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In case no. 5894-22, **Uppsala Vatten och Avfall AB** (Appellant), the Supreme Administrative Court delivered the following judgment on 15 September 2023.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court overturns the rulings of the lower courts and remands the case to the Swedish Armed Forces for a new examination.

BACKGROUND

1. A public authority shall, at the request of another public authority, provide information in its possession unless the information is classified or it would impede the due course of the work.
2. Uppsala Vatten och Avfall AB made a request to the Swedish Armed Forces to obtain a survey concerning the Swedish Armed Forces' use of fire extinguishing foam within a certain area.
3. The Swedish Armed Forces rejected Uppsala Vatten och Avfall AB's request and stated the following. The survey is a draft of an investigation which has not been finalised. The content of the draft does not constitute the position of the public authority. In the event information in various forms of draft documents must be released to another public authority in accordance with Chapter 6, section 5 of the Public Access to Information and Secrecy Act (2009:400), unprocessed information will become a public document as a consequence. This entails that diverse versions of documents from and decisions by public authorities may become public documents, which can lead to uncertainties concerning the position of public authorities on a particular issue. It may also entail that officials regard themselves as prevented from saving working versions of documents. The relevant provision in the Public Access to Information and Secrecy Act may be regarded as a specification of the general obligation to cooperate between public

authorities in accordance with section 8 of the Administrative Procedure Act (2017:900). However, the Administrative Procedure Act does not apply to Uppsala Vatten och Avfall AB since it is a municipal limited company. A release of the survey would impede the conduct of the work and, thereby, the due course of the work at the public authority.

4. Uppsala Vatten och Avfall AB appealed the decision to the Administrative Court of Appeal in Stockholm which rejected the appeal. The administrative court of appeal noted that Chapter 6, section 5 of the Public Access to Information and Secrecy Act constitutes a specification of the general obligation to cooperate applicable to public authorities in accordance with section 8 of the Administrative Procedure Act. In light of the purpose of the provision in Chapter 6, section 5 of the Public Access to Information and Secrecy Act, the administrative court of appeal found that a release of the information would impede the due course of the work for the reasons stated by the Swedish Armed Forces.

CLAIMS, ETC.

5. Uppsala Vatten och Avfall AB claims that the Supreme Administrative Court shall order the Swedish Armed Forces to release the survey.

REASONS FOR THE RULING

The question in the case

6. The question in the case is what is required for a release of information to be deemed to impede the due course of the work of the releasing public authority.

Legislation, etc.

7. Chapter 2, section 3, first paragraph of the Public Access to Information and Secrecy Act provides that limited companies, partnerships, economic associations

and foundations in which municipalities or regions exercise legal control shall be equated with public authorities upon application of the Act.

8. According to Chapter 6, section 5, a public authority shall, upon request by another public authority, provide information in its possession unless the information is classified or it would impede the due course of the work.

The Court's assessment

9. Uppsala Vatten och Avfall AB is a wholly owned municipal limited company. Accordingly, Uppsala Vatten och Avfall AB shall, in accordance with Chapter 2, section 3, first paragraph of the Public Access to Information and Secrecy Act, be equated with a public authority upon application of the Act. This entails that the company is covered by the term *public authority* in Chapter 6, section 5 (*cf.* HFD 2021 case notice no. 58).
10. Pursuant to Chapter 6, section 5 of the Public Access to Information and Secrecy Act, a public authority need not release information if it would impede the due course of the work. In the assessment of what may be deemed to impede the due course of the work, it is irrelevant whether it is a public authority or a party which is equated with a public authority which requests the information.
11. The Supreme Administrative Court notes that the information obligation covers all information in the possession of the public authority, thus not only information from public documents (Government Bill 1979/80:2, Part A, p. 361). The Supreme Administrative Court is accordingly of the opinion that no significance can be ascribed to the fact that a document will become public upon a disclosure in accordance with the provision.
12. According to the Supreme Administrative Court, the relevant exemption in Chapter 6, section 5 of the Public Access to Information and Secrecy Act should have in view whether the release of the information at the time of the request may

be deemed to impede the due course of the work of the public authority. It may be, for example, due to the fact that the information is not available without an extensive search or an otherwise very demanding work effort. In the assessment, no significance may be ascribed as to whether the public authority in the distant future may possibly encounter problems due to the disclosure, e.g. due to the fact that uncertainties arise regarding the public authority's position on a certain issue.

13. It is apparent from the documents in the case that the relevant survey is in the possession of the Swedish Armed Forces and is identified. No impediment against releasing the survey based on the due course of the work has come to light.
14. However, the Supreme Administrative Court notes that it is required that the survey not be subject to secrecy in order for it to be able to be released to Uppsala Vatten och Avfall AB in accordance with Chapter 6, section 5 of the Public Access to Information and Secrecy Act. The Swedish Armed Forces have conducted no such examination, and the Supreme Administrative Court should not do so as the first instance. Accordingly, the rulings of the lower courts shall be overturned and the case shall be remanded to the Swedish Armed Forces for a new examination.

Justices Henrik Jermsten, Thomas Bull, Marie Jönsson and Martin Nilsson have participated in the ruling.

Judge Referee: Elin Nilsson.