes A and B)?

According to IMY's assessment, the interest in privacy is stronger in the case of image and the audio recording of threatening situations with the body-worn cameras than otherwise camera surveillance that takes place with fixed cameras in the subway. This because the camera is directed at a certain person and when recording follows this person continuously on the basis of that the individual acted in a certain way, e.g. that the traveler acted in a way that perceived as threatening. As with surveillance with fixed cameras, one is also registered large number of travelers who have not behaved threateningly. Some measures to reduce it the infringement has, as far as has emerged in the case, not been dealt with.

Furthermore, current camera surveillance now includes sound recording, unlike others camera surveillance in the subway, which means that the breach of privacy becomes greater then audio recording is considered particularly sensitive to privacy. That is also the question sound recording in a public place, in SL's entire traffic network, which many people depend on for to get to different places, where the traveler cannot reasonably expect to sound recording takes place. Overall, IMY believes that the privacy interest of SL's recordings of ongoing threatening situations make a strong impression.

Regarding the need for surveillance, SL has shown a significant interest in performing the current personal data processing because there is an actual threat against the ticket inspectors. Furthermore, SL's recording of an ongoing threatening or violent situation that the processing of personal data is limited to taking place only then

a threatening situation has actually arisen, whereby personal data processing is limited to as it is absolutely necessary. The recorded material is stored during the day locally and is only loaded at the end of the work shift into a central storage area. Furthermore, the access to the recorded material is limited to a few people.

IMY states that SL's interest in surveillance weighs heavily under threats situations. Against this must be weighed the fact that the interest in privacy at the site is becoming strong current. Although a large number of travelers are caught by security, of whom the majority has not acted threateningly and audio recording is a particularly privacy-sensitive treatment, IMY believes that the SL's activated image and sound recording during threatening situations is acceptable in light of the weighty interest in these situations.

In an overall assessment, IMY considers that SL's legitimate interest in recording images and audio material in threatening situations weighs somewhat more heavily than the interest in privacy.

In this regard, it is particularly taken into account that SL has shown that the ticket inspectors are exposed to crime and that personal data processing will only continue when a threatening or violent situation occurs.

See point 30 of the EDPB's Guidelines 3/2019 for the processing of personal data through video devices, version 2.0, adopted on 29 January 2020.

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Do the interests and rights of the data subjects outweigh the continuous use of pre-recording technology for purposes A and B?

As IMY stated above, the authority considers that SL's use of continuous pre-recording technology is not necessary, at least not for as long as one

minute.

IMY also states in a balance of interests that the use of

pre-recording technology means that all travelers who are in front of one

ticket inspector with a camera is subject to both image and sound recording.

Against this must be weighed the fact that the pre-recording is only stored locally in the ticket controller

camera and is deleted after one minute, in case a threatening situation does not arise. SL has

also stated that it can be difficult to determine when a recording should start and has

demonstrated that there is an actual threat to the ticket inspectors.

IMY states that the privacy interest outweighs SL's interest in using

pre-recording technology for a full minute. IMY does not consider the SL to be heavy enough

weighty interest in justifying a continuous image and sound recording of all

travelers who are in front of the camera's coverage area. This means that

the processing of personal data, through the continuous use of

pre-recording technology, lacking a legal basis according to Article 6.1 f and contrary to the principle

on the legal basis in Article 5.1 a of the data protection regulation.

IMY also notes that the pre-recording technique led to an overly extensive

processing of personal data in relation to the purposes for which they are processed, then

the pre-recording technique is deemed to include many registered persons who should not need to

expect to be filmed and recorded with image and sound in threatening situations such as

they themselves are not involved in. Even children, who are seen as particularly worthy of protection, can come

to be filmed. The surveillance has also taken place in an environment that travelers often are

dependent on to get to work, school and recreation. The treatment therefore has

also occurred in violation of the principle of data minimization in Article 5.1 c i

data protection regulation.

However, IMY believes that the pre-recording technique could be acceptable within the framework of

Article 6.1 f of SL limited the processing to only last for a shorter period of time.

The processing of personal data that now takes place continuously for one minute, through the pre-recording technique, according to IMY, is too long a time and leads to too much invasion of the personal integrity of the travelers who may be filmed with them both image and sound. As stated above, the authority believes that a maximum of 15 seconds could have been an acceptable time in this case.

#### Summary assessment of objectives A and B

IMY notes that SL's use of body-worn cameras with enabled recording of image and sound material to prevent and document ongoing threatening or violent situations do not contravene the rules of the data protection regulation.

IMY notes, however, that SL's use of pre-recording technology as continuous records image and sound material and stores it for at least one minute, contravenes article 6.1 f of the data protection regulation when the processing is not necessary and the interest in privacy weighs more heavily for those registered.

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SL's use of pre-recording technology thus lacks a legal basis and the processing of personal data thus does not meet the principle of legality in Article 5.1 a.

IMY also notes that the pre-recording technique led to an overly extensive processing of personal data in relation to the purposes for which they are processed and that the processing therefore also took place in violation of the principle of data minimization in the article 5.1 c.

However, IMY believes that the pre-recording technology could be compatible with Article 6.1 f as well as Article 5.1 a and c of SL limited the processing to only ongoing continuously for a maximum of 15 seconds.

SL's use of body cameras to ensure

the identity of travelers who must pay surcharges (purpose

C)

SL also uses the body-worn cameras to ensure its identity

person who is charged a surcharge. The ticket inspectors are instructed to use

the pre-recording technology and record the event each time a surcharge is issued

through activated recording.

SL considers that the processing of personal data that takes place with the aim of determining

the identity of the persons for whom the surcharge is issued and the treatment that takes place in

associations with threatening or violent situations are intimately connected. Threatening

or violent situations almost always occur in connection with that surcharge

is issued.

Due to the above, as well as the limited opportunity for individual controllers

to, in practice and technically, handle the body cameras in different ways depending on whether

it is about identification or a threatening or violent situation, SL believes that

the assessment of the current treatment that takes place, in the first instance, must be based on

the need for controllers to limit threatening and violent situations and not i

purpose of identifying persons for whom a surcharge has been issued. SL does not consider it to be

realistic to make demands that the controllers treat each situation

different.

SL has also stated that a traveler has no legal obligation to identify himself

in connection with ticket controls in public transport. Ticket inspectors have no right to

request a traveler's identity document, which makes the possibilities for secure identification

in connection with the issuance of the surcharge are clearly limited.

In the following, IMY examines the processing of personal data that takes place during use

of the body-worn cameras to ensure the identity of passengers served



a surcharge is compatible with Article 6.1 f and the principle of legality in Article 5.1 a, and the principle of data minimization in Article 5.1 c of the data protection regulation.

Does SL have a legitimate interest in purpose C?

SL has stated that the number of additional fees in the last three years has amounted to approx. 30,000 per year.<sup>15</sup> The additional fee amounts to SEK 1,500 plus ticket costs.

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SL's PM dated 10/29/2018, Q & A body cameras ticket control.

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In 2017, the loss of revenue due to fraudulent driving or ticket fraud amounted to 254 million kroner. 69 percent of the travelers who are caught in the ticket checks have bought a discounted ticket even though they are not eligible for it and 29 percent miss out entirely ticket. Ticket fraud is said to be more common in the subway than on commuter trains and buses. In 2017, 291 cases went on to be examined in the district court in cases where the traveler refused pay surcharge. Of these, SL was right in 144 cases, 48 cases were withdrawn or written off, 95 cases ended with settlement between SL and the traveler, two cases was rejected and two are ongoing. In 2018, the loss of revenue was linked to cheating 280 million kroner.

SL has stated that for the time period January to November 2020, 38 cases are valid identity thefts in connection with additional charges written off. This means that matters is terminated, among other things, because the surcharge has been contested and the traveler could not be identified. It should also be taken into account here that SL's systematic ticket checks had a break during the spring and summer of 2020 due to Covid-19. During a normal year, the number of cases and written-off cases had probably

been significantly higher.

SL believes that the statistics support their position that the use of body worn cameras, despite the personal data processing it entails, is necessary both in matters relating to surcharge and matters involving threatening/violent situations and that the processing is proportionate in relation to the purposes.

IMY considers that SL has a legitimate interest in processing personal data in connection with assurance of identity.

Is SL's treatment necessary for purpose C?

The necessity criterion must, as mentioned above, be seen in the light of the fact that exceptions and restrictions on the protection of personal data must be limited to what is absolute necessity.<sup>16</sup> From reason 39 of the data protection regulation it follows that personal data only should be processed if the purpose of the processing cannot reasonably be achieved through others average. At the same time, it follows from practice that the necessity criterion can be considered fulfilled if that contributes to efficiency.<sup>17</sup>

It also follows from practice that the requirement of necessity must be tested together with the principle on data minimization according to article 5.1 c which stipulates that the personal data which collected must be adequate, relevant and not too extensive in relation to them purposes for which they are processed.<sup>18</sup>

SL has taken some alternative measures to the body worn cameras to ensure the identity of the person who pays the surcharge. SL always asks for identity document. The ticket inspector can also check the identity of the traveler by to request social security number, name and address and compare these with the information in The government's personal data addresses (SPAR). SL has stated that the ticket inspectors sometimes even make hits on the provided name on Facebook to ensure the identity. In the event that objections arise afterwards, the ticket controller's consent is used notes and testimonials.

C-13/16 Rīgas satiksme, paragraph 30.

C-524/06 Huber, paragraph 62.

18 C-708/18 TK, paragraph 48.

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However, SL has stated that it is difficult to ensure the identity with the support of the ticket inspector's memoirs and testimony. SL has referred to a judgment from the Supreme Court regarding proof requirements and burden of proof in cases of additional fee according to the law (1977:67) on surcharge in public passenger transport to demonstrate that it is difficult to prove identity with the help of the ticket checker's testimony and memory notes.<sup>19</sup>

The judgment shows that it is the transport company that has the burden of proof that this is the case as the transport company claims.<sup>20</sup> Regarding the proof requirement, the Supreme Court states i mainly the following:

"The transport company should be able to fulfill its burden of proof in the matter of the traveler's identity through certain simpler standard proof, as long as the pointed out the traveler not in the face of objections and refutations of certain weight".<sup>21</sup> The Supreme Court further states "The simple case is when it of the ticket inspector's notes or testimony show that the traveler at the check has presented a valid identification document; the space for that the controller has then made a mistake can be considered very limited. But even when there is documentation showing that the controller has ascertained the identity of the traveler in another convincing way may

the transport company is normally considered to have fulfilled its burden of proof. An example of this is when the traveler in connection with the control has left complete and consistent information about name, address and social security number. In a case, however, it must, in the aggregate evaluation of evidence which shall be made if the defendant pleads rebuttal, weighed against that of the controller identification of the traveler has contained a greater element of uncertainty compared to if an identification document has been presented. Even one relatively weak rebuttal can then result in the claim being dismissed disapprove".<sup>22</sup>

SL has stated that they can indeed use a still image in the form of a so-called snapshot from the recorded material but that the same cannot be achieved with a still image security regarding the identification as with moving image, because as well the ticket inspector as the traveler moves. The situation when a surcharge is determined is often crowded and messy with many fellow travelers on the move (for example in subway environment or on the bus). A still image with available technology therefore comes many times do not achieve the required quality and thus thwart safe identification of the traveler. There are other circumstances that make identification difficult for example travelers' clothing, such as caps, hats, etc. These circumstances can often result in a still image not enabling identification. Using image recording as supplemented with audio recording, it can also be determined which information is actually was specified at the time of issuing the surcharge. Less privacy sensitive therefore, according to SL, alternatives are not possible to achieve the purpose.

SL also uses pre-recording technology to ensure identity in connection with ticket control (Purpose C), and the ticket controllers are instructed to video record and sound on each occasion when a surcharge is issued. SL has stated that image and audio recording makes it easier to establish the identity of the person served

the surcharge. SL has stated that the recording that takes place has three purposes; prevent threatening situations in connection with ticket control, document occurred incidents for Supreme Court case 3536-18 "The traveler without an ID document".

Supreme Court case 3536-18 "The traveler without an ID document". Point 9.

21 Ibid, paragraph 10.

22 Ibid, paragraph 13.

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to facilitate investigation afterwards, as well as ensure the identity of travelers who must pay surcharge. The fact that the recording has three purposes means that the film can be longer than solely to achieve the purpose of ensuring the identity of the person served the surcharge.

IMY notes that the principle of data minimization in Article 5.1 c i the data protection regulation means that the extent of personal data processing shall be adequate, relevant and not too extensive in relation to its purpose. Further it follows from the principle of purpose limitation in Article 5.1 b of the data protection regulation that personal data must be collected for specific, explicitly stated and justified purposes purpose.

SL has stated that recording is used for three purposes. That a certain technology, in the present case cameras, used for several purposes by the person responsible for personal data means not that personal data processing can be carried out in the same way for all purposes for which a personal data controller processes personal data. The trial of in which

scope SL may process personal data in order to ensure the identity of a traveler who is caught without a valid travel document must be based on that particular purpose. To SL also processes personal data for the purpose of preventing and investigating incidents therefore not assigned importance when assessing how extensive the processing of personal data must be to ensure the identity of a certain person.

From the practice referred to by SL, it is clear that there is room for a ticket inspector to make a mistake if a traveler shows a valid identity document, it must be considered a lot limited.<sup>23</sup> IMY therefore notes that SL could have taken other, smaller measures privacy-infringing measures, than to activate recording of the person to be controlled to ensure the identity of the person who is served with a surcharge when a identity document has been presented. To use both image and sound recording and to moreover, systematically using pre-recording technology goes far beyond what can considered necessary to achieve the purpose of ensuring correct identification when an identification document is presented.

IMY states that the need to process additional personal data for the purpose of ensuring the identity of a traveler can only be considered necessary when a traveler unable to prove their identity with an identification document. Nor when identification document is missing, IMY deems it necessary to record with both moving image as sound. From the data reported by SL, it appears that, out of approximately 30,000 checks, the issue is relatively few cases where the identity has not been able to be established.

For 2020, it was - although the pandemic has probably meant that it was the question of significantly fewer cases than under normal conditions – the issue of 38 cases. During In 2018, there were 291 cases that went to court. IMY does not consider it to be demonstrated that moving image combined with sound recording and also use of pre-recording technology has been necessary to achieve the purpose of ensuring a correct identification of travelers who have not presented an identification document. IMY

considers that SL was reasonably able to use other less privacy-infringing methods

measures, such as a still image or similar, to ensure its identity

who has been charged a surcharge and lacks a valid identity document.

In summary, IMY therefore considers that the treatment is not necessary, as it is

is now performed, with image and sound recording as well as pre-recording technology, in connection with

ensuring a traveler's identity regardless of whether an identity document can be shown

up or not. IMY therefore notes that the personal data processing lacked legality

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Supreme Court case 3536-18 "The traveler without an ID document". Clause 13.

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basis according to Article 6.1 f and contradicts the principle of legality in Article 5.1 a i

data protection regulation.

IMY also states that the treatment has led to an excessively extensive

processing of personal data in relation to the purpose for which they are processed, both i

relation to those who are controlled and other registered persons who should not have to expect

themselves to be filmed and recorded with image and sound at ticket controls like themselves

are not involved in. Even children, who are seen as particularly worthy of protection, may come to

filmed. The surveillance has taken place in an environment that travelers are often dependent on

to get to work, school and recreation. The treatment has therefore also taken place in combat

with the principle of data minimization in Article 5.1 c of the data protection regulation.

Do the interests and rights of the data subjects weigh more heavily for purpose C?

As IMY stated above, the authority considers that SL's use of capitalized assets

image and sound recording as well as the use of pre-recording technology is not necessary for

to achieve purpose C, that is to ensure the identity in connection with

ticket control.

IMY also states in a balancing of interests that SL's use of

body cameras that record both image and sound and the company's use of

pre-recording technology means that all travelers who are in front of one

ticket inspectors who must issue a surcharge will be subject to both visual and

sound recording. Camera surveillance is generally considered a major intrusion into it

personal integrity, especially when it is conducted in a way that involves monitoring of

people who are only on their way to and from their work, school or are out in

recreational purposes and who in most cases have also paid their ticket.

As mentioned earlier, audio recording during camera surveillance is also typical

particularly sensitive to privacy. This is particularly true in the present case because

the sound recording takes place in a situation where travelers, especially those who are not subject to

ticket control, cannot reasonably expect the ticket controllers to record audio.

From the aforementioned guidelines, it is further clear that the person in charge of personal data must

evaluate the risks of infringement of the data subject's rights, and the decisive

the criterion is the intensity of the infringement of the data subject's rights and freedoms.

The intensity can be defined, among other things, based on the type of information that is collected

(information content), the extent (information density, spatial and geographical

extent), the number of affected data subjects, either as a specific number or as one

proportion of the population concerned, the situation in question, the actual of the data subject

interests, alternative methods and the nature and extent of the data. Important

balancing factors may be the size of the area being monitored and the number

data subjects being monitored. Examples include:

If a car camera is installed (e.g. to collect evidence in case

an accident) it is important to ensure that this camera is not constantly recording



the traffic, and the people who are near the road. Otherwise can the interest in having video recordings as evidence of a pure traffic accident theoretically occur would not justify the serious infringement of those data subject's rights.<sup>24</sup>

See points 32-35 of Guidelines 3/2019 for the processing of personal data through video devices, version 2.0, adopted on January 29, 2020.

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IMY believes that a parallel can be drawn between the example above and it pre-recording technology that SL uses. The technology means that the image and sound recording is stored one minute before a controller presses the button, which means that everyone who are in the vicinity risk being recorded with both image and sound.

Although the pre-recording technology is meant to be used in threatening situations will it in practice to be used also when recording in order to ensure the identity of travelers who do not have a valid travel document. Similar to the example above, IMY notes that it is important to ensure that any other person who happens to be in your vicinity ticket inspector is not recorded constantly with image and sound.

Furthermore, IMY considers that the registered are in a crowded situation when exhibiting of surcharge and that an activated image and sound recording of that situation entails a major breach of privacy. The use of pre-recording technology that stores material one minute back from when the controller presses the button and activates the recording, also means, as mentioned above in connection with the assessment of purposes A and B, that the large mass of travelers (in addition to the one served a

surcharge) is filmed completely without being aware of it, with both image and sound.

Against this must be weighed the fact that SL has shown that there are difficulties in establishing the identity on the person who is served the surcharge and that there have been travelers who provided another person's identity.

IMY believes, taking into account the great breach of privacy that filming entails with image and especially with sound in the way that is now happening and with the use of pre-recording technology, that SL's interest in ensuring the identity of the person served the surcharge weighs relatively lightly in relation to the interests of the data subjects and rights.

IMY states that SL's use of activated image recording as well as use of pre-recording technology lacks a legal basis according to Article 6.1 f and that the processing of personal data thus contravenes the principle of legality in Article 5.1 a.

IMY also notes that the pre-recording technique led to an overly extensive processing of personal data in relation to the purposes for which they are processed and that the processing therefore also took place in violation of the principle of data minimization in Article 5.1 c when the pre-recording technique is deemed to include many registered persons who should not need to expect to be filmed and recorded with image and sound in threatening situations such as they themselves are not involved in. The surveillance has also taken place in a milieu as travelers many times depend on to get to work, school and recreation.

#### Summary assessment of purpose C

IMY notes that SL did indeed have a legitimate interest in making use of body-worn cameras to ensure identity in connection with ticket control but that they were able to use other less privacy-infringing measures, especially in the cases where a traveler was actually able to present an identity document, and that the processing of personal data was therefore not necessary. IMY considers that a still image or similar could have been an acceptable measure to achieve the purpose.

IMY further considers that the interests and rights of the data subjects outweigh

the surveillance interest in connection with purpose C.

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IMY therefore notes that SL's use of body-worn cameras, with use

of pre-recording technology, to ensure the identity of the person being served

additional fee means that SL processes personal data in violation of Article 6.1 f i

the data protection regulation when the processing is not necessary and the interest in privacy

weighs more heavily on those registered. SL's use of body-worn cameras for

purpose C thus lacks a legal basis. The violation is therefore contrary to the principle of

legality in Article 5.1 a.

The breach is deemed to include many registered users, who should not have to expect it

that activated image and sound recording takes place by them in situations that they are not themselves

involved in. The monitoring takes place in an environment that travelers are often dependent on

to get to work, school and recreation, for example. The treatment therefore also has

occurred in violation of the principle of data minimization in Article 5.1 c i

data protection regulation.

IMY also notes that the pre-recording technique led to an overly extensive

processing of personal data in relation to the purposes for which they are processed and that

this processing has also taken place in violation of the principle of data minimization in the article

5.1 c.

Information to data subjects (Article 13)

According to Article 5.1 a, personal data must be processed in a legal, correct and transparent manner i

relation to the registered.

It follows from reason 58 that the transparency principle requires that information that is addressed to the public or to registered users is concise, easily accessible and comprehensible as well designed in clear and simple language. Is it the question of information and communication aimed at children should be designed in clear and simple language which children can easily understand.

From reason 60 it appears that the registered person must be informed that processing is taking place and the purpose of it. The data controller should provide any additional information that required to ensure fair and open treatment, taking into account the specific circumstances and context of the personal data processing.

Article 13 of the data protection regulation states which information must be provided if personal data is collected from data subjects.

Article 12.1 of the data protection regulation states that the person in charge of personal data shall take appropriate steps to provide to the data subject any information which referred to in Articles 13 and 14, and that such information shall be provided in a concise, clear and distinct, comprehensible and easily accessible form.

From article 12.7 of the data protection regulation, it appears that the information that must provided, those registered in accordance with articles 13 and 14 may be provided combined with standardized symbols to provide a clear, understandable, easy to read and meaningful overview of the planned treatment.

There are no exceptions to Article 13, apart from the case that the data subject already has about the information to be provided (Article 13.4).

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However, the personal data controller can provide information in different layers, where a sign can

form the first layer and information on a website or information in a brochure

can form the second layer of information. The most important information should generally seen is given in the first layer.<sup>25</sup>

Article 13 states that SL must provide information when the personal data is obtained from the registered. It is important here that the registered person must be able to create himself an idea of which areas are subject to surveillance so that it registered can either avoid being filmed or change their behavior.<sup>26</sup>

The image material

SL has initially stated that they provide abbreviated written information to the persons who are served with a surcharge. The information appears on that receipt there instructions are also available for how the payment of the additional fee should take place. The written one the information contains a statement that; SL is responsible for personal data, information about which categories of personal data are processed, information about SL's purposes for personal data processing, information on storage time, contact details for the data protection officer, information that the data protection officer can be contacted in case the data subject wishes to exercise his rights and a reference to SL's website and customer service where further information can be obtained. Furthermore, SL has produced a document with answers to the most common questions about the ticket controls.

However, IMY notes that from SL's impact assessment of 21 November 2018 it appears that the pre-recording technique means that film recording starts before information has been provided to the traveler.

IMY notes that when IMY's supervision began, it was only the person who was given a surcharge that obtained the information that SL provided in its first stock. Other people that SL filmed, e.g. other travelers who happened to be in the coverage area of the camera or the travelers filmed on the basis that they perceived as threatening, received no information. Although the majority of these

travelers could visit SL's website or call SL to get the information it is

not sufficient to consider that SL has provided the information in the sense referred to in

Article 13.

The fact that the recorded material is essentially deleted after one minute

(initially two minutes) is without significance in this assessment as it is missing

exception to provide information regarding short-term

personal data processing in the data protection regulation.

From SL's final opinion from 17 December 2020, it appears that i

the ticket inspectors' uniform now includes a so-called "badge" that informs that they

wearing a body camera. The size of the badge is seven centimeters in diameter. On the badge

a clear pictogram<sup>27</sup> of a camera and the written information are visualized

"Body Camera". SL further states that according to Article 12.7 it receives

personal data controller provide information to the registered through

standardized symbols (including icons) to, among other things, provide a clear and

meaningful overview of the treatment. According to SL, the badge now constitutes a first layer

See paragraph 38 of the Article 29 Working Party (subsequently renamed the EDBP), Guidelines on Transparency under Regulation (EU) 2016/679 (reviewed and adopted 11 April 2018).

<sup>26</sup> See point 113 of the EDPB's Guidelines 3/2019 for the processing of personal data through video devices, version 2.0, adopted on 29 January 2020.

<sup>27</sup> Iconic symbol.

<sup>25</sup>

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information about the personal data processing that takes place. Otherwise, information is provided as follows

as previously stated via receipt and on SL's website.

SL also refers to the Irish Data Protection Authority and its guidelines for use of body-worn cameras or action cameras. According to these guidelines are stated that the appropriate means of providing information to data subjects depends on the specific the context and environment in which the data is collected. An assessment is thus required what is appropriate in the individual case. The Irish Data Protection Authority also exemplifies a badge on controllers' uniforms as a means of providing the information.

IMY agrees with what SL referred to regarding the Irish data protection authority position, that how information should be provided depends on the specific context and the environment and what is appropriate from case to case and that a badge can be a way to provide information. As can be seen from the guideline from the EDPB that IMY referred to earlier so you have to make an assessment on a case-by-case basis and also see what type of information collected, scope and number of affected data subjects. An important factor is also the size of the area monitored and the number of registrants.

In the current case, it is a question of a significant number of controllers moving over one large geographical area (SL's entire traffic network) and which films with both image and sound.

IMY therefore states that it is not enough to simply use a badge with a pictogram of a camera with the text Kroppskamera/Body Camera as one first layer for information submission in this case.

SL has stated that according to art 12.7 it appears that the person in charge of personal data may provide information through standardized icons. It appears from Article 12.7 it, however, that the information to be provided to the registered in accordance with article 13 and 14 may be provided combined (IMY's italics) with standardized symbols to provide a clear, understandable, easy to read and meaningful overview of the planned treatment.

According to recital 60, information may be provided to data subjects "combined" with standardized symbols, thus enabling a multi-layered strategy. Symbols should however, not purely to replace such information as is necessary for the registered exercise of their rights, nor should they be used as a substitute for the personal data controller must fulfill its obligations according to articles 13 and 14.28

IMY thus notes that Article 12.7 cannot be interpreted so that only a symbol, albeit with the text Kroppskamera/Body Camera, can replace all the information that should left in a first layer.

It is central that everyone who travels with SL gets knowledge that camera surveillance with body-worn cameras may occur to give them the opportunity to choose how they wish to complete their journey.

IMY states that even if the ticket inspectors have a badge on them that indicates that body cameras are used risks the registered person being checked or who behaves threateningly to see the badge (the information) only in connection with his becoming

Article 29 Working Party, Guidelines on transparency under Regulation (EU) 2016/679 (reviewed and adopted 11 April 2018), paragraph 50.

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filmed. For others who are caught by the image and sound recording there are very limited opportunities to perceive that they are being filmed. The registered person then has no opportunity to avoid the camera or change their behavior.

The warning symbols that are now on the ticket controllers should therefore



supplemented by warning signs that all registered users can read before they enter the very area where they may be subject to surveillance with the body carrier camera. IMY wants to emphasize that the registered should have the opportunity to decide if they want enter an area where body-worn cameras are continuously used before entering the area.

IMY states that SL has violated Article 13 of the Data Protection Regulation by not provide sufficient information about the imaging that takes place with them the body-worn cameras and that SL also processed personal data in violation of the transparency principle in Article 5.1 a of the data protection regulation.

#### Sound recording

The SL not only records footage with the body-worn cameras, but also records sound. SL states on the written information that is handed over to travelers that additional fee has been added that film is recorded to prevent and document threats situations. However, it does not appear that sound is being recorded. On SL's website under the heading "Ticket control and surcharge", SL stated initially only that they treated "moving images and still images". On SL's website under the heading "So do we process your personal data" it now appears that SL in connection with ticket control, among other things, deals with moving images, sound (IMY's emphasis) and still images. However, it does not appear from the badge, which is now layer one too information, that sound is recorded.

The first layer of information should, as mentioned above, contain the information that affect the data subject the most and inform about such treatment that could come as a surprise to those registered.<sup>29</sup>

IMY states that sound recording is particularly sensitive to privacy, sound recording can will affect the registered to a large extent, not least because SL does not states that audio is recorded more than on its website, which may lead to those who

becomes the subject of the audio recording may say things that they would not have done if they had knowledge of the sound recording. Furthermore, IMY states that travelers in SL's traffic network cannot reasonably expect to be intercepted and that the audio recording is therefore surprising to them. IMY states that it is particularly serious that information about sound not left in the first layer of information because audio recording is considered as particularly privacy sensitive.<sup>30</sup>

IMY thus states that SL has violated Article 13 of the Data Protection Regulation by to not provide sufficient information about the audio recording that takes place with them the body-worn cameras and that SL also processed personal data in violation of the transparency principle in Article 5.1 a of the data protection regulation.

Summary assessment of information to the registered

Article 29 Working Party, Guidelines on transparency under Regulation (EU) 2016/679 (reviewed and adopted 11 April 2018), paragraph 36.

<sup>30</sup> Prop. 2017/18:231 p. 67

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IMY notes that SL initially only provided certain information to them registrants who received a surcharge. Information that sound was recorded did not appear.

The IMY does not consider that it was clear enough to refer to film being shot on it written information that SL provides to travelers who have been charged a surcharge.

SL's ticket inspectors now have a so-called badge on their uniform with a picture of one camera and the text Body Camera. The badge is considered layer one.

IMY notes that the information provided on the badge is deficient and not

meets the requirements for the information to be contained in layer one.

IMY therefore states that SL has violated Article 13 of the Data Protection Regulation by not providing sufficient information about the image and sound recording that takes place.

IMY states that the camera surveillance concerns a large number of travelers who are dependent

of SL's traffic network to get to work, school and places for recreation. IMY

states that the pre-recording technique entails a very extensive

personal data processing including both image and sound recording of the large

the mass of travelers who neither behave threateningly nor violently towards

the ticket inspectors, have a valid driver's license and are not subject to any inspection either.

This is especially so as the controllers are instructed to have the camera on during their entire session

shift and thus may film all travelers who might pass

a controller. The need for information is therefore strongly felt. SL has

thereby also processed personal data in violation of the transparency principle in Article 5.1

a in the data protection regulation.

Choice of intervention

IMY has established that SL's ticket inspectors use body-worn cameras

with pre-recording technology to record sound and image in connection with ticket control for

to prevent threatening situations, document incidents and to control

the identity of travelers. During the course of supervision, the experiment with body cameras has become

permanently and the number of ticket inspectors using the body cameras has increased.

The area has also been expanded to cover SL's entire traffic network. The pre-recording technology has

meant that both adults and children have been able to be captured on film, albeit only briefly

if no material has been stored for longer than one minute.

The use of the body-worn cameras has had no legal basis, with exceptions

for the recording that takes place in connection with threatening situations, and has meant that

more personal data has been collected than was necessary for the purposes.

IMY considers that SL's processing of personal data in connection with the pre-recording which takes place for one minute, and which means that everyone who can think of passing in front the camera is filmed, even those who have not behaved threateningly or violently or received any surcharge, has involved an extensive collection and processing of an excessively large amount of personal data.

This means that SL has processed personal data in violation of Article 5.1 a and Article 5.1 c of the data protection regulation and the provision on legal basis for personal data processing in Article 6 of the Data Protection Regulation.

Furthermore, IMY has established that SL has not provided information on the processing of personal data to the registered to a sufficient extent. Partly by omitting information about audio recording, partly by not informing the registered in a clear manner before the registrants enter the area where the ticket inspectors

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records moving image and sound with the body-worn cameras. This means that SL also has acted in violation of the transparency principle in Article 5.1 a and the provision on information in Article 13 of the Data Protection Regulation.

Possible interventions

Article 58 of the data protection regulation states all the powers that IMY has. IMY has a number of corrective powers in the event of violations of the data protection regulation to be available according to article 58.2 a-j, including reprimand, injunction and penalty fees.

It follows from Article 58.2 of the data protection regulation that IMY in accordance with Article 83 shall impose penalty charges in addition to or in lieu of other corrective measures which

referred to in Article 58(2), depending on the circumstances of each individual case. If there is a question if a minor violation is received by the supervisory authority, according to reason 148 i data protection regulation, issue a reprimand instead of imposing a penalty fee.

A penalty fee must be imposed

IMY has assessed that SL has violated articles 5.1 a and c, 6.1 f and 13 i

data protection regulation. These articles are covered by article 83.5 i

the data protection regulation, which means that the supervisory authority, according to article 83.2, shall consider imposing administrative penalty charges in addition to, or instead of, others corrective measures.

Against the background that large parts of the personal data processing as this supervision covered has meant illegal processing of personal data concerning a large number registered, that the processing has been going on for a long time and that SL has not been provided sufficient information to the data subjects, it is not a question of a minor infringement.

SL must therefore be subject to an administrative penalty fee.

Determining the size of the penalty fee

General regulations

According to Article 83.1 of the Data Protection Regulation, each supervisory authority must ensure that the imposition of administrative penalty charges on a case-by-case basis is effective; proportionate and dissuasive.

In article 83.2 of the data protection regulation, factors to be taken into account are stated

determining the size of the penalty fee. These factors include a)

the nature, severity and duration of the infringement, f) the degree of cooperation with

the supervisory authority to address the violation and reduce it

potential negative effects g) the categories of personal data covered

the violation, h) the manner in which the violation came to the attention of the supervisory authority

knowledge, especially whether and to what extent the personal data controller

reported the violation and k) any other aggravating or mitigating factor

which is applicable to the circumstances of the case.

Violations of articles 5, 6 and 13 are to be considered serious and covered by it

higher penalty fee according to Article 83.5 of the Data Protection Regulation. This means that

the amount of the penalty fee can amount to EUR 20,000,000, or if the object of supervision is

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a company, up to 4% of the total annual turnover in the previous financial year,

depending on which value is the highest.

It follows from Article 4.18 of the data protection regulation that a company is a physical or legal entity

person who conducts economic activity, regardless of its legal form, which

includes partnerships or associations that regularly carry on financial

Operation. To be able to impose penalty charges that are effective, proportionate and

dissuasive, the company definition shall mean that a company shall be deemed to be one

economic unit which may consist of a parent company and all its subsidiaries.<sup>31</sup>

Reason 150 in the data protection regulation states, among other things, that if administrative

penalty charges are imposed on a company, a company should be considered a company in that sense

as referred to in Articles 101 and 102 of the TFEU.

This means that the assessment of what constitutes a company must be based on

competition law definitions. The rules for group liability in the EU

competition law revolves around the concept of economic unity. A parent company and

a subsidiary is considered part of the same economic unit when the parent company

exercises decisive influence over the subsidiary. The decisive influence (i.e.

the control) can be achieved either by ownership or by agreement.

When determining the maximum amount for the sanction fee, IMY is based on SL's annual report from the previous budget year.<sup>32</sup> From SL's annual report from the year 2020 it appears that SL is the parent company of a group where SL is the sole owner of the companies SL Älvsjö AB, AB SL Finans and Waxholms Ångfartygs AB.

IMY is based on SL's turnover for the group when determining the penalty fee size. The turnover for the SL group in 2020 amounted to SEK 20,981,000,000.

The maximum sanction amount that SL can be imposed is thus SEK 839,240,000, which corresponds to four percent of SL's turnover.

SL has stated that its operations have been particularly vulnerable due to the covid 19 pandemic. SL has further stated that the company suffered large losses during the year 2020. SL's

ticket revenue in 2019 amounted to SEK 8,750,000,000 and amounts to and including November 2020 to SEK 5,068,000,000. Forecasted ticket revenue for the whole of 2020 amounts to SEK 5,632,000,000, which means that the ticket revenue for the whole year decreased by SEK 3,118,000,000 compared to the previous year. SL believes that these economic circumstances shall constitute mitigating circumstances if a penalty fee shall be issued.

SL further states that Aktiebolaget Storstockholms Lokaltrafik is owned by Region Stockholm and thus constitute a publicly owned company. As can be seen from the annual reports from 2018 and 2019 as SL attached, the total revenues consist of 44 percent operating contribution. The operating grant refers to the tax financing that SL receives for conducting public transport operations. From the annual report from the year 2020 the tax financing rate is stated to be 54.4%. The operating contribution does not refer to turnover in the form of sold goods and services but is a contribution from Region Stockholm for cost coverage in AB SL. According to the Act (1977:67) on surcharge in collective passenger traffic, the size of the fees may not exceed the additional costs incurred by SL for the control activities and according to the same law, financial profits must not be added to SL

Article 29 Working Group, Guidelines for the Application and Determination of Administrative Penalty Fees in accordance with Regulation 2016/679 (the WP253 Guidelines), p. 6

32 SL's annual report 2020.

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through the withdrawal of the additional fees. The issuance of the additional fees is thus not a profitable business for SL.

Due to the fact that the issuance is not profitable for SL, the ticket checks involve i in reality only costs for SL to implement. However, SL believes that there is one interest in carrying out these checks because it increases the willingness to pay in public transport.

Assessment of the violations

IMY has found three violations. IMY assesses that the three violations do not constitute connected treatments and that a penalty fee must therefore be given per violation.

SL's use of body-worn cameras to prevent and document threats and violence (purposes A and B)

With regard to the severity of the violation, IMY states that the treatment that took place to prevent and document threats and violence has largely been legal (den treatment that took place under ongoing threats and violence).

However, the violation in this part consists of SL's excessive use of pre-recording technique through which they continuously recorded with image and sound, during as short as one minute. The recording has not only covered the people who acted menacingly, but also all other travelers who happen to appear in the camera's view



recording area, which should not have to expect to be recorded with image and sound.

This is a serious violation because it is a public place which covers SL's entire traffic network. It has involved extensive monitoring of a large number of travelers, including children, who depend on SL's transport network to get to work, school and places for recreation. The treatment has also included recording of sound which is a particularly privacy-sensitive treatment and which has resulted in a extensive breach of privacy for individuals.

IMY also states that SL had not started its use of body-worn cameras when the inspection began without SL coming to do so shortly afterwards. SL also extended the use of body-worn cameras during surveillance to finally make the treatment permanent. SL has also expanded its use of body worn cameras to cover not only Stockholm's subway but SL's entire traffic network and all types of traffic. IMY believes that this, regardless of the length of time for supervision, is aggravating circumstances.

At the same time, IMY states that SL's personal data processing has taken place for those entitled purpose, that there was an actual threat against the ticket inspectors and that the surveillance has contributed to increasing the safety of the controllers in their daily work working environment. The filming that took place with the pre-recording technique has only been stored locally in the cameras unless the controllers activated the recording manually. The recorded the material has also been limited to a few people. Furthermore, SL has under the course of supervision has taken certain measures such as reducing the time for the pre-recording from two minutes to one minute. IMY considers these to be mitigating circumstances.

When determining the amount of the penalty fee, IMY has taken into account that SL did not use himself of the body-worn cameras for profit and that SL's ticket revenue according to that information reported in the case decreased in 2020.

IMY has established that SL lacked a legal basis according to Article 6.1 f and that SL's treatment with pre-recording technology for as long as one minute is against the principle of legality and the principle of data minimization in Article 5.1 a and c. In light of the seriousness of the violations and that the administrative penalty fee must be effective, proportionate and dissuasive, IMY determines the administrative the penalty fee of SEK 4,000,000 for the violation in this part.

SL's use of body cameras to ensure the identity of travelers who must pay surcharge (purpose C)

Also the treatment that took place to ensure the identity of the person served surcharge has taken place with pre-recording technology and included personal data in as well image as sound. Activated recording has also been used here.

IMY considers that the registered person is in a difficult situation when a surcharge is imposed out, which makes the violation serious. To continuously use recording with sound and image with body-worn cameras is particularly serious when ID has been presented of the controlled. The number of controls is estimated to be large. From SL's information it appears that approx. 30,000 additional fees are issued annually and that the majority of them checked presents an identity document.

That SL has recorded images and sounds from other travelers in SL's traffic network, in addition to those who if a surcharge is imposed, constitutes extensive monitoring of a large number of travelers who depend on SL's transport network to get to work, school and places for recreation. IMY states that the recording of image and sound in connection with issuance of surcharge has been illegal and goes far beyond what has been assessed to be

necessary for the purpose. SL could have taken other, less privacy-infringing actions measures to achieve the purpose. Against this background, IMY considers that it is a serious violation.

IMY notes the same aggravating and mitigating circumstances for purpose C as stated above regarding purposes A and B.

IMY has established that SL lacked a legal basis according to Article 6.1 f and that SL's processing is contrary to the principle of legality and the principle of data minimization i article 5.1 a and c of the data protection regulation.

In light of the seriousness of the violations and that the administrative penalty fee must be effective, proportionate and dissuasive, IMY determines the administrative the penalty fee of SEK 8,000,000 for the violation in this part.

Information for those registered

The requirements for information to data subjects according to the data protection regulation are extensive.

Access to information is crucial for data subjects to be able to choose how they want act in a given situation. Access is also crucial for registered users to be able to assert some of their rights according to the data protection regulation.

SL's shortcomings in the provision of information to the registered have mainly meant that the registered did not receive any information that camera surveillance with body cameras may occur before they have been filmed by SL. They have

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thereby not having the opportunity to choose whether they still wish to carry out the journey in SL's traffic network or refrain.

Registrants who have been controlled or who have behaved threateningly have been able to perceive

the information in the first layer, the controllers' badge, only in connection with their becoming filmed. There is a complete lack of information aimed at other registered users, who are not themselves controlled or participated in a threatening situation, but who were nevertheless caught by the image and sound recording. Furthermore, SL has not provided specific information about that sound has been recorded even though it is a particularly privacy-sensitive treatment.

The lack of information that body-worn camera surveillance may be coming to take place concerns a large number of travelers who depend on SL's transport network to get to work, school and places for recreation. Even children, who are seen as particularly worthy of protection, may be filmed. IMY considers this to be a serious violation, esp as that the great mass of travelers who only happened to be in the ticket controller's catchment area has not received any information that SL uses body-worn cameras.

SL has now equipped the controllers with a so-called badge on the uniform, an action which according to IMY shows that SL had an ambition to take measures to reduce breach of privacy and comply with the rules in the data protection regulation.

In light of the seriousness of the violations and that the administrative penalty fee must be effective, proportionate and dissuasive, IMY determines the administrative the penalty fee of SEK 4,000,000 for the violation in this part.

## Summary

IMY assesses based on an overall assessment that SL must pay an administrative sanction fee of a total of SEK 16,000,000 for the violations of articles 5, 6 and 13 of the data protection regulation.

This decision has been taken by the general manager Lena Lindgren Schelin after a presentation by lawyer Jeanette Bladh Gustafson. In the final processing also has unit manager Charlotte Waller Dahlberg and lawyer Jenny Bård participated. During the proceedings have also been attended by the Chief Justice David Törngren.

Lena Lindgren Schelin, 2021-06-21 (This is an electronic signature)

Appendix

Information on payment of penalty fee

Copy to

SL's data protection officer: [dataskyddsbudet@sl.se](mailto:dataskyddsbudet@sl.se)

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How to appeal

If you want to appeal the decision, you must write to the Swedish Privacy Agency. Enter in the letter which decision you are appealing and the change you are requesting. The appeal shall have been received by the Privacy Protection Authority no later than three weeks from the day you received it part of the decision. If the appeal has been received in time, send

The Privacy Protection Authority forwards it to the Administrative Court in Stockholm examination.

You can e-mail the appeal to the Privacy 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.