

Decision

Diariennr

2020-12-17

DI-2019-13117

Ert diariennr

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The Public Prosecutor's Office

Box 5553

114 85 Stockholm

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

The Public Prosecutor's Office's routines for handling

personal data incidents

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The Data Inspectorate's decision

The Data Inspectorate announces the following recommendations with the support of ch.

Section 6 of the Criminal Data Act (2018: 1177):

1.

The Public Prosecutor's Office should regularly evaluate their effectiveness

precautions taken to detect

personal data incidents and, if necessary, revise them in order to

maintain adequate protection of personal data.

The Public Prosecutor's Office should regularly check that the procedures for

handling of personal data incidents is followed.

3. The Public Prosecutor's Office should in the authority's routines for reporting

personal data incidents specify which data of a occurred

incident to be documented and regularly check that

the procedures for documentation of personal data incidents are followed.

The Public Prosecutor's Office should provide its employees with ongoing information and

recurring training in the handling of personal data incidents

and on the reporting obligation.

The Data Inspectorate closes the case.

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Report on the supervisory matter

The obligation for the personal data controller - ie. private and public

actors - to report certain personal data incidents to the Data Inspectorate

was introduced on 25 May 2018 by the Data Protection Regulation¹ (GDPR).

A corresponding notification obligation was introduced on 1 August 2018 in

the Criminal Data Act (BDL) for so-called competent authorities.² The obligation to

report personal data incidents (hereinafter referred to as incidents) aims to strengthen

privacy protection by the Data Inspectorate receiving information about

the incident and may choose to take action when the inspectorate deems it appropriate

is needed for the personal data controller to handle the incident on one

satisfactorily and take steps to prevent something similar

occurs again.

According to ch. 1, a personal data incident is § 6 BDL a security incident that

leads to accidental or unlawful destruction, loss or alteration; or

unauthorized disclosure of or unauthorized access to personal data. IN

the preparatory work for the law states that it is usually a question of an unplanned

event that adversely affects the security of personal data

and which have serious consequences for the protection of data.³ En

personal data incident may, for example, be that personal data has been sent

to the wrong recipient, that access to the personal data has been lost, that

computer equipment that stores personal data has been lost or stolen, that

someone inside or outside the organization takes part in information like that

lacks authority to.

A personal data incident that is not dealt with quickly and appropriately can entail risks to the data subject's rights or freedoms. An incident can lead to physical, material or intangible damage by, for example

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on that free flow of such data and repealing Directive 95/46 / EC (General Data Protection Regulation).

2 A competent authority is in accordance with ch. § 6 BDL an authority that deals personal data for the purpose of preventing, deterring or detecting criminal activities, investigating or prosecute crimes, enforce criminal sanctions or maintain public order and security.

3 Prop.2017 / 18: 232 pp. 438

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discrimination, identity theft, identity fraud, damaged reputation, financial loss and breach of confidentiality or secrecy.

There can be many reasons why a personal data incident occurs. Of

The Swedish Data Inspectorate's report series Reported personal data incidents under

The period May 2018 - December 2019 shows that the most common causes

behind the reported incidents were i.a. the human factor, technical errors,

antagonistic attacks and shortcomings in organizational routines or processes.⁴

The Data Inspectorate has initiated this supervisory case against the Public Prosecutor's Office in purpose to check whether the authority has procedures in place to detect personal data incidents and whether the authority has and has had routines for

to handle personal data incidents according to the Criminal Data Act. In the review also includes checking whether the Public Prosecutor's Office has routines for documentation of incidents that meet the requirements of the Criminal Data Ordinance (BDF) and whether the authority has implemented information and training initiatives on personal data incidents.

The inspection began with a letter to the Public Prosecutor's Office on 4 December 2019 and was followed up with a request for supplementation on 4 March 2020.

The authority's response to the supervisory letter was received on 17 January 2020 and the supplement was received on March 25, 2020.

Applicable regulations

According to ch. 3, the person responsible for personal data must § 2 BDL, by appropriate technical and organizational measures, ensure and be able to demonstrate that the processing of personal data is in accordance with the constitution and that it data subjects' rights are protected. This means that competent authorities,

Using these measures, should not just ensure that

the data protection regulations are followed but must also be able to show that this is the case. Which technical and organizational measures required to protect personal data is regulated in ch. 8 § BDL.

See the Data Inspectorate's report series on Reported Personal Data Incidents 2018

(Datainspektionens rapport 2019: 1) p 7 f; Reported personal data incidents January-September 2019 (Datainspektionen's report 2019: 3) p.10 f. And Reported personal data incidents 2019 (Datainspektionen's report 2020: 2) p. 12 f.

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In the preparatory work for the law, it is stated that organizational measures referred to in section 2 are

i.a. to have internal strategies for data protection, to inform and educate

staff and to ensure a clear division of responsibilities. Measures such as

taken to show that the treatment is in accordance with the constitution, e.g. be

documentation of IT systems, treatments and measures taken and

technical traceability through logging and log monitoring. What measures

to be taken may be decided after an assessment in each individual case.⁵ The measures shall

reviewed and updated as needed. The measures it

the person responsible for personal data shall take in accordance with this provision shall, in accordance with ch.

§ 1 BDF be reasonable taking into account the nature, scope of treatment,

context and purpose and the specific risks of the treatment.

Of ch. 3 Section 8 of the BDL states that the person responsible for personal data shall take

appropriate technical and organizational measures to protect them

personal data processed, in particular against unauthorized or unauthorized use

treatment and against loss, destruction or other unintentional damage. IN

The preparatory work for the Criminal Data Act states that security must include

access protection for equipment, control of data media, storage control,

user control, access control, communication control, input control,

transport control, restoration, reliability and data integrity. This

enumeration, however, is not exhaustive. As an example of organizational

security measures include the establishment of a security policy,

security controls and follow-up, computer security training and

information on the importance of following current safety procedures. Routines for

reporting and follow-up of personal data incidents also constitute such

measures.⁶

What circumstances should be taken into account in order to achieve an appropriate level of protection

is regulated in ch. 11 § BDF. The measures must achieve a level of safety appropriate taking into account the technical possibilities, the costs of the measures, the nature, scope, context and purpose of the treatment, and the specific risks of the treatment. Special consideration should be given in which the extent to which sensitive personal data is processed and how sensitive to privacy other personal data processed is.⁷ Violation of provisions in

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Prop. 2017/18: 232 pp. 453

Prop. 2017/18: 232 pp. 457

Prop. 2017/18: 232 pp. 189 f.

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Chapter 3 2 and 8 §§ BDL can lead to sanction fees according to ch. 1 § 2 BDL.

According to ch. 3, the person responsible for personal data must § 14 BDF document all personal data incidents. The documentation must report the circumstances about the incident, its effects and the measures taken as a result of that. The person responsible for personal data must document all that occurred incidents regardless of whether it must be reported to the Data Inspectorate or not.⁸

The documentation must enable the supervisory authority to:

check compliance with the provision in question. Failure to documenting personal data incidents can lead to penalty fees according to ch. 6 1 § BDL.

A personal data incident must also, according to ch. § 9 BDL, notified to

The Data Inspectorate no later than 72 hours after the person responsible for personal data become aware of the incident. A report does not need to be made if it is unlikely that the incident has or will entail any risk for undue invasion of the data subject's privacy. Of ch. 3 § 10 BDL states that the person responsible for personal data must in certain cases inform it registered affected by the incident. Failure to report one personal data incident to the Data Inspectorate can lead to administrative sanction fees according to ch. 6 1 § BDL.9

Justification of the decision

The Data Inspectorate's review

In this supervisory matter, the Data Inspectorate has a position to decide on

The prosecutor's office has documented routines for detecting personal data incidents according to the Criminal Data Act and if the authority has and has had routines for handling incidents since the BDL came into force.

The review also covers the issue of compliance with the requirement documentation of incidents in ch. 3 14 § BDF. In addition,

The Data Inspectorate will decide whether the Public Prosecutor's Office has implemented

Prop. 2017/18: 232 pp. 198

Liability for violations is strict. Thus, neither intent nor negligence is required to it must be possible to charge a penalty fee, see bill. 2017/18: 232 pp. 481.

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information and training initiatives for its employees with a focus on

handling of personal data incidents according to BDL.

The review does not include the content of the routines or training efforts

but is focused on verifying that the reviewing authority has

routines on site and that it has implemented training initiatives for

employees regarding personal data incidents. The review includes

however, if the authority's routines contain instructions to document them

information required by the Criminal Data Regulation.

Routines for detecting personal data incidents

The personal data that competent authorities handle within the framework of their

law enforcement and crime investigation activities are to a large extent of

sensitive and privacy sensitive nature. The nature of the business is high

requirements on the ability of law enforcement agencies to protect them

information was registered through the necessary protection measures to e.g.

prevent an incident from occurring.

The obligation to report personal data incidents according to ch. 9 § BDL

shall be construed in the light of the general requirements to take appropriate technical and

organizational measures, to ensure appropriate security for

personal data, which is prescribed in ch. 2 and 8 §§. An ability to fast

Detecting and reporting an incident is a key factor. Because they

law enforcement agencies must be able to live up to

the reporting requirement, they must have internal routines and technical capabilities for

to detect an incident.

Based on the needs of the business and with the support of risk and vulnerability analyzes

competent authorities can identify the areas where there is a greater risk

that an incident may occur. Based on the analyzes, the authorities can then

use various instruments to detect a security threat. These can be

both technical and organizational measures. The starting point is that they the safety measures taken must provide adequate protection and that incidents do not should occur.

Examples of technical measures include intrusion detectors as automatic analyzes and detects data breaches and the use of log analysis tool to detect unauthorized access (log deviations). An increased insight into the business' "normal" network

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traffic patterns help to identify things that deviate from the normal the traffic picture towards, for example, servers, applications or data files.

Organizational measures can, for example, be the adoption of internal strategies for data protection relating to internal rules, guidelines, routines and different types of governing documents and policy documents.¹⁰ Guidelines and rules for handling personal data, routines for incident management and log follow-up¹¹ constitute examples of such strategies. Periodic follow-up of assigned authorizations is another example of organizational measures. In a competent authority, there shall be procedures for allocation, change, removal and regular verification of privileges.¹² Information and training of staff on the rules and routines for incident management to be followed also examples of such measures.

The Data Inspectorate's assessment

The Public Prosecutor's Office has mainly stated the following. The authority has one number of technical solutions and organizational routines to, on both technical level as at the user level, detect discrepancies in the IT environment. Based on it

the information, they can discover what could constitute or imply risk of a personal data incident. Regarding organizational measures it appears from the investigation that the Public Prosecutor's Office has written routines for handling of personal data incidents and that information about this is available on the authority's intranet. The authority has also conducted training for without staff.

The Data Inspectorate can state that the Public Prosecutor's Office has routines for detect personal data incidents on site.

The obligation to take precautionary measures to detect personal data incidents are not linked to a specific time but the measures shall be continuously reviewed and, if necessary, changed. In order to

The Public Prosecutor's Office must be able to maintain a sufficient level of protection of personal data over time, the Data Inspectorate recommends, with the support of

Chapter 5 § 6 BDL, that the authority regularly evaluates the effectiveness of those

Criminal Data Act - Partial report by the Inquiry into the 2016 Data Protection Directive Stockholm 2017, SOU 2017: 29 pp. 302

11 Competent authorities must ensure that there are routines for log follow-up, see Bill.

2017/18: 232 pp. 455 f.

12 Chapter 3 § 6 BDL and supplementary provisions in ch. 6 § BDF

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the security measures taken to detect personal data incidents and that the authority updates these if necessary.

Routines for handling personal data incidents

In order to be able to live up to the requirements for organizational measures in ch. § 8

BDL, the person responsible for personal data must have documented internal routines such as describes the process to be followed when an incident has been detected or occurred, including how to limit, manage and recover the incident, and how the risk assessment is to be carried out and how the incident is to be reported internally and to the Data Inspectorate. The routines must state e.g. what a personal data incident is / can be, when an incident needs to be reported, and to whom, what is to be documented, the division of responsibilities and which information that should be provided in the context of notification to The Data Inspectorate.

The Data Inspectorate's control of routines for handling personal data incidents refer to the time from the entry into force of the Criminal Data Act i.e. on August 1, 2018.

The Data Inspectorate's assessment

The Public Prosecutor's Office has i.a. stated the following. The authority has one documented routine for reporting personal data incidents. Like one

The first step in this routine is to internally report events that would be able to be a personal data incident to the authority's central support function. The support function relays the information to persons in the authority's IT management group who then assess

the incident is a personal data incident and whether it should be reported to

The Data Inspectorate. The Public Prosecutor's Office has submitted the authority's routine for reporting of personal data incidents dated 2018-07-09 (revised 2018-11-27) and an extract of information available on the authority's intranet. The authority further states that it is followed in the assessment and action the instructions published on the Data Inspectorate's website.

Taking into account the documents submitted and what has emerged in

In the case, the Data Inspectorate states that the Public Prosecutor's Office from the time when the Criminal Data Act came into force has had and has routines for handle personal data incidents on site.

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To be able to handle discovered personal data incidents in a correct way and counteract its effects and risks on the data subjects' personalities

Integrity is important. The Data Inspectorate therefore recommends, with the support of Chapter 5 § 6 BDL, that the Public Prosecutor's Office regularly checks that the procedures for handling personal data incidents are followed.

Routines for documentation of personal data incidents

A prerequisite for the Data Inspectorate to be able to check compliance with the documentation requirement of incidents in ch. § 14 BDF is that the documentation includes certain information that should always be included.

The documentation shall include all details of the incident, including its reasons, what happened and the personal data involved. It should too contain the consequences of the incident and the corrective actions taken personal data controller has taken.

The Data Inspectorate's assessment

The Public Prosecutor's Office has mainly stated the following. The authority's decisions are documented and recorded in the Public Prosecutor's Office's general diarium and the authority refers to their routines for handling personal data incidents. The routine shows that if you suspect that one personal data incident has occurred, this must be reported to without delay

their central support function. This applies regardless of whether the incident has occurred in administrative or law enforcement activities. In this way the reported incidents are also documented. Then do the authority's IT department an assessment of whether the incident should be reported on to the Data Inspectorate. If the assessment means that the incident does not shall be reported, the reason for it shall be justified and documented in writing.

The Public Prosecutor's Office further states that the assessment support used for incidents that have occurred are those on the inspectorate's website, e.g.

The Data Inspectorate's form for reporting personal data incidents according to BDL.

The Data Inspectorate states that the Public Prosecutor's Office has an IT system for that i.a. report incidents involving personal data. In addition, it appears from the authority's routine for reporting personal data incidents to all incidents must be documented regardless of whether they are reported to the inspection or not. The Data Inspectorate notes, however, that the current routine lacks one a description of the information to be included in the documentation.

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To be able to document occurred personal data incidents correctly way and thereby counteract the risk that the documentation will be deficient or incomplete is important. Inadequate documentation can lead to the incidents are not handled and remedied properly, which can get impact on privacy protection. The Data Inspectorate therefore recommends, with the support of ch. 5 § 6 BDL, that the Public Prosecutor's Office's routines for reporting of personal data incidents is supplemented with a description of

what information of an incident has occurred to be documented. In addition the Public Prosecutor's Office should carry out regular inspections of the internal the documentation of personal data incidents.

Information and education about personal data incidents

The staff is an important resource in the security work. It's not just enough internal procedures, rules or governing documents if users do not follow them.

All users must understand that the handling of personal data must take place in one go legally secure and that it is more serious not to report an incident than to report e.g. a mistake or a mistake. It is therefore required that everyone users receive adequate training and clear information on data protection.

The person responsible for personal data must inform and train his staff in matters on data protection including the handling of personal data incidents. Of

The Swedish Data Inspectorate's report series Reported Personal Data Incidents under in the period 2018-2019, it appears that the human factor is the most common the cause of reported personal data incidents. 13 These mainly consist of individuals who, consciously or unconsciously, do not follow internal routines processing of personal data or made a mistake in handling personal data. About half of the incidents are due to it

The human factor is about misplaced letters and emails.

In the Data Inspectorate's opinion, this underlines the importance of internal routines and technical safety measures need to be supplemented with ongoing training, information and other measures to increase knowledge and awareness among employees.

Report 2019: 1, report 2019: 3 and report 2020: 2. MSB has drawn similar conclusions its annual report for serious IT incidents, ie. that most of the incidents are due

human mistakes, see <https://www.msb.se/sv/aktuellt/nyheter/2020/april/arsrapporten-forallvarliga-it-incidenter-2019-ar-slappt/>

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The Data Inspectorate's assessment

On the question of how information and education about incidents is provided

employees, the Public Prosecutor's Office has stated i.a. following. A collective

information on personal data processing can be found at the Public Prosecutor's Office

intranet. The authority has also informed about the routines for handling

personal data incidents to chief administrators and IT coordinators in it

operational activities. It is also stated that special webinars have

carried out for different professional categories within the authority.

In the light of what appears from the investigation, the Data Inspectorate considers

that the Public Prosecutor's Office has shown that the authority has provided information and

training on the handling of personal data incidents to their employees.

To maintain competence and ensure that new staff receive

education, recurring information and education is important

the employees and hired staff. The Data Inspectorate recommends, with

support of ch. 5 § 6 BDL, that the Public Prosecutor's Office provides the employees on an ongoing basis

information and recurrent training in the management of

personal data incidents and the obligation to report them.

This decision was made by unit manager Charlotte Waller Dahlberg after

presentation by lawyer Maria Angelica Westerberg. At the final

The IT security specialist Ulrika also handles the case

Sundling and the lawyer Jonas Agnvall participated.

Charlotte Waller Dahlberg, 2020-12-17 (This is an electronic signature)

Copy for information to:

The Public Prosecutor's Office's data protection officer

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How to appeal

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

The appeal must have been received by the Data Inspectorate no later than three weeks from
the day the decision was announced. If the appeal has been received in due time

The Data Inspectorate forwards it to the Administrative Court in Stockholm
examination.

You can e-mail the appeal to the Data Inspectorate if it does not contain
any privacy-sensitive personal data or data that may be covered by
secrecy. The authority's contact information can be found on the first page of the decision.

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