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Summary of the topics covered in the 18th Report on Activities

Internet

Is it possible nowadays to **surf the Internet and remain anonymous**? For example, cookies are becoming increasingly powerful, particularly when it comes to personalising web browsers. But quite apart from this technology, **browsers** themselves create **marks** that clearly identify the user. The FDPIC was able to verify this after examining and subsequently testing the Panopticlick algorithm (section 1.3.1).

Social networking services on the Internet remain an issue. They often have international implications, which makes the legal situation somewhat complicated. Internet users would be well advised to act sensibly and to be particularly careful with the personal data they publish (section 1.3.7).

The legal basis for the **processing of personal data in an electronic records management system by the Federal Administration** is covered by the Government and Administration Organisation Act. However, the provisions contained in the law do not provide a sufficient legal basis for the interdepartmental (inter-ministerial) GEVER system which involves automated processes (section 1.3.9).

Health

Following repeated comments by the FDPIC, and the position taken in the interdepartmental consultations, a clear legal basis for data protection has now been created as part of the comprehensive **review of the Epidemics Act**. This is the first time that regulations have been introduced to provide cross-border data protection for sensitive patient data (section 1.5.1).

During the year under review, a number of data protection issues were raised in conjunction with the far-reaching **eHealth Switzerland** project. A number of significant activities were carried out both in the field of data processing and legal regulations. The role concept, and the recommendation for the legal provisions applicable to the implementation of the eHealth strategy, are of particular relevance (section 1.5.2).

A **private hospital** unwittingly handed over a **DVD** to a patient which contained not only his own images, **but also those of a further 17 patients**. The images were accompanied by the names and addresses of the persons concerned, the operating surgeon, the type of surgery involved and the date of the operation. The FDPIC immediately ordered an inquiry to be carried out (section 1.5.6).

The Federal Authorities intend to create a legal basis for a **diagnosis register** which, at least initially, will be concerned with the diagnosis of cancer. The planning of such a register represents a major challenge in view of the extremely high data protection requirements. As



a result, the FDPIC has joined a working group that will study the issues involved (section 1.5.8).

Insurance

Motor vehicle insurers operate an electronic data platform called «**car claims information pool**» which is designed to **cut down on insurance fraud**. The FDPIC examined the platform in question and is able to state that, in principle, the system respects data protection requirements. If there is room for improvement in certain areas, he is working with the parties concerned to find pragmatic solutions (section 1.6.1).

A number of **health insurers** have written directly to insured persons who are taking certain types of medication to **draw their attention to the existence of cheaper alternatives**. Although such actions may seem appropriate, given the costs pressures in the health system, they nevertheless represent a violation of data protection requirements (section 1.6.3).

Justice/Police/Security

The **Federal Law on the Monitoring of Postal and Telecommunications Traffic** has to be adapted to technological developments and extended to explicitly cover the Internet, and thus also Email and Internet telephony. Within the context of interdepartmental consultations, the FDPIC made a number of recommendations on various aspects that need to be considered during the revision of the law (section 1.4.9).

Labour issues

Multinational companies are increasingly **centralising their human resources departments**. As a result, their Swiss subsidiaries are often required to transfer their employees' **personal data** to the parent company abroad (section 1.7.1).

Business, Economy, Finance

In an age marked by globalisation, the **transfer of data abroad** within the framework of outsourcing is gaining in importance, particularly in the case of transnational companies. Moreover, as a consequence of the division of labour, a sub-contracting firm will often be asked to undertake the data processing. This raises several questions, such as the **data protection regulations** that govern such data transfers, as well as whether or not data transfers to a contractor or sub-contractor are authorised (section 1.8.2).

Certain companies specialise in **collecting and selling personal data to third parties**. This form of data processing is permitted, provided that it complies with data protection legislation, in particular with regard to the principles of **purpose limitation and transparency**. The persons concerned must also have the possibility of preventing their personal information being used for commercial purposes and obtaining information about all personal data that concerns them (section 1.8.4).

Cantonal debt collection agencies do not operate a harmonised system for the disclosure of **debt registry extracts**. Some agencies only grant extracts for the previous two years, others accept a five-year period; some agree to divulge information which legally speaking is prohibited. The Federal Office of Justice, which is the supervisory authority for all the debt collection agencies, will take the necessary steps (section 1.9.1).

The **processing of credit rating information by credit reference agencies** raises two issues. The first point concerns the **correction** and **deletion** of erroneous data, an undertak-



ing which has proven in practice to be both laborious and time-consuming. On the other hand, the technical tools available today make it very easy to collect and cross-reference an increasing amount of personal data, and thus to create **personality profiles**. In view of this trend, the FDPIC, in his capacity as the supervisory authority, has decided to continue his investigations into the practice of these credit reference agencies (section 1.9.2).

Miscellaneous

As part of the **population census**, the FDPIC conducted an inspection of a private institute which carries out data processing tasks on behalf of the Federal Statistical Office. His conclusion is that, in principle, all the parties concerned are making every endeavour to respect data protection regulations. The inspection is not yet complete (section 1.1.1).

«Deletion» does not necessarily imply «the definitive removal» of data. During the interdepartmental consultations concerning the ordinance on the business identification number (UID), the FDPIC has been reminded once again of this fact. In the two opinions he wrote on the subject, he recommended that the question of **deletion of records in the UID register** should be legally settled in a clear way (section 1.1.4).

The **road safety action programme** (Via sicura) has a number of deficiencies from a data protection perspective. The FDPIC recommended that improvements be introduced in the areas of anonymisation, data disclosure and black box recordings (sections 1.2.1).

The Federal Roads Office has carried out several tests on the so-called **section control speed checks**, and submitted the results to the FDPIC for comments. From a data protection perspective, the FDPIC found no faults with this type of control system (section 1.2.2).

Raising the awareness of children and teenagers was once again one of the FDPIC's priority training objectives undertaken over the last year. A joint campaign was launched with the Council for the Protection of Individual Privacy called «NetLa – my data belongs to me!». Its purpose is to educate children aged between 5 and 14 about the importance of privacy and the protection of privacy rights. The campaign was presented to the public on the occasion of the **5th European Data Protection Day** (section 3.3).

Within the context of the GEVER Confederation (electronic records management) project, it is important that **data protection requirements and the transparency principle** are integrated from the very outset and, by the same token, information security and protection as well. The FDPIC drew the attention of the project managers to his reservations regarding the timetable for migration to the new GEVER system. He believes that only by extending the deadline to the end of 2013 will it be possible to integrate all the requirements into the standard products (section 1.2.11).

Principle of transparency and public access

The number of **requests for access to information based on the Freedom of Information Act** received in 2010 totalled 239, which is equivalent to the number received the previous years. Since the law came into force, there is an increasing trend towards allowing the applicant at least partial access. Overall, **32 requests for mediation** were filed, representing a good quarter of all cases in which the federal administration granted only limited access. That figure compares with 41 for the previous year. Last year, 34 requests were dealt with conclusively.

Under the guidance of the FDPIC, ten cases were the subject of mediation. In 14 cases, as a consensual agreement could not be reached or expected, he issued a recommendation.



Several requests for mediation were handled together. In three cases, access was requested for documents that did not fall within the scope of the Freedom of Information Act. Interestingly, these requests were all submitted by lawyers (section 2).

New Publications from the FDPIC

Information concerning the activities of the FDPIC in the area of data protection and public access to information can be found on his website at the following address: www.derbeauftragte.ch. New subjects include digital electricity meters (smart meters), an overview of possible scenarios regarding the outsourcing of data processing tasks to companies outside Switzerland, and a comic-style brochure on risks associated with the digital media (section 3.5).

The full version of the annual report can be obtained, in German or French, on the Internet at www.derbeauftragte.ch or a hard copy may be ordered from BBL, Vertrieb Publikationen, 3003 Bern: Art. No. 410.018

Copies may also be ordered via the Internet at:

<http://www.bundespublikationen.admin.ch/de/publikationen/artikelsuche.html>