



*COMMISSIONER
FOR PERSONAL DATA PROTECTION
(CYPRUS)*

Annual Report 2009

Nicosia, July 2010

1. Introduction

This Annual Report refers to the main activities of the Office of the Commissioner for Personal Data Protection for 2009, a year during which the Commissioner was Ms. Goulla Frangou.

Within the functions of the Commissioner for Personal Data Protection is the supervision of the application of the law and the observance of the principles for the protection of personal data. The main functions of the Commissioner's Office during 2009 related to the examination of Notifications which were submitted in respect of the establishment and operation of filing systems, the issue of licenses for the combination of filing systems and for the transmission of data to third countries, the inspections of filing systems and the investigation of complaints.

One of the priorities of the Commissioner's Office for 2009 was the control of private hospitals' Registers. The sector of providing health services is a sensitive sector to which special attention was given through the controls of the Notifications submitted to the Commissioner's Office by private hospitals and through the inspections conducted in public hospitals in 2008 and continued in 2009.

The number of complaints about unsolicited communications, commonly known as «spam» or «junk mail» or «commercial junk mail», is growing every year, mostly through messages on mobile phones. The Office of the Commissioner is taking all the necessary measures to oblige the senders of the messages to comply with the law, but it faces various legal and other problems, which will hopefully be solved in due time.

In 2009 there was an increase in the number of complaints received by individuals in accordance with section 12 of the Processing of Personal Data (Protection of Individuals) Law 2001 (Law 138(I)/2001), as amended, for non satisfaction of their right of access to their personal data. Most of these complaints received full satisfaction. The right of access was also a main topic of discussion during the 20th Case Handling Workshop, organized by the Office of the Commissioner in the Limassol in October 2009.

As regards to the international activities the Office of the Commissioner participated actively in the Mobility Programme Leonardo da Vinci, as a Host Organization. The project is financed by the European Union as part of the European Lifelong Learning Programme and it funds many different types of activities of varying scales. These include 'mobility' initiatives enabling people to train in another country, co-operation projects to transfer or develop innovative practices, and networks focusing on topical themes in the sector.



Toula Polychronidou
Commissioner
for Personal Data Protection

2. Notifications and licenses

2.1. Notifications

According to the Processing of Personal Data (Protection of Individuals) Law 2001 (Law 138(I)/2001), as amended, the data controller must submit to the Commissioner's Office a Notification about the establishment and operation of a filing system or the commencement of processing.

In 2009 there were submitted to the Office of the Commissioner 469 Notifications, raising the total number of Notifications kept in the Commissioner's Register to 2601:

Sector	Notifications submitted in 2009	Total number of notifications
Public sector	58	547
Legal entities/ organizations	14	806
Private sector	397	1248

2.2. Combination of filing systems

"Combination" means a form of processing which involves the possibility of connection of the data of one filing system with the data of a filing system or systems kept by another controller or other controllers or kept by the same controller for another purpose.

In accordance with section 8 of the Law every combination shall be notified to the Commissioner by a statement submitted jointly by the controllers or by the controller who will combine two or more filing systems which are established for different purposes.

If at least one of the filing systems, which are to be combined, contains sensitive data or if the combination results in the disclosure of sensitive data or if for the combination to be carried out a single code number is to be used, the combination is permitted only with the prior license of the Commissioner.

After hearing the views of controllers the Commissioner has granted 12 licenses in 2009 as follows:

	Controller 1	Controller 2
1	Social Welfare Services	Rents Subsidy Fund
2	Cyprus Educational Institute	Education Service Commission
3	Ministry of Labour and Social Insurance	Social Insurance Services
4	Ministry of Labour and Social Insurance	Social Welfare Services
5	Ministry of Defense	Army Recruitment Office
6	Grants and Benefits Service	Social Insurance Services
7	Ministry of Education and Culture	Education Service Commission
8	Pharmaceutical Services	Nicosia General Hospital
9	General Staff for the National Guard	Social Insurance Services
10	Cyprus Police	Road Transport Department
11	Road Transport Department	National Guard
12	Social Insurance Services	Labour Department

2.3. Transmission of data to third countries

According to the provisions of the Data Protection Law transmission of data which have undergone processing or are intended for processing after their transmission to any country which is not a member of the European Union shall be permitted after a license of the Commissioner.

The Commissioner issues the license only if he considers that the said country ensures an adequate level of protection. For this purpose, he shall take into consideration the nature of the data, the purposes and duration of the processing, the relevant general and special rules of law, the codes of conduct and the security measures for the protection of data, as well as the level of protection in the countries of origin, transmission and final destination of the data.

As the EU Commission decided, under section 25(6) of Directive 95/46/EC, that Switzerland, Argentina, Canada, the Isle of Guernsey, the Isle of Man, the organizations/companies in U.S. which are integrated in Safe Harbor, as well as the transfer of passenger data (PNR) in the Bureau of Customs and Border Protection U.S. provide adequate protection, therefore the Commissioner issues licenses for transmission of data to these countries and organizations.

The Commissioner may also grant a license for the transmission of data to a country

which does not provide adequate protection if the controller have sufficient safeguards resulting from standard contractual clauses to protect the privacy and fundamental rights and freedoms and also the exercise of such rights.

The EU Commission has approved such contractual clauses, which may constitute a satisfactory guarantee of privacy and of fundamental rights and freedoms and for that reason they may represent the legal basis for granting the license for the transfer of data.

In 2009 the Commissioner has issued 22 licenses for transfer of data to countries such as the United States of America, Russia, Serbia, Lebanon, Israel etc.

3. Complaints

The number of complaints submitted in 2009 was 348. This number increased by 26% compared to last year.

The majority of the complaints submitted (73%) referred to unsolicited communications (spam), mainly to mobile phones. The spam complaints are increasing every year and they are 32% higher compared to last year (2008: 175 complaints - 2009: 254 complaints). Most of the messages sent advertise premium rate numbers, usually about gambling, dating and astrology.

Other complaints submitted concerned unauthorized disclosure of personal data, most of the times from one organization or public authority to another.

Then, in percentage, followed the complaints about processing of excessive data (proportionality principle). As for example the case of a Community Council that used to mail to the community residents their tax and water bills and included on the correspondence envelope the data subject's bank account number. The data controller complied with the Commissioner's decision and the data subject's bank account number does not appear on the envelope any more.

The number of complaints about unauthorized access to personal data has also risen in 2009 and there were also several complaints about the right of access. Under section 12 of Law 138(I)/2001, as amended, the data subject has a right to find out if a person (an individual or an organization) holds information about him. If an organization does not comply with a valid access request that the data subject has made, the data subject can make a complaint to the Data Protection Commissioner. The Commissioner has wide powers to investigate complaints made to him and takes appropriate action against any persons or organizations that are not complying with the provisions of the Law.

The main categories of complaints submitted are as per the table below:

Category/ subject of complaint	Number of complaints	Percentage
Spam (e-mail, sms, fax)	254	73%
Unlawful disclosure	19	5,5%
Excessive data (principle of proportionality)	18	5%
Right of access/ right to object	12	3,5%
Publication – Press/ Media/ Internet	9	3%
Confidentiality/ Security measures	8	2%
CCTV systems/ voice recording	5	1,5%
Direct marketing	5	1,5%
Lawful processing/ Consent	4	1%
Monitoring at work	2	0,5%
Unauthorized collection (source of data)	2	0,5%
Biometric data	2	0,5%
Purpose of processing	2	0,5%
Unfounded (out of the scope of the law)	6	2%
TOTAL	348	

3.1. Spam

In accordance with the provisions of the Regulation of Electronic Communications and Postal Services Law of 2004 (Law 112(I) / 2004) the use of automated calling systems without human intervention, (automatic calling machines), or facsimile machines (fax), or electronic mail, or SMS messages, for the purposes of direct marketing, may only be allowed in respect to subscribers who have given their prior consent.

The Law provides that if a person or organization (data controller) obtains from its customers contact details for electronic mail, in the context of the sale of a product or a service, he may use these electronic details for direct marketing of its own similar products or services, provided that customers are clearly and distinctly given an opt-out option.

In 2009 the overall picture of complaints about unsolicited communications (spam), was about the same as in 2008.

Most complaints submitted concerned messages sent to mobile phones that advertised premium rate numbers (starting from 900 or 909) usually about gambling, dating and astrology.

In order to investigate these complaints we must locate the owners of premium rate numbers and we need to request this information from the telecommunications providers (e.g. Cyta and MTN).

In most cases however the telecommunications providers assigned premium rate numbers to other intermediary companies. Then the intermediary companies are renting premium rate numbers to their own clients or they are providing services for sending bulk messages. All these dealings significantly delay the investigation of spam complaints.

In other cases, several data controllers, such as shops and restaurants, complied immediately with the Commissioner's recommendations and stopped sending SMS to non-clients as they had not been informed about the Law and their obligations earlier.

In 2009 the Commissioner had issued a decision against a person who used to send unsolicited communications (sms) about betting, without the consent of the recipients of the message. The Commissioner imposed on the data controller a fine of €8000.

In the past the Commissioner had issued two more Decisions against the same person (data controller) imposing on him a fine of £2000 and €8000, respectively. The data controller had not paid any of the above three fines and the cases were submitted to the Law Office of the Republic for the filing of civil actions against the data controller for the collection of the fines.

3.2. Photocopy of Identity Cards

The Office of the Commissioner examined a complaint against a telecommunication provider (data controller) who was requiring from its customers a photocopy of their identity card in order to open them an account.

The data controller alleged that the collection and processing of identity cards' photocopies was essential for confirming the identity of the customers or potential customers and also to avoid recording false or inaccurate information.

The Commissioner decided that the identity card includes more information that those needed by the data controller and that the simple showing of the identity card when the contract was signed or when the transaction was taking place, could attain the purpose of the processing. The data controller was required to end the collection and processing of identity cards' photocopies and to destroy all copies already held in his filing system.

The telecommunication provider complied with the Commissioner's Decision.

3.3. Disclosure of data by the Department of Lands and Surveys

A complaint was submitted by a person alleging that the Department of Lands and Surveys has disclosed information about her, without her consent and without informing her, to the lawyer of her ex-husband in order to use them during a court procedure.

Pursuant to section 51A of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.224, the Director of the Department of Lands and Surveys can authorize access to the information held in its filing systems to the individuals or entities specified in section 51A. Section 51A provides that a lawyer, acting on behalf of a client, can use this information when he invokes legal proceedings before a Court.

In addition to the above, according to section 6(2)(e) of Law 138(I)/2001 the processing of sensitive data is permitted when it relates solely to data which are made public by the data subject or are necessary for the establishment, exercise or defense of legal claims before the Court.

After investigation of the complaint the Commissioner decided that the Department of Lands and Surveys, *prima facie*, could have authorized access to the information by the lawyer pursuant to the provisions of section 51A of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.224. On the other hand, the purpose of the processing should have been specified and the general reference to legal proceedings before the Court is not considered to be satisfactory in this specific case.

Due to the fact that the disclosure of the information to the lawyer could not clearly establish an infringement of Law 138(I)/2001, the Commissioner imposed a fine of €500 on the Department of Lands and Surveys because it failed to inform the data subject about the communication of its data to a third party, as provided for by section 11(3)(a) of Law 138(I)/2001.

3.4. Collection of excessive data by the Municipality of Strovolos

A number of telephone complaints have been received about the practice of the Municipality of Strovolos to photograph illegally parked vehicles in order to justify the fines imposed on the owners.

The Commissioner decided to investigate and correspondence with the Municipality was exchanged in this respect. She finally decided that this practice infringes the principle of proportionality (section 4(1)(c) of Law 138(I)/2001) and required from the data controller to cease the collection of such data.

Although the Municipality has initially assured the Commissioner that it ended this practice in compliance with her Decision, then it has filed a recourse to the Supreme Court and the case is pending.

3.5. Right of access

A complaint was submitted against the Social Welfare Services concerning their refusal to give the complainant a copy of a report that had been prepared following the complaints from the complainant's ex-husband.

Pursuant to section 12 of Law 138(I)/2001 every person has the right to know whether the personal data relating to him are or were processed. To this end, the controller must reply to him in writing. This section does not specify how the data controller satisfies the request for access (e.g. by providing copies, by allowing access to the file etc.), but the controller is under the obligation to provide the data subject the information provided in this section or to inform the data subject of the reasons on the basis of which he cannot not satisfy the request.

The Commissioner decided that although the controller can decide on the method to be used to satisfy a request for access, in this particular case the most appropriate way to respond to the request was to provide the complainant with copies of the documents requested.

4. Other issues

4.1. Three-dimensional visualization at street level

A Cypriot company is preparing in cooperation with a Greek company a Geographical Information System (GIS) that will provide a browsable three-dimensional visualization at street level (similar to the Google street view). To implement this service the company intends to take photos from all public roads in Cyprus. The pictures will then be put together in order to form a three-dimensional map, which will be available on the Internet.

At the meeting that we had with the company, we advised them that according to the guidelines issued by Article 29 Working Group of the Directive 95/46/EC, they should ensure that:

- the images illustrating people or car registration plates are automatically blurred with a non-reversible method.
- users are given the opportunity to submit a complaint in an easy manner in cases where some people or plates have not been sufficiently blurred and immediate action is taken to rectify the images.
- any specific systems that might be prepared e.g. for companies or local authorities always use the latest (corrected) images.

The company informed us that it is necessary to maintain the original images (non

blurred images) for the accurate operation of the service, to be able to adjust the blurring where necessary and to be able to replace any defected images. It was agreed that the original images will be deleted no later than six months after their collection.

The Office of the Commissioner will monitor the operation of the service after its implementation.

4.2. "Artemis" Bank Information Systems Ltd.

The Commercial Banks Association of Cyprus informed the Commissioner of the impending establishment and operation of "Artemis" Bank Information Systems Ltd, which is responsible for the operation of data exchange among banking institutions members of the Association of Commercial Banks in Cyprus for control purposes of credit ratings and creditworthiness of their clients.

After several meetings and exchange of views with the Commercial Banks Association of Cyprus the Commissioner decided that the operation of "Artemis" was in compliance with the provisions of Law 138(I)/2001, as amended.

"Artemis" has applied for a license in order to waive the obligation to inform the data subjects whose personal data will enter in the database at its establishment. Pursuant to section 11(3)(b) of the Law the obligation to inform the data subject about the processing of its data can be waived especially in cases where the processing is performed for statistical and historical purposes or for purposes of scientific research if it is impossible to inform the data subject or where disproportionate effort is necessary in order to inform him, or if the communication of data is provided by another law, provided that, in each case, a license is issued by the Commissioner.

The Commissioner issued the license in view of the large number of data subjects, (10,000), considering adequate the publication of this information in the daily press. The company published the information in all daily newspapers.

The company "Artemis" submitted also to the Commissioner, duly completed, the Notification for the establishment and operation of a filing system or the commencement of processing, in accordance with section 7 of the Law.

4. International

4.1. Article 29 Working Party

The Article 29 Working Party has been established by Article 29 of Directive 95/46/EC referring to the protection of personal data. It is independent EU Advisory Body on Data Protection and Privacy.

Its tasks are defined in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC concerning the processing of personal data and privacy in electronic

communications.

In 2009 there were the following developments:

- As a result of the Opinion issued in 2008 concerning the search engines, representatives of major organizations providing these services (Google, Yahoo, Microsoft) attended a meeting with the Working Party to answer questions prepared by the Commissioner of Data Protection of Berlin, Mr Alexander Dix and also to present their views on the content of the Opinion.

- The Working Party organized a meeting with representatives of WADA (World Anti-Doping Authority) to discuss the International Standards for Data Protection of Privacy issued by the Authority in an anti-doping effort concerning various sports. The Working Party issued a second Opinion for this same issue.

- After long discussions the Working Party issued an Opinion on social networking sites (on-line social networking) and has subsequently met with representatives of three providers (Facebook, Network, Studirz).

All Documents and Opinions adopted by the Article 29 Working Party are available in its website.

4.2. Cyprus Case Handling Workshop

The 20th Case Handling Workshop was held in Cyprus on 22 and 23 October 2009. There was a participation of 55 delegates from 30 Data Protection Authorities, as well as from the European Data Protection Supervisor and the European Commission.

The main topics of the workshop's agenda included:

- The Internet and particularly the division of responsibilities as regards to publication of personal data on websites, as well as suggestions for the campaign to raise awareness among minors about the dangers from the use of the Internet and mobile phones.
- National experiences on video surveillance.
- The right of access of the data subjects with emphasis to the information on data recipients following the Rijkeboer judgment of the European Court of Justice
- The employment sector with focus on the use of biometrics at workplace and the Consulting Association Database in the UK.
- Sharing of experiences in the field of financial and credit information sector.

The agenda included a case study prepared by the UK delegation, which involved the discovery of an illegal database containing construction workers' personal relationships, trade union activities and employment history data. Participants were asked to answer how their Data Protection Authority would react in such a case, taking into account the Data Protection Authorities available powers and resources. The outcome of the case study raised the issue whether Data Protection Authorities would need to have additional powers and competences.

The discussion also focused on the impact of the Judgment by the ECJ in the Rijkeboer case, concerning the interpretation of Article 12 of Directive 95/46/EC, particularly the time-span of the information to be provided to data subjects when they exercise their right of access.

The ECJ judgment declared that Member States must ensure a right of access to information on the recipients or categories of recipients of personal data and on the content of the data disclosed, *also in respect of the past*.

The ECJ judgment clearly requires Member States to take appropriate actions for ensuring the right of access in the manner described above, and it contains useful guidance to that. In particular, the Court decided that the time-limit set for storage of the information to be provided should be the result of a fair balance between the interest of the data subject in protecting his privacy and the burden which the obligation to store that information represents for the controller. The Case Handling Workshop considered it appropriate to raise this issue before the Spring Conference in order to draw attention to the difficulties encountered by national Data Protection Authorities in applying the provisions of Article 12 of the EC Directive taking into consideration this judgment of the Court.

The Case Handling Workshop considered it equally helpful to suggest that this issue be included in the work programme of the Article 29 Working Party, in order to ensure that a harmonized approach be developed at EU level – given that the WP29's mission consists, inter alia, in "contributing to the uniform application" of national implementing measures.