If you have issues viewing or accessing this file, please contact us at NCJRS.gov.

Current Sweden
Published by the Swedish Institute

No 178
November 1977
(7)
For free publication or background use

NCJRS
AUG 14 1978
ACQUISITIONS

THE SWEDISH DATA ACT

by Jan Freese

The Swedish Data Act was the first piece of nationwide legislation designed to protect the personal privacy of the citizens. It already came into partial force on July 1, 1973, with relevance for both the public and private sectors. To enable this law to become fully operative it was necessary to amend constitutional law (the Freedom of the Press Act). This was done in 1974.

The Freedom of the Press Act is of interest here because of its rules on the so-called publicity principle. This was created as far back as 1766 and is regarded as a cornerstone of Swedish democracy.

According to the publicity principle each and everyone in Sweden is guaranteed access to all public documents, i.e. all documents which have been received or set up by a government agency. Today, such documents are made to include information that is entered on a computer input medium. And the public documents are accessible to everyone, not only to those who are directly affected by them.

It is very easy to take advantage of this right. Anyone can visit the offices of government agencies and ask to look at their documents. Only if the document requested or part of it is protected by a rule in the Secrecy Act can it be kept secret or partly secret. However, exact congruity is required between this rule and the requested information. Doubtful cases are resolved by the main principle, which says that the document must be released. If access to the document is refused, the applicant is entitled to lodge complaint free of charge with the Supreme Administrative Court.

49670

The exceptions that are spelled out in the Secrecy Act were of course devised to provide protection for various purposes, personal privacy among them. But these rules proved to be inadequate in the computer age.

The publicity principle permits a massive flow of information, such as between the public and private sectors. With respect to data on persons the flow is facilitated by the civic registration number, a statistical device that was invented in Sweden as far back as 1947. The civic registration number is used as an identification concept in most of the Swedish personal data files.

Apart from these specific Swedish reasons, there was early appreciation in Sweden of those reasons which prevail on the lawmakers in most advanced countries to enact legislation in the data processing field.

Concurrently with the Swedish Data Act the Data Inspection Board was established. The Data Inspection Board is an agency of central government mandated to grant licenses to the keepers of personal files and to monitor compliance with the Act. It is headed by a director general, who is required to have experience of the bench. Its head office consists of three units: the licensing division, the supervisory division and the administrative secretariat.

Board activities are in the charge of an eleven-man directorate, with the director general serving as chairman. The other ten members are politicians from the various parliamentary parties and persons representing the business community, trade unions and other interest organizations. In addition there are seven deputies for the regular members. The alternate for the chairman is the head of the licensing division.

It should be pointed out here that the Data Inspection Board, like most other government agencies in Sweden, is an autonomous authority and administers the Data Act independently. Compared with its counterparts in many other countries, the typical government agency in Sweden has more the character of an administrative tribunal.

According to a principle in the Data Act, anyone who wishes to set up a personal file must first obtain permission. Although files that are set up by decision of Cabinet of Parliament are formally excluded from this requirement, both branches of government must as a practical matter obtain a statement of opinion from the Data Inspection Board before taking any such decision. Moreover, under the Data Ordinance, which is a set of regulations implementing the Data Act, these matters are to be dealt with in the same way as licensing matters.

A license shall be granted if there is no reason to assume that undue infringement of the registered person's privacy will arise. The kind and quantity of personal data entered in a file, as well as the attitude to that file which those who are to be registered in it may be expected to have, are factors of especially great importance in weighing the risk of undue privacy infringement.

A person must be prepared to accept some infringement as member of a society. The protection of privacy is therefore restricted to what may be regarded as undue.

According to an amendment that was recently added to the Data Act in response to the so-called Reader's Digest case, a license to set up or keep a personal file which covers a substantial part of the population in Sweden or a region therein will be granted only if

1. those who are going to be registered are members, employees or customers of the responsible keeper or have some other comparable association with the keeper;

2. those who are going to be registered give their consent thereto; or

3. special circumstances are present.

Further, the licensing procedure must pay heed to the feasibility of issuing directives for the file. Certain directives are mandatory: these have to do with the purpose of the file and which personal data are allowed to be entered in the file. But if considered necessary directives may also be issued on how the data may be collected, the technical equipment that may be used, how the information may be processed, on notifying registered persons of (say) analyses of information about them, which data may be retrieved from the file, to whom they may be released and how they may be used, how the data are to be preserved and sorted out, and control and security routines.

If when deciding to set up personal files Parliament and Cabinet do not at the same time announce directives for their use, it will be up to the Data Inspection Board to issue such directives. However, no directives are permitted to curtail the publicity principle.

Permission to set up certain types of personal files require particularly compelling reasons if the responsible keeper is someone other than a government agency which under law or statute is mandated to keep such files. Examples of the latter are police registries, records of previous convictions and other files on the society's coercive interventions against private persons.

Special circumstances must be present for permission to set up a file which contains information about private persons as regards their illnesses, state of health and political or religious beliefs. However, no such circumstances need be present if a political or religious association wants to keep membership rosters by means of ADP.

The licenses may be granted with specified time limits. Should it nevertheless turn out that an approved personal file results in undue infringement of privacy, the Data Inspection Board may alter given directives, issue new ones or revoke the license.

If there is reason to suspect that an item of personal information is incorrect, the responsible keeper is under obligation to verify it. Should it turn out that the suspicion was well-grounded, the item shall be rectified or excluded. If an erroneous item has been released to someone other than the registered person, the latter may demand that the responsible keeper send out notice of rectification or a statement saying that the item has been excluded. In certain cases, however, the Data Inspection Board may exempt the responsible keepers from this obligation. If a personal file lacks an item of information that ought to be included, or if an item is incomplete and this entails risk that personal privacy will be unduly infringed or that legal rights will be lost, the responsible keeper shall augment the file.

Under a separately issued directive a responsible keeper may be obligated to notify, either for the moment or on a sustained basis, a registered person as to the content of a personal file. However, the Data Act includes a general rule which gives a registered person the right to receive such notification once a year at his request. In principle the notifications are to be furnished free of charge.

The Data Act prohibits responsible keepers from releasing any item of information about a person if they have reason to suspect that the item will be used in contravention of the Act. Only after permission is obtained from the Data Inspection Board may an item be released if there is reason to assume that it will be used for ADP purposes abroad.

Responsible keepers are obligated to report to the Data Inspection Board when they discontinue keeping a personal file. In that case the Board will stipulate what is to be done with the stored information. This rule was adopted to prevent the huge volumes of information stored, for instance, on the premises of a company from being used as a commodity of trade at executive auctions and the like, or to guard otherwise against losing control over the information when companies are sold off or go out of business.

The responsible keepers and their personnel are required to observe professional secrecy with respect to what they have found out about the personal affairs of private persons in the course of data processing.

For government agencies a special rule is in force which compels them in principle to document, in readable form in their official written records, all proceedings of a court hearing or any other matter in dispute.

The Data Inspection Board is not only a licensing agency. It also performs monitoring functions and is called upon to act as a "wailing wall" for the general public. For this reason the Board is entitled to inspect computer centers and other premises where ADP is being done or where equipment for ADP or input media is stored. This inspection right holds for all installations and not only those where information about persons is regularly processed. But as a matter of course the inspection right is limited to making

sure that ADP does not lead to undue infringement of personal privacy. The responsible keepers are obligated to furnish the Data Inspection Board with particulars necessary for control purposes, for instance about systems documentation and computer programs. Moreover, the Board is entitled to make arrangements for computer runs. If the responsible keeper does not have the hardware at his own disposal but resorts to someone else, e.g. a service bureau, the obligations to assist the Board for control purposes will rest on the latter correspondingly.

If the Data Inspection Board is refused admission to premises or access to documents, the responsible keeper may be ordered to pay a fine. Obviously, the inspection activity must be carried on in such a way that it does not inflict unnecessary costs or inconveniences on the responsible keepers.

The Data Act also contains punitive provisions. Anyone who sets up or keeps a personal file without permission, who violates directives or the secrecy obligation, etc,, may be ordered to pay fines or sentenced to imprisonment for at most one year. Inserted in the Data Act, moreover, is a brand new category of criminal offense, known as data trespass, which means that anyone who unlawfully accesses a recorded transcription for ADP or unlawfully changes or deletes in such transcription may be ordered to pay fines or sentenced to imprisonment for at most two years, provided the offense is not punishable under the Penal Code. Attempts at or preparations for data trespass are likewise punishable. Further, a personal file that has been kept without permission may be confiscated. Incorporated in the Data Act is a rule on damages which says that a responsible keeper must indemnify a registered person for loss inflicted because a personal file contains incorrect information about him. This rule pertains both to economic and noneconomic loss, and also encompasses strict tort liability.

Responsible keepers who feel that decisions by the Data Inspection Board have gone against them may lodge appeal. A similar right of appeal is vested in the Attorney-General, who watches over the public interest. Complaints are handled by the Government in the Ministry of Justice.

In addition to administering the Data Act, the Board acts as licensing and supervisory agency with respect to two other laws, the Credit Reporting Act and the Debt Collecting Act. Both these laws regulate files irrespective of whether they are kept manually or with the aid of ADP.

The Data Inspection Board employs a staff of about 30 persons, of whom about 20 have decision-making responsibilities working either for the licensing or supervisory division. Its budget totals about Skr 4 million*, an amount that has to be reduced by the revenues generated by the licensing operation, which requires

---

* 1 Skr (Swedish krona) = US $ 0.21 or £ 0.12 (approx.)

the payment of fees. This operation is supposed to be self-supporting in principle. Obviously, no charge is made for the performance of supervisory and counseling services.

So far the Data Inspection Board has received around 21,000 applications pertaining to about 25,000 personal files. On an average, the name of every adult unmarried and conscientious Swede appears in at least 100 personal files. As for married persons, their names are bound to occur much more frequently inasmuch as such things as "affinity designation" (the spouse's civic registration number) often appear in the personal files. With a population of roughly eight millions, Sweden is one of the most computerized countries in the world.

The number of applications and the stringent rules in the Data Act readily evoke mental images of a vast bureaucracy. But in the space of about three years (following conclusion of the build-up phase) the comparatively small workforce has managed to promulgate around 19,500 decisions, a figure that takes in a great many more personal files, and at the same time discharge the Board's basic supervisory duties.

The Data Inspection Board has deliberately sought to avoid bureaucracy. Those with decision-making responsibilities prepare the agendas of business to be transacted, not seldom in groups. Most decisions are announced by the head of the licensing division, a smaller number by the director general and the most important ones, perhaps some 40 a year, by the directorate.

Around 65 percent of the agenda items are routine matters. For them the Board has developed, on the strength of the Data Act and within the framework of this law, a standard operating procedure (SOP), which has more the character of reviewing applications than of adjudicating on licenses. This means that the responsible keeper, who has files described by the Data Inspection Board and which thus may not contain more than certain information of a specified character and may not be used in any way other than that which is natural for the activity in question, need do no more than tick off appropriate boxes on an application form. Such an application may be made with respect to holders of insurance policies, indexes of tenants and lessees, etc. These matters are dealt with in summary fashion. Any gaps which may thereby arise in the control operation are filled in by the supervisory division.

The standard operating procedure is important. It permits the law to retain its strength, at the same time as it permits self-policing under self-assumed responsibility in lieu of the comprehensive licensing control which the legal text seems to denote. Actually, the Swedish Data Act does not diverge very much from counterpart laws that have come into force or been proposed in other countries. The application of SOP makes it feasible to sort out those files that are in real need of thoroughgoing control. Insofar as a responsible keeper cannot take advantage of SOP he can always apply for a license in the more formalized manner.

Every licensing decision has affected the files (as well as SOP), since each decision must come with directives defining the purposes and contents of the files. The same rule is in force for SOP, which in many cases has affected the files to a much greater extent.

In spite of the foregoing, no more than 40 or so decisions have been appealed against, a record that should be seen in light of the approximately 19,500 decisions taken so far. Around one-fourth of these complaints have been about the fee-for-service charge. Most of the remaining complaints have come from the Swedish Central Bureau of Statistics, which preserves individual identity in its 130 or so statistical files of persons, from the social-science research community and from the direct-mail advertising firms. This very low incidence of appeal applications is due to the fact that the Data Inspection Board, instead of rejecting an application out of hand when discussing its merits with the responsible keeper, usually broaches alternative constructive solutions. More often than not this approach will result in changes which signify, first, that the risk of undue infringement of personal privacy will be avoided; and, second, that the responsible keeper's reasonable expectations of operating efficiency will be met.

Occasional exceptions apart, it may be contended that the Data Act has entailed no more than marginal direct costs for the responsible keepers.

The Data Act has some positive effects to its credit. Sometimes it has directly contributed to avoidance of duplicated effort. Further, the Board's activities have given society insight into computerization and its consequences in several respects alongside the privacy issues. Among many areas to which attention has been called as side effects, mention may be made of the problems bound up with the security and integrity of data, the flow of data across national frontiers, the vulnerability of society, the need for data quality, etc.

The Data Act has had effect, in part directly through the Board's decisions, in part indirectly through self-policing among the responsible keepers. A point that perhaps deserves particular emphasis as regards the supervisory activity is that the celebrated "man on the street" not infrequently runs into difficulties whenever something goes wrong, in which case he may need all the help he can get to achieve that rectification which the services of the Ombudsman can provide. The erroneous information may have spread like ripples on the water to other data processing systems, of whose existence the aggrieved person may not even be aware.

At the time the Data Act came into being it was unanimously agreed that this maiden work, which regulates a brand new technology used in all sectors of society, ought to be examined anew after only a few years had passed. In 1975, therefore, Parliament decided to appoint a committee, known as the Data Act Committee, to review the law with a view to its possible overhaul.

The committee was not actually constituted until 1976, after the Data Inspection Board had evaluated the legislation. Its terms of reference basically adhere to the Board's evaluation.

These terms of reference mandate the committee to investigate various aspects, notably the need for public control over the keeping of personal files with techniques other than ADP, the feasibility of strengthening the protection of privacy, the extent to which the licensing requirement can be modified for different societal sectors, and the increased flow of data across national frontiers.

Jan Freese is Director General of the Data Inspection Board and co-opted to the Data Act Committee as expert.

The author alone is responsible for the opinions expressed in this article.

SVENSKA INSTITUTET
BOX 7072
S-103 82 STOCKHOLM
SWEDEN

END