

DATA PROTECTION OFFICE

SIXTH
ANNUAL REPORT

**FOR THE PERIOD COVERING
JANUARY-DECEMBER 2014**

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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.

FOREWORD BY THE DATA PROTECTION COMMISSIONER

The Data Protection Office has continually focused its limited resources to the diversification of its services through sensitisation, education, new registrations, investigations on complaints, audits, security checks and providing timely advice to organisations.

To build more concrete awareness on data protection, myself and the data protection officers have carried out site-visits, conducted presentations to public and private sectors on topics such as Data Protection Fundamentals, the Data Protection Reform for Mauritius and on Cyber Crimes and Data Protection, amongst many others.

A guideline on Apps has been published, targeting those responsible for data protection issues in public and private sectors. A booklet to assist teachers in primary schools to educate students on the fundamentals of protecting their personal information has also been prepared and submitted to the Ministry of Education. A module on data protection certification has been developed for Open University.

Our office has constantly improved its services by providing a number of facilities to the public. We have carried out 4 major audits and security checks on public & private sectors. We have also provided advice on the requirements for the sharing of data between public and private bodies, on topics such as research study in managing conflicts of interests, use of cloud servers with mauritian service providers to store data, online application for occupation permits, the governmental project on migration of data and the legal/security aspects of speed enforcement camera systems, amongst many others. I have also issued around 4620 certificates of registration, a task which currently is being done only by the Commissioner alone in view of shortage of personnel.

This year has also been very challenging as the number of applications, requests for advice, complaints, appeals on complaints and investigations have tremendously increased. Despite constraints, this office has been able to provide optimum service to its stakeholders to build more confidence in the credibility of the Data Protection Office.

Our office has hosted the 36th Edition of the International Conference for Privacy and Data Protection Commissioners from 13 to 16 October 2014, which was a great privilege for this office and the country and a recognition of the active role of the institution in the region, being the first such conference in Africa. I have also been elected a member of the Executive Committee of the Conference for a period of 2 years.

Our office has further been successful in obtaining cabinet approval for accession to the Council of Europe Convention 108 on Data Protection open to non-member states for ensuring compliance with international standards and paving the way to the accreditation of Mauritius with the European Union as a safe and adequate third country to attract more investment in the country.

Our office is further a member of the Global Privacy Enforcement Network which strengthens international cooperation between data protection authorities especially with regard to investigations involving cross-border issues.

The summary of the decisions rendered on cases lodged at this office are published on our website and on the International Law Library Website which represents international jurisprudence on data protection, thus recognising the importance of the decisions rendered by this office.

I have been re-elected as Interpol Data Protection Expert for Interpol's Commission for the Control of Interpol's Files for a further terms of 3 years starting March 2014, serving in my personal capacity.

In September 2014, I have also been nominated United Nations Expert in data protection for a term of 1 year, serving in my personal capacity.

Finally, I thank all the staff of this office for their continued dedication during the year and for maintaining their positive commitment to serving the needs and challenges of our institution.

Mrs Drudeisha MADHUB

DATA PROTECTION COMMISSIONER

The Data Protection Office

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

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

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ORGANISATION STRUCTURE

The organisation structure of this office is as follows:

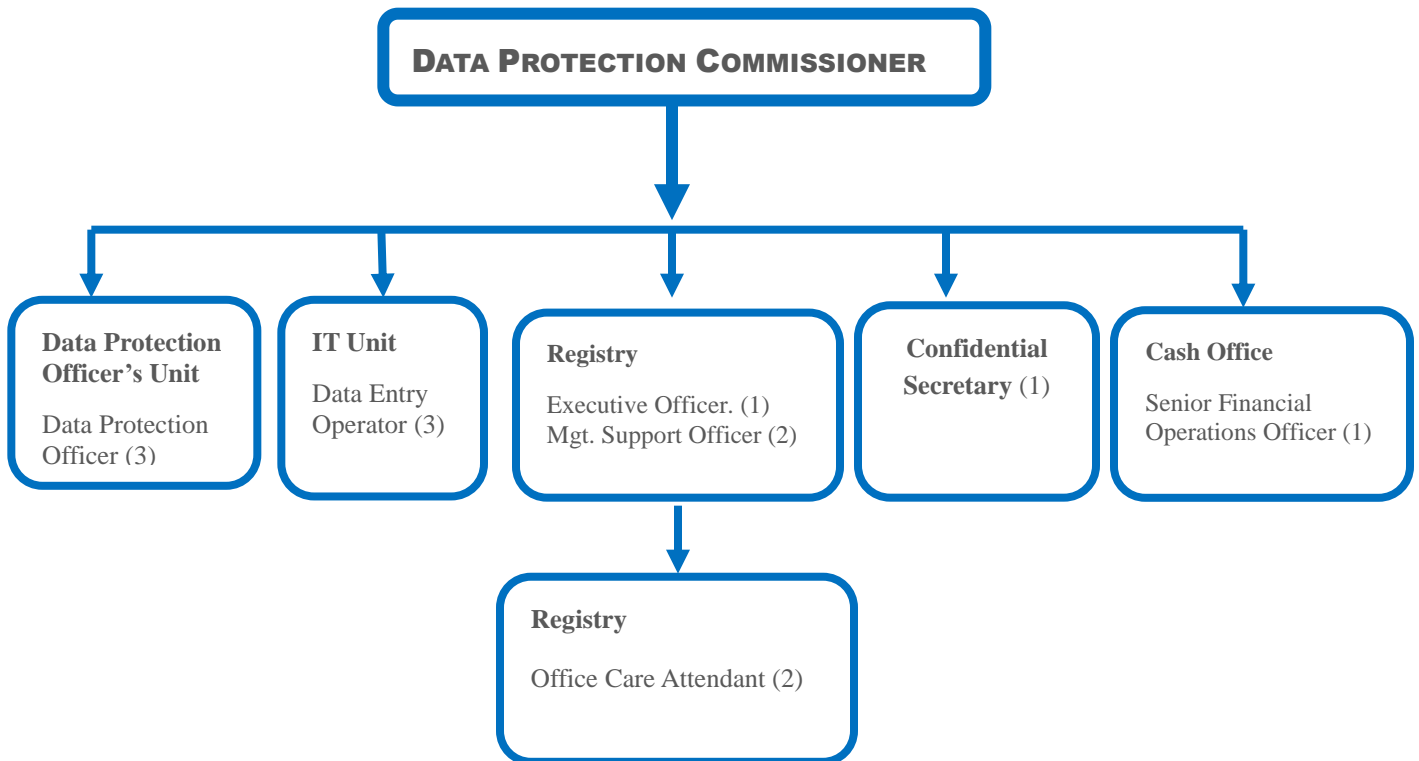


Figure 1: Organisation Structure of the Data Protection Office

ACTIVITIES IN 2014

1. SENSITISATION

To promote and simplify the understanding of the legal provisions of the Data Protection Act, extensive sensitisation campaigns have been accomplished during the year 2014 as follows:-

- a. Presentation sessions at data controllers' site
- b. Trainings provided to data controllers
- c. This office was benchmarked by officials of the Tanzanian government
- d. Participation in international workshops
- e. Organisation of capacity building sessions for senior public officers
- f. Organisation of workshop for both private and public sector audiences
- g. Organisation of the 36th International Conference in Mauritius
- h. Publication of a guideline on Apps.

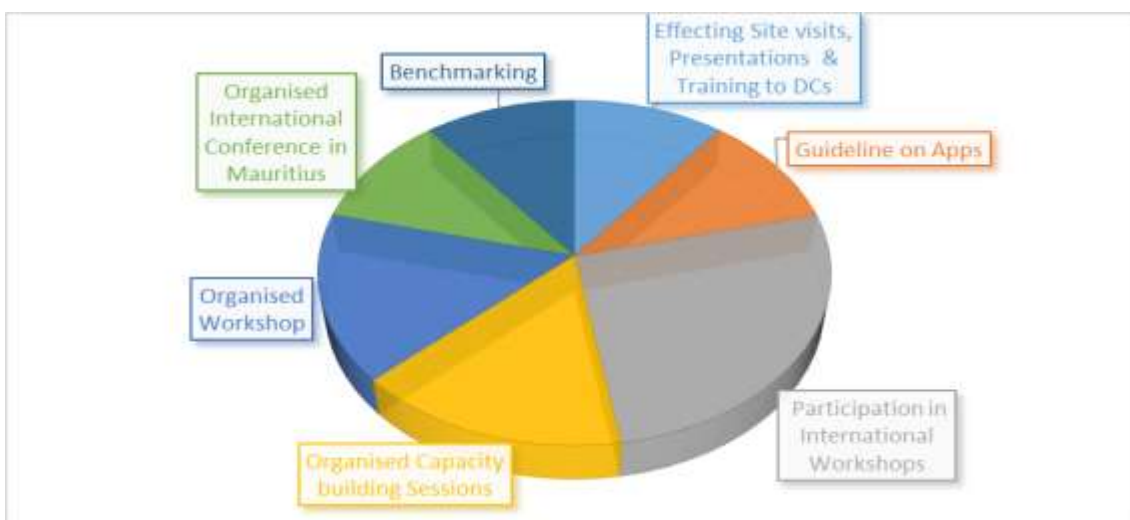


Figure 2: Sensitisation

a. Presentation sessions at Data Controllers' site

The Data Protection Commissioner and the Data Protection Officers/Senior Data Protection Officers have provided several presentations to Data Controllers on the importance and fundamentals of the Data Protection Act.

The following powerpoint presentations were delivered:

1. "A regulatory perspective about cloud solutions"

by the Data Protection Commissioner on 11th February 2014 in the Knowledge Series Workshop organised by Emtel.

2. "Is our Data safe in the Digital Ecosystem?"

by the Data Protection Commissioner on 30th April 2014 organised by the Ministry of Information, Communication & Technology and Emtel.

3. "Biometrics, CCTV & Data Protection"

by the Data Protection Commissioner on 8th July 2014 at the Centre for Alternative Research and Studies (CARES)

4. "Procedures for handling Electronic Evidence"

by the Data Protection Commissioner on 12th August 2014 at Intercontinental Resort, Balacclava during the GLACY Workshop.

5. "Law Enforcement Access to Data in Mauritius"

by the Data Protection Commissioner on 12th August 2014 at Intercontinental Resort, Balacclava during the GLACY Workshop.

6. Explaining Data Protection

by Data Protection Officer/Senior Data Protection Officer on 11th September 2014 at Ministry of Industry, Commerce and Consumer Protection.

7. Building Trust – Ensuring Security, Compliance and Privacy for the 21st Century Organization.

by Data Protection Officer/Senior Data Protection Officers on 14th October 2014 at Le Maritim Hotel, Balacclava.



Figure 3: Data Protection Compliance for Cloud Computing

b. Trainings provided to Data Controllers

For an efficient application of the law on data protection, 3 tailor-made training sessions were provided to the administrators and senior officers of both local and regional public sectors. As Mauritius has been recognised as having a successful data protection authority in Africa, we were called upon to provide technical assistance on data protection issues to tanzanian delegates who have effected a study tour at the Data Protection Office with the view to set up a national data protection office in their country.

The following trainings were provided on:

1. Data Protection

by Data Protection Officer/Senior Data Protection Officer on 21st August 2014 to Civil Status Division.

2. Data Protection - Role of the Data Protection Office

by Data Protection Officer/Senior Data Protection Officer on 18th December 2014 to tanzanian official delegates at the Data Protection Office, Mauritius.

3. Data Protection- Functions of the Data Protection Office

by Data Protection Officer/Senior Data Protection Officer on 18th December 2014 to tanzanian official delegates at the Data Protection Office, Mauritius.

c. Tanzanian's government representatives benchmarking this office



**Figure 4: Tanzanian's government representatives benchmarking this office
(17 – 19 December 2014)**

In order to benchmark the implementation of data protection issues in public and private sectors, several site visits were carried out together with all the delegates to the following data controllers and data processors:

- (1) Mauritius Telecom, Port Louis
- (2) Bhumishq Technologies Data Centres, Ebène
- (3) Civil status Division (MNIC), Port Louis
- (4) GOC Data Centre, Ebène
- (5) Electoral Commissioner's Office, Port Louis

d. Participation in International Workshops

2 international presentations were made by the Data Protection Commissioner at the:-

- (1) 36th International Conference in Mauritius
- (2) Council of Europe Meeting on Convention 108



Figure 5: The Data Protection Commissioner at the 36th International Conference in Mauritius

Data Protection Officers/Senior Data Protection Officers participated in 2 international forums on Data Protection as follows:-

- (1) On the adoption of 'Règles Contraignantes d'Entreprise' on 11th July 2014 at the 'Commission Nationale de l'Informatique et des Libertés' (CNIL) in Paris, France
- (2) "Le Chemin à parcourir après l'adoption d'une loi : L'expérience Mauricienne" on 29th November 2014 at the Human Right Forum held in Marrakech, Morocco, organised by Commission Nationale de Contrôle de la Protection des Données à Caractère Personnel of Morocco.

e. Capacity building sessions for public sector

This office organised a capacity building session for senior IT officers of the public sector in collaboration with Microsoft at Caudan Waterfront on 18th February 2014.

The Data Protection Officers/Senior Data Protection Officers from this office, Project Managers from the Central Informatics Bureau, Project Manager (ICT security) from Ministry of ICT, Assistant Secretary from Ministry of ICT and Police Officers from the Cybersecurity Unit of the Police department were provided great opportunity to have a full open day discussion on international data protection issues with Mr. Eduardo Ustaran (internationally recognised expert in privacy and data protection law) and the Data Protection Commissioner of this office.

f. Workshop at Maritim Hotel on Data Protection

On 19th February 2014, this office organised a workshop at Maritim Hotel, Balaclava, themed "DATA PROTECTION - A MUST IN TODAY'S BUSINESS" which was fully sponsored by the Microsoft.



Figure 6: Workshop at Maritim Hotel

During the workshop, topics such as Microsoft Expert Opinion on Privacy, Overview of Mauritius E-government Strategy, Cloud and Privacy MS Approach were put into open discussion. About 120 government administrators, as well as legal and compliance professionals, shared practical advice with the renowned speakers from Microsoft and local speakers from this office and the Ministry of ICT.

g. The 36th International Conference hosted by this office

This office organised the 36th edition of the International Conference of Data Protection and Privacy Commissioners from 13th to 16th October 2014 at the Intercontinental Resort in Mauritius where 275 international experts attended to vote on the international resolutions adopted at the closed sessions of the conference and to discuss the current trends in data protection at the open sessions for 4 days.



Figure 7: The 36th International Conference Participants (Open Sessions)

The primary goal of this conference was to bring together public authorities and private experts in the field around the world under one roof, to build the appropriate networks for enhancing the protection of personal information as well as to explore the path towards building the relationships and tools necessary to protect the data of individuals regardless of culture, national borders or the challenges that come from innovative data uses.

This annual gathering of regulators and other movers and shakers of the privacy world is a reference point in terms of debating key public policy issues and coordinating regulatory strategies and actions. Given how active things are at the moment, this year's conference was a great success. The quality of the discussions and the participants were top-notch. The excellent organisation of the conference was praised in many international articles published for the occasion.

The fact that this event took place in Mauritius sets an example for the developing world who is currently looking at the transformative role of technology to prosper and bring success to its people.

While organising this event, the vision of the Commissioner was to position our island as a hub for technological investment and development. An important part of this agenda involved having the right regulatory framework to protect information and people's digital lives.

As privacy professionals, we are inspired by this approach and see ourselves as enablers in a similar way.

h. The 36th International Conference Website

This office designed and launched a new website for the purpose of the 36th International Conference of Data Protection and Privacy Commissioners held in Mauritius as shown below (<http://www.privacyconference2014.org/en/>).



Figure 8: A new website designed to host the 36th International Conference

The above website interface was designed in a very user friendly manner to cater for both English and French users and provided all the required information concerning the international conference such as the programme events, registration of participants, speakers, conference history and relevant information regarding Mauritius.

The following resolutions adopted during this conference in both english and spanish languages are the:

1. Mauritius Declaration on the Internet of Things
2. Resolution Accreditation

3. Resolution Big Data
4. Resolution on Enforcement Cooperation
5. Global Cross Border Enforcement Cooperation Agreement
6. Resolution Privacy in the Digital Age

i. Brochure

On the occasion of the 36th International of the Conference held in Mauritius, a special brochure was also published as a means of ensuring international sensitisation regarding all the activities performed by this office.

The leaflet together with the guidelines published by this office were distributed to all the international participants of the conference to show the diverse activities performed by this office.



Figure 9: Leaflet

j. Publication of a guideline on Apps

'A guide on Apps on Smart Devices' has been published by this office to elaborate on relevant data protection issues to users of smart devices, in the context of the conference and as part of our legal obligation to do so under section 5(b) of the Data Protection Act.



Figure 10: Publication of a guideline on Apps

Various issues have been addressed such as:

- (1) App developers may pose consequential threats to the private life and reputation of users of smart devices if they do not comply with data protection laws.

- (2) Many apps do not have a privacy policy or do not inform their potential users in a user-friendly way about the types of personal data the app may process and for what purposes.
- (3) Poor security measures may lead to unauthorised processing of personal data, for example, if an app developer commits a personal data breach.
- (4) Personal data collected by apps may be widely distributed to a number of third parties for undefined or elastic purposes such as 'market research'.
- (5) A high risk to data protection also stems from the segregation of roles between the various players in the app development landscape. They include: app developers who create apps and/or make them available to end users; app owners; app stores; operating system and device manufacturers; and other third parties that may be involved in the collection and processing of personal data from smart devices, such as analytics and advertising providers.

2. ENFORCING DATA PROTECTION

The Data Protection Commissioner has the power 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.

All investigations on complaints are carried out 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 finalisation of the enquiry, the Commissioner gives a decision.

2.1 Investigations on complaints

An individual concerned can lodge complaints with this office for any breach of his/her privacy rights. The complaints are handled in strict confidentiality in accordance with the Data Protection Act.

The complaints are investigated and resolved efficiently in such a way that is fair to all the required parties.

All the concerned parties in a complaint are provided with equal opportunities to provide their statements and can discuss with the staff of this office in the event that they are not satisfied with the service.

The number of complaints for investigation during the year 2014 has almost doubled as compared to the preceding year.

The Data Protection Office has initiated action on 27 new complaints in the following cases:-

- Stealing & leakage of personal information
- Excess of information collected through opening of a bank account
- Request for retrieval of curriculum vitae
- Unauthorised viewing of personal images through the use of CCTV
- E-mail marketing
- Information disclosure
- Unauthorised processing of fingerprints for attendance purposes
- Unauthorised access to personal data
- Unauthorised disclosure of personal data

There has been a marked increase of 93% of complaints on investigation as compared to the previous year.

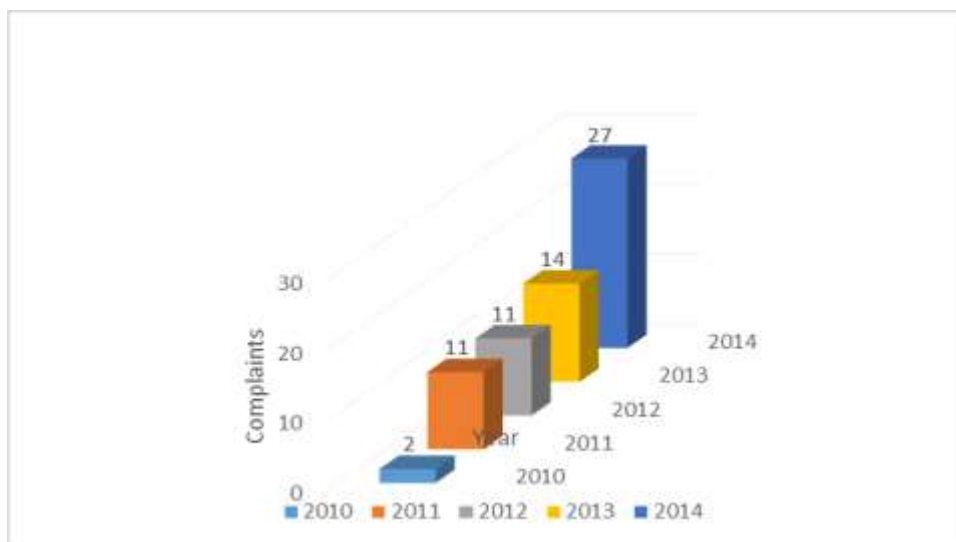


Figure 11 : Complaints for investigations

2.2 Decisions on complaints

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

- (i) unauthorised disclosure of personal data; and
- (ii) unauthorised use of fingerprint for attendance purposes.

A brief summary of the two complaints are provided below.

(i) Unauthorised disclosure of personal data

The Commissioner received complaints from two officers of an organisation for unauthorised disclosure of personal data. Respondent 1 was the chairman and Respondent 2 was a member of the board of directors of the organisation. Respondent 2 was also the representative of employees of the organisation. It was alleged that the personal data namely the national identity card number and address and salary details, amongst others of Complainant 1 were disclosed without her consent, express or otherwise, and without any legitimate, lawful objective or excuse as they were published in an Internal Audit Report compiled by the complainant's organisation. Extracts of the internal audit report comprising of Complainant 1's data were also published in the written press.

An investigation was carried out by this office which was finalised in 2014. The Commissioner ruled that the case for prosecution was established beyond reasonable doubt and prosecution was thus advised against Respondent 1 for breach of sections 27(1) & (2) and 61 of the Data Protection Act and against Respondent 2 for breach of sections 25 (1), 26(1) (b), 29(1) and 61 of the Data Protection Act. Complainants never gave their express consent for their personal data to be published nor made them

public. The matter was thus referred to the Police for prosecution under section 20 of the Data Protection Act.

(ii) Unauthorised use of fingerprint for attendance purposes.

A complaint was lodged on 9th August 2013 at this office under section 11 of the Data Protection Act (DPA) against Respondent with regard to her dismissal as she refused to provide her fingerprint for the recording of attendance.

This office opened an inquiry and informed Respondent, in writing, of the steps to be followed to comply with the DPA before processing Complainant's fingerprint. The investigation was finalised and a decision was given this year.

In view of the fact that there are three main risks associated with the use of fingerprints namely identity fraud, purpose diversion and data breach occurrence, the random use of fingerprints cannot be allowed and prosecution was advised against Respondent for breach of sections 24 or 25 and 61 of the DPA based upon the evidence before the Commissioner which established beyond reasonable doubt that Complainant was justified in not providing her consent to Respondent for the processing of her personal information which was also the reason for her dismissal. Fingerprints may be classified as personal data and/or sensitive personal data in compliance with section 2 of the Data Protection Act depending on the information they might generate on the person identified.

The matter was referred to the Police under section 20 of the Data Protection Act for prosecution, subject to the same issue which was at that time under appeal being thrashed out before the ICT Tribunal and if required subsequently by the Supreme Court.

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 to the Tribunal.

3.1 Appeals on decisions of Commissioner

The ICT Tribunal has opened 3 cases on appeal against the decisions of the Data Protection Commissioner recommending prosecutions to the police.

The appeals were based on:

- (i) unlawful disclosure of information,
- (ii) unauthorised processing of fingerprint for attendance purposes and
- (iii) alleged unauthorised forwarding of personal data to personal e-mail address.

3.2 Appeal against the determination of the ICT Tribunal by the Data Protection Office

This office has appealed against the determination of the Information and Communication and Technologies (ICT) Appeal Tribunal at the Supreme Court of Mauritius represented by the State Law office with regard to a particular decision quashed by the Tribunal.

A complaint was lodged at the Data Protection Office under section 11 of the Data Protection Act against the Respondent which pertains to the alleged unauthorised

forwarding of personal data by the latter as an employee to her personal email address. After the decision of the Data Protection Commissioner was given, an appeal was made at the ICT Appeal Tribunal against that decision by the Respondent.

In Determination No. 02/13, ICT Appeal Tribunal set aside the decision of the Commissioner.

The Data Protection Office informed the State Law Office of its intention to appeal against the determination of the ICT Appeal Tribunal with the associated grounds of appeal.

An appeal was then lodged at the Supreme Court of Mauritius under section 43 of the ICT Act 2001 and the Information and Communication and Technologies Appeal Tribunal Rules 2004.

3.3 MNIC case at the Supreme Court

The National Identity Card (Miscellaneous Provisions) Act 2013 (NIC), Act No. 18 of 2013 was enacted with the view to make better provision in relation to matters pertaining to national identity cards. As per section 2(f) of the NIC Act 2013, the collection and processing of personal data, including biometric information, shall be subject to the provisions of the Data Protection Act.

The Mauritian National Identity Card (MNIC) case was brought to the Supreme Court of Mauritius by the Plaintiff, under section 17 of the Constitution and this office has been a co-defendant in the above matter represented by the State Law Office.

4. REGISTRATION OF DATA CONTROLLERS

Under section 33 of the Data Protection Act, every data controller and data processor shall, before keeping or processing personal data or sensitive personal data, register himself with the Data Protection Commissioner. The provisions for making registration & renewals have been made under sections 34 to 39 of the Data Protection Act respectively.

This year, a total of 421 new registrations of applications for Data Controllers were received by this office. Together with renewals for the previous year, a total of 21,604 applications have been processed.

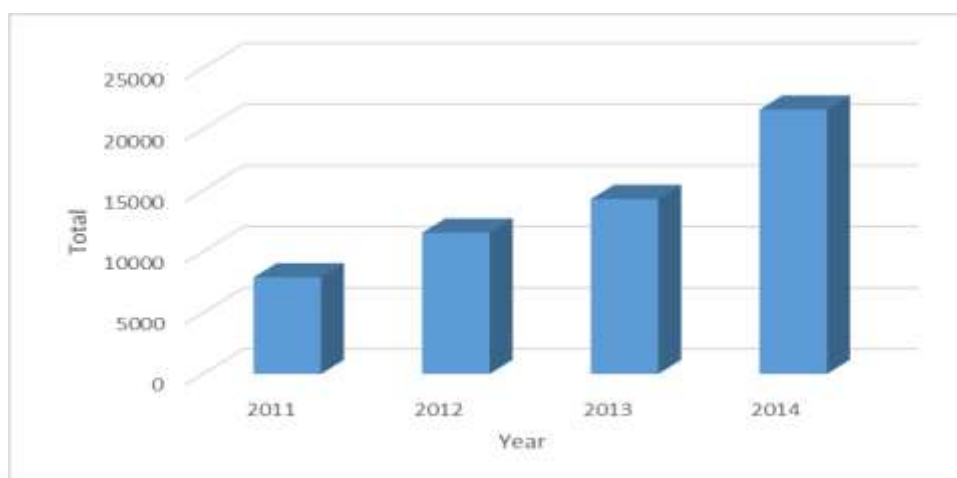


Figure 12: Cumulative total of applications processed

Around 1456 notices were sent to Data Controllers in 2014 as reminder for outstanding payments of renewals and missing document. Most of the notices have been positively responded to by the data controllers.

5. REQUESTS FOR ADVICE

Coupled with a rising awareness on data protection, the Data Protection Office has registered an increasing number of requests for advice from organisations of both public & 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 have been analysed on the need for compliance with data protection laws in Mauritius. This is further evidenced by the fact that this office received a growing number of phone calls, emails, letter and faxes for advice on data protection issues.

This office has received a total of 59 written requests for advice comprising of 39 from private bodies and 20 from ministries and governmental departments.

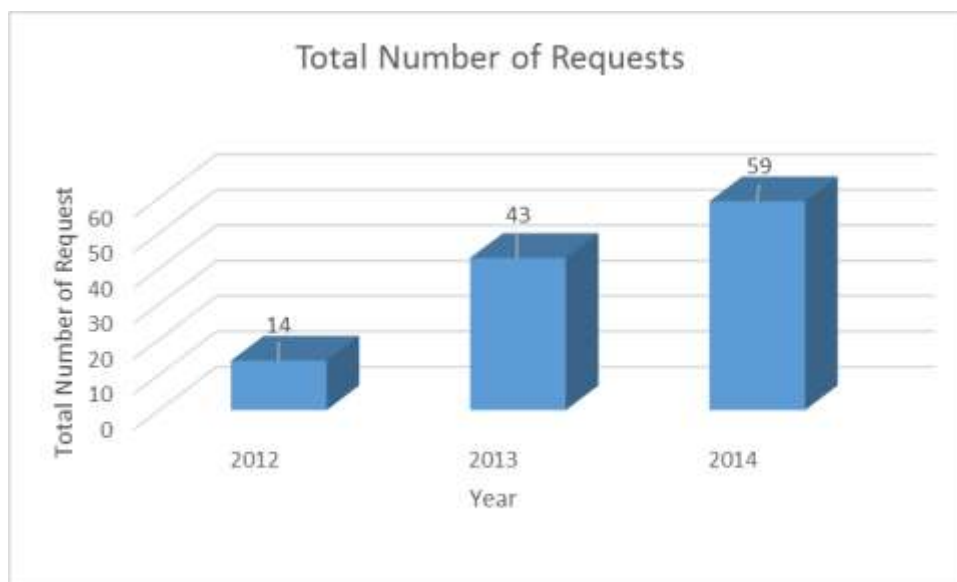


Figure 13: Total number of requests for advice

Legal advice on data protection was provided on the following issues:

- human resource management information system project
- security scanners at the airport
- protection and promotion of the right to privacy in the digital age
- personal alarm bracelets to the elderly and persons with disabilities
- implementation of child protection register to monitor distressed children
- the setting up of a framework on ecommerce trust seal by ICTA
- e-work permit to expatriates in joint venture projects
- continuous multipurpose household surveys
- collection of identification data from Somali detainees in Mauritius
- government service platform for secured connection & maintenance of ministries and departments
- introduction of whole body scanners
- requirements for sharing of data between public and private bodies
- sharing of data among public bodies
- making use of cloud server to store data
- requirements for installation of CCTV cameras
- legal requirements on fingerprint data
- project on migration of data
- census of economic activities
- enhancement of international cooperation in the field of human rights
- information regarding speed enforcement camera systems
- requests for access to personal information

6. REVENUE COLLECTED

The Data Protection Office has collected a total revenue of **Rs 7.7 million** in 2014. The increase in revenue during the year 2013 and 2014 is accounted for by an increase in notices served on Data Controllers during the overtime period performed by the staff of this office, given the scarce amount of personnel allocated to this office.

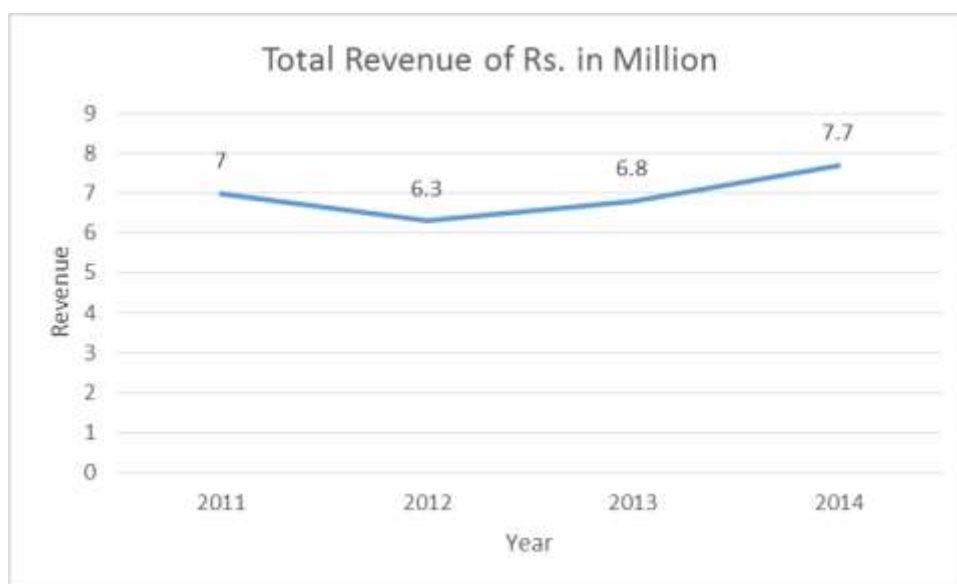


Figure 14 : Total revenue collected during 2014

7. OTHER ACTIVITIES

1. The Data Protection Commissioner has also granted authorisations to 18 organisations to transfer personal data abroad after careful assessments carried out.
2. The office has actively participated in the International Working Group on Digital Education organised by the Commission Nationale de L'informatique et des Libertés (CNIL) of France. The working group represents all the relevant regions of the world with the aim of developing a common programme on digital education.
3. This office has further designed a specific website for educational purposes in English and French.