



Annual Report 2016/2017 of the Federal Data Protection and Information Commissioner

## Privacy-friendly technologies in the spotlight

**Bern, 26 June 2017 – The Federal Data Protection and Information Commissioner (FDPIC) has demanded that big data applications, artificial intelligence and robotics, in addition to serving their primary purposes, should always support people in exercising their fundamental right to live their own private lives as they wish. As the commissioner for freedom of information, the FDPIC is committed to ensuring that no further restrictions are imposed on the Freedom of Information Act by new provisions introduced in other legislation.**

In Swiss society, key features of which are direct democracy and a free-market economy, everyone has a fundamental right to live their lives independently and in privacy. The FDPIC has called for big data applications, artificial intelligence and robotics not only to meet their commercial, official or scientific objectives but also to be used to support people in exercising their right to personal liberty. Online data processing can be conveniently transparent so that users can make their choices based on objective information and can return to the chosen option at any time.

In the case of the Windows 10 operating system, the FDPIC made sure that Microsoft makes it clear right from the installation stage what, how and where user data is being processed. With the latest software release in April 2017, the first of his recommendations were implemented throughout the world, and remaining recommendations should come into effect in autumn of this year. As a result, users will be able to see more clearly what information is being recorded by the operating system and how they can restrict the various forms of data processing. This solution, reached by mutual agreement with Microsoft, should serve as a guide for digital applications of businesses in all other sectors.

Following a digital inspection, in mid-April the Federal Administrative Court issued a landmark judgment relating to the online credit agency Moneyhouse. It confirmed the FDPIC's view that personal data that has already been published may not be stored, linked and reproduced in an arbitrary manner. In future Moneyhouse will only be permitted to process data on private individuals if these persons have given their express consent or the data needs to be processed in order to provide information on creditworthiness.

The telecom company Swisscom has revised its new general terms and conditions of business in accordance with recommendations made by the FDPIC. Swisscom will now give due notice to its customers before passing on their data to the advertising network Admeira and allow them to object to this being done.

In the report year, the FDPIC also concluded his follow-up inspection at the SBB and the Swiss Public Transport Union in relation to the Swiss Pass. He confirmed that his recommendation to delete data made in January 2016 had been implemented. The FDPIC also offered advice on other mobility projects, showing suppliers of e-ticketing systems how to provide customers with comprehensive and comprehensible information and where the legal limits lie when passing on position data to third parties.

Since April 2017, American companies that transmit personal data from Switzerland to the USA can submit to the new legal framework known as Privacy Shield. The FDPIC followed the related negotiations between SECO and the USA closely. In the report year he also made a detailed assessment of



the automatic exchange of information on financial accounts (AEOI) and its extension to cover additional states (see the summary of the 24<sup>th</sup> annual report).

### **Freedom of information**

In 2016 there was a slight fall in the number of requests for access made to the Administration (2016: 551; 2015: 597). On the other hand, the number of requests for mediation made to the FDPIC increased by around 50 per cent (2016: 149; 2015: 98). Last year, 159 mediation cases were successfully concluded. Because requests for mediation are rarely processed within the 30-day period, on 1 January the FDPIC began a one-year trial of an accelerated, verbal procedure. Greater use of this method should not only reduce the time required to process cases but also promises a higher percentage of amicable solutions. The experience of the first six months is positive.

Both in the case of federal procurement and the supervision of public transport, the FDPIC is committed to ensuring that no further restrictions are placed on the scope of the Freedom of Information Act by revisions made to other laws. In the Commissioner's view, the Freedom of Information Act provides adequate means to take due account of interests in preserving confidentiality and secrecy.

### **Digital challenges for the FDPIC and the new Data Protection Act**

The strategic focus on the phenomenon of digitalisation poses special challenges for the FDPIC:

- Users of digital technologies expect the FDPIC to advise them of risks posed by common applications and show them how to protect their own privacy.
- As more big data projects are carried out by the federal authorities and in the private sector, the FDPIC is required to extend his supervisory and advisory activities to ensure that data on specific persons is made anonymous and the probability of re-identifying persons remains low.
- Applications for processing personal data are becoming increasingly cloud-based and are constantly changing, with the result that the FDPIC must be quick to conclude his assessments.

In order to bolster the authority's digital powers and to make efficient use of scarce resources, the Commissioner has reorganised his office and implemented a number of internal measures, including a refurbished laboratory, which will improve the testing of ICT products. Thanks to speeding up the mediation procedure as already mentioned, it should be possible to reduce the number of cases pending without having to move staff from data protection to work in the freedom of information sector.

In order to cope with these challenges in the medium-term, the Federal Data Protection Commissioner will require additional instruments and powers, as provided for in the draft of the revised Data Protection Act, together with suitable funding for their implementation. According to the report accompanying the bill for consultation, the Federal Council expects the FDPIC's financial requirements to "increase substantially" overall. The extent to which the FDPIC can fulfil his remit in future will depend on how substantial this increase is.

The attached summary includes further issues covered by the 24<sup>th</sup> Annual Report.

The [full annual report](#) is available on our website in German and French.