

# Guide for processing of personal data in connection with automatic metering systems within the energy sector

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## *Introduction*

On 2 July 2010 the Norwegian Water Resources and Energy Directorate (NVE) sent a letter to all grid companies in which the Directorate informed about the work on AMS (Advanced Metering and Control Systems). In the letter, the Directorate addressed the fact that grid companies have an independent responsibility to familiarise themselves with and abide by all provisions which impact on the introduction of AMS.

Upon introducing energy meters which will register the energy consumption of the subscribers in detail, several provisions of the Personal Data Act may become applicable. An important principle in the above legislation is to limit the gathering of data to what is absolutely necessary for the purpose of the operations.

In this guide, the Norwegian Data Inspectorate will present the requirements stipulated in the Personal Data Act regarding use of personal data, as well as provide advice on how these requirements may be complied with in practice in connection with AMS.

As a point of departure, data on the consumption of power is linked to a specific address, not a person. In those cases where the meter is linked to an individual (for example a private subscriber), the Inspectorate assumes that information regarding the consumption of power will be linked to this person. Thus, the Norwegian Data Inspectorate will assume that personal data is processed in connection with AMS, and that the Act is applicable.

It is primarily the subscriber who is to be considered the data subject within the context of the Personal Data Act<sup>1</sup>. However, in certain instances persons other than the subscriber may be regarded as the data subject, for example in connection with a lease arrangement. Whether any subjects other than the subscriber have rights as data subjects must therefore be evaluated on a case-by-case basis.

## *Responsibilities*

The Norwegian Data Inspectorate assumes that **the grid company**, represented by the senior management, shall be regarded as the controller for processing of personal data in connection with AMS<sup>2</sup>.

Thus, it is the duty of the grid company to ensure compliance with the provisions of the Personal Data Act. When the controller responsibility is assigned to an enterprise, the senior management of this enterprise will normally be responsible.

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<sup>1</sup> cf. Section 2 No. 6 of the Personal Data Act

<sup>2</sup> cf. Section 2 No. 4 of the Personal Data Act

If the grid company employs a subcontractor to process personal data on behalf of the company, said subcontractor will be considered a **processor**. The grid company will still be responsible for the processing, and it will be obliged to enter into a written agreement with the subcontractor to regulate his processing of personal data<sup>3</sup>.

The Norwegian Data Inspectorate has prepared a sample data processor agreement, which is available at [www.datatilsynet.no/databehandler](http://www.datatilsynet.no/databehandler).

#### *Purpose of processing*

According to NVE, it is envisioned that AMS data on power consumption will be processed for various different purposes, such as invoicing, obtaining management data, etc.

The Norwegian Data Inspectorate cannot see that there are any processing purposes other than invoicing which render it necessary to process identifiable personal data. Any other or new purposes, such as supplemental services, must be evaluated on a case-by-case basis. As of now, only processing of data in connection with invoicing of power consumption is addressed in this industry standard.

#### *Legal basis for processing – obligation to provide information*

It is not permissible to process personal data without a legal basis for such processing. Examples of legal basis include statutory authority and consent from the data subject<sup>4</sup>.

As regards AMS, the Norwegian Data Inspectorate assumes that the grid companies will process information for invoicing purposes pursuant to a **subscription agreement**<sup>5</sup>. This means that the subscriber must receive **information** on the processing of personal data which will render him or her able to understand the consequences of entering into the contract in terms of protection of privacy<sup>6</sup>. This includes providing the subscriber with information on which data will be processed and the purpose behind the processing of data, as well as information on whether the data will be made available to others and if so, who will be the recipient.

#### *Which data may be processed by the grid company?*

According to the Personal Data Act, the grid company may only process such personal data on power consumption which is necessary and relevant to determine the correct price for the delivery of power. Within this context, it will be of significance which price agreement the individual subscriber has entered into with his or her grid company. If it is a fixed price agreement, it will be hard to maintain that it will be necessary to process large amounts of data regarding the current power consumption for invoicing purposes. This entails, for example, that the meter reading interval must be adjusted based on the agreement. The customer will also be entitled to information on the meter frequency and the grounds for this in accordance with the previous paragraph.

#### *Other obligations for the grid company*

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<sup>3</sup> cf. Section 15 of the Personal Data Act

<sup>4</sup> person who the personal data can be linked to,

<sup>5</sup> cf. Section 8, literae a of the Personal Data Act

<sup>6</sup> cf. Sections 19 et seq of the Personal Data Act

## 1 *Data security*

The grid company and any processors shall by means of planned, systematic measures ensure satisfactory data security with regard to **confidentiality, integrity and accessibility** in connection with the processing of personal data<sup>7</sup>.

The grid company must secure personal data against internal and external misuse, based on a risk assessment. By defining the security objectives and strategy, it is the controller who shall determine what constitutes an acceptable security level through supervision of the internal control measures.

The controller must demonstrate that the measures are adequate based on the risk assessment. The security provisions of the Personal Data Regulations must be complied with and documented before processing of personal data may be initiated.

- The employees of the controller must be assigned a duty of confidentiality as regards personal data and other information of significance for data security. Responsibilities and authorities must be clarified.
- Employees of the controller are only permitted to use information systems and personal data for assigned tasks in accordance with the registered authorisation. Any lack of conformity with this must be registered and security measures documented.
- Security audits must be carried out on a regular basis. This must be documented, and any lack of conformity must be reported and the results documented.

### *Confidentiality*

Personal data shall be secured against unauthorised access, cf. Section 2-11 of the Personal Data Regulations.

### *Integrity*

Measures shall be taken to prevent unauthorised changes in personal data where integrity is necessary, cf. Section 2-13 of the Personal Data Regulations.

## 2 *Internal control*

The grid company is obliged to establish and maintain planned and systematic measures necessary to comply with the requirements stipulated in or in pursuance of this Act, including safeguarding the quality of the personal data. The measures must be documented<sup>8</sup>.

If the grid company uses subcontractors during its processing of personal data, the grid company is obliged to enter into a data processor agreement<sup>9</sup>.

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<sup>7</sup> Section 13 of the Personal Data Act, cf. Chapter 2 of the Personal Data Regulations.

<sup>8</sup> Section 14 of the Personal Data Act, cf. Chapter 3 of the Personal Data Regulations

<sup>9</sup> Section 15 of the Personal Data Act

The Norwegian Data Inspectorate has prepared a guide for internal control which is available at [www.datatilsynet.no/internkontroll](http://www.datatilsynet.no/internkontroll).

### *3 Obligation to give notification*

Processing of personal data regarding clients, subscribers and suppliers is exempt from the obligation to notify the Norwegian Data Inspectorate<sup>10</sup>. However, this only applies if the use of data constitutes part of the management and performance of contractual obligations.

If the data is processed using electronic aids, and will be used for purposes other than those mentioned above, the obligation to notify the Norwegian Data Inspectorate will become applicable. Such notification must be given no later than 30 days before the processing commences<sup>11</sup>.

### *4 Obligation to erase data*

The grid companies are obliged to erase personal data when they no longer are necessary for invoicing purposes<sup>12</sup>. In other words; there is a prohibition against storing unnecessary data.

The data need not be erased, however, if the data will be processed for other purposes assuming there is a legal basis for the new processing. The obligation to erase data does not apply if there is a statutory duty to store data, for example under the accounting legislation. If the exemption is applicable, the data must be stored in such a manner that data will only be accessible for the Norwegian Tax Administration or other supervisory authorities. Thus, the information shall not be used for own purposes, with the exception of anonymous statistics.

The obligation to erase data also does not apply if further processing is in accordance with an agreement established with the subscriber, and only takes place according to this agreement.

### *Other rights for the data subject*

#### *Right of access*

Under Section 18 of the Personal Data Act, the subscriber has a right of access to all personal data stored by **the grid company** regarding the subscriber in question, including:

- Purpose
- Whether personal data has been distributed, and to whom
- Security measures during processing

This list is not exhaustive, but indicative of which information the customer will be entitled to when requesting access to the data.

#### *Rectification*

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<sup>10</sup> Section 7-7 of the Personal Data Regulations

<sup>11</sup> Section 31 of the Personal Data Act

<sup>12</sup> Section 28 of the Personal Data Act

Section 27 of the Personal Data Act indicates that **the grid company** must facilitate rectification of incorrect data regarding the subscriber on its own initiative or upon request from the subscriber.

*Erasing of data*

The subscriber may demand that data which is strongly disadvantageous to him or her shall be blocked or erased if this is not contrary to another statute or is justifiable on the basis of an overall assessment of, inter alia, the needs of others for documentation.