

Major Developments in the Data Protection Field since the 26th meeting of the T-PD

During the period under review the Office of the Information and Data Protection Commissioner worked closely with the Malta Communications Authority with the objective of transposing Directive 2009/136/EC which amends *inter alia*, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector. In this regard a draft legal notice introducing the new and revised provisions was drafted by this Office and vetted by the Attorney General's Office. To date this legal notice (Legal Notice 239 of 2011) has not yet come into force but this is expected to take place shortly. This joint transposition effort with the Malta Communications Authority was required given that in 2003, Directive 2002/58/EC was transposed in part, under the Data Protection Act and the technical part under the provisions of the Electronic Communication Act. Another legislative intervention during this period concerns the publication of regulations implementing Framework Decision 2008/977/JHA as regards the protection of personal data in the field of police cooperation and judicial cooperation in criminal matters. These regulations have been publishing through Legal Notice 198 of 2011 and are also envisaged to come into force shortly.

During 2010 and 2011 to date the Office received 44 and 69 complaints respectively, where citizens felt their privacy was being threatened and therefore resorted to a remedy before the Information and Data Protection Commissioner (Commissioner). The most common subjects of these complaints referred to the installation of CCTV cameras and unsolicited communications. As part of the investigation of a number of these complaints, this Office conducted inspections of the relevant data controllers in order to ascertain the veracity or otherwise of the alleged facts made in the respective complaints. There were two cases wherein one of the parties felt aggrieved by the decision of the Commissioner and in terms of article 49(1)¹ of the Act, filed an appeal before the Data Protection Appeals Tribunal. In one of the cases, the Tribunal decided in favour of the Commissioner and consequently dismissed the appeal. At this stage the appellant did not appeal the Tribunal's decision and the case was considered as closed. In the other case, subsequent to the second sitting of the Appeals Tribunal, the appellant opted to withdraw the appeal and adhere to the directions issued by the Commissioner.

During this period, the Office received several queries both by email and phone on the interpretation of data protection legislation, in particular the obligations imposed on entities that process personal data and the rights of the data subjects. Data controllers also submitted requests for prior checking concerning the introduction of biometric systems and the installation of CCTV camera systems at the workplace and other areas where the processing operations involved particular risks of proper interference with the rights and freedoms of data subjects.

The Office has an obligation to promulgate data protection awareness for the benefit of the citizen and various sectors and data controllers in general. In the light of this obligation, continuous work is undertaken to, amongst others, regularly deliver presentations, give interviews to local newspapers and write newspaper articles. During the period under review, the various entities to which this Office delivered presentations on the applicability of data protection rules in relation to their specific sector included the Malta Employers' Association,

¹ "Any person aggrieved by a decision of the Commissioner shall have the right to appeal in writing to the Tribunal within thirty days from the notification to him of the said decision."

the Malta Police Force, the Employment and Training Corporation, Young Enterprise and the University of Malta. On the other hand the newspaper contribution consisted in a monthly article in the IT supplement of the 'Times of Malta'. The articles tackled the data protection concerns applicable to various areas in the digital field, such as biometric devices, cloud computing, online behavioural advertising and CCTV cameras. Positive feedback was registered from this awareness initiative. In 2011, the Office also contributed in a radio program on the national station with the aim of discussing various topics in relation to the right of privacy. The listeners were given the opportunity to call during the program and ask questions about any problems or any circumstances where they felt that the right of privacy may have been impaired.

As in previous years, the Office attended data protection meetings and conferences both at European and international level as well as meetings of the Working Group established under article 29 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.