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Apotea AB

Diary number:

DI-2021-774

Date:

2023-03-13

Decision after supervision according to

data protection regulation

- Apotea AB's camera surveillance

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The Privacy Protection Authority's decision

The Swedish Privacy Protection Authority states that Apotea AB processes personal data in violation of Article 13 of the Data Protection Regulation¹ by not meeting the requirement to information to the registered regarding camera surveillance at the company's logistics center at Tjusarvägen 40 in Morgongåva.

The Privacy Protection Authority gives Apotea AB a reprimand according to article 58.2 b i the data protection regulation for the established violation.

The Swedish Data Protection Authority instructs Apotea AB to take measures to

ensure that

1. that on the camera surveillance signs at the facility in Morgongåva is available

contact details for the company and a clear reference to each external visitor

can access additional information, and

2. that the second information layer for employees contains information about all of them

rights referred to in Article 13.2 b and that the information does not express

that the data subjects' rights are limited in time or subject to formal requirements

in a way that lacks support in the data protection regulation.

The measures must have been taken no later than four weeks after this decision came into force.

Account of the supervisory matter

Background

The Swedish Privacy Protection Authority (IMY) has taken note of information in the media that is valid

that Apotea AB (hereinafter "Apotea" or "the company") operates camera surveillance at its

logistics center at Tjusarvägen 40, Morgongåva. In the media reporting, it has among

other claims have been made that Apotea uses surveillance cameras to supervise work and

control how employees perform their tasks. IMY has therefore initiated supervision of

Apotea in order to investigate the company's camera surveillance at the logistics center.

What emerged in the case

Apotea has essentially stated the following. Apotea conducts camera surveillance at

the logistics center but believes that the media reporting has given a misleading picture of

the surveillance.

Apotea conducts camera surveillance in the premises with a number of cameras which are divided into

"business cameras", "local cameras" and "still camera". The business cameras

used for the purpose of handling incidents and tracking medicines. The majority of

the operational cameras are also used for IT support. The local cameras are used in

purpose of preventing, preventing, investigating and detecting crime. The still camera is used for

1 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with
persons with
regarding the processing of personal data and on the free flow of such data and on the cancellation of
directive 95/46/EC (General Data Protection Regulation).

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logistics and business-related purposes. Camera surveillance is only used for the above
stated purposes and never for work management or control of individual employees.

All cameras except the still camera monitor with image recording.

Real-time monitoring only takes place with the operational cameras used for IT

support and then only for a reason, when a case has been escalated to IT

support department. The still camera takes a still image every 15 minutes, which is deleted when
the next still image is taken.

Apotea has stated that surveillance is supported in all cases according to Article 6.1 f i

data protection regulation. Regarding the surveillance for the purpose of handling incidents and

track medicines, Apotea has stated that there are requirements that follow from law, regulation and

The Swedish Medicines Agency's special regulations which mean that Apotea has an obligation to

take safeguards to ensure that medicines are handled safely and not

disappears or is delivered to the wrong end customer. Camera surveillance is necessary to

Apotea must be able to fulfill the legal requirements regarding safety that are set on

the business. The camera surveillance also constitutes an important public and

public interest to ensure a functioning pharmacy business because access

to medicine is essential for both individuals and public health in general. Part in

this interest is that medicines are not abused. There is also a public interest in

those who conduct pharmacy operations handle medicines in a responsible and safe manner way and that any situations where medicines end up astray can be sorted out.

Apotea has implemented several security measures to avoid that drug-related incidents occur and the camera surveillance is applied as one last option for tracking medicines or identifying wrongly packaged or wrongly delivered drug.

The majority of the operational cameras are also used as visual support for the company's internal IT hotline in case of technical problems in production. Because Apotea conducts business that involves responsibility for delivering vital medicine around the clock it is of great importance that the company can remedy technical problems immediately at all times the day. Access to materials for these purposes is very limited and is provided only as a last option when other remedial measures in place have not been successful.

The local cameras are used as support in the company's crime prevention work and constitute a complement to other measures taken to deal with crime.

The camera surveillance is partly used to prevent unauthorized persons from entering the premises and to deter such intrusions, partly to guard the particularly vulnerable areas and/or places where pilferable goods/medicines are handled.

The pharmacy industry is vulnerable to crime, especially due to the availability of classified narcotics preparation. In the premises, among other things, goods and medicines (including narcotic medicines) that are particularly prone to theft. Apotea has stated that the company's warehouse operations have been subject to theft since 2011 and that the logistics center in Morgongåva has similarly been exposed to crime since the company took office the premises in 2018. It appears from the company's submitted incident report that it has two police-reported crimes have occurred at the site since the company took over the premises. In addition have several suspicious incidents occurred that have not been reported to the police, for example have

empty packaging found where theft has been suspected.

The still image camera is used to take a still image of the logistics center every 15 minutes delivery area and is only used to determine how large a portion of the delivery area is available for future deliveries of goods. Individuals may appear on

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certain still images in connection with a delivery, but the company considers that this only rarely happens.

Justification of the decision

The extent of IMY's review of the case

The Data Protection Ordinance and the Camera Surveillance Act (2018:1200) contain a large number of rules that must be followed in connection with the processing of personal data by camera surveillance. Within the framework of this supervisory matter, IMY does not test all the rules and issues that may arise during such personal data processing as the camera surveillance in question in the case entails. IMY's review of the matter is limited to the questions of whether Apotea has fulfilled the requirement of legal basis according to the data protection regulation, if the monitoring is subject to a permit according to the Camera Surveillance Act and whether Apotea has fulfilled the disclosure obligation and the duty to provide information according to the Camera Surveillance Act and the Data Protection Ordinance.

Which regulations apply to Apotea's camera surveillance?

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 which supplements the data protection regulation.

The Camera Surveillance Act

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 surveillance that Apotea conducts at the logistics center in Morgongåva takes place with equipment that is in Sweden and constitutes camera surveillance according to § 3 § 1 the camera surveillance law. This means that the provisions of the Camera Surveillance Act applies to the camera surveillance.

The Data Protection Regulation

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.

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. Since Apotea films identifiable people with their cameras applies the provisions of the data protection regulation for camera surveillance.

Does Apotea need permission for the current camera surveillance?

According to Section 7 of the Camera Surveillance Act, permission is required for camera surveillance of a location the public has access if the surveillance is to be carried out during the performance of a task by

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public interest that follows from law or other constitution, collective agreement or decision that announced with the support of law or other constitution.

Apotek performs a task of public interest in the sense referred to in

Section 7 of the Camera Surveillance Act.² Permits for camera surveillance are admittedly required according to

Section 9, point ten of the Camera Surveillance Act, not in the case of surveillance in a shop where it

pharmacy operations are carried out, if the purpose of the surveillance is to prevent, prevent or

detect criminal activity or investigate or prosecute crime. The one in question

however, the camera surveillance does not refer to shop premises and takes place partly for purposes other than that

fight crime. What will be decisive for whether Apotea needs permission for

the camera surveillance is therefore if the surveillance refers to places where the public has access

access.

The expression "place to which the public has access" refers to places where people can

thought to reside and which are not individuals. Examples of places where the public has

access is spaces in shops, department stores and banks, unless this is the case

spaces for staff, storage of goods, offices, maintenance, operation, etc. (prop.

1989/90:119 pp. 17 and 44, prop. 1997/98:64 p. 54). The assessment of the public

have access to the place must be done based on the circumstances of the individual case (prop.

2012/13:115 p. 34). Circumstances that may have significance in this examination are among

other, the character of the place, the circle of people the activity is aimed at and

the presence of devices that physically prevent someone from getting to it

monitored the site (see RÅ 2010 ref. 35). As far as the circle of people is concerned, this one can

consists either of the own staff or of outsiders as per agreement

has to deliver goods or to carry out work. If, however, anyone has access

to the premises, they cannot be considered reserved for a limited circle of people (SOU

1987:74 p. 114). In practice, consideration has also been given to whether there is an opportunity for the public

to get to the place on your own or if the place is only accessible to the public

after authorized personnel have prepared them for access (see the Court of Appeal in Stockholm's judgment on 2 December 2015 in case no. 3168-3197-15).

Apotea's camera surveillance takes place mainly indoors of designated areas

for the company's staff and where the public obviously does not have access. Certain

Indoor surveillance does indeed take place in connection with the premises' entrance, but this is according to

Apotea's tasks - in addition to staff - only authorized external visitors who have

access to the guarded area. Any activity aimed at the public

is also not conducted on site. IMY therefore assesses that the investigation in the case does not yield

support for other than the camera surveillance that Apotea operates indoors

places to which the public does not have access. Regarding camera surveillance that takes place

outdoors refers to this fenced area which is intended for staff and outsiders

who will deliver or pick up goods. IMY assesses that the investigation in the case does not yield

support for other than that these cameras also monitor places where the public does not have

access.

In summary, the current surveillance does not concern places where the public has access

access. Apotea therefore does not need permission for the surveillance.

Does Apotea have a legal basis for its camera surveillance?

In order for Apotea's camera surveillance to be permitted, it is required that the regulations in

the data protection regulation is followed. This means, among other things, that Apotea must have a legal

basis for the surveillance. The company has stated that the legal basis for the surveillance

2 Prop. 2019/20:109 p. 32 f.

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is Article 6.1 f of the data protection regulation, the so-called balancing of interests. The

there are three conditions that must be met for this to be the case.

The first condition is that the interests that the surveillance intends to protect must constitute legitimate interests of the personal data controller or a third party party. Not all conceivable interests that could be achieved or protected through camera surveillance may be considered justified. A legitimate interest is an interest which, in general, enjoys the protection of the legal order or is otherwise considered legitimate, ethical or defensible. An interest protected by EU law or relevant national law must, for example, be regarded as legitimate.³ A legitimate interest can be a legal, financial or non-material interest.⁴ The legitimate interest must be real and the need must be current which means that it must not be fictitious or speculatively.⁵

The second condition is that the surveillance is necessary for a purpose relating to it justified interest. This means that the legitimate interest cannot reasonably protected as effectively by other means as to a lesser extent encroaches on the basic freedoms and rights of the data subjects, in particular the right to protection of privacy and the right to protection of personal data according to articles 7 and 8 i EU Charter on Fundamental Rights (2012/C 326/02).⁶ At the same time, it follows from practice that the necessity criterion can be considered fulfilled if it contributes to efficiency. ⁷ Av practice also follows 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.⁸

The third condition is that the data subject's fundamental freedoms and rights (the privacy interest) does not outweigh the legitimate interest such as surveillance intends to protect (the security interest). The data controller must evaluate

the risks of infringement of the data subject's rights, and the decisive criterion is the intensity of the infringement for the rights and freedoms of the data subject.⁹ The intensity can among other things, be defined 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 scope of the data.¹⁰ Furthermore, it must be taken into account of the type of personal data processing in question and how this is done concretely takes place, whereby particular consideration must be given to how many people have access to the personal data and the forms of access to these.¹¹ When balancing between the data subject's privacy interest and surveillance interest must also be taken into account reasonable expectations at the time and in connection with its processing of personal data.¹²

3 See Öman, Data Protection Regulation (GDPR) etc. JUNO ed. 2, the commentary to Article 6.1 f, under the heading "Legitimate interests".

4 European Data Protection Board (EDPB) guidelines 3/2019 for the processing of personal data through video devices, version 2.0, adopted on 29 January 2020, paragraph 18.

5 EDPB guidelines 3/2019, point 20.

6 Judgment of the European Court of Justice in case C-708/18 TK, paragraph 47.

7 ECJ judgment in case C-524/06 Huber, paragraph 62.

8 Judgment of the European Court of Justice in case C-708/18 TK, paragraph 48.

9 EDPB guidelines 3/2019, point 32.

10 EDPB guidelines 3/2019, point 32.

11 The judgment of the European Court of Justice in case C-708/18 TK, paragraph 57.

12 Recital 47 of the data protection regulation and the judgment of the European Court of Justice in case C-708/18 TK, paragraph 58.

All three conditions must be met for camera surveillance for a specific purpose

must have a legal basis. Because Apotea's camera surveillance is done for several purposes shall the test be done individually for each purpose.

Surveillance for the purpose of supervising and controlling employees

In the media reporting that IMY took part in before the supervision of Apotea began, it was done

the fact that the company uses surveillance cameras to continuously manage work

staff and control how employees perform their duties. Such

surveillance normally lacks a legal basis in Article 6 of the Data Protection Regulation. Pharmacy

however, has stated that camera surveillance is never used for work management or control

of individual employees. In addition to the information in the media, neither has it in the investigation

has come to light something else that suggests that monitoring took place in the manner specified in

media. IMY thus states that the investigation in the case does not support that Apotea

have used camera surveillance for this purpose. There is therefore no reason to reassess

Apotea had a legal basis for camera surveillance for the purpose of directing or controlling work employees.

Monitoring for the purpose of handling incidents and tracking medicines

Does Apotea have a legitimate interest in handling incidents and tracking medicines?

IMY initially has to take a position on whether it is a legitimate interest for Apotea to

manage drug-related incidents and track lost drugs. It can

it is established that Apotea is obliged to follow the rules contained in the law, regulation and

The regulations of the Swedish Medicines Agency and which regulate pharmacy operations and

drug management. This means, among other things, that trade in pharmaceuticals must be conducted

in such a way that the medicines do not harm people, property or the environment and so on that the quality of the medicines does not deteriorate.¹³ It is also required that the business premises must be suitable for their purpose and designed and furnished so that good quality on medicines is ensured and maintained and that a high level of safety at pharmaceutical handling is guaranteed.¹⁴ Whoever conducts retail trade in pharmaceuticals must also exercise special control (own control) over the retail trade and operations in otherwise and ensure that there is a self-monitoring program suitable for the business.¹⁵ It means, among other things, that deviations and deficiencies in the handling of medicines or the supply of medicines and the measures taken in connection with these must be documented, compiled and evaluated on an ongoing basis.¹⁶ Outpatient pharmacy must have a systematic way of working to identify and manage deviations and deficiencies in the business, for example deficiencies in the supply of medicines which can result in a customer does not receive their medicine.¹⁷ When a deviation or deficiency has been identified, it should urgently handled and investigated. Initially, it should be investigated what has happened and what possible consequences it has entailed. ¹⁸

In light of the legal obligations Apotea has with regard to ensuring correct drug management and following up and dealing with deviations, IMY assesses that Apotea has a legitimate interest in dealing with drug-related incidents and track lost medication.

13 ch. 1 § 2 Act (2009:336) on trade in pharmaceuticals.

14 ch. 2 Section 6, second point of the Act on trade in pharmaceuticals and Section 10 of the Swedish Medicines Agency's regulations on retail trade at outpatient pharmacies (LVFS 2009:9).

15 ch. 2 Section 6, point eight, Act on trade in pharmaceuticals.

16 Section 22 of the Swedish Medicines Agency's regulations on retail trade at outpatient pharmacies (LVFS 2009:9).

17 The Swedish Medicines Agency's guidance to LVFS 2009:9, version 5, February 2022, p. 20.

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Is the camera surveillance necessary?

The question then is whether Apotea's camera surveillance is necessary to deal with incidents

and track medications. Apotea has outlined alternative control measures to

detect incidents and track medicines. Despite these measures, it occurs according to

Apotea incidents that cannot be remedied only with the help of the alternative

the measures. Camera surveillance has then been used as a last option to locate

prescription bags and identify if packages need to be recalled from shipping companies.

Apotea has stated that the company only guards limited parts of the premises and

only such areas where the guarding is specifically required with regard to

identified purposes. The investigation also shows that the purpose of the camera surveillance

handling incidents and tracking drugs is limited to surfaces where drugs

handled and packaged or areas directly adjacent to such surfaces. Since

operations take place around the clock, the cameras are active throughout the day.

According to IMY, the investigation supports the fact that alternative measures are not sufficient to

achieve the purpose of the surveillance. The camera surveillance is used as a last resort

alternative when other measures are not sufficient and surveillance is limited to

areas that are relevant to the purpose of the surveillance. IMY assesses against this background

that the camera surveillance is necessary to deal with incidents and trace medicines.

The balancing of interests

IMY then has to examine whether the registered person's fundamental rights and freedoms are respected

(the interest in privacy) outweighs the legitimate interest to which the surveillance relates

to protect (the security interest).

In terms of the security interest, IMY assesses against the background of the importance of a safe drug handling as well as the requirements placed on Apotea to ensure such and to handle drug-related incidents that the surveillance interest weighs relatively heavy.

Regarding the privacy interest, it can initially be stated that camera surveillance of workplaces can give rise to particular privacy risks. It can, for example enable mapping of the staff's work efforts or habits in general. An employee nor, in most cases, expect to be monitored by their employer on their workplace.¹⁹ This means that the interest in privacy in workplaces as a starting point weighs heavily. In the present case, however, it is a question of a workplace where drugs, including narcotic drugs, are handled and which must therefore meet a number legal requirements regarding, among other things, safe handling of medicines and investigation of drug-related incidents. Under such conditions, IMY assesses that employees to a greater extent than otherwise can expect camera surveillance to take place on the workplace.

The monitoring for the purpose of handling incidents and tracking medicines is as previously stated limited to certain specially selected areas. The surveillance at the prescription part hits i some all employees who work in that part of the premises, which make up about one tenth of the total workforce. Also the coverage of warehouse operations affect a limited part of the total number of employees per shift.

Access to the recorded material is limited to three executives.

Access is limited to situations where alternative attempts to trace medicines have failed. In the first place, the incident is investigated by managers on site in the premises. The

¹⁹ EDPB guidelines 3/2019, point 37.

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executives who have access to the surveillance material are informed that the material is covered by a duty of confidentiality and that they are therefore not allowed to reveal or use it information that they learn about an individual through the surveillance material personal relationships. Access to the camera surveillance material is logged in the software and can be checked afterwards. The physical access to the location where the material can be saved is limited.

Against the background of what emerged in the case, IMY assesses - in particular with taking into account that it is a matter of monitoring employees who are dependent on his employer - that the privacy interest weighs relatively heavily. At a summary trade-off between the security interest and the privacy interest, however, IMY assesses that Apotea's interest in monitoring for the purpose of managing incidents and tracking medicines weighs slightly more heavily than the privacy interest in the places being monitored. In the assessment has been particularly taken into account that the coverage is limited to areas that are relevant to the purpose of the surveillance, that access to the material is limited and only takes place as a last option and that Apotea's operations are such that employees in larger extent than what normally applies in a workplace can expect to camera surveillance takes place at the workplace.

Apotea thus has a legal basis for the company's camera surveillance for the purpose of handling drug-related incidents and track drugs.

Surveillance for the purpose of preventing, uncovering and investigating crime

Does Apotea have a legitimate interest in preventing, detecting and investigating crime?

Protecting property against burglary, theft or vandalism may constitute a legitimate interest for camera surveillance, provided that there is an actual interest and

not an interest that is fictitious or speculative.²⁰ If crime occurred at the location before says this because it is a question of an actual interest. Some requirement that it should have However, there is no crime that has occurred, but other circumstances may also suggest that it does there is an actual interest. ²¹

Apotea has given an account of two police-reported crimes that occurred at the facility since then the company took possession of the premises in 2018. In addition, the company has stated that there have been several suspicious incidents that have not been reported to the police. It is therefore a question of a lot small number of detected crimes and IMY therefore assesses that these data in themselves are not sufficient to establish that there is an actual interest in preventing, disclosing and investigate crimes. According to IMY, however, it must also be taken into account that Apotea handles medicines, including those classified as narcotics, which are particularly prone to theft goods.²² In the requirements imposed on Apotea with respect to a safe drug handling also includes taking measures to prevent theft and ensure that unauthorized people do not get access to medicine.²³ IMY assesses against this background that Apotea has an actual legitimate interest in preventing, revealing and investigate crimes.

Is the camera surveillance necessary?

The question then is whether Apotea's camera surveillance is necessary to prevent, reveal and investigate crimes. Apotea has given an account of alternative measures taken by the company

²⁰ EDPB guidelines 3/2019, point 19-20.

²¹ The judgment of the European Court of Justice in case C-708/18 TK, paragraph 44.

²² Cf. prop. 2019/20:109 p. 34.

²³ See, among other things, §§ 9 and 10 LVFS 2009:9 with associated Guidance, version 5, February 2022, pp. 8 ff. regarding requirements for the design of the premises and Section 8 of the Swedish Medicines Agency's regulations on distance trading at outpatient pharmacies

(LVFS 2009:10) with associated Guidance, version 2, February 2014, p. 4 on packaging and preventing theft.

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which includes, among other things, the adoption of protective measures required according to

The Swedish Medicines Agency's regulations, such as neutral packaging of classified narcotics

drug. The Swedish Medicines Agency's regulations also set requirements for expediency

designed premises, which includes that the premises must be equipped with locks and alarms so

that unauthorized access is made significantly more difficult.²⁴ Apotea has also stated that the company

dialogue with the Police Authority regarding security in the premises because pharmacies are a vulnerable area

business due to the availability of narcotic drugs.

Apotea has stated that the camera surveillance aims to prevent unauthorized persons

enters the premises and to discourage such intrusions as well as to monitor in particular

exposed areas where goods prone to theft are handled. IMY notes that the coverage is

limited to areas relevant to the stated purposes. After completion

from Apotea has further revealed that the recording area of a camera has partially

masked to avoid surveillance of office locations. The cameras are active 24/7

around.

IMY assesses that the investigation in the case supports that the purpose of the surveillance is not

can reasonably be protected in an equally effective manner by alternative measures. The surveillance

is limited to areas that are relevant to the purpose of the surveillance. IMY assesses against

this background that the camera surveillance is necessary to prevent, reveal and

investigate crimes.

The balancing of interests

IMY then has to examine whether the registered person's fundamental rights and freedoms are respected

(the interest in privacy) outweighs the legitimate interest to which the surveillance relates

to protect (the security interest).

As far as the surveillance interest is concerned, Apotea has reported two crimes reported to the police on the facility since 2018 and stated that in addition there have been several suspicious incidents incidents that have not been reported to the police. Because it is a question of a very limited number of crimes that have occurred, IMY believes that these only have a limited significance at the assessment of the weight of the surveillance interest. As stated above, however, handles Apothecary especially pilferable goods in the form of medicines including narcotics. Apotheosis business is further such that the company must comply with the legal requirements in question on safe handling of medicines, which includes an obligation to protect medicines from being stolen. Against this background, IMY assesses that Apotea's security interest in purpose of preventing, detecting and investigating crime weighs relatively heavily.

Camera surveillance of workplaces can - as explained above - give rise to special integrity risks, which means that the interest in integrity as a starting point weighs heavily. In the present case, the company conducts surveillance for crime-fighting purposes partly of fenced area outdoors, partly of indoor areas. As for the surveillance indoors, this meets a large number of people in the form of visitors and employees which increases the risks of privacy breaches. At the same time, these places are of such a nature that people as a rule cannot be expected to stay in the places for any length of time, which speaks for a lower risk of privacy breaches. Regarding the outdoor surveillance this is judged to refer to places of a less sensitive nature where people cannot be expected reside other than temporarily. Similar to what was stated earlier, further means the fact that it is a workplace where goods that are particularly susceptible to theft handled and that Apotea is obliged to fulfill a number of legal requirements to protect

24 §§ 9 and 10 LVFS 2009:9.

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drugs from theft that employees to a greater extent than otherwise can expect to camera surveillance takes place at the workplace.

Access to the recorded material to investigate crime is limited to one number of appointed managers. In special cases, an additional person with a special position may granted access to assist the investigation with technical expertise. As previously accounted for, physical access to the location where the material is stored has been restricted and the persons concerned have been informed about, among other things, the duty of confidentiality and its meaning. Access to the material is logged and can be checked afterwards.

Against the background of what emerged in the case, IMY assesses - in particular with taking into account that it is a matter of monitoring employees who are dependent on his employer - that the privacy interest weighs relatively heavily. At a summary trade-off between the security interest and the privacy interest, however, IMY assesses that Apotea's interest in monitoring for law enforcement purposes weighs somewhat more the privacy interest in the places that are monitored. In the assessment, particular consideration has been given to the surveillance is limited to areas that are relevant to the purpose of the surveillance, that access to the material is limited and that Apotea's operations are such that employees to a greater extent than what normally applies in a workplace can expect camera surveillance to take place in the workplace.

Apotea thus has a legal basis for the company's camera surveillance in order to prevent, uncover and investigate crime.

Monitoring for the purpose of providing IT support

Does Apotea have a legitimate interest in providing IT support?

Apotea has stated that the purpose of providing IT support via cameras is business related. The purpose of the monitoring is to provide visual support for Apotea's internal IT emergency

- which is located elsewhere - in the event of technical problems in production. It can touch troubleshooting cases or emergency support requiring visual assistance. Apotea has further stated that it is important that the company can quickly and efficiently remedy technical problems which cannot be resolved on the spot because the company provides vital medicine around the clock.

IMY states that a legitimate interest can be financial. Furthermore, it is in customers' interest that technical problems are remedied because Apotea, among other things, delivers drug. Overall, IMY assesses that Apotea has a legitimate interest to provide IT support to remedy technical problems that cannot be resolved on site.

Is the camera surveillance necessary?

The question then is whether Apotea's camera surveillance is necessary to provide IT support.

Apotea has stated that the company's IT department is located elsewhere and that it therefore in some cases there is a need to remotely gain visual access via the business cameras to provide support in cases where the problem cannot be resolved in place. According to Apotea, the surveillance is only used as a last option when others remedial measures in place have not been successful. The monitoring only takes place in real time and is limited to the cameras deemed to be relevant for the purpose of provide IT support.

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IMY assesses that the investigation in the case supports that the purpose of the surveillance is not can reasonably be achieved in an equally effective manner by alternative measures. The surveillance used as a last resort when other less invasive measures have been exhausted. IMY

assesses against this background that the camera surveillance is necessary in order to provide IT support.

The balancing of interests

IMY then has to examine whether the registered person's fundamental rights and freedoms are respected (the interest in privacy) outweighs the legitimate interest to which the surveillance relates to protect (the security interest).

Regarding the surveillance interest, Apotea has stated that the purpose of the surveillance is business-related and that the monitoring is necessary in order to be able to quickly and efficiently fix technical errors and resume operations. Although according to IMY to some extent must be taken into account that it is also in the interest of customers that deliveries are not delayed due to of technical errors, IMY notes that the stated purpose is primarily economic nature. The interest of the camera surveillance for the purpose of providing IT support is certainly justified, but weighs relatively light according to IMY.

Similar to what applies to the monitoring that takes place for other purposes can the monitoring for the purpose of providing IT support means that employees are monitored their workplace, which means that the interest in privacy as a starting point weighs heavily. IN in the present case, however, it is a matter of limited monitoring that takes place in real time and only when an on-site remedy was not possible. Access to the material is further limited to three people with special authorization in the IT department who are informed about, among other things, the duty of confidentiality and its meaning. These circumstances means that the risk of privacy breaches is significantly reduced. Against this background IMY assesses that the breach of privacy weighs relatively lightly.

Overall, IMY assesses that Apotea's interest in monitoring for the purpose of providing IT support weighs somewhat more heavily than the interest in privacy at the locations being monitored. IN the assessment has particularly taken into account that the monitoring takes place in real time, is limited to areas that are relevant to the purpose of the surveillance and that access to the material

is limited.

Apotea thus has a legal basis for the company's camera surveillance in order to provide IT support.

Surveillance for the purpose of checking goods receipt

Does Apotea have a legitimate interest in checking the goods receipt?

Apotea has stated that the purpose of monitoring the goods reception is business-related.

The goods reception is monitored so that Apotea's purchasing department can check how large part of the delivery area that is available for future deliveries and thereby be able to plan the business effectively. IMY states that a justified

interest may be financial and considers that Apotea has a legitimate interest to control the flow of goods in the goods reception to be able to plan their operations.

Is the camera surveillance necessary?

The surveillance of the goods reception does not aim to continuously monitor the area but to give the company's purchasing department a snapshot to determine how much of the delivery area that is available for future deliveries of goods. It is according to Apotea necessary for the staff in the purchasing department to take part in the pictures because they

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must be able to carry out their work to manage delivery capacity and plan operations.

Coverage is limited to still images taken every fifteen minutes and all previous images are deleted so that only the most recently captured image is available.

The surveillance does not cover a larger area than is necessary to fulfill the purpose with the surveillance. According to Apotea, effective alternative measures for surveillance are lacking.

IMY states that the surveillance of the goods reception is limited to relevant

surveillance area and to only refer to four still images per hour. IMY assesses that the monitoring of the goods reception contributes to efficient planning of the business and that the surveillance is necessary to achieve the stated purpose.

The balancing of interests

The question is then about the registered person's fundamental rights and freedoms (the interest in privacy) outweighs the legitimate interest to which the surveillance relates to protect (the security interest).

Regarding the surveillance interest, IMY states that the purpose of the surveillance is business related. Although the interest in conducting camera surveillance is justified IMY assesses that the surveillance interest weighs relatively lightly.

Similar to what applies to the monitoring that takes place for other purposes can the surveillance for the purpose of checking the receipt of goods means that workers monitored at their workplace, which means that the interest in privacy as a starting point weighs heavily. In the present case, however, it is a question of a very limited surveillance in the form of still images every fifteen minutes. According to Apotea, there are only a few people who work within the camera's recording area and the company estimates that only a few still images per day that capture employees. The employees who have access to the material are informed about, among other things, the duty of confidentiality and that image materials may only be used for the purposes for which they were collected. These circumstances mean that the risk of privacy breaches is significantly reduced. To the purchasing department has group authorization to access the images, although the risks increase something, but against the background of above all that it is a matter of single still images per hour overall, IMY assesses that the interest in privacy at the site weighs lightly.

Overall, IMY assesses that Apotea's interest in monitoring is for the purpose of control the receipt of goods outweighs the interest in privacy at the place being guarded. IN the assessment has particularly taken into account that the monitoring takes place in the form of still images each

fifteenth minute and only exceptionally means that employees are caught in a picture.

Apotea thus has a legal basis for the company's camera surveillance for the purpose of control the goods reception.

Disclosure duty and information obligation

Whoever conducts camera surveillance has far-reaching obligations to inform concerned persons about the ongoing surveillance. Partly applies according to section 15 the camera surveillance act a requirement that information about camera surveillance must be provided through clear signage or in some other effective way. In addition to this, whoever is personal data controller for camera surveillance provide information about the surveillance and the processing of personal data that the monitoring entails according to articles 12 and 13 i data protection regulation. IMY must therefore assess whether the company has lived up to the requirements in these regulations regarding their camera surveillance.

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Obligation to provide information according to the Camera Surveillance Act

The requirement for information according to the Camera Surveillance Act means that the operator camera surveillance at a location must disclose this. The provision refers to themselves the use of camera surveillance equipment and not the treatment of personal data that the monitoring entails.²⁵ The provision does not contain any requirements in otherwise regarding what information must be provided. The duty to provide information thus becomes is considered to have been fulfilled if the person carrying out the surveillance clearly leaves information that camera surveillance takes place at a certain location. This information shall left through signage or in any other effective way.

The investigation into the case shows that the company has put up signs around the premises,

partly in connection with entrances for vehicles and when entering for employees and visitors, partly in direct connection to the camera-surveillance areas. IMY assesses against this background that Apotea has provided information about the surveillance through clear signage and thereby fulfilled the disclosure requirement in Section 15 of the Camera Surveillance Act.

Information obligation according to the data protection regulation

Applicable regulations

Articles 12-14 of the data protection regulation contain provisions on which information which the personal data controller must provide to the data subject in all forms of personal data processing, including during camera surveillance.

Article 12 contains general provisions on the right to information and the data subject's rights in general. The article states, among other things, that the personal data controller must take appropriate measures to to the registered provide all information referred to in Articles 13 and 14 in a concise, clear and clear, understandable and easily accessible form, using clear and plain language.

Furthermore, it appears that the information must be provided in writing, or in some other form, including, where appropriate, in electronic form.

Article 13 regulates what information must be provided when the personal data is collected directly from the data subject and Article 14 which information must be provided when the personal data is collected from someone other than the data subject. At camera surveillance is considered personal data collected directly from the data subject.²⁶ IMY must therefore assess whether the company has lived up to its obligations according to articles 12 and 13 of the data protection regulation.

According to Article 13.1 and 13.2, the person in charge of personal data must, among other things, inform it registered about the following.

- The identity and contact details of the person in charge of personal data.
- Contact details for the data protection officer.

- The purpose of the processing for which the personal data is intended

as well as the legal basis for the processing.

- If the legal basis is Article 6.1 f (balancing of interests), which

legitimate interest the processing aims to secure.

25 Prop. 2017/18:231 p. 88 f.

26 The Article 29 working group's guidelines on transparency according to Regulation (EU) 2016/679, WP260rev.01, point 26 and

EDPB Guidelines 3/2019, paragraphs 110-119. However, see the Court of Appeal in Stockholm's judgment on 26 January 2023 in case no

1552-22 in which the court of appeals judged that it is not article 13 but article 14 that should be applicable in

camera surveillance. The judgment has been appealed to the Supreme Administrative Court (case no. 870-23) and has thus not won

cook power. In the absence of a legally binding ruling that goes against the EDPB's guidelines on the matter, IMY assumes that it is

Article 13 to be applied in the case.

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- The recipients or the categories of recipients who are to take part

the personal data, where applicable.

- The period during which the personal data will be stored or they

criteria used to determine this period.

- That there is a right to request from the person in charge of personal data

access to and correction or deletion of personal data or limitation

of processing concerning the data subject or to object to processing.

- That the registered person has the right to lodge a complaint with a supervisory authority.

From article 13.4 it appears that points 1, 2 and 3 shall not be applied if and to the extent the data subject already has the information.

The information must in principle be provided to the data subject before processing it data subject's personal data is started. In view of the fact that it is a question of a large amount of information to be provided to the data subject, the EDPB has produced guidelines about how the person in charge of personal data can proceed in order to live up to the requirements in articles 12 and 13.²⁷ From these guidelines it appears that the person in charge of personal data can use a step-by-step method to provide the information shown in article 13. The step-by-step method means that the information that is of greatest importance to the registered person must be reported even before the registered person steps into the guarded area the area, for example on a sign (the first layer of information). Other information can be reported in another way, for example on a website or in a complete information sheets in a central location such as at an information desk or in a reception (the second layer of information).

Which information is of the greatest importance to the data subject and which must therefore be included the first layer of information may vary depending on how and in what location monitoring takes place, but should generally include that of the personal data controller identity and contact details, the purpose of the surveillance, the data subject's rights and information about the main impact of the treatment (for example storage time, publication of material or transfer of material to third parties).²⁸ The first the information layer should also contain any information that may be surprising to the data subject, for example if material is transferred to third parties or if is a question of a long storage period of the recorded material.²⁹ Finally, it must first layer of information contain a reference to how the registered person can go proceed to access the second layer of information, for example through a link to one

website, a QR code or a telephone number that the data subject can call.³⁰

How Apotea provides information about the monitoring to the data subject

In the first layer of information, which consists of signs on the facility, informs

Apotea the registrant that the company conducts camera surveillance at the location, the purposes

with the monitoring and the maximum storage time for recorded material. For further

information and to take part in their rights such as the right of access it is referred to

registered to the company's complete privacy policy which can be accessed via grant or at

closest boss. The sign also contains contact details for the company's data protection officer.

For employees, the second layer of information is the company's personal data and

privacy policy for employees. In the policy, the company informs about the legal basis for

the processing (balancing of interests) and which interests the monitoring aims to

27 EDPB guidelines 3/2019, paragraphs 110-119.

28 EDPB guidelines 3/2019, point 114 and 116.

29 EDPB guidelines 3/2019, point 115.

30 EDPB guidelines 3/2019, point 114.

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take care of. The policy also contains more detailed information about the storage times

is applied depending on the purpose for which the monitoring takes place and that the registered person has

possibility to lodge a complaint with IMY. It is further stated that Apotea may be liable to

disclose personal data to, for example, the Police Authority in connection with

criminal investigation. With regard to the data subject's rights, it is stated that the data subject has the right

to access and/or request access to their personal data once per calendar year

them deleted and that such a request must be in writing, contain it

registrant's social security number and be signed by the registrant. Further states that the data subject has the right to request that the data be corrected or deleted if they would be incomplete, inaccurate or irrelevant.

For external visitors, the second layer of information is an information sheet regarding the processing of personal data via camera surveillance that is available at the place of enrollment. The information sheet explains the legal basis for the surveillance and which interests the surveillance aims to protect. The information sheet also contains more detailed information about which storage times are applied depending on the purpose for which the monitoring takes place and that the registered person has the opportunity to file a complaint with IMY. Furthermore, it is stated that camera surveillance material can be shared with law enforcement agencies for the purpose of investigating a crime. In case of being registered rights it is stated that the data subject has the right to request access to and correction or deletion of their personal data and the right to request that personal data be stopped processed or that the processing must be limited.

IMY's assessment

IMY notes initially that Apotea has provided most of the information that shall be provided in accordance with Article 13 in either the first or second information layer. With regard to information about recipients of personal data (Article 13.1 e), it appears from EDPB guidelines that such information may be surprising to the data subject and that the information may therefore need to be provided in the first information layer. Against background of the fact that the purpose of the surveillance is, among other things, to investigate crime, as stated on the first layer of information, however, it should not be surprising to data subjects that the material may be handed over to law enforcement authorities. In the present case further information is provided that recorded material can be handed over to law enforcement agencies in the second layer of information both for employees and external visitors. Overall, IMY assesses that there is no support for the case

the conclusion that the absence of information about law enforcement agencies that recipient of recorded material in the first layer of information implies a deficiency in relation to Article 13 of the Data Protection Regulation.

Regarding information about the personal data controller's contact details notes IMY that it is indeed stated on the first information layer the e-mail address of the personal data representative. However, this is a separate task that must be informed about in accordance with Article 13 and cannot be equated with being contact information for the personal data controller. Contact information in the form of a postal address can be found indeed in the second layer of information but should, in accordance with what appears

The EDPB's guidelines are already apparent from the first layer of information. IMY notes that employees can be expected to have contact details for their employer, but that this does not necessarily apply to external visitors. That there is no contact information for Apothea on camera surveillance signs is therefore deemed to constitute a deficiency in relation to Article 13 of the Data Protection Regulation.

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The EDPB's guidelines state that the sign must clearly refer to the information on it the second layer of information as well as where and how to find it.³¹ IMY states that on the sign states that if the registered person wants further information, he is referred to the company's privacy policy, which can be accessed via grants or from the nearest manager. Relative to external visitors, IMY considers that the reference to the immediate manager is not relevant and that the expression "reached via grant" is far too vague to be considered to provide clear information about where further information can be obtained. That the camera surveillance signs do not contain a clear reference to where further information can be obtained constitutes according to IMY's

assessment a deficiency in relation to Article 13 of the data protection regulation.

Regarding the content of the second information layer for employees, IMY states that

Apotea's personal data and privacy policy for employees lacks information on

the right to request restriction of processing and to object to processing. This

implies a deficiency in relation to Article 13 of the Data Protection Regulation.

The document does state that employees have the right to request access, correction and

deletion. However, these rights are stated to be limited to only apply once

per year and contains form requirements meaning that the request must be in writing,

contain a social security number and be signed by the registered person. IMY states

that a personal data controller may in certain circumstances refuse to

comply with a data subject's request for, among other things, correction and deletion of it

personal data controller shows that he is not in a position to identify the data subject

(Article 11.1 and 12.2 of the data protection regulation) and that the personal data controller

may charge a reasonable fee or refuse to accommodate such requests if these are

manifestly unfounded or unreasonable, especially due to its repetitive nature (Article 12.5

in the data protection regulation). However, there are no specific provisions in the data protection regulation

restrictions that support the fact that a data subject may only exercise his rights a

once a year or that the request must always be in writing and contain a social security number

and signature. Instead, an assessment must be made in each individual case.³² The

according to IMY, information that Apotea provides therefore gives the false impression that the employees

rights with regard to the personal data processing such as the camera surveillance

means are limited in time and always subject to form requirements in a way that lacks

support in the data protection regulation. Against this background, IMY assesses that the information in

the personal data and privacy policy for employees that employees' right to exercise their

rights may only take place once per calendar year and that the request is subject to

certain form requirements constitute a deficiency in relation to Article 13.2 b of the data protection regulation.

In summary, IMY assesses that the deficiencies noted above mean that

Apotea has violated Article 13 of the Data Protection Regulation. 33

Choice of intervention

From article 58.2 i and article 83.2 of the data protection regulation it appears that IMY has power to impose administrative penalty charges in accordance with Article 83.

Depending on the circumstances of the individual case, administrative penalty fees are imposed in addition to or instead of the other measures referred to in article 31 EDPB guidelines 3/2019, points 114 and 117.

32 EDPB, Guidelines 01/2022 on data subject rights - Right of access, Version 1.0, adopted for public consultation on 18 January 2022 (EDPB's Guidelines 01/2022 on the right of access), p. 2 and p. 174.

33 Due to the fact that the question of whether it is Article 13 or 14 that must be applied to camera surveillance is subject to judicial review (Supreme Administrative Court case no. 870-23) IMY would like to emphasize that Article 14 corresponding requirements such as Article 13 regarding the information to contain contact details for personal data controller and information about the data subject's rights and that there is no reason to judge the requirement for clear reference to a second layer of information differs depending on whether information is provided under Article 13 or 14.

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58.2, such as injunctions and prohibitions. Furthermore, it is clear from article 83.2 which factors to be taken into account when deciding whether administrative penalty charges are to be imposed and when determining the size of the fee. If it is a minor violation receives IMY as set out in recital 148 in lieu of imposing a penalty charge issue a reprimand according to article 58.2 b. Consideration must be given to aggravating circumstances and

mitigating circumstances of the case, such as the nature of the violation, degree of severity and duration as well as previous violations of relevance.

IMY has established that Apotea has violated Article 13 of the Data Protection Regulation by not to enter contact details for the company on their camera surveillance signs, on their camera surveillance signs do not leave clear enough information about where it is registrants can access additional information as well as leave incomplete and misleading information in the second employee information layer. A violation of that provision may result in a penalty fee.

IMY assesses that the incomplete and misleading information about was registered rights in Apotea's personal data and privacy policy for employees pose a risk because data subjects do not become aware of their rights or exercise their rights i to a lesser extent than they are entitled to according to the data protection regulation.

As for the absence of contact details on the signs, this mainly means a lack of relationship with external visitors, as employees can be expected to be aware of their employer's contact details. It is also noted that contact details are in the second layer of information for both employees and external visitors.

Also the lack in the form of unclear information about where the registered person can access it the second layer of information is attributable to external visitors, who make up a smaller part of the number of people hit by the surveillance. It is also a question of a lack of clarity and not an absence of reference to the second layer of information. Apotea also has stated that the information sheet is available at enrollment as all external visitors pass.

IMY also states that the camera surveillance in question is carried out at locations there the public does not have access, which means that the deficiencies in the information affect one limited circle of people.

In an overall assessment of the circumstances, IMY finds that it is a question of such

minor violations in the sense referred to in recital 148 that there is reason to

refrain from imposing a penalty fee on Apotea for the found violation.

Apotea must therefore, with the support of Article 58.2 b of the data protection regulation, instead be given one reprimand for the established violation.

According to IMY, it is important that Apotea take measures to ensure that they

registrants receive correct and complete information regarding the current one

the camera surveillance. There are therefore reasons that with the support of Article 58.2 d i

data protection regulation order Apotea to take measures to ensure that it

there are contact details on the camera surveillance signs at the facility in Morgongåva

to the company and a clear reference to where external visitors can find out more

information and that in the second information layer for employees there is information about

all rights referred to in Article 13.2 b and that these rights are not

limited to an extent that goes beyond what appears

data protection regulation. The measures must have been taken no later than four weeks after this

decision gained legal force.

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This decision has been taken by unit manager Charlotte Waller Dahlberg after a presentation

by the lawyer Andreas Persson.

Charlotte Waller Dahlberg, 2023-03-13 (This is an electronic signature)

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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.