Executive Summary

1. General information about the Inspectorate

The Estonian Data Protection Inspectorate:

1) works to defend the right of all people to obtain information about the operations of agencies;

2) works to ensure that the inviolability of private life is respected in the use of personal data; and

3) works to defend the right of all people to access data gathered in regard to themselves.

In order to defend these constitutional rights:

1) everyone has the right to register complaints with the inspectorate;

2) we initiate supervision if rapid intervention is required;

3) we can issue precepts and impose fines;

4) we register the processing of sensitive personal data;

5) we approve public sector databases;

6) we draft guidelines for the processing of personal data and in the area of public information;

7) we take part in the joint supervision of cross-border European information systems;

8) we are on the working group formed on the basis of article 29 of the European Data Protection Directive, which harmonises the implementation of data protection in Member States;

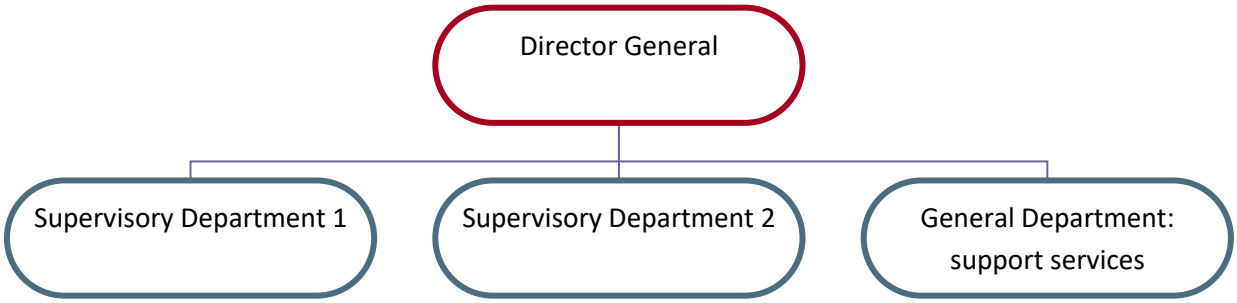
9) we issue permits for the forwarding of personal data to countries with an inadequate level of data protection; and

10) we issue permits for the use of personal data in research studies without the consent of the data subject.

Emphasising expertise, we divided our inspectors between two specialised departments in April 2009. The first department deals with 'soft' issues (the economy, communications, welfare, education, media, the Internet and spam). The second department deals with 'hard' issues (legal protection and state defence, the security business, finance, statistics, population accounting and local government).

Our inspectors deal with protection issues related to public information and private life within their fields. Where possible, specialisation in narrower issues within the departments is applied. Supervision Directors, who also act as Deputy Directors General, are in charge of our Supervisory Departments.

By late 2009 the Inspectorate had assumed the following general structure:



The number of positions in the Inspectorate (23) has not changed since last year, and neither has the number of positions covered by the wage fund (18). Labour turnover has dropped (3).

Last year's statistics indicate a significant increase in our workload:

	Registration of processing of sensitive personal data	**Requests for explanations,**	**Challenges and compla**	**Administrative coercion and punishments for misdemeanours**	**Reconciliation of public sector databases**

	Registration applications	Precepts	**memoranda and information**	**ints**	Precepts	Misdemeanour proceedings	Fines and penalty payments	
2007	629	106	251	110	35	4	2	11
2008	960	210	679	358	37	23	14	91
2009	1429	459	944	306	49	46	12	265

2. Changes in work organisation

Our workload increasing significantly while our workforce remained the same and our budget was cut[1] necessitated the following changes in the organisation of our work.

1) In March we launched a **help line** which received 851 calls[2] in 2009. Inspectorate employees answer calls on rotation throughout the day. Via the help line we can answer simple questions faster and easier than by e-mail. The questions are recorded, and the most common ones are published in the FAQ section of our website. The help line also contributes to service quality, as the employee on duty focuses on answering calls while other inspectors can continue their work uninterrupted.

2) We have introduced '**soft supervision proceedings**' as a new form of response. With less complex problems it is more expedient to send a letter drawing attention to the problem which is only expected to be answered if the recipient wishes to explain or rebut the circumstances. Thus, supervision proceedings which consisted of at least four documents have been replaced by proceedings consisting of two documents dispatched simultaneously.

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[1] In early 2009 the Inspectorate's budget was 9,186,232 kroons; this was subsequently cut three times by a total of 1,209,737 kroons or 13.7%.

[2] This number does not include calls to an official advising of the registration of the processing of sensitive personal data or calls to other numbers.

3) To reduce our workload related to the registration of the processing of sensitive personal data, a transition to a streamlined notification procedure has been planned with an information system enabling web-based submissions. Unfortunately, the passing of draft legislation no. 564 SE (which provides for the transition to the notification procedure) and the launch of the information system have been postponed until 2010.

4) In training we are switching from a 'retail' to a 'wholesale' approach, to use trade terms. We have stopped providing training events for individual agencies, companies and organisations; this niche has been taken over by the private sector. The Inspectorate now only organises large-scale training events and trains teachers, while first and foremost producing instructional materials.

3. Monitoring, instructions and round tables

We have introduced **comparative monitoring** as a new form of work using the comparative audits of the National Audit Office as an example. Monitoring is designed to identify good and bad practice. All monitoring subjects are notified of the results. Monitoring covers many subjects, and its impact is greater than that of supervision proceedings conducted subject by subject. On the basis of monitoring we initiate separate supervision proceedings for major violations and elaborate instructional materials for recurring problems.

From August to November 2009 we conducted three cases of monitoring, all of them in the area of the Public Information Act. In the first case we examined the publication of information on EU Structural Funds on the websites of agencies; in the second, the publication of contact information on the websites of central state agencies; and in the third, the publication of contact information on the websites of all municipal and city governments.

As a result of the second monitoring case, a set of instructions entitled User-Friendly Contact Information on Agency Websites was drafted on 8 October 2009. During the third case we were already able to make reference to these instructions.

With some issues we prepared instructions without monitoring, instead discussing the issue with all concerned. The most significant of these was arguably Processing Personal Data in Scientific Research, approved on 27 April 2009.

Our main partners in the drafting of these instructions were the National Institute for Health Development and officials from the Ministry of Social Affairs responsible for health-related issues. The Estonian Institute of Demography also provided advice. The instructions cover personal data processing for scientific research to be carried out without the consent of the data subjects but with the permission of the personal data protection supervision authority. Documents designed to assist applicants are appended to the instructions. The instructions are based on the principle that two-fold permission and registration is unnecessary – information that has already been submitted does not need to be submitted again.

We hope that the attitude towards the Personal Data Protection Act and its supervision authority as an impediment to research and public health has been overturned since last spring.

For a considerable time we were considered an enemy of genealogical research. Following discussions with the Estonian Genealogical Society, on 17 November 2009 we compiled a set of instructions entitled Personal Data Processing in Genealogical Research. The instructions take the view that everyone has the right to know about their ancestors, blood relatives and relatives by marriage. Compared to Finland, which occasionally stood as our example in this issue, we have taken a much more flexible approach. We treat the collection and use of genealogical data in personal genealogy as data processing within a person's private life. The Personal Data Protection Act and the requirement to obtain the consent of the people concerned only apply if the data is disclosed or used for commercial purposes.

During the financial crisis, complaints and demands for explanations have become more frequent concerning the disclosure of apartment-related debts. Having discussed this issue with the Estonian Union of Cooperative Housing Associations, we drafted Instructions on the Disclosure of Data of Indebted Apartment Owners. These instructions point out that

management boards must notify their members of shared administrative matters, including debtors.

The following instructions from 2009 are also worth highlighting:

- Personal Data in Credit Institutions, produced in association with the Estonian Banking Association on 16 February 2009;
- The Right to Ask for Your Own Data, a set of instructions approved on 9 March 2009;
- The Use of Personal Data in Election Campaigns, a set of instructions approved on 17 April 2009; and
- Instructions on the Use of Personal ID Codes, approved on 27 April 2009.

Differing opinions on the Data Protection Inspectorate and the Public Prosecutor's Office with regard to post-proceeding access to information collected during criminal proceedings resulted in Disclosure of Information Collected During Criminal and Misdemeanour Proceedings after Proceedings, an instruction-like joint letter to prosecutors' offices, investigative bodies and bodies conducting extra-judicial misdemeanour proceedings.

The Public Information Act and Personal Data Protection Act have a broad scope of application and contain evaluative legal definitions. Our discretionary decisions often have broad public resonance, and in our last annual report we noted that the Data Protection Inspectorate needed better connections and involvement with the general public.

To this end, since 27 August 2009 we have been advised by a round table that includes respected lawyers, journalists, scientists and experts on the information society. The round table provides its opinions on setting priorities in the Inspectorate's operations, drafting instructions and formulating positions on important issues that are subject to interpretation.

4. Public information problems and developments

The monitoring of agencies' websites which we conducted last autumn confirmed that compliance with the Public Information Act is irregular and not uniform. Application of the

law is too often left in the hands of officials without the necessary training. Although it may be a generalisation to say so, the area seems to be a "no man's land". It is dealt with by document management departments, public relations departments, personnel and IT departments. At the level of senior management, intervention occurs on a case by case basis, and only then if problems arise.

The lack of assigned responsibility concerning the organisation of public information issues is characteristic at the state level:

- the law itself is dealt with by the Ministry of Justice;
- the implementing legislation of the law (uniform bases of document management procedures) is dealt with by the State Chancellery;
- the organisation of training for officials is dealt with by the Ministry of Finance;
- information technology in the public sector and the information gate are coordinated by the Ministry of Economic Affairs;
- the majority of holders of public information are to be found in local governments, which are coordinated by the Ministry of Internal Affairs, and local government associations; and
- supervision of the Public Information Act and its twin law, the Personal Data Protection Act, is exercised by the Data Protection Inspectorate.

On 17 December 2009 a memorandum was sent to the Secretary of State concerning clarification of responsibilities in the area of public information. It was proposed that in all state agencies an individual with sufficient authority be assigned to take responsibility for the coordination of compliance with the Public Information Act and for the supervision of those guaranteeing compliance. These individuals would also promote better coordination in inter-agency cooperation.

The efficiency of horizontal cooperation between agencies will also be improved so as to harmonise the non-uniform web-based information of the public sector and make it more user-oriented. The complementary provisions of the Public Information Act legalising the Estonian information gate, which were drafted with our involvement and which entered force on 28 December 2009, provide for this. They make it obligatory for holders of

information to publish information about their activities and services on the website www.eesti.ee, a central information portal. The structure of the information gate will be user-oriented rather than agency-oriented.

The Data Protection Inspectorate has changed its policy concerning the supervision of compliance with the Public Information Act. Instead of the predominantly complaint-based response previously employed, we are doing our best to influence the implementation of the law. Important tools here are comparative monitoring, instructions and raising awareness.

A separate problem in compliance with the Public Information Act is the IT aspect. In this regard, a pivotal and costly mistake was made some years ago – agencies were allowed to commission similar IT solutions separately. This resulted in:

- an array of solutions that proved inconvenient for users in document management and agency websites;
- a scarcity of inter-agency solutions (there is a document exchange system for the agencies but there is no inter-agency document search system for citizens); and
- difficulties for smaller agencies in complying with the law, at the local government level in particular.

The State Chancellery deserves praise here for commissioning the Inter-Agency Document Management Centre. We are placing our hopes on the local government services portal that was primarily initiated by the county government and local governments of Viljandi County and developed with the assistance of the Ministry of Internal Affairs. We are also hoping that the Estonian Informatics Centre will successfully implement an inter-agency document search system designed for citizens.

In the accounting and labour accounting of state agencies there is a general trend towards greater harmonisation and centralisation. We are convinced that the same development is inevitable in document management and the organisation of the web-based information of agencies.

Local governments should not be left to struggle with IT solutions, either, since jointly developed solutions would be faster and cheaper to implement. It is people in need of public sector information who will benefit most from such developments.

5. Problems and developments in the protection of private life

The criminalisation of identity theft through complementary provisions of the Penal Code which entered force on 15 November 2009 has been a positive step. Judging by complaints, demands for explanations and phone calls, other people's names are more rarely being used in bad faith in Internet-based communications portals.

Last year's report highlighted the poor quality of population accounting as a major problem in personal data processing in the public sector – specifically, address data. A draft act to amend the Population Register Act prepared by the Ministry of Internal Affairs is expected to improve the quality of such data. If a person provides their contact details when, for example, filing a tax return, registering a car or applying for a benefit from their local government, this data should also be entered in the population register. All agencies must then draw the data from the population register and must not duplicate it. However, regrettably, the draft act does not go all the way in terms of changes to residence data.

The issue of limits on data protection has resurfaced from time to time in the context of freedom of speech (including the freedom of the press) and freedom of creation. On 23 November 2009 an article was published in the *Postimees* newspaper with the headline "Is personal data protection limitless?" The article explained that the primary objective of the Personal Data Protection Act is to protect people's private lives. In the case of disputes, the fundamental right protecting the subject of the dispute is considered. If the public or professional activities of a person are criticised, this involves the constitutional freedom of speech, rather than the protection of private life. It is irrelevant whether freedom of speech is exercised by a journalist or an anonymous online commentator.

The Personal Data Protection Act provides a special rule on publishing personal details without consent for journalistic purposes (subsection 11(2)).[3] In the round table we have tried to define who and what this provision applies to. The conclusion was reached that a generally accepted definition could not be given to the media. We also took into account that the Constitution does not differentiate between the freedom of the press and freedom of speech. Freedom of speech is also a fundamental right enjoyed by everyone rather than a privilege of journalists. Therefore the conclusion drawn was that everyone may refer to subsection 11 (2) of the Personal Data Protection Act when publishing personal details without consent, provided that the prerequisites stipulated in the provision are met. If we accept that the Personal Data Protection Act does not impose limits on the criticism of public and professional activities, subsection 11 (2) may provide grounds for the disclosure of personal data related to people's private lives, irrespective of the publisher – whether this be a journalist or an online commentator.

In 2009 around forty people contacted the Inspectorate concerning unwanted advertising (compared to around twenty times in 2008). There is a loophole in Estonian law at present that prevents senders of advertisements that do not provide information society services from being punished.[4] There were cases in which the sender of an advertisement received customer data from another company (e.g. a company that had previously operated in the same premises or from another company in the same holding.)

Naturally, the recession has led to increased complaints and demands for explanations concerning the publication of the personal details of debtors. We have compiled explanatory instructions about the debts of apartment owners. A significant proportion of complaints have been related to the publication of the data of members of company

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[3] "(2) Personal data may be processed and disclosed in the media for journalistic purposes without the consent of the data subject if there is predominant public interest therefore and this is in accordance with the principles of journalistic ethics. Disclosure of the information must not cause excessive damage to the rights of a data subject."

[4] However, the Ministry of Economics Affairs and Communications has prepared a draft act to amend the Electronic Communications Act and Information Society Services Act which should eliminate this loophole and introduce regulations on the sending of advertisements in compliance with the opt-in principle required in the directive. See also footnote 37.

management boards with the data of companies. Here we have also drafted relevant instructions.

An important data leak should also be mentioned where the actions of the registrar of the Estonian Central Register of Securities enabled access, prohibited by law, between 14 October and 4 December 2009, to the data of owners of pension fund shares. Misdemeanour proceedings in this matter are continuing in 2010.