

**THE PROTECTION OF INTEGRITY,  
PERSONAL INFORMATION AND  
PERSONAL REGISTERS IN SWEDEN**

**KJELL IVRI**

*Skandia*

*Stockholm, Sweden*

**ABSTRACT**

Personal integrity is closely connected to such concepts as the individual's opportunities for personal development, the possibilities individuals have to determine the image the outside world has of them, and the possibilities that exist to live free from demands and pressures of outsiders. An employer may wish to investigate an applicant's suitability for a job by asking rather personal questions. In this context, it can be of interest to know how and to what extent "incorrect" information may be subject to sanctions. Furthermore, it can be of interest to know whether personal integrity limits the obligation of loyalty to the employer. Finally, it can be of interest to know what information may be registered according to the law and collective agreement.

The protection of an individual's private life, and of information of a private nature, is preserved in Sweden through legislation in many areas. The term "protection against unauthorized encroachment of personal integrity" is generally used. It is difficult to give a simple definition of the concept of personal integrity, as it covers the protection of interests in a number of different areas. The protection of private life is of central importance, and this may be interpreted so broadly as to include such things as the right of the individual to be free from pressure entailing nuisance or coercion from outsiders.

Personal integrity is closely connected to such concepts as the individual's opportunities for personal development, the possibilities individuals have to determine the image the outside world has of them, and the possibilities that exist to live free from the demands and pressures of outsiders.

It is, of course, impossible to demand a situation of absolute protection. In many contexts, one must accept the obligation to provide information; one must tolerate public control, tolerate pressures, limit one's freedom of action, and so on. The law is intended to provide protection against unwarranted encroachments of personal integrity, that is, encroachments that may be felt to be too far-reaching, too disturbing, or too demanding in relation to the purpose of the encroachment.

As mentioned, the protection of personal integrity is spread over many different areas within the legal rules. It is therefore difficult to see the total picture, not least because this is not a question of a systematically designed set of rules. Rules exist in penal law concerning protection against bodily assault and nuisance. There are rules dealing with the protection of writers and other creators against the distortion of their work, or its reproduction in derogatory contexts. There are rules that provide protection on the use of an individual's name and picture in advertisements. There are rules on the use of TV cameras for the monitoring of public places. There are also rules about what can be checked about a person in connection with employment.

## DATA LEGISLATION

A central part in the protection of integrity is incorporated in the Data Act [1], the Credit Information Act [1], and the Debt Collection Act [3]. These acts overlap in several ways, in that they can be applied in parallel by virtue of the fact that they contain stipulations concerning personal registers, and because they are subject to inspection by the Data Inspection Board.

The primary purpose of the data legislation is to meet the individual's need for protection of personal integrity, while at the same time defending the application of the principle of free access to public records in the electronic data processing (EDP) area. Permission to establish and maintain personal registers that contain information on persons being suspected of crimes; having been sentenced for crimes; having served a sentence or having been subject to a similar penalty for a crime; or having been arrested under the laws with which special provisions for care of the young or the care of drug abusers in certain cases; or the law on commitment to institutional mental care in certain cases, the law concerning the care of certain psychiatrically mentally retarded individuals, or the Aliens Act [4]; may only be granted to anyone other than an authority who, in accordance with the law or other enactment, is obliged to maintain a list of such information under extraordinary circumstances.

Permission to establish and maintain personal registers that, in general, contain information on someone's illness, state of health or sex life, or information that someone has received financial assistance, care from the Social Services, or has been subjected to measures under the Alien's Act, may also only be granted

to anyone other than a proper authority if there is a special reason. Finally, permission to establish and maintain personal registers that contain information on someone's race, political views, religious faith or other convictions, may be granted only if there is a special reason.

The Data Act stipulates professional secrecy for those responsible for registers, and for others dealing with personal registers or with information that has been collected for inclusion in such registers. These people must therefore not disclose what they know about the circumstances of individuals without authorization. If the person responsible for a register, or anyone else, contravenes the stipulations in this paragraph, they can be sentenced to a fine or imprisonment for a maximum of one year for breaking the law on professional secrecy, in accordance with the penal code.

With regard to personal registers maintained with the assistance of automatic data processing, there are two issues of liability for damages that are of special interest. The first is when a registered person suffers some type of loss by virtue of unwarranted conduct. The other is when loss arises because incorrect information is given out. In the former case, the Tort Liability Act [5] applies. In the latter case, a special regulation that is more far-reaching has been included in the Data Act [1].

In Co-Determination Agreements there may be regulations concerning personal information and personal registers. In the Co-Determination Agreement in the insurance industry, for instance, there is a regulation to the effect that registered personal information shall be made available to the appropriate staff, and that the local parties shall, on the basis of central guidelines, reach agreement on such registration [6].

According to the central guidelines, registration of personal information can be done either in the form of data registers or manually. To prevent unwarranted encroachment on the personal integrity of employees, certain principles have been established that must be observed during the registration, handling, and storage of personal information. These are, briefly, as follows:

- storage shall be at one and the same place in the company;
- the information shall be accessible for certain authorized employees;
- information of a highly personal nature shall be stored in a special way and shall be accessible only to a limited number of people;
- registered information shall be destroyed once it is no longer required;
- authorized staff shall be suspect to the obligation of professional secrecy with regard to the information obtained;
- only essential personal information shall be registered; and
- information that is required either to make it possible to check that the employment agreement is fulfilled, or to fulfill the obligation to submit information to the authorities is subject to registration.

## EMPLOYMENT LEGISLATION

In principle, there is a free right of employment (i.e., employers have the right to select the applicant they want). The employer can also refuse to enter into a contract of employment. In this respect, the Security of Employment Act does not contain any restrictions other than the choice of the form of employment and the extent to which someone may have preferential right to re-employment [7]. Other restrictions on the free right of employment may, however, follow the law. The Constitution Act, for example, contains regulations on appointments in the public sector [8]. Here, it is stipulated that appointment to the public services shall be made solely on the objective grounds of facts such as merit and ability. An equivalent regulation is applied to state-regulated services in accordance with the Public Employment Act [9]. The Equal Opportunities Act contains regulations that forbid an employer to pass over a qualified job applicant on the basis of his or her sex [10].

The National Labor Market Board and the County Labor Boards have a number of ways of affecting the personnel policies of companies. Thus, there came into force at the time as the Employment Security Act, the so-called Promotion of Employment Act [11]. The aim of this act is to induce companies to follow a social policy in the case of new appointments. It is not a question of general norms, but rather a requirement that is decided in individual cases. The County Labor Board is entitled to require the individual company to submit information on the structure of the staff (age, sex, nationality, and the number of employees with a reduced capacity for work). The board is entitled to call the employer to talks. If the board considers that a company should be able to pursue a more generous policy with regard to older employees and employees with a reduced capacity for work, for example, the board has the right to issue directives. A directive may, for example, concern a certain quota of older employees that a company shall observe when making new appointments. If the employer does not comply, the matter is referred to the National Labor Market Board.

The directives of the County Labor Boards and the National Labor Market Board are not legally binding. If the employer does not follow the directives, however, the National Labor Board has the power to rule on compulsory referral to the labor exchange. The company then may not employ anyone other than an applicant who is officially specified by the labor exchange. Disobeying such an instruction incurs a penalty.

The Employment Security Act excludes certain employees from its area of application. Among others, employees in the management positions and employees who belong to the employers family are excluded. Paragraph 7 of the act, which deals with objective factual grounds as a prerequisite for giving notice, does not apply to these categories. The Labor Court, however, has ruled that the free right to give notice may never be used for a purpose that contravenes the law and good practice, and that judgment of this is not established once and for all but

may be affected by legal opinion on the labor market, as expressed, for example, in the Employment Security Act [7].

One interesting question is the extent to which the trade unions have the right to assume control of individual employees' legal rights. The legislative history in this area makes it clear that no such right of disposition exists in relation to benefits already earned by the individual. Therefore, without the approval of the employee, union organizations may not conclude agreements stating that the employees shall, for instance, waive earned salary, or that employment will be terminated with severance pay.

### TERMINATION OF EMPLOYMENT

Even though requirements on giving notice apply irrespective of which party initiates the termination of employment, there are still significant differences relating to notice given by the employer or by the employee. For instance, with regard to the demand for reasonable grounds for an employer to give notice, there may be a risk that the termination of employment is formally stated to have occurred on the initiative of the employee, even if the initiative was taken by the employer (so-called provoked notice of termination). The employer may, for example, have threatened to give notice but declared willingness to give the employee the chance to give notice himself. If the employee has been induced into giving notice, or if the employer has achieved an agreement by means of force, or by the unwarranted exploitation of the employee's distress, imprudence, or dependence, this can lead to the agreement and the notice being declared invalid in accordance with the Contracts Act [12]. This also applies if other circumstances surrounding the conclusion of the agreement have been such that it would contravene faith and honor to invoke the notice of termination.

A notice of termination is not, however, without effect solely for the reason that it has been induced by the employer. It must be decided whether the employer has acted in contravention of good practice on the labor market, or in some other unwarrantable way. According to the legislative history of the Employment Security Act, in cases of unwarranted action on the part of the employer, the employee should be given the same legal protection which would have applied had it been a question of an invalid notice of termination from the employer. A notice of termination can therefore not only be declared invalid, but the employer can also be liable for damages for contravention of the foundations of the Employment Security Act [7].

The legally confirmed principle on the requirement for reasonable grounds for the employer to give notice is complemented by rules on notice protection in special legislation and general labor law principles. There are thus laws which directly prescribe the prohibition of giving notice in certain cases; for instance, because of an employee having to do military service. In the Co-Determination Act, notice is also declared invalid if it is given because of the union organization

an employee belongs to, or because of the employee's union activities. The same applies to notice given solely on the grounds that the employer demands or utilizes his/her legally confirmed right to leave for the purposes of study or the care of children.

Notice, relocations and dismissals that are sexually discriminatory are forbidden in the Equal Opportunities Act. Nor should notice that contravenes good practice or that is given with reference to an employee's nationality, color, religion, political opinions, or public function be accepted unless there are special grounds.

The difference between notice that contravenes good practice and notice that is not based on reasonable grounds is not completely clear at present. It is often a question of different ways of expressing the same thing, especially in cases that have not been dealt with in the legislative history of the Employment Security Act. The employer may not, for instance, threaten to give notice to induce an employee to set aside his legal obligations, nor may the employer give notice in order to gain revenge on an employee who has refused to follow an order which would have broken the law, or who has reported conditions at the workplace to the authorities. The employer should neither use the threat of notice to try to induce the employee to commit actions generally regarded as highly reprehensible, nor use it to put pressure on the employee in a matter where, in accordance with the prevailing moral view, the decision of the individual should be free and not made under financial duress.

The handling of alcohol problems at the workplace gives rise to questions over and above those of a medical and social nature. There is often a great deal of uncertainty about how individual cases should be assessed legally when the question of giving notice comes up. The principles are in themselves rather clear. If it is a question of drunkenness which appears to be an expression of negligence or indifference in relation to work and colleagues, then the view taken is not significantly different from that in all other cases of negligence. If, on the other hand, it is a question of the expression of the various stages of an illness, then the assessment is different. In cases of alcohol abuse, which are more characterized by negligence, serious drunkenness while on duty may lead to immediate dismissal. This mainly concerns those employees with jobs involving responsibility for others, or those who have caused considerable danger, for example, to the health and lives of their colleagues. If these circumstances do not exist, and if it is a question of a single misdemeanor, then there are probably no grounds even for giving notice.

In clear cases of alcoholism (abuse as an illness), the Labor Court has adopted a view which sees these cases not as negligence but as an expression of illness. The Security of Employment Act must be seen as comprising a prohibition in principle against giving notice on the grounds of illness, which can only be contravened in exceptional situations. One such exceptional situation is when an employee is unable to perform any meaningful work.

In several legal cases, the Labor Court has discussed the question of how much criticism an employer need tolerate from an employee, and where the boundary line between what is and what is not allowed should be drawn. In general, the Labor Court believes that an employee, in part in relation to the rights of a citizen to freedom of speech, has a broad right to criticize and question the actions of the employer, but there are limits. The limits must be decided on the basis of the position of the employee, and the obligation of loyalty to the employer that goes with that position. Therefore, according to the Labor Court, those in higher positions are subject to certain limitations of their right to criticize the measures and decisions of the management. These limitations apply both in relation to their subordinates within the company, and to people outside the company. Criticism must not develop into the threat of measures that would damage the interests of the employer.

In certain cases, circumstances are such that the employee can be blamed for disloyalty to principle or other disloyalty which the employer sees as a breach of trust. It is likely that reasonable grounds for giving notice do exist if the employee has caused the employer significant damage, or if he or she has put the employer's relationship with clients, or other business connections, at risk. The contravention of professional secrecy or the revelation of professional secrets can also be grounds for notice, or even for dismissal.

With reference to competing operations, the Labor Court has stated that it is indisputable that the employee is seriously contravening the loyalty requirements connected with a contract of employment if he/she engages in activities that compete with his employer while still retaining his/her job [13]. Such activities would include, for example, an employee submitting a tender in competition with the employer, with the intention of terminating employment and setting up his/her own operations should the tender be accepted. However, regard must also be paid to the position of the employee in the company, his/her opportunities for exploiting company secrets and other internal material in this competition, the character of the operations in which the competition takes place, and the significance of this competition for the company. One case in the Labor Court dealt with the questions of whether the employer had the right to immediately dismiss certain employees after they had given their notice in order to set up a competing operation. The majority decision of the court was that this was not justified, as it was assumed that the employer would be able to benefit from their work during the period of notice. It is reasonable to assume that the outcome would have been different if there had been any risk of damage to the company in retaining these employees for the period of notice. Similar statements of principle where the court emphasizes the fact that competition must be assumed to be intended to cause the employer more tangible damage, or otherwise be viewed as disloyal, have been made in other cases.

## CONCLUSION

As mentioned above, the protection of private life and information of a private nature is preserved by means of laws in many different areas. In general, it may be said that the laws make a balance between information interests and integrity interests. In Sweden, there is, in principle, a free right of employment, i.e., employers have the right to select the applicant they want. The right of inquiry is thus free so long as there are no restrictions under the law or under an agreement. At present, there are no such restrictions.

Regarding to what extent information may be registered, there are restrictions under the law as well as under agreements. Personal registers may thus be established and maintained only by a party who has received a license to do so, and only essential information may be registered. Information the job applicant does not reasonably need to submit in view of what may be regarded as good practice on the Swedish labor market, such as information concerning possible pregnancy, alcohol addiction, drug addiction, HIV infection, and so on, should not provide the basis for any sanctions. However, erroneous information that constitutes a deficiency in pre-conditions, i.e., which concerns important circumstances that have been decisive for the conclusion of the employment, may be subject to sanctions.

\* \* \*

Kjell Ivri is employed as a market lawyer by the insurance company Skandia. He is especially engaged with company and insurance law, but is also assisting Skandia in collective agreement and other trade-union negotiations in connection with more significant reorganizations. He is also assisting the Staff department within the Skandia Group with labor legislation competence. It is within this area that he has paid attention to questions of integrity, and especially their consequences in connection with recruitment and winding up (liquidation).

## REFERENCES

1. The Data Act. The Law (1988:621) with special provision for care of the young; The Law (1981:243) on the care of drug abusers in certain cases; The Law (1966:293) on committal of institutional mental care in certain cases; The Law (1967:940) concerning the care of certain psychiatrically mentally retarded individuals.
2. Credit Information Act (1973:1173).
3. Debt Collection Act (1924:182).
4. The Aliens' Act (1989:529).
5. Tort Liability Act (1972:207).
6. The Co-Determination Agreement between the Insurance Companies' Employers' Organization (FAO) and the Swedish National Union of Insurance Company Employers (FTF) (290823).
7. The Employment Security Act (1982:80).



8. The Constitution Act (1991:1503).
9. Public Employment Act (1976:600).
10. The Equal Opportunities Act (1979:1118).
11. The Promotion of Employment Act (1974:13).
12. Contracts Act (1915:218).
13. Labor court (AD), 1977 nr 118; 1980 nr 82; 1981 nr 108; 1982 nr 40,65, 112; 1983 nr 46, 112.

Direct reprint requests to:

Kjell Ivri  
Skandia  
Sveavagen 44  
103 50 Stockholm  
Sweden