ADMINISTRATIVE COURT IN STOCKHOLM
Section 7

FOD
2024-07-17
Notified in Stockholm

Target
No
6034-24

THE COMPLAINANT
Dr Complainant

PARTNER
The Authority for the Protection of Privacy

APPEALED DECISION
Decision of the Data Protection Authority 2024-03-19

THE CASE
Processing of personal data

DECISION OF THE ADMINISTRATIVE COURT

The Administrative Court rejects the appeal.

Phone number
08-561 680 00

08:00-16:00

115 76 Stockholm

Website
www.domstol.se/forvaltningsratten-i-stockholm/

APPEALS ETC.

Dr Complainant has lodged a complaint against Region Uppsala with the Swedish Authority for Privacy Protection (IMY), essentially alleging that the Region is recording telephone conversations without a legal basis for the processing.

The IMY decided on 19 March 2024 to send an information letter to the Region informing it, inter alia, of the applicable law and to close the complaint case without taking any further action. The reasons for the decision were essentially as follows. IMY is required to deal with complaints and, where appropriate, to investigate the substance of the complaint. The purpose of sending information about the complaint and the applicable rules is to give the region an opportunity to review its own processing of personal data and to correct any shortcomings. In view of the above, IMY does not find grounds to investigate the complaint further.

Dr Complainant requests that IMY initiate supervision under the EU Data Protection Regulation[1] and argues, inter alia, the following. The supervisory authority shall investigate with due diligence complaints lodged by an individual who considers that the processing of personal data relating to him or her constitutes a
breach of the General Data Protection Regulation. The supervisory authority also has an obligation to take effective measures to curb infringements. It is therefore not true that IMY has the same scope as other Swedish supervisory authorities to decide which supervisory cases to pursue and how to do so. According to the case law of the Court of Justice of the European Union, the supervisory authority must first determine whether there has been a breach of the rules and, if so, take appropriate measures to remedy the identified deficiency. In this case, the information letter has preceded the investigation that would have formed the basis for sending the letter. The information letter also ends with the information that

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[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on

the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

IMY does not intend to take further action and there is thus no incentive for the controller to remedy its legal infringements. IMY has therefore failed to investigate the matter with due diligence and to take a decision to remedy the identified deficiency, despite the fact that it is clear from the documents it has submitted that the Region has not been able to provide a legal basis for its processing of personal data.

He does not question that in some cases a matter can be resolved by an information letter. However, this concerns issues where the controller's behaviour is due to ignorance or misunderstanding, which the region can hardly hide behind in this case. Furthermore, information letters are not a corrective measure under Article 58 of the GDPR and therefore cannot constitute an effective measure within IMY's discretionary range of appropriate measures. In addition, IMY does not follow the internal guidance established by the European Data Protection Board regarding the content of an information letter. For example, there is no call for the controller to comply with the law or information on how to make such a correction. The guidance also refers to the IMY's task of monitoring and enforcing the application of the GDPR. It is highly questionable whether the authority fulfils that mission when it does not take a position on complaints. It is not he as a rights holder who should be responsible for ensuring that the controller or the supervisory authority does what is required of them.

IMY considers that the appeal should be rejected and states, inter alia, the following. IMY has not taken a position on whether the personal data processing in question fulfils the provisions of the Data Protection Regulation, but has sent an information letter informing the region of the complaint and the applicable rules on the matter. The purpose of sending an information letter is to give the person against whom the case is directed an opportunity to review their processing of personal data and correct any shortcomings. In case the information letter does not have the intended effect, it states

the complainant was free to submit a new complaint at a later stage. IMY has considered this measure to be sufficient and has closed the case.

THE REASONS FOR THE DECISION

Applicable provisions

According to Article 77(1) of the GDPR, a data subject who considers that the processing of personal data relating to him or her infringes the GDPR has the right to lodge a complaint with a supervisory authority.
Article 57(1)(f) of the Regulation requires the supervisory authority to examine the complaint lodged by a data subject and, where appropriate, to investigate the substance of the complaint.

Recital 141 of the Regulation states that, subject to possible judicial review, the investigation of complaints should be carried out to the extent appropriate in the individual case.

Recital 129 of the Regulation further states, inter alia, that The powers of the supervisory authorities should be exercised impartially, fairly and within a reasonable time, in accordance with the appropriate procedural safeguards laid down in Union and Member State law. In particular, any measure should be appropriate, necessary and proportionate to ensure compliance with this Regulation, taking into account the circumstances of each case, respecting the right of every person to be heard before any individual measure adversely affecting him or her is taken, and designed to avoid unnecessary costs and excessive inconvenience for the persons concerned.

The Court of Justice of the European Union has stated that the supervisory authority must investigate complaints with due diligence, choose a necessary and appropriate measure, and ensure full compliance with the Regulation (judgement of the Court of Justice of the European Union in Case C-311/18, Facebook

Ireland and Schrems, EU:C:2020:559, paragraphs 109 and 112). According to the CJEU, the supervisory authority also has a discretion as to the choice of appropriate and necessary measures (judgments of the CJEU in Joined Cases C-26/22 and C-64/22 UF and AB v Land Hessen and SCHUFA Holding AG, EU:C:2023:958, paragraphs 57 and 68-69).

In connection with the adaptation of Swedish law to the EU General Data Protection Regulation, the government stated that the supervisory authority has no obligation to take supervisory measures or even to always investigate the facts more closely.
On the contrary, the authority has a clear discretion to decide for itself which supervisory cases are to be pursued and how this is to be done (Government Bill 2017/18:105, pp. 164-165).

Assessment by the Administrative Court

The issue in the case is whether IMY had grounds for not investigating Dr Complainant's complaint further, beyond sending an information letter to the region.

Dr Complainant has argued that IMY is obliged to investigate complaints under the GDPR and that its discretion as to appropriate and necessary measures relates only to corrective measures under Article 58(2) of the GDPR, which IMY has not decided in the present case.

Admittedly, the Administrative Court notes, like Dr Klagare, that cases C-26/22 and C-64/22, as described above, primarily concern corrective measures under the Data Protection Regulation. However, the Administrative Court considers that the statements of the Court of Justice of the European Union in those cases are also relevant to the present review. According to the Administrative Court, the above provisions, reasons and statements, taken together, thus support the conclusion that IMY, as

of the supervisory authority has considerable discretion to assess the extent to which a complaint should be investigated and what investigative measures are appropriate, necessary and proportionate in the individual case. Therefore, even taking into account the arguments put forward by Dr Complainant in his appeal, the Administrative Court considers that IMY has the possibility to decide not to investigate a complaint further and to close a case by sending an information letter to the controller. However, this discretion is not entirely unlimited.

Based on what is apparent from Dr Complainant's complaint, the Administrative Court considers that, at the time of IMY's decision, it must have appeared uncertain whether the Region had complied with its obligations under Article 6 of the EU Data Protection Regulation. It was therefore justified to send an information letter to the Region in the way it did. On the other hand, the Administrative Court considers that, on an overall assessment of the evidence in the case, and taking into account what has been presented above, there is no reason to question IMY's view that no further investigative measure was necessary.

Against this background, and taking into account what Dr Complainant has stated in his complaint to IMY and what is evident from the investigation in general, the Administrative Court considers that IMY has investigated the matter in question to the extent that is appropriate in the individual case and that the information letter sent has been a sufficient measure. The arguments put forward by Dr Complainant regarding what an information letter should contain do not provide grounds for making any other assessment. In that context, the Administrative Court also notes that the European Data Protection Board's working document referred to by Dr Klagare is not binding and therefore does not lay down any obligations for the supervisory authority as regards the content of the information letter.

IMY has thus had grounds to close the case without further action. The appeal should therefore be rejected.

HOW TO APPEAL

This decision can be appealed. Information on how to appeal can be found in Annex (FR-03).

Mats Mossfeldt
Counsellor

Alva Martinsson acted as rapporteur.

SVERIGES DOMSTOLAR

How to appeal

FR-03

If you want any part of the decision to be changed, you can appeal. Find out how to do this here.

Appeal in writing within 3 weeks

The time is usually counted from the day you received the written decision. In some cases, the time is counted from the date of the decision. This is the case if the decision was handed down at an oral hearing, or if the court announced the date of the decision at the hearing.

For a party representing the public interest (e.g. public authorities), the time is always counted from the date of the court's judgement.

Please note that the appeal must be received by the court by the deadline.

What day does the time expire?

The deadline for appeals is the same day of the week that time starts to run. For example, if you received the decision on Monday 2 March, the deadline is Monday 23 March.

If the deadline falls on a Saturday, Sunday, public holiday, Midsummer's Eve, Christmas Eve or New Year's Eve, it is sufficient for the appeal to arrive on the next working day.

Here's how to do it

1. Write the name and case number of the administrative court.
2. Explain why you think the decision should be changed. Tell us what change you want and why you think the Court of Appeal should take up your appeal (read more about leave to appeal below).
3. Tell us what evidence you want to refer to. Explain what you want to show with each piece of evidence. Include written evidence that is not already in the case.
4. Provide your name and social security number or organisation number.

   Provide up-to-date and complete information on where the court can reach you: postal addresses, email addresses and telephone numbers.

   If you have a representative, please also provide the contact details of the representative.
5. Send or hand in the appeal to the administrative court. You can find the address in the decision.

What happens next?

The Administrative Court checks that the appeal was received in time. If it is received too late, the court rejects the appeal. This means that the decision stands.

If the appeal is received in time, the administrative court forwards the appeal and all documents in the case to the Administrative Court of Appeal.

If you have previously received a letter by simplified service, the Administrative Court of Appeal can also send letters in this way.

Instructions for appeal **FR-03 - Appeal period 3 weeks - PT** - Produced by Domstolsverket, Avd. for Judicial Development - 2020-05

Leave to appeal in the Administrative Court of Appeal

When the appeal is lodged with the Court of Appeal, the Court first decides whether to hear the case.

The Court of Appeal grants leave to appeal in four different cases.

- The Court considers that there are grounds for doubting the correctness of the administrative court's judgement.
- The Court considers that it is not possible to assess whether the administrative court ruled correctly without reopening the case.
- The Court needs to hear the case to provide guidance to other courts on the application of the law.
- The Court considers that there are exceptional reasons for taking up the case for some other reason.

If you are *not* granted leave to appeal, the appealed decision will stand. It is therefore important to include everything you want to argue in your appeal.

Want to know more?

Contact the Administrative Court if you have any questions. You can find the address and telephone number on the first page of the decision.

More information is available at www.domstol.se.