




Norwegian data legislation and research.

Implications for data access, data collection and data archiving.



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Introduction

The Norwegian Personal Data Registers Act took effect on January 1, 1980, following a period of clarification, reports, hearings, and consultations. Almost a decade earlier, the first committee had been established to review the use of personal information in modern society. This committee, working from 1971 to

1974, dealt with information handling, especially credit reporting, in private enterprise. ² A second committee was established in 1972 to study the uses and possible misuses of personal-level registers in the public sector. In 1975, this latter committee reported to the Ministry of Justice, recommending the introduction of legislation similar to the Swedish Data Law introduced two years earlier³. The subsequent process of hearings and consultations took more than two years and resulted in a joint bill covering both the private and public sectors. The bill was submitted to Parliament in the fall of 1977, and the final Personal Data Registers Act was passed by the Storting in June 1978⁴. The main features of the Act can be summarized as follows:

1. A Data Inspectorate handles all applications for concession to establish registers of personal data, and also controls the use

² Its report was submitted to the Ministry of Justice in April 1974. Persondata og personvern (Personal data and privacy), NOU 1974:22. Oslo: Universitetsforlaget.

³ Ministry of Justice. Offentlige persondatasystem og personvern (Public person data systems and privacy). NOU 1975:10. Oslo: Universitetsforlaget.

⁴For more details see Jon Bing & Knut S. Selmer (eds.), A decade of computers and law. Oslo: Universitetsforlaget, 1980. See especially the chapter by Knut S. Selmer "Norwegian privacy legislation."

¹ This article is based on a paper presented at the IASSIST '84 conference, Ottawa, May 14-18, 1984.

of such registers.

2. In addition to covering all registers set up for electronic processing, the law requires application for concession also for manually operated registers, if these are to incorporate sensitive information (such as information on political or religious beliefs, criminal records, state of health, abuse of intoxicants, sexual habits, etc.).
3. An application for concession must specify what information the register will include. The letter of concession specifies the allowable uses of the register and, if necessary, specifies which types of data, mentioned in the application, are not included in the concession.
4. All citizens have the right to request and receive information about the data concerning themselves stored in such registers. This right does not, however, apply to data registers "which are only used for statistical, research, or general planning purposes"⁵.
5. The law also requires specific concessions be obtained for conducting opinion and market surveys, and stipulates that any identifying data, such as personal identification number or name, must be destroyed after six months,

unless explicit permission to keep such information has been obtained from the persons concerned.

6. And, finally, the law stipulates that registers of personal data cannot be transferred abroad without the explicit permission of the Data Inspectorate.

The decisive point in the definition of 'person register' is whether or not the information identifies individuals directly or indirectly, regardless of whether the data are stored in a computer file or a manual file. Compared to legislation in other countries, such as Sweden, this is a unique feature of the Norwegian Data Law. The Swedish Data Law regulates only computerized data.

Another important feature of the Norwegian data law is that it applies the concept of 'person' in the legal sense. This includes not only physical persons, but also enterprises, organizations, foundations, etc.

Consequences for research activity

Submission of an application for concession may delay the research process. Due to lack of resources, the Data Inspectorate had not managed to deal with the great number of applications for existing registers in the public and private sectors, before the arrival of the first applications for establishing new registers. Consequently, a

⁵Section 7, paragraph 1 in the Data Law.

bottleneck exists in the system. In some cases, applications from research programs may take only a couple of weeks to process. In other cases, it may take up to half a year before the researcher receives the letter of concession. Before s/he receives this letter, the researcher is not permitted to establish the register.

Many of the registers being established in medical, psychological, or sociological research programs, for example, contain the kind of sensitive information specifically mentioned in the law. Normally, researchers require quick access to such information. According to the law, however, the Data Inspectorate can impose special restrictions on the collection of such information. When information is sensitive, the Data Inspectorate may want to impose more than normally restrictive conditions, out of concern for privacy protection. These restrictions may make it very difficult to collect data and make them available on time.

The law makes no distinction between the use of data for research purposes and the administrative use of data. This means that the Data Inspectorate is not obliged to take the purpose of the data collection into account when considering applications for concession.

The Norwegian Social Science Data Services (NSD) has repeatedly emphasized the difference between data for research use and the administrative use of data. The research community has identified and stressed the important characteristics of the research process and

statistical production which distinguish research use of data from administrative management.

1. trends only will be analyzed by means of techniques such as cross-tabulations, correlations and other summary statistics; - these are techniques which prevent the identification of individuals;
2. personal data may be collected and analyzed either continually or repeatedly at irregular intervals;
3. each phase of analysis will be comparatively short as compared to an established administrative register), i.e. often no longer than a year;
4. the number of researchers and institutions involved in handling individually identifiable data is limited, because it is not the individual per se, but the attributes of the individual that are of

interest.⁶

Usually a research project will last for a predetermined period of time. So too does the validity of the concession. The Data Inspectorate has made it clear that data concessions granted a specific project will be in force only for the duration of the project. After the expiry of the concession period, the Data Inspectorate can instruct the researcher to destroy the data. Obviously, the imposition of such restrictions makes the use of such research methods as follow-up studies and panel studies impossible.

Solutions

Even as the data law was being prepared, a number of researchers called attention to the implications that the data law would have for research. Their primary concern was that the new law would make it difficult to obtain micro data. The experience of Swedish researchers was not encouraging. The Swedish Data Inspectorate had, according to some reports, interfered unnecessarily with the research process and caused serious delays in the planning and

⁶Jarle Broseveet & Orjar Oyen, Norwegian Data Law and the Social sciences, paper prepared for the CESSDA/IFDO conference on 'Emerging data protection and the social sciences' need for access to data', Cologne, August 9-11, 1978.

execution of studies.⁷

One of the concerned researchers was Stein Rokkan⁸ who advised the Norwegian Research Council for Science and the Humanities (NAVF) to take action to protect the researcher's right to access to information as regulated under the new law. Social science researchers in particular began a series of discussions to find workable solutions to the various problems facing research activity requiring micro data. At the suggestion of NSD, among others, the Board of the Norwegian Research Council for Science and the Humanities decided to establish a Secretariat for Data Protection affairs. The Secretariate, which was established at the Norwegian Social Science Data Services (NSD) in Bergen, began negotiations with the Data Inspectorate during the early spring of 1981.

The Research Council felt that two major issues required clarification. The first was to ensure that the measures taken to protect the individual's right of privacy would not seriously prevent scientists from using individual-level data. The Research Council agreed to report regularly to the Data Inspectorate research

⁷See especially Tore Dalenius and Anders Kelevmarken (eds.)/ Personal integrity and the need for data in the social sciences. Stockholm: Swedish Council of Social Science Research, 1976.

⁸See Stein Rokkan, 'The production, linkup and communication of social science data: a survey of developments in Norway.' draft, Bergen 1977 (unpublished).

projects that needed concession under the law. A letter of recommendation from the NSD should be enclosed with each application forwarded.

The other major issue stressed by the Research Council was the need to establish a system to archive data files upon termination of a research project. The Council suggested the establishment of a system whereby the Secretariat could store the data for possible later reanalysis. However, a number of questions had to be clarified before arriving at this solution. Initially, the Data Inspectorate was not sympathetic to the question of data archiving. According to the law, data containing personal identification was to be destroyed. In the end, an agreement was reached which allowed researchers to retain data when "there are reasons for presuming them useful in future research,..."⁹. This agreement was accepted with certain precautions. Firstly, a commission, appointed by the Research Council is empowered to decide which data are to be kept in archives and which are to be destroyed. Secondly, data files must be transferred to special archival institutions recognized by the Data Inspectorate. And thirdly, no data may be transferred if the transfer is inconsistent with the ethics of secrecy.

How such transfer might be inconsistent with secrecy norms was not specified, and has been a matter of discussion ever since. A report from a

⁹The general concession for research projects financed by NAVF, Oslo, April 24, 1981, paragraph 4.9.

committee appointed by the Research Council has now made it clear that data transfer to a data archiving institution usually will not imply conflict with the provisions of ethical secrecy. The Data Inspectorate was represented on the committee and accepted this interpretation as valid.

Other data access regulations

Access to administrative data

Data handling in public administration is regulated by a special law governing procedures in public management. The same law regulates accessibility of data files or information primarily used for administrative purposes in public agencies to researchers. If a researcher needs access to micro-level information, and if this information is subject to ethical secrecy, he must obtain permission from the Ministry, unless such permission can be obtained from the individuals concerned. The researcher must convince the Department of the usefulness and seriousness of the research program, and that it will be difficult to achieve the research goal by other means.

In such cases, the researcher must go through at least two steps to get permission to obtain data. First, an application must be submitted to the Department. A special advisory commission is appointed to judge the application. Then a new application must be sent to the

Data Inspectorate for concession to establish the data register. The system is bureaucratic but does allow some possibility of data access.

*Access to data from the
Statistical Agency*

The Central Bureau of Statistics has, according to the Statistics Law, the right to obtain data from citizens (such as census data). The Bureau also conducts surveys. These surveys are based on a representative sample of the Norwegian population. In accordance with the data law, the Data Inspectorate has outlined some general rules concerning researchers' access to these data. Census data may be used for research outside the Bureau. This applies as well to survey data, if respondents have consented to the data being used for research purposes. But before the data (either census or survey) may be distributed, further conditions must be satisfied:¹⁰

1. The data should be anonymized, but not to such an extent as to make the proposed research impossible. (It is up to the researcher to decide the degree of anonymization.)

¹⁰The Concession for the Central Bureau of Statistics, Oslo, April 2, 1981, paragraph 4.3 first point.

2. The researcher must have been granted concession by the Data Inspectorate before obtaining the data.
3. The data shall be used for statistical analysis only.

The regulations on access to survey data may have some negative effects. It is quite cumbersome to obtain consent for reanalysis from respondents. The outcome may be that no one wants to use the data. Further, obtaining consent may lead to a dramatic decline in the number of respondents. This may affect the representativeness of the sample. For the researcher, these conditions may be serious impediments to gaining access to survey data; and many feel that it is unreasonable to be forced to obtain the consent of respondents in order to use anonymized data.

However, the cooperation of the Central Bureau of Statistics is very important to the research community. The Bureau offers a number of services to researchers - from sampling the population to conducting the whole survey. For services such as these, however, payment is required, and for many researchers, may be too expensive.

Therefore, cooperation has been established between the Bureau and the

NSD. NSD can acquire anonymized survey data and make them available for research purposes. This arrangement does not imply departure from the regulations imposed by the Data Inspectorate. The data are totally anonymized before being transferred from the Bureau to the NSD. Nor may either the NSD nor the researcher, have input to the degree to which the data are anonymized (cf. condition no. 1 above). Access to anonymized data is not regulated by the Data Inspectorate.

Conclusions - future aspects

The agreements reached between the Data Inspectorate and the Research Council and the Bureau of Statistics have clarified 'the rules of the game'. In many respects the agreements follow the ordinary procedures as far as application for concession is concerned. But there are also some differences. The application form itself is more relevant for data processing in academic research and statistics. Further, the agreement with the Research Council implies that the Secretariate for data protection affairs, established by the NAVF, is given a mediatorial role. In practice, this way of organizing the relationships with the Data Inspectorate gives the research community better means of communication with the Inspectorate than have applicants from other sectors.

At present the Data Inspectorate has an

administrative staff of 8-9 persons, most of whom have a background in law. The Board of the Inspectorate is composed of a majority of high-ranking administrators from the public and private sectors, mainly with law and technical expertise. The chairman is Professor Knut S. Selmer of the Faculty of Law, University of Oslo. Professor Selmer was also chairman of the committee which prepared the report on the protection of personal data used for scientific research and statistics for the Council of Europe. This report recommends principles and guidelines that the governments of each member state may use as the basis for domestic law-making and practices concerning the use of personal data for scientific research. As a member state, Norway has accepted the recommendations of the report. These recommendations deal with a number of issues of considerable importance for scientific research, as illustrated by the statements that follow.

The first of these statements declares that respect for privacy must be guaranteed in any research project, and continues:

'Whenever possible, research should be undertaken with anonymous data. Scientific and professional organizations, as well as public authorities, should promote the development of techniques and procedures securing

anonymity.'¹¹

The next statement focuses on the use of data and is of great importance to the research community:

'Personal data collected for the purpose of a given research project and with the consent of the persons concerned should not be used in connection with another research project substantially different in its nature or objects from the first, except with the consent of the data subject. However, where it would be impracticable to obtain such consent by reason of lapse of time or the large numbers of data subjects involved the previously collected data may be used in conformity with other safeguards laid down by domestic law.'¹²

We will also refer to a third statement concerning conservation of data, of special interest to data archiving institutions:

'The consent of the persons concerned when

¹¹Committee of Experts on Data Protection. "Protection of personal data used for scientific research and statistics." Final activity report from the European Committee on Legal Co-operation, Council of Europe, Strasbourg, July 22, 1983, paragraph 2.2.
¹²Ibid. paragraph 4.2.

required for carrying out a research project, or compliance with other safeguards laid down by domestic law, should also extend to the possibility of the personal data collected being kept after completion of the program.'¹³

and further,

'If, on completion of the project, the personal data that have been used are not destroyed or rendered anonymous, their deposit with institutions entrusted with the task of keeping data and in which adequate security measures have been taken should be encouraged.'¹⁴

Altogether, the report to the Council of Europe evinces a positive and professional attitude towards the needs of researchers, on such issues as access to data and conservation of same, on which scientific research activity now depends heavily. Now, it is up to the national inspectorates to show their willingness to adhere to these principles and deal with these questions as well. Data legislation should not be limited to the question of protection of personal integrity, but rather cover the whole spectrum of data protection including data archiving and data access.

¹³Ibid. paragraph 9.2.

¹⁴Ibid. paragraph 9.4.