

1540-2016

Decision

Diariennr

2019-06-28

143-2017

The Elderly Committee

Uppsala municipality

The Elderly Administration

753 75 Uppsala

Supervision under the Data Protection Regulation (EU)

2016/679 - authorization allocation, barriers,

m.m. according to the Patient Data Act

The Data Inspectorate's decision

The Data Inspectorate states that the Elderly Committee in Uppsala municipality processes personal data in breach of Article 32 of the Data Protection Regulation; by:

1.

The Elderly Committee has not limited the users' permissions to only what is needed for the user to be able to fulfill their tasks in health care. The Elderly Committee in Uppsala municipality has thus processed personal data in violation of ch. § 2 and Chapter 6 Section 7 of the Patient Data Act (2008: 355) and Chapter 4 § 2 The National Board of Health and Welfare's regulations and general advice on record keeping and processing of personal data in health care (HSLF-FS 2016: 40).

2. Night nurses in the elderly committee's emergency care take part

patients' unlocked personal data with other care providers without consent of the patients. The senior citizens' committee in Uppsala municipality has thus processed personal data in violation of ch. 6 § 3 the Patient Data Act and Chapter 4 6 § HSLF-FS 2016: 40.

3. The senior citizens' committee does not have technical functions for barriers the journal system Siebel between the Elderly Committee and the Care Committee

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in Uppsala municipality, regarding the care documentation in

"Observandum". The Elderly Committee in Uppsala Municipality has thus processed personal data in violation of ch. 4 Section 4 and Chapter 5 § 4 the Patient Data Act.

The Data Inspectorate further states that the Elderly Committee in Uppsala Municipality processes personal data in breach of Article 5 of the Data Protection Regulation; by:

4. Night nurses within the elderly committee keep records in other care providers patient records for medical care during on-call time. By the senior citizens' committee records in other care providers' patient records do not meet the senior citizens' committee the requirements in ch. § 1 of the Patient Data Act and not his

personal data liability under Article 5 of the Data Protection Regulation.

The senior citizens' committee can neither be responsible for nor show that they are treating the personal data in a lawful and correct manner or ensure that the information is correct and, if necessary, updated, neither that the data is processed in a way that ensures appropriate security for personal data - including protection against unauthorized or unauthorized use treatment and against loss, destruction or damage by accident.

The Data Inspectorate instructs the Elderly Committee in Uppsala Municipality to:

1.

After a needs and risk analysis, assign each user individually authorization to access personal data in the Siebel record system to what is needed for the individual to be able to fulfill his tasks in health care, in accordance with ch. § 2 and Chapter 6 Section 7 of the Patient Data Act and Chapter 4 2 § HSLF-FS 2016: 40.

2. Stop giving users access to unlocked patients

personal data of other care providers, without consent and without it there are reasons for an exception according to ch. § 3 and ch. 6 § 4 the Patient Data Act.

Introduce technical functions for locks in the Siebel journal system between the Elderly Committee and the Care Committee in Uppsala municipality according to ch. 4 Section 4 of the Patient Data Act.

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4. Ensure that all record keeping takes place in the elderly committee's own patient records.

Information

On 25 May 2018, the EU Data Protection Regulation began to apply. Since

The Data Protection Ordinance is directly applicable in Sweden, as well as in the others

EU Member States, it is therefore the provisions of the Regulation

which is now to be applied in the processing of personal data.

The Patient Data Act and the National Board of Health and Welfare's regulations and general advice on record keeping and processing of personal data in health care

(HSLF-FS 2016: 40), constitutes supplementary legislation with regard to personal data processing in health care.

Before the Data Protection Ordinance came into force, the government appointed one

inquiry - the Social Data Protection Inquiry - which has reviewed

the register statutes within the Ministry of Social Affairs' area of activity,

for example, the Patient Data Act and HSLF-FS 2016: 40. The Data Inspectorate

notes that with regard to the current provisions of the Patient Data Act

in this decision, these are essentially unchanged.

The Data Inspectorate's inspection of the Elderly Committee in Uppsala municipality

implemented before the Data Protection Regulation came into force, why

the inspection will not in this decision make use of the corrective

powers with regard to penalty fees.

Report on the supervisory matter

The Data Inspectorate has examined the elderly committee and the care committee

allocation of permissions, log checks and asked questions within the framework of

the coherent record keeping regarding the Siebel record system

(hereinafter the journal system).

An inspection was carried out by the care committee and the elderly committee on February 3, 2017. The Data Inspectorate examined the municipal health and the healthcare's processing of personal data attributable to patients within framework of the medical record system.

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The Elderly Committee was submitted on 24 February 2017 with supplementary information

The Data Inspectorate and submitted certain comments on the inspection report.

On 25 October 2018, the Data Inspectorate requested that the senior citizens' committee should provide additional information, due to the fact that the processing had taken longer than expected. Above all, the inspectorate wanted to know about the processing of personal data in the record system had changed in proportion to when the inspection was performed on February 3, 2017.

Opinion from the senior citizens' committee was received by the Swedish Data Inspectorate on 13 November 2018, and i.a. the following appears. "The personal data processing in the record system has not changed in relation to when the inspection was made.

On the other hand, it can be mentioned that the municipality has begun a procurement of future documentation system which will replace Siebel. The idea is thus that a new record system will be in place in 2019 or at least 2020. "

The Data Inspectorate has delimited its supervision in such a way that the audit concerns authorization assignment and barriers in the journal system.

The Elderly Committee has mainly stated the following.

General information about municipal health care

Uppsala Municipality has since 1 January 2017 divided the responsibility for it
municipal health care on two different boards - the senior board and
the care board.

The Elderly Committee

The Elderly Committee is responsible for information regarding municipal commitments according to

The Health Care Act (HSL) for persons over 65 years of age, but not for
persons covered by the law on support and service to certain
disabled (LSS) or who have a mental disability.

The Elderly Committee's activities are conducted by the Elderly Administration under the leadership of
a managing director. The elderly administration is responsible for home health care in
special housing for the elderly and home care in ordinary housing for those over 65
year. MAS (medically responsible nurse) is organized in a quality and
development unit with a department head. Area manager as well
operations manager according to HSL is for ordinary housing organized under
head of the home care department. All special accommodation for the elderly has its own
operations manager HSL, which is organized under the department manager at

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Department of Housing. The elderly administration has a staff that is responsible for
strategic health issues as well as procurement, agreements and
contract follow-up.

The Care Board has stated the following

The care board is responsible for information regarding the municipal commitment

according to HSL for persons under the age of 65 who are covered by LSS or who have one physical disability. The care committee's activities are conducted by

The care administration under the leadership of an administrative director.

The administration is primarily responsible for home health care in special housing disabled and ordinary housing for persons who have received a decision according to LSS or the Social Services Act (SOL) and is under 65 years of age. The administration has also employed licensed personnel who are organized in a separate department with department manager and operations manager according to HSL and own MAS.

Emergency care

In Uppsala municipality, there are several private actors who perform municipal home health care. Their assignments are governed by agreements between the boards and them private providers. During the inspection, it was stated that Uppsala municipality agreement on health care with the private care providers only refers to the time between kl. 07-17. Other times, ie. between 17-07, it is the municipality responsible for patients in the municipal health care and for the patients of the private care providers.

Of the supplementary information received by the Data Inspectorate on 24 February 2017 it emerged that when it comes to health care interventions in ordinary accommodation (ie for those who remain in their home) has the home care providers are responsible for healthcare interventions between 7-16. When it In the case of special housing, the private actors are responsible between 7-22. Other time, individuals' needs for health care interventions are met by it municipal emergency medical care, ie. part of the municipality's own account.

The elderly administration performs all health and medical care during on-call time "on-call medical care", also for users who belong to the care committee's area of responsibility or who the boards have a principal responsibility for but which is conducted by private individuals

actors.

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The personal data responsibility for the processing of personal data in

the medical record system regarding the municipal health care in

Uppsala municipality

The Elderly Board states that the boards are responsible for personal data

each board's area of responsibility according to the Patient Data Act. It appears that one

patient can be relevant within both the care committee and the elderly committee.

With regard to the activities called "emergency care", the senior citizens' committee has, based on the definition specified in

ch. Section 6 of the Patient Data Act - assessed that

personal data liability is linked to the processing that an authority purely

actually performs. Because the executing authority in this case is

the senior citizens' committee, the municipality has made the assessment that the senior citizens' committee

is responsible for the processing of personal data in the business system as far as it is concerned

documentation relating to medical care during on-call time.

Personal data processing in the record system

The medical record system has been used in Uppsala municipality since June 2012 and that

is the municipality that handles the operation of the system. The journal system is used both

in health care and in social services. The journal information from

however, the different business areas are separated.

At the top of the patient's medical record is shown if there is specific information about

the patient under the heading "warning or observandum". To "warning or

observandum "should be visible in the journal, an ordinary journal entry is written and the line is marked with keyword 1 "observandum" and then with keyword 2 "Warning, infection or observation". Warnings are e.g. allergies and these marked with a red triangle. Infection and observations are marked with one exclamation mark. Observandum is always visible in the patient's medical record patient safety reasons. It is p.g.a. a previous complaint that has been decided to do this.

Eligibility

The document Siebel - Organizational Tree Patient Journal states the following.

Authorization level 1 - "Records are only available for leg. staff within one and the same organization, in this case for leg. staff within Uppsala municipality (own management). This means that when leg. staff within Uppsala municipality (own direction) writes a journal entry for a customer so has all the leg. staff within one's own organization access to it no matter what

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business area / business area leg. the staff is located in / works in.

This is because journals are created / written at the highest level (Level 1), which means that the customer always has a journal, regardless of whether he or she is up to date several business areas / business areas within Uppsala municipality (own regi).

□

Licensed staff, regardless of where they are located, writes

always in one and the same journal.

□

If the patient moves to another unit / ward, regardless of where in

organization, the patient record remains intact. Example:

Licensed staff in a special accommodation can continue to work in one

started care plan, created by licensed staff on one

alternating care accommodation.

□

The record is not affected in the event of a reorganization.

□

As long as there is a care relationship, no dialogue needs to take place outside

the business system (fax, mail, telephone, etc.). This leads to a pile

patient safety. "

Authorization level 2 - The private care providers establish / record at the intermediate level (Level 2), "which means that leg.

staff working with the same customer

but who is located / works in another business area / business area

do not have the opportunity to read the journal entry. It also means that it is

secrecy between the different business areas / business areas as a result

that each business area / business area prepares its own journal for

customer to whom you have a care relationship. In other words, a customer can have several

records within one and the same organization as this takes place at Level 2. "

Authorization level 3 - Means access to records for one or more devices.

During the inspection, a list was submitted to the Data Inspectorate - Order

system role - which describes the different roles that exist in the journal system. Of

this list appears i.a. that certain roles - such as nurses,

occupational therapists and physiotherapists / physiotherapists - have competence level 1.

No needs and risk analysis has been presented by the senior citizens' committee.

Emergency care

The senior citizens' committee states that the night nurses, about 15-20 nurses, work on call at night and all of these nurses are employed by the senior citizens' committee. These nurses have qualifications for tasks in the medical record system attributable in part to patients in the municipal health

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and healthcare, partly to information about patients at the private care providers.

To be able to log in to the private care providers' patient records use the nurses of so-called positioning. Positioning means that the nurses change the unit / organizational part that they currently have work from outside, for example which care provider or which unit within the caregiver they work from. Only these night nurses has the current positioning option.

Night nurses who visit the private caregivers' patients log in and record in the private care provider's journal. There is no consent from current patients to staff in the municipal health and healthcare may be given access to the private data providers' patient data in the journal system.

The municipality's view is that it is the municipal care provider that is responsible care provider during the times of the day when there is no agreement with the private caregivers. The municipality considers this to be problematically clean

legally, no matter how big or small the private caregiver is.

Coherent record keeping according to ch. 6 the Patient Data Act

The Elderly Committee states that the municipal health service participates in

system for coherent record keeping through national patient overview

(NPÖ) and through the journal system. Before the unified record keeping

was introduced in the municipality, investigations were made to check that

implementation was correct. The municipality considers that it meets the requirements in

Chapter 6 the Patient Data Act.

There are guidelines for the unified record keeping within it

municipal health care. The medical record system includes the municipal one

health care together with about 10 private care providers. The document

Guideline for information management and record keeping regarding health and

healthcare has been submitted to the Data Inspectorate.

In order for health and medical staff in the municipality to be able to take part

data from and make available data for private care providers as well

uses the journal system, in addition to what was previously stated

with regard to night nurses in emergency care, the patient's consent must be obtained

first obtained. The municipality states that obtaining consent only means that

current caregivers are given the opportunity to read other caregivers' notes. To

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Documenting consent is mandatory to enable reading by others

caregiver's journal.

The municipality carried out information initiatives aimed at the municipality citizens in connection with that system for coherent record keeping was introduced. There is also information about coherent record keeping the municipality's website.

The staff who obtain the patient's consent to take part in information through coherent record keeping, provides information to the patient in connection with the consent obtained.

Bar (coherent record keeping)

The elderly committee states that the patient can block their medical record so that it is private caregivers cannot take part in their information through the medical record system.

The patient does not block against a special care provider, but the patient blocks everything opportunity for all other caregivers to read. The lock can only be lifted off the care provider by whom the block is established, regardless of whether it is a private one caregiver or caregiver in Uppsala municipality.

However, there is no possibility for the patient to block their data as is dealt with by the elderly committee for the care committee and vice versa. One discussion is underway within the municipality about what measures must be taken due to the reorganization of the municipal health care.

Documentation of access (logs)

All roles that have access to patient data in the medical record system logged, including e.g. technicians who need access to the system.

The Elderly Committee's view is that the logs contain all that information as the Patient Data Act and the National Board of Health and Welfare's regulations (SOSFS 2008: 14) on record keeping and information management in health care prescribes.

The municipality also performs log checks.

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Reason for the decision

Authorization assignment in the journal system

It appears from ch. § 2 and ch. 6 Section 7 of the Patient Data Act, that the care provider shall determine the conditions for granting access rights to such data on patients who are fully or partially automated. Such eligibility shall be limited to what is necessary for the individual to be able to fulfill their duties in health care.

Of ch. 4 §§ 1-3 HSLF-FS 2016: 40 states that the care provider shall be responsible for that each user is assigned an individual privilege to access personal data and before he decides on the allocation of authority, shall a needs and risk analysis is carried out.

The Data Inspectorate's assessment

The provisions of the Patient Data Act aim to take care of both privacy protection and patient safety, see chap. Section 2 of the Patient Data Act.

The legislator has thus made a balance in terms of how the information shall be treated to meet both patient safety and privacy requirements.

The Data Inspectorate can establish that the requirements of the care provider authorization allocation in ch. 4 § 2 and ch. 6 Section 7 of the Patient Data Act is clear.

Eligibility must be limited to what is needed for the individual to be able to fulfill their duties in health care, based on a needs and risk analysis in accordance with ch. 2 § HSLF-FS 2016: 40.

The Data Inspectorate can further state that all licensed personnel within the senior citizens' committee has been assigned competence level 1, which means that they have

access to all journals created / written at this level. Regarding the night nurses at the senior citizens' committee, they have also been given the opportunity to use so-called positioning in the journal system, which actually entails access to all private caregivers' patient records in emergency care without patients have agreed to this.

Because different users have different tasks within different work areas, this is a wider competence than what is permitted under the Patient Data Act. Limitation of a user's permissions must be made based on a needs and risk analysis both within the framework of internal confidentiality, and within the framework of the unified record keeping.

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The Data Inspectorate states that the senior citizens' committee has not limited users' permissions to only what is needed for the user to be able to fulfill their duties in health care.

The Board of the Elderly has thus processed personal data in violation of Article 32 the Data Protection Ordinance and Chapter 4 § 2 and ch. 6 Section 7 of the Patient Data Act and Chapter 4 2 § HSLF-FS 2016: 40.

The Data Inspectorate therefore submits to the senior citizens' committee that after a needs and risk analysis assign each user individual privileges to access personal data in the journal system Siebel, to what is needed to it individuals must be able to fulfill their duties in health care in accordance with ch. 4 § 2 and ch. 6 Section 7 of the Patient Data Act and Chapter 4 § 2

HSLF-FS 2016: 40.

One caregiver's treatment of another caregiver's unobstructed
personal data

The provisions on the conditions under which a care provider may treat

unlocked personal data made available by another care provider

the system of coherent record keeping, can be found in ch. § 3

the Patient Data Act. It states that three conditions must be met - it is required that

the data relate to a patient with whom there is a current care relationship, that

the data can be assumed to be important for prevention, investigation or treatment

diseases and injuries of the patient in health care and that

the patient agrees to this.

The preparatory work for the Patient Data Act states that active consent is required

from the patient's side (Bill 2007/08: 126, p. 252 f).

Furthermore, it follows from ch. § 6 HSLF-FS 2016: 40 that the care provider shall be responsible for that

an authorized user's access to unlocked data about a patient in a

other care provider, preceded by the user checking that the conditions

for the processing of personal data according to ch. 6 Section 3 or Section 3 a of the Patient Data Act

(2008: 355) are fulfilled and then make an active choice to take part in

the data.

The Elderly Committee has stated that the night nurses in emergency care can

use so-called positioning in the journal system - in order to get

access to the patients' personal data in the private care providers

medical records, partly to the patients' personal data within the municipal health

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and healthcare. The night nurses also keep records in the private ones caregivers' records. The board has also stated that some consent from the patients in question have not been collected before this happens.

The Data Inspectorate's assessment

The Data Inspectorate can state that the senior citizens' committee has not obtained one active consent of the patients of the private care providers, before the night nurses take part of the patients' personal data with the private ones caregivers.

Active consent is required before users of the senior citizens' committee can process unlocked personal data made available by another healthcare provider through the system of unified record keeping. For a caregiver to receive process such information that a guardian does not have the right to block according to § 2 fourth paragraph second sentence is required that the conditions according to first paragraph 1 and 2 or second paragraph 1 and 2 are fulfilled (see Chapter 6, Section 3 third paragraph of the Patient Data Act).

If there is a danger to the patient's life or otherwise there is a serious risk his health, and the consent can not be obtained according to ch. § 3 the Patient Data Act, the care provider can still treat under certain conditions the unobstructed information, see chap. Section 4, second paragraph, of the Patient Data Act.

With regard to the issue of consent, the Data Inspectorate notes that it is off

The preparatory work shows that in some cases consent can be given in advance, before the current patient relationship has arisen (Bill 2007/08: 126, p. 253).

The Data Inspectorate finds that night nurses within the elderly committee emergency care takes care of patients' unlocked personal data with others

caregivers without the consent of the patients, and without the presence of anything

other exception according to ch. 6 § 3 and ch. 6 Section 4 of the Patient Data Act.

The Board of the Elderly has thus processed personal data in violation of Article 32

the Data Protection Ordinance and Chapter 6 Section 3 of the Patient Data Act and Chapter 4 § 6

HSLF-FS 2016: 40.

The Data Inspectorate instructs the senior citizens' committee to stop giving users

access to patients' unlocked personal data with other care providers, without

consent and without there being grounds for exemption according to ch. § 3 and

Chapter 6 Section 4 of the Patient Data Act.

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The patient's right to block in the medical record system

The rules on the care provider's obligation to provide an opportunity for

the patient to block their care documentation in IT systems can be found in

Chapter 4 Section 4 and Chapter 6 Section 2 of the Patient Data Act. Further supplemented

the provisions of the Patient Data Act of HSLF-FS 2016: 40. See especially ch. 4 § 5 and

Chapter 4 7-8 §§ HSLF-FS 2016: 40.

Of ch. 4 Section 4, first paragraph of the Patient Data Act states that personal data such as

documented for purposes specified in ch. § 4 points 1 and 2 of a

care unit or within a care process, may not be made available through

electronic access for those who work at another care unit or within one

another care process at the same care provider, if the patient objects. IN

in such cases, the task shall be blocked immediately. Guardians of a child have, however

not the right to block the child's information. Information that there are blocked

information may be available to other care units or care processes.

Of ch. 6 Section 2, fourth paragraph, of the Patient Data Act states that if a patient

opposes that information other than that specified in the second paragraph is the same

legal space is made available to other care providers through cohesion

record keeping, the data must be blocked immediately. The guardian of a child

can not, however, block information about the child. The section thus states that

the patient's right to object to data being made available in it

coherent record keeping includes all information except information on

that there are blocked data and which care provider has blocked these.

It further follows from ch. Section 4 of the Patient Data Act that disclosure through

direct access to personal data is only permitted to the extent that

specified in law or regulation. It follows from the second paragraph that if a county council or a

municipality conducts health care through several authorities, receives one

authority have direct access to personal data processed by someone

another such authority in the same county council or municipality.

“The fact that direct access in a particular case is allowed within a

However, the caregiver's organization does not affect the application of those provisions

which implies other limitations of the possibilities of in a specific

care situation get access to personal data, e.g. the rules on blocking

personal data according to Chapter 4 ”, (see Bill 2007/08: 126, p. 245).

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The Elderly Committee has stated that the information in "Observandum" is always visible in the patient's medical record for patient safety reasons, due to the past complaint.

The Elderly Committee has further stated that there is no possibility for the patient to block their data processed by the senior citizens' committee for the care board and vice versa.

However, the Elderly Committee has stated that it is technically possible to block the patient data against all other care providers within the framework of the cohesive record keeping and that the lock can only be lifted by the care provider who established the barrier.

The Data Inspectorate's assessment

The patient's right to block applies both in the internal secrecy as well as in system for coherent record keeping. When the patient requests his care documentation must be blocked, the care documentation must not be available electronically available for other care units or care processes or, via direct access, for other care providers.

There is no legal possibility for the caregiver to exempt certain care documentation from the patient's barrier option within the framework of the internal secrecy. This means that if the patient requests it, the care provider must block all care documentation in the medical record system - which includes care documentation found in "Observandum".

In the light of the above, the Data Inspectorate states that the senior citizens' committee does not have technical functions for barriers in the medical record system Siebel between the elderly committee and the care committee, as regards the care documentation in "Observandum". The Elderly Committee has thus processed personal data in breach of Article 32 of the Data Protection Regulation and

Chapter 4 Section 4 and Chapter 5 Section 4 of the Patient Data Act.

The Data Inspectorate instructs the senior citizens' committee to introduce technical measures functions for barriers in the medical record system between the senior citizens' committee and the care board according to ch. 4 Section 4 of the Patient Data Act.

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A caregiver's duty to keep records

It appears from ch. § 1 of the Patient Data Act that this Act is applied to caregivers' processing of personal data in health care.

§ 3 kap. the same law contains explicit provisions regarding the obligation to keep patient records. According to ch. Section 1 of the Patient Data Act shall apply to the care of patients are kept patient records.

The Data Inspectorate's assessment

The Elderly Committee is responsible for personal data for all processing of personal data that takes place at the board, which includes processing of personal data in patient records.

If a care provider records personal data with another care provider, ie. in patient records of other data controllers, this means that the most the basic conditions in the Patient Data Act are not met.

The Data Inspectorate can state that the night nurses keep records in patient records of other personal data controllers. The requirement for record keeping, its accuracy, its preservation, etc. means that the record must be kept and preserved by the senior citizens' committee. Legally, the elderly committee's night nurses

therefore only record personal data in the seniors' committee's journal system.

The Data Inspectorate states that the senior citizens' committee processes personal data in violation of Article 5 of the Data Protection Regulation, by night nurses within the senior citizens 'committee keeps records in other care providers' patient records, and not in their own patient records, for medical care during on-call time. By keeping records in other care providers' patient records, the elderly council does not meet the requirements in Chapter 3 § 1 of the Patient Data Act and thus not its personal data responsibility according to Article 5 of the Data Protection Regulation. The senior citizens' committee can neither be responsible for nor show that they process the personal data in a lawful and correct manner or ensure that the information is accurate and, if necessary, up-to-date, either that the data is processed in a way that ensures appropriate security for personal data - including protection against unauthorized or unauthorized processing and against loss, destruction or damage by accident.

The Data Inspectorate instructs the senior citizens' committee to ensure that all record keeping takes place in the elderly committee's own patient records.

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This decision was made by the unit manager Katarina Tullstedt after the presentation by the lawyer Maria Bergdahl.

Katarina Tullstedt

Maria Bergdahl

Copy to:

Data Protection Officer (via e-mail for information)

The Health and Care Inspectorate

How to appeal

If you want to appeal the decision, you must write to the Data Inspectorate. Enter i the letter which decision is being appealed and the change you are requesting.

The appeal must have been received by the Data Inspectorate no later than three weeks from on the day the decision was announced. The Data Inspectorate forwards the appeal to the Administrative Court in Stockholm for review if the inspection is not itself changes the decision in the way you have requested.