

## Preface

The year 2008 was full of events and work for the Data Protection Inspectorate. The third [Personal Data Protection Act](#) was enacted in Estonia, which eliminated the principal drawbacks and gaps of the earlier edition.<sup>1</sup>

Due to different reasons, the Act enjoyed a significantly larger interest and attention of the public than the earlier editions. In conclusion, the result was constructive, since the society was much more aware than previously of the issues related to personal data protection.

### Significant growth in number of inquiries

Due to such increased attention, people currently know better whom to address for assistance in case of the misuse of personal data. This is confirmed by growth of written inquiries:

<b>inquiries from Inspectorate</b>	<b>2007</b>	<b>2008</b>
requests for explanations and memoranda	251	631
challenges and complaints	110	358

Due to the growth in the number of inquiries, the number of reactions to offences also grew significantly. This was predominantly based on complaints, challenges and requests for explanations, and much less on our own initiative:

<b>reactions of Inspectorate</b>	<b>2007</b>	<b>2008</b>
warnings, precepts	141	247
completed misdemeanour procedures	4	23
imposition of penalty payment or misdemeanour penalty	2	14

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<sup>1</sup> The requirement to notify the data protection supervision authority of processing private personal data was waived. The scope of application of the Act was expanded to include the processing of personal data lawfully provided for public use. The requirements of processing personal data for scientific research were made more flexible. The press was provided with a basis for processing personal data without a person's consent in case there exists dominant public interest, it does not excessively damage the rights of a data subject and the press ethics is observed. The bases for processing personal data in credit reference services were specified and reasonable time frame was established for it. Unjustified restrictions for using personal identification code were waived.

## Growth of registrations and approvals

In 2008, the number of applications submitted by institutions and legal persons grew:

preventive administrative legislation by Inspectorate	2007	2008
registration applications for processing of sensitive personal data	629	960
approvals of public sector databases	11	91

The year 2008 saw the starting up of the project of [e-health](#), and the providers of health protection services joining it have submitted amendments in processing of sensitive personal data

In the second half-year of 2007, the [State Information Systems Administration System](#) (RIHA) was started up. The network environment was opened for the coordination of public sector databases. This provides the Inspectorate with an opportunity to better assess the conformity of the databases to the requirements of the Personal Data Protection Act and Public Information Act.

## Personal data protection in commercial and non-profit sector

As a rule, the Data Protection Inspectorate intervenes in processing personal data in the commercial and non-profit sector based on complaints. This provides flexible application of the Act granting a person himself/herself the opportunity to determine the boundaries of his/her private life. Naturally, reasonable exceptions shall be made in this respect. The supervision authority shall intervene on its own initiative if it is necessary to prevent serious danger to the inviolability of private life or if people are actually unaware of the material misuse of their data. It also includes the case when a person himself/herself is unable to protect his/her rights.

The advantage of addressing the Data Protection Inspectorate is that a person can quickly achieve the termination of violating his/her rights. In most cases, it actually is his/her principal and sole objective. As a rule, a warning by the Inspectorate is enough. The implementation of administrative coercion is a rare phenomenon, and the initiation of a misdemeanour procedure is even less frequent. The protection of person's rights under general procedure would be more expensive and time-consuming (civil proceeding for persons, misdemeanour procedure and criminal proceeding for the state).

## **Frequent problems related to personal data protection in 2008**

Based on requests for explanations and complaints, personal data protection was predominantly connected with the following problems:

- a) misuse of personal data in communication environments (incl. identity thefts);
- b) intrusive advertising offers in consumer's (e-)mailbox (especially the issue of the lawfulness of obtaining the contact details);
- c) prohibited publication of personal data (incl. publication of debtors' data);
- d) excessive asking for personal data (incl. when applying for client card).

## **Inefficient population registration**

The Data Protection Inspectorate believes that personal data processing in public sector has systemic drawbacks. The most significant sphere of personal data processing in public sector is keeping the population registration

The population registration shall be based on the Population Register Act, and the Ministry of the Interior is responsible for the above. However, the area of responsibility of the Ministry of the Interior includes two duplicating and badly matching population registration systems (the Population Register and databases of the Citizenship and Migration Board).

Duplicated registration of residence and contact details is more or less kept by all larger databases of the public sector, e.g. tax and social security registers, traffic register, education information system, etc. A person has an opportunity to submit to different databases different residence details.

Institutions may actually use the data of the Population Register, but the changes in the address and contact details announced to these are not recorded in the Population Register. The result is inefficient population registration system.

Notification of changes in residence shall always be recorded in the Population Register irrespective of which administrative institution receives the data.

The Data Protection Inspectorate does not approve new public sector databases if these duplicate the residence data in the Population Register. The Inspectorate plans to assess the legality of collecting address details in larger databases, which duplicate each other.

## **Legal problems in area of personal data protection**

The official publication [Ametlikud Teadaanded](#) may be called a problem in the area of personal data protection. Namely there exists no legal basis for terminating the publication of notices published in the computer network and found via search engine after the objective of the publication has been completed. Especially serious problems are related to notices, the content of which has become misleading (e.g. incorrectly referring to a person as debtor, suspect or offender).

The current law provides an opportunity of criminal punishment for the misuse of other person's data (identity theft) in case it was done for receiving material profit (fraud). However, web-based communication environments experience growth of such identity thefts, which are not directed at receiving material profit, but irrespective of the fact cause serious sufferings to a person. The Data Protection Inspectorate considers imperative the quick adoption of [identity thefts criminalisation draft](#).

## **Widespread problems in area of observing Public Information Act**

The second line of activity of the Data Protection Inspectorate is the supervision of observing the [Public Information Act](#).

Based on requests for explanations, complaints and challenges, the problems related to the public information may be collectively summed up as follows:

- a) negligence and laziness of holders of information – requests for information are not answered within the prescribed term, the obligation of maintaining the documents register or publishing the information on webpage is not performed correctly;
- b) disputes between persons making a request for information and holders of information regarding the legality of bases for access restrictions;
- c) incorrect understanding that each letter to a holder of information is request for information and it shall be answered within 5 working days – many inquiries submitted as requests for information are actually requests for explanations,
- d) webpages of holders of information are constructed not in user-centred but in institution-centred manner.

## **Webpages of public sector institutions and state portal**

*Estonian Human Development Report for 2008* admits that "considerable and persistent growth of the quality of life through ICT may take place only by means of active participation of a citizen, who is informed, enlightened and understands well the processes of governing, and in order to achieve the above various institutions should drastically improve the presentation of their everyday information in e-channels".<sup>2</sup>

[The Public Information Act](#) treats the webpages of institutions as means of publishing information and provides a list of obligatorily published information. The presentation of information and construction of webpages dramatically differs in various institutions. As regards the harmonisation of the presentation of web-based information, a positive example may be the [unfinished project of harmonising the webpages of local governments](#) that was initiated by the Ministry of the Interior.

A citizen and businessman often do not get any help from public sector webpages in case of superinstitutional topics and practical concerns if s/he does not know exactly the competence of institutions (e.g. looks for regional public transportation data, lost identity card, wishes to start business in certain area of activity, etc.).

A new trend in most developed countries is the concentration of e-services and information offered to people into integral network gateways. In Estonia, the [state portal](#) created by the Ministry of Economic Affairs and Communications is just in the initial stage. The imperative measures include

- a) creation of cooperation network between the editors of the [state portal](#) and of the webpages of the remaining institutions;
- b) imposition on institutions of legally binding obligation to correctly present and update the information in their area of responsibility (incl. information regarding the services) via the portal.

Taking into account that the supervision competence of the Data Protection Inspectorate includes the webpages of institutions, we intend to prepare recommended guidelines for holders of information on how to publish information on webpages in a more harmonised and purposeful manner.

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<sup>2</sup> Estonian Human Development Report for 2008. Estonian Cooperation Assembly. Tallinn 2009 p. 114.

## **Legal problems in area of public information**

The public sector is governed by the [Public Information Act](#) and [Personal Data Protection Act](#) as coupled acts, which are applied in the format *rule-exception*. As a rule, public sector information is public, and any exceptions may be primarily conditioned by the necessity to protect the inviolability of a person's private life. Unfortunately, the [Public Information Act](#) provides officials with extremely large right of discretion. In case of literal interpretation of subsection 12 (4<sup>2</sup>) of the Act, the greater part of documents may not be published in the document registers.

Institutions apply measures for personal data protection to a very different extent. The result is heterogeneous practice, insufficient transparency of public administration and implementation of access types not stipulated in the Act.

In February 2009, the Inspectorate published [recommended guidelines](#) regarding the maintenance of documents register and providing access to documents, but apparently specifications by the legislator are required.

## **Changes in organization of work of Inspectorate**

In order to make the activities of the supervision authority based on the Personal Data Protection Act and Public Information Act more efficient, the transfer from function-based structure to area-based structure was prepared at the end of 2008. By the time the report is submitted, the [change of the institution structure](#) has already entered into force.

In addition, the firm wish of the Inspectorate is to initiate a roundtable for involving specialists in the field of media, ethics, law and information technology. For considering any decisions with more extensive public effect, we need greater and preventive interconnection with the public.

The staff of the Data Protection Inspectorate comprising 17 members makes its best efforts in order to secure the sufficient protection of the inviolability of people's private life and personal data and sufficient transparency of the state government.



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