



INFORMATION  
COMMISSIONER



# ANNUAL REPORT

## OF THE INFORMATION COMMISSIONER FOR THE YEAR 2021

# Introduction by the Information Commissioner

In 2021, life in Slovenia and the European Union continued to be shaped by measures to curb the epidemic and its consequences. These measures have strongly affected the work of the Information Commissioner in the protection of the two constitutional rights – the right to access information of a public nature and the right to the protection of personal data. Many concerns that years ago would have been classified as the subjects of science fiction films have become reality. The response of society as a whole has proven once again that countries must always seek solutions to the crisis in an appropriate balance and at the same time by respecting all human rights. Therefore, within the scope of our powers, the Information Commissioner focused all its efforts on effectively addressing the concerns and hardships of individuals, companies, schools, journalists, and others who found themselves in a complex labyrinth of implementing measures with serious consequences for both privacy and transparency.

However, an analysis of our work in the past year not only offers reasons for concern but also indicates the good functioning of our society. The search for effective solutions demonstrated the power of non-governmental organizations, journalists and the power of connecting individuals and communities at the level of civil society initiatives. The data has proven that individuals, journalists, and companies perceive supervisory authorities, including the Information Commissioner, as important interlocutors and partners in finding solutions and exercising their rights. This is confirmed by the renewed growth in the total number of complaints related to requests for access to public information, as well as the number of applications and initiatives for the introduction of inspection procedures and the number of complaints for the enforcement of individual data protection rights. The Information Commissioner also received significantly more requests for opinions or clarifications. Based on the experience of the past year, we dare to say that both rights are firmly rooted in the social and legal consciousness of the citizens of Slovenia.

In the field of personal data protection, in 2021, the Information Commissioner again received a record number of complaints related to alleged breaches of data protection (as many as 1360) and complaints related to the enforcement of the data protection rights of individuals (313 complaints). Unfortunately, when dealing with these complaints, the Information Commissioner notes that the responsiveness of controllers is often inadequate and that many controllers are not fully aware of their obligations arising from the constitutional right to access their own personal data. In the field of inspection procedures, the need for transparent information on processing and clear legal regulation of obligations in relation to taking action regarding the epidemic has once again emerged as the most urgent. Namely, the most massive violation reports were linked to the state's measures related to the epidemic. In 2021, the Information Commissioner also received nine (9) notifications of patient data breaches based on Article 46 of the Patient Rights Act and 108 official notifications of personal data security breaches based on Article 33 of the General Regulation.

The epidemic has also affected cooperation and cross-border cooperation. Many new challenges in 2021 also at the level of the European Union (EU) and in cooperation within the framework of the European Data Protection Board (EDPB) have shown how important the cooperation of supervisory authorities is. The cases not only concerned the big tech payers, but also various providers of banking services, connected vehicles, etc. To strengthen the effectiveness of cross-border cooperation within the framework of the GDPR, in 2021, EDPB also prepared guidelines for the cooperation of supervisory authorities under Article 60 of the General Regulation.

The Information Commissioner at the EU level cooperated in 154 mutual assistance procedures under Article 61 of the General Regulation and was involved in 62 newly initiated cross-border cooperation procedures under Article 60 of the General Regulation concerning the controllers which carry out cross-border processing of personal data. In 75 procedures, it defined itself as the concerned supervisory authority (according to Article 56 of the General Regulation), and in two cases as the leading supervisory authority. 22 cross-border cooperation procedures were initiated by the Information Commissioner based on a received complaint.

In its procedures, the Information Commissioner repeatedly notes that the majority of controllers and processors wish to be compliant, but they need assistance and clear instructions. This was also evident in 2021, especially in relation to the measures related to the control of the epidemic, especially in the field of labour relations and education. Unfortunately, even in the past year, the state and the legislator did not respond to the loudly expressed need for clear regulations and clarifications of the obligations of individuals, which have been repeatedly pointed out by the Information Commissioner since the beginning of the epidemic. Even in 2021, the legislator did not take advantage of the opportunity to properly regulate the matter of responding to the epidemic and fulfil the positive obligations of ensuring the right to health care, protecting public health and the life of all members of society, and above all to eliminate the many discrepancies that were, in 2020 and 2021, already recognized by the Constitutional Court of the Republic of Slovenia in order to prevent possible unconstitutional situations in the future. With the legislative approach of regulating content-diverse matters

with a single law, the institute of legal security is being undermined, while also compromising the systemic regulation of areas that are otherwise closed units in terms of content. At the same time, Slovenia has still not adopted the key legislation for the implementation of the General Regulation.

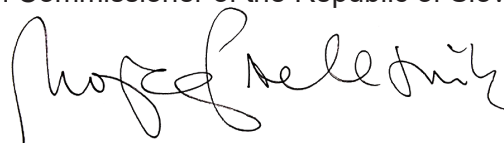
With that in mind, even in 2021, serious problems and hardships arose precisely because of unclear instructions, which made it impossible to implement many official decisions in practice. The Information Commissioner, therefore, worked intensively in this area of data protection in 2021: we advised 3647 individuals and legal entities, issuing 1471 written opinions and within the iDecide project, which was financed by the European Union from the REC program (Rights, Equality and Citizenship), answered 2176 phone calls. For this purpose, among other things, we prepared special guidelines for ensuring the compliance of IT solutions in education, guidelines for event organizers, and guidelines regarding the rights of individuals. Due to the extremely large number of questions received, within the iDecide project, we have also prepared special guidelines regarding the aspects of personal data protection in the verification of the covid-19 status (guidelines for employers, individuals, and schools). The Information Commissioner also paid special attention to web hosting providers, kindergartens, taxi service providers, and schools, through preventive activities for compliance.

Based on the experience of 2021, the success of addressing crisis situations directly depends on the transparent management of all state systems and respect for human rights. Otherwise, individuals and society do not internalize the measures, they are not implemented effectively and as a result, the crisis deepens which leads to new problems and can have serious, even long-term consequences for the entire society. The year 2021 held up a mirror that has shown us our good and our bad sides, and our common task now is to learn from this experience and take on challenges within the scope of our competencies.

The Information Commissioner will, therefore, with an excellent team of experts, who, despite all the challenges of the crisis in 2021, demonstrated how committed they are to the rights we protect, through active cooperation with all stakeholders and openness to all individuals, companies, and other organizations, continue to strive in 2022 to effectively protect both rights entrusted to us.

Mojca Prelesnik,

Information Commissioner of the Republic of Slovenia

A handwritten signature in black ink, appearing to read 'Mojca Prelesnik', written in a cursive style.



## **A brief overview of the activities in the data protection area in 2021**

In 2021, the Information Commissioner has once again faced many challenges regarding personal data protection due to the legal in the personal data field in the Republic of Slovenia. Namely, the new Personal Data Protection Act (the so-called ZVOP-2) that would implement the General Data Protection Regulation into our national legal framework has still not been adopted. The Act on the Protection of Personal Data in the Area of Treatment of Criminal Offences (the so-called ZVOPOKD), which transposed the Directive (EU) 2016/680 (the so-called Law Enforcement Directive) into the Slovenian legal system, came into force in 2021. All this has caused many open questions both on the end of controllers and processors of personal data as well as on the end of the Information Commissioner.

In 2021, the Slovenian Higher Court (in case No. Prp 215/2021) and the Slovenian Supreme Court (in case IV Ips 2/2021) made important decisions to resolve the untenable situation that had arisen following the judgments of lower courts, according to which the Information Commissioner was not allowed to impose sanctions even for violations of the still valid provisions of ZVOP-1. The decisions of the Higher Court and the Supreme Court confirmed the position of the Information Commissioner and the Ministry of Justice, that the sanctioning of those provisions of ZVOP-1, which are not in contravention with the General Data Protection Regulation and are therefore still valid as such, is in accordance with Slovenian and European legal order.

Due to the absence of ZVOP-2, even in 2021, the Information Commissioner could not impose sanctions on individuals for violations of the General Regulation. The harmonization of national provisions and imposed sanctions with the General Regulation is particularly important. Fines imposed for similar offenses in similar circumstances in different countries should not differ, which is especially true in cases of cross-border cooperation in inspection supervision procedures, which is an area that has severely been hampered due to the absence of ZVOP-2.

The trend of an increased number of violation reports, breaches of personal data protection, and complaints related to the enforcement of individual rights continued. In 2021, the Information Commissioner thus received 1360 complaints or initiatives to begin the inspection procedures and 313 complaints for violations of the rights of individuals, which is the most so far. In addition to the aforementioned reports, the Information Commissioner dealt with nine (9) cases of unauthorized communication or other unauthorized processing of personal data about patients based on Article 46 of the Act on Patient Rights (ZPacP). As part of the appellate procedures for violations of the rights of individuals, the Information Commissioner handled 226 complaints from individuals due to violations of the right to access their own personal data under Article 15 of the General Regulation, and the controller's decision in this regard (out of which 174 complaints were filed due to the controller's lack of response), three (3) complaints due to violation of the right to rectification of their personal data according to Article 16 of the General Regulation and 29 complaints due to violation of the right to the erasure of personal data according to Article 17 of the General Regulation. In addition, we received 13 complaints against alleged violations by controllers in connection with the exercise of rights under the new ZVOPOKD, 24 complaints against the alleged violations in the exercise of patients' rights under Article 41 of the ZPacP, nine (9) complaints under Article 42 of the ZPacP and four (4) complaints against the alleged violations by the controller under Article 30 ZVOP-1. All this shows that individuals are more and more aware of their rights, while at the same time we notice significant difficulty by some controllers ensuring them.

Many violation reports were due to insufficient information provided to individuals by controllers collecting their personal data, particularly in relation to processing that was directly or indirectly related to epidemic control measures. Controllers often still do not provide an individual with concise, transparent, intelligible, and easily accessible information about processing, as required by Articles 12 and 13 of the General Regulation. The Information Commissioner received an extremely large number of violation reports due to the processing of personal data of applicants interested in vaccination against Covid-19 via the e-Administration portal (SL. e-Uprava) in Slovenia, due to processing related to sending invitations to vaccination against covid-19, due to the verification of compliance with the Covid-19 status (so-called PCT requirement; vaccinated, tested, recovered) and due to the former Prime Minister sending a letter to all citizens of the Republic of Slovenia.

Violation reports that did not relate to the implementation of measures for the prevention and control of Covid-19 infections were submitted for similar reasons as in previous years. Most of them were filed due to the transfer of personal data to unauthorized persons, implementation of video surveillance, use of personal data for direct marketing purposes, illegal or excessive collection of personal data, use of personal data for purposes contrary to the purpose of their collection, illegal access to collections of personal data and inadequate security of personal data.

The Information Commissioner received 108 official notifications of personal data breaches based on Article 33 of the General Regulation. Notifications of personal data breach most often referred to the transmission of personal data to unauthorized or wrong persons, unauthorized access to personal data due to a software

error or abuse of authority by employees, attacks on the information system with blackmail viruses with data encryption, publication of personal data of parties in the administrative procedures and the loss or theft of personal data carriers (e.g. personal computers and USB keys).

The year 2021 was also marked by a greater number of individual requests for opinions that we had received in connection with the implementation of various measures related to the control of the epidemic. The Information Commissioner, therefore, in 2021, advised 3647 individuals and legal entities. We had issued 1471 written opinions and referrals to other opinions. In 2021, state supervisors answered 2176 phone calls and advised callers on issues related to the protection of personal data and the rights of individuals as part of the iDECIDE project, funded by the European Union from the REC project (Rights, Equality and Citizenship Programme). Regardless of the special circumstances, this year the Information Commissioner held 28 free lectures for individuals, mostly using online tools. We had also successfully carried out other forms of awareness-raising campaigns in the iDECIDE project, within the framework of which we have prepared guidelines on data protection adapted to three target groups (younger people, the elderly population, and the working population). The Information Commissioner also paid special attention to the data protection officers – we had prepared a new online form for reporting data on appointed data protection officers. So far, more than 2500 entities have appointed a DPO.

The delay in the adoption of ZVOP-2 also affected the area of prevention and compliance, since as a result, data controllers and processors - - cannot use certification according to the General Regulation until the conditions in ZVOP-2 are clearly defined.

According to the experience of the Information Commissioner in 2021, awareness of the importance of personal data protection and privacy in society was high among the general population, despite many challenges. With much greater concern the Information Commissioner observes the respect of these fundamental human rights by decision-makers. Ignorance and misunderstanding of the regulations were particularly evident in the case of regulations that were adopted to prevent and control infections with Covid-19, when vague and insufficiently thought-out regulations were often adopted, which, moreover, changed extremely quickly and whose compliance with the Constitution has often been called into question, according to the previous practice of the Constitutional Court in the case of planned processing of personal data. The Information Commissioner constantly reminded the legislator of this; therefore, in 2021 we issued 85 opinions on proposed changes to regulations. In doing so, the Information Commissioner observed a worrisome trend of non-systematic regulation of some serious encroachments on privacy and attempts to lower the already achieved level of personal data protection. This was also evident in the case of unclear or absent instructions to individuals for the implementation of measures related to the control of the epidemic.

To assist individuals and data controllers and processors, the Information Commissioner has prepared, among other things, three specific guidelines regarding the protection of personal data in connection with the verification of the Covid-19 status condition, adapted for employers, schools, and individuals. In response to perceived problems in the implementation of distance learning and education, the Information Commissioner also prepared guidelines for ensuring the consistency of IT solutions in education. We also prepared guidelines for event organizers, a guideline of rights for individuals, and updated guidelines on the transfer of personal data to third countries.

The Information Commissioner continued with preventive compliance activities (so-called privacy sweeps); we addressed web hosting providers, kindergartens, taxi service providers, and primary and secondary schools. With web hosting providers, we detected a systemic problem in understanding their role, especially in regards to obligations and duties related to the contractual processing of personal data, as derived from Article 28 of the General Regulation. Kindergartens were warned about the issue of obtaining parental consent and adequately informing parents of data processing. In the field of taxi services, the Information Commissioner found that many taxi service companies keep data on the past journeys of their customers, without properly informing the customers beforehand and obtaining their consent. In the area of preventive action, the Information Commissioner desires a more consistent use of the mechanism for creating a preliminary assessment of effects by controllers in the event of conducting new large-scale processing of personal data or processing with significant impacts on privacy and the rights of individuals; however, only a few benefit from the related possibility of prior consultation with the Information Commissioner.

The work of the European Data Protection Board in 2021 has also largely been influenced by the Covid-19 pandemic, which has paved the way for the establishment of the European digital green certificate. The certificate was meant to enable free movement within the EU during the pandemic through a common framework for issuing, verifying, and accepting a certificate of whether the individual has been vaccinated and with which vaccine, whether they have already recovered from Covid-19 and when or whether they had a negative test result. The European Data Protection Board and the European Data Protection Supervisor emphasized that the use of the green certificate must be in accordance with the General Data Protection Regulation and that the risks to the rights of individuals must be properly addressed. The use of the certificate

in the member states should be in accordance with the principle of proportionality, efficiency, and necessity, and should also be properly regulated by national legislation.

In the framework of the cross-border cooperation of supervisory authorities for the purpose of protecting personal data in EU and EEC member states (Iceland, Norway, and Liechtenstein) according to the principle of “one-stop-shop” stipulated in the General Regulation, in 2021, the Information Commissioner participated in 154 mutual assistance procedures between supervisory authorities according to Article 61 of the General Regulation. Based on the determination of the lead and concerned supervisory authorities, the supervision procedure in the cross-border case of personal data processing is conducted by the so-called leading authority (LSA), which cooperates with other authorities (so-called concerned authorities; CSA) for the protection of personal data. The Information Commissioner actively participated in 62 newly initiated procedures of cross-border cooperation regarding cross border companies. Twenty-two (22) procedures of cross-border cooperation were initiated by the Information Commissioner, based on the received report of a violation or a complaint. In 2021, the final decision was adopted in the proceedings led by the Irish supervisory authority against the service provider WhatsApp, where the company was fined 225 million EUR for inadequately informing individuals (users and non-users) regarding the processing of their personal data and regarding information about how data is used by Facebook and related companies. Cooperation in cross-border cases poses a great challenge, as it requires additional resources, both in terms of financial and human resources. The experience of this year has also revealed other challenges of cooperation under Chapter 7 of the General Regulation, namely questions regarding the implementation of procedural rules under the General Regulation. Cross-border cases, however, concerned not only the big tech players, which are still largely ongoing, but also inappropriate handling of personal data by diverse actors from many EU member states.

The European Data Protection Board and the European Data Protection Supervisor have adopted a joint opinion on the proposal for an EU regulation on uniform rules in the field of artificial intelligence. The opinion welcomes the uniform regulation of the use of artificial intelligence systems in the EU, but at the same time, it reminds the supervisory authorities that the regulation must be harmonized with the rules in the field of personal data protection and that it must clearly specify that these also apply in the case of data processing with the assistance of artificial intelligence.

In 2021, an important ruling regarding cross-border cooperation under the General Data Protection Regulation was also adopted by the Court of Justice of the EU, which examined the question of whether a national supervisory authority, which is not the leading supervising authority under the provisions of the General Regulation, can initiate legal proceedings against an alleged infringer for violating the provisions of the General regulation before a national court in its home Member State. It has been ruled that this is only possible if the General Regulation gives the supervisory authority, which is not the leading supervisory authority, the competence to decide whether certain processing of personal data of individuals violates the rules of the General Regulation and if the cooperation and supervision procedures are specified by the General Regulation. The Court of Justice of the EU emphasized the importance of close, loyal and effective cooperation.

The European Data Protection Board is also actively conducting analysis and search for the creation of uniform solutions to challenges that arise due to differences in national procedural rules across the EU member states (e.g. regarding the rights of parties in procedures, deadlines for individual actions in procedures, notification to applicants, etc.). Additionally, EDPB prepared draft guidelines in 2021 regarding procedures under Article 60. The Board actively contributed to the interpretation of many provisions of the General Regulation with guidelines and recommendations, among other things regarding issues of the relationship between Article 3 of the General Regulation and the obligations of controllers and processors when transferring personal data to third countries, regarding the limitations of the right of individuals under Article 23, regarding voice assistants and connected cars, and cases of data protection violations.

# 2021 IN NUMBERS



47  
employees



2.287.193,00  
EUR budget

## Data protection



1127  
Inspection supervision  
procedures



99  
Minor offense procedures



1471  
Issued opinions



2176  
Clarifications by phone



77  
Procedures of establishing  
LSA and CSA



7  
New guidelines



2  
Form for data controllers



1  
Infographic



65  
Lectures



108  
Data breach notifications



6  
Opinions regarding DPIA



2448  
Data protection officers



4  
Privacy sweeps



62  
One-stop-shop cooperation  
procedures



154  
Article 61 Mutual  
assistance procedures



85  
Opinions on legislative  
acts



639  
Complaints



397  
Issued decisions



168  
Notices regarding administrative  
silence of the bodies



14  
In camera procedures



38days  
Average time to conclude  
a procedure



301  
Written requests for clarifications

## Access to public information