



30 June 2014

Summary of selected topics covered in the 21st Report on Activities

Principle of Freedom of Information

Based on the figures that were notified to us, the Swiss federal authorities received **469 requests for access** to official documents, which represents a **reduction of 13.7%** compared to the previous year. A third of the 225 cases in which access was entirely or partially refused were submitted to the FDPIC for mediation. Of the 81 ongoing procedures of mediation in the year of report, the Commissioner adopted 37 recommendations. In 16 cases, a settlement was agreed between the parties (2.1 und 2.2).

In matters relating to public procurement by the federal authorities, the FDPIC pointed out that society, and more specifically the tax payer, was entitled under the principle of public access to verify how public money was being spent. As a result, he issued an opinion and addressed a recommendation to the Federal Council that it publish information about the award of tenders and contracts with private companies (2.3.1 and 2.5.2).

This year, too, the courts handed down a number of landmark rulings on the principle of public access to official records. For example, the **Federal Administrative Court** considered the question as to whether Administrative Commissions such as the AHV/IV Commission (old-age pension and disability insurance) were covered by the Freedom of Information Act (FoIA). The court concurred with the FDPIC and ruled that non-parliamentary committees as well as committees set up by the public authorities and administration, are to be considered part of the decentralised Swiss Federal Administration and so fall under the FoIA (2.4.1).

The FDPIC has taken note of the fact that the Freedom of Information Act will be subject to a new **evaluation** at the request of the General Secretaries' Conference. He is part of the monitoring group, and in that capacity will report on his experiences with the law and its application since its adoption in 2006. His position is that the principle of public access to official documents should not be undermined. There is a risk of this happening if supervisory authorities or the federal intelligence agencies are excluded from the scope of the FoIA (2.5.1).

Health

As part of the implementation of the eHealth project, work is currently underway to establish a legal basis for the adoption of a Electronic Patient Record Act. The current draft bill takes on board important data protection concerns, including the patient's right to "informational self-determination", i.e. a persons' right to determine what information about himself can be communicated to others and under what circumstances (1.5.1).



The Federal Council has asked the Federal Ministry of Home Affairs to present a draft bill on a cancer registry by the end of the year. During the consultation procedure, the FDPIC said that this could constitute a risk to privacy if the social security number were used as the only identification feature (1.5.3).

Insurance

A number of health insurers have asked for their **data collection points** to be certified and have registered them with the FDPIC. The smaller and medium-sized insurers often ask an external service provider to carry out an automated black-box verification. Insurance groups, on the other hand, prefer to work with a data collection point which serves all members of the group (1.6.2).

Workplace issues

After making a number of recommendations to five banks in 2012 on the subject of the **tax dispute with the USA**, and in order to find a global situation to this on-going problem, the FDPIC has published an information sheet which regulates how banks that wish to transfer personal data to the US tax authorities should proceed. He also explained to the persons concerned what their rights were and offered advice (1.7.1).

The FDPIC carried out an inspection of an insurance company that had sent out pension fund statements and noted that it had modified its procedures to reflect the ruling issued by the Federal Administrative Court. However, some occupational pension funds have yet to comply (1.7.4).

Business and commerce

The draft bill to modernise the commercial register should not contain any provision that enshrines the “right to be forgotten”. The Swiss Federal Commercial Registry Office concluded from the results of the consultation process that no special rules were needed for publishing data on the Internet. This is a regrettable decision (1.8.4).

On the **Energy Strategy 2050**, the FDPIC submitted his observations during the consultation procedure. He criticised the lack of precision regarding the legal basis for the processing of personal data and demanded that adjustments be made. He also accompanied the “Smart Grid Road Map Switzerland” working group in an advisory capacity (1.8.1).

This year, the FDPIC carried out a number of **follow-up checks** on the **customer cards** issued by the two largest Swiss retailers. The evaluation process is still ongoing (1.8.2).

Recommendations had been made to **Moneyhouse** that it modify its address system. The FDPIC monitored the implementation of those recommendations, which proved to be quite a time-consuming exercise. There have been several complaints since the operator of the service, itonex AG, modified the **deletion modalities**. The FDPIC has provided advice to the persons concerned and is in the process of analysing the services offered by itonex AG (1.8.2).

The owners of credit rating databases must ensure that they take into consideration security needs when handling **requests for the deletion of data**. However, persons making such a



request must bear in mind that having their data deleted from these databases could have negative consequences on their businesses (1.8.6).

Internet

The Logistep ruling has introduced a degree of uncertainty regarding the right to track down **acts of copyright infringement on the Internet**. The Minister of Justice Simonetta Sommaruga has therefore set up a working group which has been tasked with adapting copyright law to technological developments. In her final report, she makes explicit reference to the best practice model developed by the FDPIC. This sets out the correct procedure for the collection and processing of personal data when tracking down copyright infringement on the Internet (1.3.1).

Website operators and advertisers use **web tracking services** as a tool to make their Internet offerings more effective and their positioning more competitive. At issue is the fact that the privacy rights of the individuals concerned are usually illegally infringed by such tracking tools because they are not informed in the first place (1.3.2).

The FDPIC has published his position on the Federal Council's **Open Government Data** report. He draws attention to the risk of cross-referencing what are currently anonymized data with additional sources of information. This could lead to a **de-anonymisation** of that data and thus to a possible infringement of personal privacy (1.3.4).

The **archiving of digitised newspapers** raises a number of data protection issues, particularly with respect to the right to be forgotten. When a request is received for data to be deleted, it is important to consider both the interests of the individual who wishes to have his personal data removed from a newspaper's electronic archive or the index of a search engine and the public interest in having access to that information (1.3.5).

Justice, Police, Security

The **Post and Telecommunications Surveillance Act** is currently being revised. We have made it quite clear that any interference in the fundamental rights that are guaranteed by the Constitution require a formal and legal basis which must be set out very clearly. The planned retention of data, and more specifically the retention period, must be proportionate to the intended purpose (1.4.5).

Within the framework of the **revision of the Customs Act** as well as two decrees on information systems operated by the Swiss customs authorities, the FDPIC has once again pointed out that federal bodies are only entitled to process and divulge personal data when there is a clear legal basis authorising them to do so (1.4.7).

General data protection issues

During the year under review, the FDPIC carried out a **follow-up inspection** of the **Swiss Federal Railways' database for passenger travelling without a valid ticket**. He was satisfied that all data had indeed been deleted from the information system once the required storage period had elapsed (1.2.6).



Within the context of his consultancy activities, the FDPIC undertook a review of a **central database covering banning orders for discotheques**. He came to the conclusion that technical and organisational measures needed to be adjusted to ensure that they complied with data protection requirements, and to that end he issued a number of recommendations on the subject to the persons concerned (1.2.4).

A **ski resort**, which was the object of a prior inspection due to central storage of customer's pictures, has now made all the necessary changes to its **access control system** which is now data protection compliant. The audit procedure is now complete and was terminated (1.2.1).

When participants involved in a **research project** are **filmed**, it is relatively easy to ensure that the protection of their right to privacy is guaranteed. However, when third parties who are not directly involved in such a project are filmed, a number of **measures** must be taken in order to ensure the protection of their data (1.2.2).

When the **authorities issue an order** requiring images from **CCTV cameras** to be handed over, the release of those images is justified. On the other hand, if a request is not backed up by a court order, the operator of such CCTV surveillance cameras should only release the footage after carefully weighing up the interests of the parties involved. The operator is responsible for ensuring the legality of the request (1.2.3).

Information and awareness-raising

One of the key duties of the FDPIC is to enhance the **information and awareness of the population** with regard to data protection issues and the principle of public access to official records. On his website www.edoeb.admin.ch he regularly publishes information on topical issues. During the course of the past year, the topics have included the right to be forgotten, big data, people tracking, the publication of photographs and video surveillance by means of drones.

Furthermore, the FDPIC has developed an **impact study tool for data protection** in the form of a dynamic questionnaire. This instrument is designed to help those planning new products or applications to carry out an initial assessment of their project and to recognise possible data protection issues at an early stage (1.8.8).

On the occasion of the 8th International Data Protection Day, the FDPIC organised a podium discussion which took place on 28 January 2014. A number of prominent politicians were invited to discuss the effects of Edward Snowden's revelations and their impact on data protection in Switzerland. Members of the public were also asked to participate in the discussion via a blog (3.1).

The full version of the annual report can be obtained on the Internet (www.edoeb.admin.ch - Documentation - Annual Reports) or a hard copy may be ordered from BBL, Vertrieb Publikationen, 3003 Bern: Art. No. 410.021

Copies may also be ordered via the Internet at:
<http://www.bundespublikationen.admin.ch/de/publikationen/artikelsuche.html>