

INTRODUCTION

The main task of the Data Protection Inspectorate is to ensure that:

- a person's right to privacy is respected when personal data are used, and that
- public information is accessible.

The Inspectorate is therefore the implementing agency and independent regulator of the [Personal Data Protection Act](#) and the [Public Information Act](#).

The legislator has also assigned various other tasks to the Inspectorate. We have also been assigned tasks with international legislation. ¹

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As the protector of information-related fundamental rights the Inspectorate performs the role of an independent representative or ombudsman that resolves complaints and investigates breaches also at its own initiative. The number of inquiries and cases of supervision has stabilised in recent years:

	2012	2011	2010
Selgitustaotlused, märgukirjad ja teabenõuded	877	940	893
Infotelefoni kõned	1202	816	1061
Järelevalve- ja vaidemenetlused (algatatud) ²	595	481	588
Väärteomenetlused (lõpetatud)	43	34	35

Requests for explanation, memoranda and requests for information

Calls to the information hotline

Supervision and challenge proceedings (initiated)²

Misdemeanour proceedings (completed)

¹ The legislator has assigned additional tasks to the Inspectorate with the [Electronic Communications Act](#) (supervision of electronic direct marketing also in case it does not concern personal data; processing the breach notifications of communications undertakings whilst permitting not to inform the data subjects, separate elements of misdemeanour), the [Official Statistics Act](#) (participation in the work of the Statistics Council, separate elements of misdemeanour), the [Act on Implementation of Regulation \(EU\) No 211/2011 of the European Parliament and of the Council on the citizens' initiative](#) (certifying the compliance of online systems for collection of statements of support), the [Digital Signature Act](#) (suspension of the use of certificates in case of suspicion), the [Human Genes Research Act](#) (approval of the method for generating codes for data), the [Population Register Act](#) (expressing an opinion on the appointment of the authorised processor of the register, approving the contract for maintaining the register, granting permission for exceptional data processing contracts), the [Environmental Register Act](#) (expressing an opinion on the appointment of the authorised processor of the register, granting permission for cross-usage of personal data). Some tasks arise [directly from international legislation](#), especially those that concern participation in the joint supervision of cross-border information systems (the Schengen information system, the Europol information system, the European visa information system, the customs information system the Eurodac fingerprint register).

Use of personal data can be highlighted as a common subject in inquiries and proceedings:

- a) in employment relationships (e.g. monitoring employees, suitability of a consent or contract for data processing, continuing the use of an e-mail address in the name of a former employee);
- b) disclosure of debt data (primarily disclosure without the filter of legitimate interest, disclosure of the members of managing bodies of indebted legal entities);
- c) in social and online media (in simple terms, this may be described as a person's request to have their name deleted from Internet search engines, mostly related to social media);
- d) electronic direct marketing (unwanted advertisements sent by e-mail and text message).

The use of cameras to monitor people and also the publication of recordings in social media, companies and educational institutions is a growing concern.

In the legal sense, the focus of questions and disputes is usually on the legal basis of data processing – whether or not the person's consent for data processing was obtained, whether or not a contract or legal act could have been the legal basis for processing without consent.

There are fewer cases that concern public information – they comprise 10% of requests for explanation, 18% of calls to the information hotline and a quarter of complaints and challenges.

Establishing access restrictions remains the most common topic in the area of public information: such restrictions may be excessive as well as inadequate (access to documents that infringe on privacy via online document registers).

However, the most complicated legal disputes arise over the issue of whether or not a person in private law is someone who performs public tasks and therefore also a possessor of public information.

Misuse of the Population Register is the most common reason of misdemeanour proceedings (30 of 43 completed proceedings). Misuse of the police database has decreased (4 misdemeanour cases).

Our primary goal is to end breaches, not to punish. The majority of breaches end immediately when supervision starts or when a recommendation/proposal is received. In 2012 we issued precepts in just 48 cases.² We imposed penalty payments and misdemeanour fines in 39 cases.

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² This figure does not include standard precepts for guaranteeing the obligation to register cases of sensitive personal data processing – there were 130 such cases in 2012.

Reviewing requests for explanation and complaints is a reaction aimed at individuals and individual questions. It basically means dealing with the trees, not the forest.

We must use the little resources we have left after reacting to problems in the most effective manner: for the prevention of problems, giving information, preparation of guidelines, advising important initiatives and development of cooperation.

Preparing the opening of the electricity market is an example of prevention – the Inspectorate participated in the steering group of the electricity market data warehouse for a year as an adviser on issues concerning protection of the privacy of clients. Only one actual incident later occurred in this area.³

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Our first priority in the protection of personal data in 2012 was **protection of the privacy of minors**. We dedicated our [annual conference](#) (held on 27 January) to this topic. The [Guidelines of the Chancellor of Justice on Informing about Children in Need of Assistance](#) were also introduced at the conference. We joined the cooperation project [Targalt Internetis \(Be Smart Online\)](#) that is led by the Estonian Union for Child Welfare – we would not be able to reach such a large audience if we acted on our own. We aimed the online game [Päästa Liisa ID \(Save Liisa's ID\)](#) at teenagers. We continued giving information on the [user account](#) opened for the game in social media. We spoke to teachers of social studies at the [seminar organised by the Estonian Atlantic Treaty Association](#) (on 26 October).

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Cooperation with the Labour Inspectorate in 2012 was the continuation of the 2011 guidelines on **personal data protection in employment relationships**. We took part in the four regional lecture series of the Labour Inspectorate and explained the subject of personal data of employees to employers, human resources specialists and trade unions. The Labour Inspectorate also published our guidelines in both Estonian and Russian. We are very grateful to our colleagues from the Labour Inspectorate for this great cooperation.

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Estonia became a member of the **Schengen Convention** in 2007. The abolishment of border control on internal borders is compensated for with information exchange between the law enforcement authorities of member states via the Schengen information system and the visa information system.

³ One of the electricity sellers, 220 Energia OÜ, made it possible to access the data of consumers on the basis of personal identification codes. There was an attempt to misuse access, but it was immediately detected and access was made possible only with ID cards.

The risk that information systems may be misused is managed with strict data protection rules. Once every five years the member states all evaluate each other to check whether the activities of their authorities comply with the Schengen requirements. Evaluation committees consisting of the representatives of data protection authorities check adherence to data protection rules. This includes evaluating the day-to-day work and supervision carried out by the police, border guards and consular services in the area of data protection as well as the general capacity and independence of data protection authorities.

The Inspectorate participated in the evaluation of six foreign sister authorities in 2011 and 2012. The Baltic States were evaluated in October 2012. Estonia needed a follow-up evaluation in the area of data protection in 2007, but this time we passed the evaluation without any observations.

The evaluation committee found our [online Schengen information](#) (thorough and harmonised information in three languages on the websites of the Inspectorate as well as associated authorities), the regular cooperation between Estonian authorities and the cross-border activities of Baltic data protection authorities to be exemplary.

We would like to acknowledge the contribution made by our colleagues in the Police and Border Guard Board, the Ministry of the Interior, the Ministry of Foreign Affairs and the Information Technology and Development Centre of the Ministry of the Interior to the achievement of positive results in the evaluation.

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Detailed guidelines aimed at the senders and recipients of e-advertisements were completed on 22 February 2012 in the area of **electronic direct marketing**. The draft of these guidelines was discussed in the public advisory committee of the Inspectorate as well as with business organisations and the Consumer Protection Board. The guidelines were introduced in the *Äripäev* business newspaper on 15 March 2012. We also constantly refer to the guidelines in the course of proceedings and in correspondence.

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The number of proceedings concerning the **misuse of health data** increased in 2012. The reason for this is simple – we established cooperation with the Health Board and the e-Health Foundation. We exchange information about possible breaches. We carried out two audits in the health sector and found that the organisation of personal data protection in the State Agency of Medicines and the Health Insurance Fund complies with requirements.

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In the area of **supervision of database maintenance** we also carried out personal data protection audits in Viljandi County Government, the Rescue Board and Narva City Government. Supervision in the latter two is continuing due to the omissions we identified.

In the interests of legitimate data processing we checked the logs in the register of self-restrictions of gamblers (the Tax and Customs Board, omissions were eliminated and supervision was ended), in the payroll software of state agencies (the Ministry of Finance, follow-up inspection will continue in 2013) and in the database of the Estonian Traffic Insurance Fund (follow-up inspection will continue in 2013).

Concertation using the detailed descriptions uploaded in the [administration system of the state's information system](#) also helps identify problems in the area of database maintenance. The Inspectorate is one of the coordinating agencies that monitors compliance with personal data protection and public information requirements. The number of concertation proceedings was 84 in 2012 (including 16 refusals) and 81 in 2011.

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Comparative monitoring of the disclosure of debt data of natural persons in November 2012 covered the websites of 66 debt collection companies. 12 of them had disclosed the names and often also the dates of birth or personal identification codes of private persons on public websites. Seven of these companies terminated the breaches voluntarily, five did it after we had issued them with precepts.

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Scientific research permits were our broadest activity in the area of **research and statistics**. In 2012 we issued 13 permits and refused to issue them in three cases. We also carried out random follow-up inspections of data security in the research institutions to which we had granted permits. In 2012 we inspected the Tallinn University Institute of Demography, no omissions were found.

We also observed the Population and Housing Census during the first three months of 2012. Our colleagues from the Estonian Information System Authority helped us with advice. Statistics Estonia quickly eliminated the small omissions found in the online census, and no big problems were found. As far as we know, participation in the Estonian online census achieved a world record: 62% of all enumerated people.

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We launched the cooperation network of the public information and personal data protection coordinators of state agencies in order to improve enforcement of the **Public Information Act**. It

helps prevent and solve problems, and exchange useful information. In addition to quarterly meetings we also prepared a coordinator's reminder and administer an FAQ page about this area on our website.

As a result of monitoring public sector websites and document registers in 2011 we selected five state agencies and five local governments for the final round. In January 2012 the public advisory committee of the Inspectorate named Padise Rural Municipality as the most transparent local government and the Veterinary and Food Board as the most transparent state agency.

We published the results of the last monitoring of the websites of state agencies on the International Public Information Day on 27 September in the format of traffic light colours. We are pleased to admit that whilst most agencies had serious problems in 2009 when we started with the monitoring, none of them ended up in the red this time around.

As the situation has improved, we will carry out just one annual monitoring in the area of public information in 2013. We will continue using traffic light colours to summarise the results.

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Sensitive personal data processing was registered 537 times in 2012, including renewals after the expiry of the 5-year registration period.⁴ 130 precepts were issued to guarantee the registration obligation.

These numbers were smaller in 2011 – 397 and 62. The reason for the increase is that the 5-year registration period of many data processors expired.

We published [relevant reminders and sample forms by areas of activity](#) for persons responsible for personal data protection on our website.

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In 2012 the Inspectorate expressed its opinion on 21 draft acts and regulations. Some examples:

- we gave our opinion on the planned amendments to the Tourism Act to the Ministry of the Interior. We considered the purpose of the national database of accommodation service users – to guarantee public order – to be too general. A purpose that is too broad would justify access to the database that is also too broad;

- we advised the Ministry of Justice to archive the address details of the sole traders deleted from the Commercial Register. These are predominantly home addresses. People who have ended their

⁴ This figure also covers the alternative to registration of sensitive personal data processing – registration of persons responsible for personal data protection.

business activities are disturbed by the continued use of their personal contact details in information catalogues and receipt of business advertisements;

- amendments to the Public Information Act that concern reuse of public information demanded a lot of attention. Copying databases in full and mixing data from different sources must be seriously thought through from the viewpoint of personal data protection. The Inspectorate is preparing practical guidelines regarding this as well as the machine-readable format.

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In **international cooperation** the Inspectorate participated in the activities of numerous workgroups. Cooperation between Baltic data protection inspectorates was successful from the practical point of view – our Lithuanian colleagues joined the partnership of Estonian and Latvian authorities in 2012. We carried out a joint audit in all hotels operating under the Radisson Blue brand. The audit covered the processing of the personal data of clients and staff members.

We will continue with joint supervision activities also in 2013, when our focus will be on the gambling sector.

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The **data protection reform plan of the European Union** was the most significant international topic. The opinion expressed by European data protection authorities on the reform plan in the [opinion adopted on 23 March 2012](#) was generally positive, but also contained a number of observations and criticism. The opinion was not unanimous, as many data protection authorities did not support it for various reasons.

Estonia exercised the right stipulated in the workgroup's rules of procedure and had its dissenting opinion enclosed with the joint opinion of the workgroup. By doing this we showed that the data protection authorities of Europe do not form a united front in support of the reforms.

Although the goals of the reform plan are good, the content of the suggested drafts is clearly in contravention to the goals. The reform package considerably increases the administrative burden of companies as well as the public sector. There is no risk-based approach – any personal data processing is considered a threat.

The biggest concern for us is that discussions are taking place, but there is no independent analysis of the impact of such a monumental reform (which means that the internal legislative drafting rules of the Commission are being ignored).

The reform plan makes the council consisting of European data protection authorities and the European data inspector the persons who make decisions (the secretariat of the latter is also the

secretariat of the council). The European Data Protection Council and the European Commission may interfere with any single decisions made by each data protection authority, including punishment decisions. Large fines are prescribed as the implementing mechanism and data protection authorities do not have much discretion in imposing them.

Data subjects would be able to protect their rights not in their countries of residence, but in the data protection authority of the country of the company's or group's principal undertaking.

We see this as a deterioration of the rights of data subjects and the competitiveness of European economy, which slows down the development of digital economy and the information society.

The reform plan was discussed in the European Parliament and in the workgroup of the representatives of governments. It is positive that the Estonian Government quickly took a position on this matter and that discussions reached the general public in Estonia.

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Updating broader international documents has also been discussed in association with the data protection reform plan of the European Union. The Inspectorate participates in the advisory committee of the [Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#) of the Council of Europe. The negotiations of experts for amendment of the Convention of 1981 ended in 2012.

We also represent Estonia in the data security and privacy protection workgroup of the Organisation for Economic Co-operation and Development (OECD) with the Ministry of Economic Affairs and Communications. The workgroup discusses the amendments to be made to the central privacy document of the OECD – [Guidelines on the Protection of Privacy and Transborder Flows of Personal Data](#). The discussion is ongoing.

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The staff composition (18 positions) guaranteed with the Inspectorate's salary fund and the Inspectorate's structure did not change in 2012. The budget of the Inspectorate was 549,484 euros in 2011 and increased to 595,403 euros in 2012.

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This is the fifth annual presentation during my term in office. I would like to use this opportunity to thank my colleagues, whose hard work is summarised in this report.

My colleagues and I are also grateful to the various experts who have given us good advice over the years as members of the Inspectorate's advisory committee.

We are a small agency, so cooperation with other authorities and organisations is important for us. They are the Ministry of Justice, the Ministry of Economic Affairs and Communications, the Ministry of Foreign Affairs and the Ministry of the Interior, the Office of the Chancellor of Justice, the Estonian Information System Authority, the Police and Border Guard Board, the Labour Inspectorate, the Health Board, the e-Health Foundation, the Estonian Union for Child Welfare, the Centre of Registers and Information Systems, the Estonian Forensic Science Institute, the Estonian Newspaper Association and many others.

Viljar Peep

Director General of the Data Protection Inspectorate