

DATA PROTECTION OFFICE

**9th
ANNUAL
REPORT**

For period covering January to December 2017

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MISSION AND VISION

1. MISSION OF THE DATA PROTECTION OFFICE

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

2. VISION OF THE DATA PROTECTION OFFICE

- ◆ 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

2017 has severely rocked the fragile foundation of this office with a skeleton staff of thirteen people. An immense overflow of tasks related to the forthcoming enactment of the new Data Protection Act 2017, has squeezed out all the energy that this office could provide into realising, what I would term, an impossible task.

I was called upon to draft a new Bill based on the European model, namely the General Data Protection Regulation which came into force on 25 May 2018, when no other country has yet explored this highly sensitive legal challenge. It is important to note that the Data Protection Act imposes many legal obligations and duties on controllers and processors and non-compliance requires enforcement sanctions and legal decisions from this office, which despite many requests to the concerned Ministry, does not have a legal team including police officers to assist the Commissioner in her functions, after 11 years of existence.

Regulations have also been prepared to support the new legislation with respect to the new fees to be imposed upon controllers and processors. Guides have been designed to assist them in their new responsibilities, which involve time-consuming research and legal analysis from this office.

We are not currently equipped to monitor around an estimate of 25 000 controllers and processors operating in Mauritius. Despite such a huge setback, the office has been performing its tasks to a level satisfactory enough for the country.

My staff and myself are highly demotivated given that despite recommendations made to PRB, no change has been brought to the office salary and promotion structure since its creation in 2007 to match the fast growing responsibilities attributed to it.

In this context, it is indeed with great concern for the future of this office, that I make an appeal to our decision-makers to redress this difficult and stressful situation that we have been called upon to endure.

The delay in submitting this report has been occasioned by the fact that the two data protection officers assisting me in the production of this report could not meet the quality expectations of this office, which is also an indication that this office does not have the right expertise for its numerous functions.

Mrs Drudeisha Madhub (*Barrister-at-law*)
Data Protection Commissioner

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 Sicom Tower, Wall Street, Ebène.

Phone: 460 0251

Fax: 489 7341

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

Email: dpo@govmu.org

ORGANISATION STRUCTURE

The Structure of the Data Protection Office is as shown below

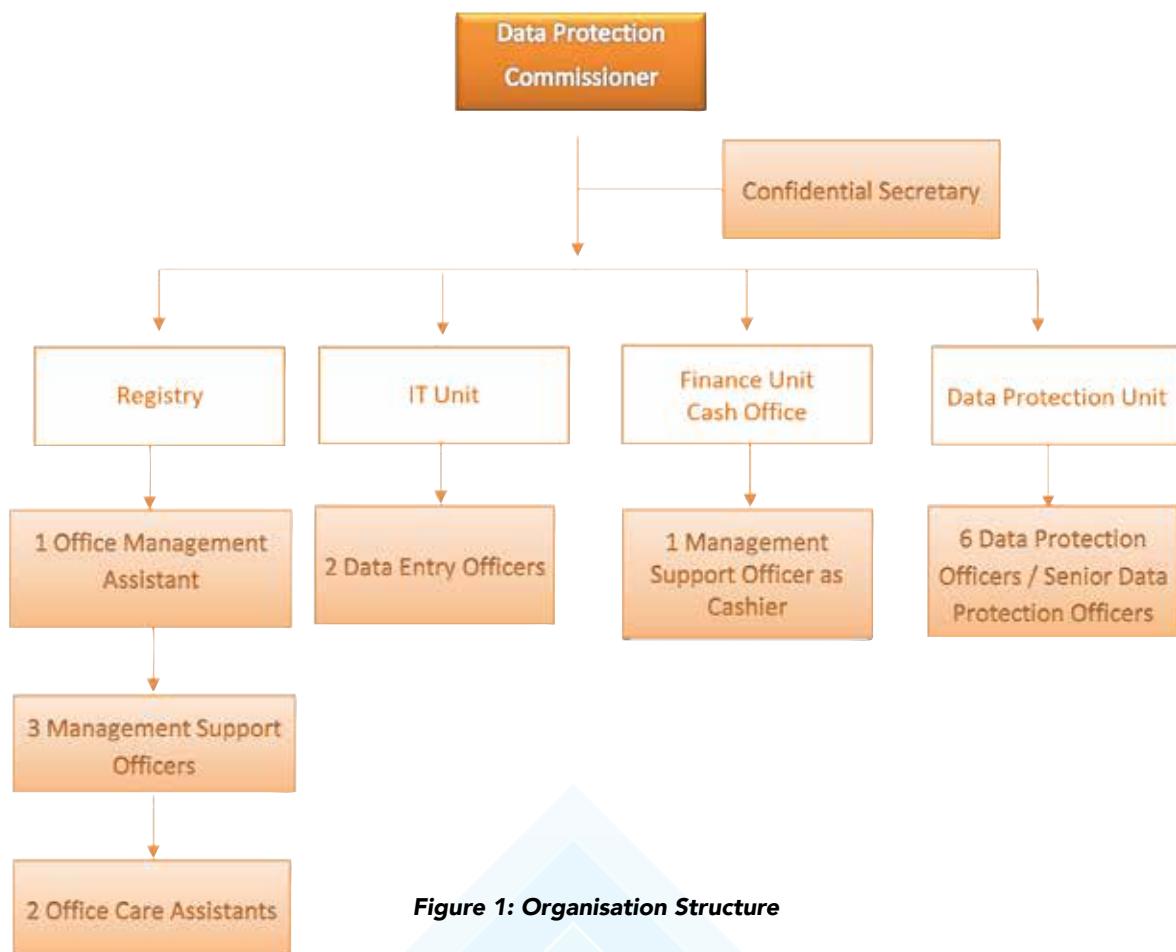


Figure 1: Organisation Structure

ACTIVITIES IN 2017

1. FINANCIAL STATUS

Revenue Collected

During the year 2017, the Data Protection Office has collected a total revenue of Rs 5,961,500. This decrease in revenue collection is attributed to the following:

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

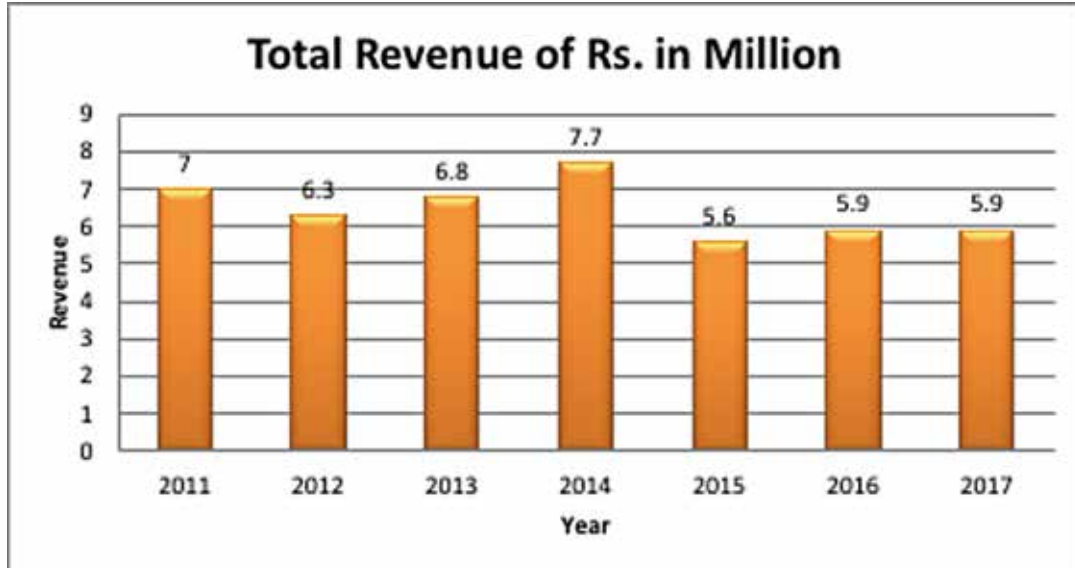


Figure 2 : Line Chart representing revenue collected for year 2017

Due to shortage of staff, renewal notices could not be sent to controllers who have failed to pay their renewal fees. Likewise, enforcement notices could not be sent to controllers who have not yet registered with the Data Protection Office. These altogether contributed to the decline in revenue.

Human Resource

This office has on numerous occasions informed the Ministry of the need to recruit one Deputy Data Protection Commissioner and one Assistant Data Protection Commissioner. However, this office was informed by the Ministry during the Budget meeting of 23 March 2017 to include only posts that have been approved and thus no assistance was obtained on this matter.

Given that the Data Protection Commissioner is the only person with a legal background and is responsible for all legal matters pertaining to the functions of the office as well as being the supervising officer regarding administration of the office, a Deputy Data Protection Commissioner would have highly alleviated the tasks of the Data Protection Commissioner. A Deputy Data Protection Commissioner would have been responsible for compliance issues, signing of certificates, acting as liaison officer with government and non-government bodies regarding sector-wise recommendation on data protection, giving decisions on complaints and managing court and tribunal matters. The Assistant Data Protection Commissioner on the other hand would have assisted the Data Protection Commissioner on all technical matters relating to data protection. He would have been the responsible officer and the advisor on research matters relating to technology on data protection. He would have been responsible for all matters relating to forensic investigations and security audits.

Additionally, the proper functioning of this office has been greatly affected by a severe depletion of human resources. Our budget proposal submitted to our parent ministry on 24 March 2017 for the financial year Jul 2017 - Jun 2018 consisted of:

- ◆ 3 Principal Data Protection Officers
- ◆ 1 Legal Executive
- ◆ 3 Assistant Data Protection Officers
- ◆ 1 Driver
- ◆ 1 Personal Driver
- ◆ 1 Receptionist
- ◆ 3 Additional Data Protection Officer/Senior Data Protection Officers
- ◆ 1 Office Supervisor/ Office Management Executive (OME)
- ◆ 2 Management Support Officers (MSO)
- ◆ 5 police officers to be posted at this office on secondment
- ◆ 1 police officer at reception desk

By end of year 2017, out of all our human resource proposals submitted, only 1 receptionist was posted at this office. Without adequate staffing, all the functions of an office could not be effected smoothly. Although the grades of Principal Data Protection Officer, Legal Executive and Assistant Data Protection Officer were already recommended by PRB Report 2016, this office notes that there has been much delay from our parent Ministry in finalising the schemes of service for the said posts. Various reminders have been sent on this matter to our parent Ministry but by end of 2017, the schemes of service were still not reviewed which resulted into a real handicap for the office since neither the replacement of a deceased Data Protection Officer/Senior Data Protection Officer could be made nor additional officers could be recruited.

The office also made a request to the Ministry for the provision of 5 trainees from the Youth Employment Programme. Same could not be entertained because this programme was discontinued in July 2017 for the public service.

Items

The purchase of a car for DPO was not effected by the parent Ministry which impacted on site visits to be carried out by this office although this item of the office budget was present for the financial year 2017 which resulted in a lost item not received when the new financial arrived after June 2017.

International / Regional

I. Participation in International Conferences

In 2017, the Data Protection Commissioner attended the annual meeting of the UN Global Pulse Data Privacy Advisory Group in New York from 10 to 21 June in her personal capacity as an emeritus member of the Group.

A Data Protection Officer / Senior Data Protection Officer participated in the 10th Francophone Conference & 11th General Assembly of AFAPDP in Tunisia from 4 to 5 September 2017.



One of the important functions of the Commissioner specified under section 5 of the Data Protection Act is to cooperate with supervisory authorities of other countries. Attending and participating in international conferences, forums and workshops furthers capacity, facilitates collaboration, highlights expertise and explores the thorny and complex issues of data protection/privacy. Unfortunately, many times our office could not respond to many such invitations at no cost to the government because our parent Ministry refused to provide its approval.

The following meetings were attended by the Data Protection Commissioner:

Date	Conference	Remarks
21-28 January 2017	98 th Session Interpol CCF Meeting in Lyon, France	Since approval was not granted, leaves were deducted.
27 February – 3 March 2017	99 th Session Interpol CCF Meeting Lyon, France	Since approval was not granted, leaves were deducted.
15-21 April 2017	UN Global Pulse, Privacy Advisory Group Meeting in New York	
6- 9 June 2017	UN Global Summit in Geneva, Switzerland	Approval was not granted.
17-22 June 2017	34 th Plenary Meeting of Committee of Convention 108 in Strasbourg, Paris	Approval was not granted.

The following conferences were not attended by the Data Protection Commissioner as the Ministry did not approve them:

Date	Conference
21-28 January 2017	98 th Session Interpol CCF Meeting in Lyon, France
11-13 September 2017	42 nd Meeting Council of Europe in Paris, France
25 – 29 September 2017	39 th International Conference of Data Protection and Privacy Commissioners (ICDPPC) Hong Kong 
9 November 2017	VIII International Personal Data Protection Conference in Moscow, Russia
22-24 November 2017	35 th Plenary Meeting of Committee of Convention 108 Strasbourg, Paris
18-20 December 2017	43 rd Meeting Council of Europe, Geneva

II. Membership/Cooperation with International Organisations

1. AFAPDP membership

The membership to 'Association Francophone des Autorités de Protection des Données Personelles' (AFAPDP) has significantly improved the international collaboration activities of this office.

The AFAPDP was created in 2007, at the initiative of thirty representatives of supervisory authorities and representatives of French-speaking states. The purpose of this association is to promote the right to the protection of personal data in states that do not yet have legislation (the majority of states in the world), and to encourage, at international level, the establishment of a binding international legal instrument on data protection. It contributes to developing and enhancing expertise in the protection of personal data.

To celebrate its 10 years, AFAPDP came up with a publication of about twenty pages which provides a summary of the activities done by the organisation during those 10 years and the perspectives on the use and protection of personal data in 2017. The Data Protection Office also participated as a member of the drafting team and wrote on: "Comment les évolutions technologiques qui sont anticipées vont impacter le travail des autorités?"

In addition, a Data Protection Officer / Senior Data Protection Officer carried out training to members of AFAPDP on 29th June 2017 through webinar. The aim was to give members a brief overview on the powers & functions of the Data Protection Office and how this office regulates controllers as per the Data Protection Act, depicting the Mauritius Data Protection Authority as an excellent example in the region.

2. The Global Privacy Enforcement Network (GPEN)

An officer participated in both GPEN's Network of Networks Partners side meeting as well as CTN Annual General Meeting scheduled on 25th September 2017 through teleconferencing system.

As the GPEN liaison authority between CTN & GPEN, a Data Protection Officer / Senior Data Protection Officer delivered a presentation to the GPEN members, highlighting:

- i. its mandate, priorities and make-up;
- ii. ongoing enforcement work of interest; and
- iii. potential opportunities for cross-network cooperation.

This was an opportunity for GPEN's network partners to create awareness regarding other networks while also creating the foundation for greater collaboration amongst networks in future.

3. The Common Thread Network (CTN)

The Common Thread Network is a forum for data protection and privacy authorities of Commonwealth countries. It has been established to promote cross-border cooperation and build capacity by sharing knowledge on emerging trends, regulatory changes and best practices for effective data protection.

In 2017, the Data Protection Office contributed to the CTN Working Group on the development of thematic pillars for the network.

4. Conferences GPEN / CTN

This office attends monthly conference calls for GPEN where a roundtable discussion is performed and participating privacy authorities share their expertise and knowledge on key topics of data protection. Likewise, CTN conference calls are attended by this office as and when scheduled by the Secretariat of CTN.

The importance of attending international conferences organized by these networks are:

- a) Sharing of knowledge and experience in the field of data protection
- b) To keep up-to-date with current happenings concerning data protection
- c) To meet new contacts and to form a bond with the data protection community such that this office can collaborate with international data protection authorities to ensure the protection of personal data.

2. NATIONAL SENSITISATION

As part of its engagement in raising privacy and data protection awareness, the Data Protection Office has organised the following activities during the year 2017:

- a) Publications
- b) Presentations

1. Publications

Guide on Data Protection and the Media:

The Data Protection Office has prepared a guide on Data Protection and the Media. The purpose of this guide is to promote the protection of the privacy rights of citizens when processing personal data of individuals.

Moreover, it is intended to help the media understand and comply with data protection laws and follow good practices while recognising the vital importance of a free and independent media. It sets out the basic principles and obligations of media organisations as provided in the Data Protection Act.

It also elaborates on the role of the Data Protection Office and explains what happens when someone complains about an alleged breach of the Data Protection Act and the enforcement powers of the Data Protection Commissioner. It further defines best practices for achieving compliance with the Data Protection Act.

2. Presentations

This office has delivered the following nine (9) presentations on privacy and data protection to controllers:

- (i) *"EU General Data Protection Regulations"* by Data Protection Commissioner on 13 December 2017 at BDO Mauritius;
- (ii) *"Presentation on Threats and Challenges to Data Protection and Privacy"* by Data Protection Commissioner on 14 November 2017 at Institute of Judicial and Legal Studies;
- (iii) *"The Data Protection Challenges - The New EU GDPR"* by the Data Protection Commissioner on 13 October 2017 at a workshop at Hennessey Park Hotel organised by the Mauritius Chamber of Commerce and Industry(MCCI);
- (iv) *"Presentation on Data Protection and Security using Disruptive Technologies Speech"* by Data Protection Commissioner on 6 October 2017 at Mauritius Telecom;
- (v) *"Training on Data Protection"* by Data Protection Officers/Senior Data Protection Officers on 17 August 2017 to Senior Management of EMTEL Ltd;
- (vi) *"Open Data and Data Privacy"* by Data Protection Commissioner on 23 May 2017 to representatives of ministries/departments at the workshop on Open Data Portal organised by the Ministry of Technology, Communication and Innovation;
- (vii) *"Confidentiality and Data Sovereignty in the Cloud"* by the Data Protection Commissioner on 6 April 2017 at eGov Conference 2017 organised by the State Informatics Limited;

- (viii) *“Managing Data Protection”* by Data Protection Officers / Senior Data Protection Officers on 5 April 2017 to representatives of Mammouth Trading Co. Ltd (Courts Mammouth);
- (ix) *“Data Protection in Organisation”* by Data Protection Officers / Senior Data Protection Officers on 13 January 2017 to Senior staff of MITCO.

Although there is a high demand for training from controllers, limited number of staff could only deliver the above trainings.

I. Capacity building / regional capacity building provided to officers of this office

To promote the performance of our staff for the continuous improvement of our services, the following trainings were attended by officers during the year 2017:

Date	Training / Workshop	Attended By
02 February 2017	Mentoring Session On Auditing ISO 2015 Version	A Data Protection Officer/ Senior Data Protection Officer
02 February 2017	Mentoring Session On Auditing ISO 2015 Version	A Data Protection Officer/ Senior Data Protection Officer
16 – 17 February 2017	ISMS Implementer Training	Two Data Protection Officers/ Senior Data Protection Officers
30 March 2017	Workshop of Top Management In ISO 2015	A Data Protection Officer/ Senior Data Protection Officer
04 & 18 April 2017	Managing Projects in the Public Sector-Civil Service College Mauritius	A Data Protection Officer/ Senior Data Protection Officer
02 May 2017	Internal Audit Report On Accounts Receivable	A Data Protection Officer/ Senior Data Protection Officer

12 May 2017	Workshop On Open Source Software (OSS) For Enterprise:Licensing, Standards And Legal Issues	A Data Protection Officer/ Senior Data Protection Officer
22 May & 23 May 2017	Workshop On Open Data Portal	A Data Protection Officer/ Senior Data Protection Officer
28, 29 & 30 June 2017	ITU-IOT Workshop	A Data Protection Officer/ Senior Data Protection Officer
20 July 2017	Digital Mauritius 2030	A Data Protection Officer/ Senior Data Protection Officer
12 September 2017	IT Security Awareness Presentation	All Staff
06 October 2017	Mauritius Telecom Invitation Office 365 Event	A Data Protection Officer/ Senior Data Protection Officer
13 October 2017	Data Protection Workshop by MCCI	A Data Protection Officer/ Senior Data Protection Officer

One Data Protection Officer / Senior Data Protection Officer was designated to attend trainings, whenever the exigencies of this office permitted so.

II. Enforcing Data Protection

One of the missions of the Data Protection Office (DPO) is to remedy the infringements occurring through the mishandling of personal information of our citizens and fiercely does so through its enquiries and investigations with a view to establishing whether a breach has taken place or not under the Data Protection Act (DPA).

The investigations are performed under section 6 of the Data Protection Act. All complaints are investigated effectively and fairly with all the concerned parties and upon completion of the enquiry, the Data Protection Commissioner gives a decision. In case an amicable resolution by the parties concerned of the complaint cannot be settled within a reasonable time, the individual who made the complaint is informed

about the decision so that the individual may, where he considers that he is aggrieved by the decision, appeal against it under section 51 of the DPA.

1. Investigation on complaints

During the period of January to December 2017, the Data Protection Office has received a total of eighteen (18) new complaints for investigations on the below subjects, among others:

- (i) Unsolicited promotional SMS messages;
- (ii) Disclosure of personal data
- (iii) Illegal use of signature
- (iv) Processing of Personal Information for Email Marketing;
- (v) Usage of Video Surveillance Systems (CCTV Camera);
- (vi) Request for Retrieval of Copy of Contract;
- (vii) Use of Biometric Attendance

The diagram below illustrates the total number of new complaints received during the past few years.

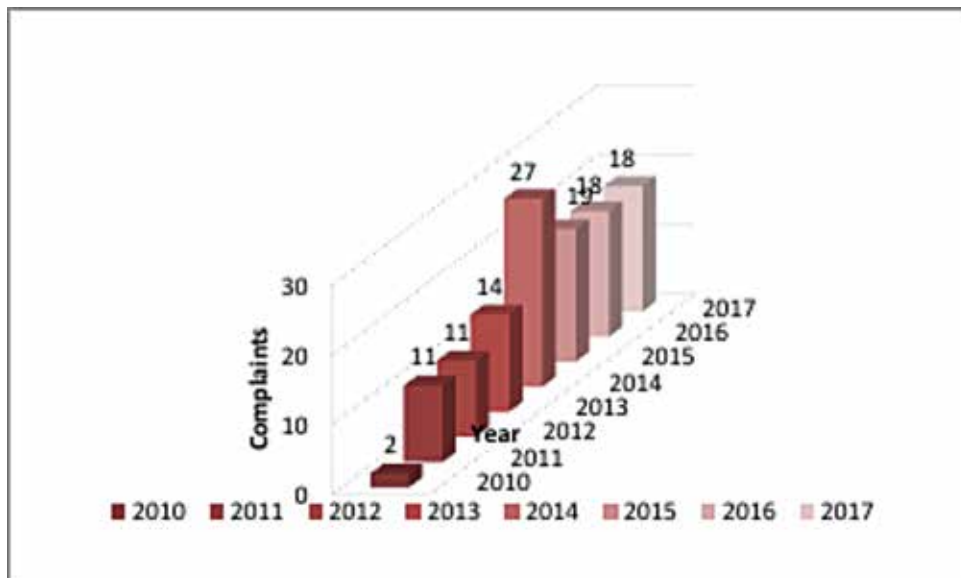


Figure 3: Number of new complaints per year

2. Decisions on Complaints

The decisions of the Data Protection Commissioner (DPC) contribute in protecting the privacy rights of our citizens and are seen as an effective deterring measure in avoiding the reoccurrence of such breaches again. The DPC has provided nine (9) decisions in 2017. A brief of the decisions is provided below:

- (i) *Decision No 38 - 06.01.2017 – Unsolicited Promotional SMS Messages*
The Commissioner found no commission of any offence under the DPA as Respondent has implemented satisfactory measures to remedy the breach.

- (ii) *Decision No 39 - 13.02.2017 – Use of Biometric Attendance*
This office conducted a site visit to verify implementation of corrective measures and confirmed that employees were asked to provide their consent for biometric attendance. Those who did not provide consent for the biometric attendance were given the option of a card system as alternative. Since Respondent took the appropriate measures, the Commissioner was of the view that no offence was committed under the Data Protection Act.

- (iii) *Decision No 40 - 14.02.2017 - Use of Biometric Attendance*
Based on the elements gathered, this office closed the enquiry due to lack of collaboration from Complainant. However, Respondent's cooperation led to a successful conclusion of the enquiry conducted by this office in view of the fact that the picture of complainant was removed from the public viewing electronic device.

- (iv) *Decision No 41 - 20.02.2017 - Disclosure of Confidential Note*
A thorough enquiry was carried out by this office to ascertain the source of the alleged leakage of personal data to the press whereby no evidence was found by this office to conclude a breach of the Data Protection Act and as confirmed by Complainant, the enquiry was closed. However, Respondents were reminded of their obligations under Part IV of the Data Protection Act and in particular, Respondent 1 under section 49 of the mentioned Act who had the duty to ascertain and verify that the publication of personal data was reasonably for public interest purposes and that the exemption under section 49(2) applied to only certain sections of the DPA.

(v) Decision No 42 - 09.03.2017 - Disclosure of Information and Illegal Use of Signatures

Given that Complainant did not provide concrete evidence, the enquiry was closed to the satisfaction of all parties and no offence was found committed under the DPA.

(vi) Decision No 43 - 06.04.2017 - Disclosure of information on Respondent's Website

In view of the clarifications brought by Respondent, there was no evidence on record to suggest a breach of any of the provisions of the Data Protection Act. The enquiry was thus closed.

(vii) Decision No 44 - 20.06.2017 - Request to retrieve a copy of contract and personal data

Based on the facts provided, there was no evidence to suggest a breach of the Data Protection Act may have occurred and the enquiry was thus closed.

(viii) Decision No 45 - 22.06.2017 - Disclosure of Personal Information

There was no evidence on record to demonstrate that personal information belonging to Complainant had been unlawfully disclosed to Respondent. Subject to corrective measures implemented, the enquiry was thus closed.

(ix) Decision No 46 - 05.12.2017 - Use of Biometric Attendance

Complainant confirmed verbally that he did not have any comment with regard to the enquiry which was successfully concluded and no offence was committed under the Data Protection Act.

The issues and challenges encountered during the investigation on complaints are as follows:

- **Site Visits**

The statistics above show that this office has received 18 new complaints for the year 2017. Most of the complaints received concerned the usage of the CCTV Camera.

This type of complaint requires site visits in order for the officers to check the positions of the cameras and the CCTV recording/footage. Since this office shifted from Port Louis to Ebene, the assigned police officer from Pope Hennessy Police Station in Port Louis could no longer accompany the officers on site visits.

Request was then made to Rose Hill Police Station for the assistance of police officers for the site visits. However, this office was informed that dedicated

police officers could not be assigned and the Police Station in the concerned jurisdiction of the complaint must be consulted for the site visits.

This office also requested the parent Ministry for the setting up of a Prosecution Unit consisting of police officers which would also handle site visits amongst others, such that the officers could concentrate more on investigation but to no avail.

- **Human Resources**

Investigation on complaints is one of the vital duties of the Data Protection Officers. They are also required to assist the Commissioner in:

- a) carrying out –
 - i. registration activities;
 - ii. inspections and assessments of the security measures imposed on controllers and processors;
 - iii. periodical audits of the systems of controllers and processors to ensure compliance with the data protection principles specified in the Act; and
 - iv. research activities on IT and data security.
- b) effect service of notices on controllers or processors;
- c) enter and search any premises for the purposes of discharging any duties under the Act;
- d) provide training to controllers and processors;
- e) promote data protection awareness and sensitisation;
- f) provide assistance and advice to other regulators to ensure that security and other measures implemented are in line with Data Protection Principles;
- g) manage data protection compliance in accordance with the Data Protection Act.

As stated above in various sections, lack of human resources created a real handicap for this office. Complaints kept on increasing and officers were overloaded with complaints and other work which resulted in a significant decrease of performance by this office.

- **Data Protection Bill**

The priority in 2017 was the enactment of the Data Protection Bill. All resources focused on this task which comprised of providing justifications for changing the Data Protection Act 2004, the comparison between EU GDPR and the Bill, cabinet papers, amongst others.

The above have influenced negatively the progress of speedy investigations on complaints.

- **Prosecution Unit**

A letter was sent to the Commissioner of Police on 21 December 2016 to request for 6 police officers to be posted permanently to the Data Protection Office(DPO) to help Data Protection Officers/Senior Data Protection Officers carry out complaints' investigation, initiate prosecution matters and appearances in court. A reminder letter was sent again to the Commissioner of Police on 13 March 2017 to request an update on the letter dated 21 December 2016.

On 22 May 2017, a negative reply was received from the Commissioner of Police.

With the promulgation of the Data Protection Act 2017, the provision relating to referral to the police for prosecution after completion of an investigation was removed. This office is henceforth required to perform all prosecutorial duties before the Intermediate Court as provided for by section 53 of the Act. In this context, another letter was sent requesting the Commissioner of Police to earmark 3 police officers of appropriate grade to assist the Data Protection Commissioner to perform the following tasks:

- a. To deal with non-complying controllers and processors;
- b. To swear an information in respect of an offence under the Act or any regulations made under it before a Magistrate and prosecute the case;
- c. To assist in search of premises in the conduct of investigations.

A reminder letter was sent again on 7 September 2018.

In the absence of any reply from the Commissioner of Police, a letter was sent to the Permanent Secretary of the Ministry of Technology Communication and Innovation on 29 October 2018 to request the Ministry's help in liaising with the Police to set up the Prosecution Unit.

III. 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.

1. *Ongoing case at the ICT tribunal*

The ICT Appeal Tribunal has upheld the decision of the Data Protection Commissioner on unauthorized disclosure of personal data by board members of a data controller on 19th January 2017.

2. *Supreme Court case*

If a party resists the decision of the Chairman of the ICT tribunal, he may appeal to the Supreme Court. There were two appeal cases on decisions of the Data Protection Commissioner regarding the use of fingerprints in the workplace for employees which were upheld by the Supreme Court. Both cases have been withdrawn by the appellants on 20th February 2017 and 2nd October 2017 respectively thereby confirming the determinations of the ICT appeal Tribunal and those of the Data Protection Commissioner.

IV. Registration of Data Controllers

Under section 33(2) of the Data Protection Act 2004, all data controllers operating in Mauritius, such as associations, companies, sociétés, partnerships, governmental institutions, sole traders and professionals in their relevant fields are required to register with the Data Protection Office. Provisions for making registration & renewals are catered for under sections 34 to 39 of the Data Protection Act, respectively.

This office has received a total of three hundred and nine (309) applications comprising of new registrations in 2017. Alongside renewals for the previous years, a total of **29854** applications have been processed.

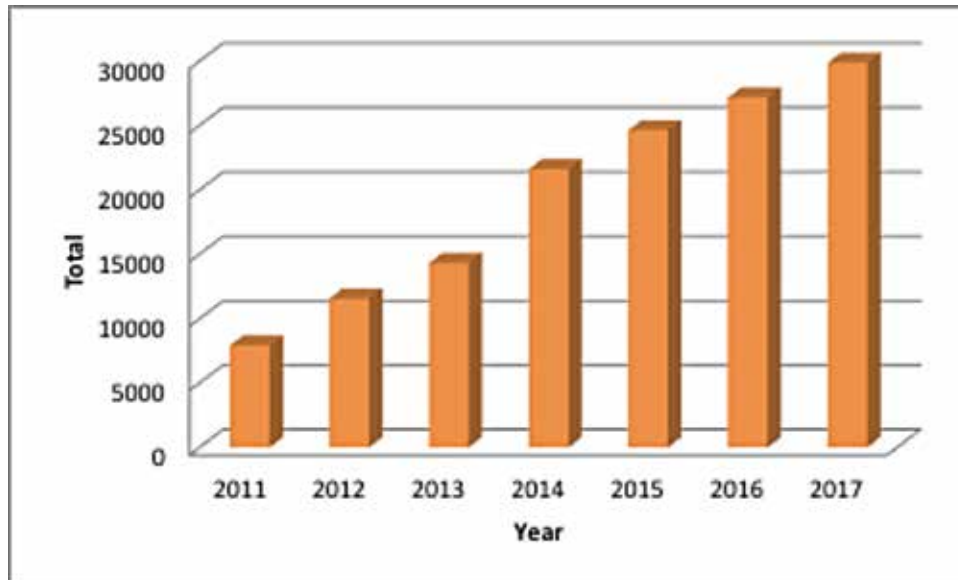


Figure 4: Cumulative percentage (%) of registrations & renewals of Data Controllers

There are approximately 11000 of data controllers registered with this office and this number is increasing day by day. The following tasks were impacted given the serious lack of human resources in other sections as well such as registry section and data entry:

- i) Enforcement/Renewal notices to unregistered controllers were not issued contributing to arrears of revenue of Rs 22,335,400;
- ii) delays in updating the records of data controllers in the computerised system of this office resulting in backlog;
- iii) delays in issuing certificates of registration to controllers.

The PRB Report 2016 recommended the creation of the post of Assistant Data Protection Officer(recommendation 19.65 -19.66) to assist the Data Protection Officer/ Senior Data Protection Officers in the performance of their duties; to examine data protection registration and renewal forms in order to ensure that they meet the set requirements; and issue renewal notice to data controllers and take up follow up action on payments. To date, this requirement has not been fulfilled.

According to the Data Protection Act 2004, the penalty provided for not registering as a controller is a fine not exceeding 200,000 rupees and imprisonment for a term not exceeding 5 years.

V. Requests for Legal Advice

Due to an increasing awareness of the role of the Data Protection Office, the latter has registered a remarkable number of requests for advice from organisations in both public and private sectors.

The notable increase in response and recognition from the members of the public and data controllers as benchmarked on the need for compliance with data protection laws in Mauritius. This was further demonstrated by the fact that this office received a growing number of phone calls, emails, letters and faxes for advice on data protection issues.

In 2017, the Data Protection Office received a total of one hundred and thirty-three (133) written requests for advice comprising of 34 from private bodies and 99 from ministries, governmental departments and parastatal bodies.

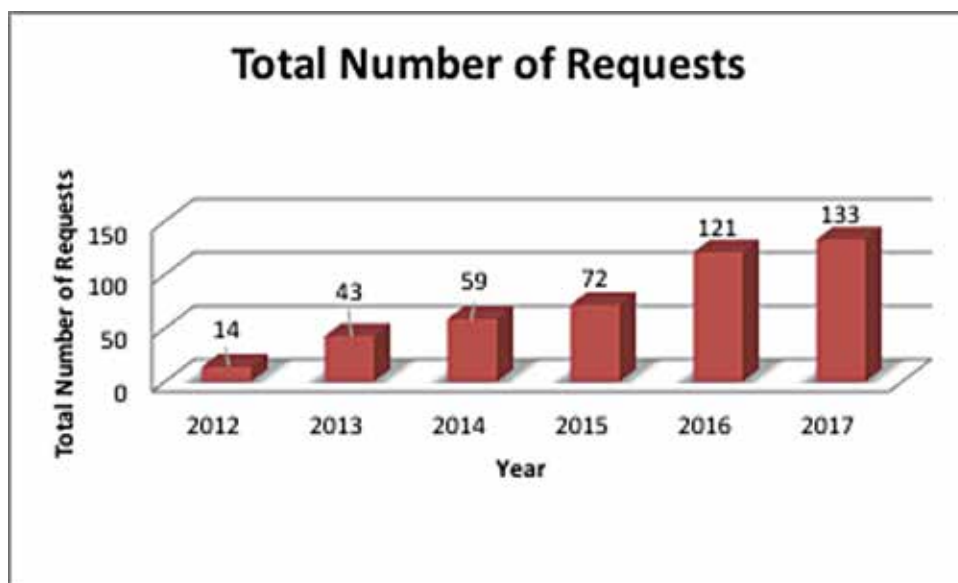


Figure 5: Number of requests for advice

Following the enactment of the new Data Protection Act 2017, being understaffed, the office has faced many difficulties to respond to the growing number of phone calls, emails, letters and faxes for advice on data protection issues. On top of that, the automated 24-hour helpdesk facility, which assisted the public seeking information, was deactivated by the Parent Ministry.

VI. Transfer of Data Abroad

According to section 31(1) of the Data Protection Act 2004, no data controller shall, except with the written authorisation of the Commissioner, transfer personal data to another country.

From January to December 2017, the Commissioner granted authorisation to thirty-one (31) companies to transfer the mentioned data in their respective "Transfer of Personal Data Forms" for their stated purposes.

IV. Site Visits

The office conducted sixteen (7) site visits in all during the year 2017. These site visits were performed for complaints, audits and security checks purposes.

The regularity of site visits was influenced significantly by 3 factors namely the number of Data Protection Officers, availability of police officers and transport facility. Unfortunately, no improvement was observed in any of these contributing factors in 2017. For instance, as also stated earlier, numerous requests were made for the replacement of a deceased Data Protection Officer, however, the post remained vacant till date. In addition, the absence of police officers posted at this office for undertaking site visits have been deeply felt since many site visits had to be cancelled. Finally, despite the need of this office to be allocated a car, till date the purchase was not accomplished by the Ministry.

V. Other Achievements

1. Data Protection Bill 2017

The Data Protection Act 2004 which no longer fitted Mauritius' evolving digital context was therefore repealed and replaced by the new Data Protection Act 2017 which came into force on 15th of January 2018. The aim was to bring our data protection framework in line with international standards, namely the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and also to strengthen the control and personal autonomy of data subjects over their personal data. The Act has been drafted by this office in a way to ensure adequacy with European Union but was also subject to policy implications from the Ministry which included certain additional provisions in the Act.

2. MS ISO 9001:2008 First Surveillance Audit

A second surveillance audit was carried out by the Mauritius Standard Bureau in October 2017. Some minor non-conformities raised have been addressed. However, it has to be noted that appropriate staffing is required in order to continue to provide a qualitative level of service.

3. TECHNICAL

I. Computerisation

Computerisation of the Data Protection Office was plagued by the major backlog in data entry work. This prevented the launch of online payment for registration and renewal of controllers. New arrangements were also made to allow for the online registration of controllers and processors as catered for in the new Data Protection Act 2017 for the year 2018. The application already developed will enhance the possibility to provide better service to controllers and processors.

The smooth running of the computerisation system should have been accompanied by an officer of the analyst cadre from Central Information System Division to liaise with the supplier for technical issues which was not possible at the time the project was being implemented. This would have avoided several issues raised by the National Audit Office. Request was made to Central Information System Division for such staff to be provided.

II. ISMS

The importance of this certification is highly valued and recognised by this office. However, the severe shortage of staff and constant transfer of staff between departments have hampered the smooth implementation of ISO 27001. Given that DPO staff have also not followed the course training on implementation of this standard, this has slowed down the progress of this project. A request for training was thus sent to the Mauritius Standards Bureau in this respect.

NOTE

This office has incurred a substantial delay in submitting this annual report. The delay incurred in publishing this annual report was due to the fact that the limited number of staff were carrying out the following highly prioritised tasks in addition to their daily routine works (such as approval of registration, attend to calls and visitors, drafting of advices, investigating complaints, cooperating with international authorities amongst others):

- ◆ Preparation of documents for submission to the Ministry on the Data Protection Bill
- ◆ Organisation of the workshop on the DPA for 550 participants
- ◆ Preparation of presentations and speeches for the workshop on the DPA
- ◆ Reviewing processes for the implementation of the DPA
- ◆ Preparation of Introductory Guide on the DPA
- ◆ Responding to the high flux of advices on the DPA after the workshop
- ◆ Preparation and conducting trainings on the DPA in house and at data controllers' premises
- ◆ Setting up of procedures and forms for certification mechanisms
- ◆ Drafting of new regulations, procedures and new forms for:-
 - ◆ Data Protection Impact Assessments
 - ◆ Records of processing
 - ◆ Notification of personal data breaches
- ◆ Determining the criteria for high risks processing
- ◆ Providing materials for the production of a video clip on the DPA
- ◆ Assisting the benchmarking of Ugandan delegates of this office as a leading example in Africa
- ◆ Developing procedures for the ISMS framework
- ◆ Reviewing the ISO 9001 procedures for transition.

