



27 June 2016

## Summary of selected topics in the 23<sup>rd</sup> Annual Report

### Principle of transparency

In 2015, the FDPIC received 98 **requests for mediation**, corresponding to an increase of just under 9 per cent (2014: 90). The most requests for mediation were again filed by journalists (26) or private individuals (23). The requests were made in the 225 cases in which the Federal Administration refused access entirely (98) or in part (127). In the report year, therefore, in a good 43 per cent of cases of complete or partial refusal of access, a request for mediation was filed (2014: 36%).

In relation to the upcoming **revision of the Freedom of Information Act (FoIA)**, the FDPIC spoke out clearly against restrictions on transparency. For example, he opposes the move to make supervisory, inspection, audit or control reports produced by federal authorities exempt from the provisions of the FoIA. No clear reason why supervisory authorities should claim that their work is confidential when there is public interest in their activities. Furthermore, the FDPIC takes the view that the coordination of the FoIA and the Data Protection Act is already sufficiently well regulated. The Commissioner's recommendations and the increasing number of decisions taken the federal courts help to clarify issues related to access to official documents containing personal data.

During the office consultation procedure on the **bill on the organisation of railway infrastructure**, the FDPIC also spoke out against the far-reaching limitation of the principle of transparency in the field of statutory supervision. He rejected the planned provisions because the FoIA does not recognise any category of official documents (e.g. audit or inspection reports) as being inaccessible by definition. The exceptions provided for in the FoIA also offer adequate means for taking proper account of the increased level of protection that certain official documents require.

### Data protection on the Internet

Many **apps**, once installed on a smartphone, access data, files and applications on the device (e.g. contacts, photographs or location). As an example, the FDPIC tested an app used in connection with medical check-ups. In general, he advises users to check carefully what authorisations an app requests and to assess whether these seem necessary. Users ought to be aware what data the app is processing. If authorisation is requested for reasons that are not clear and if the producer of the app is not trustworthy, users should not install the app. (1.3.3)

At present, people who do not want their address and telephone number to be published online can only block their address completely, even if they would be prepared to disclose it through other channels. In the course of the **revision of the Telecommunications Act**, the FDPIC therefore proposed including a provision offering a choice of publication channel in the the new law. He also called for a ban on the use of directory entries for direct advertising. However, the Federal Office of Communications (OFCOM) did not follow his proposals. (1.3.4)



## Health and research

The Federal Act on Electronic Patient Records (EPRA) will come into force in mid-2017. The sectoral identifier for **electronic patient records** will thus become reality. During the office consultation procedure in relation to EPRA, the FDPIC pointed out various sensitive issues that must still be resolved. (1.5.1)

The enquiries carried out relating to the **medical service** for the Federal Administration and federal businesses (MedicalService AeD) revealed that the service is complying with data protection requirements. The FDPIC has closed the case. (1.5.2)

## Insurance companies

In order to supervise social health insurance companies, the Federal Office of Public Health demands that insurance companies provide very detailed information on each of their policyholders. In the course of the office consultation procedure relating to the **Ordinance on the Supervision of Social Health Insurance**, the FDPIC commented on this. The current statutory requirements are unsatisfactory. (1.6.4)

## Trade and industry

The FDPIC expressed concerns last year on the **revision of copyright law**. The planned requirement to provide information in civil proceedings, the sending out of warnings and the stay-down procedure for certain cases are problematic from a data protection viewpoint. (1.8.4)

In 2015, the FDPIC filed an action in the Federal Administrative Court against the status enquiry agency **Moneyhouse** because it had not accepted all his recommendations. Among the matters that the court must consider, the FDPIC expects a decision on the definition of a personality profile. (1.8.5)

The **case against an address dealer** that failed to respond to requests for information and deletion from several persons is still pending before the Federal Administrative Court. The company concerned had not reacted to the FDPIC's recommendation and implemented the requirements made. (1.8.6)

## Finance

In the past year, Postfinance revised its **e-banking platform**, amending its terms for users. In response, the FDPIC conducted enquiries into the situation. Postfinance has accepted his suggestions for improvements. (1.9.1)

The FDPIC takes the view that the processing of **requests for administrative assistance** relating to stolen data contravenes the principle of legality. As a result, he expressed concerns in the consultations on a further amendment to the Tax Administrative Assistance Act (1.9.3)

The FDPIC received an increasing number of enquiries relating to the **information provided by banks**. Certain banks demand a fee that is well in excess of the CHF 300 maximum permitted under data protection law. (1.9.4)

## General data protection issues

The FDPIC investigated the situation in connection with the **free Wi-Fi service offered by the SBB**, issuing several recommendations in order to resolve to the issues noted. In response,



the SBB amended the data protection provisions for the service. In addition, they will retain user data for only six months instead of nine (1.2.2).

In spring 2015, the Swiss Football League (SFL) launched a project in which football fans travelling to away matches are accompanied and secretly filmed by employees of private companies. The aim of the project is to gather evidence in case any trouble or vandalism occurs. The FDPIC has advised the SFL that the **secret filming of football fans** in public areas is problematic (1.2.3).

The FDPIC tested the company Skidata's **photocompare system**, which is used to check ski passes in many ski resorts. It constitutes a greater intrusion into personal privacy than conventional procedures. The system should therefore be limited in its use to passes for longer periods. Customers must be given specific information and data must only be retained for a short time (1.2.4).

In the effort to **combat doping in sport**, data on athletes and other persons is exchanged between doping control agencies. If this involves the transmission of data to a country with inadequate data protection standards (e.g. the USA), protection for the persons concerned must be guaranteed contractually (1.2.5).

Persons who process data have a duty to cooperate in investigations into data protection matters undertaken by the FDPIC. If they fail to do so, they are committing a criminal offence. The FDPIC has filed criminal complaints against persons who have not been cooperative (1.2.7).

The Federal Council is currently examining the possibility of creating a **central address register** for the authorities. The FDPIC is part of the working group set up consider the various options proposed (1.1.3).

The FDPIC has given his opinion on the **revision of the Energy and Electricity Supply Ordinances**, examining the proportionality of the personal data published on the internet by the Swiss Federal Office of Energy. He concluded that there will be only a marginal increase in transparency as a result of the planned expansion of the group of persons affected. Accordingly, he has recommended that no expansion should take place. (1.2.6)

## Employment

In the matter of the **federal whistleblowing reporting office**, the Federal Supreme Court has decided not to consider the case because the related Federal Administrative Court judgment of 16 December 2014 has now taken full legal effect. The Federal Audit Office is therefore required to report its data collection to the FDPIC and to draw up data processing regulations. (1.7.2)

In response to various enquiries, the FDPIC has investigated the requirements for **personal security checks** in the private sector and drawn up guidelines on the data protection requirements that should be met when carrying out risk assessments. (1.7.1)

## Justice, police, security

In 2015, the FDPIC looked into the **disclosure of data on air passengers** by the State Secretariat for Migration to Federal Intelligence Service. While the process abides by data protection regulations, the implementing provisions must be revised. (1.4.4)

In terms of the Schengen-association agreements, the FDPIC examined **log files held by the Frontier Guards Corps** (FGC), which is an end user in the Schengen information systems



(SIS). The evaluation of the log files revealed that the FGC complies with data protection requirements when accessing the SIS. (1.4.5)

### **Information and raising awareness**

At the end of January, the tenth **International Data Protection day** was held, which the FDPIC this year devoted to the subject of «Cloud Computing: handling personal data securely following the Safe Harbor judgment». He organised a public event at the University of Lausanne with brief presentations and a podium debate. (3.1)

Members of the public who have a data protection concern, journalists, lawyers, and anyone else who is interested will find detailed information on the issues and areas for which the FDPIC is responsible on the **website [www.edoeb.admin.ch](http://www.edoeb.admin.ch)**. In 2015, the FDPIC published numerous recommendations relating to the Freedom of Information Act. In the field of data protection, new guidelines on personal security checks and on inheriting digital content were also issued.

The full annual report may be downloaded on the internet ([www.derbeauftragte.ch](http://www.derbeauftragte.ch) – Dokumentation – Tätigkeitsberichte) or can be ordered from BBL, Vertrieb Publikationen, 3003 Bern:

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