



Republic of Serbia

**COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND
PERSONAL DATA PROTECTION**

REPORT

**ON IMPLEMENTATION OF THE LAW ON FREE
ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
AND THE LAW ON PERSONAL DATA PROTECTION
IN 2014**

B e l g r a d e

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1. FOREWORD

This Report is the tenth annual report submitted by the Commissioner for Information of Public Importance and Personal Data Protection to the National Assembly of the Republic of Serbia and the sixth such report since the Commissioner's powers have been expanded to include personal data protection.

It is well known that until only a few years ago, the Republic of Serbia was one of the few countries that had no legislation that would define and determine the manner of collecting, using, processing and keeping of personal data and systematically regulate the issues of personal data protection. Indeed, a Law on Personal Data Protection did formally exist (Federal Republic of Yugoslavia, law of 1998), but in practice there was virtually no data protection. The direct effects of this delay in regulatory regulation and in particular practice in comparison with the neighbouring countries are very much felt to this day, as reflected in the different assessments of the situation in the two respective spheres of competence of the Commissioner.

In the field of freedom of information, the process has been one of continual progress over the years, from the very beginning to this date. Of course, we cannot underestimate the fact that in 2014 many problems have still been evident and some of them have persisted for years, as explained later on in this Report. What should particularly not be underestimated and deserves most attention is recurrence of certain issues regarding exercise of freedom of information which seemed to be resolved and settled. But, regardless of the problems in the field of freedom of information, the positive process is evidently irreversible. Only continual efforts should be made to improve and maintain the continuity of this process.

It is paramount that all those responsible focus their efforts on affirming modern concepts of the essence of freedom of information – those based on the view that this freedom, from the aspect of public authorities, along with a passive component, necessarily includes also an active one. Thus, it is not sufficient for public authorities to treat freedom of information requests appropriately and fairly and to honour them (we cannot be satisfied with the current situation); rather, public authorities are encouraged to publish as much information about their work as possible on a proactive basis, without specific requests. Means and methods of electronic communication immanent to this day and age and modern technology in general significantly facilitate the realisation of this idea. It is undoubtedly a positive development that, even with all the problems, the results are increasingly visible.

However, the situation could not be more different when it comes to personal data protection. Negative effects of the delays mentioned earlier are exacerbated by a number of negative facts, two of which stand out in particular for years.

Firstly, the Commissioner – the very institution that must continually contribute and, in spite of everything, actually does contribute significantly to the implementation of the law – operates with absolutely insufficient staff. In 2014, primarily owing to the fact that the

Government ensured adequate premises for the Commissioner's Office, at least some initial steps have been taken towards resolving this issue. However, even at the end of 2014 – the year which saw the largest number of employees at the Commissioner's Office thus far – the actual figure was about 60% of the number envisaged by the organisation regulations which had been approved by the National Assembly.

Secondly, another very much negative development is the fact that the Government and other public authorities have failed to comply with their duties under the Law on Personal Data Protection. In an otherwise difficult situation, this only aggravated the matter further.

A rough but reasonable estimate is that there are several hundred thousands of public and private entities that process personal data in Serbia. Most of them – public authorities in particular – have at their disposal several personal data collections or databases, so the total number of records is estimated to be in excess of one million. These include records kept by government agencies, the military, police, pension and health insurance institutions, education institutions, banking system institutions and credit bureaus, social welfare institutions, public utilities, associations and various human resources departments in companies, to name but a few. In many instances they process personal data without specific legal basis and/or without the consent of data subjects; in other cases, the law does not regulate the purpose and scope of personal data processing, the duration of such processing etc. Worse still, in many cases processing involves particularly sensitive data, such as medical treatment information, information on social status etc.

The risks of unlawful data processing are steadily, rapidly and constantly increasing with the ever-growing pervasiveness of modern technologies, electronic communications, video surveillance devices, biometric personal data processing etc.

The right to data protection, as part of a fundamental human right – the right to privacy – is becoming increasingly difficult to maintain in this day and age. Developments in science and technology, in particular the emergence of modern communications, introduction of new information systems and creation of large data banks in all areas, while certainly beneficial in many ways, have created new ways of violating human privacy and abusing personal data. Information on the basis of which a person is identified or identifiable has the potential for abuse in that it can be used for surveillance and for direction of a person's behaviour and habits, for trading and exchange of personal databases in the market, for identity theft, for attempts at implementing totalitarian concepts of control of the society and various other forms of abuse.

As regards personal data protection, what is particularly worrying is the fact that Serbia is at the very beginning of a process of implementation of European standards in the legal order and in practice. This process needs to be expedited and enhanced. Unfortunately, there is enough evidence to suggest that this necessity is still not sufficiently recognised and understood. This is best seen from the fact that, as early as in the summer of 2010, after seemingly endless procrastination, the Government of Serbia, acting on initiative from the Commissioner for Information of Public Importance and Personal Data Protection on the basis of a draft prepared by his staff in cooperation with European Commission experts, adopted a Personal Data Protection Strategy, but failed to adopt an Action Plan for its implementation. It is now four and a half years since the period of three months in which this Action Plan had to be adopted expired, but the Plan remains a dead letter, without any practical effects.

What is also worrying is the fact that as regards secondary legislation necessary for the implementation of the Law on Personal Data Protection, the only instruments adopted on time were those the adoption of which was the responsibility of the Commissioner. Other secondary legislation, for which the Government and certain Ministries were responsible, has either been adopted after considerable delays or, worse still, has not been adopted at all. In this context, a particularly “grave” case, one that carries much weight, is the failure of the Government to adopt, even after six years, a decree that would provide for the protection of the so-called sensitive personal data (ethnic or religious affiliation, political beliefs, sexual orientation, medical information etc.). In the absence of such a decree, it is abundantly clear that the protection of this data enshrined in the law remains an empty promise, which in turn prevents Serbia from complying with specific commitments it assumed under CoE Convention No. 108.

Precious little has been done to harmonize further the Law on Personal Data Protection with relevant European standards. This beggars belief, not least because, as early as in September 2010, European Commission experts had prepared analytical material within the IPA program “Support to the Institution of the Commissioner for Information of Public Importance and Personal Data Protection”, which provided a more than sufficient basis for such action. Particularly since the Government as early as in mid 2012 formed the Working Group to prepare amendments to the Law on Personal Data Protection. However, after almost 3 years, there are still no known and visible effects of work of this Working Group. In his efforts to help Government and the Ministry of Justice, the Commissioner with his associated and in cooperation with civil society and academia members prepared the appropriate Model Law and made it available to the Ministry of Justice, but, for reasons that are difficult to understand, nothing has been done. A direct consequence of such inappropriate and irresponsible treatment of regulation of personal data protection is the fact that there is as yet no law that would regulate some areas which are essential for personal data protection – video surveillance, biometrics, security checks, private security etc., which imply many potential and actual risks of violation of many citizens’ rights.

The attitude of the society and the government towards privacy, and personal data protection in particular, needs to undergo fundamental changes. Better results are needed. This necessity stems both from the reasoning behind the country’s EU integration processes and, even more importantly, from the need to improve the protection of human rights guaranteed by the Constitution of Serbia. Taking this into account, this Report focuses in detail on specific cases in this field.

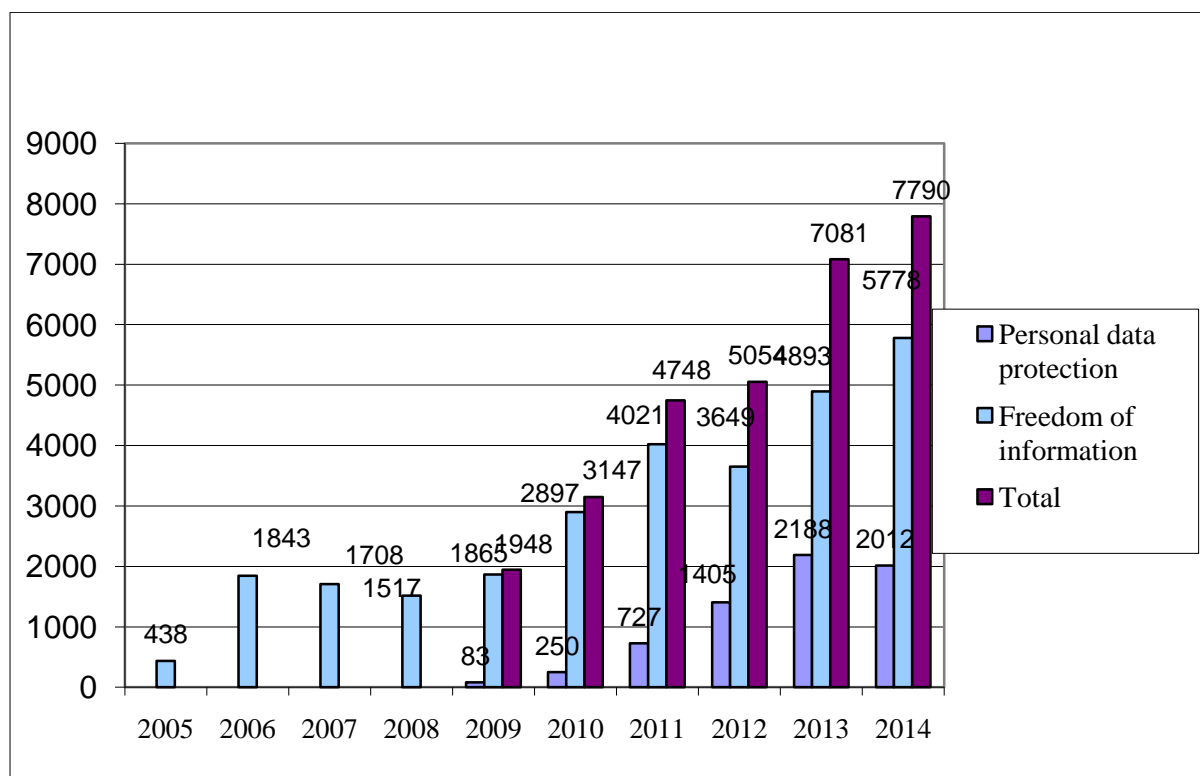
2. SUMMARY OF ACTIVITIES OF THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

The scope of work of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as “the Commissioner”) is defined by the Law by the Law on Free Access to Information of Public Importance (hereinafter referred to as “the Law on Access to Information”) and by the Law on Personal Data Protection (hereinafter referred to as “LPDP”).

The Commissioner protects the freedom of information and the right to personal data protection in second-instance proceedings pursuant to complaints lodged by citizens against violations of those rights. In addition, he is vested with oversight powers with regard to protection of personal data during processing.

Activities of the Commissioner have been increasing and becoming more complex year after year. Thus, in 2014 the number of cases received was more than 18 times higher than in 2005, the initial year of the Commissioner’s work, as can be seen from the following graph.

Graph 1. Number of cases received in 2005-2014 by years



In 2014, the Commissioner handled a total of 11,387 cases (8,749 cases in the field of freedom of information and 2,638 cases in the field of personal data protection), which was 15% higher than in 2013.

Of that number, about 70%, or more precisely **7,791 cases, were received in 2014** (5,779 cases in the field of freedom of information and 2,012 cases in the field of personal data protection), while the remaining 3,597 cases were carried forward from 2013 (2,971 relating to freedom of information and 626 relating to personal data protection).

In the course of 2014, the Commissioner closed the proceedings in 7,763 cases, including 5,563 in the field of freedom of information and 2,200 cases in the field of data protection. 3,625 pending cases were carried forward to 2015 (3,187 relating to freedom of information and 438 relating to data protection).

Compared with 2013, the volume of activities executed in 2014 measured by the number of cases alone, excluding all other operations, **was 23.1% higher.**

The majority of the Commissioner's activities in 2014 concerned the following:

- Handling of cases pursuant to complaints against violations of the freedom of information and violations of the right to personal data protection; in this context, the Commissioner ruled on a total of **3,983 complaints** (3,739 in the field of freedom of information and 244 in the field of data protection), of which 90.6% complaints against violation of freedom of information were found to be justified, while 66.8% complaints against violation of the right to personal data protection were justified. With regard to justified complaints in the field of freedom of information, the Commissioner's interventions had a positive outcome in approximately 93%. As regards decisions issued by the Commissioner ordering public authorities to comply with the requests and enable the citizens to exercise their rights, the rate of compliance is about 77.8%, although it is possible that this figure is higher, assuming some of the authorities failed to provide feedback on their compliance to the Commissioner¹;

- **Supervision** of implementation of and compliance with the Law on Personal Data Protection, to prevent any processing of personal data without proper legal basis. **1,031 supervision procedures** have been initiated, including 241 pursuant to citizens' reports, 453 on the Commissioner's own initiative and 337 in connection with reporting of the intent to process data or change records maintained by data controllers. Violations of the Law were found in 350 cases against which 298 warnings were issued, 13 ruling on rectification of irregularities in processing were issued and 4 criminal reports and 35 petitions for institution of infringement proceedings were filed;

- Provision of **assistance to individuals and to public authorities**, i.e. personal data processors, in the exercise of rights and proper implementation of the Law on Free Access to Information and LPDP, explanation of procedures (**794 opinions and answers to questions and 13 instructions for actions**) and assistance to public authorities in the implementation of regulations providing for improved transparency of their work, in connection with the preparation and publication of information booklets and improvement of data protection etc. (**100 cases**). These measures resulted in continual improvements in proactive publication of information, an increase in the number of information booklets published on the websites of public authorities, more active involvement of public authorities in the facilitation of the exercise of rights and better education of the authorities and other controllers of personal data;

¹ According to LPDP, personal data controllers do not have a duty to notify the Commissioner about compliance with orders in his decisions.

- **Assistance with the training of employees** in to public authorities and data controllers through the organisation of and participation in seminars, activities taken by the Commissioner to affirm the freedom of information and the right to personal data protection through **lectures** for students and other persons enrolled in university schools, academies and other institutions (14 seminars/lectures), **publishing activities** (the third annual publication presenting the views and opinions from the Commissioner's practice in the field of freedom of information has been published), as well as posting of decisions of Serbian and international courts and relevant decisions, views and opinions from the Commissioner's practice on the website of this authority;

- **Legislative initiatives and opinions** issued to public authorities **in connection with the enactment or amendment of laws** and other regulations (**35 opinions**), the aim of which was to ensure respect for the core principles underlying the freedom of information and the right to personal data protection and relevant international standards. Most of these opinions were accepted;

- Activities within the framework of **international and regional cooperation**, as part of which representatives of the Commissioner took part in two international and four regional conference of relevance for protection of freedom of information and protection of personal data; the Commissioner also had several meetings and talks with representatives of other international institutions and neighbouring countries in connection with his sphere of competence; the Commissioner took part in the Advisory Committee of the Convention 108 and has a member serving as the deputy chairperson in the Bureau of the Advisory Committee of the Convention 108 for the Protection of Individuals with regard to Automatic Personal Data Processing;

- Activities relating to Serbia's **EU accession process**; in this context, the Commissioner's representatives take part in the meetings under Enhanced Permanent Dialogue between the Republic of Serbia and the European Commission and present the activities within their spheres of competence. Also, the Commissioner issues opinions to competent authorities in connection with any issues that arise in the course of the accession process, to the extent that they fall under the Commissioner's mandate and submits requested information;

- **Public announcements** through which the Commissioner communicated with the public on **65** occasions, in an effort to draw the attention of the professional community and the competent officials in public authorities to certain occurrences or actions of those authorities that hamper the rights protected by the Commissioner, in cases where these can be of instructional value to the citizens;

- Activities in connection with recording of data files entered in the **Central Register** of data files maintained by the Commissioner in accordance with the law (during the year, 226 data controllers submitted to the Commissioner 950 records of the data files they keep) and on 31 December 2014, a total of 1,361 data controllers and 7,052 data files have been registered with the Register;

- Correspondence with the citizens in connection with their freedom of information **requests referred to the Commissioner** by those authorities that do not hold the requested information, to ensure that the requests are forwarded to those who might be able to provide the required information and correspondence with public authorities in connection with these and other issues about actions (**808 cases**);

- **Responses to freedom of information requests** in connection with **the Commissioner's work** and responses to requests for access to personal data processing. The

Commissioner responded positively and enabled the exercise of the rights in all but one case where access to information is possible only in a limited period of time during inspection procedure (**160 cases**);

- Activities in connection with **enforcement of the Commissioner's decisions**, which includes passing of enforcement orders, passing of resolutions on penalties, requests for assistance in enforcement set to the Government, petitions for the assistance of courts in the enforcement of resolutions on imposition of fines, objections and complaints to court decisions and resolutions on termination of procedures by the Commissioner in cases of compliance (**288 enactments passed in 165 cases**);

- **Responses submitted to the Administrative Court to legal actions** in administrative disputes (**214 cases**) against the Commissioner's decisions and resolutions. None of these legal actions succeeded in overturning the Commissioner's decisions, however, two resolutions were overturned and cases were returned for renewed procedure, following which the Commissioner passed the same decisions and rectified procedural errors at the orders of the Court²;

- Activities in connection with **transborder transfer of personal data** (**14 cases**);

- Responses to **the citizens' petitions**, most of which relate to issues outside the Commissioner's sphere of competence (**442 cases**);

- Assistance to citizens through regular **updating of information** on public authorities published by the Commissioner on his website **in the Catalogue of Public Authorities**;

- Copying of case files and **notifications to the Administrative Inspectorate of the need for inspection** in cases where public authorities do not comply with the Commissioner's decisions (**350 cases**);

- The Commissioner also received more than **15,880 calls from citizens**, journalists and the media, as well as employees of public authorities, for consultations on issues related to the exercise of the rights within the Commissioner's sphere of competence.

It should be noted that, in 2013, the competent services of the Government finally provided the required office space for the Commissioner, to which the Commissioner's Office moved in October 2013.

However, it was unfortunately not possible to develop the Commissioner's Office as planned in 2014 because it was limited by enactment of the Law amending the Law on the Budget System, which entered into force in December 2013 and according to which employment of new employees in independent authorities appointed by the National Assembly is subject to approval of the parliamentary committee competent for administrative and budget issues, which only partially endorsed the Commissioner's requests for employment of new employees.

² The Court took the stand that the Commissioner violated the procedure by rejecting the complaint as untimely without first submitting it for a response, although response is set out in LPDP as an option and not as a duty. In the other case, the Court overturned the Commissioner's decision rejecting untimely complaint according to LFAIPI because the Office did not enclose by mistake a copy of an acknowledgement of receipt to the files submitted to the Court as evidence of the facts on which the resolution was based.

3. LEGAL FRAMEWORK

3.1. Legal Framework in the Field of Freedom of Information

The citizens' freedom of information is regulated by the Law on Free Access to Information of Public Importance of 2004 (hereinafter referred to as "the Law on Access to Information"). The Law has been amended on three occasions: first in 2007, which saw amendments in terms of more stringent requirements for the appointment of the Commissioner; then in 2009, when certain procedural and penal provisions were improved; and finally in 2010, when the Law provided for enforcement powers in connection the Commissioner's decisions.

It is well known that that the Law on Access to Information is based on high international standards of exercise of rights from the aspect of the manner of protection of the freedom of information, the number and nature of exceptions from the principle of freedom of information and similar criteria. Despite this, **the Law needs to be modified as soon as possible because of the changes in other fields of the legal system and in practice, which require the Law to include certain entities that have not been subject to this Law so far and are vested with serious public powers, such as notaries public and bailiffs, and because of the need to eliminate obstacles in implementation of the Law and scope for interpreting certain provisions in ways that are prejudicial to protection of rights.**

In addition, **the European integration process requires adoption and transposition in the Serbian legal system of two European directives on freedom of information**, which consequently also requires amendments to the Law on Access to Information. These are the Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information and its amendments – the Directive 2013/37/EU of 26 June 2013 and the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

Previous two reports explained that amendments to the Law on Access to Information had been in parliamentary procedure and about to be adopted in early 2012, but the process had unfortunately been stopped with the withdrawal of the Bill in question, together with all other bills, after the new Government and new convocation of the National Assembly took office. After that, the Ministry of Justice and Public Administration took no action to return the amendments to parliamentary procedure, while, to the Commissioner's knowledge, the newly formed Ministry of Public Administration and Local Self-Government has so far formed a commission for preparation of the Draft Law.

Action plans of the competent ministries for implementation of strategic documents (anti-corruption and public administration reform) and those relating to the European integration process set completely different time limits for adoption of amendments to the Law on Access to Information, with some of these time limits already expired while amendments have not been even initiated yet.

As an example, the Action Plan of the Ministry of Justice for implementation of the National Anti-Corruption Strategy of the Republic of Serbia for the Period 2013-2018, adopted by the Government in 2013, sets late 2014 as time limit for amending of the Law on

Access to Information, but the Law has not been amended. The Strategy also emphasises that transparency in the work of public authorities is ensured in a number of ways, but none of them are fully developed; it identifies this Law as the most important piece of legislation in this regard and calls for granting the Commissioner wider powers and more resources; it also calls for full compliance with the Commissioner's instructions on preparation and publication of information booklets and enforcement of the Commissioner's final decisions in all cases.

According to the Draft Action Plan of 18 December 2014, prepared by the Ministry of Public Administration and Local Self-Government, for implementation of the Public Administration Reform Strategy adopted by the Government on 24 January 2014, the time limit for amending of the Law on Access to Information is the second quarter of 2015, while in Proposal of the same Action Plan of 26 February 2015, this time limit has been postponed to the fourth quarter of 2015 and is set as the time limit for adoption of the bill. According to the second version of the Draft Action Plan for EU Accession for Chapter 23 – Judiciary and Fundamental Rights of December 2014 prepared by the Ministry of Justice, the time limit for adoption of amendments to the Law on Access to Information is the fourth quarter of 2015.

The essence of amendments to the Law on Access to Information is to ensure higher transparency in the work of public authorities and enhanced exercise and protection of freedom of information in practice by granting the Commissioner wider powers, making sanctions more stringent and increasing accountability for implementation of the law, regulating compliance with resolutions imposing fines and increasing the level of proactive publishing of information. More specifically, the amendments should among other things ensure the following:

- All entities vested with public powers would be subject to the Law, including notaries public and bailiffs,
- Accessibility of more up-to-date information to citizens on the websites of public authorities and in their information booklets,
- The Commissioner would be authorised to file petitions for infringement proceedings for violations of the freedom of information, obtaining of his opinions would be mandatory in the legislative process and amount of fines would be in line with the Law on Misdemeanours,
- The vague wording of the provisions pertaining to enforcement of the Commissioner's decisions would be made clearer and the statutory mechanisms of enforcement of the Commissioner's decisions and resolutions would be actually applicable in practice when necessary³.

As regards **international documents**, it should be noted that as early as in 2009 the Minister of Justice of the Serbian Government signed the **Council of Europe Convention on Access to Official Documents of 18 June 2009** but **the Government has not yet initiated the procedure to ratify this Convention** by the National Assembly. When it enters into force, this Convention will be important because it would be the first general legally binding document of the Council of Europe on access to official documents, regardless of the fact that in certain segments the Law on Access to Information itself provides a higher level of rights than the minimum stipulated the Convention, which is allowed by the Convention.

³Issues in connection with enforcement of the Commissioner's decisions are described in section 4.1.3 of the Report.

The Serbian legal system lacks uniformity and consistency for norms regulating exercise of freedom of information and this fact should be a warning, primarily to the National Legislation Secretariat, to dedicate more attention to this issue.

Thus for example, the Law on General Administrative Procedure still contains the provisions on access to case files according to which this right is conditional upon the ability to demonstrate justified interest, which is directly opposite to one of the core principles of freedom of information on which the Law on Access to Information is based and which has been implemented in Serbia for ten full years.

This is why it is very important to enact the new Law on General Administrative Procedure as soon as possible. The Bill on General Administrative Procedure adopted by the Government on 18 December 2013, while containing a general provision which stipulates that freedom of information is exercised in accordance with the Law on Access to Information, makes the exercise of this freedom conditional upon the ability to demonstrate justified interest, contrary to the Law. Acting on the Commissioner's initiative, on 31 January 2014 the Ombudsman⁴ submitted to the National Assembly an Amendment to the disputed provision of the Law on General Administrative Procedure, which would rectify the potential harmful consequences, if enacted. After a warning by the Commissioner, the Minister of Justice also informed the public that the Government would draft amendments to the disputed provision of the Bill on General Administrative Procedure.

Exercise of freedom of information is also prejudiced by the provisions of the Government's Rules of Procedure on the so-called official and military secret, which do not exist as such any more according to the Law on Data Confidentiality, although the Commissioner emphasized this when the Rules of Procedure were amended. Suggestions about the duty to organize public debates during preparation of laws have been accepted but, unfortunately, they are not implemented consistently in practice.

In addition, the Commissioner emphasized in his previous report that the adopted amendments to the Rules of Procedure which provide for an obligation to obtain the Commissioner's opinion in the legislative process would become effective in practice only if relevant provisions were incorporated in the Law on Free Access to Information, as part of the provisions governing the Commissioner's competences and powers. The institute of mandatory obtaining of opinions from the Commissioner whenever legislation containing provisions on accessibility of information is drafted would significantly increase the uniformity and consistency of the legal system. This would prevent the practice in which various procedural and other laws and regulations restrict the freedom of information below the level guaranteed by the Law on Access to Information, as the *lex specialis* in the subject matter of freedom of information.

Lack of enforcement of the Law on Data Confidentiality, although it has been enacted in 2009, is also detrimental to the implementation of the Law on Access to Information, as well as the major delay in the adoption of implementing regulations and lack of supervision of its implementation. As a result the periods specified within which public authorities should have reviewed data and documents marked as confidential has expired in vain. Consequently, we are still facing a huge number of documents that had been marked as

⁴ Notification of the Commissioner by the Ombudsman, ref. No. 2346 of 31 January 2014.

confidential, including those that do not exist in the applicable classification и (the so-called official and military secret) at a specific point in time because justified reasons pertained at the time, but have never since been reviewed or declassified once those reasons no longer applied. Such situation is prejudicial both to the public's right to know and to the country's security interests and overall legal certainty.

Once again, the Commissioner reiterates the need to introduce a statutory obligation of public authorities to create and regularly update their web presentations, while the legislation should include a provision stipulating the required minimum content of such web presentation, in accordance with the initiative submitted by the Commissioner back in 2011 to the ministry in charge of public administration and once again in 2014. If adopted, this initiative would significantly contribute to higher transparency in the functioning of public authorities.

3.2. Legal Framework in the Field of Personal Data Protection

The Commissioner would like to underscore once again on this occasion, as he has done each time when he was submitting his reports to the National Assembly in several previous years, that the current legal framework in the field of personal data protection is unsuitable.

From the aspect of internal law, the existing legal framework for personal data protection cannot provide unobstructed exercise of the right to privacy and the right to personal data protection in all fields in individuals' lives. Numerous provisions of LPDP are inappropriate and/or incomplete, while certain issues are not even regulated by LPDP nor regulated systematically by other, special laws. Examples of the most important issues which are not regulated by LPDP are video surveillance and processing of biometric data. The issues inappropriately or incompletely regulated by LPDP are for example reflected in the following: inappropriately regulated procedure for exercise of the right to personal data protection; unregulated procedure for transborder transfer of personal data; insufficiently regulated supervision procedure; insufficiently regulated Commissioner's powers; lack of technology neutrality and inability of application in the existing information and communication technologies, the use of which is increasingly unavoidable; incomplete regulation of accountability in case of violation of individuals' rights and in case of failure to comply with legal duties. Furthermore, data security is regulated completely inappropriately and also the duty has not been stipulated to analyse risks for individuals' rights in case of certain kinds of processing which may seriously jeopardize individuals' rights, as well as the duty of data controllers to report to the Commissioner any breaches of data security. In that regard, it is necessary to introduce new institutes in the data protection regime, including primarily the existence of persons responsible for data protection in certain data controllers (special types of data controllers or data controllers processing personal data of a large number of individuals or processing special data categories) etc.

From the aspect of the international law and international relations, harmonization of the national legislation with *acquis communautaire* is the international law commitment of the Republic of Serbia assumed under the Stabilization and Association Agreement, while the candidate country status for EU membership shows the European integration is of key importance for foreign and internal policies of the country. LPDP is not fully compliant with relevant international documents, including in particular the Directive of the European Parliament and the Council of Europe of 1995 and Council of Europe Convention for the

Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981. This issue is all the more pressing because significant amendments bringing improvements to these international documents have already been prepared and published and their enactment and entering into force is expected in the following period.

Unfortunately, the text of LPDP has been amended only two times before adoption (2008) – first time pursuant to the judgement of the Constitutional Court about unconstitutionality of certain provisions of LPDP, passed on the Commissioner's proposal, and second time by an amendment regarding permissibility of change of the purpose of personal data processing, which, contrary to the legislator's intention, proved to be a provision that makes implementation more difficult, rather than facilitating it.

The Commissioner emphasized the shortcomings of LPDP and the problems in practice resulting from such shortcomings on a number of occasions, for example in his annual report on his work, directly to the Serbian Government and the media, at the meetings in which he participated and on his official website. In addition, the Commissioner also pointed to the Serbian Government which provisions of LPDP must be urgently amended on several occasions and for that purpose he formulated the text; however, no response on behalf of the Government followed these efforts.

Finally, faced with numerous problems in practice resulting from inappropriate and/or incomplete provisions of LPDP and from the fact that certain issues are not regulated by LPDP at all, the Commissioner prepared the new Model LPDP. The Commissioner has not opted for amendments to the currently applicable LPDP because amendments would include over seventy percent of the existing text and for technical legal reasons he prepared the text of the new Model LPDP. After suggestions were received during the discussion, in October 2014 the Commissioner submitted the new Model LPDP to the Ministry of Justice and published it on his official website, where it is still available. The Commissioner does not know whether the Ministry of Justice or Serbian Government took activities to adopt the submitted Model LPDP or to prepare new text on the basis of this Model.

Inappropriate legal framework for personal data protection is not reflected only in the missing arrangements and inappropriate and/or incomplete provisions of LPDP, but also in inappropriate sector-level laws. Namely, it is necessary to amend numerous sector-level laws which as a rule incompletely regulate personal data processing in specific sectors, while certain sector-level laws do not regulate this subject matter at all. It is well known that pursuant to Article 8, item 1 of LPDP, the legal basis for data processing can be either the law or an individual's freely given consent. Majority the laws, particularly those enacted before LPDP, do not contain provisions appropriately regulating the subject matter of personal data collecting, keeping, processing and use, although this is a constitutional duty; instead, the subject matter is often regulated by secondary legislation. In this context, the Commissioner has continued issued opinions to national and local self-government authorities regarding draft laws and bills within his sphere of competence. In certain cases, the authorities concerned went so far as to reject the Commissioner's opinion (*for more details, see: [5.1.5. Issuing of Opinions](#)*).

In addition, it is necessary to significantly improve regulatory arrangements and their implementation in the security sector. As an example, the Law on Data Confidentiality contains controversial provisions which render it virtually unenforceable. With the aim of ensuring the necessary level of personal data protection in accordance with the Constitution and LPDP, it is necessary to improve arrangements

in the Law on Data Secrecy and to enact a number of pieces of supporting secondary legislation to this Law. Also, the Commissioner thinks that it is necessary to enact the Law on Security Checks in the security sector and to that end he submitted an initiative with appropriate proposals of arrangements to the Serbian Government, but no response on behalf of the Government followed it either.

The same issues concern secondary legislation in the field of personal data protection. Namely, secondary legislation often regulate the subject matter which should be regulated exclusively by the law, which constitutes direct disrespect of the provision of the Serbian Constitution (Article 42, paragraph 2) stipulating that personal data collection, keeping, processing and use must be regulated by laws, rather than implementing regulations. Also, secondary legislation often insufficiently or incompletely regulates technical and similar issues regarding data processing activities, which should be regulated exactly by them.

Another huge issue is the lack of certain implementing regulations the Government should have passed a long time ago, but still has not done so. So far, the only implementing regulations passed on time were those which were under the responsibility of the Commissioner.

As an example, the Commissioner has pointed time and again to the need to adopt an instrument on the manner of filing and the measures for the protection of particularly sensitive data provided for in Article 16, paragraph 5 of LPDP, which should have been adopted by the Government within six months of the effective date of LPDP, i.e. by 4. May 2009. The Government has still not done so (delay of almost six years, although the Commissioner reminded about this duty on a number of occasions). This means that the protection of particularly sensitive data proclaimed by the law remains a dead letter.

As another example, the Government should have adopted an Action Plan on Implementation of the Personal Data Protection Strategy, with defined activities, expected effects, implementers of specific tasks and periods for their completion, within 90 days of publication of that Strategy in the "Official Gazette of the Republic of Serbia", i.e. by 20 November 2010. And yet, this has still not been done, even though more than three years have expired since (delay of more than four years, although the Commissioner also reminded about this duty on a number of occasions).

The situation is similar with conclusions of the National Assembly, which for example concluded on its session held on 5 June 2014 to review the Commissioner's Report for 2013 that it should invite the competent authorities and public power holders to take measures necessary for implementation of the Commissioner's recommendations, repeated year after year in the Commissioner's reports. And recommendations on personal data protection in the Commissioner's Report for 2013 among other things points to the need and invites the Serbian Government to propose a new text of LPDP, to propose amendments to several sector-level laws, to enact the instrument on the manner of filing and the measures for the protection of particularly sensitive data and to enact the Action Plan for implementation of the Personal Data Protection Strategy.

Apart from adoption of draft amendments to several sector-level laws, Serbian Government has not complied with any other of the above conclusions of the National Assembly nor other issues presented in this part of the Report. According to the Commissioner, such ignorant attitude of the Government beggars belief.

Inadequate legal framework directly results in low level of implementation of LPDP in practice, which means that individuals cannot fully exercise their constitutional right to personal data protection in all spheres of life and to free exercise the right to privacy.

4. IMPLEMENTATION OF THE LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

4.1. Commissioner's Activities aimed at Protecting Freedom of Information

4.1.1.Types and Volume of Activities

The volume of the Commissioner's activities in the field of freedom of information in 2014 was 26.2%, higher than in 2013, with an 18.1% increase in the number of received cases. The Commissioner terminated the procedure in 5,563 cases of a total of 8,749 cases handled in 2014 (5,778 received in 2014 and 2,971 pending cases carried forward from 2013). 3,186 pending cases which could not be closed due to understaffing were carried forward to 2015.

Most of the Commissioner's activities (67.2%) involved handling of individual cases pursuant to complaints filed by information requesters. In terms of resolved complaints, their number was 28.5 % higher than in 2013.

Other activities included provision of assistance to public authorities in the implementation of laws and to individuals in the exercise of their rights, through opinions, explanations etc., measures aimed at improving the transparency of public authorities, legislative initiatives and opinions in connection with the passing of regulations, execution procedures pursuant to the Commissioner's decisions or procedures related to judicial protection, communication relating to requests of information requesters filed with or forwarded to the Commissioner etc.

Furthermore, with regard to freedom of information, the Commissioner's Office has processed 341 petitions relating to actions taken by other authorities and issues outside the Commissioner's sphere of competence.

Table 1 contains a breakdown of the number of cases received and resolved by the Commissioner in 2014 by types of activities, with a comparative overview of data from the previous year.

Table 1 – Types and volume of activities and measures

Types of activities and measures		2013	2014	% increase
1.	Number of cases received	4,893	5,778	18.1
2.	Number of pending cases carried forward from previous year	2,484	2,971	19.6
3.	Total cases handled	7,377	8,749	18.6
4.	Number of resolved cases	4,406	5,563	26.2
5.	Number of complaints received	3,300	3,929	19
6.	Number of complaints resolved	2,910	3,739	28.5
7.	Responses to complaints to the Constitutional Court	75	177	136
8.	Opinions and amendments for amendments to regulations and opinions on implementation of LFAIPI	95	175	84.2
9.	Responses to requests for information about the Commissioner	87	93	6.9
10.	Acting on requests for access to information relating to the operations of/held by other public authorities – the Commissioner informed the requesters about the procedure	185	313	69.2
11.	Number of motions received for enforcement of the Commissioner's decisions	92	199	116.3
12.	Number of enforcement orders issued	62	92	48.4
13.	Number of resolutions on penalties issued in the process of enforcement of decisions	34	59	73.5

14.	Number of requests sent by the Commissioner to the Government for assistance / enforcement of his decisions	7	13	85.7
15.	Number of cases in which the Commissioner requested the administrative inspectorate to carry out an inspection and initiate infringement proceedings	283	350	23.7
16.	Number of resolutions staying the enforcement of decisions	55	124	125
17.	Written communication with public authorities in connection with the implementation of LFAIPI (advisory and instructional communications to authorities with the aim of increasing the transparency of their work and other communication)	641	555	-13.4
18.	Petitions against the work of public authorities unrelated to freedom of information	336	341	1.5

As can be seen from the above figures, in 2014 almost all individually implemented activities and measures of the Commissioner saw an increase compared with 2013.

4.1.2. Commissioner's Acting on Complaints relating to Violations of Freedom of Information

4.1.2.1. Statistics on Complaints and Outcomes of Complaint Procedures

In 2014, the Commissioner resolved 3,739 complaints, which was 829 complaints or 28.5% more than in 2013.

In 2014, the most frequent grievance of the complainants was once again the so-called "administrative silence" after filing of freedom of information requests (93.5%). These are situations where an authority either fully ignores a freedom of information request or answers it cannot comply with a request without providing proper justification. This percentage is only 1.2% lower than in 2013, which reaffirms that such negative, worrying practice in "actions" of public authorities is improving at a very slow pace, despite the fact that unlike most other administrative procedures, in freedom of

information procedures “administrative silence” is not only inadmissible, but also constitutes an infringement punishable under the law.

Only 242 complaints or **6.5%** of the total number of **resolved complaints** were filed against decisions of public authorities which rejected the requesters’ freedom of information requests as **unjustified**.

Of the total of 3,739 resolved complaints, **3,388 complaints (90.6%) were found to be justified**, while 351 complaints (9.4%) were unjustified or had formal deficiencies.

The Commissioner resolved the unjustified complaints (351) by passing:

- 237 decisions (6.3%) rejecting complaints as unjustified, and
- 114 resolutions (3.1%) dismissing complaints on formal grounds as untimely (lodged too late or prematurely) or inadmissibility or because the Commissioner lacked jurisdiction to act on them.

The outcome of proceedings before the Commissioner pursuant to the justified complaints (3,388) was as follows:

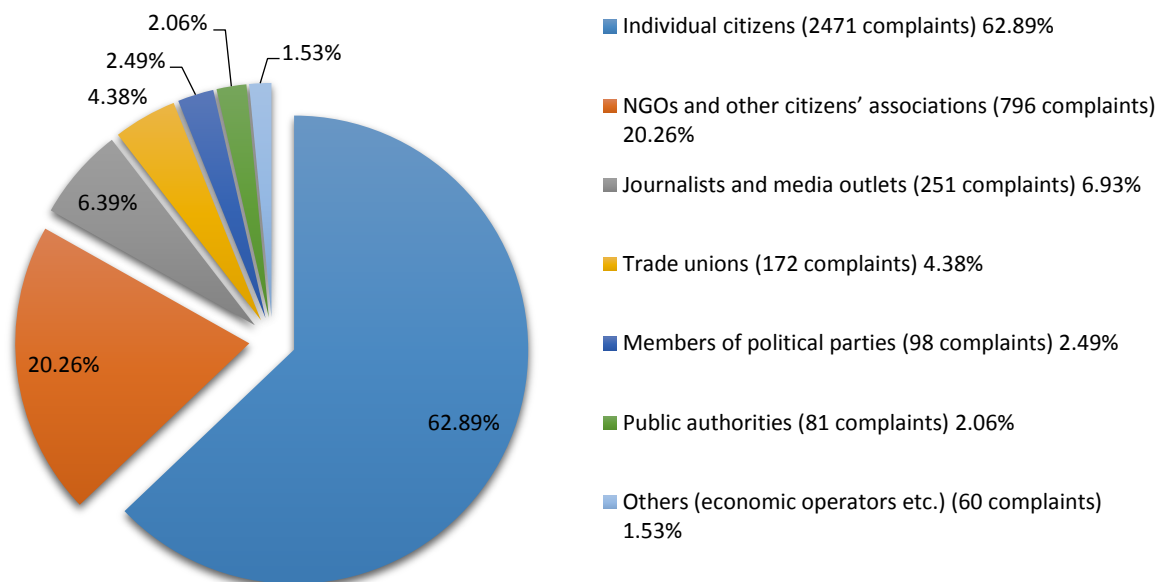
- **In 1,000 cases (29.5%) the Commissioner ordered the public authorities to comply with the requests and give the requesters access to the requested information**, in doing so, he passed 814 decisions, because 186 cases were joined with other cases, so that a single decision was passed pursuant to two or more complaints against a single authority,
- **In 242 cases (7.1%) he overturned the decisions of the authorities of first instance and ordered the public authorities concerned to provide information to the requesters**,
- **In 2,026 cases (59.8%) he terminated the proceedings** because the public authorities in the meantime complied with the freedom of information requests after the Commissioner intervened, so the proceedings in all these cases were closed by passing resolutions on termination of the proceedings,
- **In 112 cases (3.3%) he overturned the decisions of the authorities of first instance and returned the cases for repeated proceeding** and decision-making, and
- **In 8 cases (0.2%) he overturned the decisions of the authorities of first instance passed without proper legal basis.**

The figures quoted above show that in 2014, almost the same as in 2013, justified complaints by information requesters in more than 60% of all cases ended in termination of the proceedings because the public authorities honoured the request made by the requester/complainant immediately upon learning of a complaint, before the Commissioner passes a decision. **Such high percentage of procedures terminated due to subsequent compliance of public authorities upon learning of the complaints filed and after the Commissioner’s interventions shows that public authorities still mostly do not comply with the main principles of good governance, particularly responsibility and cost-effectiveness of operations, in their dealings with the citizens.**

4.1.2.2. Who requested information and which information they requested

The Commissioner received 3,929 complaints against public authorities relating to violations of the freedom of information in 2014.

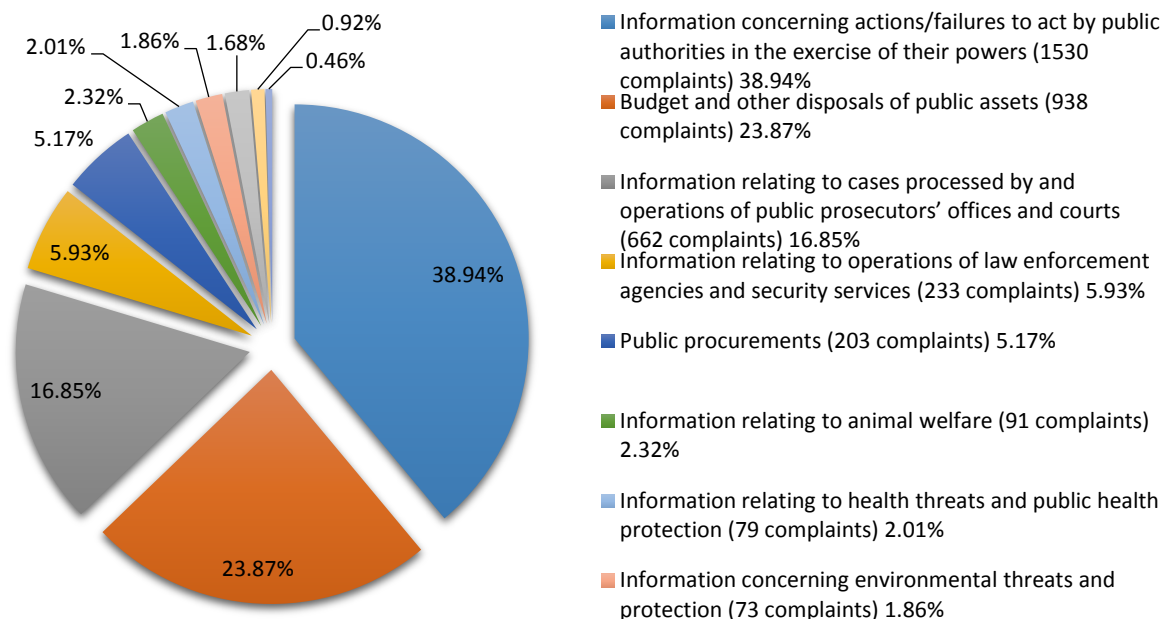
Graph 2. Complainants addressing the Commissioner



In 2014, the number of complaints lodged with the Commissioner by trade unions, NGOs and other citizens' associations, as well as economic operators increased compared with 2013. What is particularly worrying is the fact that the number of complaints lodged by public authorities against other authorities that failed to give them information increased, although in the total number of complaints they account for only 2.06%. Complaints lodged by public authorities show that there is still no exchange of necessary information and data between public authorities as part of their regular cooperation without invoking freedom of information of public importance.

The number of complaints lodged by individual citizens, which remained dominant in the total number of complaints, was reduced by 4.29%. Another noteworthy fact is that the number of complaints lodged by journalists was halved compared with previous year. This might be an indicator of either higher willingness of authorities to honour journalists' requests or a lower number of journalists' requests in 2014 than in the previous year. To confirm either of these conclusions, full data on the number of requests filed to all public authorities is necessary; unfortunately, such data are not available to the Commissioner since not all authorities are subject to the duty of reporting and only a part of those which are comply with this duty (about 28%). As regards ministries, the data available to the Commissioner show that the number of requests for access to information filed by journalists and other media representatives in 2014 was as much as 27% higher than in 2013.

Graph 3. Types of requested information that were the subject of complaints



The above figures show that individuals are still very interested in and **face difficulties in obtaining information on spending of funds from public sources, including public procurements and privatisation (30%)**, although the percentage of these complaints decreased by 5% compared with 2013.

In 2014, **the number of complaints lodged with the Commissioner relating to request for information concerning actions/failures to act by public authorities in the exercise of their powers** (information on outcomes of proceedings initiated on citizens' petitions for exercise of certain rights or reporting of certain issues that require interventions by authorities) also **slightly decreased – by 3.75% - but complaints relating to failure to obtain such information are still dominant in the total number of complaints (38.9%)**.

Increase of the number of complaints relating to failure to obtain information concerning the status of cases processed by public prosecutors' offices and courts of about 8% was observed, as well as slight increases (up to 1.5%) of the number of complaints relating to requests for information concerning operations of law enforcement agencies and security services, environment and health threats and protection, information concerning restitution etc.

4.1.2.3. Public authorities against which requesters lodged complaints with the Commissioner and reasons for complaints

The majority of complaints – 1,811 complaints (46.1%) of the total of 3,929 lodged in 2014, were filed against national authorities. The number of these complaints was 22.5% higher than in 2013. Of that number, 816 complaints (45%) were filed against ministries, which was 23.6% higher than in the previous year. These are followed by complaints against local self-government authorities, judicial authorities and public enterprises. The number of complaints filed against judicial authorities increased by 7.6%.

In 2014, the number of complaints filed against public enterprises still accounted for a high percentage of the total number of complaints - 11.4%.

Graph 4. Number of complaints by types of authorities (3.929 complaints)

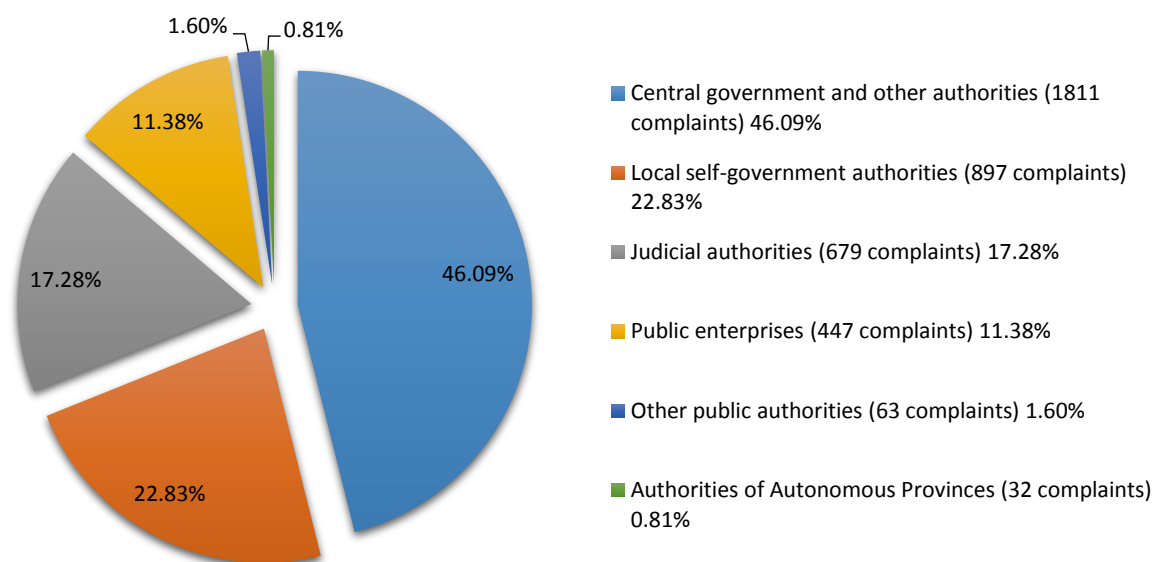


Table 2. Overview of requests and complaints filed in 2014 against ministries with bodies subordinated to them⁵

No.	Ministry	No. of requests	No. of complaints
1.	Ministry of Internal Affairs	2,561	310
2.	Ministry of Finance	567	79
3.	Ministry of Agriculture and Environmental Protection	425	71
4.	Ministry of Justice	250	89
5.	Ministry of Construction, Transport and Infrastructure	214	45
6.	Ministry of Education, Science and Technological Development	204	31
7.	Ministry of Defence	176	55
8.	Ministry of Health	159	13
9.	Ministry of Economy	98	29
10.	Ministry of Public Administration and Local Self-Government	88	12
11.	Ministry of Labour, Employment, Veteran and Social Affairs	63	32
12.	Ministry of Trade, Tourism and Telecommunications	59	8

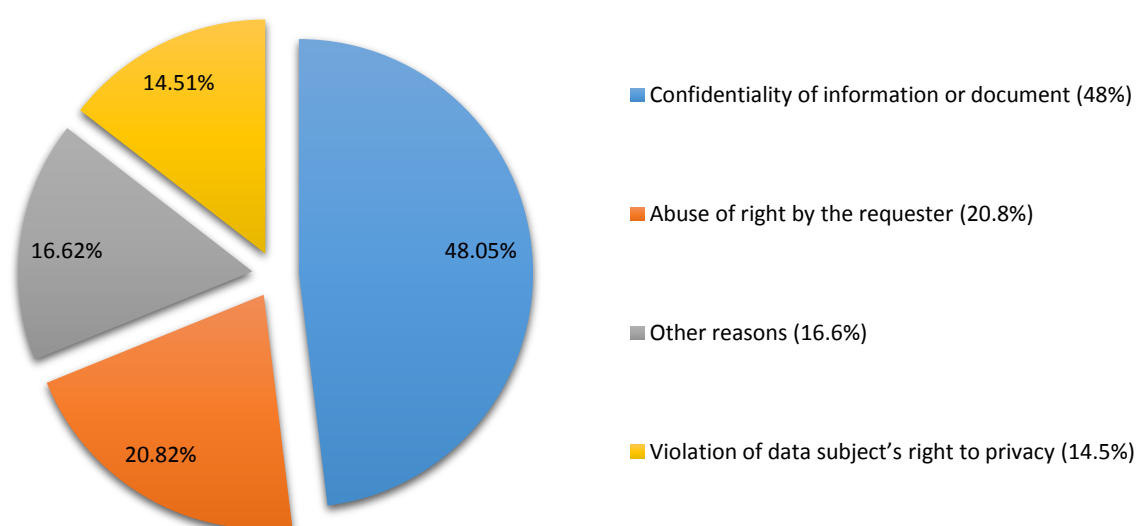
⁵ The number of requests is taken from reports of the ministries and bodies subordinated to them which submitted reports to the Commissioner, while the number of complaints has been determined on the basis of records of the Commissioner's Office. The presented data on complaints for ministries that underwent status changes according to the Law on Ministries ("Official Gazette of RS", No. 44/14 of 26 April 2014) also contain data for the ministries the tasks of which they assumed.

13	Ministry of Culture and Information	52	6
14.	Ministry of Youth and Sport	41	/
15.	Ministry of Mining and Energy	94	23
16.	Ministry of Foreign Affairs	26	13
TOTAL		5,077	816

1,160 more requests for access to information were submitted to the ministries in 2014 compared with 2013, while 150 more complaints were lodged. Taking into account the total number of requests and complaints, it can be concluded that **one in six requesters complained to the Commissioner because they they did not obtain information from ministries**, which is a certain improvement compared with 2013 when one in five requesters lodged a complaint.

The highest increase of the number of requests is observed in the Ministry of Internal Affairs, which received 694 requests more in 2014 than in 2013, while there were only complaints more against this Ministry than in 2013. Another noteworthy fact is that 126 more requests were submitted to the Ministry of Finance and boides subordinated to them, while 21 less complaints were lodged against this Ministry.

Graph 5. Reasons for rejection of freedom of information requests



Year after year, including 2014, **the most frequent reason public authorities use to deny access to information to requesters is confidentiality of information. What is particularly worrying is the fact that in 2014, the number of such cases increased as many as 12.2% compared with 2013.**

The decision to make available those pieces of information that an authority considers to be secret is as a rule still left to the Commissioner. Persons in charge of handling freedom of information requests in public authorities often justify this by their fear of the consequences of disclosure, incongruence between specific provisions of the regulations they apply within their spheres of competence and the freedom of information legislation etc.

When they deny information by invoking data confidentiality, public authorities mostly do not even provide evidence that documents or information are actually properly classified as confidential, in accordance with the Law on Data Confidentiality, and as a rule, they rarely bother to prove a substantive reason and evidence for their decisions to deny access to information. They tend to *a priori* reject a request without applying the so-called harm test and public interest test, which is necessary for determining the overriding interest – whether it is the public’s right to know or the interest to protect another right or public interest that is protected as secret and that could be seriously jeopardised through disclosure of information.

Year after year, the Commissioner has been emphasizing that the fact that many of the cases in which public authorities denied access to information by invoking data confidentiality have in the meantime resulted in prosecution due to misappropriation of public funds, malfeasance in office or other forms of corruption points to the resolution that such cases of denial of access to information, while not necessarily indicative of any of the above offences, should always be subject to careful scrutiny.

Such actions of public authorities can in large part be attributed to the absence of enforcement of the Law on Data Confidentiality (the Law was enacted at the end of 2009) and the huge delay in the adoption of its implementing regulations.

It has become customary for public authorities to include confidentiality clauses in investment contracts or other forms of business cooperation in Serbia. In that regard, the Commissioner gave public warnings on several occasions that Serbian public authorities and Serbian state-owned enterprises should not enter into commercial contracts with foreign entities which include provisions designed to exclude the application of imperative Serbian laws.

As an illustrative example, we will quote the example of a case in which a request was unjustifiably rejected by invoking confidentiality:

An information requester requested from the Ministry of Mining and Energy a copy of the Initial Memorandum of Understanding signed on 18 December 2013 between the Public Enterprise “Elektroprivreda Srbije” (Serbian electric utility power company) and the company Amplex Emirates LLC from the United Arab Emirates.

The Ministry denied access to this document by invoking confidentiality and stated that under the Memorandum of Understanding, the signatories undertook not to disclose any detail of contracting or transaction, to keep as confidential any information provided by the

other party and not to use such information, because of which the requested document cannot be available to the public.

The Commissioner did not accept the arguments given by the Ministry, finding that according to the Law on Access to Information, the fact that certain information is marked as confidential is not sufficient to deny access to it. The Ministry must provide evidence demonstrating that there is a fundamental reason, that it is a document the disclosure of which might result in serious legal and other consequences for interests protected by the law prevailing over the interest of access to information, but the Ministry failed to do so. The Commissioner ordered provisions of a copy of the Memorandum to the requester, taking into account that the Memorandum by its nature has significant importance for the Republic of Serbia and that there is an increased interest of the public to know in case of the Memorandum from the aspect of investments and possible duties of the Republic of Serbia.

The Ministry did not comply with the Commissioner's order; instead, it informed the Commissioner that the Memorandum of Understanding has not entered into force within the meaning of Clause 19 and thus is not effective, which means that there is no document which could be considered a document that could be made available to the public within the meaning of the Law on Free Access to Information. Such attitude had no footing in the Law on Access to Information, so the Commissioner continued enforcement procedure for his decision.

In the total number of complaints filed with the Commissioner in 2014, the share of those filed for denial of the freedom of information justified by a reference to the right to privacy was 12.7% higher compared with the previous year. Such change could be the result of the Commissioner's insistence that, with regard to access to information on civil servants or public officials in connection with or of importance for the exercise of their office or powers, including information on salaries paid from public funds, the authorities cannot invoke privacy of those persons as the reason to deny such information, particularly when they pertain to public or political office holders.

One fifth of the total number of complaints to the Commissioner in 2014 (almost the same as in 2013) were lodged against rejections of freedom of information requests in which public authorities claimed the requesters **abused the right to access information**. The authorities usually justified this by stating that the requests created excessive burden for them due to the volume of requested information or that requesters submitted a large number of requests. Fact remains that the existing legal provision on the possible limitation of the right by invoking abuse of the right by requesters is not precise enough and its pure linguistic interpretation outside the context of the entire law and the applicable international standards encourages authorities to deny information to requesters by invoking such provision.

On the other hand, certain situations which essentially leave scope for abuse of the right are not regulated by the law, such as when an authority makes copies of a large number of documents with requested information, but a requester refuses to pay costs of copies and does not take documents etc.

A frequently cited reason for denial of access to information is the allegation put forth by public authorities that requesters **do not have what is known as "justified interest"**, i.e. that they are not a party to proceedings in connection with which information is requested, although freedom of information of public importance is guaranteed to everyone under equal conditions and justified interest is presumed to exist until an authority provide evidence demonstrating otherwise.

It is also evident that a frequent reason for lodging complaints with the Commissioner is still **incompleteness of provided information**. The Commissioner has observed that public authorities in certain cases resort to selecting the pieces of information they provide to requesters, without formally adhering to the relevant request. Thus, as a rule, they tend to provide only information that shows the institution concerned in a positive light, or they provide only extracted information, without copies of the requested documents, which is contrary to the essence of the freedom of information of public importance, which implies the right to obtain a copy of the document containing the requested information.

It should be particularly emphasized that authorities increasingly reply they do not hold the requested information, while such replies are as a rule neither substantiated nor supported by evidence, e.g. of expiration of the statutory limit for keeping the document by presenting evidence of destruction or evidence that a case has been forwarded to a higher authority for decision-making etc. This – quite rightly – causes requesters to doubt the veracity of such allegations. Situations such as these call for oversight by the competent authority, i.e. the administrative inspectorate, which would involve actual verification of facts on the spot, in the offices of the authorities concerned, rather than through so-called indirect inspection based solely on written statements by the authorities, as has been the practice of the Administrative Inspectorate⁶ so far and taking of measures to determine responsibility for giving false information or making documents with false contents.

It has also been observed that authorities often actually do not hold, or at least do not hold all pieces of requested information, but are not willing to confirm this to requesters because by the nature of their tasks or according to an explicit legal duty they should hold them. Such situations always result in complaints and the Commissioner's order to honour the requests and provide information and only then authorities reply they do not hold the requested information. Such example is the case of the Ministry of Finance.

A journalist submitted a request to the Ministry of Finance on 13 May 2014 in connection with ban on employment in the public sector requesting information on the number of persons employed in the public sector and in individual institutions in a specific period since the Law amending the Law on the Budget System ("Official Gazette of RS", No. 108/2013 of 6 December 2013) entered into force, which sets out the ban on employment in the public sector.

The Ministry failed to honour the request within the regular statutory time limit of 15 days. Upon expiry of this time limit, on 29 May 2014, the Ministry informed the requester that it cannot provide information within the time limit set in Article 16, paragraph 1 of the Law on Access to Information, i.e. within 15 days, and that it will instead do so within the additional time limit of 40 days according to Article 16 paragraph 3 of the Law. When this additional time limit expired, on 9 July 2014, the journalist lodged a complaint with the Commissioner because he did not obtain information.

The Commissioner accepted the complaint and ordered the Ministry to send to the requester copies of documents containing the requested information and he requested from the Ministry to respond to the claims made in the complaint first, but he received no reply.

Since the Ministry failed to comply with the Commissioner's decision, on the requester's proposal, The Commissioner carried out enforcement of the decision by which he

⁶ Report of the Administrative Inspectorate No. 011-00-00012/2014-01 of 16 January 2015.

attempted to make the Ministry comply with the order through imposition of fines⁷ in accordance with the Law on General Administrative Proceedings. During this procedure, the requester informed the Commissioner that he received a reply from the Ministry on 20 October 2014 but the reply did not contain all pieces of information he requested, because of which the enforcement procedure was continued and the Commissioner addressed the Government on 11 December 2014 requesting it to ensure enforcement of his decision in accordance with the Law.

The decision has still not been complied with. In the meantime, the Minister explained failure to provide information by the fact that the Ministry does not hold complete information on the number of employees in the public sector, in spite of the legal duty to keep such register⁸.

Ten full years after the Law on Access to Information has been enacted and took effect, **certain public authorities claim they are not subject to the Law at all.** Examples are state-owned banks and enterprises majority-owned by the state, such as Telekom Srbija (Serbian telecom) which has been refusing to apply this Law for several years, in spite of the fact that the Administrative Court backed the Commissioner's opinion that Telekom Srbija had the status of a public authority within the meaning of this Law due to the fact that it was formed and managed by the Government of Serbia.

As regards the costs of exercising the freedom of information, noticeably higher number of authorities began collecting them. According to the official figures of the Treasury Department of the Ministry of Finance⁹, the total amount paid to the designated Treasury account 840-742328843-30 from **costs charged for the exercise of freedom of information**, i.e. making and delivery of copies of documents on requests submitted to public authorities, was **RSD 485,000.00**, which was 7.5 times more compared with 2013.

The Commissioner would like to underscore in this Report once again that there is merit in the suggestions of certain authorities about the need to amend the Law on Access to Information, which would include all costs of access to information charged by public authorities in the revenue of those authorities, rather than being diverted to the national budget. The charge rates provided for in the Government's Decree of 2006 have not been indexed for inflation.

4.1.3. Enforcement of Commissioner's Decisions and Resolutions

In 2014, the Commissioner's proceedings pursuant to justified complaints (3,388) were closed in 1,242 cases (36.6%) passing of decisions or issuing of the Commissioner's orders to make the information available to the requesters. In these cases, the Commissioner passed 1,056 decisions, because 186 cases were joined with other cases, so that a single decision was passed pursuant to multiple complaints against a single authority.

⁷ The Ministry paid the imposed fines to the budget.

⁸ The Law on the Budget System ("Official Gazette of RS", No.54/2009, 73/2010, 101/2010, 101/2011), 93/2012) and 62/2013 and 63/2013) Articles 9.2 and 93a.

⁹ Report of the Treasury Department, No. 401-00-1232/2014-001-007 of 16 January 2015.

As regards cases where access to information was ordered by the Commissioner's decisions (1,056 decisions), from the feedback the Commissioner received, **in 2014 public authorities complied with the orders in 77.8% of cases, which was 0.5% lower compared with 2013, while the number of cases in which compliance was ensured in the enforcement procedure has increased.** Realistically, this figure could be somewhat higher, as it would be safe to assume that there were public authorities that complied with the Commissioner's decisions, but failed to notify him of that.

In 2,026 cases, or **59.8% of justified complaints**, proceedings pursuant to complaints lodged with the Commissioner **were terminated** because the public authorities honoured the request made by the requester/complainant immediately upon learning of a complaint, before the Commissioner passed a decision.

In the remaining 112 cases (3.3%) of justified complaints, the Commissioner quashed the decisions of the public authorities and returned the cases for renewed procedure and deciding, while in 8 cases (0.2%) he quashed the decisions of first-instance authorities as illegal.

According to the data on the outcomes of complaints filed with to the Commissioner, **of the total justified complaints (3,388), the share of successful interventions by the Commissioner was 93.1%, which is a barely noticeable improvement of 0.8% compared with 2013.**

In 2014, **the number of requesters' petitions for enforced execution of the Commissioner's decisions significantly increased compared with 2013.** Thus, in 165 cases the Commissioner received petitions from the requesters for enforcement of the relevant decisions. Acting on those petitions, the Commissioner passed 92 enforcement orders relating to his decisions and 59 resolutions **on imposition of fines – the so-called penalites** - in the total amount of **RSD 4,540,000** (38 fines of RSD 20,000.00 and 21 fines of RSD 180,000.00), which constitute public revenue and are payable to the budget of Serbia. In 124 cases enforcement was terminated because the authorities concerned had in the meantime complied with the Commissioner's orders or enforcement orders relating to his decisions. According to the Treasury Department, the resolutions on imposition of fines resulted in **the collection of RSD 2,060,000 for the national budget**, which was over RSD 700 thousand more than in 2013.

The remaining amount of RSD 2,480,000 in outstanding fines was not paid voluntarily by public authorities pursuant to the Commissioner's resolutions on imposition of fines. In such situations, the Commissioner filed petitions with competent courts for judicial enforcement of the imposed fines. However, the First Primary Court of Belgrade declined jurisdiction, contending the Commissioner himself was in charge of enforcing the fines he imposed on public authorities, unlike other courts, which had accepted jurisdiction in identical cases.

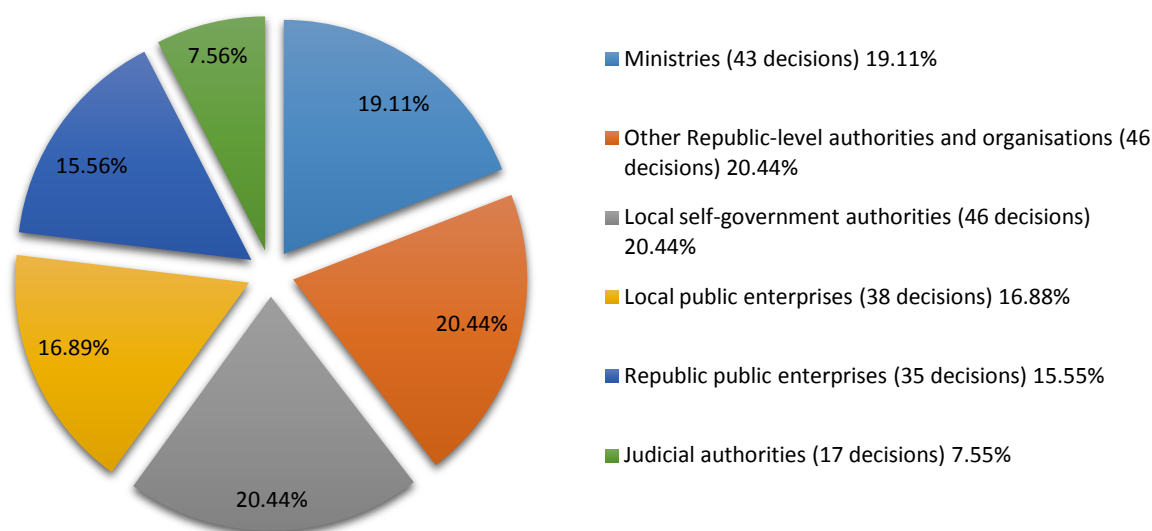
The Commissioner addressed in his annual reports for 2012 and 2013 the issue of divergent jurisprudence of different courts in Serbia in connection with the enforcement of the Commissioner's resolutions on the imposition of fines, i.e. the declining of jurisdiction by the First Primary Court of Belgrade since 2012, although this court has territorial jurisdiction over the majority of the cases where enforcement is necessary. In this regard, there have still been no improvements in 2014, in spite of all the measures taken by the Commissioner in this context in his contacts with the competent institutions.

Imposition of measures available to the Commissioner for enforced execution of his decisions through fines as a rule results in compliance with his orders and provision of information to requesters. However, in some cases even those measures produced no effect; the Commissioner was therefore forced, on initiative of the complainants, **to ask the Government to enforce his decisions in 13 cases by imposing measures available to it, including direct enforcement action, as provided by the Law. In this context, the Government gave no feedback on enforced execution of his decisions in any of those cases,** but one of these 13 decisions was complied with in the meantime.

According to the Government's Annual Report on Implementation of the Law on Free Access to Information, the Government's Secretariat General received a total of 13 requests for enforcement of the Commissioner's decisions in 2014. The Report further states that, in a number of cases, when the Commissioner conducted an enforcement procedure and the authority in question did not comply with the Commissioner's decision, the Secretariat General, on behalf of the Government, ordered the Ministry responsible for oversight of the authority concerned to take the necessary measures to enforce the decisions. Such measures by the Government have obviously produced no results, except in one case, since 12 decisions of the Commissioner for which the Government's intervention was sought still remain unimplemented.

For several years, the Commissioner has been pointing out in his reports to the National Assembly, and repeats in this Report again, that the current situation **with regard to enforced execution of the Commissioner's decisions calls for immediate implementation of the mechanism provided for in Article 28 of the Law on Free Access to Information. Alternatively, if the Government's General Secretariat need any clarifications concerning the application of that Article, the ministry competent for administration issues should provide such clarification by amending the Law.** If the situation remains as it is, the reputation of these institutions might suffer and the exercise of the right itself might suffer even more.

Graph 6. Number of Commissioner's decisions passed in 2014 that have not been complied with



This Report contains ANNEX 1. – *Overview of public authorities which failed to comply with the Commissioner's orders issued in 2014*, with a brief description of the requested information.

Of the total of 225 Commissioner's decisions that have not been complied with¹⁰, the majority (40%) were issued to national authorities and organisations (ministries and other executive authorities), followed by national and local public enterprises (32.4%).

With regard to compliance with the Commissioner's decisions and public authorities' attitude towards their legal duties, special attention should be given to the *case of the Ministry of Defence* which refused to fully comply with the binding and enforceable Commissioner's decision and provide to the requester information on the overhaul of a MIG-29 airplane performed in 2007 and 2008. In that regard the Ministry even issued a public announcement¹¹ stating it will not publish the requested information because it would constitute the criminal offence of disclosure of "military secret". This expresses attitude that this public authority is not subject to the Law on Access to Information, that it refuses to comply with the binding Commissioner's decision, that it still uses non-existent classifications of confidentiality, contrary to the Law on Data Confidentiality according to which "military secret" does not exist as such, instead of filing a motion for legal review of the Commissioner's decision with the competent court, in the manner stipulated by the law. Such action by responsible persons in the Ministry requires a thorough review by the competent authorities because, besides being contrary to the law, it undermines reputation of institutions

¹⁰ The number of decisions that have not been complied with on 23 March 2015.

¹¹ The announcement of the Ministry of 27 January 2015, available at: www.mod.gov.rs

and is an attempt to mislead the public to believe that independent public authorities, or in this case the Commissioner, are working against national interests.

In his special extraordinary report to the National Assembly submitted in early November 2013, the Commissioner draw attention to the worrying lax attitude of many state-owned enterprises to their obligations under the Law on Free Access to Information, as well as to the harmful consequences of such attitudes for human rights and the undermining of the rule of law, the National Assembly as the institution that enacted the Law and ultimately the country itself. The Commissioner also pointed out that such attitude was rather telling from the aspect of anti-corruption efforts as well. While this may not be true in each individual case, past practice in connection with complaints filed with the Commissioner and generally and in particular those filed by the Anti-Corruption Council of the Government of Serbia has shown that issues with transparency are in a large number of cases belied by issues associated with wastefulness, unlawfulness of operations and corruption. Until submission of this Report, the National Assembly has not reviewed the above Commissioner's extraordinary report.

4.1.4. Commissioner's Activities aimed at Promoting Proactive Publication of Information, Improvement of Legislation and Affirmation of Rights

Information Booklets

Proactive publishing of information by public authorities implies voluntary, continual publishing of accurate and up-to-date information easily accessible to citizens and other users, which is a very important precondition for good and responsible e-government.

The large number of freedom of information requests sent to public authorities and the large number of complaints filed with the Commissioner bespeak a need for a much more hands-on approach of public authorities in the publication of information without being requested to do so by the citizens, both on their websites and by other means. This Report will address only one segment of proactive publishing of information, the one within the commissioner's sphere of competence, which relates to publishing of information booklets.

Throughout 2014, the Commissioner monitored proactive publication of information and information booklets on the websites of public authorities, exerting influence on public authorities to enhance the transparency of work. This was done either *ex officio* or pursuant to reports made by the citizens.

Publication of information booklets on the websites of public authorities is a legal duty the primary goal of which is to make available to the citizens, the media, other authorities and other users the key facts about their operations, HR and other capacities, organisation, powers, assets, spending of public resources, salaries, state aid, subsidies, grants, international and other projects and their implementation, public procurements, types of services they render and procedures for the exercise of requester's rights, available remedies in case of negative outcome before the authority concerned, types of information available to the authorities etc. even without a formal request to access information. Publication of this document gives public authorities a chance and sets a duty to review their

organisations and procedures and to improve them, while at the same time affirming their operations.

The Commissioner's consistent insisting on implementation of the Instructions for Preparation and Publication of Information Booklets on the Work of Public Authorities which he passed in 2010 in accordance with the law results in continual progress in terms of publication of information on the so-called proactive basis, primarily in terms of quantity, but also to a certain extent in terms of quality; however, proactive activities of authorities in this regard are still insufficient.

In addition, this statutory obligation does not apply to many public entities whose operations are undoubtedly of much interest to the public. Thus, for example, the now formalised obligation to prepare an information booklet on its work does not apply to a single local public enterprise, or to those Republic-level public enterprises that are not vested with public powers under the law, despite the fact that they are fully or majority owned by the state, e.g. PTT Srbija (Serbian Post), Telekom Srbija, health care institutions, pre-school institutions etc. Because of that, this issue should be reviewed in detail within future amendments to the Law on Access to Information.

In 2014, the Commissioner continued analysing information booklets on the work of local self-government authorities, which he began in late 2013. Suggestions for correction of information booklets were given to 14 municipalities of the city of Belgrade and to 4 municipalities of the city of Nis. In addition, 39 warnings were issued to authorities of cities in the Republic of Serbia.

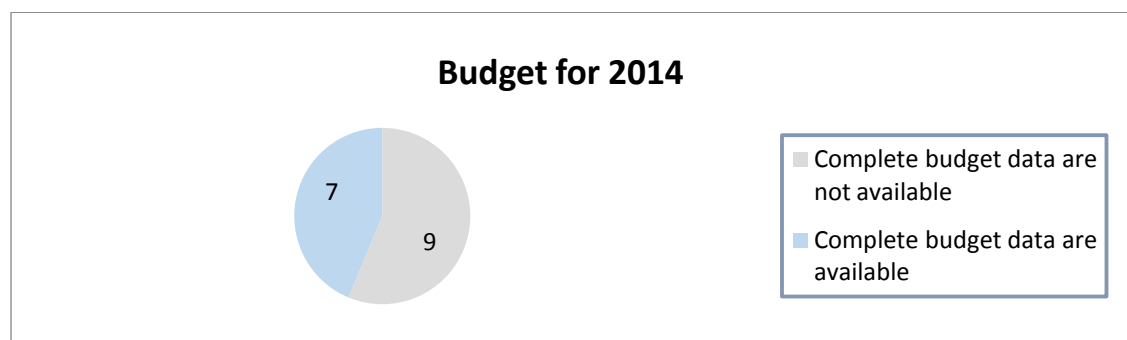
Thus, large number of city administration authorities of the city of Nis, which opted for independent preparation of information booklets and to which warnings were issued in December 2013, failed to comply with the Instructions. In that regard, the Commissioner passed 10 decisions ordering updating and presentation of information in accordance with the Instructions. Enforcement of the Commissioner's decision was carried out against the Administration for Finance, Own-Source Revenues of Local Self-Government and Public Procurements and a fine in the amount of RSD 20,000 was imposed, while the Administrative Inspectorate informed the Commissioner that in this case infringement proceedings were also initiated.

Starting from the fact that ministries as the most important executive authorities should be an example for compliance with statutory duties and transparency, **in 2014 the Commissioner dedicated special attention to information booklets of ministries.** In the period September-November 2014, it was found that two ministries, the Ministry of Public Administration and Local Self-Government and the Ministry of Construction, Transport and Infrastructure, did not publish their information booklets on their official websites, but they did so soon after the Commissioner's written warning. Suggestions for improvement of the content were given to all ministries (except the Ministry of Education, Science and Technological Development, because its information booklet was updated and meaningful). After warning, a decision was issued to the Ministry of Agriculture and Environmental Protection ordering it to bring the content of its information booklet in compliance with the statutory content.

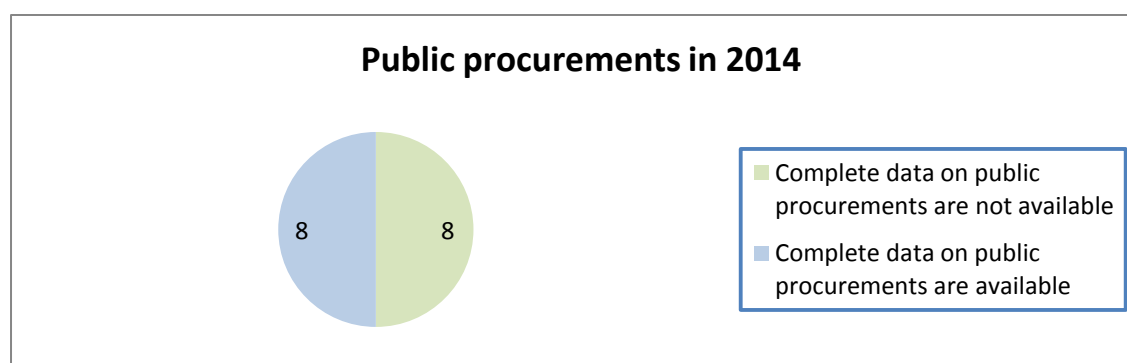
Information on budget and public procurements are the most problematic for publication. Thus for example, before the Commissioner's intervention, more than half of the total number of ministries did not publish full information on income and expenses for

2014, while half of them did not publish information on public procurements, including those which did not publish their information booklets at all at the time of inspection.

Graph 7. Publication of information on budget by ministries



Graph 8. Publication of information on public procurements by ministries



After Commissioner's warnings and in certain cases after additional interventions and suggestions, information booklets were updated and enhanced, but it can be concluded that in implementation of these activities the majority of ministries lack commitment and responsibility of persons who implement them and also supervision by responsible persons.

One of the ways in which the Commissioner motivated public authorities to make better information booklets on their work was the award for the best information booklet, for which participants have to enter in a competition and which was once again presented in 2014. The award was presented to the city of Smederevo on the 28th of September, as part of commendation of the Right to Know Day.

The Commissioner's measures have focused primarily on getting as many public authorities as possible to publish their information booklets, in parallel with interventions aimed at improving the quality of the information booklets of those authorities that attract the most attention from the public. A certain improvement has been noted in this regard, although **the response to this statutory obligation has been very low compared with the effort invested by the Commissioner, due to the absence of supervision by competent administrative inspectorate and subsequently the lack of infringement liability.** In

general, many public authorities still tend to publish information booklets only to satisfy the formal requirements even without the Commissioner's intervention, avoiding updating of published information or publishing of information that is most sensitive from the aspect of responsible spending of public funds.

In that regard, the Commissioner finds it is necessary for ministries to significantly improve their attitude towards the duty to proactively publish information on their work and to encourage others subject to this duty to enhance compliance with it.

In certain cases, public authorities attempt to achieve transparency of work in the manner contrary to the law, i.e. they form various public registers and databases without a proper legal basis, and if registers also contain personal data, it inevitably constitutes violation of personal data protection regulations, in which cases the Commissioner must take actions.

On the other hand, certain public registers, the keeping of which is stipulated by the law, have not been established even after several years. The most striking example of this is the **Register of Public Contracts** which has still not been established and which is stipulated by the Law on Public Private Partnership and Concessions of 2011, according to which this Register should be maintained by the ministry responsible for finance as a single electronic database on public contracts in the Public Procurement Portal.

Initiatives and Opinions Concerning Legislation

The Commissioner lacks power to propose enactment of legislation and the Law on Access to Information does not authorise the Commissioner to give opinions in the process of proposing and enactment of laws and other regulations. For this reason, the amendments to the Government's Rules of Procedure, which impose an obligation on public authorities to obtain opinions from competent institutions in the legislative process, will become effective from the aspect of the rights protected by the Commissioner only after the provisions of the Law pertaining to the Commissioner's powers are amended.

Regardless of that, **Commissioner, in 2014, the Commissioner once again made initiatives for the adoption of new regulations or the amendment of existing ones on multiple occasions and he supported similar initiatives coming from other entities, always with the aim to improve legislative provisions relating to the exercise of the freedom of information. Following requests from public authorities, as well as the citizens, the Commissioner also gave opinions aimed at improving implementation of the Law on Access to Information.** As there is no formal obligation to obtain the Commissioner's opinion in the process of drafting or amendment of legislation, the Commissioner could give his opinions concerning the enactment or amendments of legislation only after learning of such activities through informal means or after relevant authorities published the draft versions of legislative provisions on their websites, while in some cases he was able to respond only after specific pieces of legislation were published.

Below is a selection of only a few of the initiatives launched and opinions given by the Commissioner in 2014:

- An opinion relating to the Draft Law on Archival material and Archive Service to the Ministry of Culture and Information;
- An opinion relating to the Draft Law amending the Law on Tax Procedure and Tax Administration issued to the Ministry of Finance;
- An opinion relating to the Draft Law amending the Law on Planning and Construction issued to the Ministry of Construction, Transport and Infrastructure;
- Repeated initiative to the Ministry of Public Administration and Local Self-Government for amendments to the Law on Public Administration by provisions on the duty of public authorities to keep their electronic presentations and the minimum content of such presentations;
- An opinion on the Draft Decree on Detailed Criteria for Designation of Confidential Data with Confidentiality Levels “Confidential” and “Internal” in Public Authorities issued to the Ministry of Justice;
- In connection with the adopted Decree on Detailed Criteria for Designation of Confidential Data with Confidentiality Levels “Confidential” and “Internal” in the Ministry of Defence, the Commissioner sent a communication to the Government emphasizing that the Decree, contrary to the Constitution, regulates the subject matter of the law, i.e. the subject matter of freedom of information, in the manner contrary to the law regulating this subject matter.
- An opinion relating to the Draft Resolution on Acceptance of the Report on Evaluation of Compliance of Official Websites of Public Authorities with Document “Guidelines for Development of Websites of Public Authorities version 4.0” prepared by the e-Government Directorate within the Ministry of Public Administration and Local Self-Government;

At the time of preparation of this Report, only suggestions given in opinions regarding the documents in indents 5 and 7 have been accepted.

Furthermore, pursuant to individual requests by the citizens or public officials, **Commissioner prepared and issued 175 opinions and replies on contentious issues relating to implementation of the Law on Access to Information.** Typical opinions and views are posted on the Commissioner’s website.

Publications

In 2014, the Commissioner published [publication number 2 titled “Freedom of Information – Views and Opinions of the Commissioner”](#). [Since publications 1 and 2 were published in previous years,](#) and thus confirmed he would publish it regularly every year. As previous publication, this publication was presented as part of commendation of the Right to Know Day. This is a very useful manual for citizens, the media and all officials in public authorities who implement the Law on Access to Information.

Trainings-Seminars

In the course of 2014, the Commissioner held numerous lectures within the scope of his work, such as: a lecture for attendees of the Diplomatic Academy; a lecture and two one-day trainings for students in the Faculty of Organisational Sciences; a lecture for students of the Academy of Criminalistics and Police; two lectures on the right of access to environmental information within the School of Environmental Law for students in final years of undergraduate studies and students in master studies of university law schools in Serbia, graduate lawyers and representatives of civil society organizations dealing with environmental protection issues; two lectures on freedom of information for students of the Human Rights School “Vojin Dimitrijevic”; a lecture for journalists who will investigate and report on spending of public funds in the Republic of Serbia as part of the project titled “Advancing Accountability Mechanisms in Public Finances”, organized by the UNDP office in Belgrade; a lecture on freedom of information and personal data protection within the framework of a seminar by a civil society organization dedicated to fight against domestic violence, organized by “Women’s Association Femina” etc.

The Commissioner and representatives of the institution of Commissioner affirmed freedom of information by active **participation in numerous debates, conferences, round tables and other public meetings organized by other public authorities or civil society organizations**, which is presented in the part of this Report dealing with the Commissioner’s cooperation.

On 19 June 2014, the Commissioner presented his annual report for 2013 to Serbian citizens. Together with the Ombudsman and with support from the Open Society Foundation **public debates were organized in Zajecar, Novi Pazar, Kikinda and Kragujevac which addressed the key findings of annual reports of the Commissioner and the Ombudsman from the aspect of local communities.**

Other events relevant from the aspect of protection of rights include **conferences** hosted by the Commissioner, such as the Conference **dedicated to the World Right to Know Day, which has been held every year since 2006**, with the cooperation and support of the OSCE Mission to Serbia, the Independent Association of Journalists of Serbia, the Journalists’ Association of Serbia and the Coalition of Free Access to Information. These Conferences traditionally include the presentation of awards to public authorities for their performance and contribution to the exercise of the right to know, as well as a special award for the best Information Booklet on the work of public authorities, for which participants have to enter in a competition. The Conference held in 2014 also provided an opportunity to present publication number 3, Free Access to Information of Public Importance – Views and Opinions of the Commissioner.

For more details on the Commissioner’s participation in international conferences and other meetings organized in the country or abroad, see more in the part of the Report which deals with the [Commissioner’s cooperation](#).

4.2. Judicial Protection of Freedom of Information before the Administrative Court

Judicial protection of the freedom of information **before the Administrative Court** is a remedy for reviewing the legality of decisions passed by the Commissioner and the six authorities against which complaints with the Commissioner are not admissible and which are

exempted from the Commissioner's authority (the National Assembly, the President of the Republic, the Government, the Supreme Court of Cassation, the Constitutional Court and the Republic Public Prosecutor).

A complaint may be lodged with the Administrative Court by a party who is not satisfied with a decision and by the Republic Public Prosecutor in cases where a decision harms a public interest. A party and the competent public prosecutor may file **a motion for review of a judicial decision to the Supreme Court of Cassation** against a final and enforceable decision of the Administrative Court.

For these reasons, the Administrative Court and the Supreme Court of Cassation, together with the Commissioner, play pivotal roles in the exercise and protection of the freedom of information.

In 2014, the Administrative Court received 34 legal actions against the above six authorities, which was 21 more legal actions compared 2013. Legal actions against the so-called administrative silence (16) and rejection of requests for access to information (18) were brought against the following authorities:

- 18 against the Government (15 for failure to honour requests and 3 legal actions against decisions rejecting requests) of which 9 were adjudicated as follows: one legal action was rejected, 5 were dismissed on formal grounds, 2 were upheld, while one procedure was terminated;
- 11 legal actions against the Republic Public Prosecutor's Office for failure to honour requests, of which 7 were adjudicated as follows: 2 legal actions were rejected, 1 was dismissed and in 4 legal actions the procedure was terminated;
- 3 legal actions against the Constitutional Court of Serbia, of which 2 were adjudicated by dismissing 1 and terminating procedure in one legal action;
- 1 against the National Assembly, which have not been adjudicated.

The Commissioner would like to underscore once again in this Report that this very small number of legal actions against the above six authorities, in spite of the quantity, type and importance of information available to them by nature of their work, serves a reminder that, at the time of enactment of the Law and on many subsequent occasions, the validity of this legislative arrangement was called into question by numerous Serbian and foreign experts in the fields of freedom of information, good governance and fight against corruption. Exemption of certain public authorities from a general procedure, especially where exercise of a fundamental human right is concerned, is not common in comparative practice. However, this legislative provision has remained unchanged through several amendments of the Law.

In 2014, the Administrative Court received 193 legal actions against the Commissioner's decisions¹², of which 70 were brought against the Commissioner's decisions and resolutions, while 123 legal actions were brought because the Commissioner failed to decide on complaints within the statutory 30-day period.¹³

¹² The same person filed 95 legal actions.

¹³ The main reason why the Commissioner exceeds the 30-day time limit when deciding on complaints is the backlog of more than 3,000 cases from the eight years in which the Commissioner waited for the

Pursuant to those legal actions, the Commissioner adjudicated the complaints and the proceedings before the Administrative Court were terminated, except in cases where the requesters were not satisfied with the outcome.

Of the 193 legal actions filed against the Commissioner's decisions, the Administrative Court adjudicated 90 as follows: 26 legal actions were rejected, 17 were dismissed, in 46 legal actions the procedure was terminated and one case was returned for renewed procedure because an acknowledgement of receipt as evidence of untimely legal actions was not enclosed to case files, following which the Commissioner passed the same decision. **This means that the Administrative Court did not overturn any decision of the Commissioner in 2014. From the aspect of judicial control of the legality of the Commissioner's work, this result is indeed praiseworthy.**

In 2014, **first-instance public authorities continued filing legal actions against the Commissioner's decisions (20)**, despite the fact that such legal situations are inadmissible because public authorities are not authorised under the law to file legal actions, which is why the Administrative Court dismisses them on formal grounds. Instead, pursuant to the Law on Administrative Disputes, public authorities have at their disposal an option to initiate filing of legal action with the Republic Public Prosecutor when they believe that the Commissioner's decisions violate the public interest, which did not happen in 2014.

Inadmissible legal actions against the Commissioner's decisions in 2014 were filed by the following public authorities: "Telekom Srbija" (8), Jat tehnika (Serbian aerospace maintenance and engineering company) (2), Rudarski basen Kolubara (coal mining and smelting complex), the National Bank of Serbia, Banka Postanska stedionica (Postal Savings Bank), the Ministry of Mining and Energy, the Deposit Insurance Agency, the municipality of Majdanpek, the municipality of Doljevac (2) and the Primary Public Prosecutor's Office in Uzice.

The persistency displayed by public authorities, such as Telekom Srbija a.d., in their efforts to avoid or delay the execution of the Commissioner's binding and enforceable decisions by filing inadmissible legal actions, is highly detrimental to the reputation of those authorities, despite the fact that the number of such cases is not high compared with the number of cases handled. The Commissioner have been underscoring in his reports for several years that the situation in which representatives of public authorities and public fund spending units willingly ignore their duties, using illegitimate means to thwart the constitutional rights of Serbian citizens and taxpayers and, in doing so, waste the taxpayers' money, must not be tolerated. Obviously, the imposition of relatively small fines by the Commissioner, which the authorities more often than not refuse to pay voluntarily and which certain courts still refuse to collect by forcible means, cannot be the only path available to counter such practice. All responsible parties, including the Government, the National Assembly and the High Judicial Council, are therefore urged to take due note of this issue and to respond.

The same party filed three motions for review of the final and enforceable decision of the Administrative Court, of which one was adjudicated by rejecting the motion, which upheld the decision of the Administrative Court and of the Commissioner.

Government to provide his institution with adequate office space and thus allow him to hire sufficient staff, which finally happened in 2013.

4.3. Supervision of Compliance with the Law and Liability for Violations of Rights

As from 24 December 2009, supervision of implementation of the Law on Access to Information has been the responsibility of the ministry of charge of public administration, more specifically the Administrative Inspectorate. The authority responsible for supervision also has the power to make requests for initiation of infringement proceedings before the competent magistrates' court.

The amounts of fines provided by the Law on Access to Information are not harmonised with subsequently enacted Law on Misdemeanours, although the penal provisions themselves have been improved compared with the main text before the amendments of December 2009. The person responsible for an infringement is now the head of the authority concerned, rather than the authorised officer who handles freedom of information requests.

According to the Report of the Administrative Inspectorate of the Ministry of Justice and Public Administration¹⁴, in 2014 that body conducted 350 direct inspections of implementation of the Law on Access to Information with regard to compliance of public authorities with the decisions passed by the Commissioner in procedures launched pursuant to complaints filed by information requesters. The report further states that the authorities concerned complied with the relevant decisions in 187 cases, while the remaining cases are pending.

The report further states that 147 inspections of compliance with the duty to submit reports and publish information booklets were carried out, including 144 inspections of local self-government units. As stated in the Report, **the Administrative Inspectorate filed 4 requests for initiation of infringement proceedings**, but the authorities against which the proceedings were initiated are not stated. The Commissioner's Office has information about filed requests in three cases: against the head of the Municipal Administration of the municipality of Odzaci, for failure to submit the annual report to the Commissioner, against the president of the National Council for Higher Education, or failure to publish the information booklet in accordance with the law, and one request against the head of the Municipal Administration for finance of the city of Nis, for failure to comply with the Commissioner's decision ordering publishing of the information booklet in accordance with the law.

The number of filed by the Administrative Inspectorate for initiation of infringement proceedings and determination of liability (4) compared with the number of justified complaints filed in 2014 (3,388) and compared with 350 cases in which authorities even refused to comply with the Commissioner's binding decisions and in which the Commisisoner requested initiation of infringement proceedings by submitting all case files to the Administrative Inspectorate is obviously symbolic and serves as evidence that liability for violation of the Law on Access to Information is almost non-existent. It should be added **that in the period 2011-2013 the Administrative Inspectorate did not file a single request for initiation of infringement proceedings.**

The Report of the Administrative Inspectorate does not contain measures taken and their outcome.

¹⁴The Report of the Administrative Inspectorate No. 011-00-00012/2014-01 of 16 January 2015.

In view of the foregoing, which seems to indicate a total absence of a system of liability in public authorities for violations of the human right of access to information¹⁵, the results of interventions by the Commissioner emerge as even more praiseworthy because of the fact that they were achieved without any means of enforcement. The level of compliance of the public authorities subject to the Law on Access to Information would undoubtedly have been even higher if the mechanism of accountability had been functional and in place, i.e. if the administrative inspectors had filed petitions for infringement proceedings and if those responsible for violations of the law had been held to account.

In the light of supervision, what is particularly worrying is the position of an administrative inspector expressed in acting on a requester's report stating that the purview of inspection included implementation of provisions of the Law on Access to Information, but does not include "verification of the accuracy and completeness of information" which an authority submitted to a requester on his/her request.¹⁶

The annex to this Report includes an overview of the Commissioner's decisions that have not been complied with, i.e. the cases in which those who violated the freedom of information were not held to account.

As an illustration, the table below presents the level of compliance with the duty of public authorities to submit annual reports, publish information booklets on their work and provide training to their employees.

¹⁵ This excludes individual cases in which requesters, as wronged parties, filed requests for initiation of infringement proceedings themselves.

¹⁶ Enactment of the Administrative Inspectorate No. 038-00-00205/2014-03 of 23 December 2014.

Table 3. Figures showing compliance of public authorities with their duties (as at 3 March 2015)

Public authority	No. of public authorities	Report submitted - number and %	Information booklet published – number and %	Information booklet prepared, but not published – number and %	Training implemented – number and %	Maintenance of data storage media – number and %
Authorities referred to in Article 22 of the Law (National Assembly, President, the Supreme Court of Cassation, the Constitutional Court, Government, and the Republic Public Prosecutor)	6	6 (100%)	6 (100%)	/	3 (50 %)	6 (100 %)
Ministries (without bodies subordinated to them)	16	16 (100%)	16 (100%)	/	16 (100 %)	14 (87.5%)
Courts	159	157 (98.7%)	127 (79.8 %)	20 (12.6 %)	84 (52.8 %)	126 (79.2 %)
Public Prosecutors' Offices	89	86 (96.6 %)	22 (24.7 %)	51 (57.3 %)	44 (49.4 %)	62 (69.6 %)
Authorities and organisations of the Autonomous Province of Vojvodina	39	30 (76.9%)	26 (66.6 %)	1 (2.5%)	21 (53.8%)	26 (66.6 %)
Local self-governments (cities/towns and municipalities)	200	160 (80 %)	147 (73.5 %)	5 (2.5 %)	98 (49 %)	142 (71 %)
Public enterprises ((Republic and Provincial level) required to submit reports	33	32 (96.9 %)	27 (81.8 %)	3 (9%)	18 (54.5 %)	25 (75.7 %)
Other public authorities	2357	327 (13.8 %)	256 (10.8 %)	30 (1.3 %)	240 (10.2 %)	257 (10.9%)
Total	2899	814	627	110	524	658

		(28 %)	(21.6 %)	(3.8 %)	(18 %)	(22.7 %)
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5. IMPLEMENTATION OF THE LAW ON PERSONAL DATA PROTECTION

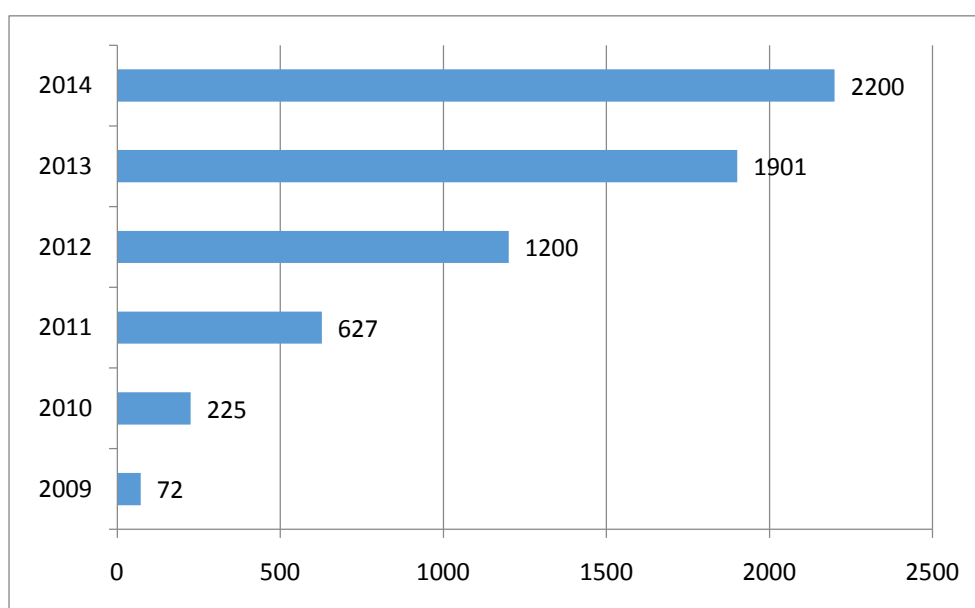
5.1. Commissioner's Activities in the Field of Personal Data Protection

5.1.1. Summary of Commissioner's Activities in the Field of Personal Data Protection

In the course of 2014, the Commissioner 2,012 cases in the field of personal data protection. As a comparison, in 2009 the Commissioner received 83 cases, in 2010 he received 250 cases, in 2011 he received 727 cases, in 2012 he received 1,405 cases and in 2013 he received 2,188 cases.

As 626 pending cases had been carried forward from 2013, the total number of cases handled in this field in the course of 2014 was 2,638. Of 2,638 cases handled, in 2014 the Commissioner closed 2,200 cases, which was an increase of 15.7% compared with 2013, when he closed 1,901 cases.

Graph 9. Overview of cases closed in the field of personal data protection by years



The structure of 2,200 closed cases was as follows:

- 1,031 completed inspections;
- 244 complaints ruled on;
- 699 opinions issued;
- 101 petitions ruled on;
- 64 freedom of information requests ruled on;
- 18 responses issued to legal actions filed with the Administrative Court;
- 5 forwarded requests ruled on;
- 13 instruction issued for improved protection and prevention;
- 14 requests for transborder transfer of data ruled on;
- 3 requests for exercise of rights in connection with personal data protection complied with;
- 6 cases pertaining to other communication with data controllers and requesters ruled on;
- 1 motion for reversal rejected;
- 1 case in the field of international cooperation closed, and
- Records of 950 data files maintained by 226 data controllers registered with the Central Register.

5.1.2. Supervision of Personal Data Protection

In the course of 2014, the Commissioner initiated 782 inspection procedures, including: 294 pursuant to citizens' reports; 151 on his own initiative; and 337 in connection with personal data files. The Commissioner also carried out 313 preliminary checks of personal data processing activities, during which no irregularities were found in 143 cases, while in 170 cases irregularities were identified, which he pointed to the attention of the data controllers concerned by issuing warnings under Article 50 of the Law on Personal Data Protection.

During the course of 2014, the Commissioner closed a total of 1,031 inspection procedures, initiated during that year or in the previous period, as follows: violations of LPDP were found in 350 cases; 538 cases were closed because it was found that previous inspection, warning or resolution was complied with, while 143 cases were closed by issuing notifications. In addition, another 312 cases were closed by official notes.

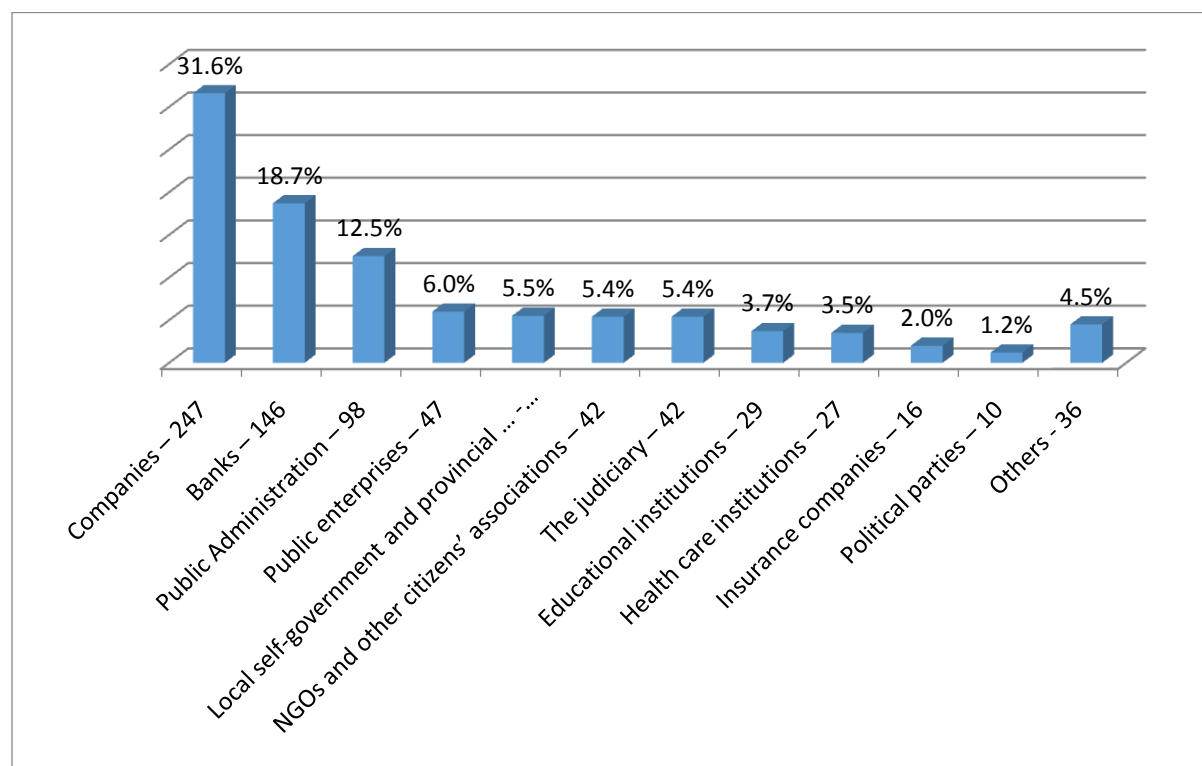
In 350 cases where the Commissioner found violations of LPDP, he:

- Issued 298 warnings;
- Issued 13 decisions;
- Filed 35 petitions for institution of infringement proceedings for violations of LPDP, and
- Filed 4 criminal reports.

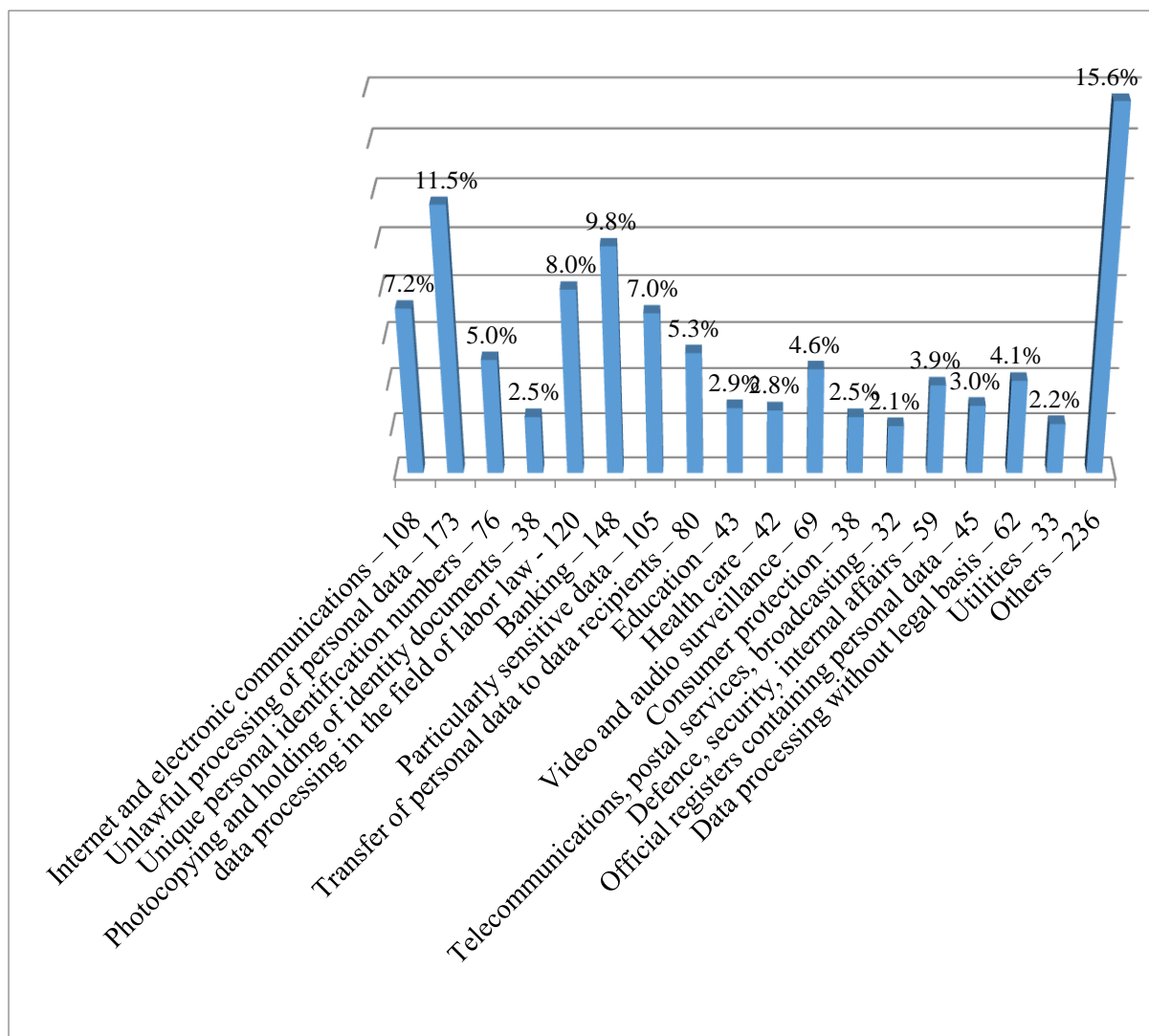
As regards data controllers inspected by the Commissioner in 2014, their structure and reasons for initiation of inspection are significantly different compared with the previous period.

Thus, data controllers inspected by the Commissioner in the 782 inspection procedures were as follows: companies - 247 (31.6%), banks - 146 (18.7%), public administration - 98 (12.5%) etc., while the most frequent reasons for inspection were: unlawful processing of personal data - 173 (11.5%), banking 148 (9.8%), processing of data in the field of labour law – 120 (8.0%), the Internet and electronic communications – 108 (7.2%), processing of particularly sensitive data – 105 (7.0%) etc.

Graph 10. Structure of data controllers inspected in 2014



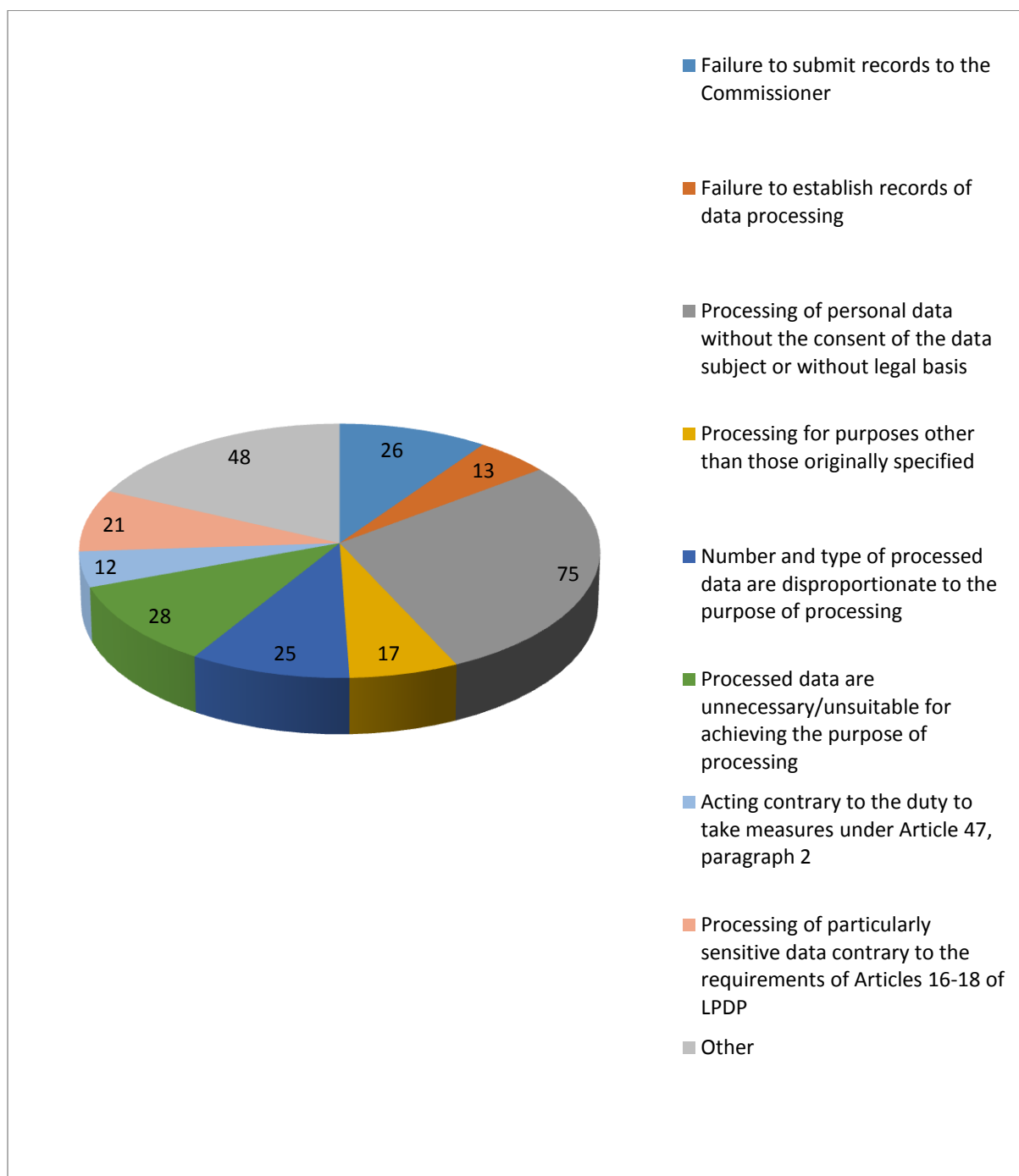
Graph 11. Most frequent reasons for initiation of inspection procedures pursuant to reports (294) or on own initiative (151)



In 298 cases the Commissioner issued warnings after he found violations of LPDP, including 170 warnings under Article 50 of LPDP (preliminary check of processing activities) and 128 warnings under Article 56 of LPDP (Commissioner's powers to take certain measures after he finds violations of the law during inspections).

On this occasion, we would particularly like to emphasize 128 warnings issued under Article 56 of LPDP, in which 265 irregularities were identified, which means that in certain cases the Commissioner found one or more violations of the law.

Graph 12. Most frequent irregularities identified in the warnings issued pursuant to Article 56, paragraph 1 of LPDP



It can be observed that the most frequently registered irregularity - processing of personal data without the consent of the data subject or without legal basis - referred to in LPDP (Article 8, item 1) is the first reason for inadmissibility of data processing.

During the reporting period, of 170 warnings issued under Article 50 of LPDP, data controllers complied with 156, or 91.76%. Of 128 warnings issued under Article 56 of LPDP, 113 data controllers were requested to inform the Commissioner about compliance with warnings and 96 of them did so (89 within the specified time limit, 7 upon expiry of the specified time limit), or 84.96%, while 17 data controllers failed to comply with warnings. The Commissioner took other measures within his powers against data controllers who did not fully comply with his warnings. The Commissioner believes that failure to comply with warnings and failure to inform the Commissioner of compliance with warnings constitutes inadmissible disrespect of the law and the right guaranteed under the Serbian Constitution.

During the reporting period, the Commissioner issued 13 warnings, including: 1 decision ordering deletion of collected data, 1 decision ordering deletion of collected data and rectification of irregularities within the specified time limit, 1 decision ordering deletion of collected data and temporary ban on processing, 9 decisions ordering rectification of irregularities within the specified time limit and 1 decision ordering temporary ban on processing and rectification of irregularities within the specified time limit. Under these decisions (13), the Commissioner ordered 16 measures, including: in 11 cases he ordered rectification of irregularities within the specified time limit, in 2 cases he ordered temporary ban on processing performed contrary to the provisions of LPDP and in 3 cases he ordered deletion of data collected without a proper legal basis. By the end of the reporting period, the Commissioner was informed that data controllers complied with 10 warnings, or 90.91%, 1 decision has not been complied with, while the remaining two decisions are pending. Of 10 decisions that were complied with, 5 were complied with within the specified time limit, while 5 were complied with upon expiry of the specified time limit.

EXAMPLES:

1. The Commissioner inspected the implementation of and compliance with LPDP by all 29 commercial banks in the Republic of Serbia. The aim of the inspection was to check the lawfulness of personal data processing by banks at the time of entering into commercial relations with natural persons, transferring of personal data for the purpose of enforced debt collection from natural persons, processing of personal data using bank video surveillance systems and processing of health-related data of natural persons by banks. The object of inspection was determined on the basis of the Commissioner's findings in earlier inspections of banks, information contained in citizens' petitions filed with the Commissioner and the specific aspects of data processing by banks which involve increased risks for personal data protection.

Most of the identified irregularities involved photocopying identity documents of individuals (usually personal identity cards and passports) by banks in situations when there was no proper legal basis for such personal data processing. Among the documents most commonly photocopied in this way were the identity documents of chairpersons and members of homeowners' associations, of authorised representatives or proxies of companies etc., for purposes which could have been achieved by other means, while the type, method and volume of data processing were such that they exposed the data subjects to increased risk. The inspection found that

approximately 65% of all banks in Serbia permed such inadmissible processing of personal data.

It was also found that some 30% of banks performed personal data processing by photocopying employment record cards, extracts from birth registers, utility bills and other documents containing personal data of their existing or prospective clients etc.

The Commissioner focused on lawfulness of processing of health-related information of individuals by banks, since the LPDP identifies all medical data as particularly sensitive personal data which can be processed only with the consent of the data subject, except in cases where their processing is not allowed under the law even with the data subject's consent, while any processing of such data without the data subject's consent can be done only in the narrowly defined situations permitted by the law in situations where this is necessary to achieve a specific and legitimate purpose of processing. It has been found that some 10% of banks engage in unlawful personal data processing by photocopying medical reports or health questionnaires of their customers or prospective customers, usually in the loan granting procedure or in situations where banks act as insurance agents on behalf of insurance companies. Furthermore, it has been found that approximately 30% of banks make photocopies of health insurance cards and thus engage in unlawful personal data processing, because the Law on Health Insurance stipulates that any information contained in a health insurance card can be used solely for purposes related to health insurance.

With regard to personal data transfers for the purpose of enforced debt collection from the customers, it has been found that banks engage³ in this practice under contracts with specialised companies which under those contracts acquire the status of personal data processors within the meaning of the LPDP, as they perform certain actions on behalf and for the account of banks. No irregularities have been found regarding the legal basis and purpose of such personal data processing.

With regard to personal data processing by means of video surveillance employed by banks and with regard to the technical, human resources and organizational measures put in place by banks in this context, no material irregularities have been found.

In the coming weeks and months, the Commissioner will issue warnings to all banks in which irregularities were found, giving them a reasonable period in which the identified irregularities are to be remedied, after which he will proceed to take further action within his mandate as and when appropriate.

2. The Commissioner inspected the implementation of and compliance with LPDP by internet service providers whose customers are natural persons. The inspection covered 184 (one hundred and eighty-four) operators, which received questionnaires from the Commissioner in which they were asked to specify the basis for personal data processing, the purpose and proportionality of processing, the type of data they processed, the manner and periods of data retention etc. Of that number, 22 (twenty-two) operators failed to return the questionnaire and Commissioner duly filed infringement reports against them.

An analysis of the replies provided in the questionnaires shows there are many reasons for concern. For example, a number of operators provided virtually identical replies, down to identical typing, grammatical and logical errors; as many as 92 operators (57%) replied they kept no records of entry and duration of stay of persons in the rooms where communication data can be accessed and many of them stated they did not even have designated rooms for the relevant technological devices; only 93 operators (57%) replied they had installed systems to detect unauthorised access, but only one of them provided documents to support this claim; as many as 115 operators (71%) stated their employees who have access to electronic communication data were not required to hold any specific qualifications, complete any trainings or hold any security clearance certificates; only 25 operators (15%) replied they stored the so-called retained data for 12 months, as explicitly provided for in the Law on Electronic Communications, while all others applied either longer or shorter periods of retention.

These and other facts seem to indicate that a majority of operators have no appropriate documentation on privacy and personal data security, no procedures for accessing personal data and no awareness of relevant legislative provisions, all of which means there is a high risk of potential unlawful data processing and invasion of privacy.

The Commissioner selected 28 (twenty-eight) typical operators for on-site inspection. The Commissioner completed the on-site inspections of 24 (twenty-four) operators in 2014, while the inspections of the remaining 4 (four) operators have continued in 2015.

3. The Commissioner inspected the implementation of and compliance with LPDP by the Ministry of Internal Affairs as the data controller pursuant to a petition which stated that the 4th Gendarmerie Division in Nis had compiled a list of police officers who were on medical leave due to mental health issues and posted it on the notice board of the Duty Desk and the Front Desk of that Division.

In the course of inspection it was found that the Detailed Instructions on Work Organisation and Functioning of Gendarmerie Units provided that police officers at the Division who were suspended or put on medical leave pursuant to a medical report made by a committee of physicians by which they were found to be incapable of working with weapons (international code "F") could be allowed into the Division's base only if accompanied by the commanding officer of their relevant organizational unit; that the head of the Duty Operational Centre had requested for this list to be compiled for the purpose of ensuring compliance with the said provision and had forwarded it to the employees at the Duty Desk and the Front Desk, without providing any further instructions on what to do with the list; that the person included in the list under number 5 (five), whose name had been added in hand by the shift commander, was not in fact assigned the said code and was suspended from work; that the list was pinned to the wall at the Duty Desk room, which can be accessed only by Duty Desk employees; and that the wall was used for posting reminders, communications etc.

The Commissioner issued a Warning to the Ministry of Internal Affairs, advising it of the fact it had processed sensitive personal data without legal basis or

without the data subject's consent and/or contrary to the conditions set out for processing without consent by compiling the "List of Police Officers of the 4th Division currently on Medical Leave due to Mental Health Issues", which lists the names, surnames and organisational units of 5 (five) police officers, which list was then visibly placed on the wall of the Duty Desk of the 4th Gendarmerie Division in Nis, where it remained from 30 April 2014 to 6 June 2014. Furthermore, the Commissioner filed an infringement report against the head of the Duty Operational Centre and the shift commanded.

4. The Commissioner inspected the implementation of and compliance with LPDP by the Ministry of Internal Affairs, as data controller, pursuant to a report filed by the Serbian Police Trade Union, which stated that certain "Fiat Punto" patrol cars used by traffic police in Novi Sad had a camera installed on the inside of the windshield which continuously recorded the area in front of the vehicle; also, it was alleged that chief patrol officers had an audio recording device on their belt and a microphone on their lapels, which they turned on when communicating with the citizens they stopped, which means they also recorded those citizens who had committed no misdemeanour or criminal offence and were just subjected to a routine police check.

Upon inspection it was found that the Traffic Police Administration had implemented the project "Audio and Video Surveillance of the Police in Traffic Control – State-of-the-Art Video Surveillance Installed in Police Patrol Cars", which aimed to increase the lawfulness and effectiveness of traffic police work as part of additional police reforms and implementation of the new Law on Road Traffic Safety by preventing corruption and torture of road users, in line with the best practices of EU Member States and the USA. Other project objectives included preparing police officers for acting lawfully, professionally and effectively in their day-to-day activities and engagement with the public and preventing all forms of corruption. It was found that the Administration had received funding for this project in 2011 and 2012 and had procured 180 patrol cars with installed equipment capable of achieving the stated project objectives.

The Commissioner issued a Warning to the Ministry of Internal Affairs, advising it of the fact that, as a data controller with the status of a public authority, it had violated the LPDP in that it had engaged in unlawful processing of personal data of police officers on call and the citizens they control, without legal basis or without the data subject's consent and/or contrary to the conditions set out for processing without consent. Given that such processing was not provided for by the law, that the purpose of processing was unclear and that the Ministry of Internal Affairs had not notified the Commissioner of its intent to create a data file before processing and had not provided the relevant data, the Commissioner issued a warning to the Ministry of Internal Affairs. As the Ministry of Internal Affairs failed to comply with the Warning even after it was repeatedly reminded to do so, the Commissioner passed a decision in which he ordered the deletion of data collected without proper legal basis within 20 (twenty) days of receipt. The Ministry of Internal Affairs complied with the Commissioner's decision and deleted the data within the specified period.

5. The Commissioner inspected the implementation of and compliance with LPDP by the Privatisation Agency, upon learning that the Internet domain of the Privatisation Agency contained an active link for accessing or downloading a

document with personal data of 5,190,397 (five million one hundred and ninety thousand three hundred and ninety-seven) persons, including name, surname, name of a parent, Unique Personal Identification Number and serial number of their application.

Upon inspection it was found that the said file contained personal data of all persons who had filed applications for the registration of title to shares in public enterprises distributed in the privatisation process, as well as of those persons whose applications for free shares had been rejected. As a result of omissions made when the web server which hosted this content – owned by the Privatisation Agency – was configured, these data were freely available to any Internet user from an unspecified date in February 2014 to 12 December 2014.

The Commissioner warned the Privatisation Agency it had not put in –place technical, human resources and organisational measures to protect the personal data of applicants for free shares distributed to the public, in accordance with the applicable standards and procedures, which were required to protect the data from loss, destruction, unauthorised access, modification, publication and any other abuse; for this reason, the data were made available to an unspecified number of persons on the Internet domain of the Privatisation Agency. The Privatisation Agency complied with the Warning and the Commissioner also filed an infringement report against the Agency and its responsible officials.

6. The Commissioner inspected the implementation of and compliance with LPDP by the Mayor and the Town Administration of the Town of Sabac, in connection with a document passed by the town's Mayor and addressed to the town's utility companies JSP "Stan", JKP "Vodovod", JKP "Stari Grad" and JKP "Toplana", which ordered those public enterprises to provide data on their service users. The justification offered for this was that "... at the request of the Town Administration of Sabac, the IT Department, together with officers of public enterprises, has initiated an integrated data processing project."

Upon inspection it was found that the authorities of the Town of Sabac has identified a number of problems in the public enterprises founded by the local self-government, including a lack of accurate and up-to-date, which resulted in non-uniform data and issues in the charging and billing of services. The Mayor had therefore passed a decision appointing the Working Group on coordination of the Development Strategy for the Town Administration and four public enterprises, tasked with developing an IT system for integrated data processing and preparation of the IT systems of all public enterprises for a transition to integrated billing. Upon inspection it was found that the data were stored at the IT Department of the Town Administration of the Town of Sabac.

The Commissioner warned the Mayor and the Town Administration of the Town of Sabac they had engaged in unlawful personal data processing, in violation of the LPDP, without legal basis or without the data subject's consent and/or contrary to the conditions set out for processing without consent, by collecting users' personal data from the town's public utility enterprises, including: name and surname, address, Unique Personal Identification Number, utility debt information and debt payment information. The Town Administration of the Town of Sabac complied with the Commissioner's warning and destroyed the data it had collected.

7. The Commissioner conducted an *ex officio* inspection of the implementation of and compliance with the LPDP by the association “Mensa Belgrade” of Belgrade, the association “Mensa of the Vojvodina Region” of Novi Sad and the citizens’ association “Mensa Novi Sad” of Novi Sad. Upon accessing the Commissioner’s Central Register on 26 May 2014, it was found that, as of that date, the said three associations had not provided any notification to the Commissioner of their intent to create a personal data file, with the supporting data, and had not reported any personal data records they had created.

Upon inspection it was found that the Citizens’ Association “Mensa of the Vojvodina Region” and the Citizens’ Association “Mensa Novi Sad” had merged with the Association “Mensa Serbia” in 2001, that they had no members or employees and that had no personal data files; instead, the Association “Mensa Serbia” kept the entire records of the members of those two associations.

With regard to the Association “Mensa Belgrade”, upon inspection it was found that this association had not created and did not keep any personal data records covered by the LPDP and that it had failed to notify the Commissioner of its intent to create personal data files and provided the data required for registration with the Central Register before processing personal data and/or before creating personal data files; also, it had not notified the Commissioner of any intended further processing and had not provided the Commissioner with records of data files and/or any changes in such records.

Based on the facts found, the Commissioner issued a Warning by which he warned the Association “Mensa Belgrade” about the identified irregularities in data processing and filed an infringement report.

8. The Commissioner inspected the implementation of and compliance with LPDP by the Local Tax Administration Office of the Finance Secretariat of the Town Administration of Subotica, as a data controller, because it had posted on its website a group of documents titled “List of Debtors/Natural Persons as at 31 January 2014 – Debt in Excess of RSD 50,000”, which contained personal data of 1,292 debtors (surname, name, place of residence and amount of debt).

Upon inspection it was found that the said authority had engaged in unlawful personal data processing in violation of the LPDP, without legal basis or without the data subject’s consent and/or contrary to the conditions set out for processing without consent. In this specific case, the personal data of tax debtors were processed without the data subjects’ consent and the processing was not authorised under the law, since the provisions of the Law on Tax Procedure and Tax Administration do not provide a legal basis for the publication of the said data.

In this procedure, the Commissioner issued a Warning in which he advised the data controller of the irregularities found in the processing of taxpayers’ personal data. As the data controller did not comply with the Warning and once again posted on its website a similar document titled “List of Debtors/Natural Persons as at 31 January 2014 (Debt in Excess of RSD 1,000)”, which contained personal data of 12,532 debtors (name and surname and amount of debt), the Commissioner passed a decision by which he ordered the data controller to remedy the identified irregularities in the processing of taxpayers’ personal data.

After that, the Public Attorney of Subotica, as the legal counsel of the data controller, filed an administrative claim with the Administrative Court in which it contested the lawfulness of the Commissioner's decision. The Administrative Court closed the administrative dispute by dismissing the claim.

Furthermore, in respect of the identified irregularities the Commissioner filed an infringement report against the data controller's responsible officer. The outcome of the court case was that the data controller's responsible officer was found guilty of an infringement of the LPDP and received a fine.

9. The Commissioner inspected the implementation of and compliance with LPDP by all commercial banks which operate in the Republic of Serbia (29 of them), demanding information on whether they collected their customers' personal data for the purpose of cooperation with the US tax authorities in the implementation of FATCA and specifically whether they transferred the data collected for this purpose out of the Republic of Serbia.

Upon inspection it was found that 15 banks engaged in such personal data processing, but in all of those cases the "cooperation" involved merely checks to determine whether the customer concerned is a US taxpayer and there was no cross-border of personal data involved. After the inspection, the Commissioner issued a warning to the banks in which he advised them that, in the absence of a signed and ratified FATCA agreement between the USA and Serbia, such data processing lacks proper legal basis and underscored that any cross-border transfer of personal data would be a serious and punishable offence under the LPDP.

The Commissioner subsequently received a letter from the Association of Serbian Banks, which expressed its full understanding of the Commissioner's stand, but also voiced a concern that failure of Serbia's competent public authorities to sign a FATCA agreement with the USA could have some very unpleasant effects, both for the economic interests of the banks and their clients and for the international reputation of the Republic of Serbia. The Commissioner forwarded the letter of the Association of Serbian Banks to the Minister of Finance and explained the letter, in and of itself, was not sufficient to change the Commissioner's stand, because it was based on unambiguous and clear provisions of the Serbian Constitution and laws; however, he concurred that the potential consequences highlighted in the letter certainly merited full attention from the Minister of Finance and warranted an appropriate response.

10. In connection with the claims of a number of citizens that the electricity distribution company "EPS SNABDEVANJE" had sent them requests for their Unique Personal Identification Number (JMBG) under threat of litigation for damages if they refuse to do so, the Commissioner inspected the implementation of and compliance with LPDP by this company.

Upon inspection, the Commissioner found that neither the Energy Law nor any other law contained provisions that would require citizens to provide their Unique Personal Identification Number for the purpose of entering into an electricity supply agreement with EPS SNABDEVANJE or for possible forcible debt collection by EPS SNABDEVANJE – both of which were stated by EPS SNABDEVANJE as reasons for this request. The Commissioner issued a Warning to EPS SNABDEVANJE, in which it explained that, by collecting citizens' Unique Personal Identification

Numbers pursuant to the communication “Call for Electricity Buyers to provide their Accurate Unique Personal Identification Number (JMBG)”, it engaged unlawful personal data processing, since the processing was performed without proper legal basis, i.e. either by the force of law or consent of the data subject, and also because the data thus collected were unnecessary and excessive for the purpose of processing. The Commissioner ordered EPS SNABDEVANJE to reply to the Commissioner within 8 days of receipt of the Warning and to issue a public announcement to inform its customers/end buyers of electricity about the measures it took to remedy the irregularities. EPS SNABDEVANJE complied within the period specified in the Warning.

11. The Commissioner inspected the implementation of and compliance with LPDP by the City Municipality of Obrenovac in connection with the publication of five thousand decisions from the “List of Final and Enforceable Decisions on the Award of Government Assistance issued from 27 July to 16 September.” Upon inspection, the Commissioner found the Municipality of Obrenovac had posted on its website on 9 October 2014 a list of valid and enforceable decisions on the award of government assistance to natural persons affected by last year’s floods. In addition to the data that had to be disclosed for the purpose of transparency of the government assistance award process (including decision number, whether it is final and enforceable or not, the amount of assistance granted etc.), the said list also included, without proper legal basis and without any apparent purpose, several personal data of the assistance beneficiaries (e.g. home address, date of birth and Unique Personal Identification Number). Even more absurd was the decision to publicise certain data of those citizens whose applications had been rejected, i.e. who had not even been granted the assistance. The Commissioner issued the Municipality of Obrenovac with a Warning and the Municipality duly anonymized relevant personal data in the “List of Final and Enforceable Decisions on the Award of Government Assistance.”

5.1.3. Commissioner’s acting on Complaints

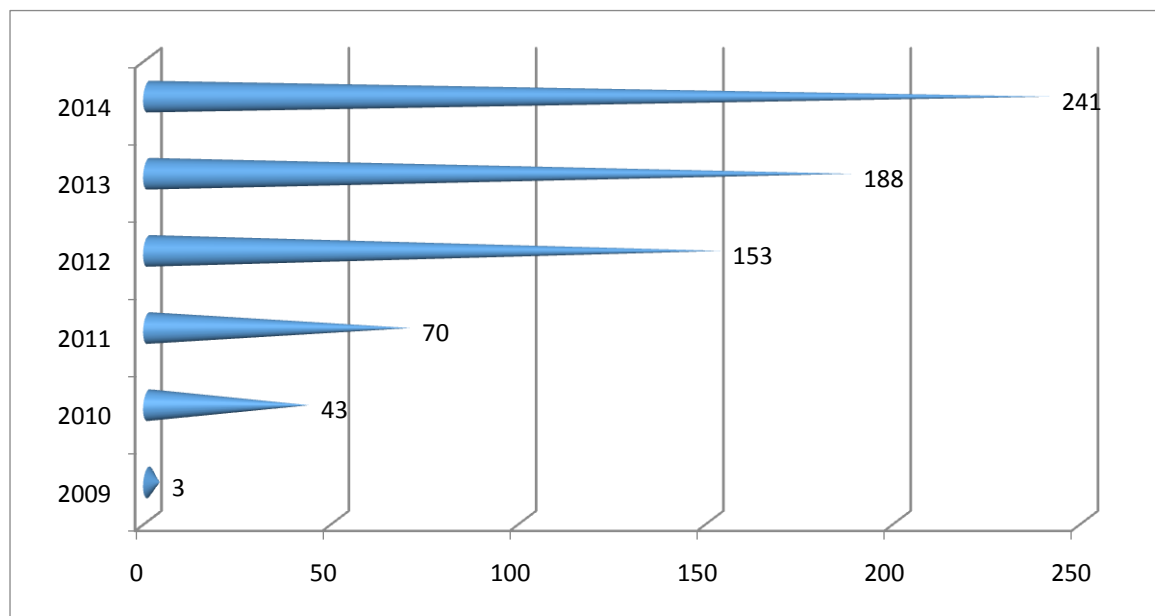
The Commissioner is vested with powers to act on complaints as the authority of second instance pursuant to complaints against violations of rights in connection with personal data protection and/or in connection with access to personal data. The procedure of ruling on complaints by the Commissioner is governed by the Law on General Administrative Procedure, unless the LPDP provides otherwise.

A person who previously addressed a data controller with a request for the exercise of rights in connection with data processing and/or in connection with access to personal data may lodge a complaint with the Commissioner in accordance with LPDP. The Commissioner forwards a complaint to the data controller concerned for a reply and then decides on the complaint. The Commissioner’s decisions on complaints are binding, final and enforceable and, if necessary, they are enforced by the Government.

In the course of 2014, the Commissioner received 241 complaints, which was almost 30% more than in 2013, about 60% more than in 2012, about 250% more than in 2011 and about 450% more than in 2010.

In 2014, the Commissioner handled 299 complaints, of which 241 were received in 2014, while the remaining 58 were carried forward from 2013.

Graph 13. Complaints lodged with the Commissioner by years

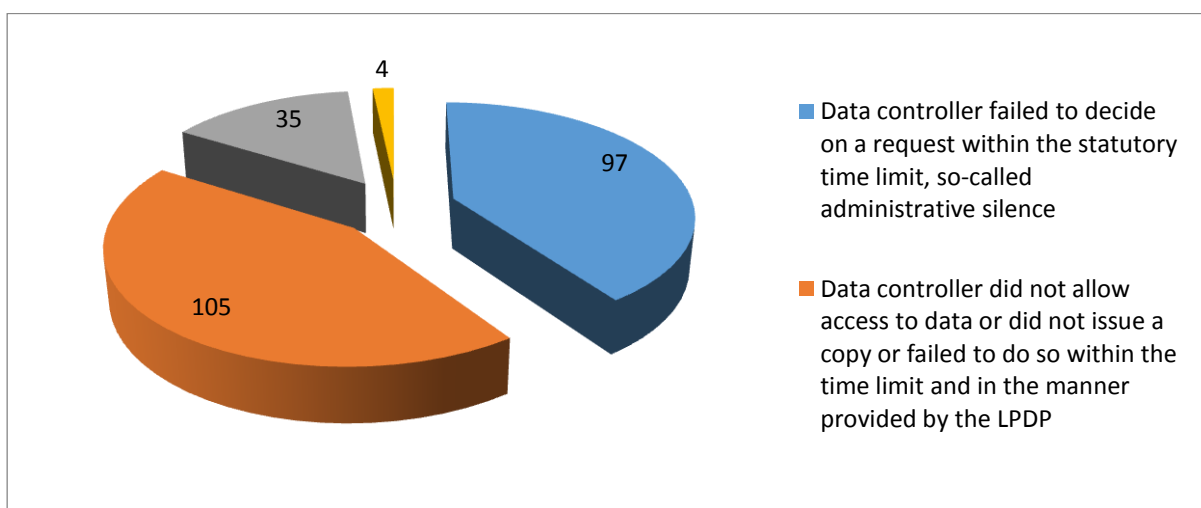


The most frequent cause for lodging of complaints with the Commissioner was the fact that data controllers did not allow access to the data or did not issue copies of the data or failed to do so within the time limit and in the manner provided for by the LPDP (105). Compared with 2013, when this reason accounted for 36.2% of all complaints, in 2014 this reason accounted for 43.6% of complaints lodged, which is indicative of a negative trend of increase.

Slightly lower number of complaints compared with the above paragraph was lodged with the Commissioner because data controllers failed to decide on requests within the statutory time limit, the so-called administrative silence (97). Compared with 2013, when 35.6% of all complaints received by the Commissioner were lodged for this reason, in 2014, 40.2% complaints were lodged for this reason, which is indicative of increased ignoring of requests by data controllers.

In 2014, the Commissioner rejected and dismissed complaints in 16.2% cases, including 14.5% rejections and 1.7% dismissals. Compared with 2013, when 28.2 % of all complaints received by the Commissioner were lodged for these reasons, in 2014, 16.2% of complaints were lodged for these reasons. Less complaints rejected by the Commissioner are indicative of correct acting of data controllers, while significantly lower number of complaints dismissed on formal, procedural grounds compared with the number of rejected complaints is indicative of increased knowledge and higher awareness of complainants that they should timely lodge complete complaints with the Commissioner and enclose all necessary documents and evidence.

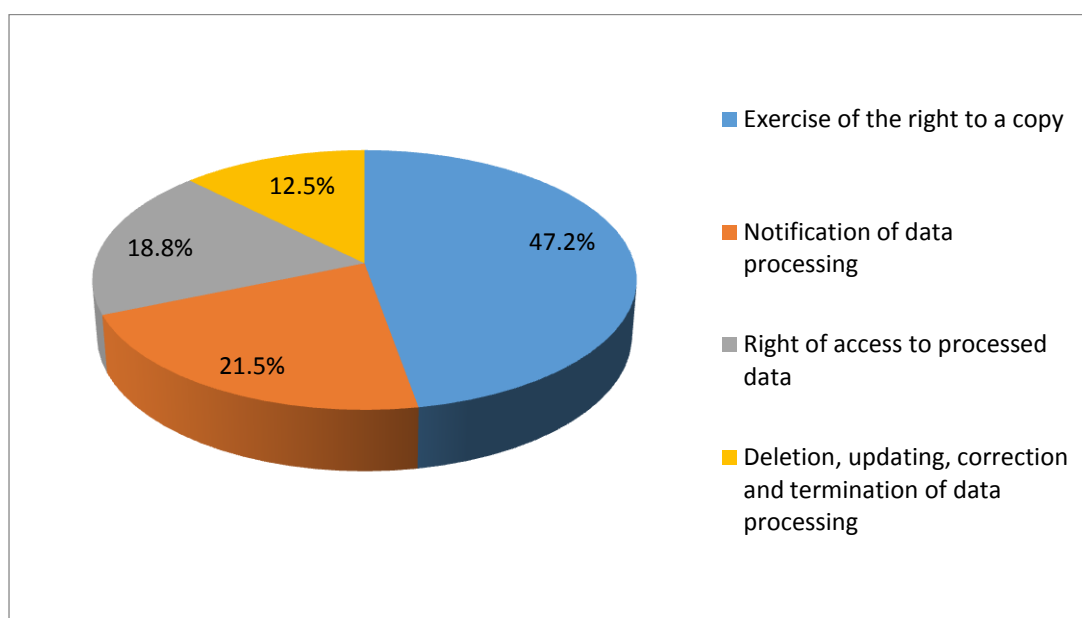
Graph 14. Reasons for lodging of complaints with the Commissioner in 2014



Complaints lodged with the Commissioner related to data contained in: police records, medical documentation, records in the fields of pension and disability insurance and health insurance, case files of social welfare centres, records kept by the Ministry of Defence within its sphere of competence, records kept by the Security Information Agency and the Military Security Agency in their documentation archives and registries, human resources records; court case files, phone listings, video recordings and the banking system.

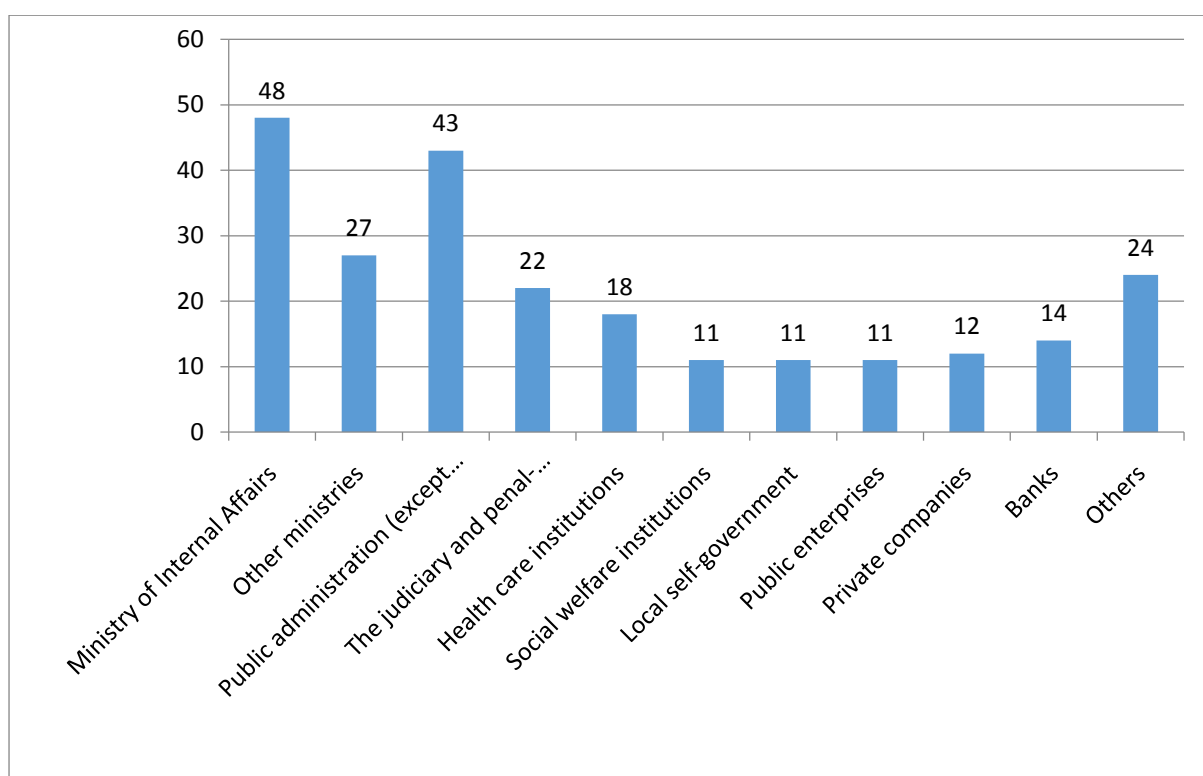
The requests which resulted in the lodging of complaints with the Commissioner due to inadequate actions of data controllers included the exercise of: the right to a copy (47.2%); the right to notification of data processing (21.5%); the right of access (18.8%) and 12.5% of the complaints related to deletion, updating, correction and termination of data processing. The majority of complaints received by the Commissioner included the right to a copy (47.2%), which shows that this is the most frequent request submitted to data controllers, while the lowest number of complaints included deletion, updating, correction and termination of data processing, which is indicative of low citizen's interest in correction of their data processed by data controllers.

Graph 15. Requests which resulted in lodging of complaints with the Commissioner in 2014



The majority of the complaints – as many as 202 – were lodged due to actions of public authorities or their failure to act, including 75 complaints against ministries, which usually related to the Ministry of Internal Affairs of the Republic of Serbia – 48.

Graph 16. Data controllers whose actions or failure to act were the most frequent cause for lodging of complaints

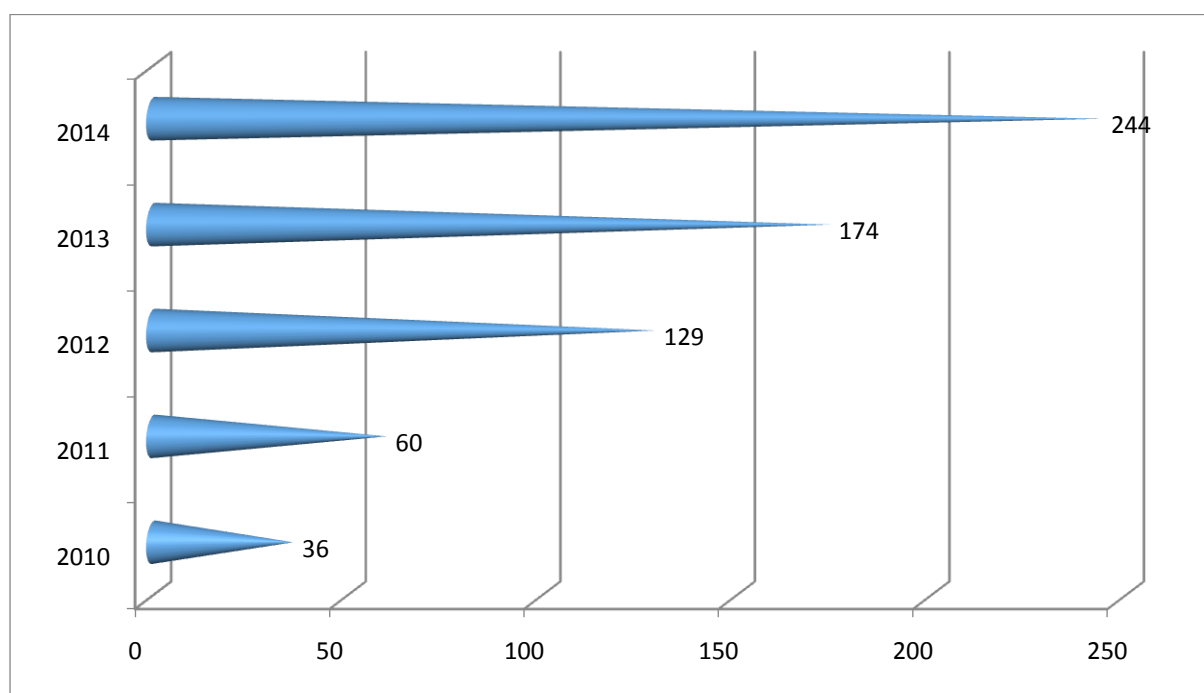


The largest number of complaints against (in)action of data controllers (48 complaints or 20% of all complaints received by the Commissioner) were lodged against the Ministry of Internal Affairs. The number of these complaints was twice higher than the number of complaints against all other ministries put together. Complaints concerning (in)action of the Ministry of Internal Affairs usually related to data contained in various records kept by that Ministry. It is noticeable that this Ministry has improved its work in the filed of personal data protection to a certain extent through active operations of the Bureau for Information of Public Importance, a special unit for personal data protection attached to the Minister's Cabinet; also, it is one of two data controllers which submitted the largest number of records of personal data files to the Commissioner for registration with the Central Register. On the other hand, the Ministry of Internal Affairs often respond to citizens' requests with delays, which is why they raise complaints with the Commissioner. The Commissioner welcomes the fact that after a number of years, the procedure has finally been initiated for improvement of the Law on Police, including inter alia the part of this Law dealing with personal data, particularly introduction of a clear legal basis for the establishment and maintenance of all personal data files kept by the Ministry of Internal Affairs, in compliance with the Constitution and LPDP.

In the course of 2014, the Commissioner acted on 299 complaints, 241 of which were received 2014, while 58 were carried forward from 2013. Of those 299 complaints, in 2014 the Commissioner closed the proceedings pursuant to 244 complaints (186 from 2014 and all 58 from 2013), while 55 complaints were carried forward to 2015. The number of proceedings closed pursuant to complaints (244) in 2014 increased by 40.23% compared with 2013, when the proceedings pursuant to 174 complaints were closed.

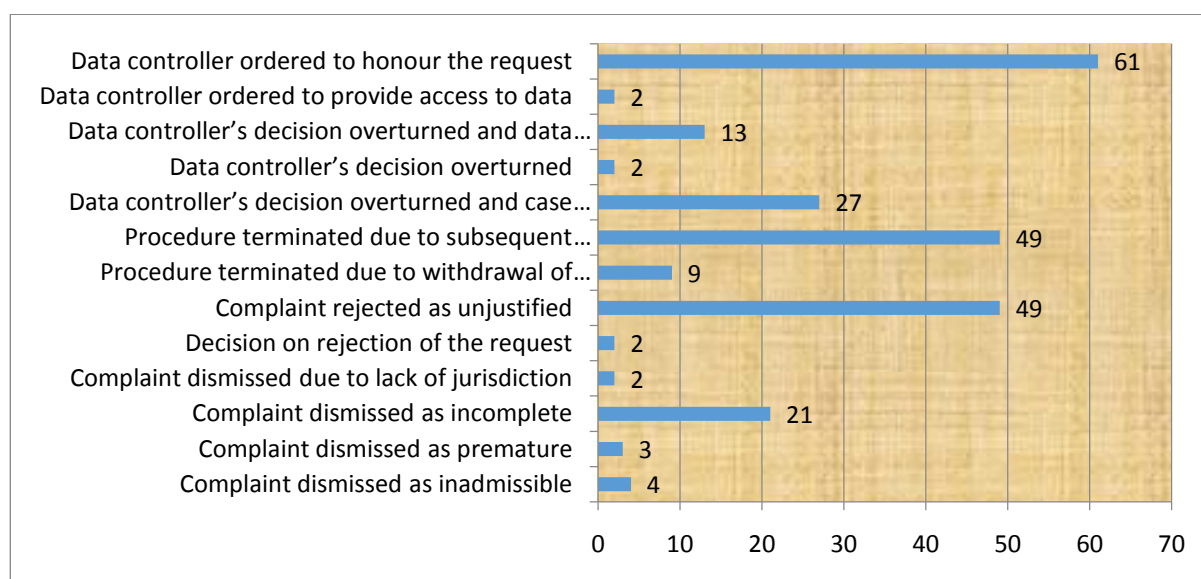
The number of proceedings pursuant to complaints closed has been increasing year after year, in accordance with the increase of complaints lodged with the Commissioner.

Graph 17. Proceedings pursuant to complaints closed by the Commissioner by years



On the basis of the Commissioner's decisions passed pursuant to complaints, the Commissioner found that complaints were justified in 105 cases, or 43.1%, because of which the Commissioner ordered the data controller to honour the request, ordered the data controller to provide information to the requester, overturned data controller's decision and ordered honouring the request, overturned data controller's decisions, overturned data controller's decision and returned the case to the data controller for renewed procedure); in 58 cases, or 23.7%, the Commissioner terminated procedures by passing resolutions because data controllers honoured the requests or requesters withdrew complaints before the Commissioner passed decisions pursuant to complaints; the Commissioner rejected complaints as unjustified or rejected requests as unjustified in 51 cases, or 20.9%, while in cases, or 12.2% he dismissed complaints on formal grounds (due to lack of jurisdiction, incomplete complaint, premature complaint or inadmissible complaint).

Graph 18. Commissioner's acting on complaints in 2014



During the reporting period, the Commissioner issued a total of 76 binding and final decisions ordering data controllers to honour the requests or to provide access to data to requesters and ordering data controllers to inform him about compliance with decisions. During the reporting period, **62 data controllers, or 81.58%, informed the Commissioner that they complied with his decisions**, 10 failed to comply with decisions, while 4 data controllers failed to inform the Commissioner whether they complied with his decisions.

EXAMPLES:

1. A requester had filed a request for the exercise of rights upon access to personal data with the Ministry of Internal Affairs of the Republic of Serbia, as a data controller, in which he requested the deletion of his personal data which had been unlawfully processed in the Integrated Information System of the said Ministry. The data controller rejected the request by a decision, explaining that the requester's data were kept on records maintained by the police pursuant to the Law on Police, that the data had been processed after he was charged with a criminal offence in 2010 by the police officers of the competent Police Station and that the data were kept in accordance with the retention periods provided for in Article 81 of the Law on Police and would be made inactive after the expiration of the statutory period, in accordance with the Criteria for Consolidation and Updating of Operational Records, and would be used exclusively for police purposes. As the requester did not find the data controller's explanation satisfactory, he filed a complaint with the Commissioner.

Upon reviewing the complaint, the Commissioner quashed the data controller's decision and referred the case back to the authority of first instance. The statement of reasons for the Commissioner's decision explains that the contested decision did not contain sufficient reasons to conclude that the relevant facts had been found and that substantive law had been applied correctly. Namely, the right to correction, modification, updating and deletion of personal data within the meaning of Article 22 of the LPDP is available to a data subject only after he/she accesses the personal data, which allows him/her to identify those data that are being unlawfully processed. Furthermore, the statement of reasons for the Commissioner's decision explained that the data which the complainant sought to delete had not been clearly specified and the data controller had not invited the complainant to modify his request and clearly and comprehensibly indicate which data he sought to delete. Moreover, the complainant had also provided no evidence that the personal data which he sought to delete had been processed in the data controller's records and the data in question were not inaccurate or collected unlawfully, which is a requirement for the exercise of the right to deletion. As the right to data deletion within the meaning of the LPDP derives from the right to access and copy personal data and can be exercised only after the data subject has accessed the relevant data, the data controller's contested decision makes it impossible to determine whether the complainant had actually accessed his personal data processed by the data controller in order to be able to exercise the right to deletion if any of those data were found to be inaccurate or unlawfully processed.

In his decision, the Commissioner ordered the data controller to repeat the procedure and to clearly and unambiguously identify the data which the complainant sought to delete in this legal matter and the exact record in which the data are kept; only then will it be able to determine whether the requirements for deletion of personal data set out in Article 22 of the LPDP are met, i.e. decide on the complainant's request in accordance with the provisions of the LPDP and other applicable regulations.

2. A requester had filed a request for the exercise of rights upon access to personal data with the City Centre for Social Work in Belgrade, as a data controller, in which he sought access to a case file relating to his deceased brother. As the data controller had rejected the request as unfounded by its decision, explaining that the

requester's deceased brother had a daughter who was his most immediate heir, the requester invoked Article 10 paragraph 6 of the LPDP and Articles 8 and 9 of the Law on Inheritance and filed a complaint with the Commissioner on the grounds that the data controller had restricted his right to access the requested data.

Upon reviewing the complaint, the Commissioner found the complaint to be unfounded. In the statement of reasons for his decision, the Commissioner took a stand that the requester/complainant failed to provide evidence he had been declared a heir to his deceased brother in probate proceedings, which would have eliminated any doubts as to the existence of more immediate heirs who would have priority over any other lawful heirs in the exercise of any right, nor had he provided a notarised power of attorney issued by the deceased brother's daughter or indeed any evidence that the deceased intended for the complainant to exercise any of the rights in connection with the processing of his personal data.

3. A requester had filed a request for the exercise of rights upon access to personal data with the Penal and Correctional Institution in Belgrade, as a data controller, in which he sought a correction to be made to the inaccurate data contained in his personal sheet in connection with his vocational qualifications. As the data controller failed to act on the request within the statutory time limit, the requester filed a complaint with the Commissioner.

The Commissioner passed a decision by which he ordered the data controller to immediately, and in any case not later than 5 days of service of the decision, comply with the requester's request within the meaning of Article 39 paragraph 3 of the LPDP, because it had failed to decide on the request within the statutory period, i.e. it had neither accepted the request and corrected the data nor passed a decision to reject the request.

4. A requester had filed a request for the exercise of rights upon access to personal data with the Higher Court of Belgrade, as a data controller, in which he sought a copy of the transcript of an audio recording of the main hearing in a criminal trial, more specifically the section of the transcript which contained the statement he made as a witness. As the data controller failed to act on the request within the statutory time limit, the requester filed a complaint with the Commissioner.

In its response to the complainant's allegations, the data controller informed the Commissioner it had complied with the request and provided a copy of the requested data to the requester. The data controller duly enclosed evidence of delivery.

As the data controller had allowed the requester to exercise his right to a copy after the complaint was filed, but before a decision was made pursuant to the complaint, the Commissioner passed a resolution and terminated the investigation of the complaint.

5. A requester had filed a request for the exercise of rights upon access to personal data with the Ministry of Internal Affairs of the Republic of Serbia, as a data controller, in which he sought the deletion of his personal data processed by the data controller in its records titled General Crime Index. He sought the deletion of a misdemeanour report filed against him with the Magistrates' Court in 1995 for offensive and violent behaviour. As the data controller had not complied with the

request within the statutory time limit of 15 days, i.e. it had neither accepted the request and corrected the data nor passed a decision to reject the request, the requester filed a complaint with the Commissioner.

Upon reviewing the complaint, the Commissioner passed a decision by which he ordered the data controller to immediately, and in any case not later than 5 days of service of the decision, delete the relevant data pertaining to the requester from the General Crime Index.

The statement of reasons for the decision explains that the requirements for data deletion within the meaning of Article 22 of the LPDP are met, because the said Law allows the processing of data only to the extent that they are necessary and proportionate for an explicitly stated purpose of processing, either with the consent of the data subject or by the force of law. As the misdemeanour report in question had been entered in the records of persons suspected of criminal offences and misdemeanours in accordance with Article 76 paragraph 2 of the Law on Police and was subsequently deleted from those records upon the expiration of the statutory retention period set out in Article 81 paragraph 1 item 2 of the said Law, the original purpose of data processing was already achieved and the reasons for retaining the data on the relevant records thus no longer pertain. It would therefore be unjustified to retain the data on any other records, in this case the records to which the data controller refers as the General Crime Index, as there is no legal basis for such retention, since the said records are not provided for in the Law on Police or indeed any other law.

The data controller's internal document on the methodology, collection and recording of data in the General Crime Index, passed pursuant to the Law on Internal Affairs, which has been superseded and extinguished by the Law on Police, cannot provide sufficient legal basis for personal data processing within the meaning of the LPDP. Another relevant factor for the Commissioner's decision was the fact that the complainant had not been found guilty and penalised pursuant to the misdemeanour report, as demonstrated by material evidence provided by the complainant during the procedure, which substantiated his allegations. Furthermore, the Commissioner is of the opinion that processing by the police of data relating to misdemeanour reports which did not result in sentencing of the alleged offenders must be subject to some sort of a time limit, because otherwise we risk the threat of undermining legal certainty for the data subjects, prejudicing the presumption of innocence guaranteed by the Constitution of the Republic of Serbia and disregarding exonerating court judgements.

6. A requester had filed a request for a copy of his ex-spouse's tax debt records to the Tax Administration of the Ministry of Finance. As the data controller rejected the request with the justification that the requested data were confidential under the Law on Tax Procedure and Tax Administration, the requester filed a complaint with the Commissioner.

Upon reviewing the complaint, the Commissioner found the complaint to be unjustified, but not for the reasons stated by the data controller in its decision. Rather, the complaint was unjustified because, under the LPDP, only the data subject can exercise the rights in connection with personal data processing (information, access and copy) and the rights upon access to personal data (correction, modification,

updating, deletion, termination and suspension of processing); as the requester filed a request for data relating to another person, this was not a case of exercising the rights in connection with personal data within the meaning of the LPDP.

7. A requester had sent a request to a representative office of a foreign company for a copy of the electronic communication between that representative office and another company which was allegedly supposed to hire the requester. As the representative office rejected the request, justifying its decision claiming that a contract signed between the foreign company and the company which was allegedly supposed to hire the requester provided for data confidentiality between the parties, the requester filed a complaint with the Commissioner.

Upon reviewing the complaint, the Commissioner passed a decision to dismiss the complaint as inadmissible, because a representative office of a foreign company does not have the status of a legal person under the Law on Companies and therefore cannot be deemed to be a data controller within the meaning of Article 3 item 5 of the LPDP, which specifically defines a data controller as a natural or legal person or a public authority that processes data.

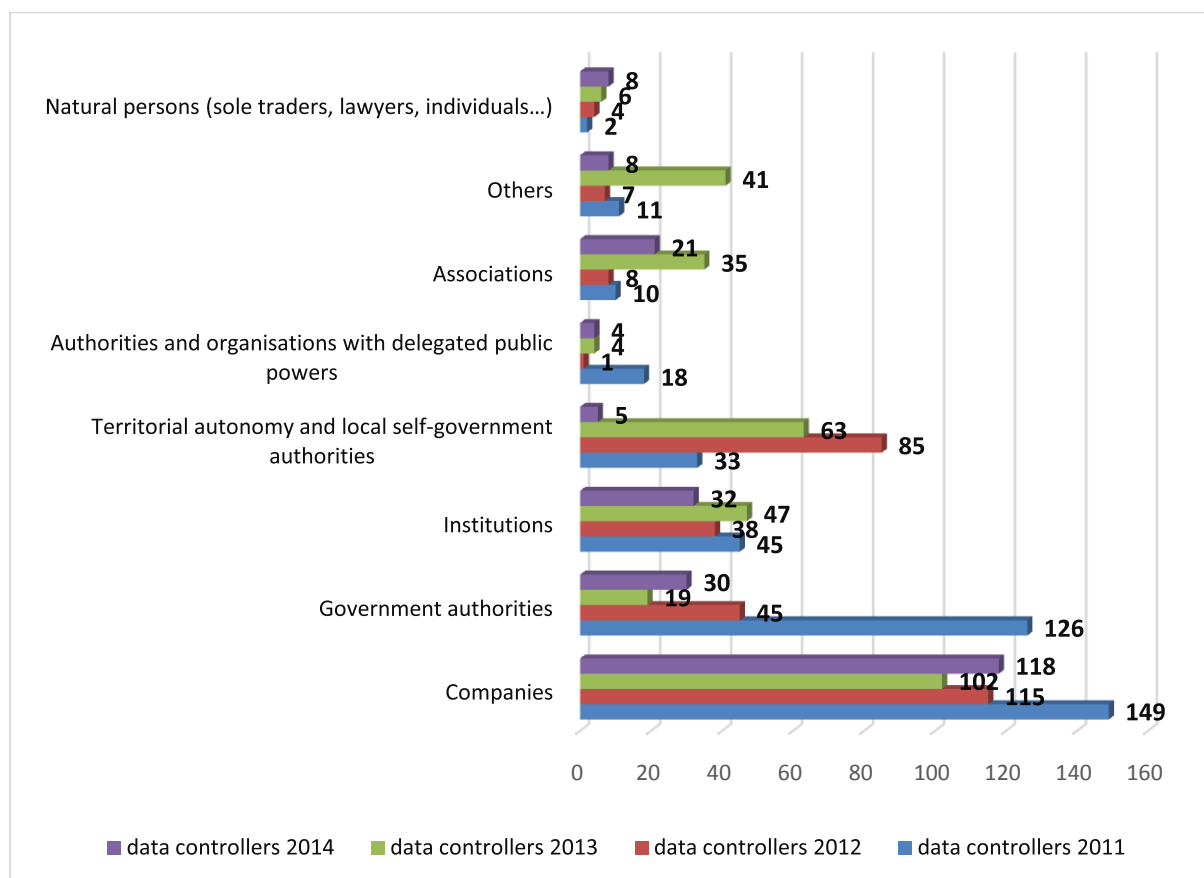
5.1.4. Keeping of Central Register

All controllers of personal data files are required under the law to submit to the Commissioner records of their data files and/or any changes thereof for the purpose of registration with the Central Register within 15 days of creation or change of such files, as the case may be.

According to the Commissioner's rough estimate, there are about 350,000 controllers of personal data in Serbia, including public authorities, territorial autonomy and local self-government bodies and other authorities or organisations exercising delegated public powers, legal entities and individuals who process personal data.

The majority of data controllers registered with the Central Register are companies, government authorities and territorial autonomy and local self-government bodies, but year after year a global trend of decrease in registration of these and all other data controllers is observed.

Graph 19. Comparative overview of registered data controllers in 2011, 2012, 2013 and 2014

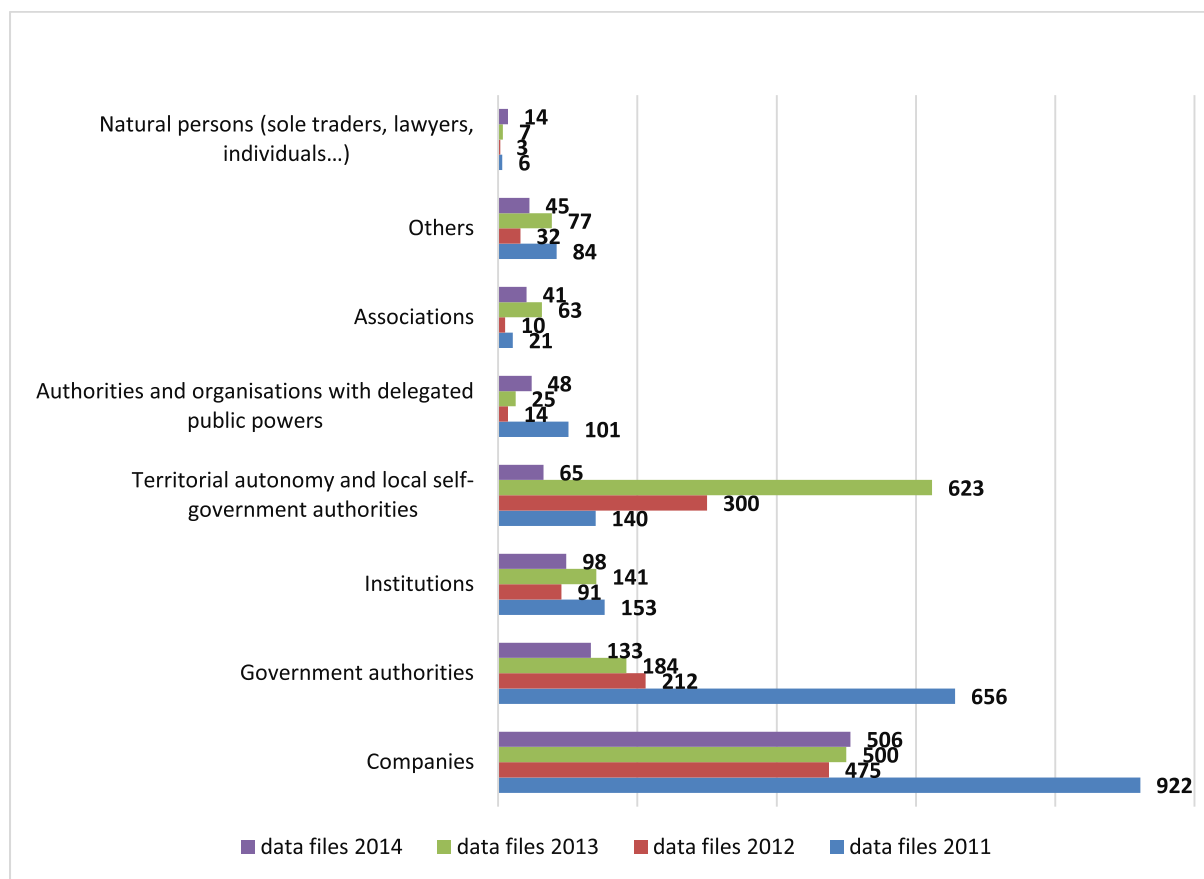


The situation as regards registration with the Central Register as at 31 December 2014 shows that a total of 1,361 data controllers submitted to the Commissioner records of the 7,052 personal data files they keep. This practically means that only about 0.4% of personal data controllers in Serbia have complied with the LPDP.

On this occasion, we would like to emphasize the negative trend of fewer and fewer data controllers submit fewer and fewer records of their data files. Thus, in the course of 2014, 226 data controllers submitted records of data files they maintain, which was 40.27% less than in 2013 when 317 did so. Also, in 2014 data controllers submitted records of 950 data files they maintain, which is 70.53% less than in 2013 when they submitted records of 1,620 data files.

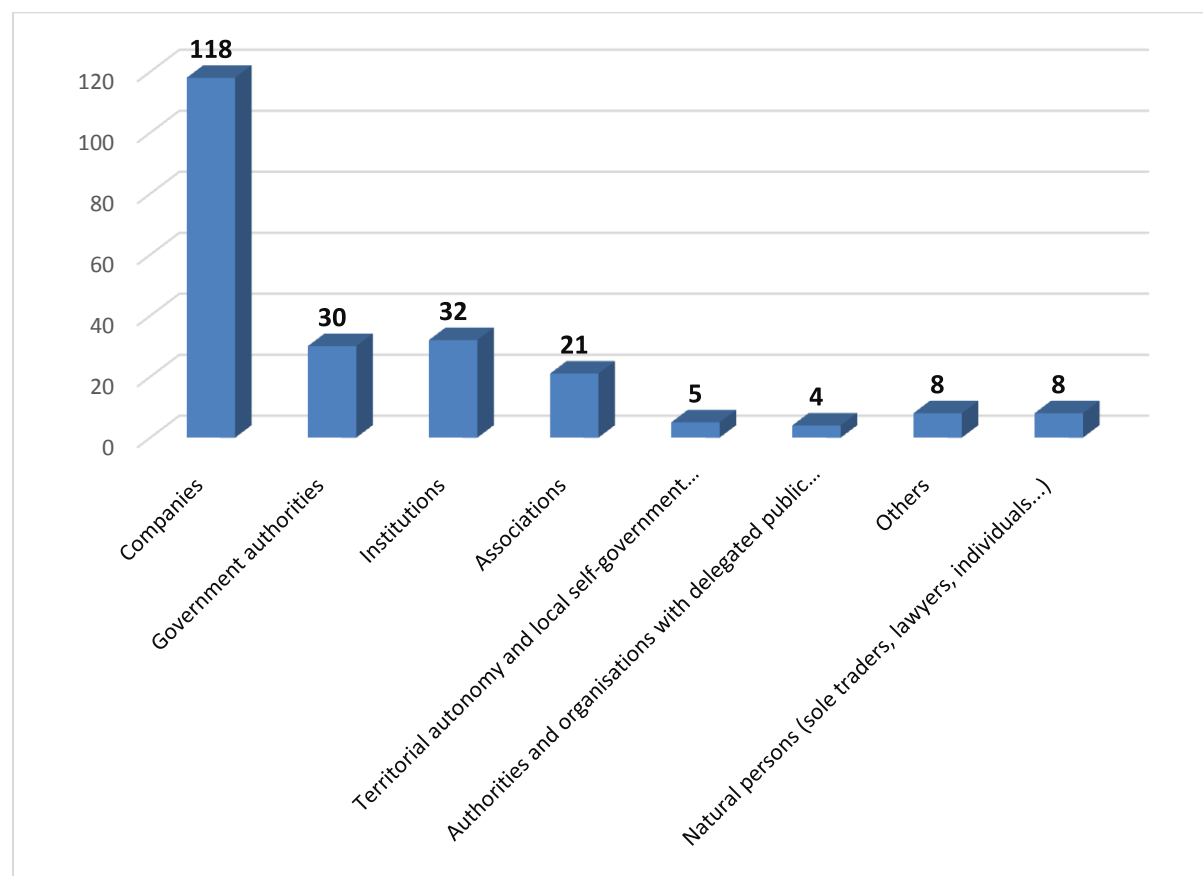
Now that the Law has been in force for more than six years, there is absolutely no justification for ignoring and disrespect of this or any other statutory obligation *en masse*.

Graph 20. Comparative overview of registered records of personal data files in 2011, 2012, 2013 and 2014

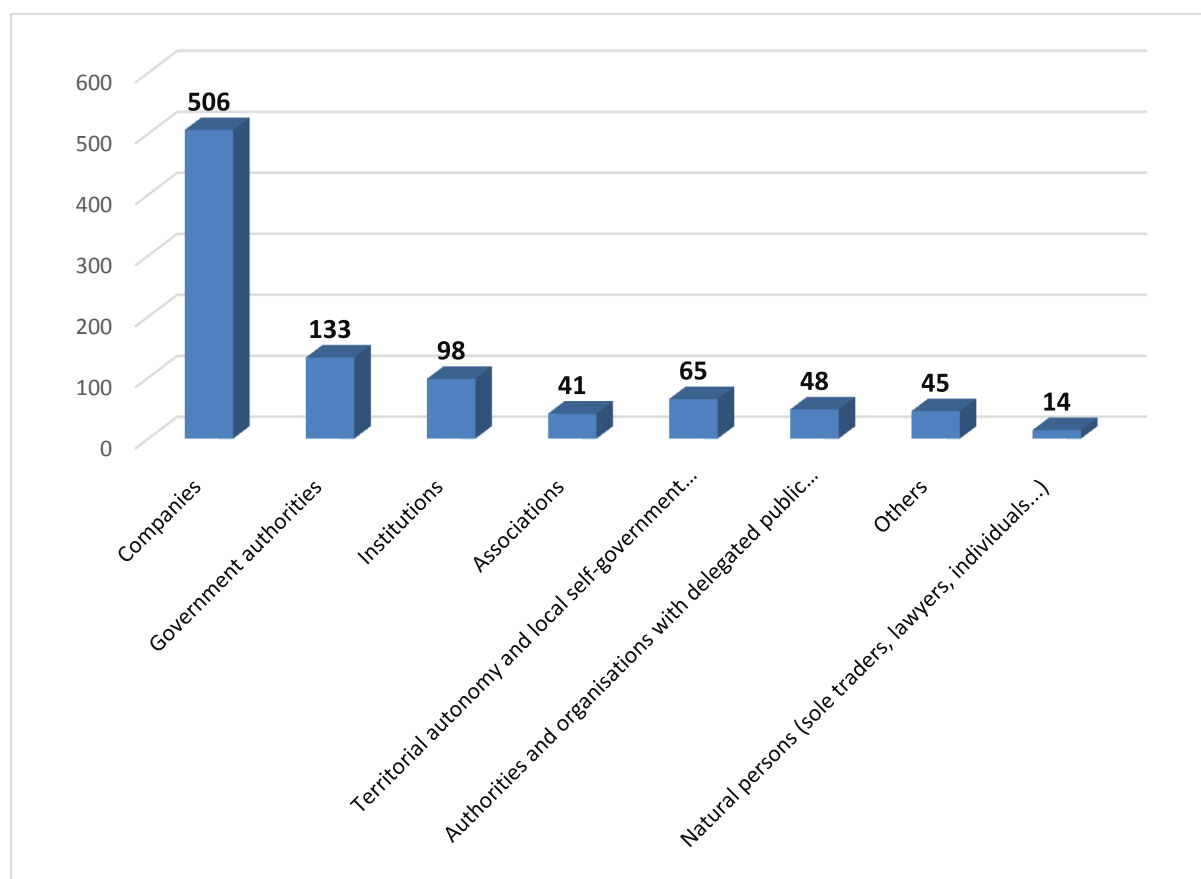


As regards submission of records of data files to the Commissioner for the purpose of registration with the Central Register in 2014, the highest response was among companies – 118, which submitted 506 records of personal data files. The response rate was lower for public authorities – 39 (government authorities – 30, territorial autonomy and local self-government authorities – 5 and bodies exercising delegated public powers – 4) which submitted a total of 246 records of data files (government authorities – 133, territorial autonomy and local self-government authorities – 65 and bodies exercising delegated public powers – 48). Somewhat higher response was observed for institutions – 32, which submitted 98 records of personal data files. All other categories of data controllers fared even worse in terms of compliance. Also, the above categories of data controllers submitted the highest number of records of data files to the Commissioner (companies – 506, an average of 4.3 data files per company, public authorities – 246, an average of 6.3 records per public authority and institutions – 98, an average of 3 records per institution).

Graph 21. Data controllers registered with the Central Register in 2014 by types of data controllers



Graph 22. Data files registered with the Central Register in 2014 by types of data controllers



The Commissioner continues to make efforts to ensure compliance with this legal duty. The Commissioner frequently calls for compliance with this duty under LPDP through the media, his web page, warnings sent to large data controllers, presentation of legislative provisions, education of large data controllers' staff and filing of requests for initiation of infringement proceedings.

5.1.5. Issuing of Opinions

In 2014, the issued issued a total of 699 reasoned opinions and responses, including 398 to individuals, 138 to legal entities and 163 to governmental authorities and local self-government authorities. In addition, the Commissioner also issued 19 opinions on requests for changes in the Central Register, which met positive responses.

The number of opinions issued by the Commissioner is constantly increasing. As an example, in 2009, the Commissioner issued 37 opinions (17 to individuals, 10 to legal entities and 10 to public authorities), in 2010 he issued 93 opinions (40 to individuals, 16 to legal entities and 37 to public authorities), in 2011 he issued 281 opinions (156 to individuals, 40 to legal entities and 85 to public authorities), in 2012 he issued 523 opinions (331 to

individuals, 82 to legal entities and 110 to public authorities), while in 2013 he issued 511 opinions (266 to citizens, 99 to legal entities and 146 to public authorities). **The number of opinions issued in 2014 (699) is 36.79% higher compared with 2013 when the Commissioner issued 511 opinions.**

Of 163 opinions issued to governmental authorities and local self-government authorities, 24 related to draft laws and bills, including 16 on request of the competent authorities and 8 on the Commissioner's own initiative.

The Commissioner issued opinions relating to the following on request of the competent authorities: the Draft Law on International Restrictive Measures (opinion issued on five occasions to the Ministry of Foreign Affairs), the Draft Law amending the Law on Serbian Army (opinion issued on two occasions to the Ministry of Defence and to the National Assembly), the Draft Law amending the Law on Defence (opinion issued on two occasions to the Ministry of Defence and once to the National Assembly), the Draft Law on Military Education (issued to the Ministry of Defence), the Draft Law on Free Legal Assistance (issued to the Ministry of Justice and Public Administration), the Draft Law on Inspection (issued to the Ministry of Public Administration and Local Self-Government), the Draft Law on Archival Material and Archive Service (issued to the Ministry of Culture and Information), the Draft Law amending the Law on Copyright and Related Rights (issued to the Ministry of Education, Science and Technological Development), the Draft Law amending the Law on Higher Education (opinion issued on three occasions to the Ministry of Education, Science and Technological Development), the Draft Law amending the Law on Occupational Safety and Health (issued to the Ministry of Labour, Employment, Veteran and Social Affairs), the Draft Law on Prevention of Doping in Sport (opinion issued on three occasions to the Ministry of Youth and Sport), the Draft Law on Health Care Documents and Records (opinion issued on two occasions to the Ministry of Health), the Draft Law amending the Law on Electronic Communications (issued to the Ministry of Trade, Tourism and Telecommunications), the Draft Law amending the Law on Tax Procedure and Tax Administration (issued to the Ministry of Finance), the Draft Law amending the Law on Travel Documents (issued to the Ministry of Internal Affairs) and the Draft Law amending the Law on Security Information Agency (issued to the Security Information Agency).

The Commissioner issued opinions relating to the following on his own initiative: the Draft Law amending the Law on Planning and Construction (issued to the Ministry of Construction, Transport and Infrastructure), the Draft Law on Air Traffic (issued to the Ministry of Construction, Transport and Infrastructure), the Draft Law on Road Freight Transport (issued to the Ministry of Construction, Transport and Infrastructure), the Draft Law on Road Passenger Transport (issued to the Ministry of Construction, Transport and Infrastructure), the Overview of the Amended Provisions of the Labour Law (issued to the Ministry of Labour, Employment, Veteran and Social Affairs), the Draft Law on Rights of Veterans, Disabled Veterans, Civilians Disabled in Wars and Members of their Families (issued to the Ministry of Labour, Employment, Veteran and Social Affairs), the Bill on Consumer Protection (issued to the National Assembly) and the Bill on Restricting Ownership of Property for the Purpose of Preventing Terrorism (issued to the National Assembly).

During the reporting period, suggestion the Commissioner gave in his opinions were fully accepted in enactment of two laws, including: the Law on Health Care Documents and Records and the Law on Prevention of Doping in Sport. The Commissioner's suggestions

were partially accepted in enactment of eight laws, including: the Law amending the Law on Travel Documents, the Law amending the Law on Security Information Agency, the Law amending the Law on Planning and Construction, the Law amending the Law on Serbian Army, the Law amending the Law on Defence, the Law amending the Law on Higher Education, Law amending the Law on Electronic Communications and the Law amending the Law on Tax Procedure and Tax Administration. The Commissioner's remarks were not accepted in enactment of two laws, including: the Labour Law and the Law on Consumer Protection.

The Commissioner issued opinions on another ten draft laws or bills which have not been enacted during the reporting period, including: the Draft Law on International Restrictive Measures, the Draft Law on Military Education, the Draft Law on Higher Education, the Draft Law on Free Legal Assistance, the Draft Law on Archival Material and Archive Service, the Draft Law on Air Traffic, the Draft Law on Road Freight Transport, the Draft Law on Road Passenger Transport, the Draft Law on Rights of Veterans, Disabled Veterans, Civilians Disabled in Wars and Members of their Families, the Bill on Restricting Ownership of Property for the Purpose of Preventing Terrorism.

The Commissioner had no remarks on two draft laws, the Draft Law amending the Law on Copyright and Related Rights and the Draft Law amending the Law on Occupational Safety and Health.

Since in several cases the backers did not provide to the Commissioner draft laws to give his opinion and since he does not have the power to give direct legislative initiatives nor to submit amendments, the Commissioner was forced to provide opinions on such draft laws within his sphere of competence directly to the competent parliamentary committees, often within a short period of time. On several occasions information was published on official website of the National Assembly that a certain bill would be considered that day or the next day, which means that the Commissioner did not even have enough time to timely submit to the chairperson of the competent parliamentary committee his opinion on a specific bill.

Within the reporting period, the Commissioner issued to the competent parliamentary committees his opinions on several bills, including: the Bill on Consumer Protection – issued to the Committee on Economy, Regional Development, Trade, Tourism and Energy (the Committee did not accept the Commissioner's opinion); the Bill on Restricting Ownership of Property for the Purpose of Preventing Terrorism – issued to the Committee on Finance, Republic Budget and Control of Public Spending (this Law has not been enacted within the reporting period), as well as the Bill amending the Law on Defence and the Bill amending the Law on Serbian Army – issued to the Committee on Defence and Internal Affairs (the Committee did not accept the Commissioner's opinion, although the Commissioner previously also issued opinions on these two draft laws to the backer, but the backer did not accept them either).

The Commissioner also issued opinions on secondary legislation from the aspect of his powers. In that context, the Commissioner issued opinions on seven pieces of secondary legislation on request of competent authorities or on his own initiative, including: the Draft Regulation on the Manner of Data Collection for the Purpose of Formation and Keeping of the Single Records of Public Broadcasting Service Subscription Fee Payers (issued to the Ministry of Culture and Information); the Draft Regulation on the Requirements for and the Manner of Application of Intellectual Property Rights Protection Measures at Borders (issued

to the Ministry of Finance); the Draft Resolution on Acceptance of the Report on Evaluation of Compliance of Official Websites of Public Authorities with Document “Guidelines for Development of Websites of Public Administration Authorities version 4.0” prepared by the e-Government Directorate (issued to the Ministry of Public Administration and Local Self-Government); the draft version of the Decision on House Rules in the National Assembly Building and the draft version of the Instructions on Implementation of the Decision on House Rules in the National Assembly Building (issued to the National Assembly); the draft version of the Decree on Detailed Criteria for Designation of Confidential Data with Confidentiality Levels “Confidential” and “Internal” in public authorities (issued to the Ministry of Justice) and the Bylaw on the Content of Payroll Records for Salaries and Benefits (“Official Gazette of RS”, No. 90/14), issued to the Ministry of Labour, Employment, Veteran and Social affairs.

The Commissioner found that during the reporting period the opinion he issued on one piece of secondary legislation was fully accepted (the Regulation on the Manner of Data Collection for the Purpose of Formation and Keeping of the Single Records of Public Broadcasting Service Subscription Fee Payers).

The Commissioner also issued opinions on three strategic documents, including: the draft version of the Public Procurement Development Strategy (issued to the Public Procurement Administration); the Draft Action Plan for implementation of the Strategy for Prevention and Protection against Discrimination in the Republic of Serbia for the period 2014-2018 (issued to the Office for Human and Minority Rights of the Serbian Government) and the Draft National Youth Strategy for the period from 2015 to 2025 (issued to the Ministry of Youth and Sport).

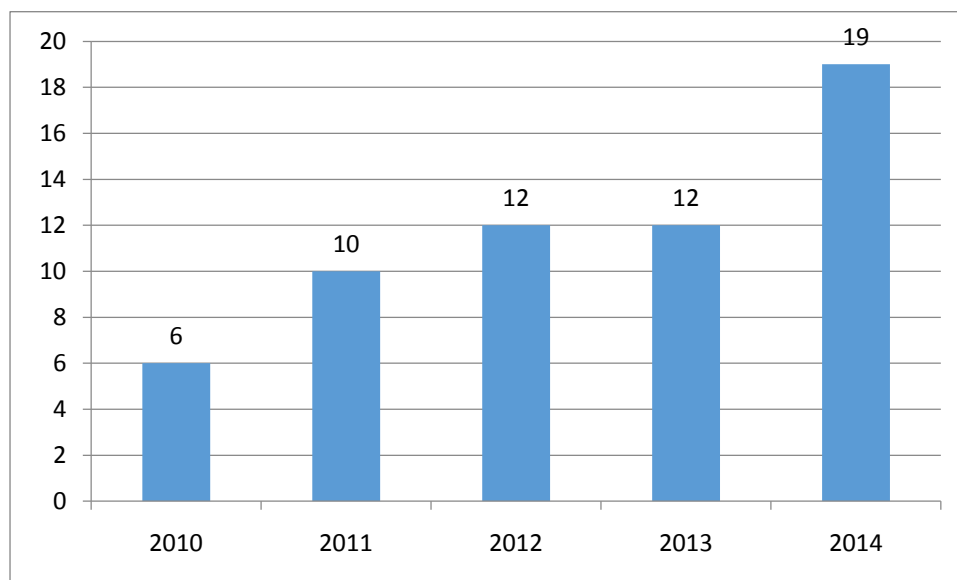
In addition to issuing opinions on laws, secondary legislation and strategic documents, the Commissioner also prepared the Model Law on Personal Data Protection, since numerous provisions of the existing LPDP are incomplete or inappropriate, while many issues are not regulated at all. After a public debate and analysis or received comments, the Commissioner submitted the Model Law to the Ministry of Justice, the authority competent for preparation of regulations on personal data protection.

The principle Commissioner’s position expressed in these opinions was that, pursuant to Article 42 of the Serbian Constitution, collecting, keeping, processing and use of personal data must be regulated by the law, instead by secondary legislation. In accordance with this, the minimum issues which must be regulated by the law include: the purpose of personal data processing, the type of personal data, the manner of use of personal data, the types of users who will have access to data and the time limits for keeping of data. Secondary legislation can regulate only technical issues in connection with data processing.

5.1.6. Commissioner's Activities in connection with Transborder Transfer of Data out of Republic of Serbia

The number of requests for transborder transfer of personal data out of the Republic of Serbia submitted to the Commissioner has been constantly increasing.

Graph 23. Overview of requests for transborder transfer of personal data handled by the Commissioner by years



In the course of 2014, the Commissioner acted on nineteen requests for transborder transfer of personal data out of Serbia. The Commissioner passed fourteen decisions pursuant to the requests, including: eight decision allowing the transborder transfer, five resolutions to terminate the procedure and one resolution dismissing a request. The remaining five requests are pending.

Requests for transborder transfer of personal data submitted in 2014 covered data relating to the following categories: employees, health professionals, researches in clinical trials, trade partners – customers, suppliers and persons whose data are processed for the purpose of control of doping in sport.

Countries to which transborder transfer was requested included the USA, Canada, India, Australia, Malaysia and the Philippines. In most cases, applicants were large business corporations which sought to transfer personal data from Serbia to their contractual processors and/or users in foreign countries for the purpose of creating centralised databases (e.g. of employees) and corporate management of those data on group level. For some categories of persons (e.g. customers, suppliers, health professionals, participants in clinical trials etc.), the purpose of transborder transfer was further processing, use and storage of data. In addition, requests handled also included those submitted by the competent institution which processes personal data and, where necessary, transfers them to a foreign anti-doping agency, on the basis of the power set under the law.

The procedure in those cases is to find all facts that may be relevant in decision-making before transborder transfer of data out of Serbia is permitted on the basis of requests and enclosed documents. In decision-making, the Commissioner takes into account all

circumstances of personal data processing by the data controller that intends to transfer those data from Serbia. The Commissioner takes into account in particular: the purpose of processing; the basis for processing; the type of personal data; the basis for transborder transfer of personal data; the manner of informing data subjects about processing and their consent for transborder transfer of data; the duration of processing for which data are taken out of Serbia; safeguards put in place before, during and after the transfer; protection of data subjects' rights and other facts relevant for decision-making in such cases. After this procedure, the Commissioner decides whether transborder transfer of personal data from the Republic of Serbia is allowed or not. A decision passed by the Commissioner may be challenged in an administrative dispute initiated pursuant to a complaint.

Judging by the requests received so far, most of them are not sufficiently substantiated and supporting documents tend to lack sufficient evidence for fact-finding for the purpose of deciding on transborder transfer of data from Serbia. On the one hand, this further complicates decision-making in these cases, while on the other hand it shows that data controllers also find it difficult to understand their obligations in connection with transborder transfer of data due to insufficient regulation of the procedure. These primarily include relevant facts in connection with: legal basis for processing and transfer; identity of data controllers responsible for processing and transfer of such data; data processors, data recipients and other persons to whom the data controller intends to make those data available; the manner in which rights, duties and responsibilities of the data controller and the processor in connection with further processing and safeguards are regulated; the manner in which the rights of individuals with regard to processing are protected etc. Due to these and other shortcomings, parties in procedures are often ordered (sometimes repeatedly) to make their requests compliant and to provide complete and proper documentation. In some cases it was necessary to carry out inspections in order to determine whether the personal data for which transborder transfer is requested would be processed in accordance with the law, which ultimately delays the procedure and extends the process of deciding on the requests.

For the purpose of clarification of the procedure and overcoming the shortcomings of LPDP in this regard, the Commissioner gives expert opinions in connection with transborder transfer of data and provides support to parties to enable them to prepare proper and duly reasoned requests and supporting documents.

The practice so far has shown that the procedure of deciding on admissibility of transborder transfer of personal data out of Serbia is insufficiently regulated, which is why it is necessary to regulate this issue in more detail and properly by the law, in accordance with the solutions contained in relevant international documents in this field.

5.1.7. Commissioner's Activities aimed at affirming of the Right to Personal Data Protection

In 2014, the Commissioner continued carrying out a number of activities on the promotion and affirmation of the right to personal data protection. These activities for example included the Commissioner's participation in educative seminars and trainings and also in round tables, conferences etc. In addition, the Commissioner addressed many data controllers by communications in which he pointed to irregularities in implementation of

LPDP. The Commissioner also informed the public or only the expert community through the media, Internet presentation, social networks and other manners of communication with citizens on the exercise and obstacles in the exercise of the right to personal data protection. Finally, the Commissioner was providing formal, and often also informal, assistance and advice to citizens for efficient implementation of LPDP.

Trainings/Seminars

The Commissioner held a number of lectures in the field of personal data protection, including: a lecture for civil servants, organized by the Human Resource Management Service; a lecture for companies, organized by the Centre for Human Resource Development and Management; a lecture for gerontology centres, organized by the Gerontology Centre Belgrade; a lecture for participants in the seminar titled “Protection of Personal Data in New Regulations on Health Care Records”; a lecture for NGOs, organized by the Women’s Association “Femina” in Smederevska Palanka; an online seminar titled “Protection of Data and Right to be Forgotten”, organized by the Diplo Foundation; a lecture for the media, organized by the Independent Journalists’ Association of Vojvodina and the Konrad-Adenauer Foundation; a lecture for participants of the “e-Government Olympics”, within the framework of the IS DOS 2014 e-Government Conference; a lecture for representatives of local health counsellors and patient right protection counsellors, organized by the Ombudsman, in cooperation with USAID; a lecture for participants in an advisory meeting titled “Retail Banking”, organized by the Association of Serbian Banks; a lecture for patient right counsellors in Subotica; a lecture for students of the Academy of Criminalistics and Police; a lecture for students of the Diplomatic Academy, organized by the Ministry of Foreign Affairs; a lecture for students of the Faculty of Organizational Sciences; a lecture for participants in the seminar titled “Working with Confidential Data in a Contractual Relationship – How to Select a Contractor in Confidential Contracting”, organized by the Serbian Chamber of Commerce and the Office of the Council for National Security and Protection of Confidential Data of the Serbian Government etc.

Conferences/Round Tables

As part of commendation of the European Data Protection Day, 28 January, the Commissioner organized a conference for the public, at which he presented the main challenges in the field of personal data protection and in the Commissioner’s work. In addition, the Commissioner took part in a number of conferences in the field of personal data protection, e.g.: the conference titled “Borders of Institutional Freedoms: How to Protect Data from those Who Publish Data?”, on invitation from the Balkan Investigative Reporting Network (BIRN Serbia); the fourth Belgrade Security Forum titled “Europe 2014: Closure and/or New Beginning?”, which was dedicated to the most important issues in regional and international foreign policy, security and economy and was organized by the Belgrade Fund for Political Excellence, the European Movement in Serbia and the Belgrade Centre for Security Policy; the ninth European Legal and Political Forum titled “Free Access to Information of Public Importance and the Law on Personal Data Protection: How to Ensure Transparency of the Judiciary and Other Institutions”; IV cycle of expert lectures dedicated to designing of telecommunication networks and systems, titled “Video Surveillance Systems”, which was organized by the Serbian Chamber of Engineers, the Serbian Chamber of Commerce and the “Mihajlo Pupin” Institute; the round table titled “Let’s Join the Global Debate on Balance between Security and Privacy”, organized by the Centre for Euro-Atlantic

Studies; the conference titled „Negotiating Negotiations – Participation of Civil Society in Negotiation Process on Serbian Accession to EU”, organized by the Centre for European Integration and the Belgrade Open School; the round table titled “e-Government Services and Guaranting of Privacy”, organized by the Serbian Chamber of Commerce; the ninth European Legal and Political Forum titled “Free Access to Information of Public Importance and the Law on Personal Data Protection: How to Ensure Transparency of the Judiciary and Other Institutions”, organized by the German Agency for International Cooperation (GIZ) and the Independent Journalists’ Association; the round table titled “Working with Confidential Data in a Contractual Relationship – How to Select a Contractor in Confidential Contracting”, organized by the Serbian Chamber of Commerce and the Office of the Council for National Security and Protection of Confidential Data of the Serbian Government; the conference titled “Protection of Privacy in Serbia”, organized by the Friedrich Naumann Foundation and the Partners of democratic Change Serbia and many other.

5.2. Acting of Judicial Authorities and Constitutional Court in the field of Personal Data Protection

5.2.1. Acting of Prosecutors’ Offices on Criminal Reports filed by the Commissioner

During the course of 2014, the filed 4 criminal reports, including 3 for the criminal offence referred to in Article 146 of the Criminal Code and 1 for unauthorized access to a protected computer, computer network and electronic processing of data referred to in Article 302 of the Criminal Code. By the end of the reporting period, one criminal report was rejected, while the remaining are pending.

The only Commissioner’s criminal report which was rejected related to unauthorized collecting of personal data referred to in Article 146, paragraph 3 taken together with paragraph 1 of the Criminal Code and was rejected on the basis of the principle of opportunity of prosecution, because the suspect complied with his duty. Namely, on the basis of the decision to defer criminal prosecution, the suspect must pay the specified amount to the account of the Serbian Government for the purpose of flood relief, which the suspect did.

The Commissioner is not aware of any criminal proceedings initiated pursuant to the criminal reports he filed. This is certainly reason enough to include this issue in the Report. The Commissioner believes that the criminal reports he filed with the public prosecutors’ offices build strong enough cases for further prosecution, to ensure the detection and appropriate punishment of the committers of those criminal offences.

5.2.2. Acting of Magistrates’ Courts on Petitions for Initiation of Infringement Proceedings filed by the Commissioner

In 2014, the Commissioner filed 35 petitions for initiation of infringement proceedings against violations of LPDP. In the same period, the Commissioner received 39 judgements of Magistrates’ Courts (first instance and second instance) pursuant to petitions

for infringement proceedings he filed in the previous period. Of these 39 judgements, 27 were convictions, 2 were exonerating judgements, 3 proceedings were terminated, 2 complaints were dismissed as untimely, 1 complaint was rejected, 1 judgement was overturned and the case was returned for renewed procedure, 1 Commissioner's appeal was upheld and the case was returned for repeated decision-making to the first-instance court, while two complaints by indicted persons were upheld and cases were returned for repeated decision-making to the first-instance court.

The Commissioner notes that an analysis of these 39 judgements delivered by Magistrates' Courts reveals that certain cases with identical factual and legal basis often resulted in opposite decisions by different Magistrates' Courts. Based on the foregoing, the Commissioner believes Magistrates' Courts do not treat the issue of personal data protection with the attention it deserves as a right guaranteed by the Constitution of Serbia. If we analyse the majority of these judgements, i.e. 27 convictions, it can be seen that in five judgements the indicted persons received only a caution, while in the remaining 22 judgements fines were imposed on indicted persons in the total amount of RSD 718,000, which means that an average fine imposed amounted to RSD 32,400. If we compare this to the range of fines specified by the law, it is quite obvious that the amounts of fines imposed are much closer to the statutory minimum than the statutory maximum. Finally, of three terminated procedures, two were terminated due to the expiration of the absolute statute of limitations applicable to the initiation and conduct of infringement proceedings, which is two years; this is an issue that has been raised by the Commissioner, to little avail, in the process of drafting and enactment of the new Law on Misdemeanours.

5.2.3. Acting by Administrative Court

In the course of 2014, the Administrative Court received 19 legal actions against the Commissioner's decision, which it submitted to the Commissioner for reply. Two legal actions were filed against the Commissioner's decision ordering rectification of certain irregularities, one was filed against the decision forbidding transborder transfer of data from Serbia to the USA, eight against decisions rejecting requester's complaints against data controllers' decisions, two against administrative silence, one against the decision ordering honouring with the request, one against the decision overturning the data controller's decision and honouring the request, one against the decision dismissing the complaint, one against the decision rejecting the request for access to information, one against the resolution rejecting the complaint as inadmissible and one against the Commissioner's reply to a requester of information of public information.

In the course of 2014, the Administrative Court ruled on 19 legal actions, by rejecting nine, upholding one and returning the case to the Commissioner for renewed procedure, dismissing 3 and terminating the proceedings in 6 cases. In one case when the Administrative Court rejected legal actions, the prosecutor filed to the Supreme Court of Cassation a motion for review of the contested judgement of the Administrative Court and the Supreme Court of Cassation dismissed the request by its judgement.

On this occasion, it is not necessary to present in detail the judgements by which the Administrative Court rejected or dismissed legal actions against the Commissioner or by which the Court terminated the proceedings; instead, we would like to point to the only judgement of this Court by which it upheld the legal actions against the Commissioner and

returned the case for renewed procedure. In this case, the Commissioner dismissed by a resolution the complaint against the decision of the Ministry of Internal Affairs due to lack of jurisdiction, by which the complainant's request to obtain information on home address of a person was rejected as unjustified. The Commissioner found that this specific case does not constitute exercise of the rights in connection with personal data protection under LPDP, because the rights in connection with personal data processing protected by the Commissioner as a second-instance authority, in accordance with the provisions of LPDP, can be exercised only by data subjects. In view of the fact that the complainant did not request the data pertaining to him, but to another person, more specifically, information on another person's home address, and that he invoked the Law on Enforcement and Security, the Commissioner dismissed the complaint due to lack of jurisdiction. Since this case includes the procedure of issuing of a certificate of residence for another person instead for the complainant, the competent authority is the Ministry of Internal Affairs, which should determine whether the complainant has a legal interest in access to information on permanent and temporary place of residence of another person by checking compliance with the statutory requirements under the Law on General Administrative Proceedings and the Law on Permanent and Temporary Place of Residence of Citizens. The Ministry of Internal Affairs did so by issuing a decision rejecting the request in question.

The Commissioner's resolution rejecting the complaint was appealed by a legal action before the Administrative Court, which upheld the legal action, overturned the Commissioner's resolution and returned the case for renewed procedure. In the statement of reasons, the Administrative Court explained that, under Article 24, paragraph 1 of the Law on Permanent and Temporary Place of Residence of Citizens, records of permanent and temporary place of residence and temporary place of residence in foreign countries are maintained electronically by the ministry competent for internal affairs, while under Article 25, paragraph 3 of the same Law, on request from courts, public administration authorities, other authorities or organizations and other legal entities or natural persons who have justified legal interest, the competent authority must provide the requested information from the records of citizens' permanent and temporary place of residence, in accordance with the regulations providing for personal data protection. The judgement further states that the right to provision or access to requested information from the records of citizens' permanent and temporary place of residence is exercised in accordance with the regulations providing for personal data protection, which means that the allegations of the respondent (the Commissioner) had no bearing of the decisions in this administrative matter.

5.2.4. Acting by the Constitutional Court

Under Article 168, paragraph 1 of the Constitution of Serbia, the Commissioner, as a government authority, has the power to file motions for the Constitutional Court to review the constitutionality and lawfulness of laws and other regulations.

In the past period, the Commissioner filed motions with the Constitutional Court for constitutional reviews of certain provision of four laws – the Law on Personal Data Protection (independently), the Law on Electronic Communications, the Law on Military Security Agency and Military Intelligence Agency and the Code of Criminal Procedure (together with the Ombudsman).

The Constitutional Court has so far ruled on motions for constitutional reviews of three laws (the Law on Personal Data Protection, the Law on Electronic Communications and the Law on Military Security Agency and Military Intelligence Agency), while in 2014 it passed the Resolution by which it terminated the procedure for constitutional review of Article 286, paragraph 3 of the Code of Criminal Procedure (“Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014). The motion for a constitutional review was filed jointly by the Commissioner and the Ombudsman on 28 May 2012. The challenged provision reads as follows: “Upon the orders of a public prosecutor, the police may, for the purpose of complying with the duty provided for in paragraph 1 of this Article, obtain records of phone communications and base stations used or identify the location from which such communication is conducted.” In the opinion of the Commissioner and the Ombudsman, this provision is incompliant with Article 41 paragraph 2 of the Constitution of Serbia, because it allows for the application of special measures which derogate from the inviolability of letters and other communication without a court order, based only on an order issued by a public prosecutor to the police. The unconstitutionality of this view has already been affirmed in earlier decisions of the Constitutional Court.

During the procedure before the Constitutional Court pursuant to this motion, the Code amending the Code of Criminal Proceedings (“Official Gazette of RS” No. 55/2014) was enacted, which amended the provision in question by stipulating in Article 6 of this Code that: “In Article 286, paragraph 3, words: “Upon the orders of a public prosecutor...” shall be amended by words: “Upon the orders of a pre-trial judge, on proposal of a public prosecutor...”. The Constitutional Court concluded that the legislator brought the challenged provision in compliance with article 41, paragraph 2 of the Serbian Constitution by this amendment and terminated the procedure for review of constitutionality by a resolution.

6. COMMISSIONER’S COOPERATION

6.1. Cooperation in the Country

Cooperation with Public Authorities and Organizations

The relations between the National Assembly of the Republic of Serbia and the Commissioner are complex and multifaceted. Cooperation between the National Assembly of the Republic of Serbia and the Commissioner in 2014 took place in accordance with the practice which has been established and applied for several years. On this occasion, we would particularly like to emphasize the following forms of cooperation.

The Commissioner submitted his Report on Implementation of the Law on Free Access to Information and the Law on Personal Data Protection for 2013 to the National Assembly of the Republic of Serbia in March 2014. The same Report was submitted to the President of the Republic, the Ombudsman and the Government of the Republic of Serbia in accordance with the Law.

The Commissioner’s Report for 2013 was reviewed by the Committee on Human and Minority Rights and Gender Equality, on its session held on 30 May 2014, and the

Committee on the Judiciary, on its session held on 2 June 2014. Based on the Commissioner's recommendations, the Committees prepared Draft Conclusions and submitted them to the National Assembly for review and adoption after the review of the Report. On 5 July 2014, after review of the Commissioner's Report and recommendations of the competent committees, the National Assembly passed the Conclusions upholding the Commissioner's recommendations contained in the Report. The Conclusions were published in the "Official Gazette of RS", No. 60/2014 of 6 July 2014 and posted on the Commissioner's website.

On this occasion, we would particularly like to emphasize the following conclusions: the National Assembly welcomed the results achieved by the Commissioner which contributed to democratic supervision of the Government by the Public, as well as the protection of citizens' right to privacy; there is a scope for further improvement of the regulations providing for freedom of information of public importance and personal data protection; it is necessary for all competent governmental authorities to take necessary measures to ensure implementation of the Commissioner's recommendations as thoroughly as possible; respect of the right to privacy must be particularly improved in the security and electronic communications sector; the Assembly invited the Government to enact the Action Plan for implementation of the Personal Data Protection Strategy as soon as possible; the Assembly made a commitment to contribute to consistent implementation of laws in this field as part of its supervisory role of the Government's work; the Assembly invited the competent authorities and holders of public powers to take necessary measures for implementation of the Commissioner's recommendations given in the Commissioner's reports year after year; the Assembly invited the Government to review the existing and propose new arrangements for the Law on Access to Information and LPDP; the Assembly ordered the Government to submit a report on implementation of these conclusions within six months.

Even at a glance, it is obvious that the competent authorities have not or have not fully implemented these conclusions. The Commissioner does not know whether the Government submitted to the Assembly the report on implementation of these conclusions within the specified time limit of six months.

The next level of relations between the Assembly and the Commissioner is achieved through direct cooperation between the Commissioner and the competent parliamentary committees, particularly when committees review bills or amendments to laws which among other things regulate the issues from the Commissioner's sphere of competence. Since the Commissioner often does not receive draft laws from the backers before the review and adoption of laws by the Government and he does not have the power to directly submit legislative initiatives, he is forced to submit opinions within his sphere of competence directly to the competent parliamentary committees, which as a rule do not accept the Commissioner's opinions. During the reporting period, the Commissioner did so in cases of several laws (*for more details, see: [5.1.5. Issuing of Opinions](#)*).

Further, in November 2014, the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly endorsed the Bylaw on Internal Organization and Job Classification in the Commissioner's Office. In December 2014, this Committee approved full-time employment of seven new employees in the Commissioner's Office, thus allowing the Office to develop further to match the increasing volume of its work.

Also, as part of celebration of the 10th anniversary of the Commissioner's work, the Culture and Information Committee organized a session in the form of a round table, which was attended by representatives of independent governmental authorities and institutions, as well as representatives of other governmental authorities, journalists' associations, representatives of embassies and NGOs dealing with the protection of human rights.

The Commissioner also took part in the first session of the Parliamentary Committee on Stabilization and Association which addressed implementation of the Copenhagen criteria for joining the EU as well as implementation of the Stabilization and Association Agreement and the key reforms.

On the invitation of certain parliamentary committees, the Commissioner attended also other parliamentary committee sessions and took part in public hearings and other events they organised in 2014, dealing with the issues of the role of independent public authorities in the protection and promotion of human rights, improvement of the legislative framework, public information and other issues of relevance for the Commissioner's sphere of competence.

The Commissioner pointed to the Committee on Finance, Republic Budget and Control of Public Spending the need to amend certain provisions of the Bill on Restricting Ownership of Property for the Purpose of Preventing Terrorism, from the aspect of the Law on Personal Data Protection, and issued an opinion on the Bill on Consumer Protection, also from the aspect of LPDP, to the Committee on Economy, Regional Development, Trade, Tourism and Energy.

As regards the relations between the Commissioner and the Government, it should be emphasized that the Commissioner has drawn the attention of the Government to specific issues of relevance for his scope of work, such as the issue of passing the new or significant amendments to LPDP, the amendments to the Law on Access to Information, the need for enactment of an implementing regulation on keeping and archiving of particularly sensitive personal data, the Action Plan on Implementation of the Personal Data Protection Strategy, implementation of the Law on Data Confidentiality, implementation of certain provisions of the Code of Criminal Procedure etc. These efforts have not yielded satisfactory results, other than the fact that the Government's strategic documents provide for the same activities to be taken by the Government and/or competent public authorities in connection with those issues over and over again .

The Commissioner's relations with Ministries, other public authorities and local authorities were based on relations of the authority of the second instance to the authority of the first instance, provision of assistance through education seminars and other expert meetings, provision of opinions and initiatives in connection with enactment and amendments to regulations and regular consultations between the representatives of these authorities and the Commissioner's Office.

In 2014, the Commissioner maintained good cooperative relations with other independent and autonomous government authorities and supervisory bodies, notably the Ombudsman, the Anti-Corruption Agency, the State Audit Institution and the Commissioner for Protection of Equality, on issues concerning possible improvements in their operations.

Cooperation with Civil Society Organizations

In 2014, the Commissioner continued developing well-established cooperation with civil society organisations. Cooperation with the civil sector took place primarily through organisation of various expert meetings for the purpose of training and affirmation of the right to know and the right to personal data protection.

Thus, the Commissioner took part in many conferences, panels and other similar events organised by civil society organisations and associations, either alone or in cooperation with government institutions and/or international organisations. The Commissioner established cooperation and participated in meetings organized by: Transparency Serbia, Belgrade Centre for Human rights, European Movement in Serbia, Bureau for Social Studies, Centre for the Development of the Non-Profit Sector, Centre for Research, Transparency and Accountability, Partners for Democratic Change Serbia, Aarhus Centre, Victimology Society, Open Society Fund, Belgrade Open School, International Security Institute, Centre for European Policies, Youth Initiative, Centre for Minority Rights, Centre for Cultural Decontamination, Human Rights Centre Nis, Media Centre Nis, Centre for Euro-Atlantic Integration, Lawyers' Committee For Human Rights, Autonomous Women's Centre, IT Society of Serbia, Civil Initiatives, Serbia's National Internet Domain Register, Centre for Euro-Atlantic Studies, Fund for Political Excellence, Forum for Ethnic Relations, Zajecar Initiative, Foundation for Development of Economic Science, Share Foundation, Partners for Democratic Change Serbia, Ambassadors for Sustainable Development and Environment etc.

Media Relations and Media Reporting on Commissioner's Activities

In the course of 2014, the Commissioner continued building on the already good cooperation with the media. Reporting on the Commissioner's activities has overall been highly positive.

Cooperation was particularly good with the Independent Association of Journalists of Serbia, the Association of Journalists of Serbia, the Association of Independent Electronic Media and online media.

6.2. International and Regional Cooperation

The Commissioner's international cooperation in 2014 was successful, just like in previous years. In addition to the already established cooperation with offices of international and supranational organisations in Serbia (OSCE, United Nations Development Program – UNDP, the Delegation of the European Union to the Republic of Serbia, the Council of Europe, United States Agency for International Development - USAID), the Commissioner also established cooperation with other organisations and public authorities. Thus, the Commissioner cooperated with competent institutions in the region and in the countries of former Yugoslavia. This cooperation was established both in the field of personal data protection and in the field of freedom of information. Apart from regional cooperation, the Commissioner also cooperated with the information commissioners and other freedom of information and data protection authorities in Europe and internationally.

Through participation in several important international conferences the Commissioner established cooperation with authorities of other states responsible for both or one of his spheres of competence.

The Commissioner's representatives also participated in the following international and meetings:

- The 6th CEEDPA (Central and East Europe Data Protection Authorities) Conference, held in Skoplje, on 2-3 April 2014;
- A conference "Proactive Transparency of Public Authorities in BiH: the Next Step in Exercise of Freedom of Information", organized by the Centre for Social Research Analitika Sarajevo;
- IX Internet Governance Forum, dedicated to the protection of human rights and the right to privacy on the Internet, held in Istanbul 3-5 September 2014;
- VIII South East Europe Media Forum "Media in South East Europe: Not enough or too much information?", held in Skoplje on 16-18 October 2014;
- A conference "Media and European Standard", organized in Banjaluka by the Friedrich Ebert Foundation, Association of Journalists of Bosnia and Herzegovina and the Transparency International BiH.

During the reporting period, the Commissioner also met on several occasions and had several talks with other representatives of European and international institutions and of neighbouring countries about the improvement of human rights and the fight against corruption and personal data protection. The Commissioner was a host and talked to ambassadors and representatives of international organisations and states, such as Head of the Delegation of the European Union to the Republic of Serbia, Head of the OSCE Mission to Serbia, Head of the Council of Europe Office in Belgrade, a representative of the United States Agency for International Development (USAID) in Serbia, Head of the country unit of the EC Directorate Enlargement, members of the EC Expert Committee on the Rule of Law, a representative of the US Embassy in Belgrade, a representative of the Public Management and e-Government Agency of the Kingdom of Norway, a member of the MATRA Programme delegation from the Embassy of the Kingdom of Holland, representatives of the World Bank which administrate analysis of the judiciary, the British Minister of State for Europe, MP of the German Bundestag etc.

The Commissioner participated in signing of the Operative Agreement between the Republic of Serbia and Europol as a member of delegation of the Republic of Serbia.

The Commissioner visited the Austrian Personal Data Protection Agency, on which occasion they exchanged experience in work, particularly in the field of personal data protection. On that occasion, the Commissioner also visited the Embassy of the Republic of Serbia to Austria.

The Assistant Secretary General of the Commissioner's Office took part in the Bureau of the Advisory Committee of the CoE Convention on Personal Data Protection as a member serving as the deputy chairperson (Convention 108 for the Protection of Individuals with regard to Automatic Personal Data Processing). The Bureau of the Advisory Committee is a working body consisting of seven elected members, appointed personally for a two-year term.

Cooperation on Projects

Within the framework of the Bilateral Program with the Kingdom of Norway for 2014, the Commissioner applied for the project titled Building of the Commissioner's Capacities for Efficient and Effective Exercise of Legal Powers and Ensuring of Exercise of Freedom of Information and Right to Personal Data Protection, in accordance with the European standards.

The Ministry of Foreign Affairs of the Kingdom of Norway, as the donor of financial support to projects coordinated by the European Integration Office of the Government of the Republic of Serbia, informed the Commissioner in October that funds intended for support to projects in 2014 will be redirected for flood relief in Serbia. Because of this, the outcome of and further activities on this project will be reviewed in 2015, which was discussed with representatives of the European Integration Office of the Serbian Government.

7. ABOUT THE COMMISSIONER'S ASSETS AND OFFICE

Assets – Funds Received and Expenses Incurred by the Commissioner

The operations of the Commissioner and his Office are funded from the budget of the Republic of Serbia.

Premises

The Commissioner has been using official premises in Bulevar Kralja Aleksandra 15 in Belgrade since mid-October 2013, allocated to him on the basis of the Resolution of the Government's Committee on Housing and Allocation of Official Buildings and Offices 77 No. 361-6726/2013 of 2 August 2013. This is when the problem of insufficient space for work, which persisted since 2005, was finally resolved. However, the consequences of inability to hire the necessary number of employees due to the years-long issue of lack of appropriate office space still affect the promptness in handling of cases, due to the backlog of several hundreds of cases.

Equipment

The Commissioner has at his disposal the equipment which is sufficient to cover the existing capacities of the Office. The equipment was purchased from the Commissioner's budget and some of it is the property of the Administration for Joint Affairs of Republic Authorities.

In 2014, equipment worth RSD 3,125,157.55 was purchased from the Commissioner's budget allocation for new employees and to replace the existing equipment which was no longer functional or was not appropriate for increasing needs. This includes primarily computer equipment, including antivirus software, as well as photocopiers, phones and some of the missing furniture for the Commissioner's premises, as presented in the table below.

Table 4. Commissioner's equipment for work

No.	Fixed assets	Quantity	Price per item, incl. of VAT	Total
1	Chair NS ISO black/C11 - black	20	1,989.99	39,799.93
2	Laptop Probook 430 Core I3-4005U FOX33EA	1	95,734.80	95,734.80
3	Laptop HP250 DC B960/4GB/500GB/Torba/WIN/Office	2	78,633.60	157,267.20
4	Work station Smartbox I3-3240/WIN7 Pro/Office H/B/LG	14	88,909.20	1,244,728.80
5	Administrative assembly Notebook Lenovo Think PAD X1 Helix Multi	1	206,085.60	206,085.60
6	Server NAS Storage QNAP/24TB	1	394,180.80	394,180.80
7	Printer HP Laserjet Enterprise P3015DN	6	67,964.40	407,786.40
8	GPS device Garmin Nuvi 42 LM EE	1	14,990.00	14,990.00
9	Antenna Ubiquiti UniFI indoor (UAP) Wireless AP 2.4 GHz, 802.11 MIMO	8	15,360.00	122,880.00
10	Phone SIP-T19P ip	9	6,600.00	59,400.00
11	Phone SIP-T28P ip	1	16,800.00	16,800.00
12	Photocopier RICOH Aficio MP 2501SP	1	236,669.62	236,669.62
13	Antivirus Endpoint 100-249 users GOV Eset LIC - 100 users	1	128,834.40	128,834.40
Total				3,125,157.55

After a public procurement procedure of small value – purchase of mobile telephony services and IP telephony – and signing of the Contract No. 404-02-16/2014-04/11 of 31 July 2014 with Telenor d.o.o. company, mobile phones HTC Desire 500 (10 pieces per price of RSD 1) and Telenor Smart 2 (41 per price of RSD 1) were delivered to the Commissioner. For the purpose of registering the delivered equipment on the Fixed Assets Ledger maintained by the Administration for Joint Affairs of Republic Authorities, a commission was formed to establish the actual market price of purchased mobile phones and to prepare a report on evaluation of the value of mobile phones.

Table 5.

No.	Fixed assets	Quantity	Price per item, incl. of VAT	Total
1	Mobile phone HTC Desire 500	10	35,000.00	350,000.00
2	Mobile phone Telenor Smart 2	41	12,000.00	492,000.00
Total				842,000.00

Budget

Approved Budget Allocation

The Law on Budget of the Republic of Serbia for 2014 ("Official Gazette of RS", No. 110/2013) **approved an allocation of RSD 162,695,000.00 to the Commissioner**, in accordance with the Commissioner's Draft Financing Plan. **The budget revision** carried out in October ("Official Gazette of RS", No. 116/2014) reduced the Commissioner's allocation by about 0.5%, while after the budget revision carried out in December ("Official Gazette of RS", No. 142/2014), the approved allocation to the Commissioner remained the same as in the October and it **amounts to RSD 161,937,000.00**.

Budget Execution

In 2014, RSD 130,904,707.78 or 80.84% of the approved budget funds was spent on the Commissioner's work.

This under-utilisation of the approved funding for 2014 by the Commissioner can in part be attributed to the fact that the human resource plan for hiring of the necessary number of employees, according to which funds for salaries were planned, was not achieved and in part to the non-wasteful spending of funds.

Table 6. - Execution of the Commissioner's budget for 2014

Function	Source of finance	Economic classification	Description	Funds approved under the Law on Budget of the Republic of Serbia ("Official Gazette of RS", No. 110/2013)	Funds approved under the Law on Budget of the Republic of Serbia ("Official Gazette of RS", No. 116/14 and 142/14)	Executed	% of execution
160	01	411	Salaries and fringe benefits	110,300,000.00	109,653,000.00	93,145,015.17	84.95
		412	Social contributions payable by employer	19,800,000.00	19,689,000.00	16,583,557.23	84.23
		413	Compensations in kind	280,000.00	280,000.00	1,870.00	0.67
		414	Social benefits to employees	1,090,000.00	1,090,000.00	120,747.77	11.08
		415	Compensation for employees	2,700,000.00	2,700,000.00	2,050,765.15	75.95
		416	Rewards and bonuses	100,000.00	130,000.00	127,764.00	98.28
		421	Recurrent expenses	4,820,000.00	4,820,000.00	3,332,290.55	69.13
		422	Travel expenses	2,400,000.00	2,370,000.00	634,886.40	26.79
		423	Contracted services	10,600,000.00	10,600,000.00	6,502,147.19	61.34
		425	Current repairs and maintenance	1,650,000.00	1,650,000.00	1,501,889.74	91.02
		426	Material	5,250,000.00	5,250,000.00	3,498,919.03	66.65
		482	Taxes, statutory charges and penalties	405,000.00	405,000.00	279,698.00	69.06
		512	Machines and equipment	3,150,000.00	3,150,000.00	2,996,323.15	95.12
		515	Intangible assets	150,000.00	150,000.00	128,834.40	85.89
TOTAL 01 Budget revenues				162,695,000.00	161,937,000.00	130,904,707.78	80.84
TOTAL FOR FUNCTION 160:				162,695,000.00	161,937,000.00	130,904,707.78	80.84

Apart from staff salaries, fringe benefits and contributions, the largest share of the Commissioner's expenses in 2014 was attributable to computer services, administrative

equipment, communication services, fuel costs and current maintenance and repairs of equipment.

Table 7.

DESCRIPTION	Утрошена средства
Recurrent costs	
Communication services (costs of Internet connections, mobile and landline phone services)	2,777,919.52
Contracted services	
Computer services (services of computer and software maintenance)	3,562,440.00
Current repairs and maintenance	
Current repairs and maintenance of equipment (transport equipment, computer equipment, communication equipment)	1,258,448.14
Material	
Transport material (fuel and other material for vehicles)	2,326,008.81
Machines and equipment	
Administrative equipment (computer equipment, electronic equipment, phones, furniture)	2,996,323.15

Commissioner's Office

For the purpose of exercising the powers with which this institution is vested under the Law on Access to Information and by the Law on Personal Data Protection, **according to the Human Resources Plan, in 2014 the Commissioner should have had 73 employees**, excluding the officials appointed by the National Assembly (the Commissioner and two Deputy Commissioners). The Ministry of Finance had agreed to this arrangement and secured budget funding. The Human Resources Plan for 2014 could not be achieved due to the limitation of employment and the lack of funds.

In 2014, certain changes have been introduced in organization of the work of the Commissioner's Office by enactment of the Bylaw on Internal Organisation and Job Classification No. 110-00-00004/2014-04 of 4 November 2014, which was approved by the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly by its enactment 21 No. 02-4056/14 of 21 November 2014. The Bylaw entered into force on 2 December 2014.

According to the new Bylaw on Internal Organisation and Job Classification, the total number of employees at the Commissioner's Office remained the same as in the previous Bylaw (a total of 94 employees).

As at 1 January 2014, the Commissioner's Office had 50 full-time employees. Employment of 6 civil servants pursuant to a public call for job application in 2013 was completed in January, after provision of the necessary office space. Three civil servants have left the Office, meaning that **as at 31 December 2014 the Commissioner's Office had 56 full-time employees, i.e. its staffing level was approximately 59% of the total classified number of employees.**

In 2014, the Commissioner's Office did not hire persons under service contracts.

8. COMMISSIONER'S PROPOSALS AND RECOMMENDATIONS

Pursuant to Article 8, paragraph 1 of the Law on National Assembly and Article 238, paragraph 5 of the Rules of Procedure of the National Assembly, **on proposal of the Committee on Human and Minority Rights and Gender Equality**, on its Fourth Special Session in 2014, held on 5 June 2014, **the National Assembly of the Republic of Serbia passed the CONCLUSION¹⁷ in connection with the review of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2013** with the following content:

“1. The National Assembly finds that of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2013, as in the previous years, presented in an analytical manner the situation in the fields of freedom of information of public importance and personal data protection, concluding that significant results have been achieved in protection and affirmation of freedom of information and personal data protection.

However, taking into account that the Commissioner for Information of Public Importance and Personal Data Protection finds that the key condition for further progress in the exercise of citizens' rights is to change slow and passive treatment of citizens' requests by the competent governmental bodies and holders of public powers, the National Assembly invites the competent authorities and holders of public powers to take necessary measures for implementation of the Commissioner's recommendations given in the Commissioner's reports year after year.

2. With regard to the conclusions of the Commissioner for Information of Public Importance and Personal Data Protection, the National Assembly invites the Government to review the existing and propose new arrangements for the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection, with the aim of ensuring efficient implementation of the principles set out in these Laws. It is necessary to regulate the mechanism of mandatory obtaining of the Commissioner's opinions in the procedure of enactment of laws, to adjust sanctions for criminal offences with the law providing for criminal offences and to bring stands into compliance in order to prevent the practice of different interpretations of certain legal provisions.

The National Assembly finds that the Government must enforce the Commissioner's final, enforceable and binding decisions, in accordance with the relevant legal provisions, and apply measures from its sphere of competence, using the existing legal mechanisms, through the competent ministry, by initiating procedure for determination of accountability for omissions in the work of governmental bodies, as well as accountability of officials who failed to comply with their duties in accordance with the law.

3. The National Assembly recalls that the Government has the duty to ensure implementation of the law providing for data confidentiality as soon as possible by enactment of secondary legislation, because without such regulations this Law is unenforceable, and thus ensure its implementation and the exercise of citizens' right to personal data protection in accordance with international standards.

¹⁷ The Conclusion of the National Assembly of the Republic of Serbia No. 43 of 5 June 2014.

The National Assembly particularly supports the Commissioner's efforts aimed at respecting of the constitutional principle that personal data processing can only be regulated by a law.

4. With the aim of ensuring the consistent legal system in the fields of freedom of information and personal data protection, the National Assembly made a commitment to make every effort to ensure respect of the main principles of freedom of information and personal data protection in proposed individual legal arrangements, particularly when the Commissioner for Information of Public Importance and Personal Data Protection points to that.

5. The National Assembly recalls that the Government has the duty to ensure as soon as possible full independence of the work of the Commissioner for Information of Public Importance and Personal Data Protection by providing adequate space and other material conditions so that Commissioner could exercise his powers in protection and improvement of human rights and freedoms in this field to the full capacity.

6. The National Assembly supports efforts and activities of the Commissioner for Information of Public Importance and Personal Data Protection on the exercise and further improvement of freedom of information and personal data protection.

7. The National Assembly puts an obligation on the Government to submit a report on implementation of these conclusions to the National Assembly within six months.

8. This Conclusion shall be published in the "Official Gazette of the Republic of Serbia".

On the same session, **on proposal of the Committee on Human and Minority Rights and Gender Equality, the National Assembly of the Republic of Serbia passed the CONCLUSION in connection with the review of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2013¹⁸**, with the following content:

1. The National Assembly welcomes the results achieved by the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as "the Commissioner") which contributed to democratic supervision of the Government by the Public, as well as the protection of citizens' right to privacy.

2. The National Assembly concludes that there is still scope for further improvement of the regulations providing for freedom of information of public importance and personal data protection and concludes that although the recommendations of the National Assembly have already been adopted, secondary legislation necessary for implementation of the Law on Data Confidentiality has not been adopted, therefore it is necessary to initiate preparation of these regulations.

3. The National Assembly concludes that it is necessary for all competent governmental authorities to take necessary measures to ensure implementation of the Commissioner's recommendations as thoroughly as possible, particularly to avoid the so-called administrative silence and unjustified invoking of data confidentiality,

¹⁸ The Conclusion of the National Assembly of the Republic of Serbia No. 42 of 5 June 2014.

which are, according to the Commissioner, the most frequent reasons for lodging of complaints with the Commissioner in the field of freedom of information.

4. The National Assembly emphasizes that respect of the right to privacy must be particularly improved in the security and electronic communications sectors.

5. the Assembly invites the Government to enact the Action Plan for implementation of the Personal Data Protection Strategy as soon as possible.

6. The National Assembly made a commitment to contribute to consistent implementation of laws in this field as part of its supervisory role of the Government's work.

7. This Conclusion shall be published in the "Official Gazette of the Republic of Serbia".

This Commissioner's Report shows the situation in the Commissioner's spheres of competence and the activities and measures he took in 2014. **Judging by the reported data, significant results have been achieved again in 2014 in affirmation and protection of freedom of information and the right to personal data protection.**

However, in both of these spheres of competence, a key precondition for continued work of the Commissioner and improvement of the situation is a change in the practice of slow or absolutely passive response from the competent authorities to identified obstacles in the Commissioner's work which hinder the exercise of the rights year after year, but are beyond the Commissioner's control.

If implementation of the above Conclusion of the National Assembly is analysed in the light of the factual situation presented in this Report, the Commissioner can conclude that the majority of conclusions have not been implemented.

It is a fact that the National Assembly, as part of its supervisory function of the Government's work, put an obligation on the Government to submit to the National Assembly a report on implementation of the above conclusions within six months.

In that regard, the Government passed the Conclusion 05 No. 021-7728/2014 of 18 July 2014, by which it ordered all ministries, special organizations and services of the Government to submit information on measures taken within their sphere of competence for implementation of the above conclusions of the National Assembly by 1 December 2014. The same Conclusion put an obligation on the General Secretariat of the Government to prepare in cooperation with the National Secretariat for Legislation the integrated material for review and decision-making on the Government's session until 31 December 2014. The Commissioner requested information from the Government on those activities and further measures, but has not received them until the date when this Report was prepared.

The Commissioner's recommendations to the National Assembly are mostly implemented, only the supervisory role of implementation of the adopted conclusions in connection with the review of reports of independent authorities is not fully implemented. Also, the Commissioner concludes that the competent committees of the National Assembly insufficiently use suggestions and opinions he submits them in the process of the review and enactment of laws, while the situation is such that the Commissioner is excluded from provision of opinions at the stage of preparation of draft laws and bills and does not have the power to submit amendments.

Taking into account Article 58 of the Law on the National Assembly and Articles 237-241 of the Rules of Procedure of the National Assembly, **the Commissioner proposes the following to the National Assembly:**

1. The competent Committees of the National Assembly should review the Commissioner's Report for 2014 and, on the basis of the Recommendations contained herein, adopt conclusions and recommendations with measures aimed at improving the situation, which would then be forwarded to the National Assembly for discussion,

2. The National Assembly should open a debate on the conclusions and recommendations submitted by competent committees and pass a resolution on their implementation, thereby supporting the Commissioner's efforts and activities in the exercise and further improvement of freedom of information and the right to personal data protection and elimination of the obstacles highlighted in this Report,

3. In addition to a debate on this Commissioner's Report for 2014, the National Assembly should also open a debate on implementation of its conclusions adopted in connection with the review of regular annual reports of independent governmental bodies for 2013, the managers of which are appointed by the Assembly, and to adopt appropriate conclusions in that regard relating to the responsibility of the Government and the competent ministries for failure to comply with them;

4. The National Assembly should ensure continual supervision of compliance with its resolutions by making use of the available mechanisms to control the work of the Government, i.e. the executive branch, in connection with the recommendations made by independent governmental bodies, including the Commissioner, with particular focus on responsibility for omissions in the work of public authorities and, where necessary, to ensure this through amendments to its Rules of Procedure;

5. The competent Committees and technical services of the National Assembly, when enacting laws, should give due consideration to the need to ensure respect for the core principles of freedom of information and the right to personal data protection, in consultation with the Commissioner,

6. The National Assembly should continue with the practice of providing appropriate support for the Commissioner's independence.

In view of the foregoing, the Commissioner repeats in this Report all recommendations that have not been complied with.

The Commissioner hereby makes the following proposals to the Government of the Republic of Serbia:

1. The Government should prepare as soon as possible amendments to the Law on Free Access to Information of Public Importance which will ensure its application on all entities vested with public powers (including notaries public and bailiffs); ensure improved proactive publishing of information, vest the Commissioner with powers to give his opinions in the legislative process and to file petitions for infringement proceedings for violations of rights; specify the manner of implementation of the Commissioner's resolutions imposing fines; harmonise the fines imposed for infringements with the Law on Misdemeanours; eliminate any scope for any divergent interpretation of specific provisions that would be detrimental to proper implementation of the Law, in consultation with the Commissioner,

2. To ensure without delay that the mechanisms for infringement liability and other forms of liability for violations of the freedom of information are fully functional through more intensive and more comprehensive direct inspection of compliance with the Law on Access to Information by the administrative inspectorate of the ministry in charge of governing the implementation of the Law on Access to Information,

3. The provisions of the law imposing a responsibility on the Government to enforce the Commissioner's final, enforceable and binding decisions, where necessary and when demanded by the Commissioner, should be implemented consistently,

4. Implementation of the law on Data Confidentiality in real life should be ensured,

5. The Government should initiate the procedure for ratification of the Council of Europe Convention on Access to Official Documents of 18 June 2009,

6. The Government should propose a new text of the Law on Personal Data Protection, to ensure a more rounded and better regulation of this subject matter. In doing so, the Government should take into account the Model LPDP the Commissioner prepared and submitted to the Government, which is harmonized with the Commissioner's experience in practice and with the relevant European documents in this field,

7. The Government should continually support the Commissioner's efforts to ensure compliance with the constitutional provision which stipulates that collecting, keeping, processing and use of personal data must be regulated by laws, rather than by secondary legislation and in that regard should propose amendments to a number of sector-specific laws which usually tend to contain incomplete or inappropriate provisions governing personal data processing in the respective fields, while some of the sector-specific laws contain no provisions at all that would regulate this subject matter,

8. With respect to the situation concerning protection for privacy in the sectors of security and electronic communications, the Government should ensure full implementation of the "package" of 14 measures, which the Commissioner and the Ombudsman developed to alert the competent authorities and the public about the worrying situation in this field and which they proposed in order to address this situation,

9. The Government should propose amendments to the Law on Security Checks in order to appropriately regulate the situation in this field by the law,

10. The Government should pass an enactment on the manner of filing and the safeguards to protect particularly sensitive data,

11. The Government should adopt an Action Plan on implementation of the Personal Data Protection Strategy, with specified activities, including in particular the relevant regulations that need to be adopted and/or amended, the expected effects, the bodies responsible for implementing specific duties and the clear timeframe for implementation of those duties.

Support for and implementation of the measures proposed above are instrumental for ensuring further improvements with regard to freedom of information and personal data protection. The Commissioner is available for cooperation and any assistance the competent authorities may need in their efforts to ensure compliance with the above recommendations.

COMMISSIONER

Rodoljub Sabic

Done in Belgrade, on 23 March 2015

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