



**ANDMEKAITSE INSPEKTSIOON**  
**ESTONIAN DATA PROTECTION INSPECTORATE**  
*We take care that privacy is respected in the use of personal  
data and that activities of the state are transparent*

**ANNUAL REPORT FOR THE YEAR 2011**

**TO THE CONSTITUTIONAL COMMITTEE OF THE RIIGIKOGU (Estonian Parliament)  
AND TO THE LEGAL CHANCELLOR:**

**ON COMPLIANCE WITH THE PUBLIC INFORMATION ACT AND PERSONAL DATA  
PROTECTION ACT**

**EXECUTIVE SUMMARY IN ENGLISH:**

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*Supervision of personal data  
and public information: less  
coercion and punishment, more  
educating, explaining and  
informing*

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Estonian constitutional law in general as well as the [Personal Data Protection Act](#) and the [Public Information Act](#) (Freedom of Information Act) see control, coercion and imposing punishment for misdemeanours as the main duties of an agency called an 'inspectorate'.

The personal data competency of the Estonian [Data Protection Inspectorate](#) covers the public, private and third sectors as well as the activities of many individuals (e.g. people who keep websites, write blogs, are members of social networks).

In terms of freedom of information our competency covers the entire public sector and also the persons governed by private law that perform public functions.

The Data Protection Inspectorate is one of the smallest government agencies in Estonia, but the quantity of the objects subject to our supervision is one of the largest. We cannot achieve the same intense controlling-enforcing-punishing supervision relationship that the Labour Inspectorate, the Health Inspectorate or the Consumer Protection Board have. It is also unnecessary.

A state supervisory authority usually operates in an area that is highly regulated with legal provisions. The Personal Data Protection Act, however, is a framework act or the general part of the law. Harmonising it with special acts and IT development requires constant establishment and explanation of practical rules and good practice for all areas of society.

Both of the acts that are the basis for our activities are characterised by legal terms that are open to interpretation (*minimalism, predominant public interest, excessive damage, significant damage of the inviolability of private life*) and the consideration of contradictory fundamental rights.

The implementation practice of personal data and freedom of information therefore needs less coercion and punishment, and more interpretation, instruction, harmonisation and explaining.

The activities of the Data Protection Inspectorate may be grouped into roles in consideration of the characteristic features of Estonia. According to the amount of work required, these roles can be listed as follows:

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*What are our actual roles?*

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- 1) **educator and consultant:** provision of explanations and information, counselling important private initiatives;
- 2) **ombudsman (commissioner):** investigation of breaches of information rights both on the basis of complaints and at our own initiative, incl. in international cooperation;
- 3) **auditor and authority that grants permission:** audits, comparative surveillance, registration of processing of sensitive personal data, approval of public sector databases, granting permission for use of personal data in scientific research without the consent of the subjects of research, granting permission for sending personal data to countries where the level of data protection is inadequate;
- 4) **soft law maker:** publication of optional guidelines and advising on specialised professional acts of self-regulation or the creation of 'soft law', incl. in international cooperation;
- 5) **policy adviser:** advising legislative drafting and data protection initiatives in the public sector, participation in the workgroup that harmonises data protection practice in Europe and advises the European Commission; presentations to the Constitutional Committee of the *Riigikogu* and the Chancellor of Justice;
- 6) **law enforcement authority:** imposing administrative coercion and punishment for misdemeanours; implementation of data protection measures at the expense of the processor in exceptional situations.

The text of the annual report is prepared according to these roles.

The Data Protection Inspectorate was established in 1999 and administered by the [Ministry of Justice](#) since 2007. The number of salaries positions since then has been 18.

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### *Review in figures*

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The authority's budget in the previous year was 592,446 euros. The budget increased by 44,213 euros in comparison to 2010.

Looking at the number of times we have been contacted shows that people and institutions have become more aware about personal data and freedom of information:

- the number of responses to explanation requests and memoranda has grown four times in five years: from 251 (2007) to 940 (2011), and 816 calls were also made to our Information Hotline last year (the hotline was opened in 2009),
- the number of complaints and challenges (appeals) has grown more than seven times: from 110 (2007) to 818 (2011).

In the area of prevention we introduced comparative monitoring sessions with tens and hundreds of objects and carried out thorough audits of large and sensitive authorities and databases. We carried out 7 surveillances and 7 audits in 2011.

The number of recommendations and proposals made to personal data processors and holders of public information in the course of complaints-based and preventive supervision increased more than eight times in three years: from 54 (2009) to 442 (2011). As a rule, this is all it takes to eliminate omissions and restore the lawful situation.

The number of fines and penalty payments tripled at the same time (12 in 2009, 38 in 2011), but it is still small.

We gave 21 opinions on draft acts in 2010 and 41 opinions in 2011.

The area of the personal data and privacy of an employee (and also a job applicant and former employee) is only covered with a few general and indefinite provisions.

It became evident that these issues have not been systematically studied in Estonian law. In 2011 we published the [Guidelines on Personal Data Processing in Employment Relationships](#). The guidelines are a bulky legal document that took legal adviser Mrs. Maris Juha and her team the entire 2010 to compile.

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*Privacy in employment relationships*

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We received assistance from the Chamber of Commerce and Industry, the Estonian Trade Union Confederation, the association for the development of human resources PARE, recognised specialists of labour law and the Labour Inspectorate.

We published a shorter summary for the wider public in June 2011, [Guidelines for Human Resources Officers – Personal Data in Employment Relationships](#), which was also [translated](#) to English.

Preparation of the guidelines received a lot of media attention. We organised a series of training sessions in cooperation with the human resources association PARE. We will continue the training in cooperation with the Labour Inspectorate this year.

We carried out national monitoring on the basis of the guideline. We also organised a joint [supervision audit](#) with the [Data State Inspectorate of Latvia](#), which focussed on the employment and client relationships of the [Stockmann Group](#).

In 2011 we aimed our analytical activities mainly on ourselves.

We carried out an extensive internal audit of administrative procedure with an analysis of court judgements and legal literature. The goal was to harmonise the legal practice of the Inspectorate, to guarantee that it is understandable and justified, and to reduce procedural errors. We improved our methodology, organisation of work and document forms.

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*Analytical activity: audit of administrative procedure + personal data and freedom of expression*

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The other major topic we analysed was the contact of private life and freedom of expression. Not many cases like this are taken to court and they mainly focus on the issue of libel. Restricting freedom of expression must be a well-considered decision. It places a larger burden of responsibility on us and calls for the ability to make the right decisions.

We carried out a thorough analysis of the rulings made by the European Court of Human Rights, the existing literature (of which there is a shortage in Estonia) and the rulings made by the Supreme Court. This is the basis we can rely on when resolving complaints and justifying our decisions. We also discussed the topic with the Inspectorate's advisory council and specified the most important principles in our strategy document of the Data Protection Inspectorate. We also agreed on a joint seminar with the Estonian Newspaper Association, which will be held in April this year.

Cooperation with other supervisory authorities or the internal audit units of institutions is very important for us, as it makes up for our small size.

Information exchange with the Police and Border Guard Board and the Ministry of the Interior for surveillance of the misuse of police databases and the Population Register, respectively, is on firm grounds. Misuse of the Population Register was increasing, so we discussed the problem in media and implemented a stricter fine policy.

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*Cooperation and inclusion  
make up for small size*

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Last year we also started regular information exchange with the [Estonian eHealth Foundation](#) in order to monitor the misuse of patients' data.

As we sometimes need high-level IT expertise in our supervisory activities, we are grateful to the [Estonian Forensic Science Institute](#) and the [Centre of Registers and Information Systems](#) for allowing their experts help us with their opinions.

In order to include experts and stakeholders, we turned our unofficial roundtable into the Advisory Council set forth in the Statutes of the Inspectorate. The Council expresses an opinion on our draft guidelines and activity priorities, raises issues and acts as a jury in giving recognition.

In order to communicate with the public, we also opened an [account in Facebook](#) in addition to [our website](#).

The requests for explanation, hotline calls and complaints received by us indicate that the issues most frequently referred to us have remained the same in recent years:

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*Personal data – what are the  
issues most frequently referred  
to us?*

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- disclosure of personal data by another person in social networks and especially in family tree research portals;

- unpermitted disclosure of debt information. The legal regime that regulates access to payment default data is

rather liberal in Estonia, but the legislature has imposed some restrictions on making lists of debtors public. An important precedent is the [Supreme Court decision made in December 2011](#), which confirmed our opinion that disclosing expired debt data forever is not permitted and that the deadline is 13 years;

- board members of companies are not pleased about their data being published alongside the debt or other data of the companies. We believe that a legal entity operates via natural persons and reproduction of public data from the Commercial Register that contains the data of legal representatives is permitted, incl. alongside debt information;
- working within the range covered by cameras seems to be the biggest problem for people at workplaces.

In the field of freedom of information we continued with the proactive and coordinating approach that we took in 2009:

- comparative monitoring sessions with tens and hundreds of objects;
- extensive training (the training organised in cooperation with the Ministry of Finance and the Government Office allowed the representatives of all municipalities improve their knowledge in 2011; training for government agencies was carried out in 2010);
- preparation and introduction of guidelines;
- appointment of freedom of information coordinators to government agencies; and
- creation of a network of coordinators.

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*Preventive and coordinating  
approach for freedom of  
information*

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The efficiency of the proactive and coordinating approach is obvious: 137 challenges (appeals) in 2008; 82 in 2009; 54 in 2010; and 46 in 2011.

We must also keep in mind that the provisions of complaint-based surveillance in the Public Information Act of 2000 are mainly designed for supervising the satisfactory compliance of requests for information.

The main channels for accessing information today are the websites of institutions (incl. web-based document registers) and the [State Portal](#) of Estonia. Complaint-based supervision is not sufficient with regard to new sources of information and the emphasis should be placed on proactive activities – monitoring, analyses, making recommendations, receiving feedback and spotting problems.

I admire the [Ministry of Economic Affairs and Communications](#) and the [Estonian Information System's Authority](#) for their work with the State Portal of Estonia. A suitable platform for the joint contact point of the public sector in the computer network has now been created. I am looking forward to the implementing regulation

that would stipulate the exact obligations of the holders of information in giving information about their activities and services.

I have high hopes for the [Government Office's](#) project that focuses on designing a common web look for government agencies.

The municipal sector, however, has beaten the state here. The [service portal of local authorities](#) initiated by the municipalities of Viljandi County and organised by the Ministry of the Interior deserves recognition. It has created a uniform user-friendly web look for all of the municipalities that have joined the portal.

European data protection authorities cooperate closely in the field of cross-border police and internal security databases. However, the need for cooperation between data protection authorities is also increasing in other areas.

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*We launched the joint supervision activities of Baltic data protection authorities*

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Nordic countries and the Baltic States are turning into an increasingly more integrated economic space. Cross-border supervision guarantees equivalent protection of the personal data of clients and employees in all countries. And to companies, it gives the reassurance that requirements are the same in all countries.

We launched a [joint audit](#) with the [Data State Inspectorate of Latvia](#) as a pilot project in 2011. It was followed by the meeting of Baltic data protection authorities in March this year, where we agreed on trilateral joint supervision activities.

The central pan-European topic was the [reform of data protection law](#) initiated by the European Commission. The reform package was officially published in January this year, but it had been introduced to the public for the first time in November 2011.

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*Reform of European data protection law*

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I must admit that the package was a disappointment. The cons outweigh the pros. I will highlight just a couple of keywords:

- 1) the directive that had lasted the test of time is turning into a regulation with obvious signs of overregulation; it is unreasonable to regulate a legal framework with a directly applicable act;
- 2) protection of the rights of data subjects becomes considerably clumsier and slower – everything of any significance must be coordinated with the European

- Commission and the European Data Protection Board that may interfere with any decisions made by data protection authorities;
- 3) the administrative burden of personal data processors increases considerably;
  - 4) an exceptionally broad legislative right in substantive matters is delegated to the European Commission;
  - 5) all this makes it possible to restrict the openness of the society that we are used to;
  - 6) the special police and criminal justice data protection directive that will be added to the general data protection regulation exceeds the legislative competency of the European Union.

It must be mentioned that the reform package created by the Directorate-General for Justice has also been strongly criticised by the other directorates-general of the Commission. It has also been pointed out that the package does not have a credible impact assessment (negative opinion from the Commission's [Impact Assessment Board](#)). The claim that the reform will help [save 2.3 billion euros](#) is an example of wishful thinking, as a reform that increases the administrative burden can only generate more expenses.

Viljar Peep  
Director General

**Full report in Estonian: <http://www.aki.ee/est/?part=html&id=22>**