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Swedish Analytica
Individuals' awareness of information about them held by Swedish public authorities, 1987–2017

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Abstract

The purpose of the study is to enhance our knowledge of enablers of, and obstacles to, individuals' awareness of how information about them in Swedish public authorities was handled and might be accessed by others. The concept *self-information awareness* developed for the study was therefore at the core of the linguistic–historical analysis that was carried out on twelve Swedish Government Official Reports on large public registers and personal integrity published 1987–2017. The empirical analysis was divided into a first part on enablers and a second part on obstacles. The Swedish Black Box model from a previous article was used to structure the empirical findings of each part according to the three components 1) input, about information *gathered* by the Swedish authorities, 2) black box, about information being *stored* by the authorities, 3) and output, with examples of information possible to *access* from the authorities.

The analysis revealed that the enablers were few and the obstacles many. Furthermore, the input part of the model was distinguishable to only a limited extent, while the large majority of examples related to output. On the input part, the legislative complexity related to information gathered by the Swedish authorities makes it interesting to note an absence of discussions on the finality principle regarding how data had been originally "collected". Regarding output, results include how awareness among individuals was claimed in relation to the implementation of European data legislation, although support of the awareness was not given and related to official documents being released, not to *self*-information awareness. Obstacles present throughout the whole investigation period – reports on European data protection being an exception – included complexity of legislation and insufficient education among public authority staff.

The main conclusion from the investigation was that the possibility of individuals being aware of how information about them was handled by the Swedish authorities and might be accessed by others seemed very limited. The linguistic analysis carried out in the study therefore needs to be supplemented by research into the material legal possibilities for individuals to gain such awareness.

Keywords: Linguistic-historical analysis, conceptual history, legal language, self-information awareness, self-information determination, rule of law, formal legality, principle of public access to official documents, principle of publicity, privacy, personal integrity, public sector.

Contents

Introduction[1]

Background

That individuals have a very limited awareness of how large companies collect, store, use and disseminate information about them is a recurring topic in current Swedish and international debate and research.[2] A notorious example was linked to the company Cambridge Analytica,[3] but there is an abundance of illustrative cases. Another topic making headlines at present is how governments of large countries keep their populations under surveillance using new technology to collect, merge and use vast amounts of data about their citizens.[4] Although the two topics – lack of awareness among individuals and state surveillance – are not always linked, I believe that it is fruitful to analyse them in tandem. I will argue that this is true notably for Sweden and its public authorities.

With this article I wish to call the attention to the limited awareness among individuals of how information about them is handled by the Swedish authorities. This topic has been conspicuously absent from recent debate and research. The subject was however intensely discussed as recently as the 1980s, in relation to a census that was intended to make use of information technology to merge information from existing registers, among others. During the same period, revelations surfaced regarding research projects having gathered detailed information about individuals over time without their knowledge.[5] It has however been argued that as technological development began to have a real impact, the debate about personal integrity largely disappeared from the agenda.[6] Today, there are certainly again good reasons for bringing renewed attention to the question of individuals' awareness about how information about them is handled by Swedish public authorities.

On the topic of awareness among individuals, legislation is crucial. Documents in Swedish public authorities are deemed "official" if certain criteria are met. Official documents, unless protected by secrecy regulation, are accessible to everyone in accordance with the *Freedom of the Press Act*, one of Sweden's constitutional laws.[7] This is true also for official documents containing personal information. The legislation surrounding the criteria and secrecy protection is complex and court proceedings have been necessary on numerous occasions.[8] Also in accordance with the *Freedom of the Press Act*, individuals are not notified when information about them is released to others. Furthermore, Sweden has enacted legislation allowing personal data in public registers to be accessible and searchable on the inter-

net.[9] These factors all appear to make it difficult for individuals to know how information about them is handled by Swedish public authorities. This makes Sweden interesting to analyse.

As for the issue of governments' surveillance of their inhabitants, Sweden is interesting because of its long history of gathering information about its population for purposes such as control, statistics and research. The uninterrupted 270-year tradition of census statistics covering the whole population is a world record.[10] Information regarding all inhabitants has been registered by the church since the end of the 17th century. This information has now been digitalised and provides a rich source for historians and genealogists alike. Furthermore, a formalised requirement of the *Archival Law* from 1990 to preserve public documents ensures the preservation of large amounts of personal information.[11] Other aspects that make Sweden interesting is the expansion of the public sector, efficient technology and consistent use of personal identity numbers. A recent Swedish Government Official Report spoke of Sweden making "a mark internationally through its large and centralised registers at public authorities and statistical databases covering the whole country's population", going on to note that "not many other countries can compare themselves to us regarding the possibility for the public authorities to investigate the lives of their inhabitants".[12] Recent "IT scandals" throw a different light on these efficient, large-scale and interlinked registers. For instance, large parts of the national register of driving licenses were made accessible in a foreign country without the necessary controls.[13] Similarly, millions of recorded telephone calls from individuals to Swedish public healthcare institutions found their way onto the open internet.[14] When things go wrong, they can go wrong for very substantial volumes of information about individuals.

The complex legislation, the long history of detailed data gathering, and the technological efficiency seem to make it difficult for individuals to foresee how information about them is handled by Swedish public authorities. The authorities furthermore have large volumes of information about individuals, and that information is dealt with efficiently. This in turn allows the close monitoring of individuals. Applying the topic of awareness among individuals on the situation in Sweden is therefore highly relevant.

This study aims to enhance our knowledge of enablers of and obstacles to individuals' awareness of how information about them is handled by, and might be accessed by others from, the Swedish public authorities. This is done by providing a historical analysis covering a period of thirty years, 1987–2017, applying linguistic-historical analysis to Swedish Government

Official Reports on large public registers and personal integrity. As indicated above, Swedish legislation seems to make awareness difficult. Analysing enablers as well as obstacles is therefore of interest to capture structural aspects that make possible or hinder individuals' awareness.

The investigation period is characterised by an increased use of technology and ensuing "digitalisation". Furthermore, two European data protection laws came into effect in 1998 and 2018, the latter of which was prepared during the investigation period. Important changes that are of interest for a study on awareness about information held by the Swedish authorities have thus occurred during the period.

To the research field of history, I wish to contribute by emphasizing how Swedish Government Official Reports constitute what is referred to as *legal sources* in legal research and practice.[15] Through the combination of historical analysis and the application of linguistic methods, this study may also contribute to legal research and administrative law related to the right of access to official documents. On a general level, it sheds light on the important political instrument that the government reports represent, and problematizes the image of such reports for the Swedish democratic process.

Purpose and outline

The purpose of this study is to enhance our knowledge of enablers of, and obstacles to, individuals' awareness of how information about them is handled by, and might be accessed by others from, the Swedish public authorities. This is achieved through a linguistic–historical analysis of enablers and obstacles, both explicitly mentioned in the material as well as of enablers and obstacles that may be inferred from the context, in twelve Swedish Government Official Reports published 1987–2017.

The outline is as follows. This introduction continues by presenting *Theoretical Perspectives*. This section introduces the concept of "self-information awareness" which was developed for this study as an analytical tool. The same section also covers theories behind the linguistic-historical analysis and theories from the field of language of the law, which have been applied to the empirical material. The next section, *Previous Research Related to Self-Information Awareness*, covers research on this topic as well as research on formal legality and predictability, the latter being two important conditions for awareness. In the section *Material and Methodology,* the twelve Swedish government reports chosen as empirical material are first presented. Thereafter, the methodology and the *Swedish Black Box* model –

used to structure the empirical findings – are described. The results are then presented in *Empirical Investigation*. In this section a first part presents enablers of awareness, while a second part discusses obstacles. In the following section, *Analysis and Discussion,* the results from these two parts are combined and new insights sought. The section *Concluding Remarks*, with proposals for future research, ends the study.

Theoretical Perspectives

Self-Information Awareness

The analytical concept self-information awareness was developed for and lies at the core of this study. It has the following meaning:

> The possibility for individuals to be aware of how information about them is handled by private and public actors and of the access others may have to the information.

An important element of the definition is the dual roles assigned to the individual: as the *knowledge subject*, and as the (potential) *knowledge bearer*. She is, in other words, both the entity about which aspects are known, and the entity that has knowledge about how information about her is dealt with and might be accessed. I have chosen the word "self" to describe that the individual is the knowledge subject, in analogy with the concept "informational self-determination" presented below.[16] To describe what can be known about the self and to convey that also seemingly random bits and pieces of information are included, the term "information" was chosen.[17]

Various fields of legal research deal with the concept "informational self-determination" which bears a resemblance to "self-information awareness". At its simplest, informational self-determination is defined as the "control over [one's] personal information".[18] The roots of the expression are found in Germany's constitution which speaks of *Selbstbestimmungsrecht*: '[t]he value and dignity of the person based on free self-determination as a member of a free society is the focal point of the order established by the Basic Law.'[19] In the 1980s, the German constitutional court interpreted this right as referring to informational self-determination, which "allows the free development of the individual's personality, includes interaction with the other members of society on an equal basis and enables the individual to participate in a free way and without the fear of being prosecuted in a democratic society".[20] This content is discernible in J. C. Buitelaar's defini-

tion: "the capacity to determine without coercion which information about him is and will be available and accessible".[21]

Buitelaar's definition shows similarities with self-information awareness, defined above as "the possibility for individuals to be aware of how information about them is handled by private and public actors and of the access others may have to the information". Both concepts deal with present and future information about individuals and with the individuals' relation to their own information. But while informational self-determination focuses on the individual's (legal) *right to determine* how information about her is handled, self-information awareness has a focus on the individual's *possibility to know* how this information is handled. It can be argued that this possibility to know, enabled through various structures, is a condition that must be fulfilled for an individual to be able to determine how information about her should be handled. If she has insufficient knowledge about how information about her is processed in the first place, then she is in no position to determine which kind of handling to accept, and which not. In other words, in the absence of self-information awareness, she has no means of exercising informational self-determination. Self-information awareness therefore precedes, and constitutes a prerequisite for, informational self-determination. This calls for research that addresses the issue of the possibilities for individuals to know how information about them is handled, i.e., to address the topic of self-information awareness.

Linguistic-Historical Analysis and Language and the Law

The theoretical foundation of the linguistic approach used in the study draws on the works of, among others, two historians: Reinhardt Koselleck and Quentin Skinner. These historians and theorists are known for their approach to text and context as fundamentally linked to, and having an impact on, one another.[22] In this view, language – and the changes it may undergo – have the capacity of saying something about the reality and societal change, just as reality is regarded as having an impact on language. The perspective they represent furthermore acknowledges the presence and importance of the actors making statements in writing or speech. As an example of consciousness on behalf of the actor, Koselleck talks of a politician who coins a new term in order to emphasize a point and sharpen an argument, and Skinner makes the point that "language is also a resource, and we can use it to shape our world".[23] In a similar vein, political scientist Kari Palonen describes politicians as "the foremost conceptual innovators of the political

language".[24] In these examples, the consciousness and room for manoeuvre by the actor are thus emphasized.

At the same time, the surrounding context is deemed to have important influence on the scope of possible statements of the actors. Quentin Skinner, for instance, makes the point that "we need to make it one of our principal tasks to situate the texts we study within such intellectual contexts as enable us to make sense of what their authors were doing in writing them".[25] Based on this, my perspective is that of the actor as conscious and able to use language as a tool to "shape" her or his world, at the same time as the room for manoeuvre is limited – in a way which may, and may not, be understood by the actor – by the context in which the actor operates. I furthermore regard text and context as mutually influencing each other, so that the language in texts may be used to identify societal change. I refer to this as linguistic-historical analysis.[26]

As mentioned, the empirical material chosen for this study is Swedish Government Official Reports (hereafter: government reports or reports; Swedish: "Statens offentliga utredningar"). The same source material has previously been used for instance by Swedish historians Lars Ilshammar and Anna Friberg. Ilshammar's thirty-year investigation period has the same length and partly overlaps with mine.[27] While Ilshammar recognizes that language may change during such a long period of time, tools related to language are not applied in his study.[28] This is the case, however, in the study of Friberg who applies conceptual history in accordance with, among others, Reinhardt Koselleck.[29] Friberg is interested in the analysis of a specific concept, and in her study of government reports between the 1920s and 1990s she identifies and explains changes to the concept "economic democracy" (Swedish: "ekonomisk demokrati"). While I highly value the results made possible by conceptual history, my interest is not confined to a specific concept. For the analysis of awareness among individuals of how information about them was handled by Swedish public authorities, a wide variety of words and expressions may be relevant. Rather than focus on specific concepts, I instead make use of the *general* theoretical perspective: the emphasis on the relationship between text and context, the actorship of the individual, and the possibility of language to reflect societal change.

I agree with Ilshammar and Friberg that government reports are highly interesting for historical analyses. Just like these authors, I study a collection of reports that discuss similar subjects and were published over several decades. I furthermore value Friberg's point that linguistic analysis can enhance our understanding of the political topics that were discussed in the

government reports.[30] However, historians do not often emphasize the fact that government reports may constitute *legal sources.* In the study of law, government reports that aim at proposing new legislation – and, of course, the ensuing bill ("proposition") to parliament – constitute *preparatory work*.[31] Once the law is in effect, the preparatory work may be consulted by the judges to identify the intentions behind the law.[32] The arguments and deliberations put forward in government reports may therefore be of great importance for future legal rulings. I find this perspective on government reports as legal sources with implications for the future very interesting, especially since legal sources are *ambiguous* in character. I will expand on this below.

With government reports categorized as legal sources, we may now turn to legal research for guidance on how to approach this material using language as the primary tool of analysis. A "linguistic turn" has quite recently started to impact legal research.[33] Just as this turn towards language has vitalised history and many other disciplines since the late 20th century, discourse analysis, postmodern theories and other theoretical perspectives are gaining increasing attention and giving rise to vibrant research in the field of law.[34] Among other things, research on language and the law has drawn the attention to the ambiguity of legal sources. This ambiguity is derived, on the one hand, from the fact that language is the tool with which lawyers perform their work,[35] and there is thus a need for legal language to be stable, clear and precise to serve its purpose. On the other hand, the language of lawyers, just like language in general, undergoes change and cannot be determined in any definite and final way.[36] The "linguistic uncertainty […] inherent in language" applies also to the "legal system", as research expert in legal translation and legal language Deborah Cao phrased it, but this more fluid and unstable character of legal language has not always been "realised or appreciated".[37] A growing research field is, however, making visible and exploring the implications of the unstable character of legal language, thereby adding valuable insights to research areas with a more positivist view of legal language.[38]

In a recent article by Swedish civil law researcher Håkan Andersson, on discourse analysis and postmodern theories applied to the field of law, various descriptions of the purpose and possible effects of this kind of research are found. Although there are fundamental ontological and epistemological differences between discourse analysis and postmodern theories and the linguistic-historical analysis applied in this study, there are also similarities.[39] The various purposes and effects found in the article by Andersson

provide an insight into what linguistically oriented research on legal sources might bring about:[40]

- "to reconstruct the framework within which the problem is discussed, and (in accordance herewith), to highlight more details that call for analysis to solve the legal problem in an extensive and pluralistic way"
- "to make visible the plethora of different values and arguments, that […] may be weighed and used to motivate solutions"
- "find argumentative patterns in the principles and procedural requirements on the superficial level; namely patterns for how stories may be created, valued, changed and developed"
- "[o]ne asks questions about the discourses and linguistic games concerning the legislation; one ponders over the ulterior interests and their impact on the change of legislation"
- "to highlight aspects and structurating principles that for different reasons – ideological and traditional – have not been mentioned in the discourse, but have rather been suppressed, neglected or, simply, remained unnoted"
- "identify a pattern for when [the author discusses a legal concept] is created".

The descriptions above show striking similarities, especially with the theories of Skinner regarding the importance of identifying the framework – the context – that constitutes the limits for what might be said, for the text. Furthermore, the quote concerning "ulterior interests" indicates a research interest for possible intentions on behalf of the authors of legal sources.[41] This, I believe, is a highly relevant point which may give rise to interesting research results. As previously discussed, lawyers need to rely on language as it is their "primary tool through which laws are written and interpreted, and sentences proclaimed".[42] We may therefore assume that lawyers are careful when choosing their words and expressions and bringing forward their arguments. We may also recall the words of Kari Palonen, quoted above, about politicians as "the foremost innovators of the political language". Lawyers and politicians are two categories of professionals involved in writing government reports, and, therefore, we have reason to believe that the authors behind the reports are well aware of linguistic nuances and possibilities.[43] Here it should be mentioned that all members of the committees in charge of the investigations are not always involved in the actual writing of the report. Also, some

members may leave the committee before the government report is published, and members occasionally present a different opinion in an appendix to the report. What has been mentioned here about writing the reports, change of members and differing opinions should thus be kept in mind by the reader of government reports.

On the topic of this material, Anna Friberg writes "that the precise wording […] indicates a high sense of awareness about the importance of the definitions", and describes how government reports often have been reviewed and revised numerous times.[44] The fact that government reports are often written by categories of professionals highly aware of linguistic nuances, in addition to careful reviewing before publication, make them particularly well suited to capture perceptions and thought patterns present in society at the time of writing. *Because* they are written by persons who are well aware of the importance of language and *because* of the careful reviewing and revision that influence the final wording of crucial passages, government reports constitute what I call "controlled sources". Sources of this kind are produced under the influence of various conditions such as the proclaimed purpose giving rise to the text, other possible instructions as well as the expectations of the receiver of the report.[45] In such a setting, the writer is likely to be as careful as possible to fulfil the various requirements, and in this process, she is likely to – consciously or unconsciously – refer to perceptions and thought patterns that are present in society at the time of writing. Some perceptions and thought patterns may thus be of such a self-evident nature to the author that she refers to them without putting much thought into why they are included in the text. Ilshammar writes that the Swedish government reports will often contain the view of the majority of the authors, and further describes how the reports contain "descriptions of reality".[46] The indication that the reports contain the "descriptions of reality" of the majority of the authors is yet another reason why we might assume that perceptions and thought patterns at the time of writing might be captured by this source material, as it is written by authors well aware that "language is […] a resource", to recall a citation of Skinner.

The material is rich. The reports often cover hundreds of pages, containing detailed descriptions of the purpose, the methods used, and presentation of earlier investigations. Furthermore, the reports contain the results of a careful analysis together with the deliberations by the authors alongside the proposal for a new law, in many cases. In texts of such richness – literally in the number of pages, as well as in the many arguments presented and the deliberations of the authors themselves – the material will also contain references to

perceptions and thought patterns of such a ubiquitous kind that the authors may be expected to pay no conscious attention to them. The richness of the material thus provides a good basis for the identification of interesting results from both the conscious *and* the unconscious wordings.

An important purpose of linguistic analysis mentioned by Håkan Andersson is to identify "aspects" that "have not been mentioned in the discourse but have rather been suppressed, neglected or, simply, remained unnoted". To identify what is *not present in a text* is a challenge. The reader is often guided by the outline of the text and by the arguments presented, and is not prepared for aspects being left out. In this respect, the diachronic analysis of government reports undertaken in this study has been helpful, by identifying arguments present in one report but not in "neighbouring" ones.

Summing up, the theoretical framework presented here, the linguistic-historical analysis, puts emphasis on the mutual relationship between context and text and on the actorship of the individual writing the text. It also takes the view that changes in language reflect changes in reality. Alongside the linguistic-historical analysis, this study also applies the theories on language and the law to the empirical material. The latter focus also on the absence in the texts of important aspects.

Previous Research Related to Self-Information Awareness

In this section, previous research relating to self-information awareness is presented. Firstly, research dealing with awareness among individuals concerning information about them is presented, with an example of public information in the United States. Secondly, examples from Sweden are included. I have not been able to identify research about awareness among private individuals, but research has indicated awareness among politicians about how information is dealt with by the Swedish authorities. As a third component, I include research on the rule of law and, more specifically, formal legality or predictability which constitute important prerequisites for self-information awareness.

Self-Information Awareness – the American Public Sector

Although the title of an article by Munson et al. conveys that the topic at hand is Americans' *attitudes* towards public information about them being available online, the authors also address the subject of *awareness* about the information being available. The authors asked the respondents in a survey

if they were "aware" that real estate records and political campaign contributions were available online. The authors also asked whether the respondents had purchased a property or made a contribution to a political campaign. With these answers, they were able to conclude that the action of buying a property or making a contribution did not "appear to increase awareness or educate people about how records of these actions might be made available".[47] The topic that was touched upon can be thus be expressed as awareness about self-information regarding certain public information made available online in the American public sector.

Public Awareness – the Swedish Public Sector

As for research regarding Sweden, there is a body of literature that touches upon information stemming from the public sector in Sweden. This literature has pointed out certain drawbacks inherent in the Swedish "principle of public access to official documents". By way of example, Inga-Britt Ahlenius, former auditor of the European investigation on the conduct of the European Commission with respect to nepotism and fraud, cautioned that the Swedish principle of public access to official documents might actually lead to a *lower* degree of openness, i.e., the reverse of what the principle was meant to achieve. The reasoning was that persons with in-depth knowledge of how official documents came into being, wanting to avoid that others got access to certain information, would take measures to avoid creating official documents. In such a case, the number of official documents would be reduced whereas informal and oral decision-making would become more widespread.[48] Several other authors have also noted that the Swedish tradition of openness and right of access to official documents might lead to a reduction in the written documentation, for fear of documents becoming publicly accessible.[49] In these accounts, openness thus turned into what might be regarded as its opposite. Interestingly, the accounts also allow us to discern categories of people with deep knowledge of official documents. It may be concluded that this knowledge among politicians and civil servants made it possible to avoid leaving detailed documentation behind. These actors are the ones over whom the "principle of public access to official documents" is often said to allow control.[50] Besides risks for reduced documentation, the literature thus also indicated that openness might be mastered by the ones whom the principle was intended to control. Paraphrasing the analytical concept of this study, one might say that these actors had public-information awareness. It remains to be seen whether the em-

pirical material indicates this kind of knowledge also among individuals outside the public sector.

Formal Legality and Predictability – Conditions for Awareness

Rule of law is a concept that has given rise to a vast literature, to a large extent in the legal research domain. As pointed out by several scholars, the meaning of the concept is inherently difficult to define. "[N]o consensus regarding the definition exists", Jørgen Møller and Svend-Erik Skaaning declared.[51] Depending on the historical perspective taken by the scholar and the meaning attributed to the concept, the interpretation will be different. Swedish scholar Olof Peterson discusses the English, German and French "Rule of Law", "Rechtsstaat" and "Etat de Droit" among others, and finds dissimilarities. For the English Rule of Law, he stresses the lesser role that the state plays in England. The origin of the German Rechtsstaat is placed at the end of the 19th century, and presented as a term that dissociates itself from "Polizeistaat", whereas Etat de Droit is described as a translation of the German term from the early 20th century and characterised by the principle of central power on the one hand, and civil and political rights on the other.[52] Møller and Skaaning take a thousand-year perspective and, instead, see similarities between "Rule of Law", "Rechtsstaat" and "Etat de Droit", and find the origin of a common meaning in the "checks of the power" in the power conflicts between state and church in Europe during the first centuries of the first millennium.[53]

Although interpretations diverge as to the precise meaning of rule of law, the term may be divided into subcategories, one of which is related to the "general, prospective, clear, certain" character of laws serving as "general guides of behaviour".[54] These characteristics are often referred to as "formal legality".[55] Møller and Skaaning explain the concept in the following way: "[i]f a subject ought to obey the laws – and that is the crux of any rule of law understanding – then it must be possible for him/her to do so."[56] To be able to follow laws, to serve as "general guides of behaviour", the laws must therefore be clear and predictable.[57] Formal legality does not say anything about what parts of society that should be ruled by laws. This is a topic discussed by Brian Tamanaha, who states that this is a choice that has to be made. "Decisions must be made about when predictability and individual autonomy are highly valued, about the costs and benefits of applying legal rules […], in what proportion and to what extent."[58] Each society, then, must determine to what extent individuals should be able to predict the

outcome of laws. Tamanah also discusses whether formal legality has been challenged with the "overall expansion of government activities", and finds some support for the view that "there may have been a reduction in the total proportion of government actions bound by legal rules".[59] This is not necessarily seen as a problem, however, as "[p]redictability can still come about if there are shared background understandings".[60]

From the presentation of the literature on rule of law and formal legality, the idea that a law must be clear and predictable to be followed is of great interest for the present study. Sweden has a long tradition of gathering detailed information about its population for reasons of control, administration, and research. The depth of knowledge and the long period during which the information was gathered makes Sweden an interesting country for a study regarding self-information awareness: to what extent has the population had the possibility to know when data has been gathered, stored and possible to access? Tamanah's view that fewer government actions are governed by legal rules as government activities take on larger proportions is also interesting in view of the fact that the investigation period of the study has witnessed an important increase in the activities carried out by public authorities. If Tamanah is right, the empirical material might show that legal rules are considered less important towards the end of the investigation period compared to the beginning in the late 1980s. This phenomenon might then be seen as a reduction in the application of formal legality. However, the investigation period also covers the bringing into force of two European data protection laws, the latter of which was brought into force in 2018 and prepared during the period. This fact is likely to work in the direction of an *increase* in formal legality and predictability of the law. Whether the investigation period saw an increase or a decrease in the possibility for individuals to know how information about them was handled therefore remains to be seen.

Material and Methodology

Material

Swedish Government Reports

The source material of this study is Swedish Government Official Reports from the period 1987–2017. Government reports are interesting for several reasons, some of which were discussed above in *Linguistic-Historical Analysis and Language and the Law*. Importantly, these reports form a

crucial and long-standing part of the Swedish democratic process. Sweden has a long history of appointing committees consisting of members representing a broad political field as well as experts from the discipline in focus to write reports in preparation for "almost every big decision in Sweden".[61] The reports have been at the very centre of the "Swedish model" of seeking consensus prior to presenting new proposals for legislation.[62] They thus contain viewpoints expressed at the macro level in society, and the analysis of the reports has the potential of capturing broad societal patterns and developments. It should be mentioned that recent criticism has suggested that the scope of the topics investigated by the committees has been reduced over time, and the execution of the investigations carried out with flawed methods.[63] This is another reason why the material is of interest.

Twelve Government Reports on Large Public Registers and Personal Integrity

This study focuses on enablers of and obstacles to individuals' awareness of how information about them is handled by Swedish public authorities and may be accessed by others. It seemed most likely to find discussions on this topic in government reports dealing with large public registers with information about individuals and personal integrity. A total of twelve such reports, published between 1987 and 2017, were therefore selected and analysed. The reports all had a highly legal character and to a large extent discussed legislative issues from different perspectives. My interest was in gaining as general a picture as possible of the handling of information about individuals and their possibilities to know about it. This explains why reports covering large public registers and personal integrity in special sectors were not included.

With this as a starting point for choosing the empirical material, it is natural that the twelve analysed reports vary regarding, for instance, the number of committee members. Some reports were authored by a single person, others by large groups that carried out their work for years. In some cases, members might even be replaced in the large committees. In the analysis of the reports, I attribute no hierarchy to the reports depending on whether they were written by "large" committees and with time have been referred to as of particular importance, or if they were written by one person and may have been regarded as less significant. I treat the reports in the same way, applying the same linguistic approach to all reports in the work to identify words, expressions and arguments related to enablers and obstacles to awareness. It should be emphasized that my interest is in the *text*

produced; not in the *persons* producing it. As outlined in *Linguistic-Historical Analysis and Language and the Law* above, I do however take the view that persons have actorship. In my analysis I thus start with the assumption that the persons involved in the investigations or in the writing of the reports are aware of nuances and phrasings, but I focus my analysis solely on the text, not on the persons behind it.

The reports also varied in their general purpose. As pointed out by historian Anna Friberg, the purpose indicated to the committee in charge of an investigation constitutes an important element of the structure of the report, which in turn determines its content.[64] One might expect reports on the introduction of European data protection in Sweden to have a tendency to show that Swedish legislation was largely compliant with European legislation, while reports on personal integrity issues might be more critical. This was indeed the general picture, as will be shown in the empirical investigation.

It should also be noted that the twelve reports cover many areas that are outside of the scope of this study. For instance, many reports cover the handling of information in both the public and private sectors. This is the case with reports detailing the European data protection and its introduction in Sweden (SOU 1993:10 *En ny datalag* (*A new data act*), SOU 1997:39 *Integritet, offentlighet, informationsteknik* (*Integrity, publicity, information technology*), SOU 2017:39 *Ny dataskyddslag* (*A new protection data act*) as well as with reports that discuss personal integrity from a general perspective (SOU 2007:22 *Skyddet för den personliga integriteten kartläggning och analys. Del 1 (The protection of the personal integrity. Survey and analysis. Part 1*), SOU 2016:41 *Hur står det till med den personliga integriteten? (What is the situation with personal integrity?)*, SOU 2017:52 *Så stärker vi den personliga integriteten. (This is how we strengthen the personal integrity)*. The private sector is an example of an area outside the scope of this study, which focuses solely on information about individuals held by the public authorities. A first analysis therefore identified sections dealing with information about individuals held by the public authorities. Such sections in the twelve reports constitute the empirical material of this study. In the table below, the titles of the government reports are shown in the first column in Swedish and English (translation by the author). The second column shows the sections analysed for each report. All twelve government reports are available in a digital and searchable format.[65]

Table 1. Swedish Government Official Reports and sections analysed

Swedish Government Official Reports	**Sections**
SOU 1987:31 *Integritetsskyddet i informationssamhället. Personregistrering och användning av personnummer* (*Protection of integrity in the information society. Registration of personal data and the use of the personal identity number.*)	4, 4.6-4.9, 5
SOU 1988:64 *Integritetsskyddet i informationssamhället. Offentlighetsprincipens tillämpning på upptagningar för automatisk databehandling (Protection of integrity in the information society. On the application of the principle of public access to automatic data processing recordings.*)	5, 6, 7
SOU 1991:21 *Personregistrering inom arbetslivs-, forsknings- och massmedieområdena* (*Registration of personal data in the areas of the working life, research and the mass media.*)	2, 4
SOU 1993:10 *En ny datalag. Slutbetänkande* (*A new data act. Final report*).	5, 9
SOU 1993:83 *Statistik och integritet. Skydd för uppgifter till den statliga statistiken m.m.* (*Statistics and integrity. Protection of data for the state statistics etc.*)	3, 4.4, 5, 8
SOU 1994:65 *Statistik och integritet. Lag om personregister för officiell statistik m.m.* (*Statistics and integrity. Law on personal data registers for official statstics etc.*)	2.1, 3.3.4, 5, 6
SOU 1997:39 *Integritet, offentlighet, informationsteknik.* Del 1 och 2. (*Integrity, publicity, information technology*. Part 1 and 2.)	8, 9, 11
SOU 2003:99 *Ny sekretesslag.* (*New secrecy law*)	11
SOU 2007:22 *Skyddet för den personliga integriteten kartläggning och analys.* Del 1 (*The protection of the personal integrity. Survey and analysis.* Part 1)	18, 24, 24.1-24.3
SOU 2016:41 *Hur står det till med den personliga integriteten?* (*What is the situation with personal integrity?*)	3, 3.1, 3.2, 3.3, 3.3.1-3.3.5, 3.3.10, 3.7.4, 10, 11
SOU 2017:39 *Ny dataskyddslag.* (*A new data protection act.*)	7, 8, 10.6, 14.5
SOU 2017:52 *Så stärker vi den personliga integriteten.* (*This is how we strengthen the personal integrity.*)	2, 8

In the presentation of the empirical analysis, the specific number of each report was used ("2017:39"). The numbers accorded all Swedish government reports begin with the year of the publication, followed by the number in the series of reports published that year. The first part of the number thus indicates the year of publication, and the second number helps telling the reports apart in case more than one was analysed from a single year.

Methodology

Analysis and Presentation of the Empirical Investigation

Two important steps of the methodology – identifying the reports and the sections of relevance – were presented above. Next came the work of analysing the text. This consisted of close and repeated reading and the identification of words and expressions relating to enablers of and obstacles to awareness among individuals about the handling of information about them by public authorities. Effort was put into analysing the context of terms and expressions in central examples, and into trying to identify aspects that might have been "suppressed" or had been "unnoted", to relate to the work of Håkan Andersson.

I approached the material as an historian. As outlined above, I take the view that societal change has an influence on language, and that change in the use and meanings of terms therefore is interesting to study. Initially, I therefore presented the empirical investigation following a chronological structure. However, this approach did not reach a sufficient analytical level. A second attempt still made use of the chronological order, but included certain themes that had emerged from the study. This approach was also abandoned, and for the same reason. Only with the use of the three components of the *Swedish Black Box* model – more about this below – a higher level of analysis was reached. Historical development was focused in *Analysis and Discussion,* the section following upon the presentation of the empirical investigation. The iterative process between theory and the empirical material, carried out during a time span of almost three years, resulted in categories of an increasingly general character. This process and the resulting categories, taken together, therefore form a kind of qualitative research which more specifically may be referred to as *inductive thematic saturation.*[66]

Because of the important role of language, numerous quotations from the material are included in the presentation of the empirical analysis. To avoid tiresome repetitions, I do not always use quotations and I do not always use the same word or expression for the same phenomenon, however.

For example, I may alternate between the expressions "principle of public access to official documents" and the "right of access". The focus on language furthermore emphasises the importance of the choice of words in writing this article. Lawyers acquainted with European data protection legislation will be sensitive to expressions such as "personal data", "processing" and "data subject", as these terms have been legally defined. To avoid activating a specific understanding of certain words and expressions, I have sought to use alternative ones with a wider meaning. Therefore, "information", "handling" and "individual" have been used instead. Similarly, the Swedish context would often use "release" for the activity of transferring information from a Swedish public authority to a person or organisation outside of that authority. Again, in an attempt to avoid predefined meanings linked to legislation, I primarily use the word "gathered" for information reaching public authorities, "stored" for information kept there, and "accessed" for the information that emanates from the authorities. Also in these cases, I vary the terms to avoid repetition. This also goes for "enablers" of self-information awareness which is used alongside "possibilities", and "obstacles" which is used interchangeably with terms such as "difficulties". I also change between awareness, understanding and knowledge not to tire the reader with the same term.

The original texts in Swedish are included as notes, making it possible for Swedish-speaking readers to assess the translation and study the texts in the source language. Translations were made by the author. To address the issue of the English language undergoing change, the official English versions of the EU legislation were used as point of reference for translations.[67]

The Swedish Black Box

As briefly mentioned, the Swedish Black Box model from a previously published article by this author was used to organise the empirical findings.[68] Black box theory is borrowed from open system theory and is used when a system cannot be directly investigated; the system is "black". Because direct observation is not possible, the knowledge about the system can be obtained only indirectly, for instance by the observer providing certain input to the system and observing the output. By repeating and varying the input and observing the output that follows, conclusions about the system become possible.

In the article mentioned, the Swedish "principle of public access to official documents" was modelled as a system affected by seven external factors. These factors had been identified through a literature review of archival science research, and might be regarded as important for the creation of of-

ficial documents, the storing of such documents, and the possible access to them. The model is shown below indicating the seven factors:

1. legislation regulating the activities of the public authorities,
2. the criteria of the *Freedom of the Press Act*,
3. legislation regarding destruction of official documents,
4. legislation regarding secrecy,
5. processes and activities at the public authorities,
6. technology, and
7. routines at the public authorities.

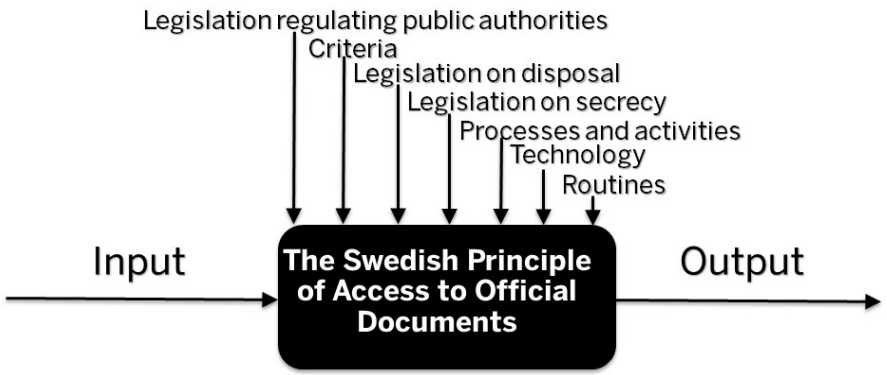

Figure 1. *The Swedish Black Box*. Rosengren, Anna. The Swedish Black Box. On the Principle of Public Access to Official Documents in Sweden. Jonason, Patricia & Rosengren, Anna eds. *The Right of Access to Information and the Right to Privacy. A Democratic Balancing Act*. Huddinge: Södertörn University, 2017, p. 89.

The model was used to organise the empirical findings so that examples relating to information *gathered* by the Swedish authorities were presented first ("input"), examples of information being *stored* by the public authorities next (the "black box"), and examples of information possible to *access* from the authorities ("output") last.

Empirical Investigation

The empirical investigation is divided into two parts: Enablers of Self-Information Awareness and Obstacles to Self-Information Awareness. Both parts follow the logic of the model of the Swedish Black Box and its three components: gathered, stored and accessed. However, where aspects of a general character covering all the components were encountered, these examples were placed first in each part.

Enablers of Self-Information Awareness

General Indication. Self-Information Awareness in the Authorities – an Idea not Pursued

The first example in this part of the investigation deals with what might be expressed as the very idea of self-information awareness. It is therefore of great interest. The example is from the 1993:10 report which discussed the EU proposal for a data protection directive. The discussion on the idea of self-information awareness took place as the authors debated the "very far-reaching demands regarding information to the individual" concerning the processing of personal data of the proposal.[69] The authors discussed the release of official documents with information about individuals, as such releases were made to anonymous recipients in Sweden.[70] Sweden had not had a tradition of informing the individual when information about her was released to third parties. In connection with the obligation to inform about such releases in article 12 of the proposal and other protection measures, the authors stated that this would mean "that the individual […] will have insight and […] efficiently control the processing of such personal data[…]" and that it "is, of course, an efficient way of making an individual aware of processing that concerns him [sic]".[71] The expressions regarding "insight", "control" and being "aware" would have constituted important steps for providing self-information awareness. These steps were rejected, however, notably on the grounds that "one might wonder if the gains from the point of view of integrity really outweighs the very substantial bureaucracy that follows".[72] The report contained no indications that the increase in bureaucracy had been looked into. In all the material, this was the clearest example of consciousness among the authors that self-information awareness would have been possible through the EU proposal and the demands placed there on information to the individual. On the grounds that improved integrity

was not expected to outweigh the corresponding bureaucracy – consequences that had not been looked into – the idea was abandoned.

Information Gathered by the Authorities

Implicitly, several reports indicated awareness among individuals that their data had been gathered. This occurred in relation to research and statistics, as the authors explained how individuals had to give their consent when information was to be provided by them.[73] In addition, informed consent might be asked for from the individuals when information about them was gathered from other registers.[74] Providing one's informed consent to the gathering of self-information and being informed about its subsequent use is obviously an efficient way of obtaining self-information awareness.

In other instances, the reports referred to the criteria of the *Freedom of the Press Act*, and contained detailed deliberations regarding the conditions needed for these criteria to be met. As outlined in the introduction, a document that meets the criteria "received" or "drawn up", "document", "held" and "public authority" was then (and still is) considered "official", and may thus be accessed by others unless protection from secrecy regulation is in place. For an official document to come into existence, it must thus *either be received* by the public authority, for instance when an individual sends an e-mail to a public authority or hands in her tax declaration, *or be drawn up* by the public authority. The conditions for when these and the other criteria are to be considered met are sometimes unclear, however.[75] Interestingly, one of the reports bringing up this subject of criteria was the 1993:10 report on the European proposal on data protection legislation. This occurred in relation to a discussion on the meaning and purpose of the "principle of public access to official documents". The authors described how the regulations in the *Freedom of the Press Act* meant that a "document" "held" by a public authority and "received" or "drawn up" by a public authority could be released in the absence of secrecy regulation.[76] The criteria were thus clearly indicated. Although the European data protection emphasized the importance of awareness among individuals, the (limited) possibilities for individuals to predict if the criteria were met were not discussed, despite the enumeration of the various criteria themselves.

Information Stored by the Authorities

As mentioned in the section on *Formal Legality and Predictability – Conditions for Awareness*, laws must be "general, prospective, clear, certain"

to be possible to follow. It is therefore of interest that authors referred to legislation as providing "predictability" in relation to documents being stored by the authorities. This was in an early report, 1988:64, and the topic at hand was potential documents, i.e., official documents that come into existence through activities at the authorities such as the compilation of two or more official documents. In a discussion regarding how the criterion "held" in the *Freedom of the Press Act* was affected by technological development and the increased use of electronic registers, the authors stated that the "predictability and overview that are necessary to make the legislation regarding the principle of publicity manageable in practice" were in place.[77] The criterion "held" was not deemed to be fulfilled unless potential documents could be produced by "routine means" by the authorities. According to the authors, recent court rulings had shed light on the interpretation of the term "routine means".[78] Although technological development made it possible to produce more potential documents than before using the same amount of "routine means", the authors were satisfied that limits in the legislation still kept the number of official documents to a reasonable level. It should be noted that the "predictability and overview that are necessary to make the legislation regarding the principle of publicity manageable in practice" did not explicitly indicate that individuals were assumed to find the legislation predictable. Considering the complexities outlined in the report – "routine means" being affected by technological development and by court rulings – it appears unlikely that the authors had individuals in mind as they spoke of "predictability". It seems more likely that the "predictability" was discussed from the perspective of public authority staff, and that the limits of legislation was considered sufficient for the staff to perform their tasks.[79]

Other examples related to information being stored by the authorities were found in the 1988:64 and 1994:65 reports and dealt with legal requirements for the authorities to register official documents. The authors of the 1988:64 report stated that "[t]he provision aims at providing the general public knowledge about what documents are kept by the public authority", and the other report had a similar wording.[80] These are thus explicit indications of a possibility for individuals – the general public – to be aware of what official documents were held by the authorities by consulting registers of official documents. The provision did not, however, allow the individual to know about information specifically related to her. Also, the scope of what might be known about the official documents was reduced by descriptions that followed, notably regarding potential documents and exceptions

from the requirement to register.[81] In the end, the possibility for awareness about information stored by the authorities was therefore quite limited in terms of self-information.

Information Possible to Access

Regarding the third component of the black box model, the material indicated awareness among individuals on several occasions and in relation to different subjects. I start with implicit indications of awareness in reports from the beginning of the investigation period, and continue with examples from reports dealing with the bringing into force of European data protection legislation and a subsequent report on the compatibility of the Swedish *Secrecy Law* with European data legislation.

Implied Awareness Regarding Informed Consent

Although only implied, a kind of awareness was discernible in examples related to informed consent. The expression "informed consent" was often related to research and statistics in the examples. So called "register regulations" permitting among other things "register research" received a lot of attention in several reports, as did other types of registers for research and statistical purposes. Register research was explained as the routine by which "information about the individual is retrieved from existing [public] registers".[82] The issue at hand was thus, in many cases, the release of personal information from one authority to another, but the creation of registers for research and statistical purposes within the authorities was also discussed. In the reports 1991:21, 1993:83 and 1994:65, the authors mentioned how informed consent in this respect was the ideal.[83] However, an interesting observation is that these examples of the ideal were mentioned in relation to detailed discussions and arguments explaining why informed consent was sometimes *not* applied. As we shall see in the second part of the empirical investigation on obstacles to self-information awareness, the subject of lack of informed consent occurred on several occasions.

Importance of Awareness for the Personal Data Act. Reports 1993:10 and 1997:39

Examples related to access to official documents were found also in the two reports dealing with the EU directive on data protection: the 1993:10 report that discussed the EU proposal, and the 1997:39 report that discussed the final EU directive.[84] The reports are of great interest as they shed light on

the discrepancy between the Swedish tradition of right of access to official documents and fundamental characteristics of the European data protection regulation. The 1997:39 report contained a law proposal that with minor adjustments became the Swedish interpretation of the EU directive (*Personal Data Act*, Swedish: *Personuppgiftslag*). The arguments that led to the Swedish data protection law are therefore highly interesting to study.

The conclusion was quickly drawn by the authors that the release of official documents was a kind of "processing" (Swedish: "behandling") in the meaning of the EU legislation,[85] and much effort was put into determining whether this "processing" was permitted or not. Both the EU proposal and the EU directive demanded that the "data subject" be provided information on the purposes of the processing, the "categories of data concerned" and to what "recipients or categories of recipients" that the data were disclosed.[86] The fact that the *Freedom of the Press Act* provided anonymity to persons requesting the release of official documents made it impossible to state to what "recipients" data about individuals might be released. According to the EU proposal, informing the individual was however not mandatory if "the data subject has already been informed that the data are to be or may be disclosed to a third party" or if a legal provision contained an exemption from the obligation to inform.[87] In the final directive, the idea remained that the data subject did not have to be informed if she was aware that data about her might be released, but the wording was shorter and less clear: "except when he [sic] already has it" (information on the purposes of the processing, the categories of data, the recipients or categories of recipients etc.).[88] The provision regarding exemptions from the obligation to inform was also kept.[89] We will now look more closely into how the authors of the 1993:10 and 1997:39 reports argued as the right to anonymity was discussed. Could the individuals be considered as having "been informed that the data are to be or may be disclosed to a third party", so that the right to anonymity might be unaltered? It was in relation to this type of discussion that the authors included arguments on awareness among individuals; if the individual was aware and informed, this would mean that Sweden was compliant with the EU regulation.

The 1993:10 authors stated that "[i]t might be argued […] that the general public is well aware of the existence of the principle of public access to official documents".[90] They spoke of how the "principle of public access to official documents" meant an "obligation on behalf of the public authorities to release official documents" and that both this obligation to release official documents and "the protection of anonymity are regulated in constitutional

law".[91] The authors thus focused on the release of documents from the authorities. The *Freedom of the Press Act* grants a right to citizens to "access" (Swedish: "taga del av") official documents,[92] but in the 1993:10 report, the focus was shifted to releases made by the authorities. This change of focus from citizens' right of access to releases by the authorities characterises many examples in this study. Although the authors accepted the idea that individuals might be considered aware of the principle, in the meaning official documents being released, the authors nevertheless reached the conclusion that releases of official documents were not in accordance with the EU proposal. The proposal required that "collection of data be must for specified, explicit and legitimate purposes and that the collected data may be used only in a way compatible with those purposes".[93] In the eyes of the authors, one could not say that "a public authority collects data to satisfy the principle of public access to official documents".[94] The lack of compliance was therefore related to the release of documents since the release was not considered in line with the purpose for which the data had been originally collected. The fact that individuals were aware of the principle of public access to official documents was therefore no argument for considering the Swedish legislation as compatible with the EU proposal, according to these authors. In the end, the authors were not willing to make changes to the way releases were made because of the vital importance of the "principle of public access to official documents" "for the democracy in Sweden", but they clearly indicated how this constituted a deviation from the EU proposal.[95]

The conclusion reached by the 1997:39 authors was different. It was stated that the right to anonymity made it impossible to inform the individual about "to which persons the data might be released".[96] It would, however, be possible to "inform about the fact that data might be released in accordance with the principle of public access to official documents", they said.[97] In this way, they argued, "the data subjects get – in the way required in the directive – information about the categories of recipients to which the data might be released".[98] As was pointed out already in a distinctly critical comment added to the report, informing about a possible release to anonymous recipients provides no more detail than that "the recipient belongs to any category of persons",[99] but this was nevertheless an argument that was presented. In another argument the authors stated: "Since the release in accordance with the principle of public access to official documents has been stipulated in Swedish constitutional law for a long time, it may further be assumed that the public already knows about that information".[100] What the authors meant by "that information" was not explained. The authors

furthermore concluded that the release of official documents might "not be considered incompatible with the purposes for which the data had originally been collected".[101] We may note that while the EU proposal talked of necessity for subsequent purposes to be compatible with the purpose for which the data had already been collected, the EU directive instead used two negations, and talked of personal data being "collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes".[102]

Both in respect of information being provided to the "data subjects", and of compatibility with the original purposes of releases of official documents, the authors reached different conclusion to those behind the previous report. In the *Personal Data Act* that was enacted shortly after the publication of the 1997:39 report, sentence 8 made exceptions for releases by the authorities in accordance with the *Freedom of the Press Act* of personal data in official documents.[103]

An important reason for the difference in outcome of the two reports may be found in the starting point for the authors of the 1997:39 report. It was stated that the "principle of public access to official documents […] is not to be changed" and that the Swedish government was of the opinion that no part of the EU directive conflicted with the Swedish principle of public access.[104] Furthermore, Sweden had "managed to add" point 72 to the preamble of the EU directive, in which consideration was given to "the principle of the right of access of the public to official documents".[105] In a comment to the report, it was pointed out that "allmän handling" in Swedish had a wider meaning than the corresponding terms in English, French and German,[106] but this reflection was not made by the authors. A fundamental reason behind the difference in conclusions that can be identified in the 1997:39 report was the expressed political will to see Swedish legislation as compatible with the EU directive. Referring 16 times to the Swedish constitutional law in a four-page discussion on the relationship between the EU directive and the principle of public access was a means of providing further support to that view.[107]

"It must be regarded as clear that a release might occur" – Personal Data Act and Secrecy Law 2003

Another indication of awareness related to access was found in the 2003:99 report. Just as with the 1993:10 and 1997:39 examples, this one was prompted by a discussion on Sweden's compatibility with EU regulation. The authors discussed the compatibility of the Swedish *Secrecy Law* with the so-

called finality principle – more below – regarding release of personal data in official documents from one public authority to another.[108] As a point of departure, the authors stated that the finality principle meant that the processing of personal data might not be carried out for purposes incompatible with those purposes for which the data had been originally collected.[109] They also noted that the 1997:39 report had left it to practice and future stipulations by the government and the *Swedish Data Protection Authority* to determine "what is incompatible with the original purposes".[110]

The *Secrecy Law* described the circumstances that might prevent the release of official documents because of secrecy protection. In addition, it contained exceptions to this protection in the form of secrecy-breaking articles. Was the release in accordance with the *Secrecy Law* [and secrecy-breaking articles therein] of electronically stored personal data from one authority to another "not incompatible" with the purpose for which the data had been "collected"?[111] This was the general topic at hand. Regarding releases interpreted as following from an obligation in the *Secrecy law,* these were considered "not incompatible" with the original purpose.[112] The indication of awareness was introduced in relation to another case: when releases took place on the initiative of a public authority, without an obligation stipulated in law. Releases on the initiative of a public authority had not been considered when the European directive was interpreted in Sweden through the *Personal Data Act*[113] – an interesting fact in itself – so now was the time to bring clarity to the situation. Once the issue had been explored by the authors, the indication of awareness was found as the authors concluded that "[f]or the individual, it must be regarded as clear that a release might occur on the grounds of the provision".[114]

One key point must be made here. The material analysed in this study abounds in examples of this kind: detailed descriptions of a large number of legal stipulations, of the relation between the stipulations, and of the legal material situation as interpreted by the authors. To the common reader, the texts are largely inaccessible because of their technical and legal character. In only one case did the authors suggest that the detailed and technical legal content was understandable for individuals lacking legal training; in the 2003:99 report. This makes the example unique.

To understand more fully the situation that was thought to be "clear", let us start the analysis with a slightly more comprehensive quote:

> When the secrecy-breaking provisions were introduced, the legislator has drawn a balance between the interest of releasing the data and the interest of protecting the integrity of individuals. In this respect, the question regarding whether the

> public authorities have released the data of their own accord or after a request is of less importance. In some instances, it has been stipulated that the data may be released without further examination, and, in other instances, that the public authority is to make an examination on a case-by-case basis and in accordance with varying conditions, to form an opinion about a release. Regardless of how the provision has been formulated, the legislator has considered the integrity aspects when the provision was made. For the individual, it must be regarded as clear that a release might occur on the grounds of the provision.[115]

In the quote, the authors described the deliberations – or, rather, their interpretations of the deliberations – made by the legislator as the secrecy-breaking clauses were introduced, permitting the release of personal data to other authorities without supporting legislation. The argument provided by the authors was that the legislator had made a balancing of interest which was apparent in the *Secrecy Law*. This, in turn, was interpreted by the authors as fulfilling the same aim as the finality principle in the European data protection legislation.[116] *If* the legislator had considered the release of personal data "incompatible with the purposes for which they had been collected", the balancing between various interests expressed in the secrecy stipulations would hinder the authorities from making releases.[117] Conversely, if releases were allowed, the interpretation by the authors was that such releases could "not be considered incompatible with the purpose for which they had been collected".[118] How the collection had happened in the first place was not discussed, so the reader was not given any information that allowed for a comparison of the purposes. The regularity of the releases – and their compliance with the European directive on data protection – were thus asserted by pointing at their existence.

The legal situation was one of great complexity. It involved the Swedish *Personal Data Act* letting other legislation take precedence over the European directive[119], and making an exception for releases taking place in accordance with the *Freedom of the Press Act*. To fully appreciate the situation, one must also consider that the right of access of "citizens" accorded through the *Freedom of the Press Act* had been interpreted as applicable also to the authorities.[120] This was not mentioned here, however, nor in the 1993:10 or 1997:39 reports on the bringing into force of the European data protection directive in Sweden. Another aspect not mentioned was the fact that the releases from one authority to another took place without informing the individual of the transfer. All these elements are important for the understanding of the highly complex legal situation at the time. With this very complex situation in mind, the authors' conclusion that it "must be

regarded as clear" to the individual "that a release might occur" is really surprising.

Summary and Reflection

This part of the empirical investigation followed the three components of the black box model: gathering of information by the authorities, the storage of information in the authorities, and information being possible to access from the authorities. Preceding this, an initial example from the 1993:10 report on the EU proposal on data protection was given.

From this first example, we learned that the suggestions of the EU proposal would provide individuals "insight" and "control" as well as the means to be "aware" of how information about them was handled. In a sense, the proposal had thus been interpreted by the authors as making possible self-information awareness for individuals regarding information held by the authorities. This idea of self-information awareness in Sweden was rejected, however, on the grounds that the expected personal integrity gains would not outweigh the increased bureaucracy thought to result from it. As such, the idea was dismissed, although neither the expected negative consequences nor the possible personal integrity gains had been investigated.

As for examples connected to the gathering of information, an initial observation was the limited number of examples. The examples were also of an indirect kind, as they did not openly describe expected awareness among individuals. We may deduce, however, that when individuals gave their consent as they provided information to research and statistics, this meant a possibility for self-information awareness. The occasional examples mentioning consent in relation to information gathered from other registers were also of this implicit kind. We may also note that the criteria making up an official document were mentioned in the 1993:10 report that discussed the European data protection proposal. This happened in relation to discussions on the meaning of the "principle of public access to official documents".[121] Against the background of the EU proposal and its emphasis on awareness among individuals it is interesting that the 1993:10 authors did *not* discuss the difficulty for individuals in determining when a document was considered "official". Equally interesting is the fact that the criteria were not mentioned at all in the corresponding sections in the report 1997:39, which introduced the *Personal Data Act*.

As for information stored by the authorities, the number of examples was also small. An interesting example from the beginning of the inves-

tigation period mentioned "predictability", which was deemed sufficient by the authors in relation to potential documents. The discussion related to the expression "routine means" in the *Freedom of the Press Act*. The example provided the information that more documents were considered "held" by the authorities as technological development had made possible more compilations of documents than before using the same "routine means", and that recent court decisions had shed light on the interpretation of the expression. Predicting the impact of decisions by authorities to implement new technology or of court decisions may have been possible for authority staff. For persons unfamiliar with how the authorities carry out tasks and with the legislation regarding official documents, doing the same seems very difficult, if not impossible, however. Therefore, the "predictability" mentioned in the report cannot be expected to refer to individuals without such knowledge. In two more examples from the beginning of the period, authors referred to an obligation on behalf of public authorities to maintain registers of official documents. This obligation was intended to provide "the general public knowledge" about documents held by the authorities. As was clear from the continued discussions, this obligation did not include potential documents and it was subject to exceptions. Lastly, it contained general information not linked to individuals, so the public might gain awareness about the existence of various official documents, but not about documents relating to themselves.

Regarding the information that was possible to access, the material contained quite a few examples. As described earlier, the emphasis on informed consent as the ideal occurred immediately before detailed discussions on instances when consent was *not* present (this will be looked into in more detail in the next part on obstacles to self-information awareness). We may also note that three examples indicating awareness among individuals were found in reports that discussed compliance between Swedish legislation and European data protection. In the first two reports, 1993:10 and 1997:39, it was clear that the anonymity granted by the Swedish *Freedom of the Press Act* to those requesting access to official documents was difficult to reconcile with the EU requirement that individuals should be informed when their personal data reached third parties. The requirement was not applicable if the individuals knew in advance about the recipient/s that might receive the information, however. Although the authors of the 1993:10 report regarded individuals as knowledgeable about the fact that official documents might be released, they did not consider this enough to convince them that Swedish legislation complied with the European regulation. This

was not the case with the authors of the 1997:39 report, who argued that individuals were aware of recipient/s in a way that made Swedish legislation compatible with the EU directive. No major changes in Swedish or European regulation had occurred between the reports. A point of departure for the second report, but not for the first, was the opinion declared by the government that Swedish legislation was compatible with the EU data protection. The difference in context regarding the view on compatibility therefore seems to have been of decisive importance for the conclusions drawn in the 1997:39 report. The alleged knowledge – no supporting information was provided – among individuals that official documents might be released was an important argument, and when the *Personal Data Act* was brought into force, it exempted the release of official documents. The third example of awareness connected to compliance with European legislation was found a few years later. This example is unique because it indicated that individuals might be able to understand the outcome of a legal situation so complex that it required several pages of explanation. Detailed descriptions of complex legal situations abounded in the material, but the view that individuals might be able to grasp the legal situation was brought forward only in this example. As in the 1997:39 report, the conclusion was reached that compliance with European legislation was at hand. In all three examples, we may also note that the awareness described among individuals was not supported by any evidence. Furthermore, the awareness referred to the *general* existence of releases, not to releases of information related to the individuals themselves.

To sum up, the number of examples indicating possibilities of awareness were few and limited in scope. The idea of self-information awareness was addressed once but rejected. Otherwise, the examples mostly referred to awareness among individuals about *general* features of the legislation on official documents, such as of registers being held by the authorities with information about official documents, or of the authorities having an obligation to release official documents. *Self*-information awareness was indicated only in relation to the topic of informed consent in the input component of the model.

Having presented the empirical investigation on enablers of awareness, it is now time to turn to the examples related to obstacles to awareness.

Obstacles to Self-Information Awareness

General Indications

On several occasions, the material contained indications of obstacles to self-information awareness that were general in nature, and not linked to any specific component in the model. These general obstacles included the topic of lack of consent. The material also contained several examples that indirectly pointed out obstacles. One of them can be seen as a need for staff at the authorities to make moral considerations to keep the effects of legislation at a reasonable level. Other obstacles were related to the risk for non-compliance with legislation at the authorities, and the vagueness in the governance of authority activities.

The first topic, lack of consent of a general nature, was found in the 2016:41 report. The authors stated that "[m]ostly, the individuals have no impact on the handling carried out by public authorities – in general, it is carried out without their consent".[122] In this example the word handling (Swedish: "hantering") was used, and could refer to any component of the model. Similarly, in relation to "digitalization" and changes to information handling in society in general, the authors stated that "[f]rom the perspective of the individual, the development of the knowledge about how the data are handled, as well as the possibility to have an impact on how they are handled, are constantly diminishing in relation to the increase in the handling of personal data in society."[123] The comments were thus of a general character and conveyed the understanding that much information about individuals was processed by the authorities and in society in general without the individuals being aware of it.

Of an indirect nature was the need for what may be termed moral considerations among staff at the authorities. Such examples were found both at the beginning and at the end of the investigation period. The authors behind the 1987:31 report cautioned the authorities not to accept "unnecessarily unrestrained register content because the data controller finds that the information might be nice to have", and that "each and every one responsible for data protected by secrecy or otherwise integrity sensitive data must also take responsibility for not losing control of their dissemination".[124] From the perspective of the authors, it would seem as though staff at the authorities might be inclined – and legally permitted – to store large amounts of data, and that this inherent inclination ought to be restrained. When they mentioned that staff should take responsibility for not "losing control", it is unclear if this implied a responsibility exceeding the legal requirements, or simply a res-

ponsibility to comply with legislation. The example at the end of the period was from the 2016:41 report. As mentioned above, the authors stated that information was often dealt with without the consent of individuals. After this, they continued: "[t]his means that the public authorities have a special responsibility to ensure that data are handled only when truly necessary in order for the administration to fulfil its task […]".[125] Also in this example, it appears as the authors were of the opinion that a kind of moral consideration among the staff at the authorities was necessary to limit the effects of legislation. The obstacle here was the fact that for the individual, it was impossible to know how the staff at each authority actually exercised such moral considerations.

Another kind of indirect obstacle was the risk for non-compliance with legislation. The authors behind the 2007:22 report criticized the entire legislation process in relation to register regulation and large public registers containing personal and often sensitive data.[126] When the EU directive was brought into force, the previously used system of register regulations for large databases with information about individuals was kept.[127] Thereafter, adjustments to these regulations had been made but were inconsistent, according to the authors.[128] Furthermore, the changes had "led to unclarity as to the application and to difficulties to get an overview of the regulatory framework, which, in turn, constitutes a risk for unnecessary personal integrity losses".[129] When the authors spoke of "unclarity as to the application", this implies that legislation might have been applied in different ways in the different authorities. In turn, this would have made it impossible for individuals to predict the application. Legislation also played an important role in the 2016:41 report as the authors described how the authorities often prioritised making processing of data more efficient in their "development and regulatory work", whereas personal integrity received considerably less attention.[130] In the next report by the same authors, 2017:52, it was bluntly stated that the "important problem is not the lack of regulation, but rather the lack of compliance".[131] This lack of compliance included the authorities and municipalities.[132] The authors suggested that "[s]ome controllers may not even see it as meaningful to follow the rules", and added that the risk for detection and sanctions was "relatively small".[133] Again, the obstacle indicated here was related to the impossibility for individuals to predict how information about them might be handled, the reason in this case being that regulation was simply not followed. That regulation was not followed was of course rather a striking suggestion by the authors, and we will return to this example in subsequent sections.

Of interest are also the vague explanations of how the activities of the authorities were governed. This was a topic approached in the reports dealing with EU data protection. The authors of the 1993:10 report discussed the regulations that limited the processing of personal data by the authorities, and concluded that the tasks of the authorities were "normally regulated in a relatively strict way in laws and ordinances".[134] This rather lax way of saying that public authority activities "normally" had support in laws or ordinances was no longer an option in the report on EU data protection published in 2017.[135] With the GDPR, the right that the authorities had had to make a balancing of interests between the controller, on the one hand, and the rights and interests of the "data subject", on the other, was abandoned.[136] According the GDPR, "lawfulness" was a prerequisite for the processing of personal data. Lawfulness was considered at hand if certain conditions, enumerated in article 6 in the GDPR, were applicable, the most cited of which in relation to the authorities were legal obligations, the tasks in the public interest and the exercise of official authority ("Swedish: myndighetsutövning"). The basis for the processing of personal data should furthermore be laid down in national law or in union law.[137] The authors had a detailed discussion on the various legal grounds that might be discerned for different activities carried out by staff at the authorities and the corresponding national law. Activities with legal grounds that might be considered to meet the conditions of article 6 and were laid down in national law would be considered lawful. In the end, the authors concluded that "[w]hether the legal obligations, the tasks in the public interest and the exercise of official authority that have been laid down in accordance with Swedish law are sufficiently precise will have to be assessed on a case-to-case basis".[138] The authors had pointed out that national "law" did not necessarily mean a law passed in parliament.[139] It did mean, they said, that the legal grounds should be established in a "constitutionally correct way", and they should be "clear and precise and its application foreseeable to persons subject to it".[140] As the authors pointed out the need for a case-by-case analysis to determine if the Swedish way of laying down legal grounds was sufficiently precise, an element of uncertainty was brought to the text. Determining the legal grounds for activities carried out by staff at the authorities therefore seemed difficult. The consequence on awareness in this case, was that individuals could not understand when processing of information about them might take place, since the governance of the activities of the authorities was lacking in clarity.

Information Stored by the Public Authorities

Related to the content of the "black box", examples of obstacles to self-information awareness were linked to the undefinable character of potential documents and individuals being unaware of activities carried out at the authorities, as well as of the implications of the implementation of new technology.

As we could see in the previous part regarding possibilities, the 1988:64 report had talked about "predictability" concerning potential documents, and we assumed that this predictability related to public authority staff rather than to individuals because of the complex legal situation. An element that contributed to the complexity was the difficulty of determining potential documents, which was also discussed by the authors. The authors referred to "critics" who had pointed out that "a public authority is not in a position to state once and for all what official documents it has in its ADP [automatic data processing] systems".[141] Similar expressions on the undefined character of potential documents were found in two more reports from the beginning and the end of the investigation period.[142] All three examples linked potential documents to criteria in the *Freedom of the Press Act* and emphasized the role of technology as the main explanation to the undefined character of this kind of documents.[143] The fact that the individuals were not able to gain an overview of the documents containing information about them that might be accessed, constituted an obstacle to self-information awareness.

In other examples, obstacles to self-information awareness could be linked to individuals not knowing about activities carried out by staff at the authorities or the implications that the implementation of new technology might have. For instance, in relation to large public registers with personal data for statistics and research, the 1987:31 report stated that "[t]he fact that the central registers do not seem to have been perceived as a great threat to the personal integrity of the registered persons, may be due to the fact that few people have knowledge about the existence of these registers".[144] Similarly, the authors of the 1988:64 report stated that "[t]oday, the public authorities often have access to data about individuals without the individual being able to get an overview of the data, or to know how they are disseminated to other public authorities and other entities".[145] The context was "mass releases"; releases due to "the application of the principle of public access to official documents in ADP recordings" that were often requested by commercial companies and often contained information about indivi-

duals.[146] Both activities at the authorities and "automatic data processing" – information technology or digitalization in contemporary language – were therefore important factors in this example. Information technology was furthermore prominent in discussions in the 1988:64 and 1994:65 reports, with a focus on the general public's lack of knowledge of such technology. An example from the latter report illustrates this: "For those not very familiar with ADP technology and its possibilities, it is difficult to comprehend the enormous amounts of information that might be stored and processed".[147] The context was that of information held by the authorities, and the reason for the difficulty in understanding was explained by modern technology that made it easy to register and store increasing amounts of data and to merge registers, a development which had led the legislator to prolong the period during which statistical data were protected from 20 years to 70.[148] Earlier in the report, the author had noted that fewer official documents were destroyed, despite this being legally permitted, and that the extension of the retention time for official documents meant that "the amount of personal data and the time period during which it will be preserved will change dramatically".[149] Similarly, the 2016:41 report emphasized the "large and centralised registers at public authorities and statistical databases covering the country's population", and the consistent use of the unique personal identity numbers that allowed for "merging of data from many different sources in a way that would not be possible in most other countries".[150] As a result, "from the very large statistical databases, [it is] possible to follow an individual literally from cradle to grave and to gain a very accurate picture of the person in question".[151]

Information Possible to Access

Regarding the component of the model that concerns "output", examples were found of individuals lacking awareness about access, complexity of legislation and changes in organisation as well as lack of informed consent.

Lacking Awareness About Access

In an example above, we read that individuals were not in a position to know "how [the information] is disseminated to other public authorities and other entities", according to the 1988:64 authors. We also read that the same authors discussed access by commercial companies through "mass releases" that took place due to "the application of the principle of public access to official documents in ADP". Although this was not stated outright, such

releases occurred without the individual being informed, as always in relation to releases in accordance with the *Freedom of the Press Act*. The topic in these examples thus implicitly dealt with the lack of awareness among individuals that information about them was being accessed. In the 2016:41 report, the access to information about individuals was again discussed in relation to the right of access to official documents in the *Freedom of the Press Act*, and again, the report did not state outright that such access took place without the individual being informed. The authors instead stated that "new consequences for the principle of public access to official documents arise" "in step with the digitalization".[152] They further elaborated: "The better and cheaper the technical possibilities to disseminate and merge different data become, the larger the commercial value of the personal data stored in the public authorities becomes. Many companies, therefore, want access to the data".[153] The authors added that a constitutional law made it possible for companies to publish sensitive personal data on the internet so that the regulation protecting personal integrity no longer applied.[154] These examples from the beginning and end of the investigation period indicated an increasing pace at which access to information about individuals occurred. In turn, this was due to the development of technology that increased "the commercial value of personal data stored by the public authorities".

Complexity of Legislation and Changes in Organisation

The topic of complexity of legislation was handled in several reports that discussed how staff at the authorities were insufficiently knowledgeable and educated in relation to legislation. In the 1988:64 report, the authors spoke of "insufficient knowledge, at the public authorities as well as among the general public, about what the legislation – properly applied – actually means" in relation to discussions regarding the criteria, among others.[155] In this example, legislation related to information held by the authorities was discussed from a general perspective. In the following examples, the context was narrowed down to research and statistics. The 1993:83 author stated that it was "nearly impossible to assess the strength of the secrecy protection", referring to certain types of statistics, and stated that the "application" of secrecy regulation "varies to some extent".[156] The issue was thus risk for varying applications of the law, just as in *General Indications* above, but it was specifically related to access in this case. Almost fifteen years later, a harsh verdict was given by the authors of the 2007:22 report regarding secrecy legislation related to research who said that "[t]he secrecy regulation for research is complicated and incomprehensive".[157] One example provided

by the authors related to a law on research ethics, and more specifically an article "saying that personal data may be released for use in research, unless regulation on secrecy […] tells otherwise".[158] The authors pointed out that "this law probably only regulates the release of data *from* research and not to it".[159] It is of course utterly surprising that the *direction* of the information flow covered by the law was not firmly established. If the authors of a report like this were not able to interpret the law, one cannot reasonably expect individuals without legal training to find much guidance from reading it. In a similar vein, the 2016:41 report mentioned how "[t]he legal framework may often be difficult to have an overview of and to understand, even for those who are professionally active within the area", and the authors also detected "important deficiencies regarding the competence at the authorities in relation to law, information security" and other areas.[160] In these examples, the legislation regarding access to information about individuals was thus described as being of such a complex nature that the staff at the authorities were not in a position to fully understand it, nor to apply it correctly. As indicated in one report, the application of the law "varies to some extent", and it may be deduced that it would be difficult for individuals to know when information about them held by the authorities might be accessed, due to the complexity leading to different interpretations by different authorities. This lack of predictability concerning the application of legislation therefore constituted an obstacle to self-information awareness.

Other examples about sharing personal data between the authorities were also related to legislative changes. Important background was found in two reports, which stated that the right of access granted by the *Freedom of the Press Act* had become interpreted as applicable to the authorities, despite this right being granted to citizens.[161] As a result, "[a] dramatic increase of the information flows in society in the last few decades" had occurred, one author noted.[162] In addition to new interpretations of legislation, the material contained examples of intentional, legislative change to "render the activities more efficient" [of the authorities], such as in the 2007:22 report.[163] More specifically dealing with the "exchange" of information between the authorities, the 2016:41 report discussed regulatory changes made to facilitate such exchanges. Legislation was not the only factor that had changed, however: "the activities, the regulation and the technology have been developed to permit an increase in the exchange of data across public authority boundaries", the report said.[164] That the authorities "want to share data with each other", that "[t]he digital data flows to and between the public authorities have […] increased in several different ways" and that "[t]he public

administration is a consumer on a great scale of personal data" were other indications of more information being shared across public authority boundaries.[165] Interestingly, the very last report in the material discussed a suggestion to gather the IT services of most authorities in Sweden in one cloud service.[166] This would mean an important step towards bringing all information together, and would make it difficult for individuals to know for whom information about them might be accessible and possible to merge between various sources. The authors did however emphasize the need to take personal integrity into consideration.

The material also contained examples of organisational changes carried out with the aim of making activities at the authorities more efficient. For instance, the 2007:22 report mentioned above spoke of intentional, legislative change to "render the activities more efficient" [of the authorities].[167] The authors also mentioned "reforms that have been initiated with the purpose of increasing the information exchange between public authorities", and that this had already happened to some extent.[168] As had been pointed out by the authors of the 2003:99 report, the secrecy regulation had been interpreted as applicable also to the authorities.[169] The theme of organisational changes to increase information flows between the authorities, rendering the effects of secrecy regulation between the authorities less efficient, was apparent in the 2007:22 and 2016:41 reports. In the latter, the authors wrote that "[t]he mergers of public authorities in recent years have […] made it easier, without hindrance of register regulations or secrecy, to share data that previously could not be shared across public authority boundaries".[170] Information about individuals thus flowed more freely between the authorities due to organisational change.

To summarize, the material contained several examples showing how legislative and organizational changes had brought about a dramatic increase in the flow of information between the authorities, including information about individuals. The legislative and organizational changes referred to in this section thus had a great influence on the volumes of information about individuals that might be transferred from one public authority to another. Foreseeing the implications of these changes would seem very difficult for the individuals about whom information was being transferred. The fact that the transfers happened without the individuals being informed – although this was not explicitly mentioned in the reports – adds to this impression. The legislative and organisational changes thus constituted the main obstacles to self-information awareness in these

examples, and were related to the difficulty for individuals to understand how they could influence the access to information about themselves.

Consent is Lacking

In the previous part on enablers, it was mentioned how descriptions in the material regarding informed consent could be presented just before longer discussions on the *absence* of such consent. Examples related to the lack of consent and primarily dealt with personal data that was released to research. It is therefore placed in this "output" component of the Swedish black box model. An early example was found in the 1991:21 report, which held up the Swedish legislation against the recommendation on research by the Council of Europe to which Sweden adhered, and which emphasized informed consent. The authors wrote, "it happens quite seldom that the individual who has provided information to an authority, the register from which information has been retrieved for the purpose of research or statistics, has consented to the use of this information for the stated purpose".[171] The lack of consent was thus clearly indicated in the 1991:21 report. At other times, the reader had to be more discerning. By way of example, the 1997:39 report stated in a section regarding research and statistics that "most people [are] negative to sensitive personal data being used for research and statistics without being asked first, or at least having the possibility to prevent the use".[172] It is possible to deduce that informed consent was lacking, but it was not clearly stated in the text. A vigilant reader might also react to the wording in the 2007:22 report regarding an article in the law on research ethics "making the information duty easier" for the research leaders.[173] This "easier" information duty meant that informed consent was not necessary, although the phrasing was ambiguous. Sometimes, the topic of lack of consent was presented in relation to arguments on good results emanating from research without consent. This was the case in the 1991:21 report, which cautioned that possible future regulations "ought not to be drawn up in such a way as to make register research unduly difficult" and stressed the importance of the "very important results" to which register research had led.[174] Similarly, just before mentioning how "most people" disliked their data being used "without being asked first", the 1997:39 report had stressed that "[i]t is undeniably an important public interest that free and comprehensive scientific research exists, which may generate new and deepened knowledge about conditions and correlations".[175] Towards the end of the period, the 2016:41 report was interesting as it contained several clearly indicated examples of lack of consent in relation to research and statistics.[176]

For instance, it was mentioned that "extremely integrity-sensitive" data for research purposes might be "disseminated without the knowledge of the individual".[177] As we saw in *General Indications*, this report also spoke of a general lack of consent when the authors stressed how "[m]ostly, the individuals have no impact on the handling carried out by public authorities" as "in general, it is carried out without their consent". In this case, the lack of consent on behalf of the individuals was thus described as widespread and pertaining to more or less all activities carried out by public authorities. In the report 2017:39 on the GDPR, the topic of right of release of official documents was exempted from what they were to investigate in accordance with the interpretation of the government, as were the areas of research and register regulation.[178] The areas that had contained numerous examples of lack of consent in previous reports were thus not investigated at all in the report on the GDPR. The area of statistics was investigated, however, and the authors mentioned that "[p]ersonal data may […] be collected and otherwise processed" for certain statistical activities "without consent from the registered persons" also after the bringing in to force of the GDPR, and that processing of personal data for archival and statistical purposes was "particularly favoured" by both the EU directive and the new GDPR.[179] It should be emphasized that the European data legislation, ever since the first proposal, had allowed for processing without the consent of the individual in certain cases. By way of example, the EU proposal indicated that processing was allowed – without the consent of the individual – when "necessary in order to comply with an obligation imposed by national law or by community law" (7 c) or when "necessary for the performance of a task in the public interest or carried out in the exercise of public authority" (7 e).[180] The absence of informed consent, therefore, did not mean that the law had been infringed. Lawfulness does not eliminate the fact that the handling of information without the consent of the individual constitutes an obstacle to self-information awareness, however. Numerous such examples of indications of obstacles to self-information awareness through lack of consent were found in the material. In most cases, examples were related to research and statistics, but the 2016:41 report spoke of lack of consent in more general terms.

Summary and Reflection

Here, examples of aspects that constitute obstacles for individuals to gain self-information awareness related to public authorities were identified. Examples

of a general kind, not relating to a specific component of the model, were presented first. Thereafter, the three parts of the Swedish black box model were used to group the examples. The same structure is used for the summary.

Regarding examples of a general kind, a report from the end of the investigation period declared that personal information held by the authorities was handled without the consent of the individuals "in general", and that their knowledge about how information about them was handled in society was diminishing. Very important and clearly stated obstacles to awareness among individuals were thus presented in the form of lack of consent and lack of knowledge regarding the handling of information about them. In the other examples, the obstacles were of a more implied kind. This was true for the statements from both the beginning and the end of the investigation period, indicating a need for the staff or management at the authorities to apply their own judgement and limit the amounts of personal information being handled. The obstacle here was that the judgement exercised by staff could not be known to the individual, who was therefore in no position to predict how information about her would be handled by the authorities. The declaration from the end of the investigation period that the authorities did not comply with legislation – a theme that had also been implied ten years earlier – was another and important obstacle to self-information awareness. If legislation is not followed, formal legality is not at hand, and laws no longer serve as "general guides of behavior", as expressed in the introduction. The last general obstacle dealt with how the authorities were governed and their activities decided. This topic was discussed in reports related to EU data protection. The first such report in the material, 1993:10, had described how laws and ordinances "normally" regulated the activities in "a relatively strict way". The lack of precision in the governing of authority activities was not an option with the GDPR, which introduced the new prerequisite "legal basis" for the processing of personal data. The 2017:39 report stated that important activities at the authorities had a legal basis, but added that it would "have to be assessed on a case-by-case basis" as whether the Swedish way of regulating the activities was "sufficiently precise". In these two examples prompted by EU data protection, the issue at hand might therefore be described as the factor "legislation regulating public authorities" in the Swedish black box model.[181] The regulation of authority activities described was not entirely clear, making it difficult for individuals to know what kind of processing that might take place as regards information about them. This vagueness as to how authority activities were governed was thus another obstacle to self-information awareness.

As for obstacles linked to information about individuals stored by the authorities, we noted that the undefined character of potential documents was mentioned throughout the investigation period. The difficulties in establishing potential documents was, in turn, linked to criteria in the *Freedom of the Press Act* and to the impact of technology. Secondly, the material contained several examples of individuals not being knowledgeable about activities at the authorities or of the possibilities brought about by technology to store, merge and release large volumes of information about individuals held by the authorities. Examples from both the beginning and the end of the period stressed that individuals were unaware of the large amounts of information held about them and the possibility of it being merged by the authorities.

Finally, the "output" component of the model contained a large number of indications of obstacles related to a lack of awareness about access, of complex legislation, organisational change, and the absence of informed consent. As for implicitly indicated examples of lack of awareness, two reports from the beginning and end of the investigation period dealt with commercial companies that gained access to information about individuals through the right of access stipulated in the *Freedom of the Press Act*. From the reports we understand that the combination of technological development and the right of access in accordance with the *Freedom of the Press Act* had made information about individuals increasingly interesting for commercial companies. As was always the case when releases took place in accordance with the *Freedom of the Press Act*, they happened without the individual being informed. As a result, she could not be aware about this increase of access to information about her by commercial companies. Regarding complexity of legislation, several examples from the whole investigation period testified to the high level of complexity and the lack of sufficient education among staff in relation to research and statistics. In one report, the point was made that an article in a law on research ethics probably regulated information transferred *from* research, not *to* it. That Swedish legislation was written in a way which made the *direction* of the transfer of data (without the individual being informed or having the opportunity to consent) unclear, is an example that well illustrates the complexity of legislation. A consequence that was occasionally touched upon in the material was the risk of lack of conformity in the application of legislation. Individuals might therefore not be able to know when information about them held by the authorities might be accessed, since the complexity could lead to different interpretations by different authorities.

The material furthermore dealt with legislative and organisational change, which had brought about an important increase in the flow of information between the authorities. As a result of such changes, according to the report authors, information could flow more freely between the authorities without hindrance of register or secrecy regulations. Furthermore, two reports pointed out that it was an interpretation of the *Freedom of the Press Act* that had made possible transfers between the authorities in the first place. The act granted – and still grants – *citizens* the right of access to official documents.[182] Rhetoric on the Swedish "principle of public access to official documents" may stress its importance for "the Swedish people", (for example on the webpage of the Swedish Government Offices, as I discuss in a recent article).[183] But the "citizens" or the "Swedish people" were not the only beneficiaries of the stipulations in the *Freedom of the Press Act* on the release of official documents. As we have seen in this investigation, the act had been interpreted to also include public authorities and commercial companies.[184] And, again in accordance with the act, the releases always occurred without information being provided to the individual whose data were released, although this was rarely mentioned in the material. Regarding lack of consent, the examples were primarily mentioned in relation to research and statistics and mostly dealt with the release of personal data to research projects without the individual being aware. From the end of the investigation period, however, the 2016:41 report also mentioned lack of consent in general. The authors were very clear, stating that the handling of information about individuals held by the authorities "mostly" happened "without their consent". This almost alarmistic description might be contrasted with the report on GDPR published the year after. This report discussed statistics – research and register regulation were not to be investigated – and it was concluded that it would be possible also in the future to collect and process personal data for certain statistical activities without consent, since statistical purposes were "particularly favoured" by both the EU directive and the GDPR. The word "favoured" has a very positive meaning. It is therefore of interest that the authors did not mention by what actor or group of actors this handling was perceived as "particularly favoured". It seems unlikely that the individuals about whom information was released without their knowledge would "favour" the continued possibility to handle releases in this way. This indicates that the continued production of statistics was seen as an important goal, while the privacy and the protection of data of individuals received less attention.

Analysis and Discussion

In this section, the empirical results on enablers and obstacles will be analysed together, first for the input component of the model, then for the "black box", and finally for the output component.

The Input Component of the Model – Few Examples, Intriguing Omissions

Regarding the input component of the model, we notice the very limited number of examples that referred to gathering of information. Only examples implicitly indicating that individuals had awareness were identified in relation to possibilities. These dealt with informed consent from the individuals as they provided information about themselves for the purpose of research and statistics. No examples, implicit or explicit, related to obstacles for the individual to gain awareness about how information about her entered the authorities.

This very limited number of examples related to "input" is of great interest. As mentioned in *Summary and Reflection* regarding the investigation of enablers, the 1993:10 report discussed the different criteria making up an official document as the meaning and purpose of "the principle of public access to official documents" was looked into. The authors did not mention, however, that it was often difficult to determine when the various criteria were considered fulfilled and an official document thereby generated. For individuals to determine this would seem very difficult. For example, it would require that they knew when public authorities took the initiative to "draw up" new documents, or when technological development and court rulings would mean that the documents were considered "held".[185] That the difficulty in determining when an official document came into existence was not discussed is interesting given the emphasis on control of individuals on behalf of the EU proposal. It certainly would have provided relevant background. It should be added that the 1997:39 report, the content of which led to the Swedish version of the EU directive on data protection, the criteria were not mentioned at all in the discussion on the "principle of public access to official documents".[186]

The 1997:39 report did, however, discuss the finality principle in the European legislation, which stipulated that personal data might not be used for purposes incompatible with those for which they had originally been collected. Also the other two reports that discussed Swedish compliance

with European data protection legislation in the enablers part discussed this topic (1993:10 and 2003:99). All three reports used the word "collected" and spoke of subsequent use that must be compatible (wording of the proposal) or not incompatible (wording of the directive) with the purpose for which the initial "collection" had taken place.[187] The interesting observation we may make is that none of the reports discussed how this original "collection" had actually occurred. They referred to it, and conveyed the message that subsequent processing of personal data must not be incompatible with the original purpose, but they did not enter into a discussion as to how the original collection had transpired. As outlined above, understanding how information enters the Swedish authorities is not easy. Determining when official documents arise through the fulfilment of criteria is difficult, especially for individuals, and if information is transferred from one public authority to another without the individual being informed, this is another reason why it will be difficult or impossible for an individual to know when information about her enters a public authority. Maybe this difficulty in determining when information about individuals reaches the authorities helps explain why the authors omitted discussion on the "collection" that had originally taken place. Along with this possibility, I have suggested another explanation in a previous article, arguing that the absence of discussions regarding "collect" was linked to the topic of transfer of legal concepts from one legal system to another.[188] Ever since the first version of the *Freedom of the Press Act* from 1766, focus has been on the *release* of official documents, and the *accessibility, not secrecy,* of these documents has been the default situation.[189] Focus has thus stayed on information that might *emanate* from the authorities – as illustrated, for instance, by the many examples related to "output" in this study – not on how information *entered* them. In the European data protection legislation, emphasis was put on the legal concept "collect".[190] This concept had no obvious correspondence in relation to official documents, which came into existence through the fulfilment of a number of criteria rather than from being "collected". The concept had therefore no immediate conceptual meaning in the Swedish legal tradition. This is yet another reason that may explain the absence of discussions regarding how information about individuals first reaches the authorities.

The Black Box – Still Black

Regarding the "black box" component of the model, the investigation has shown that many different factors influenced what was stored by the authori-

ties. In the original Swedish Black Box model, the following seven factors found in archival science literature had been identified as having an impact on the system of official documents stored at the authorities: legislation regulating the activities of the public authorities, the criteria of the *Freedom of the Press Act*, legislation regarding destruction of official documents, legislation regarding secrecy, processes and activities at the authorities, technology and, lastly, the routines at the authorities. All seven factors were identified also in this empirical investigation. Regarding the first factor, legislation regulating the activities of public authorities, we could see a development over time in the material from "laws and ordinances" regulating the activities of the authorities in "quite a detailed manner, in general" in the 1993:10 report. The European regulation on data protection that arrived just over two decades later, contained a requirement that processing of personal data should have a "legal basis". The authors of the report from 2017 discussing this had a detailed discussion on the various legal grounds for the activities of the authorities, but ultimately concluded that whether these grounds had been "laid down in accordance with Swedish law [in a manner which was] sufficiently precise" would "have to be assessed on a case-to-case basis". This discussion indicates that still at the end of the investigation period, it would be difficult to predict the outcome of the legislation that regulated the activities of the authorities. The next factor, criteria, was present to some extent in the examples. As mentioned above, the constitutionally founded way of creating official documents through the fulfilment of criteria and the difficulties in determining when the criteria were fulfilled were not discussed. Interpretations of individual criteria such as "held" were discernible, however. Least visible in the material was the third factor, legislation on destruction of official documents. One example relating to obstacles to awareness from the 1990s made a point of the increase in the amounts held by the authorities due to fewer official documents being destroyed. Although not directly mentioned in connection with this example, an underlying factor that is likely to have reduced the number of documents being destroyed was the bringing into force of the *Archival Law* in 1991. This law stipulated the retention of official documents as the default situation, and although regulation on destruction of official documents is also in place, retention is the primary option to serve the right of access and research, among others.[191] It should be remembered that previous stipulations related to public archives had also indicated that documents should be preserved.[192] In a previous article, I analysed government reports related to public archives published before and after the enactment of the *Archival Law* in 1991.[193] I showed that

arguments relating to the importance of public archives for democracy became more clearly visible as the enactment of the *Archival Law* came closer as well as after its enactment. This suggests that the *Archival Law* contained elements working in the direction of retention and an ensuing importance for democracy. This aligns well with the conclusion of Swedish archival scientists Geijer, Lenberg & Lövblad that the *Archival Law,* in contrast to previous legislation, covered all official documents and was permeated with the idea to link archival regulation to the right of access of the *Freedom of the Press Act*.[194] As for secrecy legislation, this factor appeared several times in the investigation, such as in the example on secrecy-breaking rules that were of such a character that it must be "clear" to the individual that releases might occur. As discussed above,[195] the clarity claim was dependent on so much knowledge about the Swedish legislation related to official documents that it is unlikely that individuals would be able to understand the situation, however. Secrecy regulation in relation to research was furthermore categorised as "complicated and incomprehensive" in the material, and towards the end of the investigation period it was reported how organizational changes in the authorities had taken away limits to transfers of information between authorities, previously stipulated by secrecy regulation. All in all, the investigation thus contained several examples that also indicated difficulties in predicting the outcome of secrecy regulation. As for the fifth factor, processes and activities at the authorities, it was noticeable for instance that the authorities took various actions, but the factor was barely present in the material. The contrary was true for the sixth factor, technology. As we have seen, technology played an important role in many examples throughout the period of study. In-depth discussions on the effect of sophisticated technology on potential documents were present throughout. Furthermore, it was made clear that information about individuals held by the authorities became increasingly valuable as new technology made it cheap and easy to compile, store and distribute. Lastly, the seventh factor, routines at the authorities, was mentioned notably in relation to complex legislation leading to application that "varies to some extent", as one report put it. Authors cautioning authority staff not to handle information about individuals if it was not "truly necessary" was another example that indicated that the factor routines might affect the volume of official documents stored by the authorities.

All seven factors, originally compiled from archival science literature, were thus identified in the material. The investigation has thus provided support for the model. Also, the examples in the material in many cases underlined the difficulty in predicting and understanding what information

was held by the Swedish authorities. To summarize, the investigation supports the model concerning factors that make it difficult for individuals to be aware of the information about them that is stored.

The Output Component of the Model – Intensely Discussed, Intensely Cherished

Examples related to output were the most frequent by a wide margin, regarding enablers and obstacles alike. As for *enablers*, examples were found in discussions on informed consent being the ideal, as well as in discussions on the compliance of the Swedish legislation with European data protection. As for the three instances on compliance, the first example from 1993 described how awareness among individuals that official documents might be released was considered insufficient to conclude that Swedish legislation complied with the European data protection, whereas the subsequent report from 1997 reached the opposite conclusion. A few years later, the conclusion was, again, that compliance prevailed and that it must be "clear" to the individual that a release might occur. To the reader, the very high level of complexity of the legal situation and the many dependencies in the example make it difficult to agree with the conclusion of the authors. We furthermore note that the examples related to compliance dealt with the awareness of the fact that official documents might be released from the authorities, and were not linked to information about the individuals themselves. We also note that the statements about awareness among individuals were presented without any supporting evidence. As for *obstacles* in the output component of the model, the examples included lack of awareness among individuals about access taking place, for instance as the result of information about individuals becoming increasingly valuable for commercial companies with technological development in combination with the right of access in accordance with the *Freedom of the Press Act*. Many examples related to the complexity of legislation, which was a recurring theme through the whole investigation period and often caused the authors to call for more education among public authority staff. From this, we may deduce that the complexity and lack of sufficient education brought about a risk for non-conformity in the application of legislation, which, in turn, made it impossible for individuals to foresee the outcome of legislation. To this might be added the comment made by the authors of the 2017:52 report that the "important problem is not the lack of regulation, but rather the lack of compliance", and their observation that controllers sometimes did not

"see it as meaningful to follow the rules". It was almost as if they had resigned themselves to the fact that legislation was no longer thought of as very important. Legislative and organisational changes aiming at increasing the flows of information about individuals between the authorities were also identified as preventing individuals from gaining self-information awareness. The interpretation of the right of access in the *Freedom of the Press Act* as being applicable also to the authorities further contributed to this. Lack of informed consent was yet another example of obstacles to self-information present in the material.

It is interesting that the examples found were predominately related to the output component of the model. As pointed out above, the *Freedom of the Press Act* has focused on the release of official documents since its original version in 1766. This centuries-old system of release of documents from the authorities constitutes the core of the Swedish system concerning official documents. Because of risks related to the release of information stored by the authorities, for instance related to the national defence, to activities related to crime prevention, or containing sensitive information about individuals, secrecy protection as well as register regulation were put in place.[196] Later on, the European data protection legislation was added, although exceptions were made for the release of information about individuals held by the authorities. The three different sources of protective measures – secrecy legislation, register regulation and European data protection legislation – made the situation very complex. As pointed out in several reports, the necessary coherence between the three sources had not been reached. The long tradition of accessibility, cherished for very good reasons by politicians and many other actors, as well as the complexity of protection against access, explain why the output component was present to such a large extent in the material. As was shown in the investigation, the possibility to access information was further accentuated through the interpretation of the *Freedom of the Press Act* as applicable to the authorities, as well as through legislative and organisational changes that made possible large transfers of information about individuals between the authorities. The overall impression from the investigation is, therefore, that individuals were practically in no position to be aware of what information about them might be accessed by others.

Reflection and Discussion

Here, the development patterns of certain topics that have emerged as particularly interesting in the investigation will be further analysed. Firstly, the topic of change of scope of the three reports dealing with the bringing into force of European data protection legislation will be discussed. As a result of the findings, a discussion on official government reports as a tool in the Swedish democratic process follows. Lastly, the complexity of legislation is discussed.

Decrease in the Scope of Data Protection Reports

The topic of scope in reports dealing with data protection concerned the 1993:10, 1997:39 and 2017:39 reports. In the first report, the *authors* had reached the conclusion that Swedish legislation concerning releases of official documents to anonymous recipients was not compliant with the EU proposal. Because of the importance of the "principle of public access to official documents" for the Swedish "legal framework and democracy", the authors suggested that an exception be made to the EU proposal, however.[197] What appears to be the authors' opinion was thus heard in this report, both concerning the conclusion that Swedish legislation was not compliant with the EU proposal and their emphasis on the importance of the principle of public access to official documents. Also, the suggested exception from the EU proposal, that was the result of maintaining the principle, seems to convey the voice of the authors. In the next report, 1997:39, the authors had been instructed that the "principle of public access to official documents is not to be changed". Furthermore, it was declared *a priori* that no part of the EU directive conflicted with the Swedish principle of public access according to the Swedish government, notably because of the insertion in the preamble of point 72. In this case, the framework that governed the work of the authors behind the 1997:39 report is likely to have had a strong influence on the arguments presented, which conveyed compliance of the Swedish legislation with the EU directive. Interestingly, the argument that individuals were aware of official documents being released by the authorities was raised. Individuals' alleged awareness may therefore be said to have constituted a factor for introducing an exception for releases of official documents in the Swedish version of the EU directive on data protection. The authors did not provide any evidence supporting the awareness among individuals, and as pointed out already in an annex of the report, the releases of official documents did not include information about

the recipients. This was required by the EU directive, but was not consistent with the *Freedom of the Press Act* allowing the recipients to stay anonymous. Nevertheless, the authors reached the conclusion that the EU directive was complied with. We may also note that the constitutionally founded difficulty to determine the fulfilment of the criteria that make up official documents was not mentioned, nor the fact that "official document" was a wider concept in Sweden than in other parts of Europe.[198] The constitutional law the *Freedom of the Press Act* contained stipulations on criteria, anonymity and release of documents, yet only the last part was referred to as "constitutionally founded" in the discussion on the principle of public access to official documents, albeit 16 times. In the 2017:39 report that discussed the GDPR, the instructions to the authors were to maintain "the processing of personal data that is allowed today, as far as possible".[199] They furthermore declared that their task did not include "any suggestions regarding the publicity of documents",[200] a term used to denote the right of access to official documents. This was explained by the authors by the fact that the government had made the interpretation that articles 85 and 86 in the regulation made it "clearer than in the current data protection directive that the EU stipulations on data protection does not encroach upon the area of the *Freedom of the Press Act* and the *Fundamental Law on Freedom of Expression*".[201] "Allowed today" meant that much processing and the release of personal data by the authorities was carried out without the individual being informed about it, in accordance with conclusions drawn in the 1997:39 report that led to exceptions being made for releases of official documents. One might ask how clear these wordings were to a reader who lacked much knowledge of Swedish legislation.

It is possible to discern a development in the three examples. The authors of the 1993:10 report started by asking openly whether the release of official documents to unknown recipients and without the individuals being informed was compliant with the European proposal on data protection. They arrived at the conclusion that it was not. The starting point for the authors of the next report was that Sweden complied with the EU directive on data protection, and put forward the argument that individuals knew about the "principle of public access to official documents" and iterated how the release of official documents was founded in "constitutional law". The argument on awareness was unsubstantiated. The release of documents to anonymous recipients was described in a way that conveyed compliance with the EU directive despite the directive requiring that the individual be informed about the recipients. Finally, the argument was put

forward on many occasions that the release of official documents was "founded in constitutional law". The report did not discuss the difference in meaning of "official document" in Sweden compared to corresponding terms in other European countries, or that the creation of such official documents happened through the constitutionally founded *Freedom of the Press Act*. To sum up, the report that led to the exemption of releases of official documents with personal data when the EU directive was brought into force in Sweden rested on arguments that were not phrased in a neutral way, and left out important aspects. The next report from 2017 aimed to preserve status quo.[202] In this report, it was suggested that the GDPR did not "encroach upon" the *Freedom of the Press Act* or the *Fundamental Law on Freedom of Expression*, and the authors were instructed not to make suggestions relating to the "publicity of documents". It is thus logical that the report did not discuss the undefined way of creating official documents through fulfilment of various criteria or the extensive right of access to anonymous recipients without the individual being informed about the access. This also means that important aspects about handling of information about individuals held by the authorities were excluded from the analysis of the 2017 report on the GDPR.

We may conclude that over time, the scope of what was discussed in the reports on EU data protection regulation was considerably reduced. The recent article in the introduction that criticized the reduced scope of Swedish government reports[203] thus finds support in this investigation.

A Democratic Deficit?

As outlined in the introduction, Swedish government reports are regarded as an important tool in the Swedish democratic process. The committees behind the reports might have the task of making a proposal for new legislation, as in the cases above, and this collective way of reaching agreements has been regarded as an efficient way of enhancing democracy. The 1997:39 report, which was to have such important repercussions for the handling of information about individuals, contained arguments that sometimes are difficult to describe as neutral. To this should be added that other and vital arguments were not "mentioned in the discourse but have rather been suppressed, neglected or, simply, remained unnoted", to cite law researcher Håkan Andersson once again. The expression "allowed today" that was used in the subsequent report, 2017:39, did not contain much detail as to the processing that was allowed. Individuals lacking a high degree of familiarity

with Swedish legislation related to official documents would have difficulty understanding the implications of this short expression. In contrast to the 1993:10 report, it is challenging to get a picture of how information about individuals was actually handled by the authorities and might be accessed by others from reading the 1997:39 and the 2017:39 reports. Over time, the three reports on EU regulation therefore contained less and less information about how information about individuals was handled by the Swedish authorities. This gives rise to questions regarding the efficiency of the government reports as a democratic tool. This is not because of lack of expertise of the various committees and their members. Rather, the linguistic analysis applied in this study has made possible the identification of the pattern discernible during the long investigation period.

We may also recall how many reports talked of the authorities and their release of documents, although the *Freedom of the Press Act* spoke of citizens and their right of access to official documents. In many examples in the investigation, the authorities were thus the active part, releasing documents to third parties, both authorities and commercial companies. In the *Freedom of the Press Act*, however, the citizens constitute the active part through the request of access to official documents of which the citizens were also the recipients. In the constitutional law, the citizens were thus both the active part and the recipients of official documents. Conversely, in the material, the authorities were described as active and other public authorities and commercial companies as recipients. This discrepancy between the wording of the *Freedom of the Press Act* and the descriptions in the material was rarely pointed out. This omission, in so many instances in the material, of the fact that individuals were not informed when data about them were released to others in accordance with the *Freedom of the Press Act,* [204] is another feature that gives rise to questions related to democracy. As mentioned in the introduction, the importance of government reports for democracy is linked to their possibility to provide consensus decisions. This investigation has not found anything to contradict the consensus aspects of the reports. However, the diachronic analysis carried out in this study made it possible to distinguish how the content regarding handling of information about individuals in the three reports on EU data protection legislation decreased dramatically over time. The reader of the last two reports had to be very knowledgeable about Swedish legislation to understand the implications of the proposed legislation. The problem identified regarding the government reports was therefore linked to the lack of comprehensive analyses and descriptions related to how information about individuals held

by the authorities was handled. As indicated in the introduction, the content in the government reports may be used to detect broader societal patterns in society. One such pattern is related to reduced clarity in the reports on the handling of individuals' information. This, in turn, implies a democratic deficit.

From Legislation to Resignation

We have seen that complexity of the legislation regarding official documents was a topic brought up during the entire investigation period. On several occasions, the authors suggested education of authority staff to remedy the problem of insufficient knowledge. The observed lack of knowledge might lead to non-conformity regarding the application of the law. At the end of the period, however, it was as if the problem of complex legislation and the need for more education was followed by a feeling of resignation. The authors of the very last report in the material, 2017:52, declared that the "important problem is not the lack of regulation, but rather the lack of compliance". The regulation was in place, the compliance was not. The most interesting aspect of this statement was, however, not the content as such. Even more surprising was the fact that the observation did not lead to a heated discussion on the reasons for this and possible remedies. As we read in the introduction, the rule of law and the related term formal legality means that laws should be "general, prospective, clear, certain" and serve as "general guides of behavior". In turn, the rule of law/formal legality are considered vital elements of a democracy. If compliance with regulation is not in place, formal legality is not at hand. In turn, this might have serious implications for democracy. This is the reason why it is surprising that the authors' observation was left without much further discussion. Was lack of compliance not seen as serious? The many examples throughout the investigation period testifying to complexity of legislation and lack of knowledge among authority staff – reports on the European data protection legislation being exceptions – culminated, as it were, with the observation that compliance was not observed. A question arising from the analysis, therefore, is whether Sweden is about to reduce its commitment to the principle of formal legality. In the introduction, we saw that Brian Tamanha ventured the idea that the "proportion of government actions bound by legal rules" might have decreased, and that this was not necessarily a problem. "Predictability can still come about if there are shared background understandings", he wrote. Could it be that Sweden will cease to

try to remedy the never resolved complexity of Swedish legislation related to official documents, and replace it with commonly shared "understandings"?

There is no room to investigate the question in this study, but it is an interesting topic for future research to investigate. What may be done here is to summarise the observations related to aspects of Swedish legislation that contribute to its complexity. The table below lists the aspects identified in the material that contribute to the legal complexity.

Table 2. Elements contributing to legal complexity related to information about individuals in Swedish public authorities

Interpretation that the right of access accorded "citizens" is applicable to public authorities
1991 *Archival Law* – stipulations that official documents are to be preserved as the default situation
1998 *Personal Data Act* • exceptions made for release by the authorities in accordance with the *Freedom of the Press Act* of personal data in official documents (as well as archiving and preservation of official documents and the taking care of "archival material" by archival authorities) • the *Freedom of the Press Act* and the *Fundamental Law on Freedom of Expression* are to prevail over the *Personal Data Act* • other regulation such as "register regulation" – separate laws on large public registers – is to prevail over the *Personal Data Act*
2003 changes to the *Fundamental Law on Freedom of Expression* that extended the protection by constitutional law to databases with sensitive information about individuals and made it easy and cheap for organisations to acquire the certificate needed to set up such a database

Taking an example from today, information on the internet contains the full name, date of birth and address of individuals living in Sweden. This is the result of the *Freedom of the Press Act* prevailing over the *Personal Data Act,* of the *Personal Data Act* making exceptions for the release of personal data held by the authorities, and of the 2003 change to the *Fundamental Law on Freedom of Expression* making possible the posting of databases on the internet by commercial companies.

After this section, where the results from the enablers and obstacles parts in the empirical investigation were brought together and development

patterns discussed, the study will be summarized and proposals for future research presented.

Concluding Remarks

It is often commented that individuals have difficulty in understanding when large American corporations in the social media industry collect data about them and under what conditions the collected information may be reused and sold. Lately, it has also been discussed how large nations collect vast amounts of information from the surveillance of their own citizens. In this study, I claimed that the combination of the topic of possibility for individuals to understand how information about them is handled is interesting to apply to information held by the Swedish authorities. The Swedish legislation concerning information – including information about individuals – held by the authorities involves a number of criteria that, taken together, mean that a document is "official". In turn, this means that it can be accessed by anyone in the absence of secrecy regulation. Determining when the criteria are fulfilled is not always straightforward. It would therefore appear that it is difficult for individuals to know, not only when American corporations handle their data, but also when this happens in the Swedish authorities. The long tradition of gathering information about the Swedish population has been complemented by growth in the public sector, the use of personal identity numbers, and digitalisation that facilitates the processing of vast amounts of information. It has thus become "possible to follow an individual literally from cradle to grave and to gain a very close picture of the person in question", as expressed in a recent government report. Monitoring the lives of individuals is thus possible in Sweden as well.

That it seems difficult for individuals to understand how information about them is handled in Sweden, where large volumes of information have traditionally been gathered about individuals, makes the topic of awareness among individuals of how information about them is handled in Swedish public authorities highly relevant. The concept *self-information awareness* was developed to designate information about the individual that she might be aware of. The concept thus assigns two different roles to the individual: the role of the *knowledge subject*, the entity about which information is known, and role of the (potential) *knowledge bearer,* the entity having the knowledge. The purpose of the study was to enhance our knowledge of enablers of and obstacles to individuals' awareness of how information about them is handled by, and might be accessed by others from, Swedish public authorities. As difficulties of gaining awareness had been identified, the study set out to analyse not only possibilities, but also obstacles to gaining awareness. The material used for the empirical investigation was

twelve Swedish government reports dealing with personal integrity and large public databases published 1987–2017.

The investigation was divided into two parts, the first regarding enablers and the second obstacles. This way of presenting the investigation made it clear that the examples related to obstacles were considerably greater in number than those linked to enablers. Furthermore, the indications of awareness, in general, related to information that did not pertain to the individual herself, and the indications were provided without support that individuals actually possessed the alleged awareness. The two parts on enablers and obstacles were divided into the three components from the Swedish Black Box model: input, black box, output. With this logic of the presentation, it became evident that a large majority of the examples in the material related to the output component that dealt with information about individuals emanating from the authorities and might be accessible to others.

The main conclusion from the investigation is that the possibility for individuals to be aware of how information about them was handled in Swedish public authorities seemed very limited. Previous research has identified how politicians and other functions with deep knowledge of legislation related to official documents had been able to avoid documents becoming official. With such measures, it would not be possible for citizens to exercise control over their politicians and policy makers. This kind of control is often mentioned as one of the main purposes of the "principle of access to official documents".[205] The empirical investigation in this study did not indicate any corresponding knowledge among individuals. An important difference between the politicians described in previous research and the individuals studied here, is that the group in the former example were acting *from within* the authorities, while the individuals were not. As indicated in the Swedish Black Box model, many factors have an impact on the volume of official documents stored by the authorities. Being aware of those factors might be possible for functions working within the authorities, but seems difficult for individuals outside.

The results presented in this study were reached through the application of linguistic-historical analysis and inductive thematic saturation. This approach made it possible to identify general patterns and omission of arguments. It should of course be recalled that the topic of this study, awareness among individuals of how information about them was handled in Swedish public authorities, was not in focus in the empirical material. But although other issues were debated in the reports, enablers and, to an even larger extent, obstacles to self-information awareness regarding the

authorities, were indicated in the material. Of particular interest is the fact that reports discussing the bringing into force of European data regulation contained descriptions of awareness among individuals as an argument for conveying Swedish compliance with European legislation. Furthermore, the analysis revealed that the topic of awareness among individuals was presented from very different perspectives in reports chronologically close to one another. For instance, the fact that releases of official documents in accordance with the *Freedom of the Press Act* had also been interpreted as applicable to the authorities was not presented in reports on the bringing into force of European data protection, but could be found in a report that was chronologically close. This emphasis on time and diachronic analysis is typical for the work of many historians. To the field of legal research, the method thus brings new aspects to the foreground.

Important results were linked to the European data protection. The analysis showed that the scope in the reports on European data protection was gradually diminished. An open question about compatibility of Swedish legislation with European data protection in 1993 was replaced in 1997 with the starting point for the authors that compliance was at hand. This was important for the European data protection being implemented in Sweden with exceptions for the release of official documents and precedence for national law. In the report on the GDPR from 2017, the authors once again described the opinion of the government at the time, namely that the EU regulation did not "encroach upon the area of the *Freedom of the Press Act* and the *Fundamental Law on Freedom of Expression*". Research and register regulation were exempted from the investigated areas, and the aim was that processing "allowed today" was to continue. Both the gradually decreased scope of what was investigated in the reports relating to European data protection and the impact of the interpretations made by the government for the outcome in the reports from 1997 and 2017 are of great interest. But the results also give rise to questions related to the image of government reports as vital for the Swedish democratic process. For instance, the broad selection of politicians, lawyers and experts as committee members has been regarded as very important for the process leading to law proposals. However, this study has shown that the premises of the 1997 and 2017 reports were presented in a way that made it difficult for individuals lacking profound knowledge of the legal situation to understand their implications. This was true for instance of expressions such as "constitutionally founded" in the 1997 report and "allowed today" twenty years later. The fact that arguments were phrased in a way that conveyed compliance of Swedish

legislation with European data protection in the 1997 and 2017 reports further points in this direction, as does the absence of important aspects in the 1997 report. Adding information about the implications of "constitutionally founded" and "allowed today" could have helped remedy this situation, but this did not occur. The combined effect of a reduced scope, vital information being left out and implications of important aspects not being presented, makes it relevant to ask if these government reports really do match the image they have as essential for democracy. It would seem that government reports *also* have the capacity of posing problems for the democratic process by the omission of discussion on important areas and through the selection and presentation of arguments. Of great interest is also the tendency in the reports to not mention that access to information about individuals in accordance with the *Freedom of the Press Act* occurred without the individual being notified. These identified elements of the government reports mean that the reader is presented with a content that has been adapted in various aspects. Identifying this is not easy for the reader. This study therefore problematizes the image of Swedish Government Official Reports as vital elements for Swedish democracy.

We have also seen that the whole investigation period signalled high complexity of the legislation regarding official documents with information about individuals. The complexity was so high that several reports spoke of insufficient knowledge among public authority staff and implied risk for non-conformity in the application of legislation. In the last report, the risk for non-conformity was no longer implied; the authors bluntly stated that existing regulation was not complied with. While earlier reports signalled difficulties in upholding formal legality – for which clear laws that are equally applied are prerequisites – the last report seems to indicate instead the abandonment of formal legality. This, of course, seems like a very serious development that warrants further investigation.

Taken together, the study points out the need for further research in several areas. What is the possibility for individuals today to gain self-information awareness concerning information about them in Swedish public authorities? The study investigated Swedish government reports published 1987–2017, and although the linguistic-historical analysis indicated that self-information awareness was difficult to achieve, the topic remains to be studied from a legal perspective. Clarifying how individuals might be aware of how information about them reaches the authorities, is stored there and may be accessed is the most obvious area of future research that emerges from this study. Another interesting topic is the state of self-information

awareness among individuals today. What is their knowledge of how information about them is handled by Swedish public authorities? As we have seen in the material, descriptions of awareness among individuals were always unsubstantiated. In the introduction, it was argued that self-information awareness precedes and constitutes a prerequisite for self-information determination. Not in the least from the point of European data protection, which emphasises the control of data on behalf of the individual, establishing the degree to which individuals can achieve awareness is therefore a topic of great interest.

I conclude this study with a reflection on the situation today and implications for tomorrow. Today, technology has reached a level of efficiency that makes possible the storage, transfer and compilation of vast volumes of information. Sweden has made the choice to cherish a generous right of access to personal information. This has occurred through the releases of documents in accordance with routines first mentioned in the version of the *Freedom of the Press Act* from 1766 and through the introduction of new national legislation such as the *Archival Law* and the amendment to the *Fundamental Law on Freedom of Expression.* As a result, releases from the authorities – without notification to the individuals – of large amounts of information about individuals and the subsequent publication of this information in a structured and searchable format on the internet are allowed. One may be intrigued about this path, and one might want to look more deeply into possible causes behind the choice. The tradition of "openness" would be a self-evident candidate.[206] Expressions in the material such as "making the information duty easier", "allowed" and "particularly favoured" all signal a positive attitude towards openness regarding information about individuals, in the same way as "encroach upon" signals relief that the new GDPR was not to infringe upon this openness. These expressions may thus well constitute examples of unconscious phrasings on behalf of the authors, and signal a broad societal pattern in the form of a tendency to value openness. A positive attitude in Sweden towards technological development is another area that might serve as inspiration in the quest for reasons. Numerous scholars have addressed this issue.[207] To me, it is more pressing to investigate what the abundance of legally and openly published information about individuals might lead to, rather than to find possible causes, however. What happens to the information about individuals? Who collects it? To the legally released information might be added data about individuals that finds its way from the Swedish authorities to unknown territories and recipients by mistake or because of criminal action. These

issues are of a crucial nature and merit prompt further analysis, so as to hopefully avert a Swedish Analytica scandal.

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Notes

[1] An earlier version of this article was commented on by Samuel Edquist, Department of ALM, Uppsala University, Stanley Greenstein, Department of Law, Stockholm University, Patricia Jonason, School of Social Sciences, Södertörn University and Inger Rosengren, Stockholm. For very constructive comments I extend my warmest thanks to you all. I also had the opportunity to present my research at the transdisciplinary workshop "Power on Information" arranged by the Department of Law and the Department of ALM in Uppsala in March 2019. I received many valuable comments notably from Cecilia Magnusson-Sjöberg and Anna-Sara Lind for which I am very grateful, although time did not allow for the realization of all suggestions.

[2] See e.g. research on "Informational asymmetry", or "asymmetry of power". By way of example, the issue was raised in relation to large, American "consumer intelligence industry" by Rachel Finn and Kush Wadhwa, who contrasted the considerably deeper level of knowledge on behalf of the consumer intelligence actors about how information about individuals was handled, against the much more limited levels of knowledge held by the individuals themselves. Finn, Rachel & Wadhwa, Kush. The ethics of "smart" advertising and regulatory initiatives in the consumer intelligence industry, *info*, Vol. 16 Issue: 3, 2014, pp. 22-39.

[3] The Guardian. *Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach*. 2018-03-17 https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election [2019-03-20]

[4] Denyer, Simon. Beijing bets on facial recognition in a big drive for total surveillance. *Washington Post* 2018-01-07, https://www.washingtonpost.com/news/world/wp/2018/01/07/feature/in-china-facial-recognition-is-sharp-end-of-a-drive-for-total-surveillance/?noredirect=on&utm_term=.9a50b8251a2b [2019-03-20]; Rundkvist, Fredrik. Polisens brillor vet vem du är. Så övervakas hela Kinas befolkning av automatiska system, *Aftonbladet* 2018-10-21, retriever-info.com [2019-02-26]; Jakten på datan – den digitala oljan, *Sveriges Radio* 2018-12-06, https://sverigesradio.se/sida/avsnitt/1194570 [2019-02-26].

[5] See e.g. Olsson, Anders R. *Privatliv och internet – som olja och vatten?* Stockholm: Teldok, 2000, p. 18.

[6] Olsson 2000, p. 18.

[7] SFS *Tryckfrihetsförordning* 1949:105, ch. 2.

[8] For numerous examples on court decisions, see Bohlin, Alf, *Offentlighetsprincipen*. Stockholm: Norstedts Juridik, 2010; Magnusson Sjöberg, Cecilia, *Rättsinformatik: inblickar i e-samhället, e-handel och e-förvaltning*. Lund: Studentlitteratur, 2011; SOU 2018:25 *Juridik som stöd för förvaltningens digitalisering* p. 55 regarding electronic material.

[9] See e.g. SOU 2016:41 pp. 60-61. The law permitting this is the *Yttrandefrihetsgrundlag* SFS 1991:1469 (*Fundamental Law on Freedom of Expression*) and changes made to that law in 2003. See also Österdahl, Inger. Between 250 Years of Free Information and 20 Years of EU and Internet. *Etikk i praksis. Nordic Journal of Applied Ethics*, 2016, Vol.10(1), p.31.

[10] SCB, SCB:s historia, https://web.archive.org/web/20111006182719/http://www.scb.se/Pages/List____259871.aspx. The world record is shared by Finland which was incorporated with Sweden at the time the census started. [2019-04-13].

[11] See e.g. Riksarkivet. *Vilka uppgifter kan du hitta?* https://sok.riksarkivet.se/kyrkoarkiv [2019-03-20]. The *Archival Law* stipulates that official documents by default are to be preserved for the sake of "the right to free access to public records", "information requirements for the jurisdiction and administration", for "research requirements" and for "information requirements for the jurisdiction and administration". SFS 1990:782 *Arkiv-*

lag, § 3. Translation by Mira Barkå, Barkå, Mira. *Legal framework for records management and archives. Public authorities and private financial institutions in Sweden*. 3rd Workshop on Archival Legislation for Finance (ALFF) in Europe, year unknown.

[12] SOU 2016:41 p. 278 "utmärker sig internationellt med sina stora och centraliserade myndighetsregister och statistikdatabaser som omfattar hela befolkningen i landet"; p. 77 "inte många andra länder som kan jämföra sig med oss när det gäller möjligheten för det allmänna att undersöka sina invånares liv". The authors also spoke of the "unique personal identity numbers that are consistently used by both public authorities and companies" and which "make possible the merging of data from many different sources in a way that would not be possible in most other countries" ("unika personnumren som används konsekvent och genomgående av både myndigheter och företag", "möjliggör sambearbetning av data från många olika källor på ett sätt som inte skulle vara genomförbart i de flesta andra länder", p. 278).

[13] SVT, *Transportstyrelsen, detta har hänt* 2018-06-07, https://www.svt.se/nyheter/inrikes/transportstyrelsen-detta-har-hant, [2019-03-19]; Expressen, *It-skandalen på Transportstyrelsen dag för dag – det händer nu*, 2017-07-24, https://www.expressen.se/nyheter/it-skandalen-pa-transportstyrelsen-det-hander-nu/ [2019-03-19]; Furusjö, Johan. *Aftonbladet*. Vilse i it-skandalen? Det här är vad det handlar om, 2017-08-28, https://www.aftonbladet.se/nyheter/a/rQz4l/vilse-i-it-skandalen-det-har-ar-vad-det-handlar-om, [2019-03-19]

[14] Dobos, Lars. 2,7 miljoner inspelade samtal till 1177 Vårdguiden helt oskyddade på internet. *Computer Sweden*, 20129-02-18, https://computersweden.idg.se/2.2683/1.714787/inspelade-samtal-1177-vardguiden-oskyddade-internet [2019-03-13]

[15] See section Linguistic-Historical Analysis and Language and the Law.

[16] Cf. "Quantified Self", an expression used for individuals who gather and store various kinds of data about themselves, e.g. for the purpose of improved health. See e.g. Debora Lupton: "These concepts refer to the practice of gathering data about oneself on a regular basis and then recording and analyzing the data to produce statistics and other data (such as images) relating to one's bodily functions and everyday habits." Lupton, Deborah. Understanding the human machine. *Technology and Society Magazine* 2013, winter, p. 25.

[17] An alternative to "information" would be the term "personal data", which is legally defined in current EU and national legislation. I wanted to use a word that does not lead the reader to think of terms already legally defined, however, and therefore wanted to avoid "personal data". See also *Analysis and Presentation of the Empirical Investigation* in the *Methodology* section.

[18] Buitelaar J.C. Post-mortem privacy and informational self-determination. *Ethics and Information Technology*, 2017, Volume 19, p. 129.

[19] In Buitelaar, J. C. Privacy: Back to the roots. *German Law Journal*, 13, 2012, p. 173, note 15.

[20] Van Alsenoy, Brendan, Kosta, Eleni & Dumortier, Jos. Privacy notices versus informational self-determination: Minding the gap. *International Review of Law, Computers & Technology*, Volume 28, 2014, Issue 2, p. 188.

[21] Buitelaar, 2017, p. 137.

[22] Important works include Koselleck, Reinhart. *Einleitung. Geschichtliche Grundbegriffe: historisches Lexikon zur politisch-sozialen Sprache in Deutschland*. Bd 1, A-D. Stuttgart 1972, pp. XIII-XXVII; Koselleck, Reinhart. *Futures Past. On the Semantics of Historical Time*. New York: Columbia University Press, 2004; Skinner, Quentin. *Meaning and Understanding in the History of Ideas.* History and Theory vol. 8:1 1969, pp. 3-53; Skinner, Quentin. Visions of Politics. Volume 1. Regarding Method. Cambridge: Cambridge University Press, 2002.

[23] Koselleck 2004, p. 78; Skinner 2002, p. 7.
[24] Palonen, Kari. Den begreppshistoriska *Verfremdungseffekten. Trygghet och äventyr. Om begreppshistoria*. Lindberg, Bo, ed. Stockholm, 2005, p. 42, "är de främsta konceptuella innovatörerna i det politiska språkbruket".
[25] Skinner 2002, p. 3.
[26] Other historians influenced by Koselleck and Skinner may use the Swedish term "begreppshistoria", which is in accordance with the title of one of Koselleck's book *Geschichtliche Grundbegriffe*. The term "begrepp" (English: concept) is so ambiguous that also the term "begreppshistoria" is one of unclear meaning, however. Instead, the term "språkhistorisk analys" (linguistic-historial analysis) was chosen. A more in-depth discussion on the theoretical inspiration behind the "linguistic-historial analysis" and the choice of name is found in Rosengren, Anna. *Åldrandet och språket. En språkhistorisk analys av hög ålder och åldrande i Sverige cirka 1875–1975*. Huddinge: Södertörns högskola, 2011, pp. 32-39.
[27] Ilshammar, Lars. *Offentlighetens nya rum: teknik och politik i Sverige 1969–1999*. Diss. Örebro: Örebro universitet, 2002.
[28] Ilshammar 2002, pp. 61-62.
[29] Friberg, Anna. Experterna och språket. Begreppshistoriska perspektiv på statens offentliga utredningar. *Dolt i offentligheten. Nya perspektiv på traditionellt källmaterial*. Förhammar, Staffan, Harvard, Jonas & Lindström, Dag eds. Lund: Sekel, 2011, pp. 47-59.
[30] Friberg 2011, p. 59.
[31] Alongside laws and legal literature, preparatory work is considered legal sources. See Kleineman, Jan. Rättsdogmatisk metod. *Juridisk metodlära*. Nääv, Maria & Zamboni, Mauro eds. Lund: Studentlitteratur, 2018, p. 33.
[32] Kleineman 2018, p. 33. See also Edquist, Samuel. *Arkiven, bevarandet och kulturarvet*. Stockholm: Riksarkivet, 2014, p. 10.
[33] For an introduction to postmodern theories and its use for legal research, see Andersson, Håkan. Postmoderna och diskursteoretiska verktyg inom rätten. *Juridisk metodlära*. Nääv, Maria & Zamboni, Mauro eds. Lund: Studentlitteratur, 2018, pp. 349-375. For a reflection on hermeneutics in relation to legal research, see Samuelsson, Joel. Hermeneutik. *Juridisk metodlära*. Nääv, Maria & Zamboni, Mauro eds. Lund: Studentlitteratur, 2018, pp. 377-399.
[34] Some examples are mentioned in Andersson 2018.
[35] See for instance Cao, Deborah. *Translating Law*. Clevedon: Multilingual Matters, 2007, p. 13; Tiersma, Peter M. & Solan, Lawrence M. Introduction. *The Oxford handbook of language and law,* Tiersma, Peter M. & Solan, Lawrence M. eds. Oxford: Oxford University Press, 2012 a), p. 6.
[36] See e.g. Cao 2007, p. 19; Mattila, Heikki E.S. Legal Vocabulary. *The Oxford handbook of language and law,* Tiersma, Peter M. & Solan, Lawrence M. eds. Oxford: Oxford University Press, 2012, p. 28; Tiersma, Peter M. A history of the languages of law. *The Oxford handbook of language and law,* Tiersma, Peter M. & Solan, Lawrence M. eds. Oxford: Oxford University Press, 2012, pp. 13-26.
[37] Cao 2007, p. 19.
[38] See e.g. Samuelsson who discusses differences between "legal realism" (Swedish: "juridisk realism") and hermeneutics. Samuelsson 2018, pp. 390-391.
[39] A discussion on similarities and differences between discourse analysis/postmodern theories and linguistic-historical analysis is found in Rosengren 2011, pp. 34-36.
[40] Andersson 2018, p. 367 "att rekonstruera den specificerande ram som problemet diskuteras inom samt att (därmed) lyfta fram alltfler detaljer som måste penetreras, för att man på ett uttömmande, pluralistiskt vis ska kunna beta av rättsproblemet"; p. 367 "synliggöra den mängd av olika värderingar och argument, som […] kan vägas och nytt-

jas för att motivera lösningar"; p. 368 "hitta argumentativa mönster i ytnivåns enkla principer och rekvisit; nämligen mönster för hur berättelser kan skapas, värderas, förändras och utvecklas"; p. 370 "Man ställer frågor kring de diskurser och språkspel som aktualiserar gällande rätt; man funderar över bakomliggande intressen och deras påverkan på rättens förändring"; p. 370 "att lyfta fram aspekter och struktureringsprinciper som av olika skäl – ideologiska och traditionella – inte formulerats i diskursen utan snarare undantryckts, negligerats eller överhuvudtaget inte ens uppmärksammats"; p. 373 "utkristallisera ett mönster för när [the author discusses a legal concept] skapas". Translation by the author.

[41] Seeking any intention behind the formulations that the lawyers use has often been seen as not relevant in the legal practice, however. Civil law researcher Joel Samuelsson writes that "the idea that *the actual intention* of the subjects behind a certain legislation product (committee secretaries, members of the parliament etc.) would be decisive for the outcome of specific cases is quite absurd" in the "realistic" law tradition. Samuelsson 2018, p. 392 "idén att *den faktiska avsikten* hos de subjekt som ligger bakom en given lagstiftningsprodukt (kommittésekreterare, riksdagsmän etc.) skulle vara avgörande för utgången i konkreta fall är ju smått befängd". Samuelsson refers to opinions presented by a lawyer in this "realistic" tradition. Translation by the author. Italics in original.

[42] Rosengren, Anna. *Power to the people – or privacy in peril? A linguistic-historical analysis of the meaning and boundaries of the Swedish principle of public access to official documents*. Huddinge: Södertörn University, 2019, Working Paper 2019:2, p. 13 and referred literature.

[43] A third category is researchers, which is another profession highly trained in using precise and concise language. For information on categories, see Ilshammar 2002, pp. 113-114 and Friberg 2011, p. 52.

[44] Friberg 2011 pp. 52-53 "noggranna formuleringar […] indikerar en hög medvetenhet om vikten av definitionerna". Friberg speaks more specifically of "huvudbetänkande" – the final report in case several have been written. Translation by the author.

[45] There is thus a similarity with other types of controlled source materials such as applications. The writer of an application has the purpose of receiving a positive answer from the receiver of the application. Therefore, the writer will make use of the arguments and wordings that she believes will be positively perceived. I call such empirical materials "controlled sources" (Swedish: "styrda källor"). See Rosengren 2011 pp. 85-87.

[46] Ilshammar 2002, p. 114.

[47] Munson, Sean, Avrahami, Daniel, Consolvo, Sunny, Fogarty, James, Friedman, Batya & Smith, Ian. Sunlight or sunburn: A survey of attitudes toward online availability of US public records. *Information Polity*, 2012, Vol. 17(2), p. 105.

[48] Ahlenius, Ing-Britt. *Myten om vår öppenhet. Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 18-19.

[49] See Fredriksson, Berndt. Arkivvetenskap – historia och framtid. *Arkiv, samhälle och forskning*, 2002:2, p. 87; Fredriksson, Berndt. Vad skall vi bevara? Arkivgallringens teori, metod och praktik. *Arkiv, samhälle och forskning*. 2003:2, p. 43; Norberg, Erik. Förord. *Handlingsoffentlighet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, p. 8; Waldemarsson, Ylva. Politiska makthavare som politisk källa. *Arkiv, samhälle och forskning*, 2007:2, p. 6; Lönnroth, Louise. Bortglömt i arkiven. *Glömskan – värd att minnas*, Lindberg, Bo ed. Göteborg: Kungl. Vetenskaps- och Vitterhets-Samhället, 2012, p. 35.

[50] See e.g. SOU 1987:31 p. 124; SOU 1988:64 p. 69; SOU 1993:10 p. 85.

[51] Møller, Jørgen & Skaaning, Svend-Erik. *The Rule of Law. Definitions, measures, patterns and causes.* Basingstoke: Palgrave Macmillan, 2014, p. 26.

[52] Peterson, Olof. *Rättsstaten: frihet, rättssäkerhet och maktdelning i dagens politik*. Stockholm: Norstedts juridik, 2005, pp. 16-18.
[53] Møller & Skaaning, 2014, p. 131.
[54] Tamanaha, Brian. *On the rule of law: history, politics, theory*. Cambridge: Cambridge University Press, 2004, pp. 91, 97.
[55] Tamanaha 2004, p. 91; Møller & Skaaning 2014, 16, Petersson 2005, p. 22 (in relation to the Swedish term "rättssäkerhet").
[56] Møller & Skaaning, 2014, p. 18.
[57] See also Ramberg, Anne. Demokrati och rättsstat. *Makt. Om Sveriges demokratiska underskott*. Rankka, Maria & Segerfeldt, Fredrik eds. Stockholm: Timbro, 2006, p. 126 (in relation to the Swedish term "rättssäkerhet").
[58] Tamanaha 2004, p. 97.
[59] Tamanaha 2004, p. 98.
[60] Tamanaha 2004, p. 98.
[61] Ilshammar 2002 p. 113 "nästan varje större politiskt beslut i Sverige"
[62] Ilshammar 2002, p. 113; Friberg 2011, p. 49.
[63] Lemne, Marja & Sundström, Göran. Därför är det nödvändigt att se över statens utredningar. *Dagens Nyheter*, 2018-07-08. One of the reports from 2007 contained much of the same criticism although oriented even more strongly towards legal issues. SOU 2007:22 *Skyddet för den personliga integriteten kartläggning och analys*. Del 1. (*The protection of the personal integrity. Survey and analysis*. Part 1), section 24.1.
[64] Friberg 2011, p. 55.
[65] The National Library of Sweden has digitalised all government reports, among other publications.
[66] Saunders, Benjamin, Sim, Julius, Kingstone, Tom, Baker, Shula, Waterfield, Jackie, Bartlam, Bernadette, Burroughs, Heather, Jinks, Clare. Saturation in qualitative research: exploring its conceptualization and operationalization. *Quality & Quantity*, 2018, Vol.52(4), p. 1896.
[67] I am referring to the following three texts: Commission of the European Communities. Amended proposal for a council directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data 1992; European Parliament and the Council. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 (95/46/EC); European Parliament and the Council. 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) (GDPR).
[68] Rosengren, Anna. The Swedish Black Box. On the Principle of Public Access to Official Documents in Sweden. Jonason, Patricia & Rosengren, Anna eds. *The Right of Access to Information and the Right to Privacy. A Democratic Balancing Act*. Huddinge: Södertörn University, 2017, pp. 77-105. Model p. 89.
[69] SOU 1993:10 p. 76 "mycket långtgående krav på information till den enskilde".
[70] SOU 1993:10 p. 80.
[71] SOU 1993:10 p. 77 "den enskilde […] skall kunna få insyn och […] utöva effektiv kontroll över behandlingen av sådana personuppgifter", p. 80 "givetvis är ett effektivt sätt att göra en enskild medveten om att en behandling pågår som rör honom". The situations discussed were the right for the individual to receive information on request about her and notification to the individual in the event of disclosure to third parties.
[72] SOU 1993:10 p. 80 "fråga sig om vinsterna från integritetssynpunkt verkligen uppväger den mycket betydande byråkrati som följer med". The idea about information on request was rejected because it would lead to "a heavy information duty on behalf of the

controllers and rather a substantial bureaucratisation of the control system" ("en betungande informationsskyldighet för de persondataansvariga och en ganska betydande byråkratisering av kontrollsystemet"), p. 77. The authors instead suggested that individuals might seek information on their own, notably in the applications sent in by public authorities to the Swedish *Data Protection Authority* and in the public authorities' descriptions of their electronic registers.

[73] See e.g. SOU 1991:21 p. 42, 1997:39 pp. 271; 280.

[74] See e.g. SOU 1991:21 p. 42; SOU 1997:39 pp. 279-280, 297.

[75] See section *Background*.

[76] SOU 1993:10 pp. 85-86.

[77] SOU 1988:64 pp. 91-94, 96 "förutsebarhet och överblickbarhet som krävs för att göra offentlighetslagstiftningen hanterlig i praktiken", citation p. 96.

[78] SOU 1988:64 pp. 93, 96.

[79] The authors of the 1993:10 report also mentioned "predictability", that would be enhanced both for the personal data controller and for the individual "whose personal data are concerned" by legislation concerning register regulation on sensitive personal data, p. 171.

[80] SOU 1988:64 p. 91 "Bestämmelsen syftar bl. a. till att allmänheten skall få vetskap om vilka handlingar som finns hos myndigheten"; SOU 1994:65 p. 77; SOU 1997:39 p. 214. In current legislation, this is found in SFS 2009:400 *Offentlighets- och sekretesslag* (Public Access to Information and Secrecy Act), ch. 4 and 5.

[81] SOU 1988:64 p. 91; SOU 1994:65 p. 77.

[82] SOU 1991:21 p. 65 "information om den enskilde hämtas ur redan befintliga register".

[83] SOU 1991:21 pp. 59, 64, 68; SOU 1993:83 p. 85; SOU 1994:65 p. 118. See also 1993:10 which discussed "informed consent" that could be "dispensed with" in certain cases such as register research, p. 170. The authors came back to the question and spoke of "the surely few cases in the public sector where consent is at hand" ("de säkerligen få fall inom den offentliga sektorn där det kan bli aktuellt med samtycke", p. 171.

[84] See also Rosengren, Anna. Offentlighetsprincipen i teori och praktik. *Arkiv, samhälle och forskning*, 2017:1, pp. 26-57.

[85] SOU 1993:10 p. 87; SOU 1997:39 p. 215.

[86] 1993:10 appendices p. 245, article 12 (proposal); 95/46/EC, article 11.

[87] 1993:10 appendices p. 245, article 12 (proposal).

[88] 95/46/EC, article 11.

[89] 95/46/EC, article 13.

[90] SOU 1993:10, pp. 90-91 "Det skulle […] kunna hävdas att allmänheten i Sverige är väl medveten om offentlighetsprincipens existens."

[91] SOU 1993:10 p. 91 "såväl myndigheternas skyldighet att lämna ut allmänna handlingar som anonymitetsskyddet reglerade i grundlag". The 1988:64 report also contained indications of awareness among individuals about the "principle of public access to official documents" understood as the release of official documents. The authors discussed the various groups in society that requested the release of official documents in accordance with the "principle of public access to official documents", and concluded that "the general public" rarely made such requests. To this they added that "[t]he most important thing is that the principle in itself exists and is protected by constitutional law and that the public authorities and the general public are aware of this." ("Det viktigaste är att själva principen som sådan existerar och är skyddad i grundlag samt att myndigheterna och allmänheten är medvetna om detta."). SOU 1988:64 p. 64. See also p. 61. "There is, however, reason to believe that the individual citizen finds it more intersting to know that the principle of public access to official documents exists as an important part of our society, rather than to make use of the right of access that it grants. "Typiskt sett finns

det nog ändå fog för påståendet att den enskilde medborgaren sannolikt är mer angelägen om att veta att offentlighetsprincipen existerar som en viktig del av vårt samhälle än att själv utnyttja de möjligheter till insyn som den ger."
[92] SFS 1949:105 ch. 2, art. 1 and interpretation into English in *The Freedom of the Press Act* ch. 2, article 1.
[93] SOU 1993:10 p. 88 "måste insamling av uppgifter ske för specificerade, uttryckliga och lagliga ändamål och de insamlade uppgifterna får användas endast på ett sätt som är förenligt med dessa ändamål."
[94] SOU 1993:10 p. 88 "en myndighet samlar in uppgifter för att tillgodose offentlighetsprincipen." See also arguments on difficulties to reconcile Swedish legislation with EU data protection in the previous report by the same committee, SOU 1991:21 section 2.
[95] SOU 1993:10 pp. 92-93.
[96] SOU 1997:39 p. 216 "till vilka personer uppgifterna kan komma att lämnas ut".
[97] SOU 1997:39 p. 216 "information givetvis lämnas om att uppgifterna kan komma att lämnas ut enligt offentlighetsprincipen".
[98] SOU 1997:39 p. 216 "får de registrerade – på det sätt direktivet kräver – information om till vilka kategorier av mottagare som uppgifterna kan komma att lämnas ut."
[99] 1997:39 p. 697 "att mottagaren tillhör en kategori personer vilken som helst". The comment is found in the section "Särskilt yttrande av experten Jan Evers med instämmande av experten Rolf Nygren".
[100] 1997:39 p. 216 "Eftersom utlämnande enligt offentlighetsprincipen sedan lång tid tillbaka föreskrivits i svensk grundlag, kan det vidare förutsättas att allmänheten redan känner till den informationen."
[101] SOU 1997:39 p. 215 "inte anses vara oförenligt med de ändamål för vilka uppgifterna ursprungligen samlades in".
[102] 95/46/EC, article 6. See also Rosengren 2017 (a).
[103] SFS 1998:204 *Personuppgiftslag*, § 8.
[104] SOU 1997:39 pp. 213-214 "offentlighetsprincipen […] inte skall förändras", citation p. 213.
[105] SOU 1997:39 p. 213 "lyckats få in", "principen om allmänhetens rätt till tillgång till allmänna handlingar".
[106] SOU 1997:39 p. 694.
[107] SOU 1997:39 pp. 213-216, subsections 9.1 and 9.2.
[108] SOU 2003:99 sections 11.2.3, 11.3.
[109] SOU 2003:99 p. 225.
[110] SOU 2003:99 p. 226 "vad som är oförenligt med de ursprungliga ändamålen".
[111] See also SOU 1993:83. The author explained releases of personal data from one public authority to another without support in legislation with the *Administrative Law* stipulating that "each public authority is to provide other authorities help" ("varje myndighet skall lämna andra myndigheter hjälp", p. 56.
[112] SOU 2003:99 p. 227. The authors stated that because other legislation was applicable, the *Personal Data Act* was not to be applied.
[113] SOU 2003:99 p. 233.
[114] SOU 2003:99 p. 234 "För den enskilde måste det anses stå klart att ett utlämnande med stöd av bestämmelsen kan komma att ske."
[115] SOU 2003:99 p. 233-234 "När de sekretessbrytande bestämmelserna införts har lagstiftaren gjort en avvägning mellan intresset av att uppgiften lämnas ut och intresset av att skydda enskilda personers integritet. I det avseendet spelar det mindre roll om uppgifterna lämnas ut av myndigheten självmant eller efter begäran. I några fall har det föreskrivits att uppgiften får lämnas ut utan vidare prövning och i andra fall att myndigheterna efter en prövning i varje enskilt fall, efter varierande förutsättningar, själva får ta

ställning till ett utlämnande. Oavsett hur bestämmelsen formulerats har lagstiftaren beaktat integritetsaspekterna vid utformningen av bestämmelsen. För den enskilde måste det anses stå klart att ett utlämnande med stöd av bestämmelsen kan komma att ske."
[116] SOU 2003:99 p. 234.
[117] SOU 2003:99 p. 234 "oförenliga med de ändamål för vilka uppgifterna samlats in".
[118] SOU 2003:99 p. 234 "inte kan anses vara oförenliga med det ändamål för vilka uppgifterna samlats in".
[119] See also Österdahl 2016, p. 30.
[120] As will be discussed in the next part on obstacles, this was pointed out in two other reports in the material. The authors of the 2003:99 report did emphasize that the *Secrecy Law* had been interpreted as applying also to public authorities, however. SOU 2003:99 p. 219.
[121] In Rosengren 2019 I discuss the meaning of the right of access/principle of public access to official documents in more detail.
[122] SOU 2016:41 p. 79 "Oftast har de enskilda inget inflytande över myndigheternas hantering – den görs i regel utan deras samtycke".
[123] SOU 2016:41 p. 51 "Ur den enskildes perspektiv innebär utvecklingen att kunskapen om hur uppgifterna hanteras, liksom möjligheten att påverka detta, hela tiden krymper i förhållande till den ökande hanteringen av personuppgifter i samhället." See also p. 53 "individuals to a large extent are unaware and have limited knowlege about how and why their persondal data are handled" ("enskilda i stor utsträckning är omedvetna om och har dåliga kunskaper om hur och varför deras personuppgifter hanteras"). The message was repeated in the subsequent report by the same authors, 2017:52 p. 138.
[124] SOU 1987:31 p. 115 "onödigt vidlyftigt registerinnehåll som den registeransvarige tycker kan vara bra att ha", p. 120 "[v]ar och en som har ansvar för sekretessbelagda eller andra integritetskänsliga uppgifter måste dessutom ta sitt eget ansvar för att man inte tappar kontrollen över deras spridning". The authors furthermore stressed the importance that staff fulfil the demands that the data law posed on them, as if this was not the case (p. 115).
[125] SOU 2016:41 p. 79 "Det innebär att det vilar ett särskilt ansvar på det allmänna att se till att uppgifter bara hanteras när det verkligen är nödvändigt för att förvaltningen ska kunna utföra sitt uppdrag […]". This was repeated in the subsequent report 2017:52 p. 58.
[126] SOU 2007:22 p. 462.
[127] SOU 2007:22 p. 461. The authors of the 1997:39 report interpreted their task to exclude the investigation of register regulations, SOU 1997:39 p. 207.
[128] SOU 2007:22 p. 462.
[129] SOU 2007:22 p. 462 "lett till oklarheter i tillämpningen och svårigheter att överblicka regelverket, vilket i sin tur innebär en risk för onödiga integritetsförluster".
[130] SOU 2016:41 p. 79 "utvecklings- och författningsarbete".
[131] SOU 2017:52 p. 56 "centrala problemet […] inte avsaknaden av ett regelverk, utan snarare bristen på efterlevnad".
[132] SOU 2017:52 p. 56.
[133] SOU 2017:52 p. 56 "Vissa personuppgiftsansvariga kanske inte ens ser det som meningsfullt att följa reglerna", "förhållandevis liten".
[134] SOU 1993:10 p. 88 "i allmänhet relativt noggrant i lagar och förordningar".
[135] It should be noted that what is here described as a rather "lax" way of explaining how public authority activities were governed, was the most precise example when the research question related to the boundaries of the principle of public access to official documents, see Rosengren 2019. GDPR, art. 6; 2017:39 section 8.2.
[136] 2017:39 p. 104.

[137] GDPR, art. 6.3.
[138] SOU 2017:39 p. 112 "Huruvida de rättsliga förpliktelser, de uppgifter av allmänt intresse och den myndighetsutövning som har fastställts i enlighet med svensk rätt är tillräckligt precisa måste bedömas från fall till fall".
[139] SOU 2017:39 p. 112.
[140] SOU 2917:52 p. 112; GDPR point 41.
[141] SOU 1988:64 p. 89 "en myndighet inte en gång för alla kan uppge vilka allmänna handlingar den har i sina ADB-system".
[142] SOU 1987:31 p. 118 "It is therefore not possible to indicate beforehand what official documents a data system built on modern technology will contain" ("Det går därför inte att på förhand precisera vilka allmänna handlingar som finns i ett datasystem byggt på modern teknik."); SOU 2016:41 p. 302 "reasonably assumed that there are considerably more potential documents at the public authorities than before" ("rimligen antas finnas långt fler potentiella handlingar hos myndigheterna än tidigare").
[143] SOU 1987:31 p. 118; 1988:64 pp. 89-90; SOU 2016:41 p. 302.
[144] SOU 1987:31 p. 72 "Det faktum att de centrala registren inte tycks ha upplevts som något större hot mot de registrerades personliga integritet kan bero på att få människor har kännedom om att dessa register existerar."
[145] SOU 1988:64 p. 105 "I dag har myndigheterna ofta tillgång till uppgifter om enskilda, utan att den enskilde själv kan överblicka vilka uppgifter det är fråga om och hur de sprids vidare till andra myndigheter och andra enskilda organ."
[146] SOU 1988:64 p. 105 "offentlighetsprincipens tillämpning på ADB-upptagningar".
[147] SOU 1994.65 p. 114 "Det kan, för den som inte är insatt i ADB-teknik och dess möjligheter, vara svårt att inse vilka oerhörda mängder av information som kan lagras och bearbetas", SOU 1988:64 p. 89 according to "critics", "the individual has no control over the data that he [sic] submits to a public authority, and that is stored through the means of ADP" ("den enskilde saknar kontroll över de uppgifter som han lämnar till en myndighet och som lagras med hjälp av ADB").
[148] SOU 1994.65 p. 114.
[149] SOU 1994:65 p. 25 "kommer mängden av personinformation och den tidsrymd under vilken den bevaras dramatiskt att förändras".
[150] SOU 2016:41 p. 278 "stora och centraliserade myndighetsregister och statistikdatabaser som omfattar hela befolkningen i landet", "sambearbetning av data från många olika källor på ett sätt som inte skulle vara genomförbart i de flesta andra länder".
[151] SOU 2016:41 p. 278 "med hjälp av de mycket stora statistikdatabaserna, [är det] möjligt att följa en individ bokstavligen från vaggan till graven och skapa en mycket närgången bild av personen i fråga".
[152] SOU 2016:41 p. 60 "I takt med digitaliseringen uppkommer nya konsekvenser för offentlighetsprincipen."
[153] SOU 2016:41 p. 60 "Ju bättre och billigare de tekniska möjligheterna att sprida och sambearbeta olika uppgifter blir, desto större blir det kommersiella värdet av de personuppgifter som finns hos myndigheterna. Många företag vill därför få åtkomst till uppgifterna." Similarly, the authors emphasized that "far-reaching effects" might be the result "when data from the public administration sector reach the private sector […] with the support of the principle of public access to official documents" ("långtgående effekter när uppgifter från förvaltningssektorn når privat sektor […] med stöd av offentlighetsprincipen"), p. 54.
[154] SOU 2016:41 pp. 60-61. See note 9 on the changes in the constitutional law making possible the publication of sensitive personal data. It is not clear whether the authors had public or commercial actors in mind when they stated that "certain large actors" were in a position to "gain access to an increasing amount of personal data and, as a result of

this, are in a position to draw an increasingly complete picture of a single individual" ("vissa stora aktörer, […], får tillgång till en allt större mängd personuppgifter och därmed har möjlighet att teckna en alltmer komplett bild av en enskild person", SOU 2016:41 p. 50.

[155] SOU 1988:64 pp. 62-67 "saknas tillräckliga kunskaper, både hos myndigheterna och hos allmänheten, om vad lagstiftningen – rätt tillämpad – egentligen innebär". The message of lack of knowledge and competence among staff at public authorities was reiterated several time in this section, notably as the author emphasized how the need for "education about the legislation regarding the principle of publicity" was "probably greater than the government authorities can possibly imagine" ("behovet av utbildning om offentlighetslagstiftningen" "sannolikt större än man från statsmakternas sida riktigt kunnat göra sig en föreställning om"), pp. 65-66. "Legislation related to the principle of publicity" ("offentlighetslagstiftning") was not defined.

[156] SOU 1993:83 p. 40 "närmast omöjligt att bedöma hur starkt sekretesskyddet är", p. 49 "tillämpning av sekretess" "i viss mån varierar".

[157] SOU 2007: 22 p. 359 "Sekretessregleringen för forskningen är svåröverskådlig och inte heltäckande". This was a heading in the report and, so, a clearly stated message.

[158] SOU 2007:22 p. 362 "säger att personuppgifter får lämnas ut för att användas i forskning, om inte något annat följer av regler om sekretess […]".

[159] SOU 2007:22 p. 362 "torde lagen endast kunna reglera utlämnanden av uppgifter *från* denna forskning och inte till den" (italics in original).

[160] SOU 2016:41 p. 288 "Regelverket kan många gånger vara svårt att överblicka och förstå även för dem som är professionellt verksamma inom området"; p. 81 "stora brister i myndigheters kompetens avseende juridik, informationssäkerhet […]". Also for "controllers" – the function that was to ensure compliance with the *Personal Data Act* then in force – it was "non uncommon" that they had "insufficient knowledge", the authors claimed ("personuppgiftsansvariga", "inte […] ovanligt", "bristande kunskaper"), SOU 2016:41 p. 53. Similarly, they mentioned how "many different owners who conduct research have varying levels of knowledge about integrity protection" ("många olika huvudmän med varierande kunskap om integritetsskydd som bedriver forskning"), SOU 2016:41 p. 77.

[161] SOU 1993:83 p. 50; SOU 2003:99 p. 222.

[162] SOU 1993:83 p. 50 "informationsflödena i samhället ökat dramatiskt under senare decennier".

[163] SOU 2007:22 p. 458 "effektivisera verksamheten".

[164] SOU 2016:41 p. 293 "såväl verksamheterna som regelverk och teknik har utvecklats för att möjliggöra ett utökat utbyte av uppgifter över myndighetsgränserna". Interestingly, the subsequent report, 2017:52, the authors agreed to a proposal to investigate making it easier for public authorities to release 'particularly integrity sensitive' information to subcontractors by removing secrecy regulation, and to replace it with professional secrecy. In this way, subcontracting would be easier and a barrier to digitalization removed. In addition, the prevailing insecurity regarding when this was permitted would disappear, in turn a situation which had led to personal integrity being weakened and digitalization hampered, the authors stated. SOU 2017:52 pp. 140-141. The report was published in June 2017, one month before the IT scandal regarding large parts of the national driving license – subcontracting explaining that the data was handled in foreign countries – reached the media.

[165] SOU 2016:41 p. 292 "vill dela uppgifter med varandra", "[d]et digitala uppgiftsflödet till och mellan myndigheterna har […] ökat på flera olika sätt", p. 291 "[o]ffentlig förvaltning är en storkonsument av personuppgifter".

[166] SOU 2017:52 pp. 141-142.

[167] SOU 2007:22 p. 458 "effektivisera verksamheten".
[168] SOU 2007:22 p. 458 "ett reformarbete har också inletts i syfte att möjliggöra ett utökat informationsutbyte mellan myndigheter, något som redan har kommit till stånd inom ett antal myndighetskretsar".
[169] SOU 2003:99 p. 219.
[170] SOU 2016:41 p. 295 "De senaste årens myndighetssammanslagningar har […] medfört ökade möjligheter att utan hinder av registerförfattningar eller sekretess dela uppgifter, som tidigare inte fick delas över myndighetsgränserna." See also SOU 2007:22 p. 460.
[171] SOU 1991:21 p. 66 "mera sällan förekommer att den som lämnat uppgifter till någon myndighet, ur vars register information för forsknings- eller statistikändamål sedermera hämtas, har lämnat sitt samtycke till uppgiftens vidare användning för angivet ändamål."
[172] SOU 1997:39 p. 297 "de flesta människor [är] negativa till att känsliga personuppgifter används för forskning och statistik utan att de tillfrågas först eller åtminstone har möjlighet att förhindra användningen."
[173] SOU 2007:22 p. 362 "underlätta […] informationsskyldighet".
[174] SOU 1991:21 pp. 65-66 "bör dock inte utformas så, att registerforskningen onödigtvis försvåras", citation p. 66.
[175] SOU 1997:39 p. 296 "Det är onekligen ett viktigt samhällsintresse att det finns en fri och allsidig vetenskaplig forskning, som kan generera ny eller fördjupad kunskap om förhållanden och samband."
[176] SOU 2016:41 pp. 77-78, 278, 282, 284, 289. In instances when consent *was* gathered, the consent might be of such a broad nature that it was difficult for the individual to know what she had agreed to, they wrote, p. 77.
[177] SOU 2016:41 p. 77 "synnerligen integritetskänsliga", "spridas utan den enskildes vetskap".
[178] SOU 2017:39 pp. 19, 95.
[179] SOU 2017:39 p. 235 "Personuppgifter kan […] samlas in och i övrigt behandlas för detta ändamål, utan samtycke från de registrerade". The reason was that "[t]he official statistics […] produced by […] public authorities, […] have been assigned a task of public interest laid down in regulation". This type of statistics was referred to as "especially favoured" ("[d]en officiella statistiken […] framställs av […] myndigheter, […] genom författning har tilldelats en uppgift av allmänt intresse"; "särskilt gynnad") pp. 220, 236.
[180] 1993:10 appendices p. 233.
[181] See section *The Swedish Black Box*.
[182] SFS 1949:105 ch. 2, art. 1.
[183] Swedish Government Offices. *The Swedish Principle of Public Access to Official Documents*, https://www.government.se/how-sweden-is-governed/the-principle-of-public-access-to-official-documents/ [2019-03-12]; Rosengren 2019.
[184] See also Patricia Jonason who discusses that the lists of personal data obtained through the right of access and published in newspapers, is a topic that has been largely ignored. Jonason, Patricia, Le droit d'accès à l'information en droit suédois: une épopée de 250 ans. *International Journal of Digital and Data Law*, 2016, vol. 2, p. 43.
[185] The complexity regarding the criteria was even higher than has been described here. Some reports spoke of the "equation principle" (Swedish: "likställighetsprincipen") which was described as "what is available for a public authority it the ADP-systems shall also be available to the general public" and "the general public shall have access to a recording to the same extent as it is available to the public authority" ("vad som är tillgängligt för en myndighet i ADB-systemen också skall vara tillgängligt för allmänheten", SOU 1988:64 p. 70, "allmänheten skall få ta del av en upptagning i samma utsträckning som den är tillgänglig för myndigheten (likställighetsprincipen)", SOU 1993:10 p. 89). In the 1988:64 report, the principle was said to have implications for the criterion "held"

and "routine measures". The second report, which discussed the EU proposal on data protection and the requirement that processing should be in accordance with the "purpose", described the principle as having an impact on the transfers of personal data that a public authority was allowed to carry out. For an individual to be aware of what information about her that might be accessible to others would require her to know how public authorities interpreted the principle. This seems like yet another important obstacle to self-information awareness.

[186] SOU 1997:39 pp. 214-217. I refer to sections 9, 9.1 and 9.2.

[187] See *Information Possible to Access*.

[188] Rosengren 2019.

[189] Rosengren 2019, p. 29. See also Jonason 2016, p. 39.

[190] The *term* "samla in" ("collect") had been included in the Swedish *Data Act* (*Datalag*) from 1973, however, "the first national data protection legislation of its kind in the world". Jonason, Patricia, *The Swedish measures accompanying the GDPR*. E-conference on National Adaptations of the GDPR, June 7, 2018, p. 1.

[191] See note 11. For an analysis of the arguments presented in relation to the bringing into force of the *Archival Law*, see Rosengren, Anna, *Openness, privacy and the archive. Arguments on openness and privacy in Swedish national archival regulation 1987-2004*, Södertörns högskola Working Paper 2016:4. Concerning stipulations concerning destruction, a report published a few years after the bringing into force of the *Archival Law* described how regulations on destruction had been put in place to limit the amount of digital information. SOU 1994:65 p. 108. The fact that different retention periods were stipulated in different laws, also made awareness among individuals difficult. SOU 1994:65, section 6.

[192] See e.g. Geijer, Ulrika, Lenberg, Eva & Lövblad, Håkan. *Arkivlagen. En kommentar*. Stockholm: Norstedts Juridik AB, 2013.

[193] Rosengren 2016. In addition, the *Archival Law* bill was analysed.

[194] Geijer, Lenberg & Lövblad 2013, pp. 62-63.

[195] See "It must be regarded as clear that a release might occur" – Personal Data Act and Secrecy Law 2003.

[196] Although most reports described register regulation as enhancing personal integrity, other views were also found in SOU 1993:83 and SOU 2016:41. SOU 1993:83 p. 83 "In some cases, the regulation should rather be seen as an administrative action on behalf of the government to regulate the activities of a certain public authority and the exchange of information with other public authorities." ("I vissa fall bör författningen mera ses som ett led i en administrativ reglering från statsmakterna sida av en viss myndighets arbetsuppgifter och utbyte av information med andra myndigheter." SOU 2016:41 p. 321 "mostly, register regulation makes it possible to handle personal data in a way which would not have been legally possible with the support of the *Personal Data Act* only." ("registerförfattningarna möjliggör oftast att personuppgifter hanteras på ett sätt som inte hade varit lagligen möjligt med stöd endast av personuppgiftslagen".)

[197] SOU 1993:10 p. 92.

[198] This was pointed out in a comment to the report, however. SOU 1997:39 p. 694.

[199] SOU 2017:39 p. 19 "den personuppgiftsbehandling som är tillåten i dag i möjligaste mån […] fortsätta".

[200] SOU 2017:39 p. 95 "att lämna några förslag som rör handlingsoffentligheten".

[201] SOU 2017:39 p. 95 "blir tydligare än i det nuvarande dataskyddsdirektivet att den EU-rättsliga dataskyddsregleringen inte inkräktar på området för tryckfrihetsförordningen och yttrandefrihetsgrundlagen."

[202] Cf. Patricia Jonason who has pointed out the fact that the "relationship between data protection legislation and the right of access to official documents" was "negatively impacted" by the short time permitted to finalise the Swedish law. Jonason 2018, p. 1o.
[203] See section *Swedish Government Reports*.
[204] The material did contain one example indicating that individuals should be notified when data was collected from another public authority to a statistical register with sensitive personal data. SOU 1997:39 p. 271.
[205] See Rosengren 2017 (a).
[206] See e.g. references to literature in Rosengren 2016 p. 37.
[207] For a selection of results pointing out politicians' views on technology as a tool for progress, see Johansson, Magnus. *Small, Fast and Beautiful. On Rhetoric of Technology and Computing Discourse in Sweden 1955–1995*. Diss. Linköping: Linköping University, 1997; Ilshammar 2002; Lindh, Maria. *Cloudy talks. Exploring accounts about cloud computing*. Diss. Borås: University of Borås, 2017.