

DATA PROTECTION OFFICE

SEVENTH
ANNUAL REPORT

FOR THE PERIOD
COVERING
JANUARY
TO
DECEMBER
2015

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FOREWORD

Data protection is a very fast-moving field. The ways in which data can be collected, analysed, stored, used and abused are all constantly changing and affecting a number of people. My office is seen as an effective regulator trusted with the responsibility of enforcing data protection rules in Mauritius and addressing a challenging caseload in a proportionate and efficient manner.

As Commissioner of the Data Protection Office, I am happy to see the growing awareness and level of importance that organisations and the public are now giving to data protection issues.

The Data Protection Office has constantly improved its services by providing a number of facilities to the public. Organisations both in public and private sectors are seeking our advice almost every day on data protection matters and looking at the nature of complaints being registered in my office and the investigations being carried out, I can say that data protection has infiltrated the fabric of Mauritian life.

2015 has been a remarkable year. My office has worked on two guidelines: one for secondary school curriculum which will help teachers educate students on the fundamentals of protecting their personal information and the other for teenagers to sensitise them on data protection and privacy and on how to own, control and secure their personal data.

2015 has also been a busy year for this office. My staff has worked towards achieving ISO 9001:2008 and it is with great pleasure that we were ISO certified by the Mauritius Standards Bureau at the end of the year. This certification will help us serve the public better by improving our services and customer relations.

Furthermore, my office has worked on amendments to the Data Protection Act 2004 in order to face the increasing challenges of new information technologies and globalisation and to be in line with the European Convention 108 and EU directives on data protection.

As we are moving towards an e-government framework, my office has also worked on a new project to computerise its main processes: registration, renewal, payment and complaint investigation.

4 new Data Protection Officers/Senior Data Protection Officers joined our team this year easing up to some extent our huge workload.

This office aims at continuing to provide better services to the public and to sensitise them in general on data protection issues by organising several awareness workshops throughout the year to promote a culture of data protection amongst data controllers both public and private.

To conclude, I congratulate and thank everyone at the Data Protection Office who has made this year a great achievement and I look forward to their support over another eventful 12 months.

As per section 55(1) of the Data Protection Act 2004, the Commissioner shall lay an annual

report of the activities of the Data Protection Office before the National Assembly. I am thus submitting this annual report covering the activities of this office for the year 2015 to the National Assembly.



Mrs Drudeisha MADHUB (BARRISTER-AT-LAW)
DATA PROTECTION COMMISSIONER

OUR MISSION

Safeguarding the processing of your personal data in the present age of information and communication.

OUR VISION

A society where data protection is understood and practiced by all.

The right to privacy and data protection is primordial to the sanctity of any modern democracy.

The adoption of clear procedures for the collection and use of personal data in a responsible secure, fair and lawful manner by all data controllers and data processors.



DATA PROTECTION OFFICE

The Data Protection Office became operational since 16th February 2009 when the Data Protection Act came into force.

The Data Protection Office, headed by the Data Protection Commissioner, is located on the 5th Floor of Happy World House, Port Louis.

Phone: 212 2218

Fax: 212 2174

Website: <http://dataprotection.govmu.org>

Email: pmo-dpo@govmu.org

ORGANISATION STRUCTURE

The Management Structure of the Data Protection Office is shown below:-

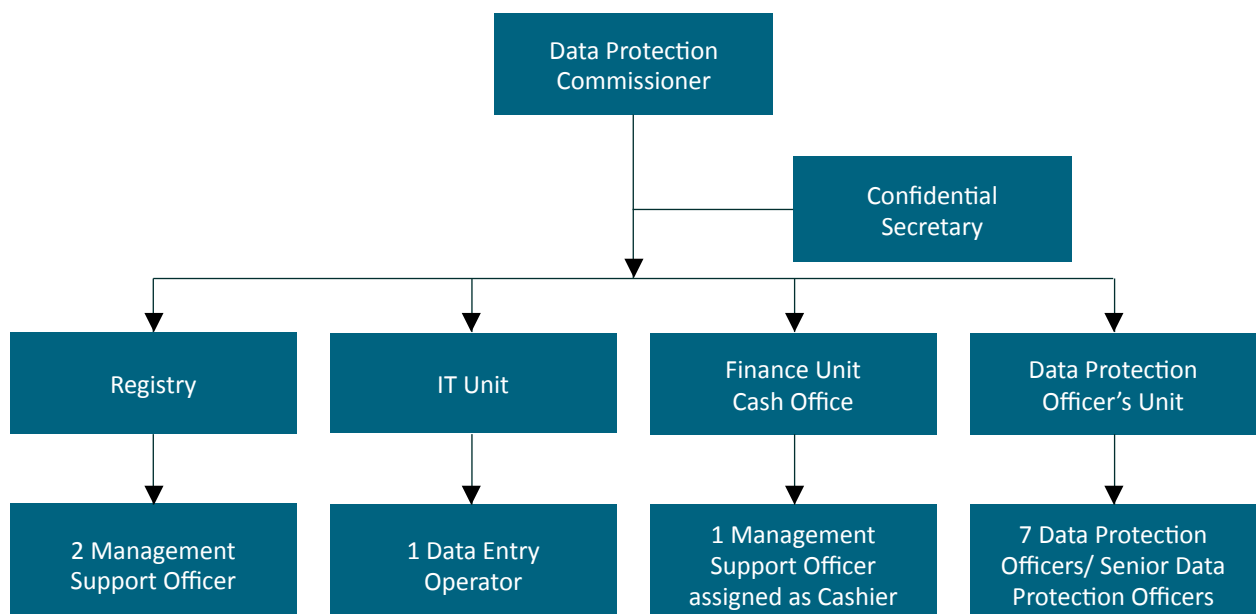


Figure 1 : Organisation Structure

ACTIVITIES IN 2015

1. SENSITISATION

To create awareness on the provisions of the Data Protection Act, the following sensitisation campaigns were organised during the year 2015: -

- (i) Publications
- (ii) Presentations
- (iii) Training sessions
- (iv) Capacity building sessions
- (v) Participation in international conferences

I. PUBLICATIONS

Publication of a guide on usage of unmanned aircraft systems (UAS)

Unmanned aircraft systems (UAS) may have embedded technology such as a camera/microphone which offers the possibility to collect and record personal images/sound allowing operators to identify persons directly or indirectly.

In this context, a guide was published to provide guidance on the usage of unmanned aircraft systems (UAS) for processing personal data for personal and professional/ commercial use.

II. PRESENTATIONS

Several presentations were provided on privacy and data protection topics.

a. *“Privacy for websites”*

By Data Protection Commissioner on 23rd April 2015 at Data Protection Office, Mauritius

b. *“Panorama des cadres de protection des données personnelles – Ile Maurice”*

By Data Protection Officer/Senior Data Protection Officer on 19th May 2015, Dakar, Senegal

- c. ***“Les instruments internationaux de coopération”***
By Data Protection Commissioner on 25th June 2015, Bruxelles, Belgium
- d. ***“Big Data Framework: Data Privacy & Data Protection Guidelines for Development and Humanitarian Sector”***
By Data Protection Commissioner on 24th June 2015, The Hague, Netherlands
- e. ***“Challenges & Opportunities from the Regulatory Perspective, a conversation with regulators, discussing the differences and similarities between commercial vs humanitarian and development applications of big data”***
By Data Protection Commissioner on 25th June 2015, The Hague, Netherlands
- f. ***“Public Sensitisation”***
By Data Protection Officer/Senior Data Protection Officer on 9th October 2015 at Data Protection Office, Mauritius
- g. ***“Big Data for Development: Privacy Risks and Opportunities”***
By Data Protection Commissioner on 12th November 2015, João Pessoa, Brazil (through video conferencing)
- h. ***“Encadrer la Liberté d’Expression Entre Régulation des Médias et Protection des Données Personnelles”***
By Data Protection Commissioner on 19th November 2015, Strasbourg, France

III. TRAINING

- a. ***Public sensitisation***
On 9th October 2015, a training session was organised to sensitise people on privacy rights and data protection. The training session was held at the Data Protection Office and the attendees were from following organisations: Mauritius Civil Service and Administrative Reforms, Police, University of Mauritius, Mauritius Telecom, SICOM,

MTML, MC-Vision Ltd, GFA Insurance, AppleBy Management Mauritius Ltd, Harel Mallac Technologies Ltd, Navitas Corporate Services Ltd and Lamco International Insurance.

b. *Training on ISO*

Four Officers of the Data Protection Office were requested to follow training at the Mauritius Standard Bureau to facilitate the implementation of ISO 9001:2008 from 21 April 2015 to 24 April 2015.

IV. CAPACITY BUILDING SESSIONS

On 5th August 2015, a capacity building session was organised for new comers. A presentation on the operation of the office was given.

V. INTERNATIONAL CONFERENCES



During the year 2015, this office participated in the following international conferences:

- | | |
|---|---|
| 23 rd April 2015 | - Developer's Conference 2015, Mauritius |
| 19 th May 2015 | - Forum Africain sur la Protection des Données Personnelles FA/PDP Dakar |
| 23 rd - 27 th June 2015 | - 8 ^{ème} Conférence de l'AFAPDP à Bruxelles |
| 23 rd - 24 th October 2015 | - UN Global Pulse Data Privacy Advisory Group, The Hague |
| 26 th - 29 th October 2015 | - 37 th International Data Protection and Privacy Commissioners' Conference, Amsterdam |
| 12 th November 2015 | - Internet Governance Forum, João Pessoa, Brazil (via video conference) |
| 18 th - 20 th November 2015 | - World Forum for Democracy 2015, Council of Europe, Strasbourg |

2. ENFORCING DATA PROTECTION

One of the powers of the Data Protection Commissioner is to investigate any complaint or information which gives rise to a suspicion that an offence may have been, is being or is about to be committed under the Data Protection Act 2004.

The investigations are performed under section 11 of the Data Protection Act. All complaints are investigated effectively, fairly and in a timely manner with all the concerned parties and upon completion of the enquiry, the Commissioner gives a decision.

I. INVESTIGATION ON COMPLAINTS

The Data Protection Office has begun investigation on **19** new complaints in the following cases: -

- Unauthorised viewing of personal images through the use of CCTV
- Unauthorised processing of fingerprints for attendance purposes
- Unauthorised disclosure of personal data
- Unauthorised access to personal data

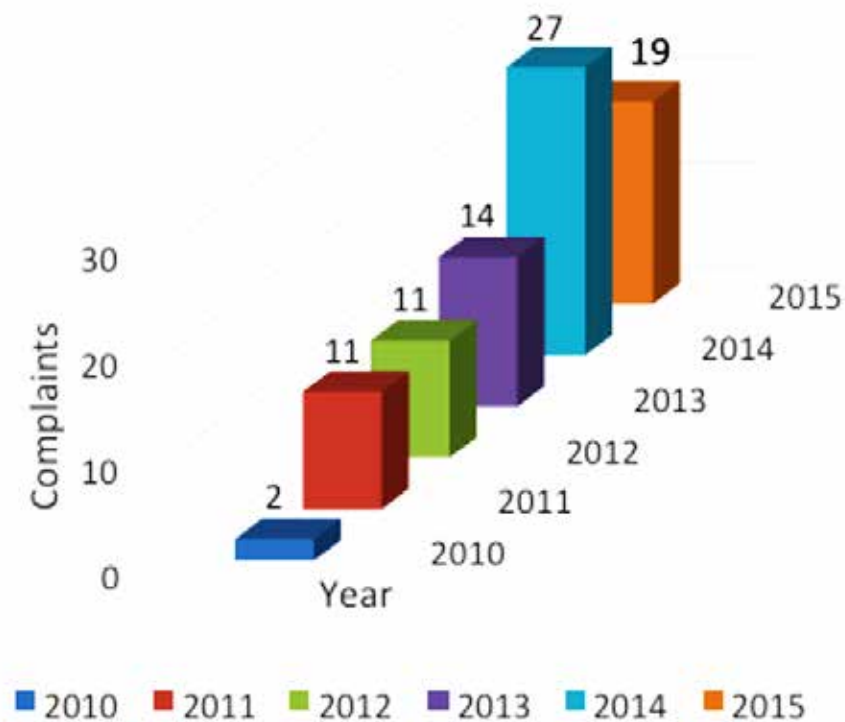


Figure 2 : Number of new complaints per year

II. DECISIONS ON COMPLAINTS

After careful examination and complex investigations carried out, the Commissioner has given 2 decisions on the following complaints:

- a. unauthorised disclosure of personal data; and
- b. unauthorised use of CCTV cameras.

A brief summary of the two complaints are provided below.

a. *Unauthorised Disclosure of Personal Data*

A complaint was lodged on 31 January 2013 at the Data Protection Office under section 11 of the Data Protection Act against two Respondents as follows:-

- (i) Respondent No. 1 is making illegal use of confidential information acquired without the prior authority of Complainant to favour the flourishing of Respondent No. 2's business;
- (ii) Respondent No. 2 is making illegal use of confidential information unlawfully acquired by Respondent No. 1 without the prior authority of Complainant to favour the flourishing of his own business.

Please find below a summary of the Data Protection Commissioner's Decision:

The Data Protection Commissioner recommends that complainant adopts more protective security measures to reduce the probability that such incidents happen again.

Respondents have not cooperated with the enquiry by failing to fill in the audit questionnaire sent by this office since the site visit effected by our officers on 2 September 2013 and never provided their further statements on the alleged facts in breach of their correspondences dated 5 March 2013, 6 May 2013, 16 August 2013, 25 October 2013, 29 January 2014 and 28 August 2014, sent to this office, namely that they will provide their statements once the supreme court case has been thrashed out on 30 May 2014. Instead, their counsel raised further points in law which had to be thrashed out by this office before proceeding with the enquiry by way of letter dated 13 February 2015.

In view of the above points raised, the Data Protection Commissioner is of the view that the case has been proven by complainant that respondent no. 1 has acted in breach of sections 26(b) & 29(1) of the DPA for unlawfully disclosing personal data in her possession and both respondents have acted in breach of section 24(1) of the DPA for not seeking the valid consent of the clients before posting their information.

As regards complainant, since there is evidence on record to show that data subjects have signed a written agreement whereby authorisation has been given to respondent no. 2 to find potential tenants for their property, thereby obtaining their consent to market the properties in lite, the Data Protection Commissioner finds that the posting of the property images by respondent no.2 were effected within the legal perimeters of the agreement.

The Data Protection Commissioner is thus referring the matter to the police for prosecution against respondents who had no legal right to usurp the role of a data controller under section 20 of the DPA for breaching sections 24(1), 26(b) & 29 (1) of the DPA.

b. *Unauthorised Use of CCTV Cameras*

This office received a complaint regarding recording of CCTV video of the entrance of a shop under Section 11 of the Data Protection Act against respondent. Complainant alleged that one camera records the entrance of his shop and, each and every action that occurs around the shop is being monitored. My office indicated to respondent that the rules of data protection require that CCTV cameras must be positioned to capture images only within his premise. Moreover, signs must be displayed to notify the public entering his premise of any camera surveillance's system.

Respondent was thus informed to take all corrective measures to ensure compliance with the principles of data protection and one camera was requested to be removed.

The office carried out site visits at respondent's place. Consequently, respondent has taken corrective actions which were verified by my office. Complainant was then informed of the corrective actions taken.

The Data Protection Commissioner found no commission of any offence under the Data Protection Act.

3. IMPROVING LEGAL PROTECTION

Under section 58 of the Data Protection Act, any person aggrieved by a decision of the Commissioner in respect of the performance of her duties and powers under the Data Protection Act, shall have a right of appeal within 21 days from the date when the decision is made known to that person by the Information and Communication Technology Tribunal.

I. Appeals on decisions of Commissioner

For the year 2015, there were no appeals to the Information and Communication Technology Tribunal on the decisions given by the Commissioner.

II. Supreme Court cases

Ongoing cases:

a. *ALTEO V/S Decision of the ICT Tribunal*

Alteo Ltd, being dissatisfied with the Determination of the Information and Communication Technologies Appeal Tribunal, determining the use of fingerprints for attendance purposes has lodged an appeal to the Supreme Court of Mauritius.

b. *Prokid V/S Decision of the ICT Tribunal*

Prokid, feeling aggrieved by the Determination of the Information and Communication Technologies Appeal Tribunal on the ground that the said Determination regarding the use of fingerprints for attendance purposes without consent is erroneous in law, has made an appeal to the Supreme Court of Mauritius.

4. REGISTRATION OF DATA CONTROLLERS

Under section 33(2) of the Data Protection Act 2004, all data controllers operating in Mauritius, for instance, associations, companies, sociétés, partnerships, governmental institutions, sole traders and professionals in their relevant fields are required to register with the Data Protection Office. The relevant sections regarding registrations and renewals are found under sections 34 to 39 of the Data Protection Act respectively.

This year, a total of **536** new registrations of applications for Data Controllers were received by this office. Together with renewals for the previous years, a total of **24605** applications have been processed.

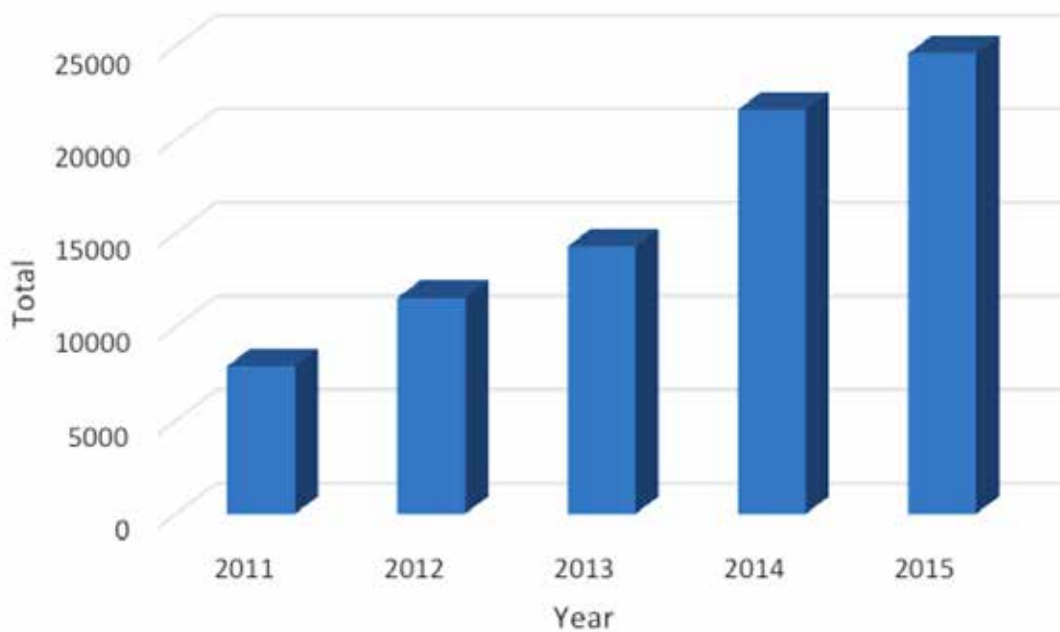


Figure 3 : Bar chart representing cumulative number of registrations and renewals of Data Controllers

5. REQUESTS FOR ADVICE

Coupled with the rising awareness on data protection, the Data Protection Office has registered an increasing number of requests for advice from organisations of both public and private sectors. However, due to budgetary constraints, sensitisations on many important aspects on data protection could not be fulfilled.

The remarkable increase in response and recognition from the public and data controllers are based on the need for compliance with data protection laws in Mauritius.

This office has received a total of 72 written requests for advice comprising of 42 from private bodies and 30 from ministries and governmental departments.

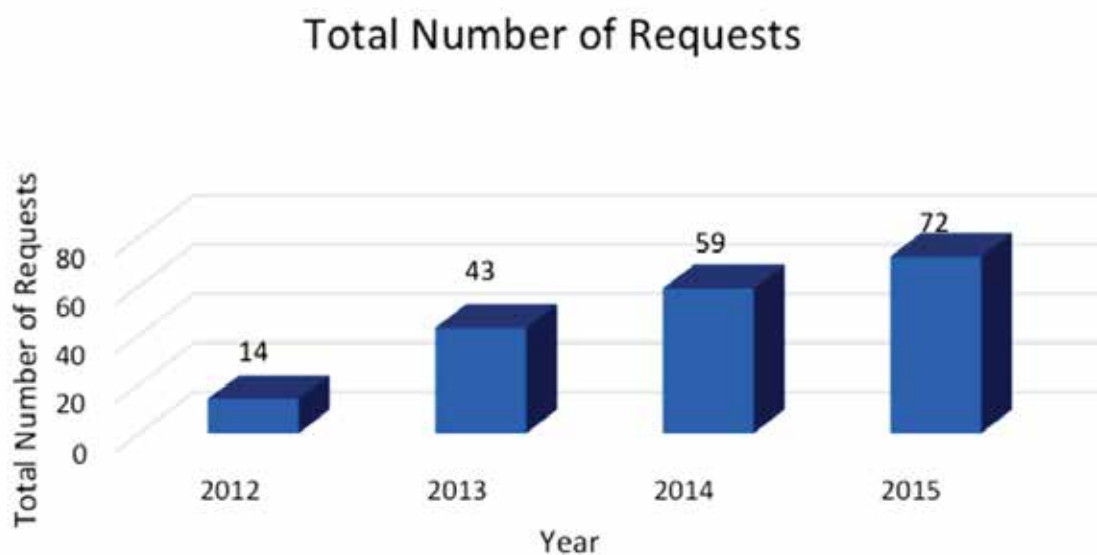


Figure 4 : Bar chart representing number of requests for advice

6. REVENUE COLLECTED

In 2010, the Data Protection Office has collected a revenue of about 13 million rupees compared to 2009, 2011, 2013, 2014 and 2015. This was achieved:

- (i) as many data controllers registered first time with this office.
- (ii) from major sensitisation campaigns (done through television and newspaper) and notifications from the office. It is to be noted that a deadline was given to all data controllers to register with this office by 30th November 2010.

In 2015, The Data Protection Office has collected a total revenue of Rs 5.6 million. This decrease in revenue collection is explained as a result of:

- (i) The already registered data controllers pay less fees on renewal.
- (ii) Many data controllers have not paid their renewal fees.

To remedy the situation at part (ii) above, renewal notices are being sent to data controllers who have failed to pay their renewal fees. Furthermore, in 2016 this office has started to send enforcement notices to data controllers who have not yet registered with the Data Protection Office.



Figure 5 : Line Chart representing revenue collected for year 2015

7. SITE VISITS

The office conducted 12 site visits in all during the year 2015. These site visits were performed with respect to complaints, audit and security checks.

