



INFORMATION COMMISSIONER
OF THE REPUBLIC OF SLOVENIA

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Annual Report Information Commissioner

2011



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INTRODUCTION



The year 2011 was again marked by a noticeable increase in individuals' level of awareness of the importance of the right to access public information and the right to personal data protection, as well as, unfortunately, some worrisome trends.

Judging from the scope of cases dealt with by the Information Commissioner in 2011, we again witnessed a record number of cases received in the two fields of operation of the Information Commissioner, regarding either requests for an opinion, complaints, or appeals. Without a doubt such circumstances are a consequence of individuals being ever better informed and having increased awareness and understanding of the purpose and importance of these two human rights whose implementation and protection fall within the competence of the Information Commissioner. At the same time, such increase in the number of appeals and cases related to inspections has to be ascribed also to certain worrisome actions of liable authorities in the area of access to public information, on the one hand, as well as to the enormous (perhaps too enormous) appetites of various data controllers from the private and public sectors as regards processing personal data.

With regard to its work, the Information Commissioner's continues to strive for an increasing level of responsiveness and professionalism; however, due to the increasing number of cases processed this is barely still attainable. Nevertheless, I am pleased that in 2011 we again succeeded in doing so and that the public recognises our efforts to protect both fundamental rights, i.e. the right to access public information and the right to personal data protection, and thus in the past year it again expressed a high level of trust in the Information Commissioner.

According to research carried out by the Public Opinion and Mass Communication Research Centre, as of January 2012 the level of trust in the Information Commissioner was characteristically high again (52%), the highest among the examined institutions, while the level of distrust was the lowest of all the institutions monitored (14%). Since previous measurements also demonstrated a high level of trust and since the percentage has always been in the upper half of the range, a continuous level of trust has clearly been expressed, which makes me extremely satisfied and at the same time compels us to continue with our work and seek ways to improve.

In the area of access to public information, the Information Commissioner established that applicants are better acquainted with the institute of access to public information and also use it more often in practice. However, with regard to liable authorities, the Information Commissioner unfortunately noted a worrisome decrease with regard to their willingness to cooperate with applicants, which is also indicated by the increased number of appeals to the Information Commissioner and the increased number of appeals filed by liable authorities against the decisions of the Information Commissioner. The above-mentioned is probably also a consequence of the fact that the Government of the Republic of Slovenia has not (yet) adopted a common strategy from which it would follow what the objectives

of the functioning of public sector authorities in this field should entail, nor a strategy that would encourage a higher level of transparency with regard to the operations of liable authorities. Thus, the Information Commissioner noticed that in actual practice certain groups of liable authorities (especially minor municipalities, public education institutions, private contractors carrying out public services, and contractors holding concession agreements) are poorly acquainted with their obligations in accordance with the Access to Public Information Act (hereinafter: the APIA), although such was adopted already in 2003 and the initial implementation period finished a long time ago. Such is indicated also by certain conclusions and assessments of the national integrity system in Slovenia obtained by the association Integriteta – Transparency International Slovenija.

With regard to the area of personal data protection for 2011, I would like to draw special attention to the field of electronic communications as we have observed increased tendencies towards controlling electronic communication, which causes conflicts between different interests and rights. Above all, I would like to point out the inappropriate regulation in the Gambling Act regarding limiting access to web content that orders internet providers to block access to on-line gambling sites, and worrisome attempts to broaden the competences of prosecution authorities related to the use of data that electronic communication operators are obliged to retain. Namely, the Government proposed changes to Article 149b of the Criminal Procedure Act that would enable obtaining not only data related to specific telephone numbers but data related to an entire mobile telephony base station. The Information Commissioner evaluated such proposal as extremely disproportionate and ineffective with regard to the weight of such an interference with privacy. The competent body, comprised of deputies of the National Assembly, rejected the Government's proposal, which, however, would not have happened had the Information Commissioner not persistently warned, on the basis of firm arguments, against the disproportionality of such proposals.

This experience pointed out again the significance of two essential warnings that the Information Commissioner continues to call attention to. Firstly, the fact that the establishment of large personal data filing systems unavoidably leads to increased appetites for data (this concerns the so-called phenomenon of function creep, i.e. the broadening of the primary purpose of data processing). Secondly, it is very difficult – sometimes even impossible – to stop such tendencies. Such indicates the necessity of a prompt judgment issued before the establishment of filing systems that must successfully undergo the test of necessity, proportionality, and effectiveness, as such filing systems represent a significant risk to the level of personal data protection. With regard to such, the Information Commissioner underlines that in the preparation of legislative proposals envisaging changes which significantly increase the risk of personal data abuse a mechanism should be established for prompt judgment of the effects on privacy. Unfortunately however, such judgments were not applied either in the introduction of obligatory data retention in electronic communications traffic, nor in the proposed broadening of the purpose of the use of such filing systems; furthermore, what is lacking are post festum analyses justifying the necessity, proportionality, and effectiveness of such projects.

In 2011 the Information Commissioner devoted a great deal of attention to preventative activities. Due to great interest and changes in this field, in 2011 we prepared a revised edition of the brochure *Kako uporabljati Facebook ... in preživeti* (English: "How to Use Facebook ... and Survive") and of the manual for data controllers entitled *Zavarujmo osebne podatke* (English: "Let's Protect Personal Data"). Furthermore, the Information Commissioner prepared other new guidelines to help users (guidelines on the tools for protecting privacy on the internet and guidelines on cloud computing). In 2011 the Information Commissioner also began to prepare thematic reports focused on important individual topics related to carrying out control. The first report prepared is entitled *Klubi zvestobe – povečajmo drobni tisk* (English: "Loyalty Clubs – Enlarging the Fine Print") and presents a comparison from the perspective of respecting the principles of personal data protection between some of the largest businesses offering loyalty clubs. Once again, in 2011 the Information Commissioner marked Personal Data Protection Day and International Right to Know Day with a variety of activities. Furthermore, experts employed at the Information Commissioner share their knowledge and experience with colleagues from other countries that are still in the phase of establishing an effective system of access to public information and personal data protection; among others, the Information Commissioner is a partner in a twinning project in the field of personal data protection in Montenegro.

I am concerned as in both fields of the Information Commissioner's competence a certain decline can be noticed with regard to the sensitivity of liable authorities and data controllers, to both fundamental rights, i.e. access to public information as well as personal data protection. Therefore, in the field of access to public information my wish for the future is that the Government be more active in its efforts to encourage liable authorities to carry out their operations with greater transparency, by means of which we will contribute together to the increased integrity of the public sector and the trust of individuals in public institutions. At this point I must mention our proposal sent to the Minister competent for public administration in August 2011 which provided arguments regarding the necessity of broadening the circle of authorities liable for ensuring access to public information to companies in which the state or a local community has a controlling interest. Given the fact that such companies are established by entities under public law, i.e. by means of public money and capitalisation, claiming that such belong in the sphere of private law and consequently of private funds is a pretence. Companies in which the state or a local community has a controlling interest operate with public funds and/or under the influence of public authority, the consequence of which is or should be increased liability with regard to their operations towards the public. I hope that in 2012 our proposal will be heard and understood such that the political will for the proposed changes will exist. Furthermore, in the field of personal data protection, my wish is for everybody to demonstrate a greater degree of care and awareness regarding the consequences of the seemingly unimportant measures of massive and disproportionate personal data collection which lead to a surveillance society.

A society in which the individual does not trust the integrity of the public sector and feels that his privacy no longer exists because his personal data are processed without his knowledge and to a disproportionate extent and because he is subject to video and audio surveillance recordings is a society in which there is no space for creativity, which is the driving force behind progress. However, in the time we live in, both integrity as well as life creativity are truly needed. My wish is that the readers of this report give thought to such as well.

Yours sincerely,

Nataša Pirc Musar,
Head of the Information Commissioner

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THE INFORMATION COMMISSIONER

1.1 The Establishment and the Competences of the Information Commissioner

On 30 November 2005 the National Assembly of the Republic of Slovenia adopted the Information Commissioner Act¹ (Official Gazette RS, Nos. 113/05 and 51/07 – ZUstS-A, hereinafter: the ICA), by means of which a new and independent state authority was established as of 31 December 2005. The Act combined two authorities, namely the Commissioner for Access to Public Information and the Inspectorate for Personal Data Protection. The Head of the Information Commissioner, who has the position of a state official, is appointed by the National Assembly of the Republic of Slovenia upon the proposal of the President of the Republic of Slovenia. The Head of the Information Commissioner is Nataša Pirc Musar.

In accordance with Article 2 of the ICA, the Information Commissioner is competent to:

- decide on appeals against a decision by which an authority denied or refused the applicant's request for access or in any other manner violated the right to access or re-use public information, and also, within the frame of appellate proceedings, to supervise the implementation of the act regulating access to public information and regulations adopted thereunder (as the appellate authority in the area of access to public information);
- perform inspections regarding the implementation of the Act and other regulations governing the protection or processing of personal data or the transfer of personal data out of the Republic of Slovenia, as well as to perform other duties determined by these regulations;
- decide on the appeal of an individual against the refusal of a data controller to grant the request of the individual with regard to his right to access requested data, and to extracts, lists, viewings, certificates, information, explanations, transcripts, or copies in accordance with the provisions of the act governing personal data protection;
- file a request before the Constitutional Court of the Republic of Slovenia for the review of the constitutionality of a law, regulation, or general act issued for the exercise of public authority if a question of constitutionality or legality arises in connection with proceedings it is conducting, in both the field of access to public information and personal data protection.

In the area of access to public information, the Information Commissioner also has the competences determined by the Public Media Act² (Article 45, hereinafter: the PMA). A liable authority's refusal of a request by a representative of the media shall be deemed a decision refusing the request. The authority competent to decide on appeals is the Information Commissioner³.

The Information Commissioner also has competences under the Electronic Communications Act⁴ (hereinafter: the ECA) which concern the area of inspections of retained traffic and location data acquired or processed in connection with providing public communication networks or services (in accordance with Articles 112 and 147 of the ECA) and in connection with the implementation of European Directive 2002/58/EC on privacy and electronic communications and the Directive on the retention of telecommunications data.

With the entry of the Republic of Slovenia into the Schengen Area, the Information Commissioner also assumed responsibility for supervision of the implementation of Article 128 of the Convention Implementing the Schengen Agreement and is thus an independent body responsible for supervising the transfer of personal data for the purposes of the mentioned Convention.

The Information Commissioner is competent under the Patients Rights Act⁵ (in relation to accessing medical records), the Travel Documents of Citizens of the Republic of Slovenia

¹ Official Gazette RS, No. 113/2005, 51/2007 – ZUstS-A; hereinafter: the ICA.

² Official Gazette RS, No. 110/2006 – official consolidated text 1, with amendments; hereinafter: the MedA.

³ Official Gazette RS, No. 51/2006 – official consolidated text 2, with amendments; hereinafter: the APIA.

⁴ Official Gazette RS, No. 13/2007 – official consolidated text 1, with amendments; hereinafter: the ECA.

⁵ Official Gazette RS, No. 15/2008; hereinafter: the PatRA.

Act⁶, the Identity Card Act⁷ (in relation to photocopying personal identity documents), and the Banking Act⁸ (in relation to the supervision of personal data processing within the SISBON system).

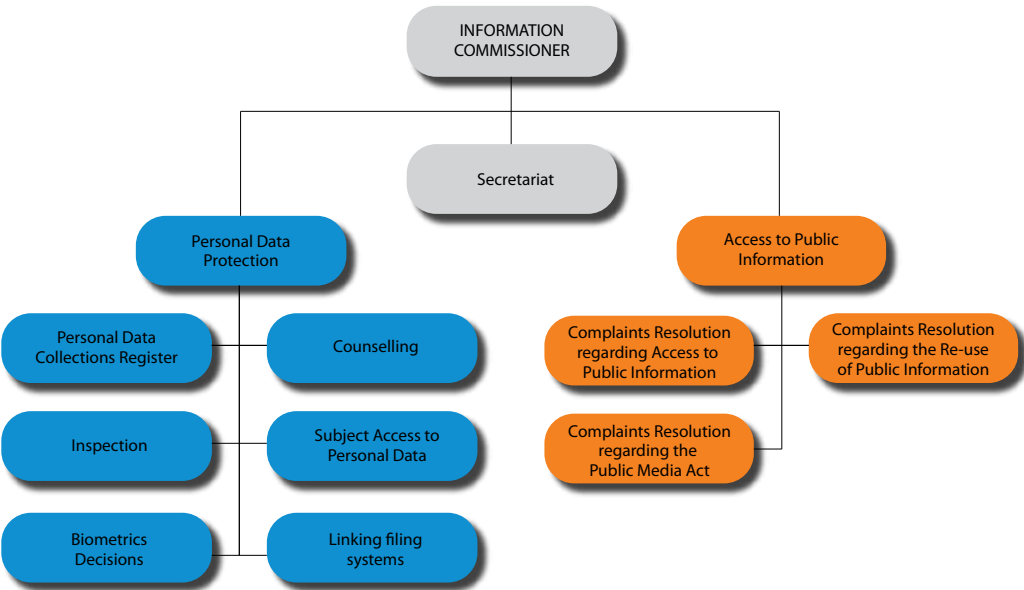
1.2 Organisational Structure and Budget of the Information Commissioner

The Information Commissioner carries out its tasks through the following organisational units:

- The Secretariat of the Information Commissioner;
- The Pulic Information Department;
- The Personal Data Protection Department;
- Administrative and Technical Services.

At the end of 2011, the Information Commissioner had 33 employees, of which three were employed on the basis of temporary contracts, substituting for absent employees. All employees in official positions have at least a bachelor’s degree.

Figure 1: Organisational Chart of the Information Commissioner.



⁶ Official Gazette RS, No. 62/2009 – official consolidated text 3; hereinafter: the TDA.
⁷ Official Gazette RS, No. 71/2008 – official consolidated text 2; hereinafter: the IdenCA.
⁸ Official Gazette RS, No. 131/2006 with amendments; hereinafter: the BanA.

The work of the Information Commissioner is financed from the state budget; funding is allocated by the National Assembly of the Republic of Slovenia on the proposal of the Information Commissioner (Article 5 of the ICA). In fiscal year 2011, the funding allocated to the Information Commissioner at the start of the year amounted to EUR 1,549,511.46. In order to increase savings in the state budget, the Information Commissioner returned EUR 10,000.00 to the budget from Item 1267 (wages and salaries). The operational budget at year end amounted to EUR 1,542,214.87. European funds for the implementation of projects (Lapsi and Twinning) and the payment received from the sale of an older company car are included in this amount. Excluding earmarked and European funds, 99.87% of the budget was used. In 2011 EUR 1,139,495.82 was spent on wages and salaries. EUR 302,103.22 was spent on material costs and expenses. Material costs and expenses were necessary for the normal functioning of the Information Commissioner (stationery, travel expenses, cleaning expenses, student work payments, postal services, the education of employees, producing brochures, etc.) A great deal of the expenses stemmed from the rent for our offices.



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**ACTIVITIES IN THE FIELD OF
ACCESS TO PUBLIC INFORMATION**

2.1 Activities in the Field of Access to Public Information in the Republic of Slovenia

The right to access public information was granted by the legislature already in the Constitution of the Republic of Slovenia⁹. The second paragraph of Article 39 of the Constitution determines that everyone has the right to obtain information of a public nature in which they have a well founded legal interest under law, except in such cases as are provided by law. This right is further regulated in the Access to Public Information Act¹⁰ (hereinafter: the APIA), which ensures everyone free access to and re-use of public information held by state bodies, local government bodies, public agencies, public funds, and other entities under public law, bearers of public authority, and public service contractors. The Act includes the public interest test.

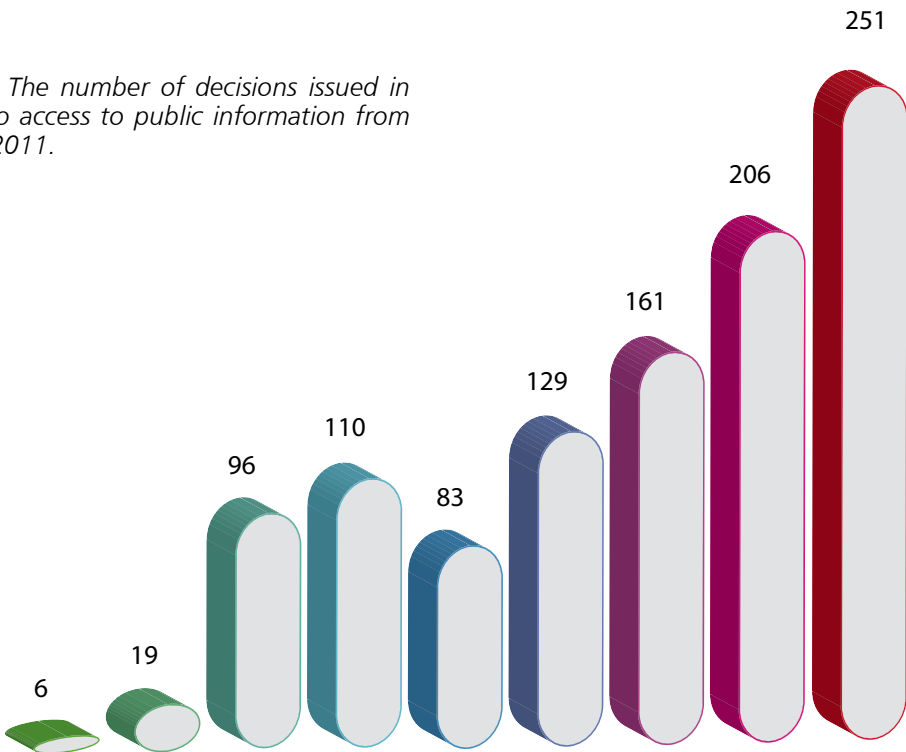
In 2011 the Information Commissioner received 857 appeals, of which 308 were against decisions refusing requests, while 549 were against the non-responsiveness of first-instance authorities. In processing the appeals of individuals, 81 so-called in camera examinations were carried out.

In appeal procedures the Information Commissioner issued 251 decisions, in five cases it rejected the appeal, in the same number of cases matters were joined for joint consideration, while three cases were transferred to a competent authority for consideration. In comparison with 2010, the number of decisions issued in relation to access to public information increased significantly.

The following actions were taken amongst the decisions issued by the Information Commissioner:

- in 94 cases it dismissed the appeal;
- in 83 cases it granted the appeal of the applicant;
- in 42 cases it returned the matter to the first instance authority for reconsideration;
- in 28 cases it partially granted access to information;
- in 3 cases it rejected the appeal.
- in 1 case it annulled the decision of the first instance authority, due to significant violations of the procedure.

Figure 2: The number of decisions issued in relation to access to public information from 2003 to 2011.



⁹ Official Gazette RS, No. 33/1991, 42/1997, 66/2000, 24/2003, 69/2004, 68/2006; hereinafter: the Constitution.

¹⁰ Official Gazette RS, No. 24/2003 with amendments; hereinafter: the APIA.

In its decisions the Information Commissioner most commonly considered and decided upon the merits of the following:

- whether the liable authority even possesses the document or the public information requested by the applicant (79 cases);
- whether the documents requested contained personal data whose disclosure would entail a violation of personal data protection in accordance with the PDPA-1 (72 cases);
- whether the applicant requested information and/or data deemed to be a business secret in accordance with the Companies Act (48 cases);
- whether a violation of procedural rules occurred (41 cases);

The Information Commissioner decided on an appeal due to access to public information being denied with regard to the following groups of liable authorities:

- ministries, constituent bodies, and other state authorities (94 cases);
- public administration units, municipalities, and local communities (48 cases);
- public funds, institutes, agencies, public service contractors, and bearers of public authority (44 cases);
- courts, the State Prosecutor's Office, the State Attorney's Office (29 cases);
- educational institutions (26 cases);
- health care institutions (8 cases).

In 173 cases applications were submitted by natural persons, in 42 cases complaints were submitted by private sector legal entities of which 13 were either non-governmental organisations, societies, or associations. 16 complaints were submitted by journalists and 7 by public sector legal entities.

In 2011 the Information Commissioner received 549 appeals against the non-responsiveness of authorities. The Information Commissioner first called on to the liable authorities to decide on the requests as soon as possible, which in most cases they did. In 40 cases the Information Commissioner rejected the appeal, in 10 cases it issued the explanation that it was not competent to consider their applications and transferred the cases to a competent authority for consideration, and 9 applicants withdrew their appeals.

In 2011, 33 appeals were filed with the Administrative Court against decisions of the Information Commissioner (i.e. against 13.1% of the decisions issued). The relatively small portion of such appeals, which has remained at almost the same level for a number of years, indicates a greater level of transparency and openness in the public sector in relation to its operations and the acceptance of the Information Commissioner's decisions by various authorities and applicants. In 2011, the Administrative Court issued 23 judgments in relation to appeals filed against the decisions of the Information Commissioner. In 12 cases the Court granted the appeals and returned the matters to the Information Commissioner for reconsideration, 9 appeals were dismissed, in 2 cases the Court decided partially in favour of the appellants, in 1 case it issued a decision rejecting the appeal, and in 1 case it issued a decision staying the procedure.

In 2011, the Information Commissioner received 699 requests to provide assistance with regard to various questions of individuals regarding access to public information, especially with regard to the question of whether a certain document contains public information. The Information Commissioner replied to all applications to the extent it is competent, in most instances it referred them to the competent institution – The Ministry of Public Administration.

2.2 The Most Significant Cases and Precedent Cases in Different Areas

By Decision No. 090-159/2010/15 of 24 January 2011, the Information Commissioner annulled the decision of the Slovenian Research Agency (ARRS), which partially refused the request of the applicant to view and photocopy applications and assessment sheets for projects submitted in 2009 by certain researchers holding PhDs, and to view all the records of the sessions of the Scientific Council and of the Management Board, as well as of all

other permanent and temporary bodies of the Agency which decide on applications for projects. In the opinion of this authority, disclosure would affect its own work and could obstruct it. With regard to the disclosure of the name and family name of the reviewer of the project, the Information Commissioner determined that such are not protected personal data as, due to their function, reviewers are listed on required documents and are paid for their work from public funds. Furthermore, it determined that information in the area of research of a certain reviewer does not meet the definition of the exemption regarding the "internal functioning of the authority", the purpose of which is to protect the "internal considerations of the authority", and not to protect external subjects included in public tender procedures due to their expertise in a specific field. The disclosure of such a document would not interfere with the functioning and activities of the authority. The Information Commissioner also determined that the action of the authority whereby it erased the names and family names of the members of the Management Board was unjustified. Such members undoubtedly hold public office and therefore their names and family names do not amount to protected personal data.

The applicant requested access to documents related to the purchase of Patria Armored Modular Vehicles classified as INTERNAL and CONFIDENTIAL, due to which in the trial against the former Minister of Defence and the former Chief of the General Staff of the Slovenian Armed Forces the court excluded the public from the main hearing. The applicant referred to the prevailing public interest in data disclosure and also requested that the level of confidentiality be reduced.

By Decision No. 090-13/2011/2 of 10 February 2011 the Information Commissioner decided that the authority must send the applicant's request to reduce the level of confidentiality to the Government for consideration, together with the proposed decision of the head of the authority. The Information Commissioner determined that the authority did not take a stand regarding the applicant's request to reduce the level of confidentiality and it rejected the request by referring to the exemption of confidential information and the exemption with regard to protecting the carrying out of criminal prosecution. Due to the fact that the decision regarding the applicant's request to reduce the level of confidentiality should have been made by the Government of the Republic of Slovenia on the proposal of the head of the authority, such should have transferred the case to the Government for consideration, together with the proposal of the head, within 15 working days from receiving the request. Additionally, the Government (and not the authority itself) should have decided on the prevailing public interest in the disclosure of the documents requested which the applicant referred to. Thus, the Information Commissioner determined that the decision had been issued by an authority not competent to issue such as it did not transfer the matter to the Government, by means of which it caused an essential violation of the rules of administrative procedure. Therefore, the Information Commissioner ex officio annulled the decision and sent the case for consideration to the competent authority, i.e. the Government of the Republic of Slovenia.

By Decision No. 090-212/2010/18 of 11 March 2011, the Information Commissioner ordered The Agency for Radioactive Waste [Agencija za radioaktivne odpadke] to provide two applicants with a copy of the Programme of the decommissioning of Krško Nuclear Power Plant and treatment of low- and intermediate-level radioactive waste and the spent nuclear fuel. The Information Commissioner ordered the authority to only conceal certain parts of the document which are correctly classified as confidential. With regard to the remainder, a business secret exemption was not demonstrated, which is primarily due to the fact that the document was transferred outside the circle of operations of the authority without limitations. Furthermore, contrary to the decision of the authority, the Information Commissioner determined that the exemption with regard to the document had not been demonstrated in the procedure for producing it, as the authority did not demonstrate the occurrence of damage in the event of the disclosure of the document to the public. The mere fact that the disclosure and interpretation of variable data from the document would lead to incorrect understanding and make the procedure for its coordination and adoption by both governments (of Slovenia and Croatia) more difficult is not sufficient for the existence of the element of incorrect understanding of the content of the document. Furthermore, what is also important in the case at issue is the question of whether the information in the document requested could be classified as environmental information,

i.e. information regarding emissions into the environment, waste, and hazardous matter in the power plant, or as information from the safety report and other information for which such is provided for by the law regulating environmental protection. In accordance with the APIA, access to such information can be allowed regardless of possible exceptions from free access to public information. The Information Commissioner determined that information on low- and intermediate-level radioactive waste and spent nuclear fuel is environmental information. It is thus possible to apply the business secret exemption only to the part not related to environmental information. Finally, the Information Commissioner determined that the document requested does not represent a copyright protected work as it is an official text from the administrative field (the exclusion from copyright protection), due to which the authority must provide the applicant with a copy of the document.

By Decision No. 090-41/2011/5 of 15 March 2011, the Information Commissioner granted the appeal of an applicant and ordered the Pension and Disability Insurance Institute of the Republic of Slovenia to provide the applicant with the document regarding persons receiving exceptional pensions in 2009. The applicant requested from the authority any document containing a list of all the recipients of personal or survivor's pensions receiving exceptional pensions in 2009. The authority rejected the request due to the information on whether a certain person receives a pension being protected personal data. The Information Commissioner determined that the case at issue does not concern the protected personal data of individuals as the basis for the disclosure of such is the Act¹¹ that determines that the decision on the exceptional awarding and determination of a retirement pension be published in the Official Gazette. Furthermore, the basis for providing information on the recipients of exceptional pensions is provided for by the APIA, as such is information related to the use of public funds. Funds for exceptional pensions that are higher than pensions determined in accordance with general rules are provided from the state budget.

By Decision No. 090-91/2011/3 of 20 May 2011, the Information Commissioner granted the appeal of an applicant who requested from the Municipality of Piran a photocopy of the records of the committee deciding on a call for applications to fill an available clerk position in such manner that the identity of the candidates be protected. The authority rejected the applicant's request by stating that the call was not successful and no candidate was selected, which is why the committee's records exclusively contain information on candidates that were not selected and such represents protected personal data. The Information Commissioner determined that the authority should have applied the institute of partial access and concealed the names, family names, and the information on the employment and employers of the candidates not selected. With regard to the personal data of the members of the committee deciding on the call for applications, the Information Commissioner determined that such information is not protected personal data since two members of the committee are employees within the authority and are thus public officials, while the third member was appointed by an order of the mayor and thus performed public office in the name and on behalf of the authority.

By Decision No. 090-88/2011/8 of 24 June 2011, the Information Commissioner granted the appeal of the applicant and ordered the authority (a home for the elderly) to provide him with a photocopy of the Contract on the Performance of the Internal Audit of Operations for 2009, however, the authority had to conceal those parts of the contract that meet the criterion of a business secret. Despite the fact that the internal audit does not fall directly within the public service of institutional care provided by the authority, the Information Commissioner determined that the case concerned information falling within the field of work of the authority. The authority is obliged to carry out an internal audit due to its status of being an indirect beneficiary of the state budget and cannot decide freely whether to carry such out or not. The company with which the authority concluded the contract to carry out the internal audit of operations adopted a written decision by which it determined certain business secrets. In the examination of the decision the Information Commissioner determined that in such a manner the basis for a business secret exemption had been demonstrated; nevertheless, certain information in the document refers to the use of public funds, which entails that, irrespective of the business secret exemption, such data must be freely accessible. The Information Commissioner determined that the authority paid for the internal audit from public funds received for carrying out a public service and is a beneficiary of public funds for that part of its operations that involve providing

¹¹ Official Gazette RS, No. 14/1990.

institutional care to the elderly as a public service. Thus, the authority must provide the applicant with the Contract on the execution of the internal audit of operations, but must, due to the business secret exemption, conceal the information that is not related to the use of the public funds.

By means of partial and subsequently final Decision No. 090-197/2011, the Information Commissioner partially granted the request of a journalist who requested that the Commission for the Prevention of Corruption provide copies of all the reports of lobbied persons who filed a report with the authority on contact with lobbyists. The lobbied person assembles a record of every contact with a lobbyist intending to lobby in which the lobbied person includes information on the lobbyist and within three days informs his supervisor and the authority of the record. The Information Commissioner determined that the basis for an exemption due to the internal functioning of the authority had been demonstrated since the documents requested do not entail internal correspondence between public officials employed by the authority. With regard to the personal data protection exemption, the Information Commissioner concluded that the requested reports contain protected as well as unprotected personal data. Unprotected personal data includes the personal data of public and state officials (name, family name, employment), and the personal data of registered lobbyists that is published in the registry of lobbyists and is public in accordance with the Integrity and Prevention of Corruption Act¹². Data on the legal or authorised representatives of interest organisations is also public since this data is also published in public records. Finally, what is deemed to be protected data is the personal data of individuals employed within private interest organisations who, however, are not legal or authorised representatives of such organisations; furthermore, all addresses of individuals (including those of registered lobbyists) that are not published in public records, as well as e-mail addresses and other contact information of public and state officials (due to the protection of communication privacy) are also deemed to be protected data.

2.3 General assessment and recommendations in the field of access to public information

In 2011 the Information Commissioner again noted a significant increase in the number of cases in the field of access to public information; it considered 1556 cases (compared to 971 the year before). It received 857 appeals and, compared to the previous year, also a significantly increased number of questions, initiatives, and requests for explanations with regard to the application of the APIA. Furthermore, the Information Commissioner noted that appeal cases were becoming ever more demanding with regard to both their extent as well as content. Applicants possess increasingly better knowledge of the institute of access to public information and use it increasingly often. However, with regard to liable authorities, there has been a decrease in their willingness to cooperate with applicants, which is also indicated by the increased number of appeals of applicants and of appeals filed by liable authorities against the decisions of the Information Commissioner.

The above-mentioned probably also originates from the fact that the Government of the Republic of Slovenia has not (yet) adopted a common strategy which would encourage a higher level of transparency with regard to the operations of liable authorities. Thus, the Information Commissioner noticed that in actual practice certain groups of liable authorities (especially minor municipalities, public education institutions, private contractors carrying out public services, and concessionaires) are poorly informed with regard to their obligations under the APIA, although it was adopted already in 2003 and the initial implementation period finished a long time ago. Liable authorities do not respond adequately to applicants' requests, they often charge excessive fees, and reject requests without a legal basis for doing so. With regard to the number of requests for an explanation, the Information Commissioner established that liable authorities are often in doubt as to how to implement the law; furthermore, some issues call for a change in the legislation (the issue of (not)

¹² Official Gazette RS, No. 69/2011 – official consolidated text 2.

protecting the copyrights of liable authorities, procedural fees, third-party participants, etc.). Therefore, the Information Commissioner calls upon the Ministry of Justice and Public Administration to more actively participate in this field in order to prepare a proposal regarding the necessary legislative changes as soon as possible. The Information Commissioner can provide unofficial advice to liable authorities, however, as the appellate authority it is not allowed to take sides in advance with regard to specific cases.

The Information Commissioner would again like to call attention to the charging of fees for the work of public officials related to accessing information. Of late, a significant increase can be observed in the number of complaints with regard to which it was found that liable authorities charged applicants requesting access to a small number of documents (up to 50 pages) several hundred euros in expenses for the work of public officials. The Information Commissioner calls attention to the fact that the possibility to charge for material expenses should not become a tool to deter applicants from filing requests to obtain public information. Fees for the provision of public information must remain within as low a range as possible and must not disproportionately hinder applicants' constitutional right to access public information. In the opinion of the Information Commissioner, reasonable fees comprise material expenses that actually occurred and, in accordance with the Decree on Communication and Re-use of Information of Public Character, also the reasonable cost of the work of public officials, but only to an extent that does not entail excessive interference with the constitutionally granted right to access information. Charging fees must not be arbitrary and must not entirely depend on the individual capabilities of public officials or on the organisation of work within a certain liable authority.

The Information Commissioner makes an effort to operate in a spirit of openness and transparency, therefore it regularly and proactively publishes on its website decisions related to appellate procedures in accordance with the APIA, judgments of the Administrative Court of the Republic of Slovenia, remarks it issues regarding various draft laws, explanations, and news from this field. With regard to procedures in which the Information Commissioner is the liable authority regarding access to information, it attempts to conduct such procedures rapidly and effectively, without unnecessary delay (it typically provides applicants with information or a decision rejecting the request immediately or within one work week at the latest and does not wait for the legally determined term of 20 working days to expire). The Information Commissioner calls on other liable authorities to follow its example.

In 2011 the Information Commissioner received only three appeals from the field of the reuse of public information, which indicates applicants' poor knowledge of such mechanisms. The reuse of public information has important economic potential which remains underexploited in practice. This has also been pointed out by the European Commission, which in 2011 prepared draft amendments to the Decree on the Reuse of Public Sector Information, the purpose of which is to ensure an optimal legal framework and changes in the public sector culture in order to foster the digital content market for products and services that are based on public sector information and to prevent distortions regarding competition in the market. In the field of the reuse of public information, the Information Commissioner actively participated in the international consortium within the LAPSI project (Legal Aspects of Public Sector Information), which is intended to establish a thematic network in the field of the reuse of public information.





3

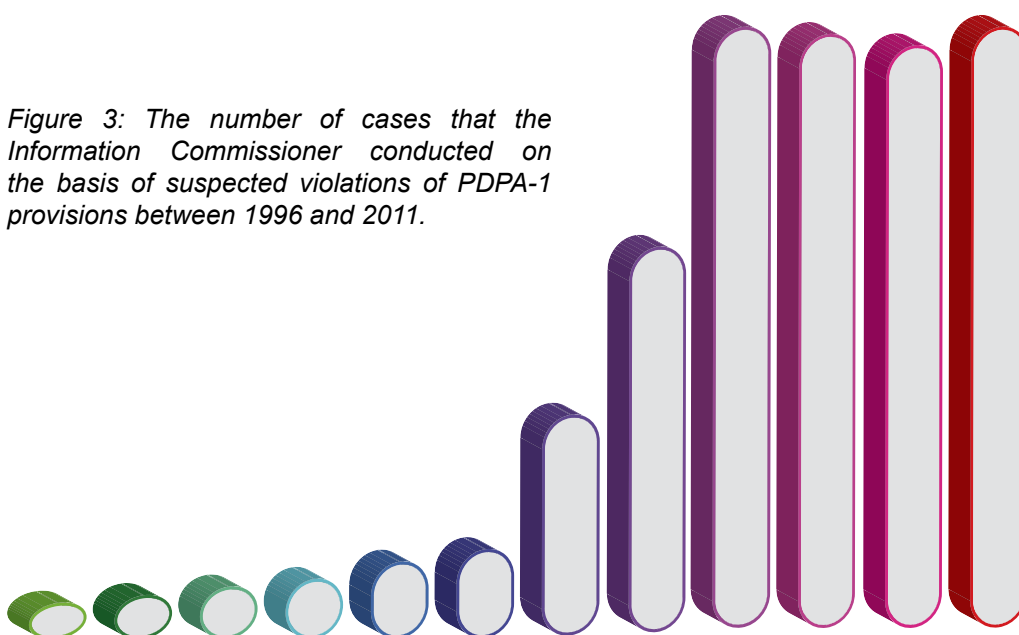
**WORK IN THE FIELD OF
PERSONAL DATA PROTECTION**

3.1 Activities in the field of personal data protection

In the Republic of Slovenia the concept of personal data protection is based on the provisions determined by Article 38 of the Constitution, according to which personal data protection is among the constitutionally guaranteed human rights and fundamental freedoms. The PDPA is an organic law that has been valid since 1 January 2005, while the amended PDPA-1¹³ was adopted in July 2007. The purpose of organic laws is to define in a uniform manner general rights, obligations, principles, and measures by means of which unconstitutional, illegal, and unjustified interferences with the privacy and dignity of individuals in the processing of personal data are prevented. Therefore, sectoral laws must clearly determine which filing systems will be established and maintained with regard to individual fields, the types of personal data that individual filing systems will contain, the manner of personal data collection, the possible limitations of the rights of individuals, and, above all, the purpose of processing the collected personal data. With regard to Part VI, the PDPA-1 is also a so-called sectoral law which by means of the exact definition of rights, obligations, principles, and measures provides data controllers with a direct legal basis for personal data processing in the field of direct marketing, video surveillance, biometrics, recording the times of persons entering and exiting buildings, as well as professional supervision. Furthermore, what is also used in Slovenia are the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Convention was ratified in 1994¹⁴.

Due to the suspicion of violations of the provisions of the PDPA-1, in 2011 the Information Commissioner conducted 682 cases of inspection, of which 246 pertained to the public sector and 436 to the private sector. It received 219 complaints against public sector legal entities, on the basis of which it initiated 159 inspection procedures, while it initiated 27 procedures ex officio; furthermore, it received 398 complaints against the private sector and upon such basis initiated 285 procedures, while it initiated 38 procedures ex officio. The number of complaints and appeals due to the suspicion of violations of the PDPA-1 increased in comparison to the statistical data for 2010. Within the framework of inspection procedures, 64 physical inspections were carried out in the public sector and 150 in the private sector. In order to redress the established irregularities, in 2011 38 warnings were entered into the records and 79 regulatory or administrative decisions were issued. In 2011, 310 decisions to stay procedures were issued.

Figure 3: The number of cases that the Information Commissioner conducted on the basis of suspected violations of PDPA-1 provisions between 1996 and 2011.



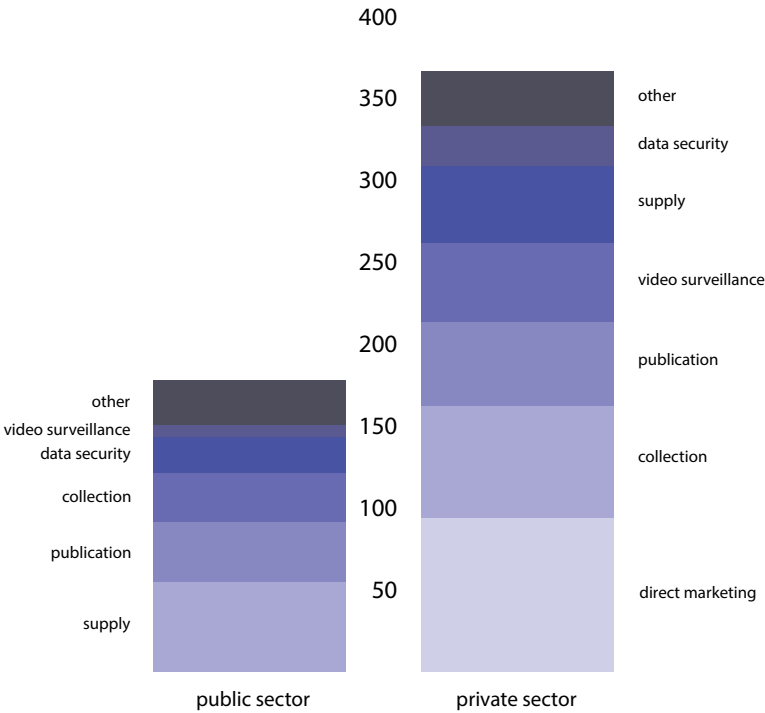
¹³ Official Gazette RS, No. 86/2004; hereinafter: the PDPA-1.

¹⁴ Official Gazette RS, No. 11/1994 – International contracts no. 3/1994.

With regard to complaints, the largest number of suspected violations of the provisions of the PDPA-1 referred to the following:

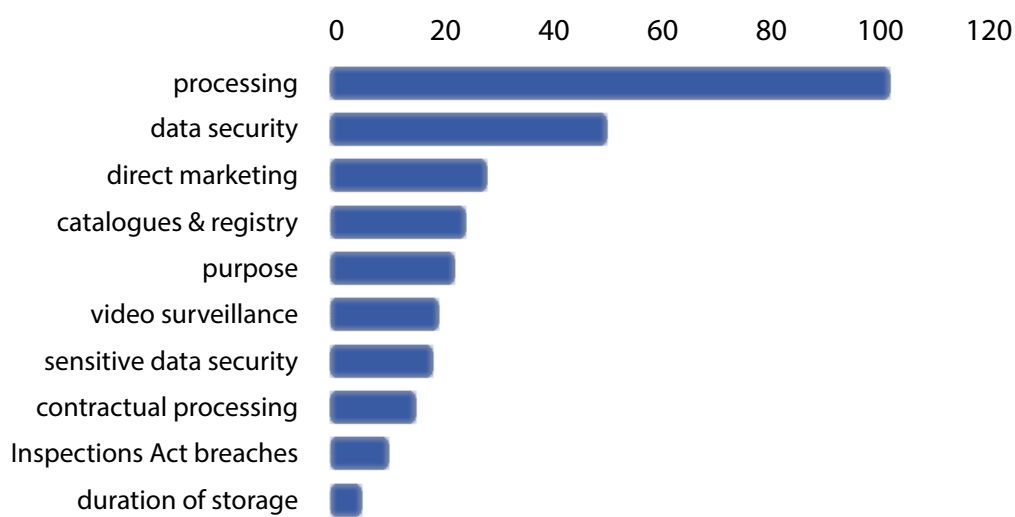
- unlawful disclosure of personal data; the transfer of personal data to unauthorised users by data controllers and unlawful publication of personal data (196 cases);
- unlawfully collecting or requiring personal data (130 cases);
- unlawful video surveillance (89 cases);
- abuse of personal data for direct marketing purposes (81 cases);
- inadequate security of personal data (43 cases);
- other (22 cases).

Figure 4: Complaints regarding unlawful processing of personal data in 2011, a comparison between the public and the private sectors.



In 2011, 136 offence procedures were initiated due to PDPA-1 violations, of which 43 were against public sector legal entities, 66 against private sector legal entities, and 27 against individuals. In offence procedures in 2011 the Information Commissioner issued 30 warnings, 64 decisions regarding violations (52 cautions and 12 fines), and 7 penalty notices. Furthermore, the Information Commissioner issued 75 warnings for minor violations. Violators filed 9 requests for judicial protection against the decisions issued. In 2011 competent authorities stayed procedures in 14 cases by means of an official note stating that there was not sufficient evidence to pronounce sanctions or since it was found that the action alleged was not a violation.

Figure 5: The most common violations of PDPA-1 provisions in 2011.



In 2011, the Information Commissioner received 25 judgments whereby local courts decided on requests submitted for judicial protection against decisions by the Information Commissioner regarding offences. The decision of the Information Commissioner was upheld in 9 cases, the sanction for the offender was changed in 8 cases, and the decision of the Information Commissioner was annulled in 6 cases. In 1 case the request was denied and 1 case was returned to the Information Commissioner.

In 2011, the Information Commissioner proposed that the State Prosecutor’s Office file a request for the protection of legality against the judgment of a local court and the Prosecutor’s Office followed the proposal. The Supreme Court upheld the decision of the Information Commissioner and decided that in the cases involving interferences with the personal data of individuals as many violations occur as there are injured parties.

In 2011, the Information Commissioner received 2,143 requests to issue a written explanation or an opinion in relation to specific questions. It issued 261 written opinions and explanations, and in 1,882 cases it referred applicants to opinions and explanations already issued. Most opinions are published on the following website: www.ip-rs.si. In addition, 14 opinions were issued to applicants from abroad. Furthermore, the Information Commissioner issued opinions and explanations orally. Everyday between 9 a.m. and 3.30 p.m. there is an officer on duty at the office who can answer questions over the telephone.

In 2011, 8 decisions were issued on the permissibility of implementing biometric measures. The Information Commissioner granted the request of an operator who will, by means of biometric measures, protect a telecommunication area where assets of great value (a server with traffic data and a server with retention data, a telecommunications central switcher, computer equipment) and business secrets are located; the request of an applicant who will secure the so-called clean premises of laboratories in which stem cells and blood from umbilical cords will be treated and stored; the request of an applicant securing a room containing an ionic accelerator; the request of an applicant who would like to secure laboratories in which medicine is validated; and of an applicant securing rooms intended for the destruction of data storage devices containing confidential information. The Information Commissioner rejected the request of an applicant who wanted to use biometric measures to secure a room from which access to the protected data of the land registry is possible, of an applicant who wanted only replace common locks, and of an applicant who wanted to protect access to special cash registers and for the registration of the working hours of employed students.

In 2011, the Information Commissioner received four applications for the transfer of personal data out of the Republic of Slovenia. It issued two decisions and permitted both applicants to transfer personal data: a telecommunications operator who will transfer data to Serbia for the purpose of analysing traffic flows, and a company dealing with the sale of computer equipment that will transfer the data of its employees and business partners to its holding company in the People's Republic of China.

In 2011, the Information Commissioner permitted six data controllers to link with another or other personal data filing systems, it partially granted the request of a data controller, and in one case it did not permit the linking of filing systems. It permitted the linking of filing systems to the following institutions: the Supreme Court of the Republic of Slovenia and the Ministry of Internal Affairs (the e-land registry and the central population register); the company Cetis, d.d. and the Ministry of Internal Affairs (the register of cards issued, the register of births, marriages, and deaths, the register of permanent residents, the register of drivers); the General Hospital in Izola, the General Hospital in Murska Sobota, and the Ministry of Internal Affairs (e-births); the Ministry of Education and Sport and the Ministry of Internal Affairs (the central register of persons participating in upbringing and education and the central population register); the Ministry of Labour, Family, and Social Affairs (e-Social Services); the Institute of Public Health of the Republic of Slovenia and the Ministry of Internal Affairs (medical reports on persons deceased and the Register of Persons Obligated to be Vaccinated and to Perform Vaccinations).

In 2011, the Information Commissioner received 85 appeals regarding the right to access one's personal data. The appeals filed concerned state authorities, ministries, and constituent bodies (22 cases), health care institutions (19 cases), courts, the State Prosecutor's Office, and the State Attorney's Office (10 cases), employers (6 cases), educational institutions (4 cases), insurance companies (3 cases), and other data controllers such as associations (27 cases). In 16 cases data controllers enabled individuals access to requested data upon being called on to do so, while 13 data controllers were ordered by a decision to do so. Seven applicants were advised how to act, while four withdrew their appeals. The Information Commissioner transferred nine appeals to competent authorities for consideration, in the same number of cases it issued a decision rejecting the appeal on the grounds that the application was incomplete or had been submitted prematurely, and in 15 cases it issued a decision dismissing the appeal.

In 2011, the Information Commissioner filed a request for a review of the constitutionality of the two articles of the Real-Estate Recording Act¹⁵ which determine the public nature of the name, family name, permanent residency address, and the year of birth of individuals entered in the cadastre of buildings and the land cadastre, and also that the Surveying and Mapping Authority provide within its distribution area information from the registers it maintains and controls in accordance with the law at issue and possibly also provide information that it obtains in accordance with the law from other filing systems, as well as additionally processed or linked information.

3.2 The Selected Cases Involving a Violation of Personal Data Protection

The Information Commissioner received a complaint that user names, e-mail addresses, and passwords of users of a certain website intended to look for a partner are freely accessible on the internet. First, the person who published the information was identified. It was found that the data controller entrusted the design of the website to an Indian company that did not follow the requirements of Slovene legislation as the final product did not ensure the traceability of personal data processing. Due to programming errors, the person who published the information was able to obtain information on almost 7,000 users of the website, including their user names and passwords. The data controller had not concluded an appropriate written contract with the Indian company and data was transferred to a third country without a legal basis. The Information Commissioner stopped the functioning of the website and ordered the data controller to inform all users of the website on the incident.

¹⁵ Official Gazette RS, No. 47/2006 with amendments; hereinafter: the ReRA.

The Information Commissioner received a complaint regarding the unlawful recording of telephone calls by a data controller, one of whose activities is marketing its services and products over the telephone. The data controller recorded incoming and outgoing calls, while persons making outgoing calls were not informed thereof. The data controller recorded outgoing calls in order to monitor the quality of its services and to resolve customer complaints more easily; the coordinators of the work of the telephone service representatives and the head of the service were enabled access to the recordings. The ECA permits telephone calls to be recorded only for the purpose of providing evidence regarding market transactions or other business related communication, therefore the Information Commissioner prohibited the data controller from recording outgoing calls, except in cases where the individual called clearly states that he would like to subscribe to a service or product and also gives clear and explicit consent to being recorded, with regard to which he must be notified of the purpose of such recording and of the retention periods of the recordings.

The Information Commissioner received a complaint regarding the suspicion of unlawful access to the register of registered vehicles. The complainant obtained from the Ministry of Transportation, which controls and maintains the register, the list of persons accessing his personal data related to vehicle ownership and found that such was accessed in offices he had never gone to and where they had no reason for such access. Among other things, it was found that a certain official employed by a certain office wanted to obtain information on the condition and ownership of the vehicle after he noticed the vehicle listed in used vehicles ads. Therefore, the Information Commissioner issued the official a fine.

The Information Commissioner received numerous complaints regarding veterinary offices sending dog owners notifications regarding vaccinations and at the same time offering them other services. The complainants stated that they were not customers of the offices from which they received offers. It was found that the veterinary offices had obtained dog owners' personal data from the central register of dogs, which does not have the status of a public register, which entails that the personal data of dog owners may be used only in accordance with the legally determined purposes (maintaining the register of dogs and dog owners, control over carrying out regular vaccinations and the monitoring of bites, as well as for statistical purposes). Veterinary offices should not use such data for direct marketing despite having access to it. For the purposes of direct marketing only the personal data of the dog owners who are customers of a certain office can be used, as well as data obtained within the framework of the office's lawful activities, and data obtained from publicly accessible sources. The Information Commissioner issued the veterinary office a sanction.

The Information Commissioner considered a case involving direct marketing of geodetic services offered by a certain company by means of regular mail to individuals with regard to whom it found, in the examination of registers published on the portal Prostor (English: 'Space'), that the plot of land their building was on was not entered in the register. Investors/owners must file a request to enter a building in the register of buildings within 30 days from the conclusion of construction. Although in the case at issue the data controller obtained information from publicly accessible sources, it violated PDPA-1 provisions due to the fact that only the following information may be used for the purpose of direct marketing: the name of the person, and his permanent or temporary address, phone number, and fax number. In order to use the information that an owner has not yet entered his property in the register the data controller would need his consent.

In inspection procedures against employers, the Information Commissioner examines which personal data of employees employers process in personal files. Employers (in the public as well as the private sectors) may not require just any personal data from their employees, but must demonstrate, with regard to every piece of information, that such is required by law or is indispensable due to the realisation of rights and obligations (of the employee or the employer) originating from the work relationship. Personal data collection on the basis of the personal consent of employees is not permissible. With regard to candidates for employment, employers may only collect personal data which is necessary for assessing whether a certain candidate possesses appropriate knowledge and experience for the open position. For this purpose, information such as the unique personal identification number, tax identification number, bank account, and information regarding the candidate's children is not needed at that point. Only after the candidate has been selected and the

employment contract has been concluded may the employer obtain other information it needs to process. The Information Commissioner ordered the erasure of the information collected unlawfully (most commonly, such was contained in questionnaires that employees fill in upon concluding an employment contract; furthermore, unmarked copies of personal identification documents are stored as well).

The Information Commissioner discovered that on the website of the National Electoral Commission personal data was published of the candidates in the parliamentary elections in 2008, 2004, and 2000, as well of candidates for local elections in 2010, 2006, and 1998. Sectoral law regulates the publication of candidates' personal data only with regard to the period before an election but not with regard to the period following it, e.g. how long data may be published. In the previous parliamentary election candidates' personal data was published for the purpose of voters being able to make an informed and free decision as to which list and candidate they would vote for. Since the purpose of personal data processing – its publication on the website – had already been fulfilled, the data controller should have acted in accordance with para. 2 of Article 21 of the PDPA-1 and deleted the candidates' personal data.

The Information Commissioner considered the spatial photographs that a data controller published on the internet from the perspective of personal data protection; the photographs contained images of identifiable individuals. With regard to photographs whose purpose is to present geographic locations, individual parts of settlements, or immovable property and which do not record a specific event, the same purpose can be fulfilled with the same quality in a manner such that they do not contain identifiable individuals. The interest of a photographer to publish a photograph does not prevail over the interest of a passer-by to decide for himself whether he would like to be identifiable in a photograph. Therefore, prior to publication on the internet, photographs must be altered in such a manner that the individuals in them are no longer identifiable. Furthermore, the Information Commissioner issued an opinion regarding so-called street photography and personal data protection.

3.3 General Assessment of the Status of Personal Data Protection and Recommendations

In the field of personal data protection, in 2011 the Information Commissioner noted an increase in the number of complaints. There was an increase in the number of cases related to direct marketing via e-mail, with regard to which marketers do not inform individuals of their right to request that personal data pertaining to them no longer be used for the purpose of such; furthermore, in some cases entities did not stop sending unwanted e-mail messages even after individuals have requested such. Direct marketers often can not demonstrate in what manner they obtained e-mail addresses, which suggests that they obtained such in an unlawful manner. Furthermore, the Information Commissioner considered a number of complaints regarding unlawful disclosure of the e-mail addresses of the recipients of a message in the "To" or "Cc" fields when such addresses should have been entered in the "Bcc" field.

In the area of video surveillance, the Information Commissioner established that such is spreading rapidly, also to areas where it is not the least permissible, e.g. in the sauna, in changing rooms, on children's playgrounds, and in some other public areas such as walking paths. The most common violations entail inadequate record keeping regarding reviewing or using video surveillance footage, the use of footage for unlawful purposes (e.g. supervising employees), poorly marked and incomplete notification of video surveillance, the non-existence of a written decision on the implementation of video surveillance, carrying out video surveillance within work spaces without previous consultation with the representative trade union, and the non-existence of video surveillance footage filing system catalogues.

With regard to procedures and measures for personal data security referred to in Articles 24 and 25 of the PDPA-1, attention must be called to the commonly inadequate security of personal data collected over the internet. There were cases when data controllers did not ensure even the most basic measures of personal data security such that it was possible, without any special knowledge of computer use but simply by means of using browsers and entering only a person's name, to obtain information on e-mail addresses, user names, and passwords for accessing user accounts of individuals' registered at a certain portal, or the personal names, e-mail addresses, and phone numbers of individuals who had ordered a certain product from a website.

Furthermore, the Information Commissioner determined that numerous data controllers face the dilemma of whether to use cloud computing, which raises certain doubts regarding its consistency with legislation in the field of the protection of personal data and privacy. Organisations that decide to use cloud computing often do not possess enough information on where their personal data will be located and how it will be protected, however, without such information it is difficult to carry out appropriate risk assessment prior to making a decision to use the cloud. The Information Commissioner issued a few opinions regarding cloud computing and at the end of 2011 it also began to prepare guidelines intended to help data controllers in the process of deciding to use this product.

In 2011, the Information Commissioner continued its preventative activities and considerations regarding the effects on privacy. It provided its opinion with regard to various projects, such as the following: eArhiviranje (e-Archives), the use of smart (biometric) pens and biometric signature tablets, the system of notifying and monitoring patients, personal data protection in documentation systems, software for the analysis of abuse in the insurance industry, personal data when using wireless networks, public procurement for designing IT applications, collecting geo-location information and capturing street images, the project of education for the elderly regarding computer use (the Simbioz@ project), the use of biometrics in self-service machines, as well as several requests related to cloud computing.

It used a great deal of its resources for the project of preparing internal rules for the purpose of appropriate electronic storage of documentation in accordance with the Protection of Documents and Archives and Archival Institutions Act (hereinafter: the PDAAIA), and it was thus one of the first state authorities to submit to the Archives of the Republic of Slovenia its request for the confirmation of their internal rules (the IC submitted such in May 2011 and received confirmation in 2012).

In 2011 the Information Commissioner actively participated in numerous groups, among which the interministerial working group should be pointed out, which focused on the implementation of safer and more user friendly e-identities, with regard to which the following analyses were carried out in cooperation with the Ministry of Public Administration, the Ministry of Internal Affairs, and the Ministry of Higher Education, Science, and Technology: an integrated analysis of the situation of e-identities in Slovenia, an analysis of possible legal and implementation possibilities, as well as a comparative analysis with other countries. Questionnaires and consultations were carried out with the parties involved, such as service providers, certification authorities, citizens, and officials employed in the state administration. The redesigned system of e-identities enables better and more efficient e-administration services with a higher degree of use with regard to target groups; at the same time, the redesign enables, in combination with appropriate decisions, also a higher level of personal data protection than current means of identification and authentication of individuals in the virtual world. Furthermore, the Information Commissioner actively participated in the interministerial working subgroup for the Preparation of a Document of Developmental Planning in the Field of the Information Society for the Period 2011–2015 in the Priority Areas of Security, Privacy, and Trust.

At the end of 2011 the Local Court in Novo Mesto upheld the highest fine that the Information Commissioner has thus far issued, which was issued with regard to an insurance company due to unlawful data processing as in the offence procedure it determined that personal data pertaining to 2,382 former insured persons was unlawfully communicated by one insurance company to another. The Court dismissed the request for judicial protection submitted by the two violators and upheld the Commissioner's decision by pronouncing a fine amounting to EUR 112,590 for the legal entity and EUR 20,000 for the person responsible.



4

**OTHER ACTIVITIES OF THE
INFORMATION COMMISSIONER**

4.1 Participation in the Preparation of Laws and other Regulations

In accordance with the provisions of Article 48 of the PDPA-1, the Information Commissioner issues prior opinions to ministries, the National Assembly, bodies of self-governing local communities, other state authorities, and bearers of public authority regarding the compliance of the provisions of draft statutes and other regulations with the statutes and other regulations regulating personal data.

In 2011, the Information Commissioner participated in the preparation of 27 acts and other regulations, including the following:

- the Draft Healthcare Databases Act (opinion of 22 September 2011);
- the Draft Treatment of Juvenile Offenders Act (opinion of 11 September 2011);
- the Draft Officials in the State Administration Bodies Act (opinion of 12 August 2011);
- the Draft Toll Collection Act (opinion of 12 August 2011);
- the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (opinion of 12 August 2011);
- the Draft Act Amending the Real Estate Records Act (opinion of 15 July 2011);
- the Draft Act Amending the Electronic Commerce and Electronic Signature Act (opinion of 5 July 2011);
- the Draft Act Amending the Criminal Procedure Act (EVA 2010-2011-0009) – repeated interministerial coordination (opinion of 26 May 2011);
- the Draft Act Amending the Penal Code (opinion of 4 May 2011).

4.2 Relations with the Public

Throughout 2011 the Information Commissioner provided for the public nature of its work through its website www.ip-rs.si and it raised the awareness of legal entities and natural persons by means of regular and consistent contact with the media (by means of press releases, statements, commentaries, interviews with the Head of the Information Commissioner, press conferences). It endeavoured to ensure that its website was up to date and comprehensive. The majority of information on its website is also available in English. By organising a variety of workshops and seminars it provided for the continuing education of liable entities and persons; furthermore, it participated in a number of conferences, workshops, and round tables.

In 2011 the Information Commissioner continued its preventative work and dedicated a great deal of attention to continuing to disseminate tools and aids for raising awareness. It issued the *Smernice za zaščito zasebnosti na internetu* (English: "Guidelines on Tools for Protecting Privacy Online"), and as well embarked on a new path with the preparation of special reports. In 2011 the first report on loyalty cards was prepared.

On 26 January 2011 the Information Commissioner marked European Personal Data Protection Day and prepared an event intended to draw attention to the importance of personal data protection in the modern and technologically ever more developed society. The focus of the event was the premiere of the British documentary film *Erasing David*, which concerns privacy, surveillance, and all-encompassing databases. As has become a tradition, on this occasion the Information Commissioner awarded a prize for good practice in the area of personal data protection to two data controllers, one from each the private and the public sectors. In 2011 the special award "Privacy by Design Ambassador" 2010 was bestowed for the first time for efforts in the field of privacy by design. The award was bestowed upon the Metrology Institute of the Republic of Slovenia for its work in section-based speed measurement. Furthermore, awards were given to companies which in 2010 became certified in accordance with the ISO/IEC 27000 information security management standard and thus demonstrated a high level of personal data security.

Every year on 28 September the International Right to Know Day is marked. On this occasion the objective of the Information Commissioner was for its message regarding transparency and the right to public information to reach the broadest public possible, for which purpose a leaflet was designed with the following slogan: Curiosity is an Eye-

opener. The Information Commissioner established that the “curiosity” of citizens is at a satisfactory level. Unfortunately, it also noted that despite certain progress in public and state officials’ level of awareness, their work is not and can not be confidential (except in exceptional circumstances envisaged by law). The number of cases is still rising in which liable authorities do not provide applicants with documents requested or refuse access to such. Furthermore, the Information Commissioner called attention to the ever more frequent practice of authorities referring to the exemption of confidential data when refusing access to documents. In the opinion of the Information Commissioner, the Government of the Republic of Slovenia should devote greater effort to the promotion of the transparency of public sector operations. Two years after signing the Convention of the Council of Europe on Access to Official Documents, Slovenia has still not ratified such, it did not join the Open Government Partnership signed by 43 other countries from around the world, does not encourage non-governmental organisations engaged in issues related to the openness of public administration, and is planning changes to the APIA that will decrease the right to access documents. Two international organisations – Access Info Europe (Spain) and the Centre for Law and Democracy (Canada) carried out a study in 89 countries on the quality of legislation in the field of access to public information. Due to its excellent act, Slovenia was ranked in the enviable position of second place, however, it must be kept in mind that good legislation does not guarantee transparency if it is not implemented in practice.

In 2011 the Public Opinion and Mass Communication Research Centre Politbarometer carried out several studies within the Public Opinion Research on the Relationship of the Public to Current Circumstances and Events in Slovenia Project. The Information Commissioner is the highest ranked institution with regard to institutions that Slovenes trust the most (51%). The institutions following it are: the Human Rights Ombudsman, the Commission for the Prevention of Corruption, the Director General of the Police, and the State Prosecutor General. Of the institutions listed, the Information Commissioner was ranked highest also in 2010.

At the 7th International Conference of Information Commissioners in October 2011 in Ottawa, Canada, the community of information commissioners and similar institutions ensuring the transparency and protection of the right to access information adopted the decision to create and present to the public a common website of all information commissioners. The website was created by the Slovene Information Commissioner (info-commissioners.org).

4.3 International Cooperation

Information Commissioner employees regularly participate in international seminars and conferences where they often present their own papers.

As the national supervisory authority for the protection of personal data, the Information Commissioner cooperates with the competent bodies of the European Union (EU) and the Council of Europe engaged in personal data protection.

In 2011, the Information Commissioner actively participated in six EU working bodies engaged in supervision of the implementation of personal data protection within individual areas of the EU, namely the following:

- the Article 29 Working Party for personal data protection, as well as in four of its subgroups (the Technology Subgroup, the Future of Privacy Subgroup, the Binding Corporate Rules (BCR) Subgroup, and the Borders, Travel and Law Enforcement (BTLE) Subgroup);
- the Europol Joint Supervisory Body;
- the Joint Supervisory Authority for Schengen;
- the Joint Supervisory Authority for Customs;
- at co-ordination meetings of the European Data Protection Supervisor (EDPS) together with national authorities for the protection of personal data for the supervision of CIS;
- at co-ordination meetings of the European Data Protection Supervisor (EDPS) together with state national authorities for the protection of personal data (EURODAC);

In 2011, the Head of the Information Commissioner continued to hold the position of Vice-Chairman of the Europol Joint Supervisory Body. In March 2011 a Deputy Information Commissioner participated in the international inspection group that carried out an inspection regarding personal data protection at Europol's headquarters in the Hague. The Information Commissioner also regularly participated in the meetings of the Working Party on Peace and Justice (WPPJ) and actively participated in the International Working Group on Data Protection in Telecommunications (IWGDPT). Once again in 2011, a representative of the Information Commissioner participated in the Council of Europe's Consultative Committee (T-PD) of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108).

The Information Commissioner carried out an inspection at the embassies of the Republic of Slovenia in Pristina and Cairo, where it reviewed, among other issues, the lawfulness of personal data processing in procedures for obtaining a Schengen Area visa and within the Visa Information System (VIS).

In 2011, the Information Commissioner hosted representatives of similar institutions from a number of European countries, such as Croatia, Serbia, Kosovo, Montenegro, and Macedonia, to whom it presented its activities and good practices in its fields of competence. As a Junior Partner it continued with the implementation of the Twinning project IPA 2009, No. MN/09/IB/JH/03 – "Implementation of Personal Data Protection Strategy" in Montenegro, to which it was selected in 2010, together with the project leader, the Ludwig Boltzmann Institute for Human Rights from Austria. In November 2011 the Information Commissioner was selected by the European Commission to implement the Twinning Light Project SR/2009/IB/JH/01 – "Improvement of Personal Data Protection" which is focused on improving personal data protection in Serbia.

In 2011, the Information Commissioner continued its work within the European LAPSI project (Legal Aspects of Public Sector Information), which is intended to establish a thematic network of experts in the field of the reuse of public information in order to remove obstacles to its implementation that occur in practice.



Editor:

Nataša Pirc Musar

Avtorji besedil:

dr. Monika Benkovič Krašovec, State Supervisor for the Protection of Personal Data

Jože Bogataj, Head of State Supervisors for the Protection of Personal Data

Alenka Jerše, Secretary General

Eva Kalan, Advisor

Polona Tepina, Advisor

Kristina Kotnik Šumah, Deputy Information Commissioner

Andrej Tomšič, MA, Deputy Information Commissioner

Design:

Bons d.o.o. & Klemen Mišič

Translation:

Petra Zaranšek and Dean J. DeVos

Addres:

Informacijski pooblaščenec RS

Vošnjakova 1

1000 Ljubljana

www.ip-rs.si

gp.ip@ip-rs.si

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