

COMPLAINANT

See appendix

CONTROLLER

Svenska Julförlaget AB

Swedish ref.:
IMY-2024-961

Finnish ref:
7376/153/22

IMI case register:
[598404]

Date:
2024-12-11

Final decision under the General Data Protection Regulation – Svenska Julförlaget AB

Decision of the Swedish Authority for Privacy Protection

The Swedish Authority for Privacy Protection (IMY) finds that Svenska Julförlaget AB (Svenska Julförlaget), 556952-143, is processing the complainant's personal data in breach of

- Article 17(1)(c) of the General Data Protection Regulation (GDPR)¹ by not deleting the personal data of the complainant after the complainant has objected to the processing pursuant to Article 21 (2) and
- Article 21(3) of the GDPR by processing the complainant's personal data for direct marketing purposes after the complainant objected to processing for such purposes.

IMY issues a reprimand to Svenska Julförlaget pursuant to Article 58(2)(b) of the GDPR for the stated infringements of the GDPR.

Pursuant to Article 58.2 (c) of the GDPR IMY orders Svenska Julförlaget AB to

- erase the complainant's personal data pursuant to Article 17(1)(c) of the GDPR and
- stop processing the complainant's personal data for direct marketing purposes pursuant to Article 21(3) of the GDPR.

The measures shall be implemented no later than two weeks after this decision has become final.

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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).

Presentation of the supervisory case

The handling of the case

IMY has initiated supervision regarding Svenska Julförlaget AB due to a complaint regarding the right to erasure and objection to direct marketing pursuant to Articles 17 and 21 of the GDPR. The complaint has been submitted to IMY, as lead supervisory authority pursuant to Article 56 of the GDPR. The handover has been made from the supervisory authority of the country where the complaint has been lodged (Finland) in accordance with the provisions of the GDPR on cooperation in cross-border processing.

The case has been handled through written procedure. In light of the complaint relating to cross-border processing, IMY has used the mechanisms for cooperation and consistency contained in Chapter VII of the GDPR. The concerned supervisory authority has been the Finish Authority for Privacy Protection.

The complaint

The complainant has essentially stated the following. Svenska Julförlaget sends sales catalogues to the complainant despite the fact that he has on several occasions asked the company to cease sending him direct marketing and delete his personal data. The direct marketing has continued year after year despite that Svenska Julförlaget has replied that the mailings would stop. According to the complaint the request has, at least, been made in September, 7th 2020 and September, 8th 2021. On August, 25th 2023, the applicant stated that he had again received marketing from Svenska Julförlaget again. Together with the complaint, the complainant submitted a picture of direct marketing from Svenska Julförlaget in the form of a sales catalogue from the year 2022.

When the complainant was given the opportunity to comment on Svensk Julförlaget's statement in the case, as set out below, he also submitted scanned images of Svenska Julförlaget's sales catalogues from 2023 and 2024 and the corresponding sales lists dated 2023 and 2024 showing the appellant's name and address.

Statements from Svenska Julförlaget

Svenska Julförlaget AB has essentially stated the following. Svenska Julförlaget is the controller of the processing of personal data that is the subject to the complaint. Svenska Julförlaget has handled the complainant's request for erasure and objection to direct marketing. The direct marketing in 2020 was sent to the complainant by mistake. In September 2020, the complainant turned to julforlaget.se, but should have emailed julforlaget.fi as it was said that Finnish customers should do for customer service. Since then, the case has not been handled as it should have been, due to the fact that julforlaget.fi was not contacted, and the complainant received incorrect automatic information that the next year's direct marketing would be stopped. The complainant therefore incorrectly received direct marketing in 2021. The complainant emailed the Swedish customer service again in 2021. At that time, attention was paid to the problem and the company introduced a new routine that meant that customer service also handled Finnish customers who emailed to the wrong email address. Svenska Julförlaget buys addresses through an external company. The reason why the complainant could submitte a picture of a mailing from 2022 may be that his information was included in the addresses purchased or that he took the mailing from

a neighbour or relative. Nor is it true that the complainant received mailings in 2023 and 2024, since the complainant was removed after his email in 2021 and the customer card was marked 'do not disturb'. The address source is clearly visible from the company's mailings and the address source has been cut from the images submitted by the complainant.

Motivation for the decision

IMY will examine whether Svenska Julförlaget has fulfilled the complainant's request for erasure and whether the company has ceased the processing of the complainant's personal data for direct marketing purposes after he objected to that kind of processing.

Applicable provisions

According to the principle of accountability, the controller must be able to demonstrate that the processing of personal data is carried out in accordance with data protection rules (Articles 5(2) and 24 GDPR). This means that the controller bears the burden of proving that the processing complies with the data protection rules.²

Pursuant to Article 17(1)(c) of the GDPR, the data subject is entitled to have his or her personal data erased by the controller without undue delay, inter alia, when the data subject objects to the processing pursuant to Article 21(2) of the GDPR.

Pursuant to Article 21(2) of the GDPR, the data subject has the right to object at any time to processing of personal data concerning him or her for direct marketing purposes. Furthermore, it follows from Article 21(3) of the GDPR, that personal data may no longer be processed for such purposes if a data subject objects to the processing.

IMY:s Assessment

Since 2020, the applicant has repeatedly approached Svenska Julförlaget to request that the company's direct marketing be stopped and that his data should be deleted. IMY considers that the complainant's e-mails should have been interpreted and handled as an objection to direct marketing and the request for erasure.

Svenska Julförlaget has stated that the complainant's email received in 2020 was not handled correctly because he contacted the Swedish customer service department instead of the Finnish one. IMY notes that Svenska Julförlaget has had an obligation to deal with the complainant's request despite that it was sent to an email address that belonged to the company's Swedish customer service. A data subject is not limited to use certain communication channels indicated by the controller as the preferable one, the data subject can also make requests by using other official communication channels of the controller, such as the complainant has done.³

Svenska Julförlaget states that the complainant's request for erasure and objection to direct marketing were dealt with in 2021 and that the company has not sent him any marketing after that date. However, the applicant has submitted documentation in the form of pictures of Svenska Julförlaget's sales catalogues from 2022, 2023 and 2024.

² Dom Valsts ierņēmumu dienests, māl C-175/20, EU:C:2022:124 p. 77–81.

³ European data protection Boards (EDPBS) Guidelines 01/2022 on data subject rights – Right of access, p 52–56.

As regards the catalogues of the last two years, the applicant also attached sales lists belonging to the catalogues showing the complainant's name and address. IMY considers that the documentation supports that the complainant has received postal marketing from Svenska Julförlaget in 2022–2024 made for commercial purposes, in order to get him to become a customer of the company, which has been addressed to the complainant. Such mailings constitute direct marketing.⁴ IMY does not consider that the Company has provided any reasonable explanation to disprove that such marketing has been made. IMY considers that the investigation shows that Svenska Julförlaget has processed the complainant's personal data in breach of Article 17(1)(c) by not erasing the complainant's personal data even though he has objected to the processing. IMY also considers that the company has not ceased the processing of his personal data for direct marketing purposes after he objected to it in breach of Article 21(3) of the GDPR.

Choice of corrective measure

In the event of infringements of the General Data Protection Regulation, IMY may direct a number of actions, known as corrective powers, against the subject of supervision. It follows from Article 58(2)(i) and Article 83(2) of the GDPR that the IMY has, inter alia, the power to impose administrative fines in accordance with Article 83 of that regulation. In the case of a minor infringement, IMY may, as stated in recital 148 of the GDPR, instead of imposing a fine, issue a reprimand pursuant to Article 58(2)(b). Aggravating and mitigating circumstances of the case, such as the nature, gravity and duration of the infringement and previous relevant infringements, must be considered.

Svenska Julförlaget has processed the complainant's personal data in breach of Articles 17(1) and 21(3) of the GDPR. However, the infringement in question has affected an individual complainant. Furthermore, the company has not previously been found to have infringed the GDPR.

In the light of the circumstances surrounding the infringements found, IMY considers that these are minor infringements within the meaning of recital 148 and that Svenska Julförlaget should therefore be given a reprimand under Article 58(2)(b) of the GDPR for the breaches.

The investigation in the case shows that the complainant's objection to direct marketing and request for erasure has not been met. IMY therefore considers that it is appropriate to order Svenska Julförlaget pursuant to Article 58(2)(c) to delete the complainant's personal data pursuant to Article 17(1)(c) of the GDPR and to stop processing the complainant's personal data for direct marketing in accordance with Article 21(3) of the GDPR. The measures shall be implemented no later than two weeks after this decision has become final.

This decision has been made by decision maker [REDACTED] after presentation by legal advisor [REDACTED].

⁴ Dom StWL Städtische Werke Lauf a.d. Pegnitzden, mål C-102/20, EU:C:2021:954, p 47.

Appendix

The complainant's personal data