

Aktiebolaget Storstockholms Lokaltrafik

Record number:

DI-2018-21487

Your record number:

Date:

2021-06-21

Decision after supervision according to

data protection ordinance Greater Stockholm Local Transport

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The decision of the Integrity Protection Authority

The Integrity Protection Authority (IMY) states that Aktiebolaget Storstockholms

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

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

ticket control, processes personal data in violation of

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Article 5 (1) (a) of the Data Protection Regulation¹ as the camera surveillance, with

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

because it took place without a legal basis and in violation of the principle of transparency

by not providing sufficient information to the data subjects,

Article 5 (1) (c) of the Data Protection Regulation by processing more personal data

than was necessary for the purposes contrary to the principle of

task minimization,

Article 6 (1) of the Data Protection Regulation by processing personal data without

to have any legal basis for it, as well

Article 13 of the Data Protection Regulation by not providing sufficient

information to the data subjects.

The Privacy Protection Authority decides on the basis of Articles 58 (2) and

83 Data Protection Ordinance that Aktiebolaget Storstockholms Lokaltrafik shall pay one administrative sanction fee of SEK 16 million (sixteen million) of which:

a)

b)

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

Local transport use of body-worn cameras to prevent and

document threats and violence (purposes A and B), using

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

6.1 f and has been in conflict with the principle of legality and the principle of

data minimization in Article 5 (1) (a) and (c) of the Data Protection Regulation;

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

Local use of body-worn cameras to ensure identity

on travelers who have to pay a surcharge (end goal C) which is not legal

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the

natural persons with regard to the processing of personal data and on the free movement of such data and on

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

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on the basis of Article 6 (1) (f) and has been in breach of the principle of legality and

the principle of data minimization in Article 5 (1) (a) and (c) (i)

the Data Protection Regulation and

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

Local transport's lack of information to the registrants, which is contrary to the article

13 and the principle of transparency in Article 5 (1) (a) of the Data Protection Regulation.

Report on the supervisory matter

Background

The Privacy Protection Authority (IMY), formerly the Data Inspectorate, was brought to attention

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

to equip their ticket controllers with body-worn cameras and therefore initiated supervision

against SL.

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

the body-worn cameras have been made in accordance with the rules of legal basis in Article 6

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

has also examined whether SL complied with the principles of legality and transparency in Article 5 (1) (a)

and the principle of data minimization in Article 5 (1) (c).

What has emerged in the case

SL has in connection with IMY's supervision of the company's use of body-worn

cameras, and the personal data processing that thus takes place, stated mainly

following.

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

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

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

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

During the test period, 4-10 ticket inspectors carried the body-worn ones

the cameras.

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

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

The purpose of the treatment was to:

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prevent threatening situations in connection with ticket control,
document incidents that occurred to facilitate subsequent investigation, and
ensure the identity of travelers who have to pay a surcharge.

During the inspection, SL has decided to introduce the body-worn cameras
permanent. This means that the body-worn cameras are most used by about 55
pieces of ticket inspectors on weekdays and about 20 ticket inspectors on
holidays. SL has also expanded its geographical area of use
body-worn cameras, from initially only being used in Stockholm
metro, to be used in all modes of transport within the entire SL's traffic network.

SL has stated that they have extensive problems with cheating. Of the report in
The case shows that the loss of revenue in 2017 linked to cheating was 254
million and in 2018 the corresponding figure was SEK 280 million. The

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However, according to the company, the financial loss is not the primary reason for working
actively with ticket checks, as it costs more than what SL receives in additional fees. SL has
as a principle that everyone who travels with the company must pay for their trip and it is SL who
shall ensure that this is done. In addition, the loss of income from cheating must always be taken into account
when pricing tickets. The most common forms of cheating are to buy
discounted ticket without being entitled to the discount and to travel without a ticket. SL also has

problems with cheating travelers stating someone else's identity

ticket control, which leads to difficulties in claiming compensation for

non-payment of surcharge in court.

According to SL, the use of the body-worn cameras has meant that approx

90 percent of travelers present an identity document, compared with about 60 percent

without a body camera, that fewer surcharges are contested and that four cases were written off

during the test period due to the recorded material. Furthermore, SL has stated

that the ticket inspectors feel that fewer travelers are upset in connection with

the issuance of surcharges and that ticket inspectors feel safer.

SL has stated that the ticket inspectors wear the cameras during the entire work shift

and control the camera themselves. The camera and microphone continuously record movies

with image and sound. The cameras have a so-called circular memory, which means that one happens

continuous automatic cleaning of all video material older than 2 minutes. After

the cleaning is the recorded material, including personal data, deleted.³ IMY

hereinafter referred to as the continuous recording and erasing technology

pre-recording technology.

SL has described that the ticket controller, in different situations, can activate a recording

by pressing a record button. That information is then added to the recording

stored in the camera using the pre-recording technique. SL has indicated that it exists

need to be able to preserve material that shows the course of events just before

the issuance of a surcharge or in threatening / violent situations. Initially

the material was stored for two minutes but it has been changed to one minute during supervision

walk. IMY refers to the continued recording that takes place after the inspector's

keystroke as activated recording.

SL has entered into a supplementary agreement with the personal data assistant who is responsible for

the ticket controls. It follows from the supplementary agreement that the cameras must be on for filming during

the entire work shift. When a ticket inspector is to issue a surcharge is hen instructed to record material. All situations where a surcharge is issued will thus to be documented. Furthermore, the ticket inspector must document situations then threats arise.

After the controller has completed his work shift, the camera is placed in one communication dock stored in a locked space. The camera then charges the material to a server for review by evidence administrators at SL and the imagery will be available to a few proof administrators as soon as it is uploaded.

When a ticket inspector issues a surcharge, a paper is printed at the same time information about the company's personal data processing. From the information appears among otherwise SL will process the photo and / or film on the person sent

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

SL's final statement of 17 December 2020.

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

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

SL has carried out an impact assessment regarding the processing of personal data when recording with the body-worn cameras. Of the impact assessment

It appears that SL considers the personal data processing that takes place during recording either of an "acceptable level" or of a "level of supervision", and that the risks are not

high enough to request prior consultation.⁴

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

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

Justification of the decision

Personal data manager

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

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

Camera surveillance is a form of personal data processing. If and in which to the extent that camera surveillance is permitted to be regulated in the Data Protection Regulation and the Camera Surveillance Act (2018: 1200) which supplements the Data Protection Ordinance.

Does the Camera Surveillance Act apply?

Section 4 of the Camera Surveillance Act states that the Act applies to camera surveillance in accordance with section 3. takes place with equipment located in Sweden. According to Section 3, Section 1 of the Camera Surveillance Act with camera surveillance to a television camera, another optical-electronic instrument or a comparable equipment, without being maneuvered on site is used on such means involving permanent or regular repeated personal surveillance.

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

Does the Data Protection Regulation apply?

According to Article 2 (1), the Data Protection Regulation shall apply, inter alia, to the processing of personal data which is wholly or partly carried out automatically.

Acceptable level means a risk that is valued low and that does not require any action. Monitoring level means risks that need to be analyzed in more depth and that the risks must be monitored in order to be able to quickly take action if the event occurs. See SL's impact assessment, Appendix 5, Assessment of threats and risks, p. 12.

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Article 4 (1) of the Data Protection Regulation states that any information relating to a identified or identifiable natural person is a personal data. According to Article 4 (2), processing a measure or combination of measures concerning personal data, for example, collection, registration, storage, reading and deletion.

If a security camera captures an identifiable person or someone else personal data in the picture, the rules in the Data Protection Ordinance must therefore be followed. Since SL filming, and recording audio, from identifiable people with their cameras applies the Data Protection Regulation.

Basic principles for the processing of personal data (Article 5)

Article 5 of the Data Protection Regulation contains a number of basic principles such as that personal data controllers must take into account when processing personal data.

It follows from Article 5 (1) (a) that personal data must be processed legally, correctly and transparently

in relation to the data subject.

It follows from Article 5 (1) (c) that personal data must be adequate, relevant and not for extensive in relation to the purposes for which they are dealt with (the principle of task minimization).

It follows from Article 5 (2) that the personal data controller shall be responsible for and be able to demonstrate that the principles set out in Article 5 (1) are complied with (the principle of liability).

It follows from recital 39 in the Data Protection Regulation that personal data should only be processed if the purpose of the treatment cannot reasonably be achieved by other means.

The assessment of whether SL processes personal data in accordance with the principles of legality and transparency in Article 5 (1) (a) and the principle of data minimization in Article 5 (1) c will take place in connection with the assessment of Articles 6 and 13.

Legal basis for the processing of personal data (Article 6)

In order for the use of body-worn cameras to be considered legal, it is required that at least one of the conditions of Article 6 (1) of the Data Protection Regulation is met.

SL has stated that the legal basis on which they support their processing of personal data is a balance of interests in accordance with Article 6 (1) (f) of the Data Protection Regulation.

Initially, SL also stated that the company intended to change the legal basis for the article 6.1 b of the Data Protection Regulation (performance of contracts), but that they must first be amended their general terms and conditions. However, SL's final statement states that it is an article 6.1 f (balancing of interests) on which the company bases its treatment. IMY is therefore coming to examine the processing of personal data which is now subject to supervision in accordance with Article 6 (1) (f). In order for the processing of personal data to be lawful in accordance with Article 6 (1) (f) i the Data Protection Regulation requires SL to demonstrate that 1) there is a legitimate interest, 2) the processing of personal data is necessary for a purpose related to it legitimate interest sought and 3) that the fundamental rights and freedoms of data subjects do not outweigh the legitimate interest.⁵⁶

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

See recital 47 of the Data Protection Regulation.

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Test project

SL has initially stated that the personal data processing performed with them

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

The Data Protection Regulation does not contain any exceptions for test projects. Of the Regulation

requirements must therefore be met even if the person responsible for personal data names

personal data processing as a test activity.

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

document threats and violence (purposes A and B)

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

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prevent threatening situations in connection with ticket control, below

referred to as "purpose A",

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

ensure that the right person is paid the surcharge, below

referred to as "purpose C".

The company states that all types of recording that takes place with the body-worn cameras

constitutes an (IMY italics) processing of personal data, as the purposes for the recordings often overlap and are closely linked.

IMY considers that SL's three purposes are of a different nature, where purposes A and B are of one character other than purpose C. Purposes A and B both aim to improve the safety of ticket inspectors, while purpose C aims to improve SL's opportunity to achieve success in the collection of surcharges. Each purpose therefore requires an own assessment, and can thus also lead to different conclusions of how extensive personal data processing may be to achieve a specific purpose.

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

IMY will initially test the personal data processing that takes place at the use of the body-worn cameras for purposes A and B is compatible with Article 6 (1) (f) and the principle of legality in Article 5 (1) (a) and the principle of data minimization in Article 5 (1) (c) of the Data Protection Regulation. When balancing interests pursuant to Article 6 (1) (f) of the Data Protection Regulation, whether there is a legitimate interest; if the treatment is necessary to achieve the stated purpose and if it the interests of personal data controllers outweigh the interests of individuals' privacy.

Does SL have a legitimate interest in purposes A and B

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

In 2018, a total of 62 incidents were reported (which includes verbal attacks, threats of violence and violence), 21 cases of injury without absence and three cases of injury with sick leave.

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

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

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(eg verbal insults, insults and threats) and 9 were incidents of serious or very serious in nature (incidents of a serious nature include, for example, pushes and incidents of a very serious nature include kicks, blows and strangulation).

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

Of these incidents, 221 were of a less serious nature and 5 incidents were of serious or very serious in nature. The statistics for 2019 and 2020 are based on approx 100 inspectors, corresponding to 84 full-time positions, and refers to incidents throughout public transport.

SL has stated that verbal threats and violations have more than doubled since 2019 to the year 2020, despite the restrictions on travel that Covid-19 entailed. SL states also a large percentage reduction in the serious or very serious incidents from the year 2019, which SL believes shows the effects of the body-worn cameras.

IMY states that SL has shown that there is a legitimate interest in the company to use body-worn cameras, with activated image and sound recording, to prevent and document threats and violence (purposes A and B). IMY also notes that SL has a legitimate interest in using pre-recording technology for these purpose.

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

As IMY stated above, the authority considers that SL has a legitimate interest in use body-worn cameras in connection with threats and violence.

The next question is then about SL's use of body-worn cameras with image and

audio recording and pre-recording technology are necessary to achieve the right thing

interest?

The necessity criterion must be seen in the light of exceptions and limitations of

the protection of personal data shall be limited to what is strictly necessary.⁷ Furthermore

It follows from recital 39 in the preamble to the Data Protection Regulation that personal data should only be processed

if the purpose of the treatment cannot reasonably be achieved by other means. At the same time

it follows from practice that the necessity criterion can be considered fulfilled if it contributes to

streamlining.⁸

It also follows from practice that the requirement of necessity must be examined together with the principle

on data minimization in accordance with Article 5 (1) (c) of the Data Protection Regulation which provides

that the personal data collected must be adequate, relevant and not for

extensive in relation to the purposes for which they are treated.⁹

The investigation in the case has shown that SL has taken alternative measures to them

body-worn cameras. The ticket inspectors have received training in low-affective

treatment and during certain work shifts the ticket inspectors are also accompanied by

security guards. However, according to SL, these measures have not proved to be sufficient, why

the company decided to use body-worn cameras and to record with mobile

image and sound.

IMY believes that SL has taken reasonable alternative measures to achieve the objectives in

in connection with threats and situations of violence.

C-13/16 Rīgas satiksme, point 30.

C-524/06 Huber, paragraph 62.

⁹ C-708/18 TC, paragraph 48.

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In the following, IMY examines SL's processing of personal data with the body-borne cameras are necessary to achieve objectives A and B, that is, to prevent and document threatening or violent situations.

IMY will divide the trial to include activated image recording and sound in connection with threats and violence is necessary to achieve objectives A and B, and partly to consider whether SL's continuous use of pre-recording technology is necessary to achieve objectives A and B.

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

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

IMY therefore notes that activated recording of audio and video during an ongoing threatening or violent situation is necessary to achieve SL's purpose of prevention and document threats and violence (purposes A and B).

Is SL's use of pre-recording technology in connection with threatening situations necessary?

SL has stated in its impact assessment that it is difficult in threatening situations to determine when a recording should start, so pre-recording takes place over a minute

(initially under supervision for two minutes).

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

At the same time, IMY notes that the pre-recording technology entails an extensive personal data processing including both image and sound recording of travelers who do not behave threateningly or violently towards the ticket inspectors. That's the question about a large number of travelers who thus risk being monitored in an environment they are depending on being able to get to, for example, work, school or activities for recreation. Although the pre-recorded movies can be useful to achieve purposes for those cases where a threatening or violent situation arises suddenly, IMY believes that it is a matter of a widespread invasion of the privacy of a large number of travelers. Necessity should, as mentioned, be tested along with the principle of data minimization which prescribes that the personal data collected in shall be adequate, relevant and not too extensive in relation to the purposes for which they are treated.

IMY notes that the use of pre-recording technology per se meets the requirement necessity to counter threats and violence. IMY also notes that the SL: personal data processing that takes place through the use of pre-recording technology widely exceeds what is necessary for the purpose. Use of

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the pre-recording technique for one minute is too extensive in relation to the threats and

risk situations that arise in connection with ticket controls.

IMY notes that the use of pre-recording technology in the way it is now used

is not necessary to achieve objectives A and B, which means that

the processing of personal data has no legal basis in accordance with Article 6 (1) (f) and is contrary to

the principles of legality and data minimization in Article 5 (1) (a) and (c).

In case the pre-recording technique had only been going on for a short time had

the processing of personal data, given the problem picture that exists, could be considered to be

necessary to achieve objectives A and B. In this specific case, the IMY considers that a

shorter time of a maximum of 15 seconds, could have been accepted to achieve

the purpose.

IMY is now trying as a final step in the balancing of interests that must be done according to the article

6.1 f if the interests of the data subjects weigh more heavily in SL's recordings of threatening

situations and the use of pre-recording techniques for purposes A and B.

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

IMY initially states that camera surveillance with fixed cameras is relative

common in the metro environment. Camera surveillance in a subway car and by one

metro station with fixed cameras are exempt from the permit requirement for some

purpose¹⁰. When subway cars and subway stations were excluded from

the government stated the obligation to obtain a permit as a reason for the exemption that individuals can expect

themselves to be monitored when they are there because there are a large number of cameras

where. Furthermore, the government stated that those who were monitored were also those who were normal

was protected by the guard.¹¹ This suggests that the interest of privacy in the use of

cameras that capture footage in the subway weigh relatively lightly. IMY notes

however, that SL has now expanded the field for the use of body-worn cameras

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

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

The preparatory work for the Camera Surveillance Act states that recording or listening to sound has long been considered particularly sensitive to privacy and that such personal data processing should continue to be subject to a careful examination in it individual case.¹²

Of the European Data Protection Board's (EDPB) guidelines for processing personal data through video devices¹³ states that if one assumes that video surveillance is necessary to protect the legitimate interests of a data controller, a video surveillance systems are only put into operation if the data controller or a legitimate interests of third parties (eg protection of property or physical integrity) infringes the interests or fundamental rights and freedoms of the data subject.

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

See § 9 point 6 of the Camera Surveillance Act.

Prop. 2012/13: 115 pp. 66.

¹² Prop. 2017/18: 231 pp. 67.

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

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if this causes violations or negative consequences with respect to it

rights of data subjects. A balancing of these interests is mandatory.¹⁴

The IMY will also share in the assessment of the data subjects' interests and rights

up the trial to partly refer to SL's activated recordings of threatening or violent situations, and partly refer to SL's pre-recording technology that is used continuously for to record the precursor to threatening or violent situations.

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

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

Furthermore, the current camera surveillance now includes the recording of sound, unlike other camera surveillance in the subway, which means that the invasion of privacy will be greater then sound recording is considered to be particularly sensitive to privacy. That is also the question sound recording in a public place, in SL's entire traffic network, on which many depend to get to different places, where the traveler can not reasonably expect to audio recording takes place. Overall, IMY believes that the integrity interest in SL's recordings of ongoing threatening situations are gaining ground.

With regard to the need for surveillance, SL has shown a strong interest in performing the current processing of personal data because there is an actual threat against the ticket inspectors. Furthermore, SL's recording of an ongoing threatening or violent situation that the processing of personal data is limited to take place only then a threatening situation has actually arisen, whereby the processing of personal data is limited to then it is absolutely necessary. The recorded material is stored locally during the day and

is only loaded at the end of the work shift on a central storage surface. Furthermore, the access to the recorded material is limited to a few people.

IMY notes that SL's interest in surveillance weighs heavily under threatening situations. It must be weighed against this that the interest in privacy on the site is strong current. Although a large number of travelers are caught by the guard, most of whom has not behaved threateningly and sound recording is a particularly privacy-sensitive treatment, IMY believes that SL's activated image and sound recording during threatening situations is acceptable in the light of the overriding interest in these situations.

In an overall assessment, IMY considers that SL's legitimate interest in recording image and sound material in threatening situations outweighs the interest in integrity.

In this connection, special consideration is given to the fact that SL has shown that the ticket inspectors are exposed to crime and that

personal data processing will only take place when a threatening or violent situation occurs.

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

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

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

In addition, the IMY notes in a balance of interests that the use of pre-recording technology means that all travelers who are in front of one ticket controller with camera will be subject to both image and sound recording.

It should be weighed against this that the pre-recording is only stored locally in the ticket inspector's camera and deleted after one minute, in case a threatening situation does not arise. SL has also stated that it can be difficult to determine when a recording should start and has shown that there is an actual threat against ticket inspectors.

IMY notes that the interest in privacy outweighs SL's interest in using pre-recording technique for a full minute. IMY does not believe that SL has a heavy enough weighty interest in motivating a continuous image and sound recording of all travelers in front of the camera recording area. This means that the processing of personal data, through the continuous use of pre-recording technology, lacks a legal basis under Article 6 (1) (f) and is contrary to the principle on a legal basis in Article 5 (1) (a) of the Data Protection Regulation.

IMY also notes that the pre-recording technology has led to an over-extensive personal data processing in relation to the purposes for which they are processed, then

The pre-recording technique is judged to include many registrants who should not need to expect to be filmed and recorded with images and sounds in threatening situations such as they themselves are not involved in. Even children, who are seen as particularly worthy of protection, can come to be filmed. The surveillance has also taken place in an environment that travelers often are dependent on getting to work, school and recreation. The treatment has therefore also in breach of the principle of data minimization in Article 5 (1) (c) (i) the Data Protection Regulation.

However, IMY believes that the pre-recording technology could be acceptable within the framework of Article 6 (1) (f) of the SL limited the treatment to only a short period.

The processing of personal data that now takes place continuously for one minute, through

pre-recording technology, according to IMY is too long and leads to too large

invasion of the privacy of the travelers who may be filmed with

both image and sound. As stated above, the authority considers a maximum of 15 seconds

could have been an acceptable time in this case.

Summary assessment of objectives A and B

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

recording of visual and audio material to prevent and document ongoing

threatening or violent situations do not contravene the rules of the Data Protection Regulation.

IMY notes, however, that SL's use of pre-recording technology is continuous

records video and audio material and stores it for at least one minute, contrary to

Article 6 (1) (f) of the Data Protection Regulation where processing is not necessary and

the interest in privacy weighs heavier on the data subjects.

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SL's use of pre-recording technology thus has no legal basis and

the processing of personal data thus does not comply with the principle of legality in Article 5 (1) (a).

IMY also notes that the pre-recording technology has led to an over-extensive

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

the processing therefore also took place in violation of the principle of data minimization in the article

5.1 c.

However, the IMY considers that the pre-recording technique could be compatible with Article 6 (1) (f)

and Article 5 (1) (a) and (c) of the SL limited the treatment to only ongoing

continuously for a maximum of 15 seconds.

SL's use of body cameras to ensure

the identity of travelers who have to pay a surcharge (purpose

C)

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

person to whom a surcharge is imposed. The ticket inspectors are instructed to use

the pre-recording technique and record the event each time a surcharge is imposed

by activated recording.

SL considers that the processing of personal data takes place for the purpose of establishing

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

relationships with threatening or violent situations are intimately connected. Threatening

or violent situations almost always occur in connection with that surcharge

issued.

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

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

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

the assessment of the current treatment that takes place must primarily be based on

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

purpose of identifying persons for whom a surcharge has been issued. SL does not believe that it is

realistic to demand that the inspectors deal with each situation

different.

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

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

request a traveler's identity document, which allows for secure identification

in connection with the issuance of surcharges are clearly limited.

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

of the body-worn cameras to ensure the identity of travelers being sent

an additional fee is compatible with both Article 6 (1) (f) and the principle of legality in Article

5.1 a, and the principle of data minimization in Article 5 (1) (c) of the Data Protection Regulation.

Does SL have a legitimate interest in purpose C?

SL has stated that the number of additional fees over the past three years has amounted to approximately 30,000 per year.¹⁵ The additional fee amounts to SEK 1,500 and ticket costs.

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

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

SL has stated that for the period January to November 2020, 38 cases are pending identity theft in connection with surcharges written off. That means matters is terminated, among other things, due to the fact that the surcharge has been disputed and the traveler could not be identified. It should also be taken into account here that SL's systematic ticket controls were suspended during the spring and summer of 2020 due to Covid-19. During a normal year, the number of cases and written cases was probable been significantly higher.

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

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

Is SL's treatment necessary for purpose C?

The necessity criterion must, as mentioned above, be seen in the light of the exceptions and

Restrictions on the protection of personal data shall be limited to what is absolute

necessity.¹⁶ It follows from recital 39 in the preamble to the Data Protection Regulation that personal data only should be treated if the purpose of the treatment cannot reasonably be achieved by others average. At the same time, it follows from practice that the necessity criterion can be considered fulfilled if so contributes to efficiency.¹⁷

It also follows from practice that the requirement of necessity must be examined together with the principle on data minimization in accordance with Article 5 (1) (c), which provides that the personal data provided by collected shall be adequate, relevant and not too extensive in relation to the purposes for which they are processed.¹⁸

SL has taken some alternative measures to the body-worn cameras to ensure the identity of the person to whom the surcharge is imposed. SL always asks for identity document. The ticket controller can also check the traveler's identity through to collect social security number, name and address and compare these with the information in State personal data addresses (SPAR). SL has stated that the ticket inspectors sometimes even do hits on the given name on Facebook to ensure the identity. In the event that objections arise afterwards, the ticket inspector's is used notes and testimonies.

C-13/16 Rīgas satiksme, point 30.

C-524/06 Huber, paragraph 62.

18 C-708/18 TC, paragraph 48.

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SL has stated, however, that it is difficult to secure the identity with the support of the ticket inspector's memoirs and testimonies. SL has referred to a judgment from the Supreme Court regarding evidentiary requirements and burden of proof in cases of additional fees according to the Act (1977: 67) on surcharges in public passenger transport to demonstrate that it is difficult to prove identity using the ticket inspector's testimonies and memoranda.¹⁹

The judgment states that it is the transport company that has the burden of proof that this is the case as the transport company claims.²⁰ Regarding the burden of proof, the Supreme Court states in essentially the following:

"The carrier should be able to meet its burden of proof in the matter of the identity of the traveler through some simpler standard proof, as long as it the traveler did not point out any objections and rebuttals of certain weight".²¹ The Supreme Court further states "The simple case is when it off the ticket inspector's notes or testimony appear to the traveler at the inspection has presented a valid identification document; the space for that the inspector has then made a mistake may be considered to be very limited. But even when there is documentation showing that the inspector has made sure of the traveler's identity in another convincing way may the carrier is normally considered to have fulfilled its burden of proof. An example of

this is when the traveler in connection with the check has left complete and consistent information about name, address and social security number. In a in such a case, however, it must, in the overall evaluation of evidence that should be made if the defendant invokes rebuttal, weighed in that of the inspector identification of the traveler has accommodated a greater element of uncertainty compared to if an identification document has been presented. Even one relatively weak rebuttal can then result in the claim to ogillas ".22

SL has stated that they can certainly use a still image in the form of a so-called snap shot from the recorded material but that with a still image the same cannot be achieved security regarding the identification as with moving image, because as well the ticket controller that the traveler moves. The situation where a surcharge is set is often crowded and messy with many fellow travelers in motion (for example in metro environment or on the bus). A still image with available technology therefore comes many times do not achieve the required quality and thus destroy safe identification of the traveler. There are other circumstances that make identification difficult such as travelers' attire, such as caps, hats, etc. These circumstances can often mean that a still image does not allow identification. Using image recording as supplemented with audio recording, it can also be determined which tasks are actually was stated at the time of issuing the surcharge. Less privacy sensitive alternatives are therefore according to SL not possible to achieve the purpose. SL also uses the pre-recording technology to ensure the identity in connection with ticket control (purpose C), and the ticket controllers are instructed to record with a picture and sound at each occasion when the surcharge is issued. SL has stated that image and audio recording makes it easier to determine the identity of the person being sent the surcharge. SL has stated that the recording that takes place has three purposes; prevent

threatening situations in connection with ticket control, document incidents that have occurred

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

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

21 Ibid, point 10.

22 Ibid, point 13.

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to facilitate subsequent investigation, and to ensure the identity of travelers who are to pay surcharge. The fact that the recording has three purposes means that the film can be longer than merely to achieve the purpose of securing the identity of the person being served the surcharge.

The IMY notes that the principle of data minimization in Article 5 (1) (c) of the

The Data Protection Regulation means that the scope of a personal data processing shall be adequate, relevant and not too extensive in relation to its purpose. Further follows from the principle of purpose limitation in Article 5 (1) (b) of the Data Protection Regulation that: personal data shall be collected for special, explicitly stated and justified purpose.

SL has stated that recording is used for three purposes. That a certain technology, in the present case cameras, are used for several purposes by the person responsible for personal data not that the processing of personal data can be performed in the same way for all purposes for which a personal data controller processes personal data. The trial of in which scope SL may process personal data in order to secure the identity of a

a passenger who is caught without a valid travel document must be based on that very purpose. To

SL also processes personal data for the purpose of preventing and investigating incidents

therefore, importance is not attached to the assessment of how extensive

the processing of personal data must be to ensure the identity of a specific person.

The practice referred to by SL shows that there is room for a ticket inspector to make a mistake

if a traveler has presented a valid identity document should be considered a lot

limited.²³ The IMY therefore notes that SL could have taken other, smaller ones

breaches of privacy, than to enable the recording of the person to be checked

to ensure the identity of the person to whom a surcharge is imposed when a

identity document has been shown. To use both image and sound recording and that

in addition, systematically used pre-recording technology goes far beyond what can

considered necessary to achieve the purpose of ensuring correct identification

when an identification document is displayed.

IMY notes that the need to process additional personal data in order to

Securing the identity of a traveler can only be considered necessary when a traveler

is unable to prove his identity with an identification document. Not when either

ID document is missing, IMY considers it necessary to record with as well

moving image as sound. From the information reported by SL, it appears that, of approximately 30,000

checks, is the question of relatively few cases where the identity has not been established.

For 2020, it was - although the pandemic has probably meant that it was a question of

significantly fewer cases than under normal circumstances - the issue of 38 cases. During

In 2018, there were 291 cases that went to court. IMY does not think it is

shown that moving image combined with sound recording and also the use of

pre-recording technology has been necessary to achieve the purpose of ensuring one

correct identification of travelers who have not presented an identification document. IMY

considers that SL could reasonably have used other minor breaches of privacy

measures, such as a still image or the like, to secure its identity

which is subject to a surcharge and lacks a valid identity document.

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

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

securing a traveler's identity regardless of whether an identity document could be displayed

up or not. IMY therefore states that the processing of personal data was not legal

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

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basis under Article 6 (1) (f) and is contrary to the principle of legality in Article 5 (1) (a) (i)

the Data Protection Regulation.

IMY also notes that the treatment has led to an excessive

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

relation to those who are controlled and other data subjects who should not have to expect

themselves to be filmed and recorded with pictures and sounds at ticket controls like themselves

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

films. The surveillance has taken place in an environment that travelers often depend on

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

with the principle of data minimization in Article 5 (1) (c) of the Data Protection Regulation.

Do the interests and rights of the data subjects outweigh purpose C?

As IMY stated above, the authority considers SL's use of activated variable

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

to achieve purpose C, that is, to secure the identity associated with

ticket control.

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

body cameras that capture both image and sound as well as the company's use of

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

The ticket inspector who is to issue a surcharge will be subject to both picture and

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

privacy, especially when conducted in a manner that involves the monitoring of

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

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

As mentioned earlier, audio recording during camera surveillance is also typically seen

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

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

ticket control, can not reasonably expect the ticket controllers to record sound.

The previously mentioned guidelines also state that the person responsible for personal data must

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

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

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

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

scope), the number of data subjects concerned, either as a specific number or as a

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

interests, alternative methods and the nature and scope of the tasks. Important

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

registered who are monitored. Examples include:

If a car camera is installed (eg to collect evidence in the event of

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

the traffic, and the people who are close to the road. Otherwise can

the interest in having video recordings as proof of a traffic accident clean theoretically would occur does not justify the serious intrusion into the data subjects' rights.²⁴

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

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IMY believes that one can draw a parallel between the example above and that pre-recording technology used by SL. The technology means that the image and sound recording stored one minute before a controller presses the button, which means that all that located nearby risks being recorded with both image and sound.

Although the pre-recording technique is meant to be used in threatening situations will it in practice to be used even when recording in order to ensure the identity of travelers who do not have a valid travel document. Similar to the example above, IMY states that it is important to make sure that all other people who happen to be near one ticket controller is not constantly recorded with picture and sound.

Furthermore, IMY considers that the data subjects are in a tight situation when exhibiting of surcharge and that an activated image and sound recording of that situation entails a major breach of privacy. The use of pre-recording technology that stores material one minute back from the time the controller presses the button and activates the recording, also means, as mentioned above in connection with the assessment of purposes A and B, that the large mass of travelers (in addition to the one sent to one surcharge) is filmed completely without being aware of it, with both picture and sound.

It should be weighed against this that SL has shown that there are difficulties in establishing the identity on the person to whom the surcharge is paid and that there have been travelers who stated another person's identity.

IMY considers, taking into account the great invasion of privacy that it entails to be filmed with image and in particular with sound in the way that is now happening and with the use of pre-recording technology, that SL's interest in securing the identity of the person being sent the surcharge weighs relatively lightly in relation to the interests of the data subjects and rights.

IMY states that SL's use of activated image recording and use of pre-recording technology has no legal basis under Article 6 (1) (f) and that the processing of personal data thus infringes the principle of legality in Article 5 (1) (a).

IMY also notes that the pre-recording technology has led to an over-extensive processing of personal data in relation to the purposes for which they are processed and that the processing therefore also took place in violation of the principle of data minimization in Article 5 (1) c as the pre-recording technique is judged to include many registrants who should not need to expect to be filmed and recorded with images and sounds in threatening situations such as they themselves are not involved in. The surveillance has also taken place in an environment such as travelers many times depend on to get to work, school and recreation.

Summary assessment of purpose C

IMY notes that SL did indeed have a legitimate interest in using it body-worn cameras to ensure the identity associated with ticket control but that they have been able to make use of other less intrusive measures, especially in those cases where a traveler has actually been able to present an identity document, and that the processing of personal data has therefore not been necessary. IMY consider a still image or similar could have been an acceptable measure to achieve the purpose.

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

the guarding interest in connection with purpose C.

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IMY therefore notes that SL's use of body-worn cameras, with use of pre-recording technology, to ensure the identity of the person being provided with one surcharge means that SL processes personal data in violation of Article 6 (1) (f) i the Data Protection Regulation when processing is not necessary and the interest of privacy weighs heavier on the data subjects. SL's use of body-worn cameras for purpose C thus has no legal basis. The infringement is therefore contrary to the principle of legality of Article 5 (1) (a).

The violation is judged to include many registrants, who should not have to expect that activated picture and sound recording takes place of them in situations that they are not themselves. The surveillance takes place in an environment on which travelers are often dependent to, for example, get to work, school and recreation. The treatment therefore also has contrary to the principle of data minimization in Article 5 (1) (c) (i) the Data Protection Regulation.

IMY also notes that the pre-recording technology has led to an over-extensive processing of personal data in relation to the purposes for which they are processed and that even this processing has taken place in violation of the principle of data minimization in the article 5.1 c.

Information to data subjects (Article 13)

According to Article 5 (1) (a), personal data must be processed in a lawful, correct and transparent manner in relation to the data subjects.

It follows from recital 58 that the principle of transparency requires that information addressed to

to the general public or to registered persons is concise, easily accessible and comprehensible as well designed in clear and simple language. Is it a matter of information and communication aimed at children, it should be designed in a clear and simple language which children can easily understand.

Recital 60 states that the data subject must be informed that processing is taking place and the purpose of it. The personal data controller should provide all additional information such as required to ensure fair and transparent treatment, taking into account the specific circumstances and context of personal data processing.

Article 13 of the Data Protection Regulation sets out the information to be provided if personal data is collected from data subjects.

Article 12 (1) of the Data Protection Regulation states that the controller shall: take appropriate measures to provide the data subject with all information that: referred to in Articles 13 and 14, and that such information shall be provided in a concise, clear and distinct, comprehensible and easily accessible form.

Article 12 (7) of the Data Protection Regulation states that the information to be provided provided to data subjects in accordance with Articles 13 and 14 may be provided combined with standardized symbols to provide a clear, comprehensible, easy-to-read and meaningful overview of the planned treatment.

There are no exceptions to Article 13, except in the case where the data subject already has of the information to be provided (Article 13 (4)).

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The person responsible for personal data can, however, provide information in various warehouses, where a sign can constitute the first layer and information on a website or information in a brochure

can be the second layer of information. The most important information should be general seen in the first layer.²⁵

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

The image material

SL has initially stated that they provide abbreviated written information to the persons to whom a surcharge is imposed. The information appears on the receipt there. There are also instructions on how to pay the surcharge. The written information contains an indication that; SL is responsible for personal data, information on which categories of personal data are processed, information on SL's purpose with the processing of personal data, information about storage time, contact information for the data protection officer, information that the data protection officer can be contacted in case the data subject wishes to exercise his rights and a reference to SL's website and customer service where further information can be obtained. Furthermore, SL produced a document with answers to the most common questions about ticket controls.

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

IMY states that when IMY's supervision began, only the person who was added an additional fee that received the information that SL provided in its first stock. Other people who SL filmed, e.g. other travelers who happened to be in the camera's recording area or the travelers who were filmed on the basis that they were perceived as threatening, received no information. Although most of these travelers could visit SL's website or call SL to get the information

not sufficient to consider that SL has provided the information within the meaning of

Article 13.

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

(initially two minutes) is irrelevant in this assessment as it is missing

exceptions to provide short-term information

personal data processing in the Data Protection Regulation.

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

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

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

a clear pictogram²⁷ of a camera and the written information are visualized

"Body Camera". SL further states that according to Article 12 (7) it receives

personal data controllers provide information to the data subjects through

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

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

See paragraph 38 of the Article 29 Working Party (which later changed its name to EDPB), Guidelines on transparency under Regulation (EU) 2016/679 (reviewed and adopted 11 April 2018).

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

²⁷ Figurative symbol.

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

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

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

IMY agrees with what SL referred to regarding the Irish Data Protection Authority position, that how information is to be provided depends on the specific context and the environment and what is appropriate on a case - by - case basis and that a badge can be a way to provide information. As stated in the guideline from EDPB that IMY referred to earlier so you have to make an assessment from case to case and also make sure what type of information collected, scope and number of data subjects concerned. An important factor is also the size of the area being monitored and the number of registered.

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

IMY thus states that it is not enough to just use a badge with a pictogram of a camera with the text Body Camera as one first layer for information provision in this case.

SL has stated that according to Article 12.7 it appears that the person responsible for personal data may provide information through standardized icons. Article 12 (7) states provided, however, that the information to be provided to data subjects in accordance with Articles 13 and 14 may be provided in combination (IMY italics) with standardized symbols to provide a clear, comprehensible, easy-to-read and meaningful overview of the planned treatment.

According to recital 60, information may be provided to the data subject "combined" with

standardized symbols, thus enabling a multi-layered strategy. Symbols should however, not even replace such information as is necessary for the data subjects exercise of their rights, nor should they be used as a substitute for the controller shall fulfill his obligations under Articles 13 and

14.28

The IMY thus notes that Article 12 (7) cannot be interpreted as merely a symbol, albeit with the text Body Camera, can replace all the information that should left in a first layer.

It is central that everyone who travels with SL gets knowledge that camera surveillance is included body-worn cameras may come into play to enable them to choose how they wishes to complete their journey.

IMY notes that even if the ticket inspectors are wearing a badge that indicates that body cameras are used, the data subject is at risk of being checked or who appears threatening to see the badge (information) only in connection with him becoming

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

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

The warning symbols that are now on the ticket controllers should therefore supplemented with warning signs that all registered persons can read before they

enters the area itself where they may be subject to body-worn surveillance

camera. IMY would like to emphasize that the data subjects should be able to decide if they want to enter an area where body-worn cameras are continuously used before entering the area.

IMY finds that SL has violated Article 13 of the Data Protection Regulation by not provide sufficient information about the image capture that takes place with them body-worn cameras and that SL also processed personal data in violation of the principle of transparency in Article 5 (1) (a) of the Data Protection Regulation.

Sound recording

SL not only records footage with the body-worn cameras, but also records sound. SL states on the written information provided to travelers that added additional fee that film is recorded to prevent and document threatening situations. However, it does not appear that sound is being recorded. On SL's website below under the heading "Ticket control and surcharge", SL initially stated only that they processed "moving images and still images". On SL's website under the heading "So. we process your personal data "it now appears that SL in connection with ticket control, among other things, processes moving images, sounds (IMY's underlining) and still images. However, it does not appear from the badge, which is now layer one for information, that audio is recorded.

The first layer of information should, as mentioned above, contain the information that affects the data subject the most and inform about such processing as could come as a surprise to those registered.²⁹

IMY states that audio recording is particularly sensitive to privacy, audio recording can will affect those registered to a large extent, not least because SL does not informs that sounds are recorded more than on their website, which can lead to those who being the subject of audio recording can say things they would not have done if they had

knowledge of sound recording. Furthermore, IMY states that passengers in SL's traffic network can not reasonably expect to be intercepted and that the audio recording is therefore surprising to them. IMY notes that it is particularly serious that information about sound not be left in the first layer of information because audio recording is considered particularly sensitive to privacy.³⁰

IMY thus finds that SL has violated Article 13 of the Data Protection Regulation by not to provide sufficient information about the audio recording that takes place with them body-worn cameras and that SL also processed personal data in violation of the principle of transparency in Article 5 (1) (a) of the Data Protection Regulation.

Summary assessment of information to the data subjects

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

³⁰ Prop. 2017/18: 231 pp. 67

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IMY notes that SL initially only provided certain information to them registered who received an additional fee. Information that sound was recorded did not appear.

IMY does not consider it clear enough to refer to filming being recorded on it written information that SL provides to the travelers who have been paid a surcharge.

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

IMY notes that the information provided on the badge is incomplete and not meets the requirements for the information that must be in layer one.

The IMY therefore finds that SL has infringed Article 13 of the Data Protection Regulation by not to provide sufficient information about the image and sound recording that is taking place.

IMY notes that the camera surveillance concerns a large number of travelers who are addicted of SL's traffic network to get to work, school and places for recreation. IMY notes that the pre-recording technique entails a very extensive personal data processing including both image and sound recording of the large the mass of travelers who neither behave threateningly nor violently towards the ticket inspectors, have a valid travel document and are not subject to any inspection either.

This is especially true as the controllers are instructed to wear the camera throughout work shifts and thus may film all travelers who may pass a controller. The need for information is therefore very important. SL has thereby also processed personal data in violation of the principle of transparency in Article 5 (1) a of the Data Protection Regulation.

Choice of intervention

IMY has stated that SL's ticket inspectors use body-worn cameras with pre-recording technology to record audio and video in conjunction with ticket control for to prevent threatening situations, document incidents and to control the identity of travelers. During the supervision, the experiment with body cameras has become permanently and the number of ticket controllers using the body cameras has increased.

The area has also been extended to apply to SL's entire traffic network. The pre-recording technology has meant that both adults and children have been able to be captured on film, albeit for a very short time in case no material is stored for more than one minute.

The use of body-worn cameras has no legal basis, with one exception for the recording that takes place in connection with threatening situations, and has meant that more personal data has been collected than has been necessary for the purposes.

IMY considers that SL's processing of personal data in connection with the pre-recording

which takes place over a minute, and which means that everyone who can conceivably pass in front the camera is filmed, even those who have not acted threateningly or violently or received anyone surcharge, has involved an extensive collection and treatment of an excessive amount of personal data.

This means that SL has processed personal data in violation of Article 5 (1) (a) and Article 5.1 c of the Data Protection Regulation and the provision on legal basis for processing of personal data in Article 6 of the Data Protection Regulation.

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

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captures moving images and sounds with the body-worn cameras. This means that SL also has acted in breach of the principle of transparency in Article 5 (1) (a) and the provision on information in Article 13 of the Data Protection Regulation.

Possible intervention measures

Article 58 of the Data Protection Regulation lists all the powers of the IMY. IMY has a number of corrective powers in the event of breaches of the Data Protection Regulation available under Article 58 (2) (a) to (j), including reprimand, injunction and penalty fees.

It follows from Article 58 (2) of the Data Protection Regulation that in accordance with Article 83, the IMY shall: impose penalty fees in addition to or instead of other corrective measures such as referred to in Article 58 (2), depending on the circumstances of each case. If it's a question

if a minor infringement is granted to the supervisory authority, in accordance with recital 148 i

the Data Protection Regulation, issue a reprimand instead of imposing a penalty fee.

A penalty fee must be imposed

IMY has ruled that SL has infringed Articles 5.1 (a) and (c), 6.1 (f) and 13 (i)

the Data Protection Regulation. These Articles are covered by Article 83 (5) (i)

the Data Protection Regulation, which means that, in accordance with Article 83 (2), the supervisory authority shall:

consider imposing administrative penalty fees in addition to, or instead of, others

corrective measures.

Given that large parts of the personal data processing that this supervision

covered has involved the illegal processing of personal data concerning a large number

registered, that the treatment has been going on for a long time and that SL has not provided

sufficient information to the data subjects, it is not a minor infringement.

SL must therefore be subject to an administrative sanction fee.

Determining the size of the penalty fee

General provisions

Pursuant to Article 83 (1) of the Data Protection Regulation, each supervisory authority shall ensure that:

the imposition of administrative penalty charges in each individual case is effective;

proportionate and dissuasive.

Article 83 (2) of the Data Protection Regulation sets out factors to be taken into account in

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

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

the supervisory authority to deal with the infringement and reduce it

potential adverse effects (g) the categories of personal data covered by

the infringement; (h) the manner in which the infringement came to the attention of the supervisory authority

knowledge, in particular whether and to what extent the data controller

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

applicable to the circumstances of the case.

Infringements of Articles 5, 6 and 13 are to be judged as serious and covered by it

higher penalty fee under Article 83 (5) of the Data Protection Regulation. This means that

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

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

depending on which value is highest.

It follows from Article 4 (18) of the Data Protection Regulation that an undertaking is a natural or legal person

person engaged in economic activity, whatever its legal form, which

includes partnerships or associations that regularly conduct financial activities

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

deterrent, the company definition shall mean that a company shall be considered a

economic entity which may consist of a parent company and all its subsidiaries.³¹

Recital 150 of the Data Protection Regulation states, inter alia, that if administrative

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

referred to in Articles 101 and 102 of the TFEU.

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

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

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

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

exercises a decisive influence over the subsidiary. The decisive influence (ie

control) can be achieved either through ownership or through agreements.

When determining the maximum amount for the penalty fee, IMY is based on SL's

annual report from the previous financial year.³² Of SL's annual report from the year 2020

it appears that SL is the parent company in a group where SL is the sole owner of the companies

SL Älvsjö AB, AB SL Finans and Waxholms Ångfartygs AB.

IMY is based on SL's sales for the Group when determining the penalty fee

size. Sales for the SL Group in 2020 amounted to SEK 20,981,000,000.

The maximum sanction amount that SL can be imposed is thus SEK 839,240,000,

which corresponds to four percent of SL's sales.

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

Ticket revenues in 2019 amounted to SEK 8,750,000,000 and amount to and including November

2020 to SEK 5,068,000,000. Forecasted ticket revenues for the whole of 2020 amount to

SEK 5,632,000,000, which means that ticket revenues for the full year have decreased by

SEK 3,118,000,000 compared with the previous year. SL considers these economical

circumstances shall constitute mitigating circumstances if a penalty fee is to

issued.

SL further states that Aktiebolaget Storstockholms Lokaltrafik is owned by Region Stockholm

and thus constitutes a publicly owned company. As shown in the annual reports from 2018

and 2019 as SL attached, the total revenue to 44 percent consists of

operating grants. The operating grant refers to the tax financing provided by SL

receives to conduct public transport operations. Of the annual report from the year 2020

the tax financing ratio is stated to amount to 54.4%. The operating grant does not apply

turnover in the form of goods and services sold but is a contribution from the Stockholm Region

for cost recovery in AB SL. According to the law (1977: 67) on surcharges in collectives

passenger traffic, the size of the charges may not exceed the additional costs that SL incurs

for the control activities and according to the same law, SL shall not receive financial gains

Article 29 Working Party, Guidelines for the application and determination of administrative penalty fees in accordance with

with Regulation 2016/679 (WP253 guidelines), p. 6

32 SL's annual report 2020.

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through the levying of surcharges. The issuance of the surcharges is thus not a for-profit business for SL.

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

Assessment of the infringements

IMY has identified three infringements. IMY assesses that the three violations do not are interconnected treatments and that a penalty fee should therefore be given per violation.

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

With regard to the severity of the infringement, IMY states that the treatment has taken place to prevent and document threats and violence has largely been legal (the treatment that has taken place during ongoing threats and violence).

The violation in this part, however, consists of SL's excessive use of pre-recording technology through which they continuously recorded with picture and sound, during as short as one minute. The recording did not only include the people who acted threatening but also all other travelers who happened to be in the camera recording area, which should not have to expect to be recorded with pictures and

sound.

This is a serious infringement because it is a public place like covers the entire SL traffic network. It has been about a comprehensive monitoring of a large number of passengers, including children, who depend on SL's traffic network to get to work, school and places for recreation. The treatment has also included the uptake of sound which is a particularly privacy-sensitive treatment and which has resulted in a extensive invasion of privacy for individuals.

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

At the same time, IMY states that SL's personal data processing has taken place for the legitimate purpose, that there was an actual threat to the ticket inspectors and that

The surveillance has helped to increase the security of the inspectors in their daily work working environment. The filming that took place with the pre-recording technology has only been stored locally in the cameras unless the controllers have activated the recording manually. It recorded the material has further been limited to a few people. Furthermore, SL has below the supervision has taken certain measures such as reducing the time for pre-recording from two minutes to one minute. IMY considers these to be mitigating circumstances.

In determining the size of the penalty fee, IMY has taken into account that SL has not used of the body-worn cameras for profit and that SL's ticket revenues according to the information reported in the case decreased in 2020.

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IMY has found that SL lacked a legal basis under Article 6 (1) (f) and that SL's treatment with pre-recording technology for as long as one minute is contrary the principle of legality and the principle of data minimization in Article 5 (1) (a) and (c).

In view of the seriousness of the infringements and the administrative penalty fee shall be effective, proportionate and dissuasive, the IMY determines the administrative the penalty fee of SEK 4,000,000 for the violation in this part.

SL's use of body cameras to ensure the identity of travelers who shall pay additional fee (purpose C)

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

IMY considers that the data subject is in a tight situation when a surcharge is set out, which makes the infringement serious. To continuously use recording with sound and image with body-worn cameras is especially serious when identity document has been shown of the controlled. The number of inspections is considered to be large. Of SL's information it appears that about 30,000 additional fees are issued annually and that the majority of them checked shows an identity document.

That SL recorded images and sounds from other passengers in SL's traffic network, in addition to those who is subject to a surcharge, constitutes a comprehensive monitoring of a large number of travelers which is dependent on SL's traffic network to get to work, school and places for recreation. IMY notes that the recording of image and sound associated with issuance of a surcharge has been illegal and goes far beyond what is deemed to be necessary for the purpose. SL could have taken other minor breaches of privacy

measures to achieve the purpose. Against this background, IMY considers that this is a serious infringement.

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

IMY has found that SL lacked a legal basis under Article 6 (1) (f) and that SL's processing is contrary to the principle of legality and the principle of data minimization in Article 5 (1) (a) and (c) of the Data Protection Regulation.

In view of the seriousness of the infringements and the administrative penalty fee shall be effective, proportionate and dissuasive, the IMY determines the administrative the penalty fee of SEK 8,000,000 for the violation in this part.

Information for the registered

The requirements for information to data subjects under the Data Protection Regulation are extensive.

Access to information is crucial for data subjects to be able to choose how they want

act in a given situation. Access is also crucial for registered users

be able to assert some of their rights under the Data Protection Regulation.

SL's shortcomings in the provision of information to the data subjects have mainly

meant that the data subjects did not receive any information about that camera surveillance with

body-worn cameras may occur before they have been filmed by SL. They have

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

Registered persons who have been checked or who have acted threateningly have been able to perceive the information in the first layer, the inspectors' badge, only in connection with their becoming

filmed. There is a complete lack of information aimed at other data subjects, who do not themselves controlled or involved in a threatening situation, but still caught by image and sound recording. Furthermore, SL has not provided any specific information about that sound is recorded even though it is a special privacy-sensitive treatment.

The lack of information that camera surveillance with body-worn cameras can come to happen concerns a large number of passengers who are dependent on SL's traffic network to get to work, school and places for recreation. Even children, who are seen as particularly worthy of protection, may be filmed. IMY considers this to be a serious infringement, in particular like the large mass of travelers who just happened to be in the ticket inspector's catchment area has not received any information that SL uses body-worn cameras.

SL has now equipped the inspectors with a so-called badge on the uniform, an action which according to IMY shows that SL had an ambition to take measures to reduce invasion of privacy and comply with the rules of the Data Protection Regulation.

In view of the seriousness of the infringements and the administrative penalty fee shall be effective, proportionate and dissuasive, the IMY determines the administrative the penalty fee of SEK 4,000,000 for the violation in this part.

Summary

Based on an overall assessment, IMY assesses that SL must pay an administrative fee a penalty fee of a total of SEK 16,000,000 for the violations of Articles 5, 6 and 13 of the Data Protection Regulation.

This decision was made by Director General Lena Lindgren Schelin after the presentation by lawyer Jeanette Bladh Gustafson. At the final processing has also unit manager Charlotte Waller Dahlberg and lawyer Jenny Bård participated. During David Törngren, Chief Justice, also participated in the proceedings.

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

Appendix

Information on payment of penalty fee

Copy to

SL's data protection ombud: dataskyddsbudet@sl.se

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How to appeal

If you want to appeal the decision, you must write to the Privacy Protection Authority. 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 part of the decision. If the appeal has been received in time, send

The Integrity 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 data that may be covered by secrecy. The authority's contact information can be found on the first page of the decision.