

The Swedish Parliamentary Ombudsmen

Report for the period
1 July 2012 to 30 June 2013

SUMMARY IN ENGLISH

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This is an excerpt from The Swedish Parliamentary Ombudsmen's Annual Report for the period 1 July 2012 to 30 June 2013. The original report is about 783 pages long.

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1. The Parliamentary Ombudsmen's overall statements for each supervisory area

1.1 Parliamentary Ombudsman Lars Lindström (supervisory area 1)



Introduction

Supervisory area 1 includes the courts, the Enforcement Authority, the planning and construction service, the land survey service, environment and health protection, the Tax Agency, the chief guardians and the communications system. During the working year 1,675 complaints cases were received, which is an increase of 103 cases (+6.5%) on the previous year. 1,637 cases were concluded during the year. Of these 608 were concluded by delegated heads of division.

During the working year I inspected two district courts and one local building committee. Another local building committee was inspected by a head of division on my instructions. Records of these inspections are available (in Swedish) on the Parliamentary Ombudsmen's website, www.jo.se.

Below I highlight some of the decisions detailed in this year's annual report and present certain other measures I took during the working year.

Grounds for judgements and decisions in courts

It is fundamental from a legal certainty perspective, and for maintaining public trust in the judiciary, that grounds are given for judgements and decisions. Grounds also contribute to better quality judgements and decisions – a person who is obliged to present the reasons for his/her position in writing will often discover in the process that there are elements which may need to be given further consideration.

During the year I had reason to assess general court practice in respect of the obligation to present grounds.

The obligation to present grounds for rulings in the general courts is laid down in the Code of Judicial Procedure. Ch. 17, Section 7 and Ch. 30, Section 5 specify that the judgement must contain the reasoning in support of the judgement, including a statement of what has been proved in the case. It is not enough, however, just to present what has been proved. For example, a person sentenced for a crime he/she denies having committed is entitled to know why the court did not believe him/her. In this year's annual report I describe a case which I consider serious (reg. nos. 592 and 1813-2012). It concerns a district court judge who in several judgements in criminal cases neglected to present

grounds properly for the verdicts. Such neglect strikes at the very core of the duties of a judge and jeopardises trust in the judiciary. The judge received serious criticism.

One further case of deficient presentation of grounds for a court ruling is described (reg. no. 2836-2012). The case concerned the rule which states that whoever is sentenced for a crime must repay the state's costs for public defence counsel etc., and that the sum to be repaid is determined by the financial circumstances of the sentenced person. In the case in question, the sentenced person had stated to the court that he had no income at all. He was nevertheless obliged to repay a large sum, without any explanation from the court for why this was so. The responsible judges were criticised for not specifying the reasons for their position.

During inspections of district courts I have examined judgements in cases where the prosecutor charges the defendant with a crime and asserts that it was committed either with intent or through carelessness (e.g. violations of the Knife Act). In these cases it is common for the court to state in its grounds simply that it has been proved the crime was committed, without considering whether it was a matter of intent or carelessness. Here it is in fact not just the grounds for the judgement which are insufficient – there is no specification of which of the two claims regarding the subjective prerequisite that the court finds proven by the prosecutor. This is of course incorrect.

Slow processing in administrative courts

In last year's annual report I presented observations of long processing times in administrative courts. At the time I had received a report from the Stockholm Administrative Court which indicated that it was getting to grips with its problems, at least at the department of general affairs. The evolution of the number of complaints regarding slow processing at administrative courts also suggests that a shift towards more normal processing times has begun. During the 2011/2012 working year I issued 17 decisions containing criticism of administrative courts for slow processing. The corresponding number for the 2012/2013 working year was 10. In this year's annual report I describe a case in which an administrative court received serious criticism for very slow processing of a case concerning sickness benefit (reg. no. 4669-2012).

The courts' rules of procedure

For many years there were rules in the courts' instructions for how the courts were to distribute cases between departments. Those rules were abolished in 2003. Courts are now free to organise their activities in other ways. However, the instructions contain rules to the effect that every case and matter must at all times have a judge appointed as responsible for it. The Parliamentary Ombudsmen have looked at two aspects of the distribution of cases.

The first is that some courts have organised things so that a few judges have become responsible for a very large number of cases – sometimes so many that it may be questioned whether their responsibility can be effectively exercised. The second aspect regards the distribution of cases between judges

from a legal certainty perspective. At district courts as well as administrative courts it is common for cases received by the court to be distributed between units where several judges work. One of these judges then becomes the responsible judge for the case during the preparatory stage. But then there is a second distribution, this time to the judge who is to pass judgement in the case. The Parliamentary Ombudsmen have previously examined a district court which had this arrangement. The purpose of the examination was to investigate whether the second distribution, the one to the judge who would pass judgement, fulfilled the requirement for impartiality, i.e. whether it was organised in such a way as to preclude even the suspicion that improper considerations were made in the distribution.

In a decision of 1 March 2013 (reg. no. 682-2012) I examined the distribution of cases at the Stockholm Administrative Court's department of general affairs. The Courts and Judges Inquiry (Domarlagsutredningen) had published its report, "Legislative reform of the courts" (En reformerad domstolslagstiftning, SOU 2011:42) when the decision was issued, and the inquiry's considerations were useful for my examination. The administrative court's department of general affairs is divided into units, and cases are assigned to these by lot. The problems at administrative courts when definitively assigning cases to judges are a little different from the problems at district courts, since a large share of the cases are concluded without a hearing. The court's units had many different ways of distributing cases to judges. In my decision I stated that none of these ways may be regarded as wrong, but there is nonetheless a deficiency in the administrative court's system. To maintain public trust in the activities of the judiciary, it is important to have written down – e.g. in the court's rules of procedure – what the provisions on distribution that the court applies are. The administrative court did not have this organised properly, and was therefore criticised.

The formulation of the courts' rules of procedure are regularly the subject of scrutiny during inspections. One particular issue comes up recurrently during inspections of district courts. Under Section 25 of the Young Offenders (Special Provisions) Act (1964:167), criminal cases against young offenders must as a rule be processed by specially designated judges and lay judges. Some district courts have not organised their activities in the way the legislators have prescribed, and this has led to negative annotations in the inspection reports.

Public court hearings

Ch. 2, Section 11 of the Instrument of Government prescribes that a court hearing shall be public. This public access may be limited by means of legislation, however. In two cases detailed in this year's annual reports, district courts were criticised for limiting public access without the support of the law.

In the first of these cases (reg. no. 5483-2011) a judge prevented a group of women from attending a detention hearing as spectators. The women were wearing niqab, which meant that their faces were covered. The judge cited

this circumstance as disturbing the order in the courtroom, which enabled him under Ch. 5, Section 9 of the Code of Judicial Procedure to deny them access. In my view the judge's decision was not supported by Ch. 5, Section 9 of the Code of Judicial Procedure, and the judge therefore received criticism.

In the second case (reg. no. 1774-2012) reception staff at a district court had denied spectators access to an ongoing hearing even though the court had not issued a decision that the hearing was to be held as an in camera session. In this case too, then, the court limited public access without the support of the law. The district court was criticised.

Handling of compulsory-care cases in administrative courts

It is an important task for the Parliamentary Ombudsmen to monitor that deprivations of liberty do not occur without the support of the law, and also that cases and matters concerning persons deprived of liberty are processed expeditiously by the courts. Issues of deprivation of liberty petitioned by the state feature frequently in the general courts. It is my view that the courts handle these cases correctly as a rule. By contrast, however, I have found reason to criticise administrative courts for deficiencies in the handling of cases concerning administrative deprivations of liberty. In last year's annual report I described three instances of deficient handling of such cases. In this year's annual report one such case is also described (reg. no. 5420-2011). A person was in custody pending an examination as to whether he was to be placed in compulsory care under the Care of Substance Abusers (Special Provisions) Act (1988:870). In its deliberations following oral proceedings, the administrative court decided that the application for care would be rejected. The chairperson of the court was criticised for not ensuring that custody was immediately terminated following the court's decision.

Handling of evidence in the courts

A person pursuing a case in the courts may invoke evidence in support of his/her case. This year's annual report includes three decisions in which courts were criticised for deficient procedures when parties wanted to invoke evidence. In one case the court gave misleading information to a party who wanted to invoke sound files as evidence (reg. no. 446-2012). In another, a party stated that the contents of what is known as a bicycle computer would show that he had not committed the traffic offence he was charged with (reg. no. 3200-2012). The chairperson of the court was criticised for not establishing how the defendant wanted the contents of the computer to be presented before the court.

What these two cases have in common is that they can be seen to reflect a certain perplexity by the judiciary when faced with other types of evidence than those expressly regulated in law. In the worst case, this perplexity can lead to the party subjected to it finding the procedure unfair. There is reason, therefore, to regard issues of this kind as serious.

In another decision (reg. no. 680-2012), an administrative court had a method for handling parties' requests for witness examinations which lacked

legislative support. Instead of summoning – as the law prescribes – witnesses to the court, the administrative court made the parties responsible for bringing witnesses. The court further acted incorrectly when it announced the hearing would be held even if the witnesses failed to appear. It is easy, in this case as well, to imagine that the party subjected to these errors would find the procedure unfair.

District courts' handling of issues regarding covert coercive measures

District courts are charged with considering requests from prosecutors for the use of what are known as covert coercive measures (including the secret interception of electronic communications, clandestine camera surveillance and concealed listening devices). The characteristic shared by all of these measures is that decisions regarding them are made in secret, without the involvement of the suspect. Thus it is natural that no complaints are made to the Parliamentary Ombudsmen regarding their application. An important task for the Parliamentary Ombudsmen when inspecting district courts is therefore to check how they apply the rules governing covert coercive measures. In the course of my inspections of district courts over the working year I have made observations regarding deficient documentation of what the police based its suspicions on, deficiencies of documentation when it could have been questioned whether wiretapping was still of particular importance to the investigation, the failure to make any notes whatsoever of the court's hearings, and the failure to appoint a public attorney prior to hearings.

Grounds for decisions at administrative authorities

The obligation for administrative authorities to present grounds for their decisions is primarily regulated in Section 20 of the Administrative Procedure Act (1986:223). The reasons that underlie the obligation to present grounds in courts also apply to administrative authorities. Over the year I have drawn attention to two cases of deficient presentation of grounds for administrative decisions. In the first of these, the authority had completely neglected to present any grounds for its decision. The issue concerned the granting of a building licence, which had been opposed by the applicant's neighbours. The local building committee granted a building licence without presenting grounds, and was criticised for that (reg. no. 5756/2012). In the second case a mobility allowance committee had partially rejected an application. The committee's grounds essentially consisted of an abridged version of the text of the law, which as a rule is insufficient. The committee received criticism (reg. no. 6344-2011).

The Planning and Building Act

On 2 May 2011 the Planning and Building Act (2010:900, abbreviated PBA) came into force. One of the changes it brought was that local building committees were instructed, in Ch. 9, Section 27, to issue decisions on licences and advance notice within ten weeks of having received the completed appli-

cation, as a general rule. In connection with inspections I have obtained information about how the committees are dealing with the new time limit. The annual report includes one decision in which a committee exceeded the time limit to an extent which made the total processing time six months. Such handling of matters is a direct infringement of the law, and serious criticism was therefore directed against the committee in the decision (reg. no. 1815-2012).

Ch. 9, Section 27 of PBA contains the information that provisions to the effect that an acknowledgement of receipt is to be sent to the applicant when a completed application has been received is included in Section 8 of the Act on Services in the Internal Market (2009:1079). In a decision I note that the obligation to send an acknowledgement of receipt only applies formally to licence matters within the scope of the EU's directive on services in the internal market. However, in guidelines on its website, the National Board of Housing, Building and Planning states that the local building committees are to send an acknowledgement of receipt in all licence matters. In my decision I write that it is appropriate for committees to follow the recommendations of the National Board of Housing, Building and Planning, and thus to act as if the rule about acknowledgement of receipt applies generally (reg. no. 4086-2011).

The Tax Agency

In last year's annual report I accounted for my criticism against the Tax Agency for very long processing times of what are known as obligatory reviews in connection with appeals. In this year's annual report I describe another such decision (reg. no. 3804-2012). I note in the decision that the Tax Agency in its statement to me does not say anything about whether the agency intends to do anything to prevent delays with obligatory reviews in the future. Evidently there is reason for the Parliamentary Ombudsmen to continue paying attention to this issue.

Public access and confidentiality

In last year's annual report I described a decision in which a municipal committee was criticised for informing fur farmers that a person had requested and received documents concerning them. My criticism was based on the view, founded in turn on the right to anonymity enshrined in the Freedom of the Press Act, that an authority should not pass on identity information without consideration in this way. A similar case is described in this year's annual report: a county administrative board that had received a request for access to an official document in an animal protection matter contacted the animal keeper before releasing the document. The county administrative board received criticism (reg. no. 440-2012).

Legislative referrals

An important task for the Parliamentary Ombudsmen is to take part in legislation by responding to referrals of proposed bills. The referrals I responded to over the working year include the reports “A new criminal damages act” (En ny Brottskadslag, SOU 2012:26), “New sanctions” (Nya påföljder, SOU 2012:34), “Rental and tenancy disputes in the future” (Hyres- och arrendetvister i framtiden, SOU 2012:82), “A more modern trial II – a follow-up” (En modernare rättegång II – en uppföljning, SOU 2012:93), the ministry memorandum “Procedural consequences of the New Sanctions proposal” (Processrättsliga konsekvenser av Påföljdsutredningens förslag, Ds 2012:54) and the report “The criminal trial procedure” (Brottmålsprocessen, SOU 2013:17). These are available on the Parliamentary Ombudsmen’s website, www.jo.se.

1.2 Chief Parliamentary Ombudsman Elisabet Fura (supervisory area 2)



General information

During the working year supervision in area 2 covered the prison system, social insurance, defence and a number of smaller authorities including the National Board for Consumer Disputes, the Equality Ombudsman and the National Board of Appeal. In organisational terms, the National Preventive Mechanism (NPM) division belongs to area 2, but the division’s inspections are carried out on the instructions of the Ombudsman supervising the authority

to be inspected.

Efforts are in progress to integrate the division’s work with the other activities in order to make the best use of existing synergies.

Over the year I continued to focus, in international activities as well, on the core mission of the Parliamentary Ombudsmen: safeguarding the legal certainty of the individual. I and my collaborators received many study visits, in the process prioritising requests from those institutions on which we judged to have the most positive effect. In this connection I would like to emphasise that this has never been a question of one-way communication, but that the learning process has always been mutual. Questions from an external observer can often generate ideas about possible improvements to the organisation. As an example of this I would highlight the study visit by the Turkish ombudsman institution that took place in the spring of 2013.

On 14 June 2012, Turkey adopted a law which involves the establishment of an ombudsman institution for judicial oversight. Within the framework of a bilateral agreement between the Swedish Courts and the Turkish Ministry of

Justice, the Swedish Parliamentary Ombudsmen participated in the legislative process which led to the ombudsman law being adopted by the Turkish parliament. In the spring of 2013 we received, as part of the cooperation project, four employees including one of the parliamentary ombudsmen from the ombudsman institution, inaugurated in January 2013 and still in the process of being set up. Our visitors followed daily procedures in all of the Parliamentary Ombudsmen's supervisory areas, including administration, over a period of a week. The visit was very rewarding for both parties, and the visitors' observations and our dialogue with them is likely to have sparked ideas for certain changes to the newly established institution's law, instruction and working methods. In subsequent statements by the chief parliamentary ombudsman to the media, he underlined how important and inspiring the experiences of the visits to Sweden and other countries had been for further consolidating the autonomy, independence and legitimacy of the new institution.

As in earlier years, cases involving the prison system and social insurance made up 90 per cent of the work in the supervisory area. Over the working year I carried out ten inspections, and two further inspections were performed by a head of division on my instructions. The NPM division additionally carried out eleven inspections of prisons and detention centres. I instituted an initiative case on the basis of the latter inspections; this had not been concluded at the end of the working year.

The prison system

A total of 1,002 cases regarding the prison system were received during the working year, which is around 150 fewer than during the previous working year. 1,054 cases were concluded, which is about 50 less than in the previous year. Just under 12 per cent of the concluded cases contained some form of criticism by the Parliamentary Ombudsmen. Nine decisions have been deemed of such general interest as to be included in the present annual report. I would like to highlight the following decisions in particular.

One decision (reg. no. 2242-2012) concerns what are known as crime victim gateway activities at the country's detention centres. In the previous year's annual report is a description of certain issues connected with crime victim gateway activities in prisons. It has been emphasised in this connection that the role of the crime victim gateway is to examine whether there is a risk of injury to crime victims or indirect crime victims through decisions made by the Prison and Probation Service. On the occasion of the NPM division's inspection in January 2012 of the Prison and Probation Service, Uppsala detention centre, information was given to the Parliamentary Ombudsmen's employees about the crime victim gateway activities being run at the centre. On the basis of facts which emerged during the inspection, the then Chief Parliamentary Ombudsman, Mrs Nordenfelt, decided that the issue of the Prison and Probation Service's efforts with crime victim gateways was to be investigated within the framework of an initiative case. Crime victim gateway issues have also been on the agenda in inspections carried out during the working year dealt with in the present report. In my decision in the case I

emphasised that it is inappropriate to use the terms “crime victim” and “perpetrator” in contexts involving detainees who have not been sentenced for any crime. I also made statements regarding the distinction between the missions of the Prison and Probation Service and the social services in respect of contacts with the injured party.

In one decision (reg. no. 6137-2011) the Prison and Probation Service’s transport service was criticised for its transporting of a person who was in custody under the Care of Substance Abusers (Special Provisions) Act (LVM; 1988:870). The person in question was taken from a treatment centre in Rosersberg to the Administrative Court in Växjö and back again. The transport took four days and nights, and included four overnight stays in detention centres for the person in custody. The Prison and Probation Service was criticised for the way in which the transport was planned and carried out. The Service was also criticised for deficient documentation in connection with the prisoner’s stays at detention centres. The decision also included statements about the inappropriateness of transporting individuals under the various acts on compulsory care, e.g. LVM, together with other client groups.

One initiative case (reg. no. 4269-2012) concerned the possibilities for detainees at detention centres of having contact with their defence counsels. On the basis of allegations in a newspaper article, information was requested from the Prison and Probation Service about detainees’ possibilities for receiving visits and speaking on the telephone with their defence counsels. In the decision I emphasised that a public defence counsel should not be turned away from a detention centre without having seen his or her client, not even in the evening. I was critical of the fact that this had occurred in some cases. I did not have any objection to the Prison and Probation Service locking a solicitor into a visiting room together with the detainee when this is judged to be necessary. The decision contains statements about how detention centre personnel should act when this happens.

Social insurance

During the working year 359 complaints were received which were directed against the Social Insurance Agency. I am pleased to note that the trend over the past two years of fewer complaints against the Social Insurance Agency is continuing. Complaints against the Pensions Agency remain few, with a total of 32 for the year. Just under 400 social insurance matters were concluded during the working year, of which just over 15 per cent contained some of criticism by the Parliamentary Ombudsmen. Of these, seven were deemed of such general interest that they were included in the annual report. I would like to highlight the following decisions in particular.

One decision (reg. no. 3726-2011) deals with the issue of the Social Insurance Agency’s procedure in connection with group consultations for medical insurance assessments. Since 2009 the Agency has used a procedure which means that officials prefer anonymised group cases when consulting with a medical insurance adviser. The procedure is oral. If the official judges that the consultation has added anything new to the case he or she may, according to a

procedural aid specially developed for the purpose, request that the medical insurance adviser issue a written statement. In those cases where no statement is requested, no record is made of what has emerged during the consultation. On investigating the case I found that while the Social Insurance Agency underlines, in the procedural aid referred to above, the importance of following the rules on documentation and communication, this far from the norm in practice. Serious administrative law deficiencies thus arise in processing. The decision further states that the delimitation problems and uncertainty about what is to be documented imply a tangible risk of similar deficiencies even if the Social Insurance Agency's personnel strive to follow the procedural aid. Against this background, I found that group consultations for medical insurance assessments are not in any way appropriate in individual case consultations, and that the Social Insurance Agency should therefore always use a written procedure when the medical insurance adviser is consulted, in the real sense of the word, for advice and support in an individual case.

Another decision (reg. no. 6160-2011) deals with the issue of presenting grounds for decisions. In this decision I criticise the Social Insurance Agency for completely neglecting, in some cases, to present grounds for decisions on maintenance support directed at the parent liable for payment. The vast majority of these decisions are "automated", meaning they come with pre-set headings and sections of text. The investigation showed that the automated decisions lacked space for free text, and neither was there any fixed section for grounds. The decisions were thus issued without any grounds whatsoever, which is a breach of the provisions in the Administrative Procedure Act. In my decision I also describe what demands for grounds can be made on the Social Insurance Agency's decisions in general. I note in this connection, as the Social Insurance Agency itself has noted, that certain deficiencies of a general nature occur, e.g. that the Agency confuses what are crucial factors for the decision with what is instead a general description of the case. It is my intention, in my continued supervisory role, to follow up on the Social Insurance Agency's efforts to improve the presentation of grounds for its decisions.

In one decision (reg. no. 5813-2012) I deal with the issue of the Social Insurance Agency's possibilities for withdrawing or changing a favourable decision at the request of the insured. In the decision I note that for the individual it is voluntary to apply for and receive social insurance benefits, and that the individual is free to withdraw an application at any time. Granting an insured individual's request to annul a decision for the future is likewise unproblematic. Where the difficulties arise is with already executed favourable decisions. I note that many of the decisions made by the Social Insurance Agency do not only affect third parties, but also have consequences for society, and that the effects can be hard to oversee. I further state in the decision that the Social Insurance Agency is under no obligation to grant a request for the revocation of an already executed favourable decision, but that there is no judicial obstacle to revoking such a decision either, so long as no opposing interest is passed over. Taking into account, above all, the complexity of the social insurance system, the large number of cases that the Social Insurance

Agency handles and the importance of like cases being treated alike, I found that the Agency should make it standard procedure not to grant requests for the revocation of already executed favourable decisions.

In another decision (reg. no. 6471-2011) I criticised the Social Insurance Agency for having, on repeated occasions, left sensitive confidential information on a telephone answering machine belonging to the family of the insured person. My decision stated that social insurance confidentiality is intended to protect the integrity of the individual and that confidential information must be handled carefully to prevent unauthorised access to it. The investigation also showed that the Social Insurance Agency – again on repeated occasions – had provided incorrect information to the insured. In one case the incorrect information had been the result of the Social Insurance Agency using a standardised letter without adapting the contents to the circumstances of the insured person it was addressed to. In that connection I expressed, among other things, the importance of scrupulousness and forethought when using templates. There had also been other deficiencies in the handling of the case, e.g. slow processing in both the initial and the review rounds. The accumulated criticism against the Social Insurance Agency was serious.

Miscellaneous

In one case (reg. no. 3627-2012) deputy Parliamentary Ombudsman Ragnemalm dealt with the issue – interesting from the perspective of administrative process – of when a decision can be regarded as having gone against a complainant in such a way that he or she is entitled to institute an action against it. Deputy Ombudsman Ragnemalm stated that if a complainant who is affected in a negative way by a decision which “concerns him”, in accordance with Section 22 of the Administrative Procedure Act, requests that the decision be annulled or changed, the authority is normally to assume that the decision “affects him adversely”. In the case in question, the National Board of Appeal was found not to have adduced convincing reasons for making an exception from this assumption, and was therefore criticised for its application of the provision referred to above.

Parliamentary Ombudsman Axberger requested to be discharged during the spring of 2013, as a consequence of which supervisory area 4 was without an Ombudsman during the final months of the working year. During this period I assumed chief responsibility for the area, and I would like to highlight one decision.

In connection with a “police chase” in southern Stockholm a motorcyclist lost his life. The motorcyclist, who was suspected of dangerous driving among other offences, was followed by several police patrols, including a police helicopter, at very high speeds for about 20 minutes. At the time of the accident, however, the pursuit had been interrupted. The “police chase” occurred in connection with a planned police action against motorcycle street racing. Thus it was not a reaction to a situation that had arisen quickly; in-

stead the police had ample opportunity to prepare for precisely the kind of situation that arose.

In my examination of the “police chase” (reg. no. 6331-2011) I noted that the police had an obligation to intervene against the motorcycle driver at the beginning of their action, but that the extended pursuit at very high speeds was inconsistent with the principle of proportionality, due to the elevated risk it involved for the motorcycle driver, his passenger, the policemen and other road users. I further noted that there had been shortcomings in terms of planning, communication, coordination and commanding the action against the motorcycle driver, which meant that both individual policemen and their command had limited scope for assessing the situation correctly. This appears to have been a decisive factor in causing the police to pursue the motorcycle driver in the way they did.

These events show that in order to avoid similar tragic accidents happening, the police urgently need to improve their working methods during planned traffic actions. It must be possible, in my view, to intervene against drivers who drive at extreme speeds without dramatically increasing the risk of accidents

1.3 Parliamentary Ombudsman Lilian Wiklund (supervisory area 3)



Handling of complaints

As previously, supervisory area 3 principally covers health and medical care, the education system and the social services, i.e. “health, education and care”. During the working year just over 1,900 complaints cases were registered, compared with 1,800 in the previous year and 1,700 in the year before that. Of the newly registered cases, 19 were Ombudsman-initiated, which is the same number as in the previous year. During the year 1,922 cases were concluded (1,726 in the previous year). A total of 179 decisions (144 in the previous year) were preceded by a fuller investigation in the form of a referral to the reported authority. A total of 155 cases (133 in the previous year) were concluded with criticism in some form being directed against the reported authority and/or official.

The balance of cases at the end of the working year was 280 cases (292 in the previous year). Of the unfinished cases, 39 (approx. 14 per cent) were older than one year. All these were referred cases. This represents a slight decline on the previous year, when 25 of 292 unfinished cases, or just under 9 per cent, were older than one year. It may be noted in this connection, however, that the average processing time for referred cases which resulted in criticism was 5.6 months, a considerable improvement on the previous working year, when the corresponding processing time was 11.7 months. The average

processing time for all concluded cases during the year was 33 days, which is also a marked improvement over the previous year, when the average processing time was 57 days.

To sum up, I note that the department has both concluded more complaints cases than in the previous year and managed to shorten processing times considerably – and this despite the increased inflow of complaints. This is a pleasing development, and it is my hope that we will be able to further shorten processing times for referred cases over the coming working year.

Referrals

During the working year I administered 29 referrals, of which 16 were from the Ministry of Health and Social Affairs, 8 from the Ministry of Education and Research, 2 from the Ministry of Culture and 2 from the National Board of Health and Welfare. Substantive opinions were issued in only 5 of the cases. The report “Psychiatry and the law – compulsory care, criminal liability and protection of the community” (Psykiatrin och lagen – tvångsvård, straffansvar och samhällsskydd, SOU 2012:17) involved the other Ombudsmen as well, requiring comprehensive input from all. However, it usually takes a fair amount of work even to decide not to issue an opinion from the Ombudsmen, or that the referred proposals do not give cause for any objections from the Ombudsmen.

Inspections

During the year I personally inspected four authorities: two social welfare committees and two psychiatric clinics. Head of Division Carl-Gustaf Tryblom inspected a social welfare committee on my instructions. These inspections covered a total of 16 calendar days. Converted into man-days, this comes to roughly the same effort as in the previous year – 78 days this year, compared with approx. 80 days in the previous year.

The National Preventive Mechanism (NPM) division carried out eight inspections at institutions within my supervisory area. Five of these were of activities run by the National Board of Institutional Care in LVM homes (for adults with substance misuse) or special residential homes for young people. Three inspections were of clinics carrying out forensic psychiatric care and/or compulsory psychiatric care. Two of the inspections gave me reason to initiate special investigations. These are in progress.

One of the inspections I carried out personally was a follow-up of an inspection from the spring of 2012, of the social welfare committee in Landskrona municipality. On that occasion I had noted that there were serious deficiencies in how the committee administered matters concerning the care of children and young people, as well as in family law matters, and in the inspection report I had stated that the committee needed to apply strong measures in order promptly to correct the deficiencies. Following a referral, the social welfare committee submitted a statement to the Parliamentary Ombudsmen in the autumn of 2012 with a brief description of applied and planned measures. I found no reason for comment regarding the described

measures, but informed the committee that a follow-up inspection would be held at a later date to determine whether the desired result had been achieved. The follow-up took place in April 2013. I was able to observe on that occasion that the committee had devoted very extensive efforts to remedying the deficiencies I had identified earlier, and I noted with great satisfaction that these efforts had already led to tangibly positive results.

With a supervisory area that includes 290 municipalities and about 400 social welfare committees, it may seem somewhat pointless to carry out five or ten inspections per working year. Still, as shown not least by the inspection described above, which led to clear procedural improvements at the authority in question, even small-scale inspection activities can lead to valuable positive outcomes. The extensive reports written after every inspection and published on the Parliamentary Ombudsmen's website serve as a source of information for other authorities as well, thereby spreading knowledge about the regulatory framework and the conditions in each supervisory area to a circle far wider than inspecting authority itself. My ambitions in respect of inspection activities therefore remain unchanged, and taken together with the inspections carried out on my instructions by the NPM division, an expansion is already underway.

Preliminary investigation

On two occasions during the working year (in October 2012 and May 2013) I decided to initiate a preliminary investigation due to suspected crimes committed by officials under my supervision. Both cases concern the administration of matters within the social services. In the first of these cases the preliminary investigation has been discontinued following the application of investigative measures, and the continued review of administrative procedures will be carried out within the framework of the original inspection. That review has not yet been completed. In the second case, the preliminary investigation is still in progress.

Social services

The category comprising social service cases can be divided into four subcategories: cases that concern children in one way or another, e.g. issues regarding the application of the Care of Young Persons (Special Provisions) Act (LVU), cases to do with various forms of assistance, complaints concerning the Act on Support and Service for Persons with certain Functional Disabilities (LSS), and complaints linked to the Care of Substance Abusers (Special Provisions) Act (LVM). In total, just over 1,100 complaints were received in the area of social services during the working year (just under 1,080 during the previous year). The biggest increase was in assistance-related issues, from 370 to 410 complaints. In percentage terms, complaints regarding LVM saw the biggest increase, by 50 per cent – but in number terms this remains a very small category, with only around 40 complaints received. There was a marginal reduction in child-related cases, which nonetheless remains the largest

category, with approx. 560 complaints in the past year (580 in the previous year). The number of LLS cases was unchanged at around 100.

Some decisions relating to home visits by the social services administration are covered in this annual report, as well. One decision concerns a home visit carried out after concern was reported regarding a child in a child care case (reg. no. 4034-2011). Officials had documented conditions in a home with photographs, against the objections of the family's mother. The photographs were then used by the social welfare committee and administrative court in making the decision to take the children in question into care. The decision notes that there is no provision which entitles the social services to document, against an individual's will, observations with photographs. I stated that the officials had shown a flagrant lack of respect for the integrity of the individual and his/her right to make decisions in his/her own home, and that their actions deserved serious criticism. – Two other decisions concern home visits within the framework of assessments of the right to social assistance – issues that were also covered in the 2011/2012 annual report. The social services administrations in question received criticism in both of these decisions. In one case, the administration had made an unannounced home visit to an assistance applicant without an emergency situation being present. I further found that the administration had procedures for home visits which I did not consider to be in accordance with applicable principles for how the social services should operate (reg. no. 2914-2011). In the second case, the home visit had been announced and consent given, but circumstances were such that it could be questioned whether the individual was given sufficient time and space to consider the request for a home visit. It appeared as if the administration wanted to achieve the same effect as an unannounced visit would have had, and in this case as well their actions were deemed to be in breach of the principles on which the social services' activities are based (reg. no. 2737-2011). – In two decisions concerning the right to financial assistance, the social welfare committees in question were criticised for having internal guidelines and calculation rules which were not in accordance with current legislation (reg. nos. 4297-2011 and 2515-2012, respectively).

I would also like to highlight some decisions which concern the role and actions of the social welfare committee in family law cases. The first of these concerns the handling of a case of supervised access – a type of complaint which is quite common. In the decision in question (reg. no. 3946-2011), the district court had decided that contact between a daughter and her father would take place in the presence of a person appointed by the social welfare committee. For certain reasons the committee chose not to appoint anyone to this task. I noted that the committee has a purely executive role in a case of this type, and directed serious criticism against the committee for not carrying out the district court's decision. – The other decision concerns the handling of a case involving a child born by a surrogate mother (reg. no. 5744-2012). There is currently no legislation in Sweden applying to surrogate motherhood, and the case in question raised a number of issues about how a social welfare committee should manage such cases, e.g. how the custody issue should be handled before a custody agreement has been approved and how the examina-

tion of a case prior to approval of such an agreement should be carried out in practice. Against the background of the Riksdag's decision that an inquiry be held into the issue of surrogate motherhood, I had reason to send copies of my decision to the Ministry of Justice and the Ministry of Health and Social Affairs. The commission of inquiry ordered by the Riksdag has now been appointed.

Health and medical care

The volume of complaints in this area was about the same as in the previous year, with approx. 300 new cases registered over the year.

Of the small number of decisions reproduced in the annual report, I would like to mention one of two reports regarding the regional clinic of forensic psychiatry in Växjö for confiscating, in this case, an mp3 player which was then handed over to the prosecution authority. The reason for the confiscation was that suspicions had arisen that one of the patients was in possession of child pornography images. The patient was later sentenced on child pornography charges for the images on the mp3 player. I noted in my decision that information about a patient possessing such images is confidential and may only be disclosed with reference to a secrecy-breaking provision. Such provisions are included in the Public Access to Information and Secrecy Act. They cover sexual offences against children, for example, but not child pornography crimes – which may be regarded as a legislative deficiency. However, in my opinion the demands made on healthcare personnel should not be excessive in terms of assessing what criminal acts – and what classification of those criminal acts – might come into question in cases such as this. Against the background of what the clinic had stated in its comments to the Parliamentary Ombudsmen, therefore, I did not direct any criticism against the clinic for confiscating the mp3 player and handing it over to prosecution authority (reg. no. 2046-2012). The same assessment was made in the other case, which is not described in the annual report. The circumstances were similar, but the confiscated item was a USB memory (reg. no. 5753-2011).

The education system

Complaints in the area of education numbered 275 cases, which is an increase by about 60 cases.

No specific type of complaint could be identified which increased markedly more than others. It may be noted, however, that complaints continued regarding the Swedish National Agency for Education and its handling of cases concerning the issuing of teacher qualifications. Most of these were dismissed with reference to the decisions I issued during the previous working year as well as to measures taken by the agency itself, by the government and the Riksdag. For this reason, no decision is included in the present annual report. – In spite of earlier decisions by the Parliamentary Ombudsmen and information material produced by the National Agency for Education, there are still occasional complaints about schools' actions when certain political parties wish to have access to them in order to inform pupils about the parties'

activities. The present annual report thus also describes a decision regarding an upper secondary school which acted in breach of the principle of objectivity specified in Ch. 1, Section 9 of the Instrument of Government. Sverigedemokratisk Ungdom (SDU) had applied to be allowed to set up a book stand at the school, but the head teacher rejected the application, initially justifying this decision by saying that the school was unable to maintain security at the event. When SDU questioned the justification, the head teacher further cited various practical grounds, to do with planning and resources, for rejecting the application. My finding was that the rejection decision was connected, at least indirectly, with the views that SDU was expected to present, and I therefore directed criticism at the head teacher in question (reg. no 2459-2011).

1.4 Parliamentary Ombudsman Hans-Gunnar Axberger (supervisory area 4)



General information

At the beginning of the year I requested to leave my post, and consequently completed my last working day at the end of the first quarter of 2013, after just over five years as Parliamentary Ombudsman (JO). My annual report for 2013 thus ends there too.

As in previous years, work at my department – which is dominated by police and prosecution cases, immigration cases and certain matters concerning the Government Offices and municipal activities –

was focused mainly on inquiries following complaints from individuals. Decisions of significant interest on matters of principle, or of public interest, are described in the annual report; comments on some of these decisions are included below.

The Government Offices and the principle of public access to information

In the 2009/10 annual report I described a case which had led to grave criticism of the Government Offices for their handling of a journalist's request to be given access to official documents (JO 2009/10). In the case in question, nine months passed between the presentation of the request and the response to it. In the interim, statutory grounds were introduced for not disclosing the requested documents. The case was exceptional, concerning as it did what became known as the "tsunami tapes", but the inquiry nevertheless demonstrated serious procedural shortcomings at the Government Offices. I have since seen signs, in more or less significant contexts, that these shortcomings persist. Others have made similar observations.

Against this background I decided to include a number of similar cases with further complaints against the Government Offices in a relatively exten-

sive inquiry (reg. no. 639-2012 etc.). The results of the inquiry again indicated shortcomings in terms of organisation, responsibilities and procedures at the Government Offices, which had led on repeated occasions to a disregard for the requirement under the Freedom of the Press Act that public documents shall be disclosed promptly.

The inquiry suggests that the shortcomings are of a fundamental nature. The organisation is not adapted to the principle of public access to official documents, nor has it been adapted to the changes, long since implemented, in the organisation of the ministries. It appears in this connection that a request which does not lead to an immediate disclosure of the requested document can easily end up in a no man's land, where it is sent round without either officials or ministers being held answerable for extended processing times or other shortcomings that encroach on the constitutional right to transparency. I found it particularly remarkable that officials at the Government Offices appeared to think that processing of the matters under scrutiny had been acceptable, and I therefore added that it is especially important that the offices of the government respect the public's right to transparency. Otherwise there is a considerable risk that other authorities will also stop regarding themselves as obliged to follow the Constitution to the letter, which would eventually amount to a threat against the principle of public access to information.

The inquiry also included the case with reg. no. 4506-2012. It concerned a journalist who had requested access to documents from the Ministry of Enterprise, Energy and Communications, about internal entertaining costs. In this case as well, disclosure was delayed by general procedures, but it also highlighted some further issues, e.g. what other measures beside prompt disclosure an authority can take in response to a request for disclosure of a document. In this connection, the decision indicates that a document may not first be circulated in order to give recipients the opportunity to comment in general terms on what should be done. It also indicates, however, that an authority is entitled to correct shortcomings discovered after a document has been requested, and even to release information about both discovered shortcomings and applied correctives, on condition that this does not lead to delays in the document's disclosure.

Both of these decisions were sent to the parliamentary Committee on the Constitution (KU), where an inquiry of a similar nature was in progress, albeit focused on the responsibilities of the government and of individual ministers (neither of which come under JO's supervision as, by contrast, the Government Offices as an authority and officials employed there do). In its report, the Committee on the Constitution concurred with my assessment that the organisation of the Government Offices is not adapted to requirements that follow from the principle of public access to information (2012/13:KU20). In respect of the Ministry of Enterprise, Energy and Communications, the Committee was able to establish in its inquiry that the Ministry had disclosed documents to third parties before they were disclosed to the journalist who had requested them. The Committee stated that the Ministry had acted incorrectly, and did not think the possibility could be ruled out that it had acted to

get its own version into the public domain first in a way that was unfair to the journalist who had requested the document. Criticism was directed against the Minister for Enterprise as ultimately responsible for the handling of the matter.

In earlier cases – including the “tsunami case” referred to above – there has sometimes been a tendency for the distance that JO and KU maintain between each other’s areas of supervision to lead to certain issues falling between two stools. In the present case, I note that the inquiries actually overlapped each other somewhat. In my opinion, that is preferable from a constitutional point of view, as long as the supervision bodies’ criticism is limited to their respective objects of supervision – as was the case on this occasion. It is with satisfaction, therefore, that I note that the issues I had investigated were well received by the Committee and subjected to in-depth scrutiny.

Police authorities and public prosecutors

Police surveillance at sporting events appears to be an increasingly common category for complaints. Three decisions in this year’s report concern incidents at what are known as “high risk matches” (reg. nos. 1444-2012 – ice hockey in Stockholm, 4480-2011 – football in Helsingborg and 341-2012 – football in Örebro). The overall observation here is that these events make demands on the police which are difficult to live up to while acting within the constraints of the law and in a legally certain manner.

Among the other cases involving the police I would like to highlight one which led to grave criticism of Dalarna County Police Authority (reg. no. 915-2012). A person was suspected of a petty drugs offence (personal use). He was unable to provide urine, and requested a blood test instead. The police, however, took the suspect to a hospital where they had a catheter inserted in order to force him to provide urine. Suspicion of a petty drugs offence does not justify such a coercive measure; it is not in reasonable proportion to the penal value of the crime. My assessment of the incident as serious also had to do with the formal handling of it. Neither a decision nor a decision-maker could be identified; the police officers involved appeared only to have “talked about it” and then driven off to the hospital. Thus no-one could be held responsible for the violation.

Dalarna County Police Authority has also been criticised for unlawfully photographing individuals who were the object of a coercive intervention (reg. nos. 3445-2011 and 3446-2011), and following observations during an inspection (reg. no. 4307-2012).

A decision which led to criticism of both the police (Jönköping County Police Authority) and a prosecutor dealt with the rights of young crime suspects to defence counsel (reg. no. 3577-2011). Similar cases have led to criticism on a number of occasions in recent years (see e.g. last year’s report, JO 2012/13).

A bigger inquiry into a rape case also involved both the police and prosecutors. A solicitor levelled very serious criticism at the preliminary investigation. This led to a detailed inquiry which indicated that the solicitor had done

a very good job as defender in the case, but which did not fully support his very serious criticism (reg. no. 2959-2011). The inquiry included a number of questions which were unusually hard to assess. Mistakes had undoubtedly been made by both the police and the head of the preliminary investigation. It was shown in court, for example, that the injured party's account had not been sufficiently checked. This is pointed out in the decision, which also criticises a police officer for asking unwarranted leading questions that damaged the inquiry. Taking into account the complexity of the preliminary investigation, however, it could not as a whole be described as flawed.

In what I consider a significant case in terms of principle, a prosecutor was criticised for communicating in an informal manner with a witness (reg. no. 3671-2011). According to the prosecutor, the intention was chiefly to offer the witness support for withdrawing his/her testimony. However, such ends do not entitle a prosecutor to disregard what must be considered self-evident parts of the regulations surrounding criminal procedure. Among these is the inappropriateness of a prosecutor, in direct connection with a main hearing, using his/her authority in a private encounter to try to persuade a witness, quoted by the opposite party and duly summoned by the court, to abstain from taking the stand, and naturally of trying to influence what the witness may come to say in his/her testimony.

As is well known, issues of slow processing are common causes for complaint to the Parliamentary Ombudsmen. One case in which processing was definitely too slow was that of an elderly woman who had been hit by a car and seriously injured (reg. no. 2358-2012). Due to muddled handling by both the police and the prosecutor, the crime lapsed under the statute of limitations before charges were brought. The unfortunate matter was concluded when a prosecutor, despite the statute of limitations, brought an action which had to be withdrawn following an admonition by the court. The individual mistakes and the negligence that caused this may have been of an everyday nature, but the result for the individual in question was clearly unacceptable. I would emphasise that this case is not an isolated event (cf. e.g. JO 2012/13).

Immigration

Over the past few years, the Swedish Migration Board's asylum examination units in Boden, Uppsala and Malmö have been inspected under the guidance of head of division Lina Forzelius (see reg. nos. 724-2012, 5620-2012 and 468-2013, with references; the decisions are not included in the annual report). Certain shortcomings were observed, but the overall impression was that activities at the units functioned well. The Malmö unit, however, had a comparative backlog of cases and problems with extended processing times.

In addition to the inspections, there is reason to highlight the following decisions in the area of immigration.

An asylum-seeking family was to be sent to Russia in accordance with deportation orders that had gained legal force. For the father of the family, Afghanistan was specified as a possible alternative. Örebro County Police Authority was charged with executing the deportation orders. However, the au-

thority did not follow them, instead focusing its efforts on sending all the family members to Afghanistan. Only when the case had been reported to JO and the police authority's officials subsequently made aware, by JO, of the deportation orders' actual content, was the deportation rerouted. This is a serious incident. In a similar case last year (see JO 2012/13), I criticised Gävleborg County Police Authority for deporting a man to Iraq instead of Iran, with very unfortunate consequences. In the case of the family, enforcement never had time to occur, but the risk that it could have was evident. (Reg. no. 6074-2011)

In an earlier annual report I described a case in which beggars had been refused entry under the Aliens Act – a decision for which there were insufficient statutory grounds (JO 2011/12). In this year's report there is a similar case (reg. no. 4468-2011). This concerns refusal of entry to prostitutes. Prostitution differs from begging in that legislators have specified in the relevant legal history that the former is a dishonest means of subsistence in the eyes of the law. Furthermore, prostitution cannot occur without a crime being committed and must be regarded as a principally forbidden activity. In contrast with the case involving beggars, I did not find that the refusal of entry in this case could be criticised as incorrect.

Among the other immigration cases, a decision concerning the difficulties in judging the age of young asylum seekers should be mentioned (reg. no. 4107-2011). The Migration Board was criticised for its processing of the case, which went against the authority's own guidelines.

2. The NPM division

2.1 General information

Since 1 July 2011 the Parliamentary Ombudsmen have been charged with additional tasks as National preventive mechanism (NPM) under the Optional Protocol of 18 December 2011 to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Opcat).

The purpose of the protocol is to set up a system of regular visits carried out by independent international bodies and national visiting bodies to places where persons deprived of their liberty are being held, in order to prevent their subjection to torture and other cruel, inhuman or degrading treatment or punishment.

The purpose of the Ombudsmen's activities as national preventive mechanism is to carry out regular inspections of and visits to institutions where people deprived of their liberty are being held, and to report to international supervisory and cooperation bodies, all of this in such a way and to such an extent that the Ombudsmen contribute to Sweden's fulfilment of its commitments under the optional protocol to the UN's convention against torture (Opcat).

The places of detention to be inspected within the framework of Opcat have been identified as prisons, remand prisons, police cell blocks, institutions for compulsory psychiatric care, forensic psychiatric care, the Migration Board's detention units, as well as special residential homes for young people and LVM (care of substance abusers (special provisions) act) homes run by the Swedish National Board of Institutional Care (SiS). Principal responsibility for the Opcat activities lies with the Ombudsman in charge of supervising correctional care. A plan for the Opcat activities is drawn up every six months by the Chief Parliamentary Ombudsman. The Parliamentary Ombudsmen are assisted by a special division, the NPM division, in the fulfilment of their tasks as NPM.

2.2 Development of Opcat activities

During the Parliamentary Ombudsmen's second year as national preventive mechanism, efforts were made to increase the efficiency of the inspection activities and to develop reporting about the treatment of detainees and the environment in which they are detained.

Individual inspection objects were selected partly according to the principle that Opcat activities should consider other locations than those that the Parliamentary Ombudsmen have recently inspected in the course of traditional supervision activities. Priority was further given to locations where detainees often have limited contact with the outside world and where the turnover of detainees is high, e.g. police cell blocks and remand prisons. Activities were coordinated with the inspections planned for each of the Parliamentary Ombudsmen's supervisory areas. Within traditional supervision activities, five inspections of prisons, three inspections of remand prisons and two inspections of forensic psychiatric care clinics were carried out over the year.

The aim of the inspections is to obtain various types of information relevant to the overall preventive activity that the Parliamentary Ombudsmen carry out within the framework of their remit. It is important for the Parliamentary Ombudsmen to consider the work of other supervisory bodies. Among the criteria applied by the Parliamentary Ombudsmen in determining which locations to inspect are, in addition to those mentioned above, how many detainees there are within a specific authority's activities, and if there are many or particularly interesting reports concerning the situation for detainees in a specific location. There may also be reason to consider information about conditions for detainees which have been reported in the media or which have emerged in the course of contacts with authorities or civil society. Inspection activities are not primarily about "fault searching". Instead they are characterised by being forward-looking, in order to strengthen the respect for detainees' human rights.

The elements and methodology of an "Opcat inspection" are always the same, irrespective of the type of institution concerned. This contributes to quality and credibility in both the execution and the reporting of activities. Interviews with detainees are a priority, and are conducted as private interviews.

Information obtained during an inspection regarding e.g. staffing and reception, material conditions, possibilities for contact with the outside world, information about rights, coercive measures, possibilities for spending time outdoors etc. are documented in a report presented to the Parliamentary Ombudsman concerned.

2.3 Inspections during the year

Over the year, the Parliamentary Ombudsmen carried out 35 inspections within the framework of Opcat activities (eleven of which in Supervisory area 2, nine in Area 3 and fifteen in Area 4). The number of inspections was greater than in the previous year. In total, 43 days were dedicated to the inspections. Inspections were mainly carried out during the daytime, with one police cell block inspected in the evening. The year began with inspections of the cell blocks in Norrtälje and Nacka, belonging to the Stockholm county police authority, and ended on the island of Gotland, where the psychiatric clinic, the police cell block and the Swedish Prison and Probation Service prison and remand prison were inspected in the same week.

In contrast with the previous year, in which the number of announced and unannounced inspections was about the same, inspections this year were mainly carried out following prior announcement. One lesson learned is that inspections done at a previously agreed time and based on diverse background material tend to function relatively well. In order to increase the credibility and efficiency of inspection activities, however, the number of unannounced inspections needs to increase. Such inspections provide a more realistic picture of the object of inspection and of any problems, and thereby contribute to promoting good and legally certain treatment of detainees. According to the European Committee for the Prevention of Torture (CPT), one of the most important elements of prison visits is that they be unannounced.

The composition of the visiting teams varied depending on the size and security level of the institution being visited. Some inspections were carried out together with personnel from the affected supervisory department.

2.4 Opcat inspections of the Prison and Probation Service

On instructions from Chief Parliamentary Ombudsman Fura, the NPM division inspected eight of the Prison and Probation Service's remand prisons and three of its prisons during the year. Following the inspection of the remand prison in Falun (reg. no. 475-2013), Chief Parliamentary Ombudsman Fura drew attention to the importance of ensuring that information about rights and obligations, and about rules and procedures for the remand prison, are provided to the detainees. She found it worrying that detainees at the remand prison had maintained that such information had not been given to them. A simple measure in order to ensure that correct information is provided to the detainees would be to give them the Prison and Probation Service brochure entitled "Information for detainees".

On inspection of the remand prison in Helsingborg (reg. no. 4850-2012) it was observed how “security searches” of female detainees were carried out by male personnel in connection with exercise walks. This prompted the Chief Parliamentary Ombudsman to point out that legislation did allow for such a procedure, but that the basis for “security searches” of detainees must be that it is carried out by personnel of the same sex as the detainee. She noted in this connection that the remand prison had stated that just under half of the prison officers it employed were women. In the opinion of the Chief Parliamentary Ombudsman, it would therefore be reasonable for the separate women’s section of the remand prison be staffed such that the presence of both female and male prison officers was always ensured. The Chief Parliamentary Ombudsman considered that the remand prison should strive to have procedures in place and staff available for “security searches” to be carried out in a dignified way for all detainees, irrespective of their sex. She further found reason to request a special investigation into the application of physical restraints on a detainee since it was not clear, among other things, whether a doctor had examined the detainee in connection with the measure being applied (reg. no. 1455-2013).

2.5 Opcat inspections of SiS special residential homes for young people and LVM homes, and of compulsory psychiatric care and forensic psychiatric care

Four LVM homes and two special residential homes for young people were inspected during the year. Two initiatives for action were taken as a result of observations made during the inspections. One of these concerns the issue of whether the LVM home in question routinely carries out such correspondence control as is specified in Section 35 of the Care of Abusers (Special Provisions) Act (1988:870; abbreviated LVM in Swedish) without formal decisions to that effect (reg. no. 2793-2013). The other concerns the issue of whether the procedures for placement of detainees at the same LVM home in certain cases amounted to the detainee being subject to solitary care under Section 34, second paragraph of LVM (reg. no. 1971-2013).

Three psychiatric wards were inspected during the year. Two of the inspections concerned patients in care under the Compulsory Psychiatric Care Act (1991:1128).

The inspection of a forensic psychiatric ward at the Löwenströmska Hospital prompted Parliamentary Ombudsman Wiklund to express various concerns, including over the limited opportunities for spending time outdoors offered to recently interned patients in particular. Parliamentary Ombudsman Wiklund underlined that the basis for compulsory and forensic psychiatric care should be that a patient is given the possibility of spending at least an hour outdoors every day.

2.6 Opcat inspections of police cell blocks and the Migration Board's detention units

Over the year a total of thirteen police cell blocks were inspected, as well as one special police vehicle for transporting detainees (known as a “Viktor bus”). During the period from October 2011 until June 2013, the Parliamentary Ombudsmen inspected 29 police cell blocks at fourteen of the country's police authorities. An inspection of the Migration Board's custodial facility in Åstorp was carried out together with personnel from the affected supervisory department.

The inspections of police cell blocks have prompted Chief Parliamentary Ombudsman Fura to take two initiatives for action.

One of these concerns the extent to which detainees in cell blocks are given the opportunity to spend time outdoors. Provisions regarding detainees' opportunities to spend time outdoors are included in Ch. 2, Section 7 of the Detention Act (2010:611). The provision specifies that a detainee must be given the opportunity of spending at least one hour a day outdoors, unless there are exceptional reasons against this. The Parliamentary Ombudsmen's inspections have indicated considerable differences in access to and design of exercise yards at different police authorities. It has further emerged from the inspections that most of the inspected police authorities do not have a procedure, or have an unsatisfactory procedure, for informing detainees about opportunities for spending time outdoors. The Parliamentary Ombudsmen have therefore requested that the National Police Board, after obtaining information from the police authorities, deliver an opinion on how the police ensures that detainees in cell blocks are provided the opportunity of spending time outdoors daily (reg. no. 2054-2013).

The other initiative for action concerns the issue of whether, when and how detainees in cell blocks are informed of their rights and of the purport of enforcement, see Section 2 of the Detention Ordinance (2010:2011). In this matter as well, the National Police Board has been requested to deliver an opinion, after obtaining information from the police authorities, on how the police ensures that detainees in cell blocks are informed of their rights and of other aspects of enforcement, and on how this is documented (reg. no. 2572-2013).

BILAGA 10

The Swedish Parliamentary Ombudsmen

Report for the period 1 July 2012 to 30 June 2013

1 General information and statistics

During the period covered by the report, the following have held office as Parliamentary Ombudsmen: Ms Elisabeth Fura (Chief Parliamentary Ombudsman), Mr Hans-Gunnar Axberger, Ms Lilian Wiklund, and Mr Lars Lindström. For a number of shorter periods the Deputy Ombudsmen Mr Hans Ragnemalm and Ms Cecilia Nordenfelt have dealt with and adjudicated on supervisory cases.

During the working year, 7,097 new cases were registered with the Ombudsmen; 6,872 of them were complaints (previous working year: 6,818, an increase of 55 (0,81%), and 93 were cases initiated by the Ombudsmen themselves as inspections or on the basis of observations made during inspections, newspaper reports or on other grounds. Another 130 cases concerned new legislation, where the Parliamentary Ombudsmen were given the opportunity to express their opinion on government bills etc.

7,068 cases were concluded during the period, an increase of 159 (2,3%); of which 6,836 involved complaints, 103 were cases initiated by the Ombudsmen themselves and 129 cases concerned new legislation. It should be noted that the schedules overleaf show cases concluded during the period, not all cases lodged.

This summary also comprises a full report of one of the cases dealt with by the Ombudsmen during the period.

Schedule of cases initiated by the Ombudsmen and concluded during the period 1 July 2012–30 June 2013

Activity concerned	Closed without final criticism	Admonitions or other criticism	Prosecutions	Total
Courts of law	0	9	0	9
Administrative courts	0	6	0	6
Public prosecutors	0	3	0	3
Custom services	0	1	0	1
Police authorities	15	6	0	21
Prison administration	10	14	0	24
Chief guardians	0	1	0	1
Social welfare	8	11	0	19
Medical care	0	4	0	4
Social insurance	1	5	0	6
Labour market auth.	0	1	0	1
Planning and building	0	3	0	3
The school system	0	1	0	1
Immigration, integration of immigrants	1	3	0	4
Total	35	68	0	103

Schedule of complaint cases during the period 1 Juli 2012–30 June 2013

Activity concerned	Dismissed without investigation	Referred to other agencies or state organs	No criticism after investigation	Admonitions or other criticism	Prosecutions or disciplinary proceedings	Preliminary criminal investigation. No prosecution	Guidelines for good administration	Corrections during the investigation	Total
Courts of law	155	1	185	15					356
Administrative courts	46		52	10					108
Public prosecutors	124		61	13					198
Police authorities	451	14	247	42					754
Custom services	5		9						14
Armed forces	12		4	2					18
Prison administration	582		348	119			1		1,050
Social welfare	715	5	323	69					1,112
Medical care	205	1	76	12					294
Social insurance	243		73	52					368
Labour market auth.	94		64	5					163
Planning and building	98		73	19					190
Enforcement	69		74	5					148
Municipal self-government	82		9	2					93
Communications	216		72	6					294
Taxation	120		38	8					166
Education	179	8	75	13					275
Culture	16		5						21
Chief guardians	19		36	5					60
Agriculture, environment, protection of animals	129		73	13					215
Immigration	94	1	101	16					212
County administrative boards, control of lotteries, serving of alcohol	25		8	1					34
Housing	5		1	1					7
Employment of civil servants etc.	65		5	2					72
Freedom of expression, access to public documents	188	3	103	83		1			378
Administration of parliamentary and foreign affairs; general elections	8		4						12
Miscellaneous	80		33	3					116
Complaints outside jurisdiction, complaints of obscure meaning	108								108
Total	4,133	33	2,152	516	0	1	1	0	6,836

2 Reports of one individual case

Criticism of the Government Offices for repeated disregard of the constitutional requirement that public documents must be provided without delay

(Reg. nos. 639-2012, 2463-2012, 2732-2012)

Summary of the adjudication: A number of similar complaints from journalists dealing with the failure of the Government Offices to reach decisions about their requests for the provision of public documents gave rise to a joint enquiry. This reveals shortcomings in the Government Offices' organisation, allocation of responsibilities and routines that have contributed to disregard of the stipulations of the Freedom of the Press Act on the provision of public documents without delay on repeated occasions.

The enquiry suggests that these are shortcomings that are fundamental in nature. The structure of the Government Offices is not adapted to the principle of public access nor to the changes in the organisation of the ministries that was implemented some time ago. It would therefore appear that applications that do not result in the immediate provision of the documents requested can end up in a no man's land and are circulated without it being possible to hold any official or minister to account for the long time taken to deal with them or for other shortcomings that encroach upon the right to insight guaranteed to individuals or the mass media by the constitution.

The view of the Government Offices appears to be that these routines are acceptable. For this reason the adjudication lays stress on the particular importance of respect for the right to public insight by the Government's own officials. Without it, there is a major risk that other public authorities will consider that they too need not comply strictly with the constitution, which in the long run would pose a threat to the principle of public access.

Background and enquiry

Introduction and organisation

Four separate complaints had been submitted to the Parliamentary Ombudsmen from journalists concerning applications to view transcripts from the Government Offices' administrative system, mainly its accounting system. These complaints raised similar issues and have therefore been dealt with together. One complaint was made by Kristoffer Örstadius, Dagens Nyheter, two by Ulla Danné, Nyhetsbolaget/TV 4-group and one by Richard Aschberg, Aftonbladet. The complaints of Örstadius and Danné are dealt with in this adjudication, while Aschberg's complaint, which also concerns other issues, is treated separately (cf. reg. no. 4506 2012).

An account of the complaints will be presented initially together with the response to them submitted by the Government Offices and the rest of the enquiry that the different complaints gave rise to. This will be followed by a presentation of the legal provisions and the statement from the Government

Offices about the organisational procedures that apply in cases of requests for documents.

The adjudication concludes with an appraisal of what has come to light. It begins with a section on the general issues that the enquiry has raised (routines in the Government Offices, the obligation to compile information from public documents and what the requirements are for accepting a delay in their release with reference to the need to assess their confidentiality status). An appraisal is then made of the way in which the individual cases in the complaints have been dealt with. Finally an overall adjudication is presented.

Case no. 1 (reg. no. 639-2012)

Kristoffer Örstadius, a reporter working for Dagens Nyheter, complained that on 30 November 2011 he requested documents from the Government Offices but that when he submitted his complaint – 30 January 2012 – he had still not received them, despite repeated reminders by both telephone and e-mail. The request he submitted read as follows.

I hereby request a list from the Prime Minister's Office's accounting system for internal and external entertainment.

I would like it to reveal at least the voucher numbers, names of companies/voucher descriptions, dates and amounts. Preferably also the public authorities incurring the expenditure/accountability codes/project codes.

Kristoffer Örstadius presented the following justification for his complaint to the Parliamentary Ombudsmen.

During the last year Dagens Nyheter has encountered unacceptable delays in response to requests to the Government Offices. In the spring of 2011 my colleague Jens Kärrman requested all the PR releases from all the ministries. It took the Ministry for Foreign Affairs, for example, more than three months to provide them. I also note that several of my fellow reporters feel that on the whole it is taking longer and longer to get documents from the Government Offices. In 2010 I checked the way in which all the government agencies dealt with the principle of public access by requesting an e-mail. The Government Offices failed to pass this test by claiming that the e-mail did not exist, even though they had responded to it.

My request for the provision of entertainment costs at the Prime Minister's Office did not involve the receipts themselves, merely a list of them. The accounting system has been designed to provide simple transcripts of this kind and it should not take more than a minute to produce them. As I did not request the receipts themselves, assessment of the confidentiality status of the information should not have taken much time. Here is a pointer to how long it has taken to deal with requests for similar documents from other public authorities:

- The Riksdag (all the entries in the accounts of the Parliamentary Committee for Electoral Review), 12 April 2011 – three hours
- National Agency for Education (all entries in the accounts for a three-month period), 29 December 2011 – 37 minutes
- SL, Stockholm Public Transport (entertainment), 1 September 2010 – one working day
- National Historical Museums (entertainment), 16 June 2011 – two working days

- Swedish Armed Forces (advertising, printing costs and PR), 1 April 2011 – seven working days
- Uppsala County Police Authority (entertainment), 14 January 2011 – one working day.

Authorities where the confidentiality status is high (Swedish Armed Forces and Uppsala County Police Authority) have, in other words, released files from their accounting systems relatively rapidly.

Monitoring the work of Sweden's highest executive authority – the government and its offices – is an important task for the media. For this reason I would like the Parliamentary Ombudsman to review how the Government Offices apply the principle of avoidance of delay – in both the cases I have referred to here and generally.

The Government Offices were asked to look into the complaint and submit a statement. Its response (from the Director-General for Legal Affairs in the Prime Minister's Office, Christina Weihe) stated that Kristoffer Örstadius had been contacted a few days after his request had been submitted and asked for clarification of the period for which he wanted the information. The Government Offices continued:

The Government Offices then appraised what possibilities existed for complying with Kristoffer Örstadius's request and began the work of compiling the information from its accounting system and assessing its confidentiality status pursuant to Section 2 of Chapter 15 of the Public Access to Information and Secrecy Act (2009:400). As the material was so extensive, appraisal of its confidentiality status was also time-consuming.

Two transcripts with the information requested were supplied to Kristoffer Örstadius on 14 February 2012. Some of the information in these documents was considered subject to confidentiality pursuant to Section 2 of Chapter 15 of the Public Access to Information and Secrecy Act and was therefore not disclosed.

The Government Offices concluded by offering the following appraisal.

It took just over two months to deal with the request from Kristoffer Örstadius for a list from the Prime Minister's Office's accounting system concerning internal and external entertainment [*the time spent was eleven weeks, Parliamentary Ombudsman's comment*]. The information requested could not be found in an official document that had already been drawn up but to be able to comply with his request the Government Offices produced two compilations for Kristoffer Örstadius. In order to assess the confidentiality status of the information in the compilations it was necessary to locate and go through a large number of the documents on which this information was based. Not until then could both documents be supplied, with some of the information redacted. This request therefore required a great amount of work in locating the documents and then assessing the confidentiality status of the information they contained.

In his comment on the statement from the Government Offices Kristoffer Örstadius included the following:

The Government Offices write that "the information requested could not be found in an official document that had already been drawn up" and the authority expresses itself in terms such as "to be able to comply with his request". The document is not as complicated as it sounds. This is an ordinary ledger for one account, information that every accounting system on the market can produce in a few seconds. In my complaint to the Par-

liamentary Ombudsmen I made it clear how other public authorities (including the Swedish Armed Forces where high confidentiality status applies) responded very rapidly.

In this case the Government Offices supplied me with seven pages, whose confidentiality status had therefore been assessed. If doing so takes more than two months, then I can only deplore the authority's inefficiency. In addition, only one or two letters had been redacted in only a few places.

I was provided with an additional four pages but in principle these only contained the date, "cost item" and amount. Here it cannot possibly have taken more than a few minutes to assess the confidentiality status, as no detailed information was included.

Supplementary information was requested from Louise Hallquist, Deputy Director and acting Administrative Director of the Prime Minister's Office. She stated that in order to provide the information requested by Kristoffer Örstadius a number of searches had to be made of the computer systems in two different ministries, which took some time to undertake. Producing the information requested involved routine measures, however. The main reason why it had taken such a long time to deal with the request was the comprehensive appraisal of the confidentiality status considered necessary before the information could be released.

Case no. 2 (reg. no. 2463-2012)

Ulla Danné, a reporter working for Nyhetsbolaget, complained that an e-mail she had sent to the Ministry of Justice on 28 February 2012 had included a request for telephone logs relating to the Minister of Justice, a state secretary and two directors. On 8 March 2012 she was told that her request to be provided with the telephone logs had been sent on to the Administrative Department. At the beginning of April she was notified that her request had been forwarded from there to the Prime Minister's Office. When she contacted the Prime Minister's Office she was informed by the official dealing with the request that he did not know when a decision was going to be made or if it was to be made by an official or in Cabinet. When she submitted her complaint to the Parliamentary Ombudsmen – 24 April 2012 – she had still not received what she had requested. Ulla Danné summed up by saying:

Two months have now elapsed since I requested a public document and still no decision can be expected in the near future. This is a flagrant breach of the stipulations in the Freedom of the Press Act that public documents are to be provided as quickly as possible. I consider it particularly grave that it is the Government itself that is contravening the constitution, not least in view of the fact that no appeal may be made against its decisions.

The Government Offices were asked to look into the complaint and submit a statement. The Government Offices (Christina Weihe) stated the following.

Ulla Danné contacted the Government Offices by e-mail late in the afternoon of 28 February 2012 requesting a journal of the incoming and outgoing mail from the head of the prosecution unit, the head of the unit for criminal prosecution and international judicial cooperation, Magnus Graner, State Secretary, and also Beatrice Ask, the Minister of Justice, for the

period from 15 April 2010 until 31 December 2010 as well as for the period from 1 November 2011 until the present. Her request also included the following: "I would also like to request telephone logs, landlines as well as mobile phones, for the same individuals for the corresponding periods [...] In addition I would like to request desk diary notes for the same individuals during the periods listed above".

On 8 March 2012 Ulla Danné was informed by the Ministry of Justice that the lists from the Ministry's journal she had requested had been made available for viewing in the premises of the Government Offices. Her request for telephone logs had been forwarded to the Administrative Department as they were not processed by the Ministry of Justice. There were no other public documents that were covered by her request.

What remained outstanding from Ulla Danné's request after 8 March 2012 consisted of telephone logs for the head of the prosecution unit, the head of the unit for criminal prosecution and international judicial cooperation, Magnus Graner, State Secretary, and also Beatrice Ask, the Minister of Justice. These were to be provided by the Administrative Department, which manages the technological system, and by the Prime Minister's Office.

Assessing the confidentiality status of these logs was complicated. The Government issued a decision without any prior official ruling. This decision, dated 3 May 2012, was to reject the request as the information in the telephone logs in the keeping of the Government Offices was subject to secrecy pursuant to Section 2 of Chapter 15 of the Public Access to Information and Secrecy Act (2009:400).

The Government Offices concluded with the following assessment of the way in which the request for disclosure of the telephone logs had been dealt with.

[...] with regard to this aspect of the request, two months elapsed between its receipt and the Government's decision on the matter. The request involved a number of individuals both in and close to Government itself, all of them with different areas of responsibility, and appraisal of the confidentiality status involved was not uncomplicated.

The Government's decision to reject the request was attached to the response.

Ulla Danné's comment on the statement from the Government Offices included the following:

The basic material for the telephone lists was produced relatively quickly – if the context is taken into account. The Government Offices persist in maintaining that it was appraisal of its confidentiality status that was so extensive and time consuming. My impression is that it was not appraisal of the confidentiality status that was protracted but that in fact two months were spent trying to avoid coming to a decision, which was not reached until a complaint was submitted to the Parliamentary Ombudsmen. In other words, it was not complying with my request that took so long but the fact that nothing was done about it and it was shuttled round to various officials who had no mandate to assess the issue or even to tell me when a decision could be expected. For the Government Offices the decision involved a matter of principle. It did not review each telephone number separately, which would have explained the delay.

Case no. 3 (reg. no. 2732-2012)

Ulla Danné also complained that on 29 March 2012 she requested lists of transactions in a number of accounts in the Government Offices' accounting system. This request concerned all the ministries. When she submitted her

complaint – 2 May 2012 – she had still not received what she had requested. She repeated what she had said when summing up the first case. The e-mail correspondence between Ulla Danné and the Government Offices revealed that on 13 April the Government Offices contacted her to ask what period the request concerned. In addition, it transpired that on 19 April the Administrative Department informed Ulla Danné that responses were still awaited from two ministries and that she would be contacted when there was any material to provide.

Information was requested orally from the Government Offices through Stefan Arnesson, Desk Officer in the Administrative Department, who provided the following information. The staff working with financial and salary routines in the Administrative Department are often listed as the case officer dealing with requests for the provision of information from the Government Offices' accounting system. As a rule the case officers can produce what has been requested rapidly. The case officers have no influence over when the information will be made available, however, as confidentiality status is appraised by the ministry concerned. When a ministry has made its confidentiality appraisal, the documents are returned to the case officer, who forwards them to the Administrative Department's information section, which in its turn provides the documents to the individual who has requested them. Stefan Arnesson stated that the day after he had been registered as the case officer dealing with Ulla Danné's request he sent the transaction lists she had asked for to the different ministries so that they could review their confidentiality status. On 16 May 2012 the request was with the Prime Minister's Office, which had still not completed its confidentiality appraisal.

The Government Offices were therefore requested to look into the matter and make a statement about the complaint. The Government Offices (Christina Weihe) stated the following.

Ulla Danné contacted the Administrative Department on 29 March 2012 to request disclosure of lists of transaction in a number of accounts in the Government Offices' accounting system. The lists requested by Ulla Danné were to include information about the date, voucher number, supplier and cost centre. On 13 April the Government Offices contacted Ulla Danné to ask for clarification about what precise periods she was referring to. The lists of transactions that were produced by the financial administration system were extensive. As this material was so comprehensive, confidentiality appraisal was also time-consuming. And as the transactions listed involved all of the ministries as well as the Prime Minister's Office, the Government Offices decided that the documents should be provided collectively in order to enable uniform appraisal of their confidentiality status.

The lists of transactions were supplied to Ulla Danné on 13 June 2012. Some of the information was considered to be subject to confidentiality as laid down in Section 2 of Chapter 15 of the Public Access to Information and Secrecy Act and was therefore redacted.

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It took just over two months to deal with Ulla Danné's request for the disclosure of lists of transactions from the time it was submitted until the Government Offices provided the documents [*the time taken was eleven*

weeks, Parliamentary Ombudsman's comment]. The request concerned a number of accounts and involved all of the ministries as well as the Prime Minister's Office.

The material contained information which may in itself be innocuous but could, taken as a whole, provide a picture of the routines in place. Information of this kind could be used in its entirety to map how central government functions. Disclosure of this information could jeopardise national security. In consequence, this request required comprehensive and time consuming appraisal of the confidentiality status of the information.

Ulla Danné commented on the statement by the Government Offices. She included the following:

In this case too I would like to stress that in my contacts with the Government Offices I have never been given the impression that the confidentiality status of each individual entry had to be appraised but that issues of principle were involved when it came to what could be provided. Note in particular that it took more than two weeks from receipt of my request for the Government Offices to contact me for clarification of the periods involved and that was not until I had asked how much progress had been made. The actual decision to provide most of the entries in these accounts took two and half months and was only made after my complaint had been submitted to the Parliamentary Ombudsmen.

In other contacts with the Ministry for Foreign Affairs concerning documents that should not normally be classified, such as lists of visitors and guests invited to embassies, I have received the response that confidentiality in relation to foreign affairs applies. Not until I have initiated a discussion of the legal provisions applying to this specific confidentiality have the documents been provided.

My impression, after having been in contact with the Government Offices in a number of other cases, is that the actual routines that apply to the provision of what could normally be considered public documents are so hierarchical that the officials dare not provide documents that are incontrovertibly covered by the principle of public access.

On 27 March 2013 the Parliamentary Ombudsman *Hans-Gunnar Axberger* issued the following adjudication.

Legal provisions

General provisions on making documents available etc.

The basic regulations

The basic regulations on the public nature of official documents can be found in Chapter 2 of the Freedom of the Press Act. These stipulate that every individual is entitled to free access to a document that is in the keeping of a public authority, if it has been received, prepared or drawn up by the authority, provided that it is not subject to confidentiality (the principle of public access).

The term document refers not only to conventional documents but also to records that can be read, listened to or otherwise comprehended by means of technical aids. A document of this kind is considered to be in the keeping of the authority, if the authority has access to it using its own technological systems.

Potential documents

A compilation of information taken from material recorded for automatic processing is considered to be in the keeping of an authority if it can be produced using routine means. This kind of “potential document” is also subject to the principle of public access. Regulations about entitlement to the provision of public documents do not apply, however, to compilations of a more complicated nature. This means that a public authority is not required, according to these regulations, to compile information that can be found in its databases, if this cannot be undertaken with a minimum of effort and no great cost. Special restrictions apply to the compilation of personal information about individuals.

Avoidance of delay

An official document that may be made available is to be provided immediately or as soon as is possible. This is to take place at the authority and free of charge. Those requesting an official document are also entitled to a copy of the document for a fixed fee. A request of this kind is to be dealt with without delay.

Information about a request for a document should normally be given on the day on which the request is submitted. A delay of one or a few days is, however, acceptable if a ruling is required about whether the document may be provided or not. Some additional delay can sometimes be inevitable if the request concerns or requires analysis of extensive material. In such cases it may often be appropriate to provide information about what can be supplied in stages.

General requirements concerning the management of public documents by public authorities

Chapter 4 of the Public Access to Information and Secrecy Act contains provisions on general measures to make it easier to search for official documents.

Section 1 lays down that a public authority must take entitlement to the provision of official documents into account when organising the management of these documents and in other procedures relating to them. The authority must in particular ensure that official documents can be provided with the avoidance of delay stipulated in the Freedom of the Press Act and that it is possible for individuals to locate them.

According to Section 2, each public authority must draw up descriptions with information about how it is organised, for instance, in order to make it easier to search for official documents.

Chapter 5 contains regulations on the requirement for public authorities to maintain a register of official documents.

Case officers and public authority appraisals

Section 3 of Chapter 6 of the Public Access to Information and Secrecy Act lays down that it is the officials at the public authorities who are responsible

for the management of a document that must first assess whether the document may be provided or not. In doubtful cases officials are to arrange for the authority to make this assessment (public authority appraisal), if this can take place without unnecessary delay. If an official decides not to provide the document or part of it, the individual making the request is to be notified of the possibility of requesting appraisal by the authority. This notification must make it clear that the applicant must request and receive a written refusal from the authority before any appeal can be made.

Neither the Freedom of the Press Act nor the Public Access to Information and Secrecy Act contain any provisions about what form public authority appraisal is to take. This means that each public authority, or rather its senior management, is required to ensure that there is a procedure to determine which official or officials are to be empowered to decide on the authority's behalf and how cases of this kind are to be dealt with. What a procedure like this will look like will, of course, vary considerably, depending on the size of the authority, how often issues of this kind arise, etc.

Appeal

If a public authority appraisal results in a refusal to provide the entire document or parts of it, its decision can be appealed against. This is made clear by Article 15 of Chapter 2 of the Freedom of the Press Act, which also says that appeal against the decision of a minister must be addressed to the Government. Section 7 of Chapter 6 of the Public Access to Information and Secrecy Act stipulates that no appeal may be made against a decision by the Government.

Information requirements etc.

In addition to the regulations in the Freedom of the Press Act on the provision of official documents, the Public Access to Information and Secrecy Act also contains provisions on the information that public authorities are required to provide for the public. Section 4 of Chapter 6 of this act stipulates that if requested by an individual, a public authority must supply information from an official document unless the information is subject to confidentiality or doing so would unduly interfere with its operations. No particular rapidity is required in this context.

Section 4 of the Administrative Procedures Act further stipulates that a public authority must, to the extent reasonable in view of the nature of the request, the help needed by the individual and its own operations, provide individuals with information, guidance, advice and other assistance of this kind on issues that concern the area in which it operates.

These general regulations can be cited to confirm that an authority should assist individuals by making compilations of the kind that do not constitute potential documents. There is, however, no general obligation to do so and the authorities must judge from case to case what may be required of them. As has been shown, there is no stipulation on avoidance of delay corresponding to that laid down in the Freedom of the Press Act.

Regulations about the provision of documents from the Government Offices

The Government Offices are a public authority whose task is to prepare issues for Cabinet meetings and otherwise assist the Government and ministers in the work that they do.

In other words, as it is a public authority the same rules on the provision of documents apply in principle for the Government Offices as for all other public authorities, i.e. the ones described above. It is therefore incumbent on the Government Offices, ultimately their senior management, to ensure that there is an efficient organisation to deal with and decide on issues concerning the provision of documents.

The Ordinance with Instructions for the Government Offices (1996:1515) distinguishes between Government business, on which the Cabinet has to make decisions, and Government Offices business, where the Government Offices themselves as a public authority are entitled to decide. Provision of public documents is a Government Offices concern. Section 18 of the Instructions for the Government Offices lays down that a request for the provision of documents is to be reviewed in the ministry in whose keeping they are, unless otherwise prescribed. (The Prime Minister's Office and the Administrative Department are placed on the same footing as the ministries, see Section 2.) This regulation also states that decisions on the provision of documents in doubtful cases are to be made by a minister. The same applies if the individual applying for the documents so requests. Requests may also be forwarded to the Government for its appraisal. If this occurs, the request shifts from having been a Government Offices concern to become Government business and therefore other regulations in the instructions about how it is to be dealt with apply.

In the case of Government business, Section 13 lays down that responsibility for matters concerning the operational areas of several ministries lies with the ministry to which they mainly pertain. According to Section 15 Government business that falls within the ambit of the operations of several ministries is to be dealt with in consultation with the other ministers concerned. This second provision means that what is known as "joint consideration" is obligatory for Government business that affect several ministries. Requiring joint consideration is intended to ensure that the principles of collective Cabinet decisions and responsibility are given genuine substance and that all the ministers are in fact enabled to exert influence on the Government issues that their responsibilities justify. More detailed guidelines on joint consideration can be found in the memorandum from the Prime Minister's Office designated PM 2012:1, *Forms of Consultation in the Government Offices*.

No regulation about how cases are to be dealt with corresponding to the one in Section 15 that applies to Government business exists for the procedures of the Government Offices. This means that there is no stipulation that a request for the provision of documents that affect several ministries has to be dealt with jointly other than when such a request is forwarded to the Government for its appraisal.

The Government Offices' routines for dealing with requests

The Government Offices were asked to account in particular for their organisation and routines to deal with requests for access to public documents. The Government Offices (Christina Weihe) submitted the following response.

The Government Offices comprise the Prime Minister's Office, the eleven specialist ministries and the Administrative Department. Each ministry is headed by one or more ministers, of whom one is the minister-in-charge. Immediately subordinate to the ministers-in-charge there are usually three kinds of officials: state secretaries, directors-general of administrative affairs and directors-general for legal affairs. The Permanent Secretary of the Administrative Department is responsible for joint administrative concerns and is also head of the Administrative Department.

The way in which a request for access to public documents from the Government Offices is dealt with is subject to the provisions of the Freedom of the Press Act and the Ordinance with Instructions for the Government Offices (1996:1515). Section 18 of the Ordinance with Instructions for the Government Offices lays down that such a request is to be appraised within the ministry at which the document is kept. In doubtful cases or if the applicant so requests, the question of provision is to be appraised by one of the ministers within the ministry. The request may also be forwarded to the Government for its appraisal.

If a case concerns several ministries, Section 13 of the Ordinance with Instructions for the Government Offices lays down that the ministry to which the case mainly pertains is to deal with a request for the provision of a public document. According to Section 15 of the Ordinance with Instructions for the Government Offices on joint consideration, Government business that falls within the ambit of the operations of several ministries is to be dealt with in consultation with the other ministers concerned. Consultation may also be required in cases which can be decided by the Government Offices. Consultation must be initiated as soon as is practically possible. Consultation between the entities and ministries concerned when it comes to such requests is undertaken in the same way as when dealing with other cases and takes the requirement to avoid delay into account. According to the routines that have been developed and now apply, decisions are made case by case about the coordination and treatment of a request for the provision of documents that concern more than one ministry.

The operations of the Government Offices are characterised by transparency and public access. All of the ministries have a registrar who helps the public and journalists to acquire insight and access to public records. The Government Offices also offers archival support for those who wish to view sections of the journal and after searching through it request documents.

The impression of the Government Offices is that the number of requests for documents or the provision of information in other ways has risen considerably in recent years. Work has begun on reviewing the routines for dealing with cases and enquiries of this kind and they may be changed as a result of this development. The necessity and possibility of organisational changes are also being considered.

Appraisal

General observations on the Government Offices' routines

If the principle of public access with all its regulations about access to official documents is to have any effect, the public authorities have to adapt their organisation to provide the insight that individuals and the mass media are entitled to. This requires, for instance, the existence of officials who are responsible for managing the documents of various kinds in the keeping of the authorities and also explicit and distinct procedures for official appraisal by the authority of the kind described above and which individuals are entitled to request when the documents applied for are not provided. In addition, the procedures adopted must enable compliance with the constitutional requirement of avoidance of delay in dealing with such requests, including the long established praxis pertaining to them.

As the Government Offices are a public authority, the main rule that applies can be found in Section 18 of their instructions, which stipulates that decisions on issues relating to the provision of documents are to be made by the ministries or their counterparts in which the documents requested are kept. No normal procedure is stipulated, nor which official or officials are to make the decisions. The responses from the Government Offices have cast no further light on the question of what routines apply. Judging from what has been stated, procedures seem to have been devised ad hoc, without adequate support from fixed routines and principles. The complaints dealt with here and the material submitted by the Government Offices suggest that the authority's organisation has not been adapted to the requirements that stem from the provisions in the Freedom of the Press Act and the Public Access to Information and Secrecy Act on access to public documents.

It seems, furthermore, that joint consideration, which pursuant to Section 15 of the Instructions for the Government Offices is to take place where Government business is concerned, also applies in connection with the provision of documents. An inspection undertaken by the Parliamentary Committee on the Constitution (see 2010/11:KU10, p. 29) would seem to confirm this. As can be seen from the account of the legal provisions, such joint consideration is intended to ensure that the principles of collective Government decisions and responsibility are given genuine substance and that all ministers are in fact enabled to exert the influence on Government business that their responsibilities justify. There can be no question of joint decisions and responsibility of this kind where issues relating to the provision of documents are concerned, unless the case has been forwarded to the Government for its appraisal. Joint consideration is, moreover, designed to guarantee complete and thorough analysis of an issue and is completed when all concerned are in agreement (see Prime Minister's Office's memorandum PM 2012:1, p. 10 f.). This naturally prolongs the time devoted to such issues. A procedure of this kind is not compatible with the principle of public access, where the basic regulation is that documents are to be provided immediately by the officials responsible for them. Only in exceptional cases, therefore, when time is needed to be able to carry out a satisfactory appraisal of confidentiality status,

should this kind of joint review be made of a request for public documents. The methods adopted in such a joint review should then enable the avoidance of delay stipulated in the Freedom of the Press Act.

The Committee on Electronic Public Access, which reviewed the appraisal of questions concerning the provision of public documents in the Government Offices a few years ago, pointed out that the regulations were still based on the premise that the Ministries were authorities in their own right, i.e. on the system that applied before the extensive restructuring that took place in 1997. The committee's analysis demonstrated a number of areas where there was lack of clarity in this respect (see SOU 2009:5, chapter 6).

The failure to adapt the organisation and regulations to the demands deriving from the principle of public access, as well as to the changes in the structure of the ministries implemented no short time ago, has probably, judging from the complaints that have been reviewed here, had an impact on the efficiency with which they have been processed. It appears that an application that cannot result in the immediate provision of the documents requested can easily end up being circulated in a no-man's land where no official or minister can be held accountable for any delay in dealing with it or for other shortcoming that obstruct the insight to which individuals or the mass media are entitled to.

The obligation to compile information from public documents

The complaints reviewed here have all concerned the requests of journalists to be provided with documents that consist of compilations from the Government Offices' administrative system. A request of this kind requires a public authority to determine whether it relates to a document as laid down in the provisions of the Freedom of the Press Act, with the avoidance of delay this stipulates, or if instead it concerns a compilation that these provisions do not require the authority to provide, so that the stipulation about avoidance of delay does not apply either (see for instance the Parliamentary Ombudsmen's adjudications 6926 in 2010 and 7232 in 2010, in which it was not considered that the provisions of Chapter 2 of the Freedom of the Press Act required to the Government Offices to compile the information requested). In order to decide which regulations are to apply, knowledge is required about the structure of the administrative system and the possibilities it provides to produce documents.

It is, however, clear that the three complaints examined here all concern information that could have been compiled from the Government Offices' administrative system using routine measures. The requests have therefore been for potential documents, which are covered by the principle of public access laid down in Chapter 2 of the Freedom of the Press Act, in other words they concerned public documents.

In particular where the complaint of Kristoffer Örstadius is concerned, it seems from the statement submitted by the Government Offices unclear how his request was dealt with. Against this background I would like to underline how important it is for a public authority, in this case the Government Of-

fices, to decide immediately whether a request is for the provision of a public document or not, as well as to inform the applicant as soon as possible about what decision has been reached. It is particularly important for notification of this kind to be provided when it is clear that the applicant assumes that the request is covered by the provisions of the Freedom of the Press Act while at the same time the authority has a different opinion.

Delay caused by appraisal of confidentiality status

The excuse offered by the Government Offices for the length of time taken to deal with all of the cases examined here is that time-consuming appraisal of confidentiality status was required.

From the point of view of the Parliamentary Ombudsmen, the reference by a public authority to the need to appraise confidentiality status should be accepted if it seems reasonable: in principle the task of the Parliamentary Ombudsmen does not include assessment of any specific appraisal of confidentiality status. A public authority that does not feel it can provide a document straight away because of the required appraisal of confidentiality status must, however, to avoid being criticised for failure to avoid delay, be able to demonstrate in a reasonably concrete manner that a need of this kind arose in the specific case. In other words it is not enough to assert flatly that one secrecy provision or another had to be taken into account. What has been stated by the Government Offices in this respect on the complaints under review has been terse, abstract and relatively unconvincing.

Moreover, the same constitutional provisions apply to the appraisal of confidentiality status as for the treatment of requests for documents in other respects, which means that the task takes priority over routine operations. Appraisal of confidentiality status may not therefore delay the provision of documents for longer than is justified by the process itself. The length of time involved may in itself be dependent on the access of the authority concerned to expertise and resources of other kinds. In this respect, however, in principle the Government Offices can be expected to act more rapidly than most other public authorities.

Adjudication on the individual complaints

Case no. 1: Kristoffer Örstadius's complaint

Kristoffer Örstadius requested information from the Prime Minister's Office's accounting system. This concerned potential documents that are subject to the principle of public access and the avoidance of delay required.

The documents provided consisted of two lists, one of seven pages and one of four. The first list dealt with internal and external entertainment and the second out-of-pocket expenditure. The first document listed voucher numbers, voucher dates, periods, account codes, cost centres, amounts and brief descriptions detailing the transaction, such as "Foreign Office, lunch for the committee 7 October 2009" and the suppliers. The second contained similar but fewer details and lacked individual descriptions of the transactions.

After his complaint to the Parliamentary Ombudsmen, Kristoffer Örstadius received the documents – with some confidential information redacted – about eleven weeks after he had requested them. In response the Government Offices claim that the long delay was due to the fact that it took some time to produce the information, that appraisal of its confidentiality status was time consuming as the material was so comprehensive and analysis was required of a large number of the documents on which the information was based.

The documents requested appear, as Kristoffer Örstadius pointed out, to correspond to a normal printout from a ledger in the Government Offices' accounting system and only comprised a limited amount of the information it contained. It must have been possible to produce the documents rapidly and simply. The Government Offices have asserted that some of the information was subject to defence secrecy pursuant to Section 2 of Chapter 15 of the Public Access to Information and Secrecy Act, without, however, going into any more detail. The Government Offices have further stated that appraisal of the confidentiality status has required analysis of the material on which the information was based but not why this was necessary. Nor have the Government Offices otherwise provided any more detailed information about the appraisal of the confidentiality status that took place.

From the sparse information provided by the Government Offices about what the appraisal of confidentiality status involved and in view of the information that was in fact provided, it is not possible to come to any other conclusion than that it should have been possible to undertake the appraisal in one or two working days and that dealing with the request in its entirety should not have needed to take very much longer than that. Irrespective of the true state of affairs, the eleven weeks that Kristoffer Örstadius had to wait appears to have more than exceeded the time frame within which a request of this kind should have been complied with.

Case no. 2: Ulla Danné's first complaint

Ulla Danné's first request concerned what are called 'telephone logs', i.e. information on incoming and outgoing calls etc. from the desk phones of certain officials. These were potential documents, which are subject to the principle of public access and the avoidance of delay.

Ulla Danné's request, which prompted special consideration, ended up being dealt with as Government business and was rejected after just over two months with reference to confidentiality. Decisions by the Government are not subject to the supervision of the Parliamentary Ombudsmen, which in this case is restricted to the way in which the case was handled by the Government Offices while it still remained their concern before being forwarded to the Government for its appraisal.

Forwarding a request for the provision of documents to the Government means that responsibility for dealing with it in accordance with the provisions in the constitution and the Public Access to Information and Secrecy Act is shifted from one level to another. It is therefore important for it to be made clear that such a transfer has taken place as well as when it did so. This trans-

fer also replaces the decision that would otherwise have to be made by an official. It should therefore take place within the same time frame (see JO 2009/10, p. 483 [p. 512]). This means that it was incumbent on the Government Offices either to decide rapidly if the request for the documents could be granted or, in compliance with the same requirement to avoid delay, to submit the request to the Government for its appraisal.

Ulla Danné made her first request on 28 February 2012. The Government Offices have not stated when it was forwarded to the Government. This cannot, however, have been before the case was sent on to the Prime Minister's Office some time between 8 March and beginning of April. Information in the complaint that has not been contested by the Government Offices suggests that at the time of the complaint to the Parliamentary Ombudsmen on 24 April the case had still not been transferred. This means that at any rate it took the Government Offices almost two months to determine that Ulla Danné's request should be treated as Government business.

In the statement submitted by the Government Offices nothing is said about the considerations that led to the transfer but it is merely asserted that the Government issued its decision without any preceding decision by an official, and also that the time taken to deal with the request as a whole was because appraisal of the confidentiality status was not uncomplicated. Ulla Danné has argued that it was not appraisal of the confidentiality status that took time but that the delay was due instead to the fact that her request was shifted from one official to another who lacked any mandate to make a decision.

Producing the telephone logs requested cannot have taken more than a few days. It must therefore have been clear relatively early that the request was of the kind that might need to be forwarded to the Government for its appraisal. Section 18 of the Instructions for the Government Offices stipulates that it is complex cases that can be transferred in this way, so it is not enough merely to state that this is what happened. A decision on how to respond to Ulla Danné's request could, in this light, have been made in much less time than the two months or so it seems to have required.

One shortcoming in the way Ulla Danné's request was dealt with is that it is not clear which official in the organisation was responsible for it. It appears to be the Administrative Department that maintains the Government Offices' telephone logs. According to the instructions for the Government Offices, therefore, it is there that the request should have been dealt with. It obviously spent nine days in the Ministry of Justice – which in itself is already a delay that is incompatible with the regulations – before it was transferred to the Administrative Department. When and why the request was later sent to the Prime Minister's Office has not been explained. The Prime Minister's Office then finally – at some date that is not precisely known – forwarded the request to the Government for its appraisal. These twists and turns illustrate the lack of clarity, not to say confusion, that is depicted above: it is obvious that this contributed to the unacceptably long time taken to deal with the request.

Case no. 3: Ulla Danné's second complaint

Ulla Danné's second complaint concerned lists of transactions from the Government Offices' accounts. This also involved potential documents that are subject to the principle of public access and avoidance of delay. After she had complained to the Parliamentary Ombudsmen, Ulla Danné received the material she had requested – apart from information that had been declared confidential – about eleven weeks after submitting her request.

Here the Government Offices have stated that the delay was because the list of transactions was extensive and therefore appraisal of their confidentiality status was time-consuming. With regard to the appraisal of confidentiality, the Government Offices added that the request concerned items of information that might in themselves be innocuous but could, taken as a whole, enable the routines in force to be mapped to provide insight into how central government functioned. Disclosure could therefore be assumed to jeopardise the security of the realm.

I see no reason to question the Government Offices' assessment of the need for appraisal of confidentiality status. The way in which this was undertaken seems, in the light of the current regulations on the provision of documents, both unstructured and rigid. The enquiry reveals that once the lists of transactions had been produced straight away by an official in the Administrative Department, they were circulated in a way destined to delay rather than hasten the process. To begin with they were sent to all the ministries, which in certain cases did not respond for several weeks. It was not until some time between 19 April and 16 May that all the ministries had sent their responses to the Administrative Department, which in its turn forwarded the material to the Prime Minister's Office. There a new, overall, appraisal of confidentiality status was undertaken, which seems to have taken about another month, after which the material considered to be public was provided on 13 June 2012. It is as clear as daylight that this procedure was not characterised by an effort to respond to Ulla Danné's request for insight without delay.

It appears to be unclear, just as it was in the case of Ulla Danné's request for the telephone logs, who was responsible for the shortcomings in the way this request was dealt with.

Conclusion

The way in which the Government Offices dealt with the requests for official documents from Kristoffer Örstadius and Ulla Danné involved gross disregard of the provisions on the avoidance of delay in the Freedom of the Press Act. Judging from what has been disclosed and by the Government Offices' own description, organisational shortcomings as well as unclear chains of responsibility and routines have contributed to the failure to comply with the constitutional provisions. Similar observations have been made in previous scrutinies.

From the point of view of the Parliamentary Ombudsmen, it is unusual for obvious shortcomings in the way in which a public authority deals with issues relating to the principle of public access to come to light without the authority

acknowledging and deploring its failings. In the complaints reviewed here the Government Offices seem to think that the procedures were normal and acceptable. For this reason I would like to conclude by stressing that it is particularly important for the Government's own officials to respect the entitlement to insight that the public enjoy. Failure to do so could lead to the risk that other public authorities will consider that they are not required to comply punctiliously with constitutional provisions either, which in the long run would be a threat to the principle of public access.

As has been made clear, it is incumbent upon the Government Offices and ultimately their senior officials, to ensure that there are effective procedures for issues relating to requests for documents and where decisions about them are to be made. The Parliamentary Ombudsmen's supervision does not apply to the Government and the individual ministers, who are instead monitored by the Parliamentary Committee on the Constitution, to which a copy of this adjudication has been forwarded.