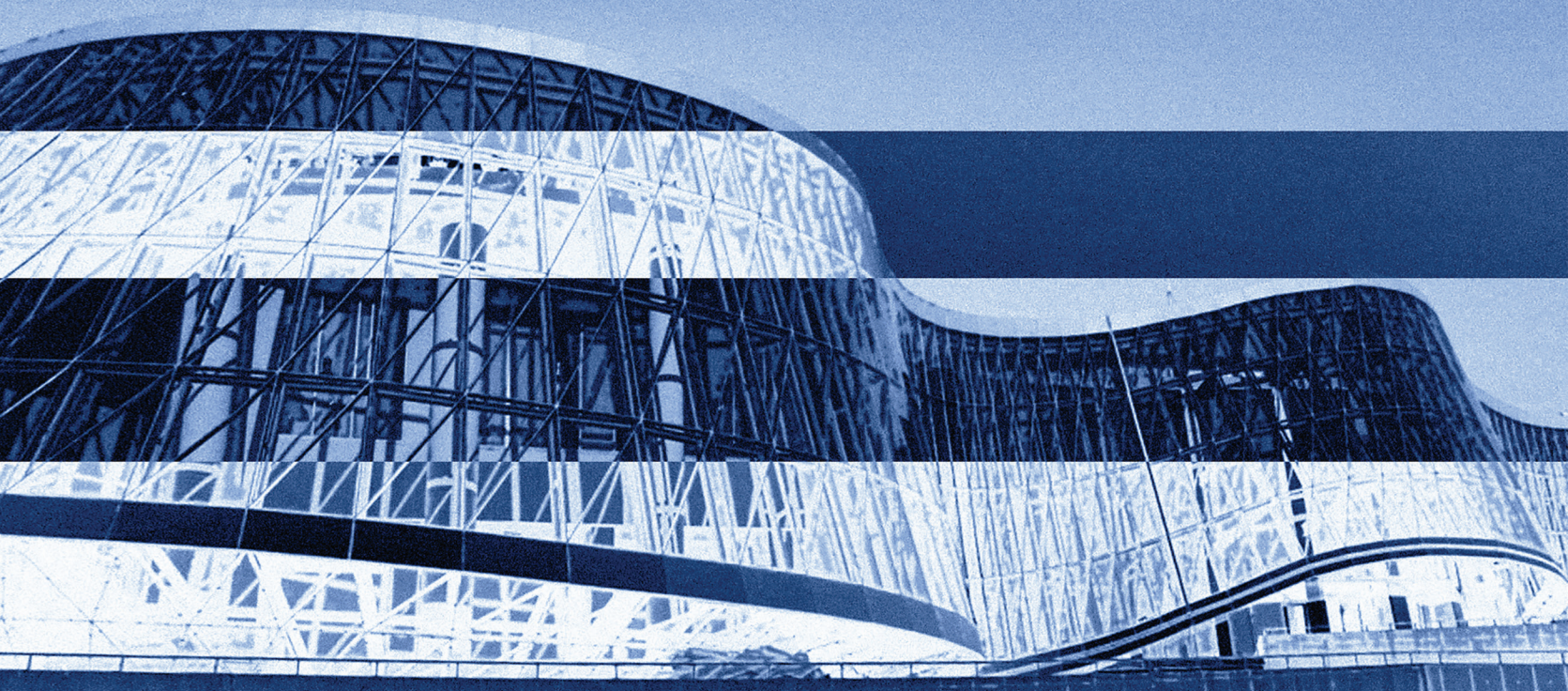


# TRANSPARENCY OF THE MINISTRY OF INTERNAL AFFAIRS



ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**  
Human Rights Education and Monitoring Center



OPEN SOCIETY GEORGIA FOUNDATION  
ფონდის ღია სპონსორების ასოციაცია

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# INDEX

1. Overview	2
2. Methodology	4
3. Access to Public Information	6
3.1. Release of Public Information	6
3.2. Completeness of the Provided Information	8
3.3. Timely Responses to FOI Requests	10
3.4. Cases of Classified Information	11
3.5. Hearing of Administrative Complaints	13
3.6. Proactive Publication of Information	13
3.7. Summary	17
4. Methods for Producing Statistics in the MIA	18
4.1. Legal Framework for Statistical Production	20
4.2. Recorded Crime Statistics	20
4.3. Methodology of Recorded Crime Statistics	21
4.4. Statistical and Analytical Research	24
4.5. Interactive Statistics and Crime Mapping	25
4.6. Summary	25
5. Forms of Compiling and Managing Databases	26
5.1. Forms of Personal Data Processing	27
5.2. Employee Access to Databases	31
5.3. Access to Data by Outside Institutions	31
5.4. Oversight	32
5.5. Unauthorized Access	33
5.6. DNA Bank	35
5.7. Summary	35
6. Staff Management Issues	36
6.1. Recruitment	37
6.2. Employee Transfer	37
6.3. Disciplinary Responsibility	38
6.4. Evaluation and Incentives	39
6.5. Dismissal	40
6.6. Summary	40

# 1. OVERVIEW

Police represents one of the most important systems for the exercise of powers by the government. The main functions of the police are safeguarding of public safety and protection of civil order. The law enforcement agencies are given broad authority by legislation to fulfil those functions, which creates the risk of misuse of power. To ensure public trust in law enforcement agencies, the police must systematically demonstrate respect for the rights of persons, rule of law, and application of the principle of political neutrality. Moreover, police should be open to oversight over its activities.

The Ministry of Internal Affairs has been one of the most closed ministries for several years, which has largely been conditioned by its merger with the state security service in 2004. The lack of transparency raised difficulties of conducting research on institutional issues surrounding the Ministry and providing assessments. A public outcry was caused in 2013 with the discovery of an archive within the system of the Ministry, which included illegal surveillance recordings from the past several years.<sup>[1]</sup> In the summer of 2015, the state security service separated from the Ministry of Internal Affairs. However, problems with transparency and low quality of issuing public information still persisted within the Ministry of Internal Affairs.

This report aims at defining the level of transparency of the Ministry and the reasons hindering it, as well as, increasing the accessibility to the information in the system of the Georgian police and providing an analysis of the structure and system of the Ministry of Internal Affairs, following the reforms of 2015.

The report also assesses the quality of accessibility to public information, production of statistics, methods of compiling of databases and forms, as well as, the personnel policy of the Ministry of Internal Affairs. These are the main findings:

## Accessibility to public information:

- The Ministry has not left a single FOI request without a reply. In most of the cases (64%), the issued information was considered as complete. It is worth noting that this practice does not correspond to the general experience of author organizations receiving public information from the Ministry and is also different from the findings of other non-governmental organizations within the same period of reporting;<sup>[2]</sup>
- The issuing of public information on time, as defined by law, has been identified as significant problem. The Ministry responded to FOI requests only two times out of ten, within a 10-day period. The responses to other requests came with significant delays, including a response provided after 70 days;
- The information provided by the Ministry has in some cases been assessed as incomplete. In spite of filing administrative complaints, we were unable to receive full information on the bonuses and disciplinary proceedings. Moreover, we were unable to receive complete information on persons employed and dismissed from the Ministry;
- The classification of documents as state secrets limits the accessibility to public information. The Ministry was unable to provide sufficient argumentation in favor of classifying the statutes of their departments and the amount of staff.
- The Ministry does not conduct complete administrative proceedings over the filed administrative complaints related to the release of public information. The Ministry has not held an oral hearing on any of the administrative complaints presented during the drafting of this report. The received responses did not have a form of a decision and they did not fully respond to the demands provided in the complaint;
- The Ministry does not fully fulfill its obligation of proactive publishing of public information.

## Forms of producing statistics and managing databases:

- The Ministry of Internal Affairs does not have a single and consolidated guideline document for the production of statistical information. Statistical-analytical research is conducted chaotically and it is unknown what purposes or aims it serves. Little attention is paid to the sociological polls on the perception of substance and indicators of crimes, as well as broken down information on sensitive issues;

<sup>1</sup> Final report of the commission working on the illegal surveillance and recordings, 2014 <https://goo.gl/eS8feC>

<sup>2</sup> For example, IDFI assessed the accessibility of MIA in 2016 as 32.98%, Ratings of the Accessibility of Public Institutions in Georgia, 2016 <https://goo.gl/CvXLkQ>

- In spite of rising public interest, the Ministry has not published information on the crime statistics since February 15th of 2016. The unified report on crime statistics, published based on the inter-agency memorandum, does not contain police statistics for any of the months of 2012-2016,;
- In spite of the obligations taken under the Open Government Partnership Action Plan, the interactive crime statistics and criminological map has not become available to the public;
- The Ministry does not provide the production and public dissemination of statistical information on the complaints/statements lodged against the police, average indicators of illegal activities of the police and information on imposed sanctions/penalties;
- The retention period of information is not regulated for several different categories of data, moreover, the necessity of indefinite archiving of several categories of data is unclear. The secondary legislation does not clearly define the different regime for access to archived information;
- There are insufficient legislative guarantees for the prevention of abuse of access to the databases.

### **Personnel Policy:**

- The regulative statutes of the staffing policy of the Ministry of Internal Affairs is vague and is not spelled out clearly on the legislative level;
- Response mechanisms to disciplinary violations are ineffective. The institutional independence and transparency of the General Inspectorate is insufficient.
- The reward-based motivation of staff is not based on clearly defined professional criteria, which naturally poses risks of conducting the process without due regard for principles of transparency and accountability;
- The right to dismiss a police officer from work is overly concentrated in the broad powers of the Minister of Internal Affairs or in the respective authorized person. The issue in this regard is the vagueness surrounding the dismissal procedures.

## 2. METHODOLOGY

The reporting period of this publication is from January 2016 till December 2016. The project activities are broken down into three main parts:

### 1. Determining the accessibility to public information

The project's team relied largely on freedom of information requests to measure the quality of transparency of the MIA. This allowed us to assess the timeliness of responses to FOI requests, the content and scope of the responses, the practice of denying the information and hearing of administrative complaints. These activities match in essence the work of several countries that jointly conduct monitoring of police transparency.<sup>[3]</sup> The project team thoroughly studied the methodology and questionnaire the countries used in their monitoring. It is through this questionnaire that a list of issues was compiled, which was used for the purposes of requesting and analyzing information.

Within the scope of the project, 11 letters were sent out to the Ministry of Internal Affairs in the period from June 2016 till October 2016. Each letter requested different volumes of public information on thematically grouped issues, amongst them active guidelines and procedures of the police, staffing policy of the Ministry, hierarchical structures, arrest statistics and methodology on producing archives/databases. The assessment of the quality of accessibility to public information was not based on the amount of responses received, but on the completeness of the information received and on the identification of classified documentation. Thus the responses provided by the Ministry were assessed as: 1) provided completely, 2) provided partially or 3) request was denied and no information was provided. It is worth noting that the accordance of the provided normative materials with the current legislation and international standards has not been assessed. Instead, only the accessibility to information was assessed.

In cases when the FOI request was denied due to state secrecy concerns, the denial for the request was considered as a complete response. However, the report finds the practice of classifying information as one of the significant problems.

It is worth noting that within the scope of this project, the Ministry of Internal Affairs has not left a single FOI request without a response. Such practice does not correspond to the general experience of author organizations in receiving public information from the Ministry and is also different from the findings of other non-governmental organizations within the same period of reporting.<sup>[4]</sup>

### 2. Increasing accessibility to information of the Ministry of Internal Affairs

In an effort to increase accessibility to public information, the project's team made use of strategic litigation, which served the purpose of establishing court practice and securing more transparency in the future for the police sector.

We addressed the Ministry with administrative complaints in cases of a denial to FOI requests. Moreover, we send a motivated statement requesting the declassification of several information. We lodged a claim in Tbilisi City Court over the release of public information.

### 3. Analysis of the structure and system of the Ministry of Internal Affairs

The analysis of the structure and system of the Ministry of Internal Affairs was broken down into two main parts:

1. The study of the methods of production of statistics, compiling and management of forms of various databases and processing of personal data in the system of the Ministry of Internal Affairs;
2. The analysis of staff selection, employment, career advancements, salaries, sanctions/disciplinary proceedings and dismissals in the Ministry of Internal Affairs;

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<sup>3</sup> Police Transparency Audit: Police Response to Protest; Pilot countries: Brazil, England, India, Mexico, and South Africa, <https://goo.gl/C0khdf>

<sup>4</sup> For example, IDFI assessed the accessibility of MIA in 2016 as 32.98%, Ratings of the Accessibility of Public Institutions in Georgia, 2016 <https://goo.gl/CvXLkQ>

The methodology for the assessment of the aforementioned issues was based on the following instruments:

- Secondary analysis of existing research;
- Request and analysis of public information;
- Study of international standards and best practices;
- Analysis of the normative framework;
- Work meetings and individual interviews.

Before publication, the report was sent to the MIA for comments and opinions, after which the representatives of the Ministry organized a meeting with the authors of the research. During the meeting, the representatives of different departments presented their opinions regarding the findings of the report and provided information about ongoing efforts to solve some of the problems identified in the report. The part of the information gained from the meeting is reflected in the report.

## 3. ACCESS TO PUBLIC INFORMATION

The unhampered ability of the law enforcement agencies to perform their duties plays a crucial role in the sustainable development of the country. At the same time it is important that the activities and methods employed by the police remain within the legal boundaries and do not infringe on the rights and freedoms of persons. A closed police system and the absence of public control creates conditions for the misuse of police powers and hampers the institutional development of the police system.

The Ministry of Internal Affairs has been one of the most closed ministries for several years, which has largely been conditioned by its merger with the state security service in 2004. The exceptional level of confidentiality and secrecy of the state security service spread to the Ministry of Internal Affairs. This has resulted in several instances of information being classified as secret. Amongst such instances was the classification of information which represented public information and was even eligible for proactive disclosure.

Local non-governmental organizations have numerously indicated to the problems related to transparency within the Ministry of Internal Affairs over the recent years.<sup>[5]</sup> The main problems identified was the denial to FOI requests, incomplete FOI responses, violation of providing responses within a legally required timeframe and the formal practice of hearing administrative complaints. In addition to those obstacles, a significant problem was researching the Ministry's institutional issues and staffing policy, as well as, identifying and assessing the process of making operative decisions.<sup>[6]</sup> The Ministry's low level of transparency was especially a problem in the process of MIA reforms initiated by the government in 2015. The confidentiality of information hampered the due process of reforms and participation of external experts.

In the summer of 2015, by the initiative of the government, the state security service separated from the Ministry of Internal Affairs. However, it is worth noting that this reform was not systematic and the functionality of an independent, effective, accountable and transparent police mechanisms based on human rights was not ensured. The aim of the following chapter is to assess the transparency of the police system after these reforms.

### 3.1. RELEASE OF PUBLIC INFORMATION

11 FOI requests were sent to the Ministry within the scope of this project. The requested information was identified thematically with the use of a pre-defined questionnaire and covered issues such as forms, methods and means of conduct of police activities.

The responses provided by the Ministry were assessed as: 1) provided completely, 2) provided partially and 3) request was denied and no information was provided. It is worth noting that the accordance of the provided normative materials with the current legislation and international standards has not been assessed. Instead, only the accessibility to the information was assessed.

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<sup>5</sup> Accessibility to information in Georgia, Final Report 2010-2015, IDFI, <https://goo.gl/Zj8T4W>

<sup>6</sup> Policy of Invisible Power, EMC, 2015, <https://goo.gl/Uwl0yM>



**Chart N1: Requested information and results**

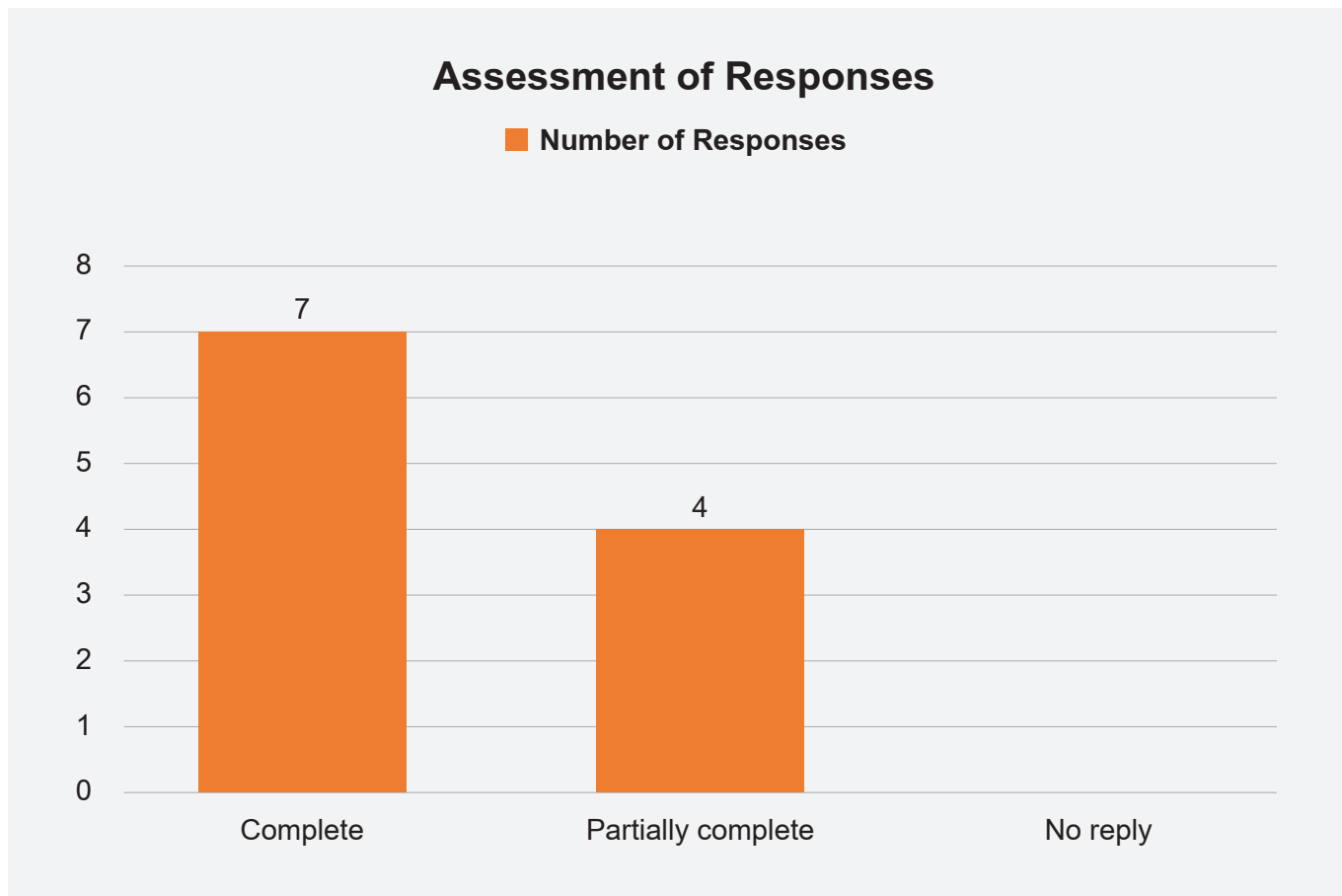
#	Content of the requested information	Information provided	Timeliness of response
1	Police learning manuals, active guidelines and operative protocols (for example, acts on manifestations, search and seizure, and use of power).	Complete	Within a 10-day period
2	Powers and responsibilities of the Minister of MIA and his deputies, their curating departments, as well as the number of civil servants in their staff	Partially	Violation of the time period (20 days)
3	Number of employees in the MIA and number of staff (by structural units), statutes of structural units	Partially	Violation of the time period (25 days)
4	Documents on staffing policy (selection, salary structures, bonuses and criteria for issuing the bonuses, disciplinary policy)	Complete	Violation of the time period (51 days)
5	Internal structure of the structural units and staffing and the organogram of the ministry	Complete	Violation of the time period (35 days)
6	Statistical information on staffing policy (how many people were employed and dismissed in 2014-2015 by status and structural units; how many employees received bonuses and how many disciplinary actions were carried out)	Partially	Violation of the time period (70 days)
7	Number and location of pre-detention facilities, number of employed persons (by status), including gender breakdown; the rule of conducting video recording in the pre-detention facility; also, arrest statistics	Complete	Violation of the time period (49 days)
8	Address and contact information for the department of the MIA police	Complete	Violation of the time period (48 days)
9	Rules for the conduct of video-monitoring; how many cameras are functional and on what territories	Partially	Within the 10-day period
10	The rules for producing bases/archives, forms of processing personal data; methodology and regulative acts of producing crime statistics	Complete	Violation of the time period (11 days)
11	Number of FOI requests made to the Ministry, number of responses, including how many were denied and for what reason	Complete	Violation of the time period (15 days)

## 3.2. COMPLETENESS OF THE PROVIDED INFORMATION

The assessment of accessibility to public information was not based on the number of responses received, but on the completeness of the information received and on the identification of classified documentation.

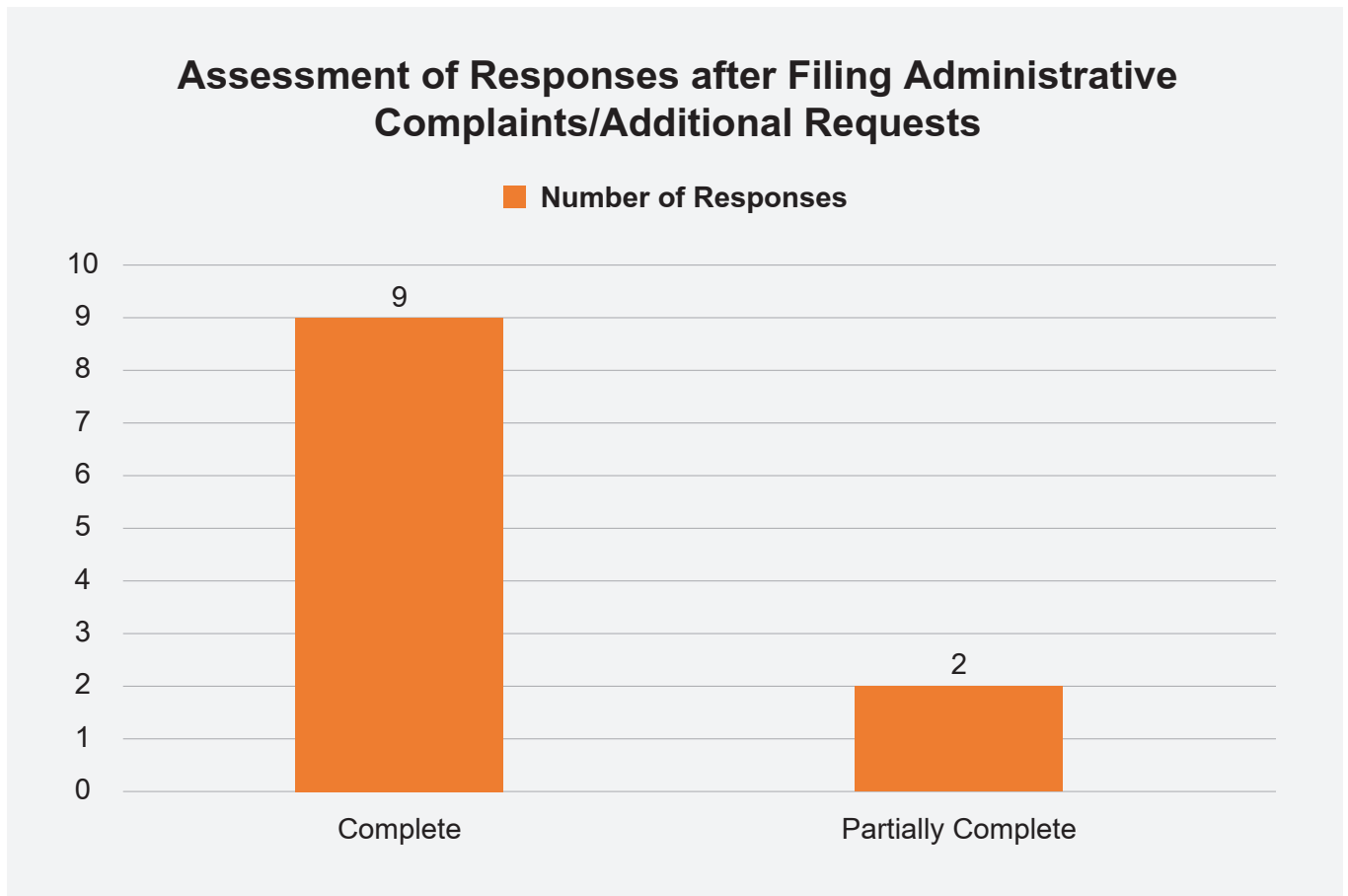
The findings of the report show that the Ministry has not left a single FOI request without a reply. Moreover, the provided information has mostly been complete.

**Chart N2: Number of responses received and assessment of their completeness.**



It is worth noting that receiving complete response on two FOI requests was possible after sending administrative complaints (number of employees in the office of the deputies of the Minister) and additional requests (location of video-monitoring cameras). This has eventually increased the final volume of the responses received.

Chart N3: The number of complete responses after filing administrative complaints/additional requests.



In overall, in spite of filing administrative complaints, the Ministry of Internal Affairs has not provided the following information:

- How many employees received bonuses in 2014-2015;<sup>[7]</sup> how many of these were management staff, and by what criteria the bonuses were given out and their volume;
- How many employees were employed and dismissed in 2014-2015 in the Ministry (subdivisions, territorial organs, LEPLs, subordinate agencies); how many of these were management staff;<sup>[8]</sup>
- Types and number of disciplinary violations in 2014.

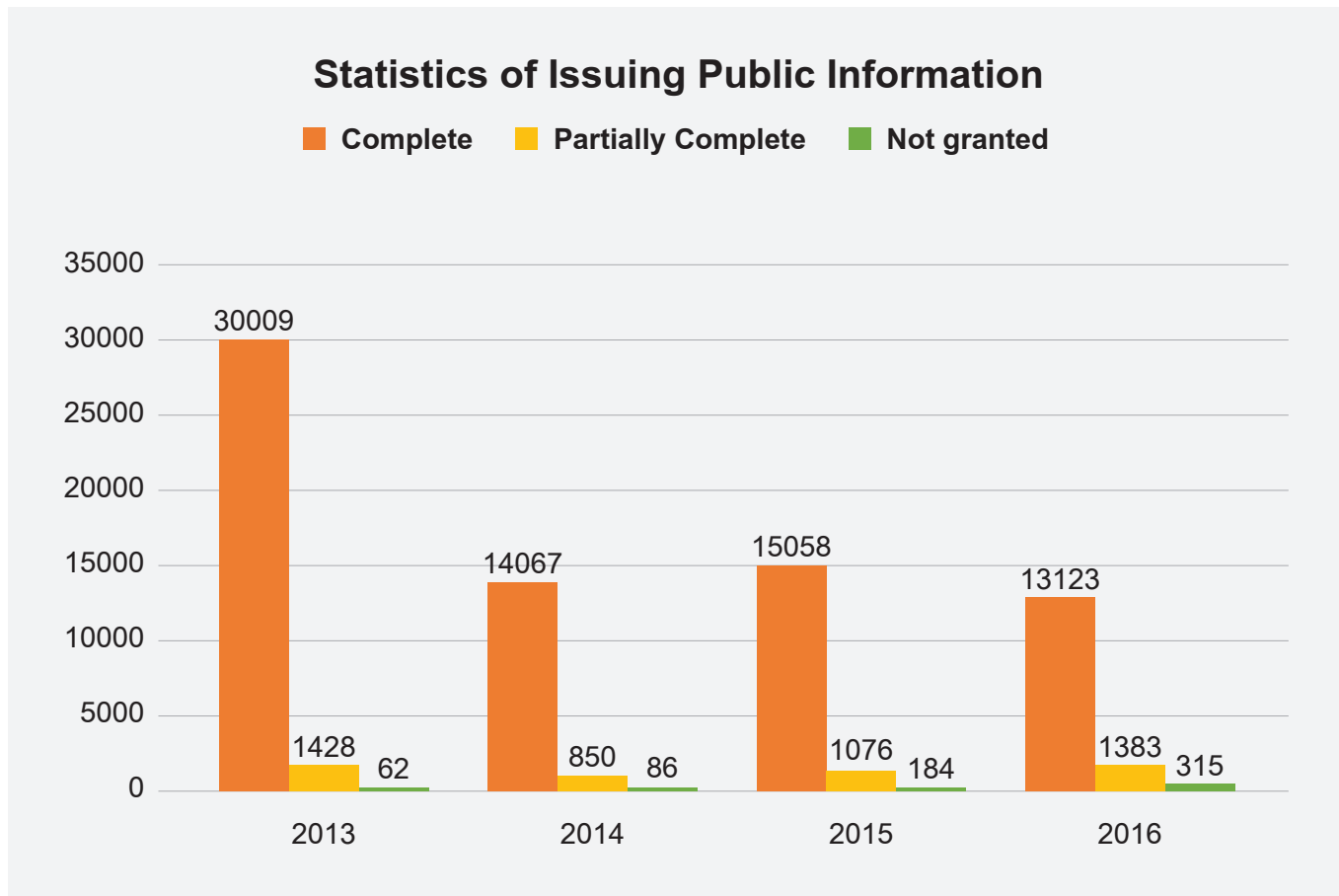
Moreover, the information provided by the Ministry does not make it clear whether they supplied us with the actual number of employees at the Ministry or the number predefined by their staffing policy. We were unable to receive this information even after filing the administrative complaints.

We addressed the Tbilisi City Court with the request to receive information that had been denied to us. As of this report's completion, the court has not made its decision.

Here, for the purpose of comparison, we present the official statistics on the issuing of public information by the MIA.

<sup>7</sup> The Ministry provided only the aggregate of salaries, supplements and bonuses.

<sup>8</sup> The Ministry provided this information in total, according to years.

**Chart N 4: Official statistics on the issuing of public information by the MIA<sup>9]</sup>**

### 3.3. TIMELY RESPONSES TO FOI REQUESTS

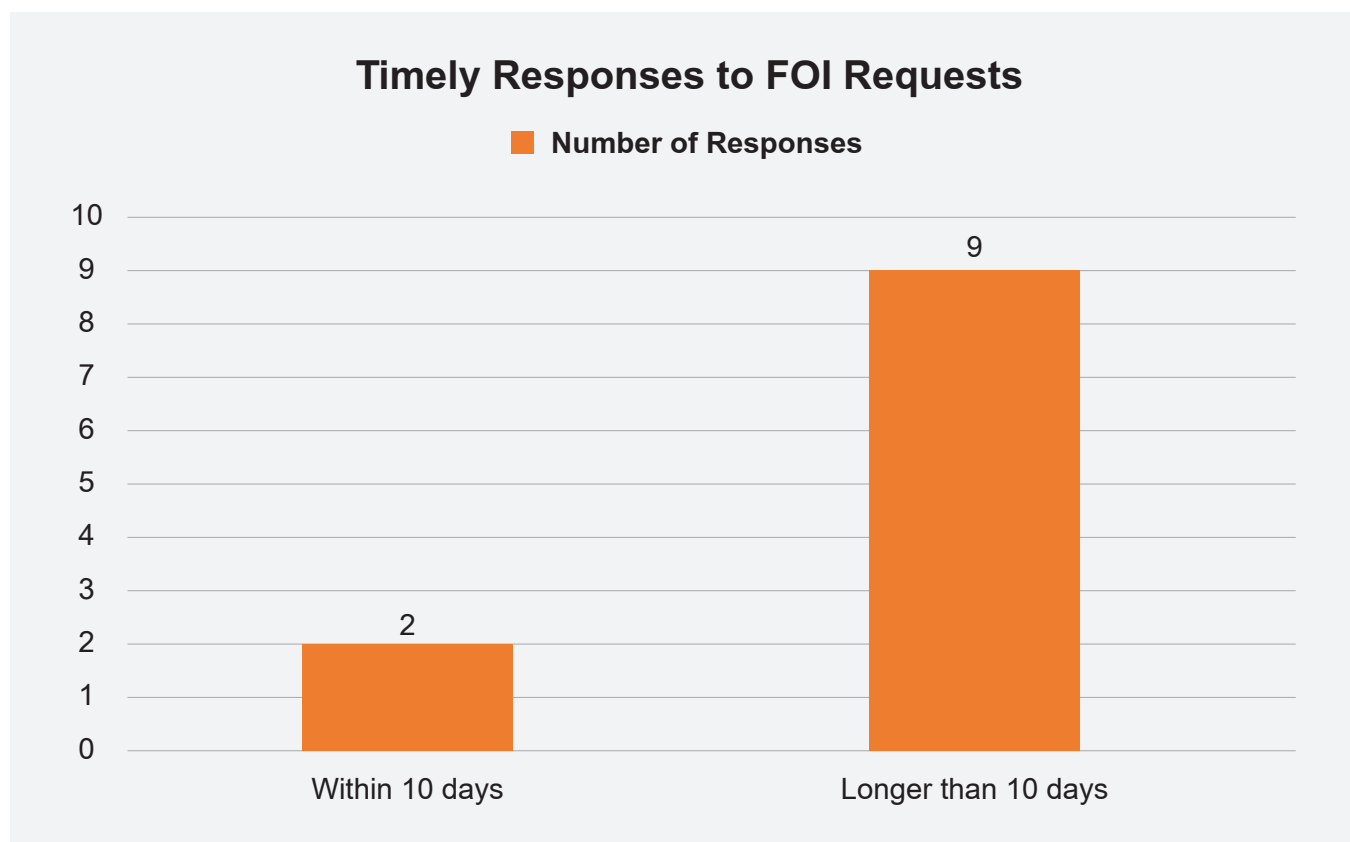
The report has found that the violation of issuing public information in the time period as defined by the law is a significant problem. According to the General Administrative Code, a public institution is obliged to issue public information, including the public information requested electronically, immediately or no later than 10 days. Moreover, according to the law, the information can be released beyond the 10-day period if the request for public information requires:

- a) retrieving of information from its structural subdivisions in another locality or from another public institution, and its processing;
- b) retrieving and processing of single and uncorrelated documents of considerable size;
- c) consulting with its own sub-division in another locality or with another public institution.

If a 10-day period is required for issuing public information, a public institution is obliged to notify the applicant about it.

The findings of the report show that the Ministry responded to only two FOI requests within the 10-day period. In all other cases, the responses were issued with a significant delay, including a response that came 70 days after the request had been made. Moreover, there were only two cases when the Ministry prepared an intermediate response, notifying us that they needed to retrieve and process information from structural units.

<sup>9]</sup> Annual reports presented by the MIA to the President, Parliament and Prime-Minister, <https://goo.gl/wL9DAG>

**Chart N5: Timely responses to FOI requests.**

The representatives of the Ministry state that the volume of information they have to process is the reason behind the delay of responses. Notably, the time required by the Ministry to respond to several FOI requests did not match the time that would be required to process that information. For example, it took the Ministry 40 days to respond to a FOI request on providing addresses and contact details of police departments. Moreover, it took two months for the Ministry to provide a response on the statistics of staff transfers and events. This indicates to the fact that such information is not systematically processed within the Ministry, which creates problems not only for the timely issue of public information, but to the single and organized administration of the Ministry as well.

The timely responses to FOI requests is one of the crucial components of assessing accessibility to public information. Information provided with a delay may lose its value and become useless at the time it is received. Due to this, it is important to follow the time limits for compliance to FOI requests and establish a practice of issuing public information without delays in the Ministry.

### 3.4. CASES OF CLASSIFIED INFORMATION

The report has found that the classification of information as state secrets poses a significant challenge for accessibility to information. The Ministry has denied the issuing of the following information on the basis of the Law on State Secrets:

- Statutes of the MIA's Special Task and Operative Departments;
- Actual number of employees (in whole) and established number of staff members in the MIA's Special Task and Operative Departments;
- Actual number of employees and established number of staff members in the Border Police of Georgia – Subordinate State Agency of the Ministry of Internal Affairs.

We requested the decision that had made the aforementioned documents classified and the reasoning behind the necessity to mark those documents as state secrets. The Ministry replied with only a referral to the legislative norm and that the documents were classified on the basis of the Article 6 (d) of the Law on State Secrets and Article 19 of the List of Information Considered as State Secrets as approved by the Resolution N507 issued on 24 September, 2015. The Ministry has not presented any argumentation why the content of the requested information was considered a state secret. Afterwards, we addressed the Ministry with a motivated statement to declassify the requested information, however our request was denied. By this report's publication, the request for declassification of information is being processed in the Tbilisi City Court.

The Ministry has provided us with the following response after we had filed our motivated statement asking for the declassification of the information:

*„The statutes of the Special Tasks and Operative Departments include information on state security, law and order and operative-investigative activities that are classified as state secret due to it being vital for the preservation of the interests of the state. As for the number of employees and permanent staff [...], its declassification will cause the divulgence of information, including names and locations of the structural subdivisions of the intelligence, counter intelligence and other special forces. This also goes against the interests of security and defense of the state.”*

According to Article 41 (1) of the Constitution of Georgia, every citizen of Georgia has the right of access to information as determined by law, as well as to official documents about him/her stored in state institutions, unless they contain state, professional, or commercial secrets. In cases when information that should be public is considered as a state secret, the constitutional right of access to information is violated. This situation has a negative effect on the citizen engagement in state governance and creates risk of leaving the state agencies without due citizen control.

The Law on State Secrets and the Government Resolution on “The List of Information Considered as State Secret” explicitly state that not all types of information on counter intelligence, state security and law and order is state secret, but rather specific events and activities, as well as the methods, forms, means and results of these activities. The statutes of the structural units are general normative documents, which define the structural unit's sphere of work, principles, main structure and **does not include information on specific events or operations. Due to this, the declassification of statutes cannot be considered as a threat to state interests.**

In the denial to declassify the statutes, the MIA also noted that the functions of the Special Tasks and Operative Departments include counter-intelligence and operative-investigative activities. Notably, according to the statute of the MIA, counter-intelligence and operative-investigative activities also fall under the General Inspectorate's (department) functions. Moreover, operative-investigative activities are carried out by other departments, however the statutes of these departments are public and are not classified. Due to this, the MIA should provide additional argumentation why the statutes of the Special Tasks and Operative Departments are classified.

Notably, apart from the counter-intelligence activities, the functions of the Special Tasks Department include the fulfillment of other tasks, such as preserving order and security during protests and manifestations, as well as, conducting preventive measures to avoid violations of the law. The tasks of the Operative Department, as defined by the law, include the collection of IDs and visual control, identification and search function, as well as conduct of investigative activities. The aforementioned activities are not always connected to counter-intelligence. Therefore, it is unacceptable to spread the level of secrecy, which is typical to counter-intelligence, over all of the activities of the Operative Department.

It should be noted that, amid the criticism by non-governmental organizations,<sup>[10]</sup> the Ministry of Internal Affairs declassified the statutes of several important departments in recent years. In particular, in 2015, the statutes of 3 structural units were made available,<sup>[11]</sup> while in 2016 two additional statutes were made public.<sup>[12]</sup> It is important that the ministry makes the statutes of all its departments publicly available.

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<sup>10</sup> Policy of Invisible Power, EMC, 2015, <https://goo.gl/Uwl0yM>

<sup>11</sup> In 2015 the statutes of the following departments came into force: Central Criminal Police Department (N103 order issued by the Minister), Department of General Inspection (N123 order issued by the Minister) and Analytical Department (N963 order issued by the Minister).

<sup>12</sup> In 2016 the statutes of the Department for Protecting Facilities (N136 order issued by the Minister) and the Department for Strategic Pipeline Protection (N129 order issued by the Minister) went into effect.

It is also unclear why the number of employees and established number of staff members in structural units and sub-division units are classified. Especially when the annex to the Order N211 issued by the Minister of MIA in 25 April, 2016 is public and includes information on the monthly salaries for permanent positions in all units. In the given case, information on the high-ranking officials should be declassified and the number of employees should be made public without relieving information on special classified units.

A special emphasis must be made on the fact that currently the information on statutes and number of staff is completely (and not partially) classified. There can be no necessity to classify the entire statutes and number of employees and staff members in structural units. Should there be some parts of information that is considered state secret, then the Ministry should separate and classify only those parts.

### 3.5. HEARING OF ADMINISTRATIVE COMPLAINTS

The hearing of administrative complaints is defined by the General Administrative Code of Georgia, according to which the administrative body reviewing an administrative complaint should thoroughly study the complaint, conduct an oral hearing and ensure the participation of the author of the complaint. The conduct of a thorough hearing of the complaint plays a crucial role in the increase of accessibility to public information, avoiding court cases and conducting oversight over the persons responsible for issuing public information. The administrative proceedings on the complaints as defined by law also ensures better communication between the author of the complaint and the agency, which in turn increases chances for issuing public information in the desired content and form.

Within the scope of the project two administrative complaints were sent to the Ministry on the release of requested information. In spite of requesting participation in the administrative proceedings, the Ministry did not conduct a thorough administrative proceeding and did not hold an oral hearing. The provided responses do not have the form of an administrative act. Moreover, these responses do not indicate the procedure, date and location for the appeal.

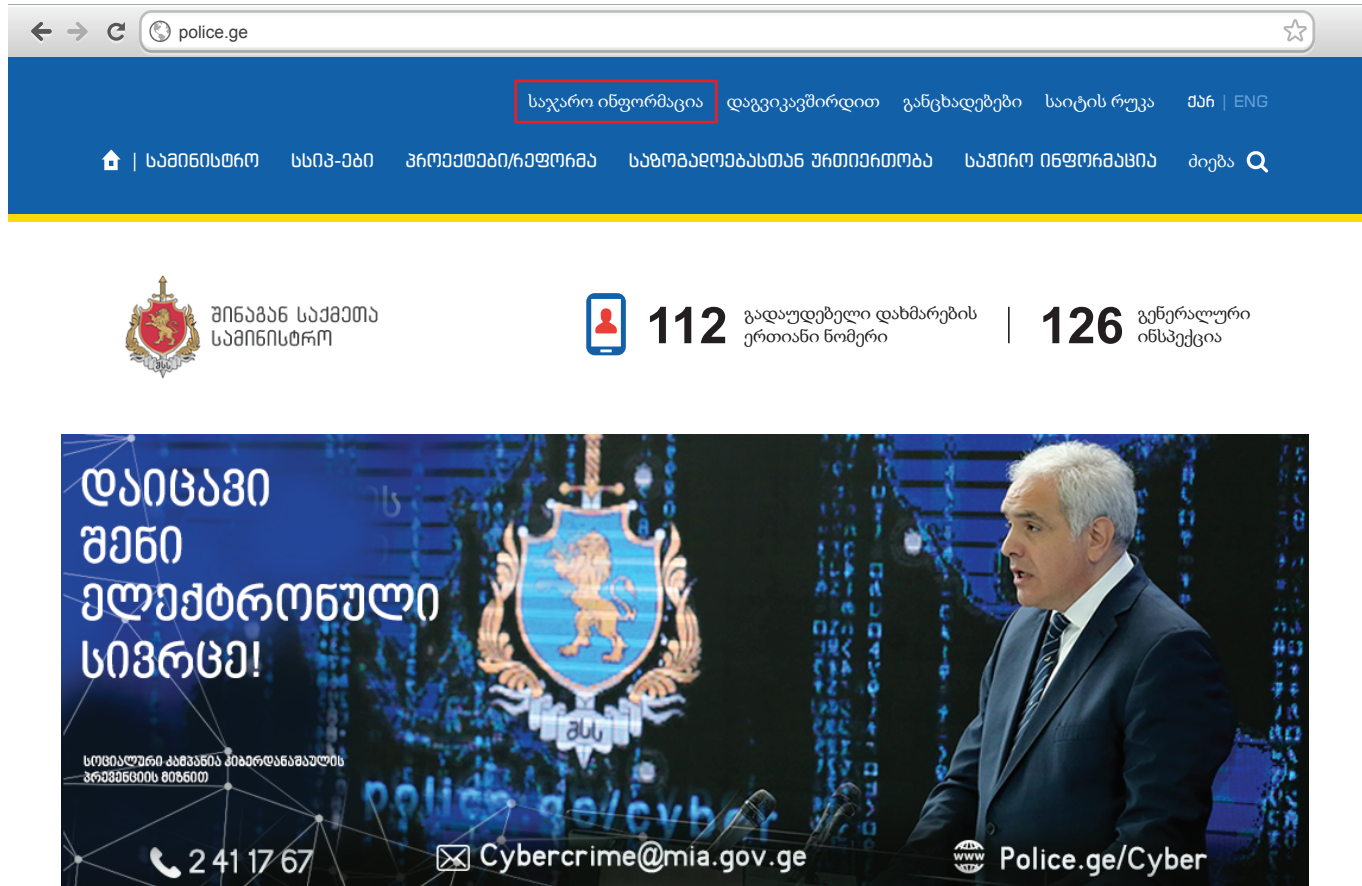
Notably, one of the administrative complaints was filed due to the violation of the 10-day period for issuing public information. We received a response after filing the administrative complaint, however the response was not complete. The refusal of the Ministry to provide the requested information has been appealed in the Tbilisi City Court.

### 3.6. PROACTIVE PUBLICATION OF INFORMATION

According to the law, public information should be proactively published and be made available for request in an electronic form. This supports the increase of transparency in public institutions and provides fast and simple access to information. The Ministry of Internal Affairs falls under the scope of the Decree N219 of the Government of Georgia "About Electronic Requests and Proactive Disclosure of Public Information" dated 26th August 2013. The analysis of the MIA's website showed that the Ministry does not fulfill in entirety the obligations spelled out in the aforementioned government decree.

According to the government decree, the Ministry is obliged to guarantee the proactive disclosure of public information on the corresponding electronic resources (web-sites), where all public information as defined by the decree should be made available.

**Image N1: There is a public information section on the official website of the MIA, date of access: 20.01.2017.**



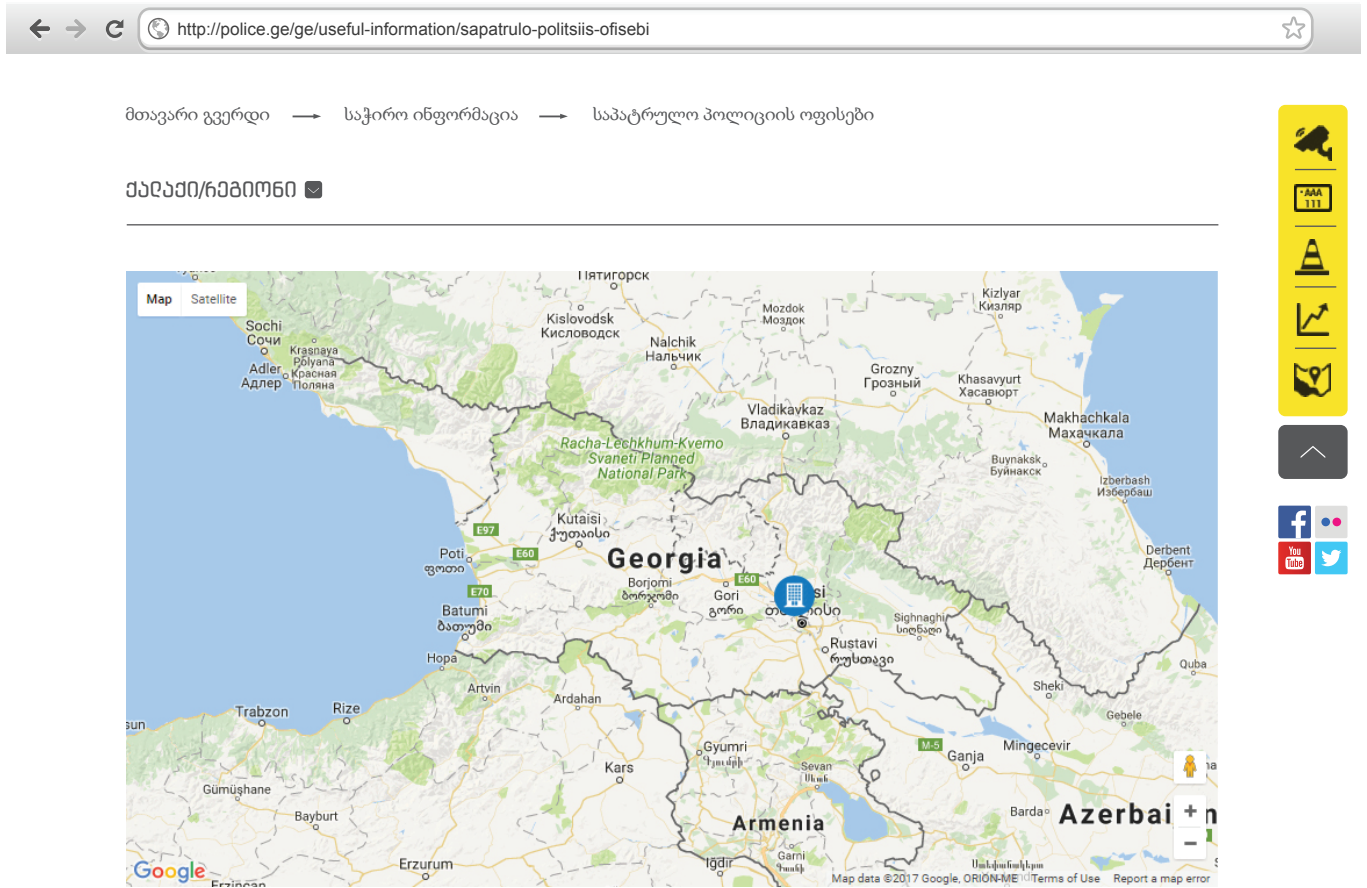
There is a public information page on the Ministry's webpage ([www.police.ge](http://www.police.ge)), however it does not include the following information defined by the annex of the government's decree:<sup>[13]</sup>

- Information on all of the heads of the Ministry's structural units/territorial organs (heads and deputies in case of LEPLs): name, surname, photo, biographies;
- Addresses, e-mails and telephones of all structural units/territorial organs. Moreover, the webpage does not include information of high-public interest such as location of police stations. Notably, there is a separate space for a map under the "Important Information" section, but no information is attached to it.

<sup>13</sup> The findings are provided according to the information published by January 20, 2017.

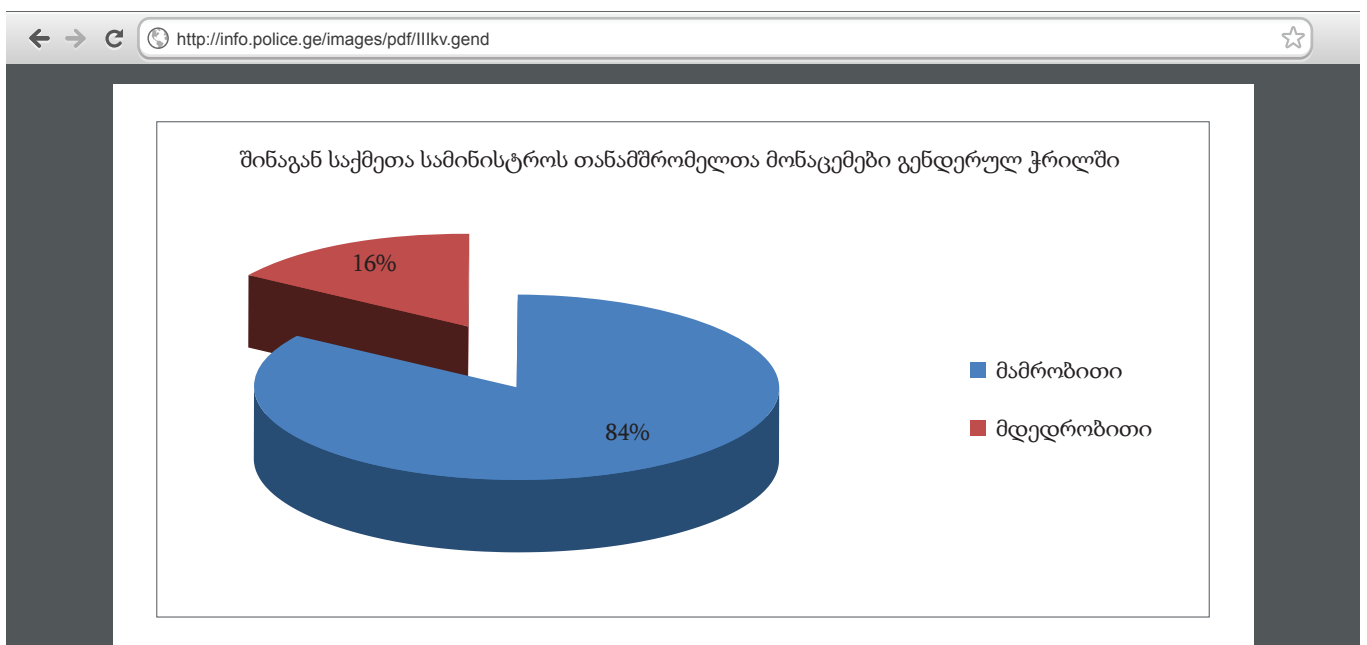


**Image N2: No information on police stations is available on the website, data of access: 20.01.2017**



- Results of the contests for public servants announced in the Ministry’s system and rules for appealing the contests;
- Number of employees in the system. The webpage provides information on the percentage breakdown of employees by gender, without indication of the number of employees;

**Image N3: Percentage breakdown of MIA employees by gender, data of 3<sup>rd</sup> Quarter of 2016. MIA’s public information page, data of access: 20.01.2017**



- Information on sale and transfer of state property was not published quarterly in 2016;<sup>[14]</sup>
- Information on the alienation and transfer of state property has not been published since the 2014 report. Moreover, after the publication of the 2014 data, the information on the financial assistance to administrative organs (grants, credits), as well funds dedicated as defined by the Budget Code of Georgia, has not been updated. The list of real estate property owned by the administrative organs has not been updated since 2013.<sup>[15]</sup>

#### Image N4: Public information page of the MIA, date of access: 20.01.2017

According to the government decree, administrative organs are obliged to ensure that public information can be requested in an electronic form, as well as to ensure the existence of an automated confirmation system for the registration of electronic requests. On the MIA's public information page the "Electronic Request Form" bounces back to the main page of [www.my.gov.ge](http://www.my.gov.ge). This makes it unclear for the users how to register an electronic request for public information.<sup>[16]</sup>

<sup>14</sup> After completion of the report the Information on sale and transfer of state property was added to website for all quarters of 2016.

<sup>15</sup> The list of real estate property owned by the administrative organs was not published by January, 2017, however after the completion of the report such data for the years 2015 and 2016 was added on the website.

<sup>16</sup> After the reporting period the Electronic Request Form was added to the website.

### 3.7. SUMMARY

The assessment of the accessibility to public information showed that the MIA responds to the FOI requests. Moreover, information is issued mostly in complete form and is in line with the demands of the request.

In spite of this, there is a problem of receiving the responses within the time period defined by law, as well as the issuing of incomplete information. Access is restricted on certain categories of classified information without reasonable grounds. Moreover, the Ministry does not entirely fulfill the obligation of proactively publishing information.

Due to the aforementioned, we call upon the Ministry to take the following steps to increase the accessibility to public information:

- To issue public information in complete form and in time periods defined by law; to carry out continuous systematization of important statistical and contact information, which will allow the timely disclosure of public information as well as effective administration of the Ministry.
- To make available the classified statutes of departments and total number staff members in structural units. In cases where such information includes state secrets, the Ministry should disclose information without those parts;
- To conduct thorough administrative proceedings on administrative complaints related to issuing of public information and substantiate the decision on the basis of a study of the circumstances and assessment;
- The Ministry should timely and completely publish information as defined by law on its webpage and ensure that the electronic system is operational. Moreover, the Ministry should proactively publish public information of high-public interest.

## 4. METHODS FOR PRODUCING STATISTICS IN THE MIA

There is no single and exhaustive definition of “good governance,” nor is there a delimitation of its scope, that commands universal acceptance.<sup>[17]</sup> However, there is a significant degree of consensus that good governance relates to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. It has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law.<sup>[18]</sup> The concept of good governance has been defined by the UN Resolution of the Human Rights Commission, which has recognized that transparent, responsible, accountable and participatory government, responsiveness to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights.<sup>[19]</sup>

One of the most visible representatives of the executive government is the police, whose main functions are the upholding of public order, protection of fundamental human rights and freedoms, prevention of crime and providing citizens with respective services. In fulfilling its duties, the police should act within the boundaries of national law and standards defined by international court and should demonstrate the upholding of rule of law. The document regulating law-enforcement system should be clear, precise and accessible to the public.<sup>[20]</sup>

Accountability and transparency, which are also central principles of democratic policing, demand that the police be open to having their activity observed – including the behavior of individual police officers, strategies for police operations, appointment procedures and budget management – by a variety of oversight institutions. The police must be accountable to the law, and accountable and transparent to the public.<sup>[21]</sup>

According to the OSCE Guidebook on Democratic Policing, one of the fundamental signs of democratic policing is the maintaining of public tranquility. Since the police cannot assume that they always act with the consent of (all) citizens, they must constantly work to ensure that the public supports their work. A prerequisite for gaining public support is providing for transparency of police operations and cultivating communication and mutual understanding between the public and the police. Measures to achieve transparency and communication include the public dissemination of reports on crime and police operations, the establishment of mechanisms for the public to request police service, the creation of forums for open discussion of crime and safety problems, and the introduction of community-based policing.<sup>[22]</sup>

Public information reports include crime statistics, clear-up rates for crimes, public security perceptions, reports on human rights records of the police or corruption cases within the police and other public oversight reports. These reports describe police activities, the security situation and the public’s perception of safety. They allow for public evaluation of police performance by assessing the level of divergence of policing results and actions from laws and written policies, as well as the cost-efficiency of those activities.<sup>[23]</sup>

Statistical analysis can make an important contribution to the delivery of an effective and efficient police service and to how police and their partners tackle crime. It can be used to identify the nature of a crime problem, understand the most cost-effective ways of addressing the problem, and monitor and evaluate any initiatives implemented to address the problem. An analysis of the nature of a crime problem is usually a critical first step to ensure that community needs are being met, and there are wide ranges of statistics that can be used to help with this. It is worth noting that there is growing interest in making greater use of statistics and data analysis within policing and making good use of them can be hugely beneficial.<sup>[24]</sup>

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<sup>17</sup> see <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

<sup>18</sup> Ibid.

<sup>19</sup> The role of good governance in the promotion of human rights, Commission on Human Rights resolution 2000/64

<sup>20</sup> OSCE, Guidebook on Democratic Policing, p. 9

<sup>21</sup> Good Practices in Building Police-Public Partnerships, p. 24

<sup>22</sup> OSCE, Guidebook on Democratic Policing, §95

<sup>23</sup> Ibid. §98

<sup>24</sup> Statistical and analytical guidance on crime and policing statistics for analysts working for Police and Crime Commissioners, p.6

The UN Criminal justice assessment toolkit stresses on the production of the following types of statistical information:

- Number and types of criminal offenses and its proportional indicators; the number of crimes that resulted in conviction; statistical data on the number of appeals for the conviction;
- Statistical data on the complaints made against the police; proportional indicators of confirmation of unlawful activities of the police and information on the imposed sanctions/fines;
- Statistical data on public confidence and trust in the police;
- Statistics on the ethnicity of persons stopped and searched; information on how many persons were arrested after the search.<sup>[25]</sup>

It is interesting to mention that the Code of Practice for official statistics, produced and published by the UK Statistics Authority, provides a common standard for good practice to all bodies producing official statistics in the UK and by so doing, helps to ensure a coherent and trustworthy service to users. The Code of Practice for Official Statistics comprises eight high level principles:<sup>[26]</sup>

- **Meeting user needs** - The production, management and dissemination of official statistics should meet the requirements of informed decision-making by government, public services, business, researchers and the public;
- **Impartiality and objectivity** - Official statistics, and information about statistical processes, should be managed impartially and objectively;
- **Integrity** - At all stages in the production, management and dissemination of official statistics, the public interest should prevail over organizational, political or personal interests;
- **Sound methods and assured quality** - Statistical methods should be consistent with scientific principles and internationally recognized best practices, and be fully documented. Quality should be monitored and assured taking account of internationally agreed practices;
- **Confidentiality** - Private information about individual persons (including bodies corporate) compiled in the production of official statistics is confidential, and should be used for statistical purposes only;
- **Proportionate burden** - The cost burden on data suppliers should not be excessive and should be assessed relative to the benefits arising from the use of the statistics;
- **Resources** - The resources made available for statistical activities should be sufficient to meet the requirements of this Code and should be used efficiently and effectively;
- **Frankness and accessibility** - Official statistics, accompanied by full and frank commentary, should be readily accessible to all users.

Notably, reliable crime statistics are critical for measuring changes in crime levels, monitoring state responses to crime, evaluating policies and understanding the various facets of crime in different contexts. Often, raw data from different stages of the criminal justice process are available, but the purposeful collection and organization of these data into statistical form is required to produce valuable information for use in decision-making.<sup>[27]</sup>

The purpose of this chapter is to identify and analyze the MIA's methods, types and main directions of the production of statistical information. Notably, statistics is a crucial component in public control and transparency and it is discussed according to international standards and national regulation. To meet the aims of the report, we focused on the MIA's production of the statistical information that is public and available to everyone.

<sup>25</sup> United Nations office on Drugs and Crime, The Integrity and Accountability of the Police, Criminal Justice Assessment toolkit, p. 5

<sup>26</sup> Statistical and analytical guidance on crime and policing statistics, p. 9

<sup>27</sup> International classification of crime for Statistical Purposes, p. 7

## 4.1. LEGAL FRAMEWORK FOR STATISTICAL PRODUCTION

The Law on Police does not touch upon the production of statistical information by the MIA. This issue first appears in statute of the MIA. According to the secondary legislation, it is within the duties of several departments to process, produce and systematize statistical information. The statute of the MIA does not focus on the main principles or specific procedures of processing and producing statistical information. Comparatively detailed issues are regulated across statutes of various departments and secondary legislation. Based on the requested secondary legislation and public information, the main direction of MIA's statistical production is crime statistics. However, the MIA also periodically prepares various types of analytical-statistical research. It is clear that the MIA doesn't have consolidated guidelines on the production of statistical information. This has been identified as a significant challenge when assessing the production and processing of statistical information.<sup>[28]</sup>

The information-analytical department has the main role in producing and processing statistical information within the MIA. It is within the responsibilities of the department to process and generalize information received from secret sources and manage electronic data-bases and registries.<sup>[29]</sup>

As it has been mentioned, the department ensures the processing, systematization, drafting of reports and storage into databases of information obtained from open and secret sources. Moreover, the department provides within its competences respective statistics and analytical materials to state organs, heads of ministries and subdivisions.<sup>[30]</sup>

## 4.2. RECORDED CRIME STATISTICS

According to the MIA,<sup>[31]</sup> statistical report on crime is prepared by the information-analytical department. The report is prepared every next month of the reporting year in coordination with the Ministry of Justice through an electronic statistical module.

It can be said that three types of statistics for recorded crimes exist in Georgia. The publication of two of these types of statistics is obligatory under the 2016 Statistical Activities Program approved by a government decree:<sup>[32]</sup>

1. On April 30, 2010, according to a memorandum of understanding between five agencies, the MIA, for the purposes of uniform statistical reporting, shall prepare and present to the National Statistics Office information on recorded crime statistics, termination of ongoing investigations according to type of crime, information on victims, administrative violations and facts of domestic violence;
2. The MIA and other agencies shall present quarterly reports to the National Statistics Office with information on the legislative sphere which, apart from recorded crime statistics, will cover number of traffic incidents (including those caused by intoxication) and the number of injured and fatalities, the number of fires and injuries caused by it, as well as information on buildings destroyed by fire.

The third type of statistics, as defined by the representatives of the MIA, is published on the basis of "good will" on the webpage of the ministry. It is worth noting that after February 15, 2016, the MIA has not published crime statistics.<sup>[33]</sup> While it is true that the law and secondary legislation do not obligate the MIA to publish statistical information on its website, it is within the interest of the MIA to seek public confidence and increase the level of accountability towards the public. This is especially important given that there is rising public interest for crime statistics. It should also be noted, that in 2014-2015 the Ministry of Internal Affairs periodically published crime statistics on the website. The published data included monthly statistics as well as summaries of statistics for several months.

<sup>28</sup> For example, Order of the Minister of Georgia on the Rules, Production, Dates of Presentation of Statistical Information in the system of the Ministry of Corrections and Probation exists in the Ministry of Corrections

<sup>29</sup> Government Decree N337 on the Approval of the Statute of the MIA

<sup>30</sup> Order of the Minister of Internal Affairs N963 on the Approval of the Statute of the MIA's information-analytical department, Article 6

<sup>31</sup> Letter of the MIA №2523515

<sup>32</sup> Order N215 of the Georgian Government on the Approval of the Program for Statistical Work in 2016

<sup>33</sup> <http://police.ge/ge/useful-information/statistics/statistics1> (date of access: 19.01.2017)

As far as the obligations of the memorandum are concerned, it is worth noting that the memorandum is defined as an informal legal agreement that has no mechanisms for enforcement.<sup>[34]</sup> The legally-binding nature of the memorandum is a matter of dispute given that the obligations spelled out therein have not been reflected in laws and secondary legislation.

These suspicions are further strengthened by the fact that the 2012-2016 consolidated report published by the National Statistics Office does not include information provided by the MIA for any of the months presented in the report. Moreover, the first chapter on police statistics is not included in the report. Therefore, we can assume that either the MIA neglected the obligations of the memorandum to present information to the National Statistics Office or that the latter chose not to publish the information in the report.<sup>[35]</sup> Due to this, it is expedient to translate the obligations of the memorandum on the legislative level, or at least through secondary legislation.

### 4.3. METHODOLOGY OF RECORDED CRIME STATISTICS

Until 2013, crime statistics in Georgia was produced based on an old methodology, according to which terminated criminal cases, regardless of the reason of termination, were not reflected in the crime statistics. With the new methodology introduced in 2013, any type of terminated criminal case, which does not rule out a criminal offense (discretionary powers of the prosecutor, diversion, mediation, repentance, nonexistence of guilt...), is registered in the statistical report and tagged as a solved case in the electronic system. Moreover, cases are considered solved when criminal cases are terminated due to non-existence of a crime.<sup>[36]</sup>

Notably, in spite of our efforts, the MIA has not provided us with the document of the new methodology. In response to our letters, the MIA provided information on key issues that were changed after 2013 and did not provide the response with the requested documentation.

For comparison, we present the general indicators of the old and new methodology for producing crime statistics for the years 2012-2013:<sup>[37]</sup>

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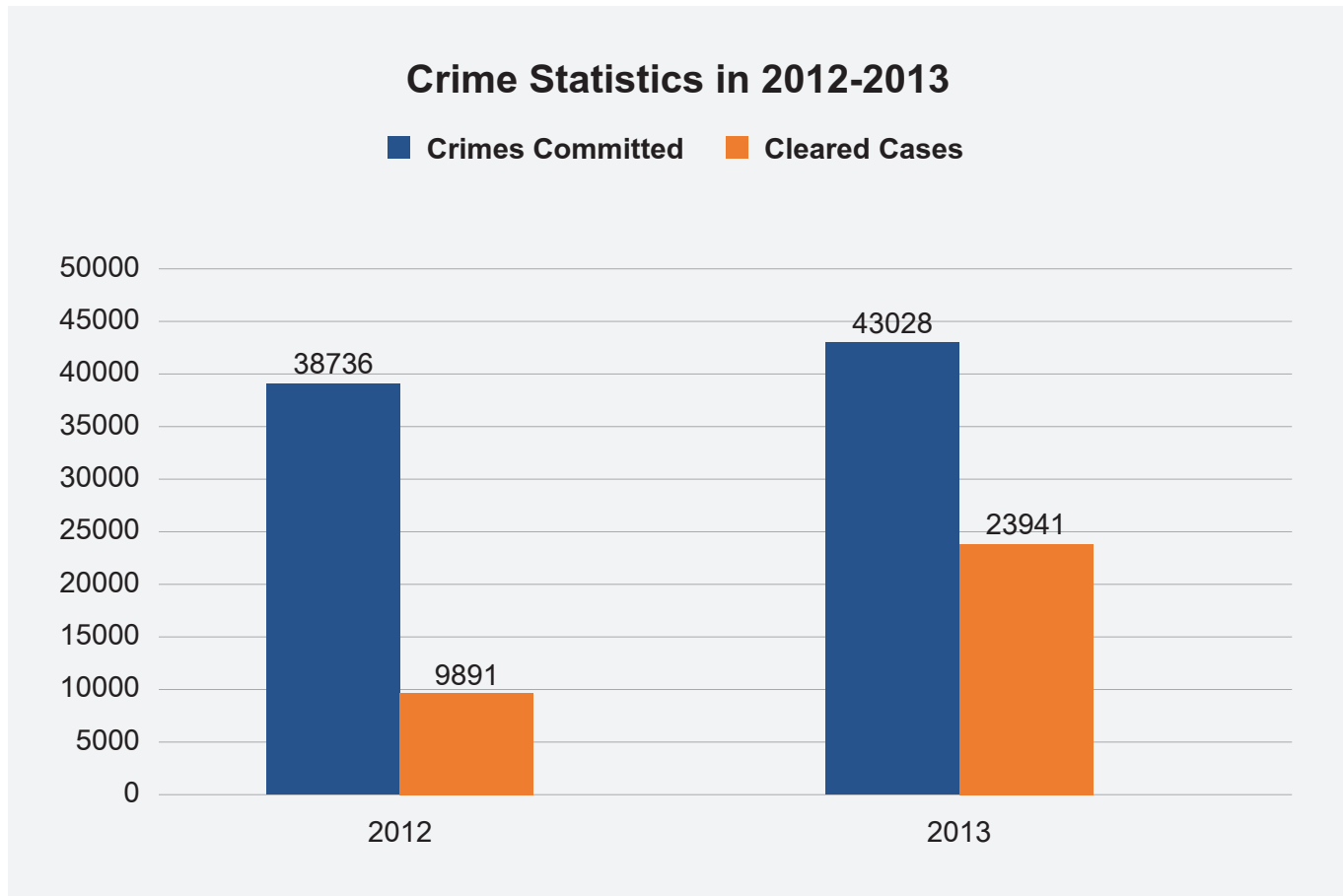
<sup>34</sup> <http://dictionary.cambridge.org/>

<sup>35</sup> [http://www.geostat.ge/?action=page&p\\_id=601&lang=geo](http://www.geostat.ge/?action=page&p_id=601&lang=geo)

<sup>36</sup> Letter of the Ministry of Internal Affairs №2462280

<sup>37</sup> [http://police.ge/files/pdf/statistika%20da%20kvlevebi\\_new/geo/sxvadasxva%20statistika/%E1%83%A2%E1%83%94%E1%83%9C%E1%83%93%E1%83%94%E1%83%9C%E1%83%AA%E1%83%98%E1%83%94%E1%83%91%E1%83%98%202012-2015.pdf](http://police.ge/files/pdf/statistika%20da%20kvlevebi_new/geo/sxvadasxva%20statistika/%E1%83%A2%E1%83%94%E1%83%9C%E1%83%93%E1%83%94%E1%83%9C%E1%83%AA%E1%83%98%E1%83%94%E1%83%91%E1%83%98%202012-2015.pdf)

Chart N6: Crime statistics in 2012-2013



As it has been noted, trustworthy and publicly available statistics on crime plays a significant role in the defining and implementation of criminal justice in the country.<sup>[38]</sup> The manipulation of crime statistics poses risk of the police misusing their powers or provoking offenses. The production of crime statistics and internal system of plans should not encourage offenses or the use of all means (including illegal) to solve cases or on the contrary - the cover-up of crime.<sup>[39]</sup> The most wide-spread reason for covering up crime can be the attempt at showing better statistics for solved cases. In this case, the police officer is interested in recording only easily solvable cases, while leaving the difficult cases unrecorded. The recording of crime requires special control.<sup>[40]</sup> However, this issue is beyond the scope of this document and represents a topic for a separate report.

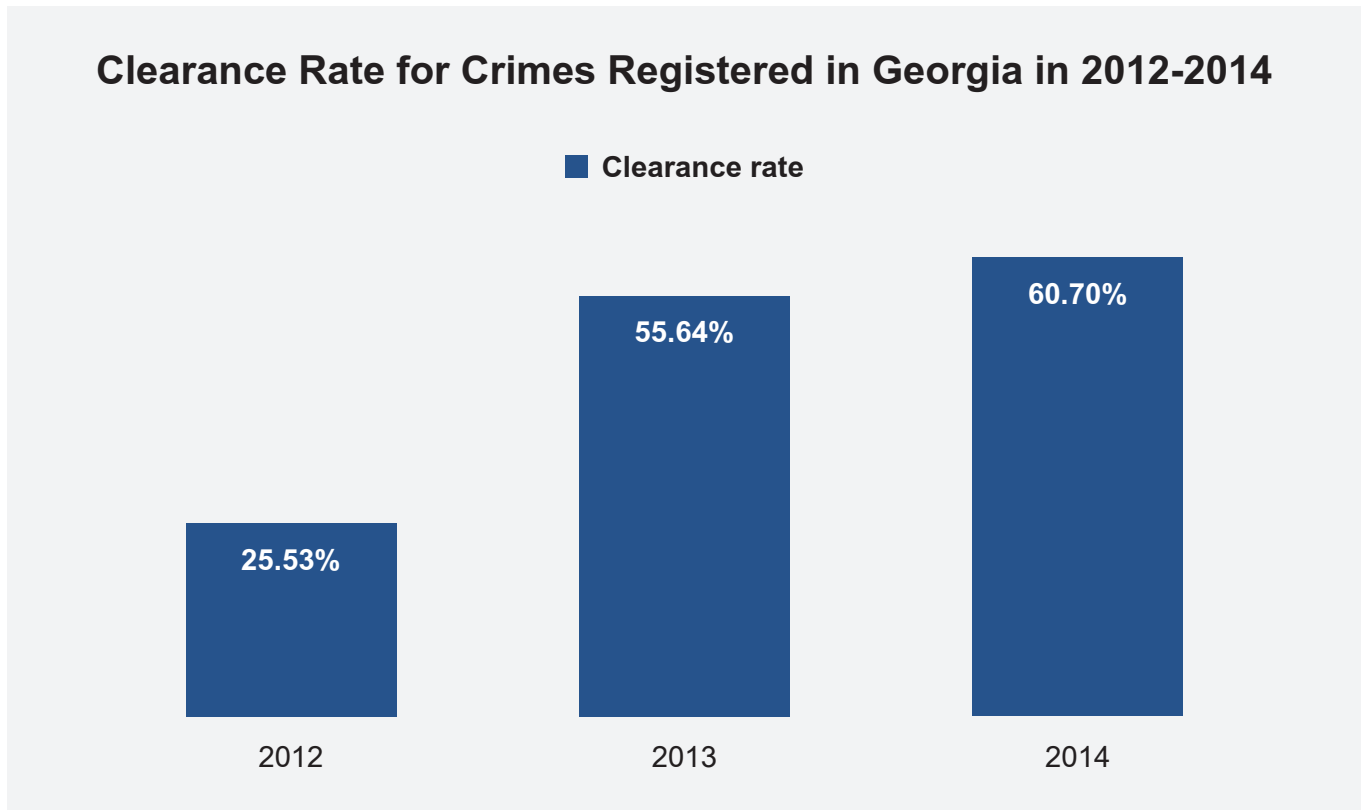
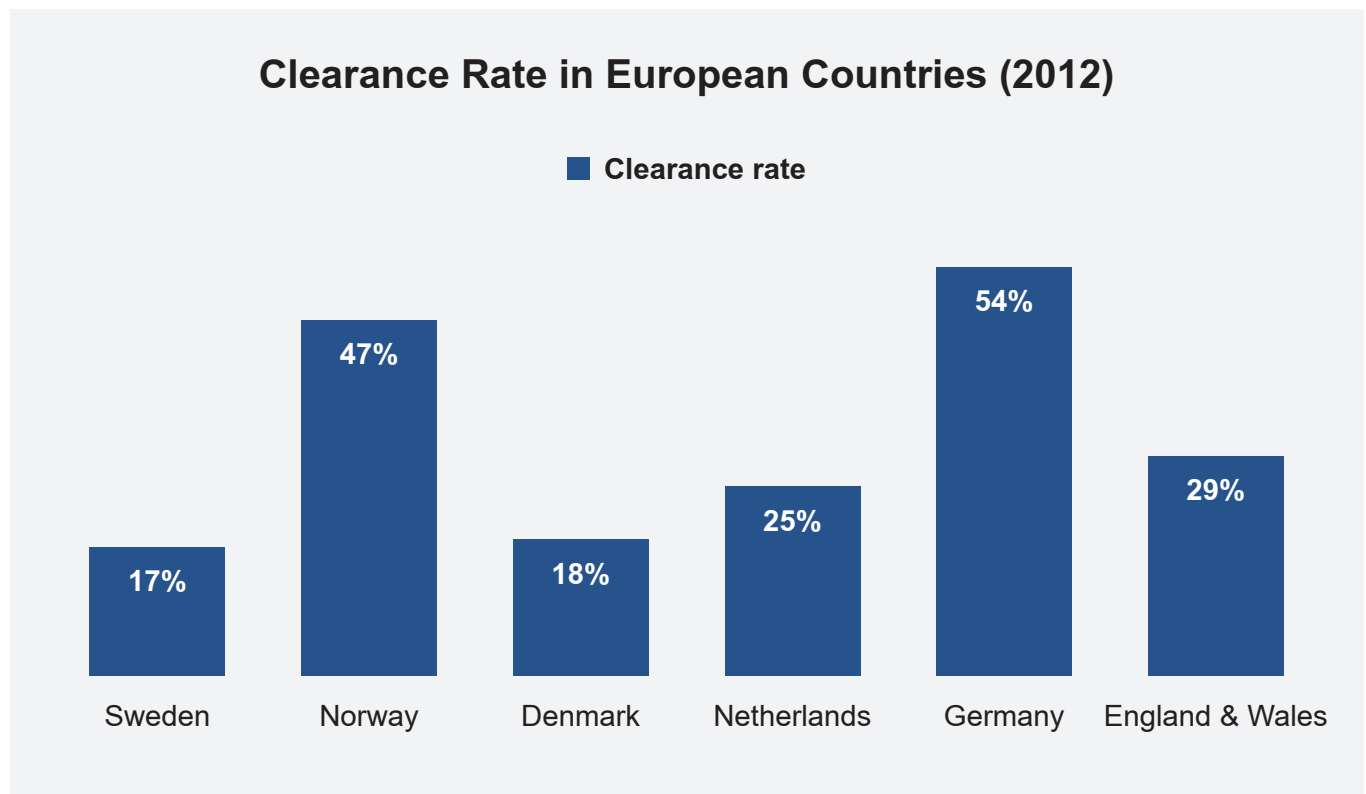
<sup>38</sup> Gloveli E., Analysis and Prognosis of Crime Justice in Georgia, p. 8-9

<sup>39</sup> Perspective of reforms in law enforcement system p. 6

<sup>40</sup> Kakhidze O., Crime and Statistics, Accessible at: <http://www.tabula.ge/ge/story/65903-danashauli-da-statistika>



Chart N7: Clearance rate for crimes registered in Georgia in 2012-2014.

Chart N8: The Clearance rate in European countries in 2012<sup>[41]</sup>

<sup>41</sup> The Clearance rate in Sweden and in other countries, An excerpt from the final report from the evaluation of the "20,000 Police" initiative, Brå report 2014:17

Criminal cases undergo various procedural changes in the period between their opening and completion. According to the MIA, for the purposes of conveying real data and better visibility, the status of all criminal cases is registered and taken into account in the programming software, which is finally reflected in the consolidated statistical form.<sup>[42]</sup>

According to the information provided by the MIA, one of the normative acts regulating the recorded crime statistics is the unified guidelines for crime recording approved in 2015. According to this document, the recording forms are the basis of the unified recording system, which are completed and sent within 72 hours to the Bureau for Provision of Analysis and Information. On the basis of the provided information, the Bureau proceeds to record data of the victims, perpetrators, injured and criminal cases. The statistical and analytical reporting on crime is formed on the basis of processing cards.<sup>[43]</sup>

When talking about the recording forms, it is noteworthy to mention five-article Order issued by the Minister of Internal Affairs in 2011.<sup>[44]</sup> According to the Order, in regard to electronic production of criminal cases, it is forbidden to fill in the crime record forms and send it to the information-analytical department. Moreover, according to the Order, the following restriction does not apply to the Ministry's counter-intelligence department. In all countries, regardless of the level of income, the majority of crime is not reported to the police for a variety of reasons, including fear of the consequences, or mistrust of the police.

It is universally acknowledged that police statistics do not provide an accurate account of the crime that people experience. Rates of crime reported to the police are highly dependent on the willingness of people to report them, on the capacity of the police to record them and on data-collection systems themselves.<sup>[45]</sup> In the countries, the majority of crime is not reported to the police for a variety of reasons, including fear of the consequences, or mistrust of the police. <sup>[46]</sup>

This restriction, which is connected to the crime and the application of statistics for data-recording of its indicators, has encouraged criminologists and researchers to look for alternative sources of understanding and measuring crime. One of the biggest advances in this regard is the victimology research. In the scope of this research, questionnaires and interviews are held with specific individuals, which state throughout the process whether they have been a victim or perpetrator of a crime. The victimology research is an important mechanism that provides direct contact with citizens and ensures data collection.<sup>[47]</sup>

Therefore, it is expedient to periodically conduct sociological research in parallel to the production of official statistical data. It should be noted that a sociological research on crime and statistics was held in 2010-2012 with the financial support of the Ministry of Justice of Georgia and the European Union. The interviews for the sociological research were held throughout the entire territory of Georgia, except for the occupied regions. 3001 respondents were interviewed in total.<sup>[48]</sup>

#### 4.4. STATISTICAL AND ANALYTICAL RESEARCH

The Information-Analytical Department at the Ministry of Internal Affairs conducts various statistical and analytical research bases on statistics available at the Information Center.<sup>[49]</sup>

The information that the Department uses to conduct its research is being supplied to it through procedures determined by bylaws.

The Statute of the Ministry also mentions statistics gathered by the Department of Migration and defines the Department's goal as elaboration of proposals and legal acts for the purpose of improving the legal framework.

The Department of Migration processes and analyzes the following statistics:

<sup>42</sup> Letter from the Ministry of Internal Affairs №2462280

<sup>43</sup> Order of the Government of Georgia N423 on the Adoption of the Common Guidelines for Crime Recording, Article 2

<sup>44</sup> Order of the Government of Georgia N1094 on the Elaboration of Issues Related To Electronic Production of Criminal Justice Cases

<sup>45</sup> Handbook on the crime prevention guidelines - making them work, p. 55

<sup>46</sup> Ibid. 56

<sup>47</sup> Manual for the Development of A System of Criminal Justice Statistics, p. 46

<sup>48</sup> see. <http://www.justice.gov.ge/Ministry/Department/280>

<sup>49</sup> For example, the Ministry website contains information from 2015-2016 on violations of the state border, foreign visitors and violations committed by them in Georgia, domestic violence, restraining orders, and traffic accidents for 2008-2015, (<http://police.ge/ge/useful-information/statistics/skhvadaskhva-sakhis-statistika-kvlevebi>)

- Decisions on expulsion of foreign citizens from Georgia (including reasons thereof)
- Refusals on expulsion of foreign citizens from Georgia (including reasons thereof)
- Detention / placement in a temporary accommodation center of a foreign citizen (including reasons thereof)
- Postponement of decisions on expulsion of foreign citizens from Georgia (including reasons thereof) and so forth<sup>[50]</sup>

According to the Ministry of Internal Affairs, statistics gathered on a monthly basis and/or upon request.<sup>[51]</sup>

## 4.5. INTERACTIVE STATISTICS AND CRIME MAPPING

According to the Open Government Partnership Georgia Action Plan for 2014-2015, one of the commitments taken by the Ministry of Internal Affairs was introducing crime mapping and interactive statistics. This commitment responds directly to existing challenges in terms of having safe environment and is designed to increase access to public information, its proactive openness and public accountability related to crime. This commitment implies diversification of statistics and opening up and presenting statistics using interactive and innovative formats:

1. Interactive statistics will be provided based on the data of the Integrated Criminal Case Management System of Georgia.
2. Detailed crime mapping will be created: an interactive instrument, which allows seeing the statistics in various formats with combination of different variables, including specified time period, crime type, regions, etc.<sup>[52]</sup>

According to the report prepared by the Independent Reporting Mechanism, the Ministry of Internal Affairs failed to fulfill this commitment.<sup>[53]</sup> According to the Ministry, the Information-Analytical Department had largely completed its part of the task; however, the system was not launched due to a problem with purchasing GPS trackers.<sup>[54]</sup> The fact is that neither crime mapping nor interactive statistics have been introduced by the Ministry so far.<sup>[55]</sup> According to the information provided by the Ministry the interactive map for crimes has been operating in a test mode, after which it will be available to all interested persons.

## 4.6. SUMMARY

In view of the above, it is clear that the method used by the Ministry of Internal Affairs to gather statistics is not based on a common set of systematized procedures, and that issues related to statistics are regulated by various bylaws and memoranda. Statistical and analytical research inside the Ministry is conducted in a chaotic manner without being based on clear goals and needs. Not enough attention is paid to sociological surveys on the nature and characteristics of crimes and the keeping of detailed statistics on more sensitive issues.

Therefore, in order to increase transparency and public awareness, and improve policy planning, the Ministry of Internal Affairs must:

- Elaborate a single consolidated document that will determine the procedures, time-frames and responsible bodies for statistics production in the Ministry.
- Fulfill its commitments within the 2010 interagency memorandum and provide monthly crime data to the National Statistics Office.
- Regularly publish statistics on its website.
- Start keeping and disclosing information on complaints received against the police, the share of complaints where police misconduct was identified and information punishments.
- Periodically conduct public opinion surveys and studies, and process gathered data.
- Start keeping more detailed statistics on sensitive issues.<sup>[56]</sup>
- Introduce interactive statistics and crime mapping and ensure their public access.

<sup>50</sup> Invalidated decisions on expulsion of foreign citizens from Georgia (including reasons thereof); Executed decisions on expulsion of foreign citizens from Georgia (compulsory and voluntary); Appealed decisions on the expulsion of foreign citizens from Georgia; Decisions to impose measures alternative to placement of foreign citizens in a temporary accommodation center; Basis for releasing foreign citizens from temporary accommodation center; Persons subjected to readmission, and their applications.

<sup>51</sup> Letter №2755140 of the Minister of Internal Affairs

<sup>52</sup> Open Government Partnership (OGP) Georgia Action Plan 2014-2015, p. 51

<sup>53</sup> Independent Reporting Mechanism (IRM): Georgia Progress Report 2014-2015, p. 31

<sup>54</sup> Letter №3041678 of the Minister of Internal Affairs

<sup>55</sup> Ibid.

<sup>56</sup> Eg. Producing detailed statistics on hate crimes and crimes against right to privacy.

## 5. FORMS OF COMPILING AND MANAGING DATABASES

New information technologies can greatly simplify the methods of combating various categories of crime. Keeping a record of and analyzing personal data allows the police to more efficiently combat crime. However, uncontrolled use of personal data may result in a gross violation of privacy rights. In order to prevent misuse of personal data during data collection, storage and use, the actions taken by the police must be based on internationally recognized principles of data protection.<sup>[57]</sup> Worth mentioning in this regard are the recommendations and guidelines elaborated by the Council of Europe:<sup>[58]</sup>

- **Control** – Each member state should have an independent supervisory authority outside the police sector which should be responsible for ensuring respect for the principles contained in the Council of Europe recommendation.
- **Collection of data** – The collection of personal data for police purposes should be limited to such as is necessary for the prevention of a real danger or the suppression of a specific criminal offence. Any exception to this provision should be the subject of specific national legislation.
- **Storage of data** – As far as possible, the storage of personal data for police purposes should be limited to accurate data and to such data as are necessary to allow police bodies to perform their lawful tasks within the framework of national law and their obligations arising from international law.
- **Us of data by the police** – Personal data collected and stored by the police for police purposes should be used exclusively for those purposes.
- **Communication of data**

**a) Communication within the police sector** – The communication of data between police bodies to be used for police purposes should only be permissible if there exists a legitimate interest for such communication within the framework of the legal powers of these bodies.

**b) Communication to other public bodies** – Communication of data to other public bodies should only be permissible if:

b. a) there exists a clear legal obligation or authorization; or if

b. b) these data are indispensable to the recipient to enable him to fulfill his own lawful task and provided that the aim of the collection or processing to be carried out by the recipient is not contrary to the legislation.

- **Publicity** – The supervisory authority should take measures so as to satisfy itself that the public is informed of the existence of files which are the subject of notification as well as of its rights in regard to these files.
- **Length of storage of data** – Measures should be taken so that personal data kept for police purposes are deleted if they are no longer necessary for the purposes for which they were stored. Rules aimed at fixing storage periods for the different categories of personal data should be established in agreement with the supervisory authority or in accordance with domestic law.
- **Data security** – The responsible body should take all the necessary measures to ensure the appropriate security of the data and prevent unauthorized access. For this purpose, the different characteristics and contents of files should be taken into account.

This Chapter presents the forms and procedure of data processing used by the Ministry of Internal Affairs as well as issues of personal data protection during this process.

<sup>57</sup> The European Code of Police Ethics, p. 58

<sup>58</sup> Recommendation No. R (87) 15 Regulating the Use of Personal Data in the Police Sector

## 5.1. FORMS OF PERSONAL DATA PROCESSING

According to the Statute of the Ministry of Internal Affairs, obtaining information from open and secret sources, and processing and analysis of this information is carried out by the Information-Analytical Department based on rules defined by the Minister.<sup>[59]</sup> In order to fulfill its function, the Information-Analytical Department processes relevant information, keeps record, transfers data to authorized entities and performs other activities defined by its statute.<sup>[60]</sup>

The Joint Operations Center, a new department within the Ministry, is charged with unifying, developing and managing existing databases in the Ministry, ensuring quick access to them for the purpose of providing analytical support to police officers responsible for crime prevention and incident response. The objectives for the implementation of the center of one of the structural units, The Technical Support and Technology Development Division of the Joint Operations Center is responsible for unified management of Ministry databases, development and implementation of projects for the purpose of increasing analytical capabilities.<sup>[61]</sup>

Data processing is generally defined broadly as any action taken with respect to data through automatic, semi-automatic or non-automatic means, including: collection, recording, photographing, audio recording, video recording, organization, storage<sup>[62]</sup> and more.<sup>[63]</sup>

One example of automatic data processing, or processing using information technologies, is the Ministry of Internal Affairs's electronic system of document management called Eflow, which enables electronic signature holders to create, send, receive, and/or storage documents. An example of non-automatic or manual data processing is having a journal with manual records of who enters and leaves a building. In case of semi-automatic data processing, a part of the data in a database is processed through automatic and a part by non-automatic means.<sup>[64]</sup>

A special order of the Minister of Internal Affairs defines the time-frames for processing, storage, deletion and archiving of data inside the Ministry's filing systems:<sup>[65]</sup>

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<sup>59</sup> Government Resolution №337 on the Approval of the Statute of the Ministry of Internal Affairs

<sup>60</sup> Order №963 of the Minister of Internal Affairs on the Approval of the Statute of the Information and Analytical Department of the Ministry of Internal Affairs

<sup>61</sup> Order №558 of the Minister of Internal Affairs on the Approval of the Statute of the Joint Operations Center (Department) of the Ministry of Internal Affairs

<sup>62</sup> Order №387 of the Minister of Internal Affairs on the Approval of the instructions for Personal Data Processing and Protection in the Ministry of Internal Affairs, Article 1, Subparagraph c)

<sup>63</sup> Alteration, recovery, withdrawal, use or disclosure through data transmission, dissemination or other ways of making it available, grouping or combination, blocking, deletion or destruction.

<sup>64</sup> Izoria L., Police Law, p .91

<sup>65</sup> Order №53 of the Minister of Internal Affairs on the Approval of the Time-Frames of Data Storage in the File Systems of the Ministry of Internal Affairs

**Chart N9: Time-frames for processing, storage, deletion and archiving of data inside the Ministry's filing systems**

Data Type	Storage Period	Archiving
Data on persons and vehicles entering and leaving administrative buildings	3 Years	
Recordings of surveillance cameras in and outside administrative buildings	Storage period depends on the technical means, but must not exceed 3 years	
Recordings of surveillance cameras on roads and buildings	Storage period depends on the technical means, but must not exceed 3 years	
Data on administrative offenses	4 Years	Indefinite
Data on domestic violence, its perpetrators, restraining and protective orders	5 Years	Indefinite
Registration data of persons held criminally responsible	Until expungement	Indefinite
Fingerprint data of candidates	Until dismissal of the Ministry employee	Indefinite
Fingerprint data and photos	Until ascertainment of a person's death	Indefinite
Data on missing persons and unidentified corpses	For 1 year after a missing person / unidentified body is found	
Data on registered lost / found objects	For 1 year after the transfer of an object to the authorized person (owner)	
Data on registered wanted persons and lost firearms and vehicles	For 3 years after a lost object has been found	Indefinite

Data Type	Storage Period	Archiving
Data on registered conflicts related to juveniles and occurring in educational institutions	5 Years	10 Years
Records of Georgian or foreign citizens expelled, readmitted (or awaiting deportation) from foreign countries into Georgia	5 Years	Indefinite
Data on foreign citizens residing in Georgia without a legal basis	15 Years	Indefinite
Data on state border crossing	15 Years	Indefinite
Data on competition candidates	2 Years	1 Year
Data on persons placed in a temporary detention center	10 Years	Indefinite
Data from crime statistics forms		Indefinite
Data on work related activities of current / former employees	Until dismissal of the Ministry employee	Indefinite
Call sign data	5 Years	25 Years
Data available on a person's drug test	4 Years	Indefinite
Data (logging) on user access to information stored in the Ministry's filing system	5 Years	5 Years
Recordings of calls received by the hotline of the Technical Service of the Operational Technical Department	2 Years	2 Years
Recordings of calls received by the General Inspection's hotline	Storage period depends on the technical means, but must not exceed 3 years	

The Ministry processes data on administrative violations based on Article 270 of the Administrative Code and the Order of the Minister of Internal Affairs.<sup>[66]</sup> According to Section II of Article 270, bodies responsible for drafting and reviewing reports of administrative violation are obligated within 10 days of drafting or reviewing a report to inform a relevant structural unit of the Ministry of Internal Affairs (information bank).<sup>[67]</sup> According to an Order of the Minister of Internal Affairs, this data must be stored for 4 years and archived indefinitely. According to the Instructions on Keeping a Unified Record of Administrative Violations, Operation of the Information Bank, and Record-Keeping and Analytical Activities, until February of 2017, electronic data was kept indefinitely in the unified information bank of administrative violations.<sup>[68]</sup>

On February 9, 2017, the Constitutional Court upheld the constitutional claim<sup>[69]</sup> of Edisher Goduadze and the indefinite storage of information about committed administrative offences in electronic format in unified information bank was declared unconstitutional. The court ruled, that the regulation violates the constitutionally protected right of free development of a person.

The court explained that for maintaining legal order and public security in a state, preventing administrative offences and proper qualification of actions, it is important to record and store information on administrative offences. However, when achieving such legitimate aim the state must protect human rights and freedoms and act with the principle of proportionality.

The court clarified that the disputed legal norm provided grounds for keeping data about a person even when the storage of such information did not serve the purposes of enforcing the administrative penalty or/and defining proper punishment for a repeated offence and it established an indefinite and blank obligation of storing such information.

The court ruled that storage of information on administrative offenders in a blank and indefinite manner is not a necessary and proportionate means for achieving the legitimate aim and it creates risks for illegal dissemination of information or/and such other abuses of power. The legitimate aim can be achieved by less restrictive means. The term for storing data in filing systems starts from the moment such data enters the system. The term for storing specific information can be prolonged by the time necessary for achieving legitimate purpose.<sup>[70]</sup> The disputed bylaw does not specify the goals for extension of storing term and does not set out the decision making procedure or person/body authorised to make such decisions.

The data is archived after the expiration of the storage period. In many cases, data of various categories is archived indefinitely.<sup>[71]</sup> Bylaws do not separate different modes of access to the archived data. The Minister's Order and the Instruction on Processing and Protection of Personal Data contain only a general note, according to which, archiving is defined as protection of data in the Ministry's filing system after the expiration of the storage period, where it can only be accessed on the basis of a substantiated written request.

After the expiration of the storage (for data which is not subject to archiving) and/or archiving periods, or after the legitimate goal for data processing has been achieved, the data must be deleted or saved without identification data.<sup>[72]</sup>

<sup>66</sup> Order №271 of the Minister of Internal Affairs on the Approval of the Instructions for Keeping a Unified Record of Administrative Violations, and Functioning and Analytical Activities of the Information Bank

<sup>67</sup> Order №53 of the Minister of Internal Affairs on the Approval of the Time-Frames of Data Storage in the File Systems of the Ministry of Internal Affairs

<sup>68</sup> Order №271 of the Minister of Internal Affairs on the Approval of the Instructions for Keeping a Unified Record of Administrative Violations, and Functioning and Analytical Activities of the Information Bank

<sup>69</sup> Registration №622

<sup>70</sup> Order №53 of the Minister of Internal Affairs on the Approval of the Time-Frames of Data Storage in the File Systems of the Ministry of Internal Affairs

<sup>71</sup> The following data categories are archived indefinitely: records of persons found guilty for criminal offenses, fingerprint data, crime statistics forms, domestic violence perpetrators and issued restraining and protective orders, photo materials (habitoscropy), images of wanted persons and lost firearms and vehicles, records of Georgian or foreign citizens expelled, readmitted (or awaiting deportation) from foreign countries into Georgia, data on foreign citizens residing in Georgia without a legal basis.

<sup>72</sup> Order №53 of the Minister of Internal Affairs on the Approval of the Time-Frames of Data Storage in the File Systems of the Ministry of Internal Affairs



Therefore, the Ministry's Information-Analytical Department and the Operating-Technical Department are responsible for: <sup>[73]</sup>

- a) Technical organization of deletion or archiving of data in the Ministry's filing systems after the expiration of storage or archiving periods.
- b) Deletion of data from the filing systems based on storage periods.
- c) Archiving and protection of data that are not subject to deletion.

As the representatives of the MIA explained to the research team, the work is currently in progress for amending the legal acts on time-frames of storage of archived data and adopting detailed regulations for accessing the archived information.

## 5.2. EMPLOYEE ACCESS TO DATABASES

Regulations for granting employees access to certain categories of data are defined by an Order of the Minister of Internal Affairs.<sup>[74]</sup>

According to the order, the head of a relevant Ministry institution must appeal to the Information-Analytical Department with a written request to grant access to their authorized employee to data stored in the central database (in each individual case). The request must include the following information:<sup>[75]</sup>

1. Request to receive a one-time password-generating device (DIGIPASS).
2. Information on the person to be granted access to the central database.
3. List of access rights to be granted to this person.
4. Substantiation for the necessity to access data (separately for each item on the above list).

The Information-Analytical Department analyzes the above information and makes a decision to grant the employee access to databases. This Ministry employee is then given the password generation device, which they can use multiple times. In each instance of accessing the databases, the device generates a one-time password, meaning that the employee's access to databases can only be monitored post factum.

Access requests are considered individually and can be granted fully or partially. In case of a refusal, the initiator is provided with a substantiated response.<sup>[76]</sup>

The project team requested information on the number of times the Information-Analytical Department had rejected an access request. According to the Ministry, the Department does not keep record of its decisions on access requests.<sup>[77]</sup>

## 5.3. ACCESS TO DATA BY OUTSIDE INSTITUTIONS

According to the Ministry's Instruction on Processing and Protection of Personal Data, data held by the Ministry can be accessed by outside state bodies and institutions, based on their official authority and according to legislation. Other institutions can also have access to data through mutually beneficial cooperation with the police, as long as this cooperation is contrary to Georgian legislation and legal provisions of data protection and confidentiality. According to data received through requesting public information,<sup>[78]</sup> apart from investigative bodies, the following bodies of the executive government have access to the Ministry of Internal Affairs' central information bank:

- Ministry of Refugees
- Ministry of Healthcare
- LEPL Levan Samkharauli National Forensics Bureau

<sup>73</sup> Ibid.

<sup>74</sup> Letter №2271059 of the Minister of Internal Affairs

<sup>75</sup> Order №860 of the Minister of Internal Affairs on Regulating Issues Related to access to the Central Data Bank of the Ministry of Internal Affairs

<sup>76</sup> Letter №3051646 of the Minister of Internal Affairs

<sup>77</sup> Ibid.

<sup>78</sup> Letter №2981080 of the Minister of Internal Affairs

- Ministry of Foreign Affairs
- Ministry of Education
- Government Administration (State Security and Crisis Management Council)
- Ministry of Environment
- Financial Monitoring Service

The project team also requested the list of legal acts that regulate access to Ministry databases by other institutions. The response revealed that the data exchange between state institutions is largely based on bilateral memoranda and agreements.

According to the Ministry of Internal Affairs, data exchange with state institutions is carried out on relevant solid legal basis. In particular, the process involves written requests, and appropriate responses based on identification of specific legal basis for processing of personal data.<sup>[79]</sup>

Transfer of data from the police system to outside institutions must be carried out solely on the basis of clear legal obligation or authorization.<sup>[80]</sup> Therefore, due to the quantity and nature of the data stored by the Ministry of Internal Affairs, a common legal act must be elaborated that will define the list of outside state institutions with access to the central data bank, the basis for granting access to data, and the main procedural issues.

## 5.4. OVERSIGHT

In accordance with the Law on Personal Data Protection, independent oversight of data processing by the Ministry of Internal Affairs and an authorized person is carried out by the Personal Data Protection Inspector. Oversight procedures, Inspector's authority and response mechanisms are defined in detail by the Ministry's Instructions on Processing and Protection of Personal Data.

The Inspector is authorized to:

- Inspect the Ministry within competence on their own initiative or upon request of an interested party.
- For the purpose of conducting the inspection, to request the Ministry to provide (or themselves enter and inspect) documents and information, including information containing commercial and professional secrets, as well as investigation material that constitutes a state secret.

The Ministry is obligated to provide the Inspector with the requested information and documents immediately, or within 10 days if the obtaining this information requires contacting of other institutions or processing of a significant amount of information/documents.

In case of a violation, the Inspector is authorized to:

- Demand that the violation and data processing deficiencies be rectified in the manner and by the deadline set by the Inspector.
- Demand temporary or permanent termination of data processing, if the data security measures taken by the processing person or entity are inconsistent with the requirements of the law.
- Demand termination, blocking, deletion, destruction or depersonalization of data processing, if the Inspector considers the process to be carried out unlawfully.
- Demand termination of the transfer of data to other states and international organizations, if the transfer is being carried out in violation of the requirements of the Law on Personal Data Protection or the Ministry Instructions.
- Give written advice and recommendations to the Ministry and the authorized person, in case of violations of data processing rules.

<sup>79</sup> Letter №2981080 of the Minister of Internal Affairs

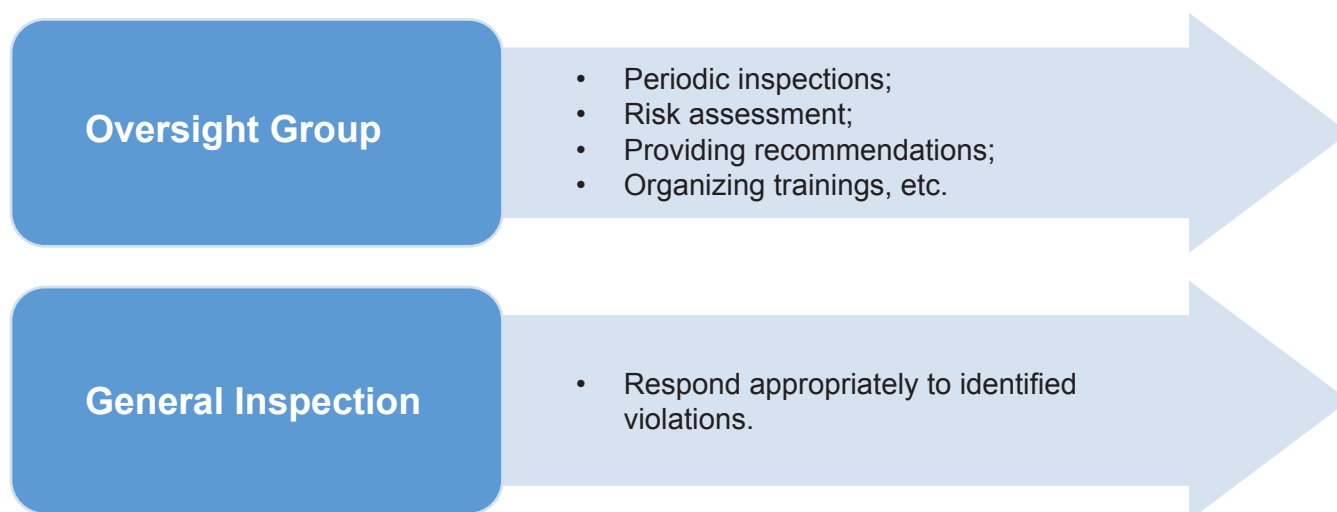
<sup>80</sup> Handbook on European Data Protection Law, p. 147

The Ministry of Internal Affairs is obligated to comply with the demands of the Inspector, within the period specified by the Inspector, and notify the Inspector thereafter. If the Ministry fails to comply with the demands, the Inspector is authorized to address the court.

In case of an administrative violation, the Inspector is authorized to issue a report of administrative violation and impose administrative responsibility on the Ministry or the authorized person in accordance with the law. If the Inspector suspects a violation, they are required to notify competent state authorities of this in accordance with the law.

The Inspector's decision is binding and can be appealed only in court, in accordance with the law.

Within the Ministry, data protection standards are overseen by the Personal Data Protection Supervision Group, whose function is to monitor compliance with domestic and international data protection standards, coordinate between various Ministry units and, oversee the implementation of the regulations included in the Instructions. The Ministry's General Inspection is responsible for responding to violations of personal data processing standards and regulations included in the Instructions by Ministry employees.



Upon violation of a data subject's rights defined by the Law on Personal Data Protection and Ministry Instructions, a data subject has the right to appeal to the same (Ministry) or higher administrative authority, the Inspector or the court. The data subject has the right to request their data be blocked prior to the final decision.

## 5.5. UNAUTHORIZED ACCESS

According to the European Court of Human Rights, the protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life. The Court notes that the domestic law must afford appropriate safeguards to prevent any misuse of personal data. These mechanisms are especially important in a situation when personal data subject to automatic processing. The need for such safeguards is all the greater where personal data undergoes automatic processing. The Court states that only relevant data must be stored and that adequate guarantees must be places so that retained personal data are efficiently protected from misuse and abuse.<sup>[81]</sup>

Even though the Ministry of Internal Affairs introduced several changes regarding personal data protection and database management since 2015, prevention of unauthorized access to databases still remains a challenge. The following are the existing mechanisms to deal with this problem:<sup>[82]</sup>

- Upon losing the password generating device (DIGIPASS), the employee must immediately notify the Information-Analytical Department so that the access right can be terminated.
- Heads of the Ministry's Structural Divisions, Territorial Bodies, Border Police and Legal Entities of Public Law are required to oversee their employees, in order to prevent the use of Ministry data for purposes outside their official duties.

<sup>81</sup> European Court of Human Rights, Factsheet, Personal Data Protection, November 2016, p. 9

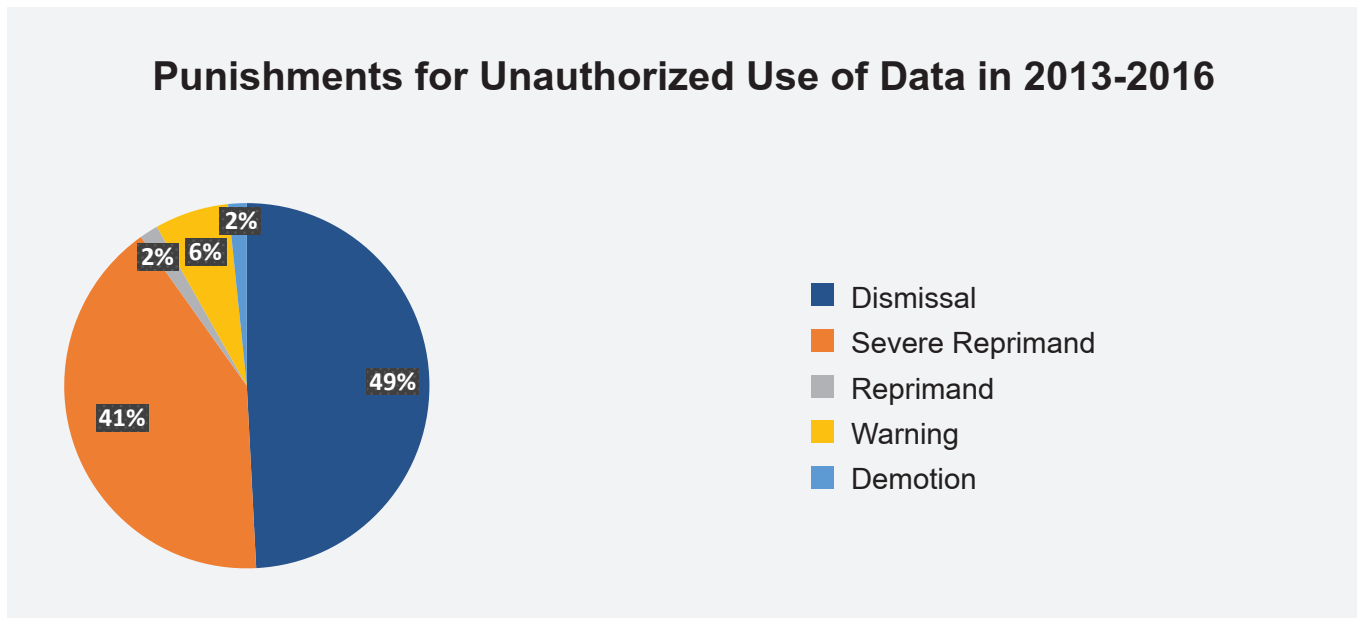
<sup>82</sup> Order №860 of the Minister of Internal Affairs on Regulating Issues Related to access to the Central Data Bank of the Ministry of Internal Affairs

- The Information-Analytical Department oversees the use of information resources. Upon having reasonable doubt on unauthorized use of data, it blocks the relevant service and, if necessary, notifies the General Inspection.

Despite the existence of these provisions, statistical data show that unauthorized database access is still a problem and that further steps need to be taken to improve personal data protection.

According to the Ministry of Internal Affairs,<sup>[83]</sup> **61 disciplinary punishments** had been issued against Ministry employees in 2013-2016 for unauthorized database use.

**Graph N10: Punishments for Unauthorized Use of Data in 2013-2016.**



From 2013 to 2016, the Personal Data Protection Inspector examined 40 cases of data processing by the Ministry of Internal Affairs. From these, the Inspector identified violations of the Law on Personal Data Protection in 16 cases, in 5 cases the Ministry was asked to rectify a violation, and in 1 case the Prosecutor's Office was notified.<sup>[84]</sup>

**Chart N11: Information on violations of the Law on Personal Data Protection.**

	2013	2014	2015	2016
Cases Examined	0	03	15	22
Violations Identified	0	01	08	07
Orders Issued to Rectify a Violation	0	0	03	02

The Ministry also keeps physical archives, which include information containing personal data. This data is considered confidential based on Article 2, Paragraph 1, Subparagraph n) of the General Administrative Code and can only be disclosed in accordance with the Law on Personal Data Protection.<sup>[85]</sup> Compared to electronically archived data, it is much harder to oversee access to physically archived data, since no electronic trace is left after the fact.

<sup>83</sup> Letter №174739 of the Minister of Internal Affairs

<sup>84</sup> Personal Data Protection Inspector Letter PDP 1 17 00000195 of the Office of the Personal Data Protection Inspector

<sup>85</sup> Letter №2271059 of the Minister of Internal Affairs

## 5.6. DNA BANK

The success of DNA banks in several countries, in terms of solving crimes and identifying suspects, has encouraged more states to create their own national DNA databases and a relevant legislative base.<sup>[86]</sup> According to a 2008 global study by Interpol, 120 member states had been using DNA profiles during criminal investigation, out of which 54 states owned their own national DNA bank.<sup>[87]</sup>

The Ministry of Internal Affairs has drafted a package of legislative amendments that aims to introduce legislative regulations required for creating a DNA bank and, in this way, to enhance the capabilities of investigative bodies.

According to the draft law, it will be mandatory to take DNA samples from convicted individuals and defendants charged with grave and especially grave crimes upon their entry into a penitentiary institution. The sample will immediately be sent to a structural unit under the Ministry of Internal Affairs that is responsible for operating the DNA bank. In cases under Article 105 of the Criminal Procedure Code, except for Paragraph 2, Subparagraphs b) and c), upon dropping of charges, acquittal or conviction for a less grave crime of an accused, their DNA profile must be destroyed within 3 months of the decision. DNA profiles of convicted individuals and unidentified DNA profiles discovered at crime scenes are stored for 50 years.

The recommendation of the Council of Europe's Committee of Ministers on this matter gives discretion to Member States to regulate DNA collection, processing and use more strictly and narrowly at the national legislation level. The recommendation states that "measures should be taken to ensure that the results of DNA analysis and the information so derived is deleted when it is no longer necessary to keep it for the purposes for which it was used. The results of DNA analysis and the information so derived may, however, be retained where the individual concerned has been convicted of serious offences against the life, integrity or security of persons. In such cases strict storage periods should be defined by domestic law."<sup>[88]</sup>

Considering the fact that a DNA sample contains a lot of sensitive information about a person, it is important for the process of its collection, storage and analysis to meet the proportionality test. The means of taking a DNA sample must be appropriate and proportionate to its legitimate goal. Therefore, instead of tying DNA sample collection to general crime categories (grave and especially grave), it may be more appropriate to consider more specific types of criminal acts and their objects.

In addition, the storage of DNA samples belonging to juvenile convicts must be handled differently from the general rule. For example, according to the Austrian federal law, juvenile DNA samples must be destroyed within 3 years.<sup>[89]</sup> Notably, unlike the initial draft, the current bill sets different time-frames for storage of DNA samples belonging to juveniles. Namely, the DNA samples of juveniles convicted for grave or particularly grave crimes will be kept for 10 years. When it comes to DNA samples of juveniles, it may be advisable to create a separate DNA bank, from which DNA samples of juveniles will be destroyed upon them reaching legal age.<sup>[90]</sup>

## 5.7. SUMMARY

Since protection of personal data and privacy is one of the main functions of the Ministry of Internal Affairs, the Ministry must ensure that its databases are protected and their unauthorized use by Ministry employees is prevented. For this purpose, the Ministry must:

- Clearly and strictly define the procedures, basis and time-frames for archiving data following the expiration of the storage period.
- Regulate the procedure for extending the data storage period (by requiring substantiation).
- Define issues related to access to Ministry databases by other public institutions, including their list, key principles and procedures, through a single legal act.
- Digitize material archives.

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<sup>86</sup> DNA and Law Enforcement in the European Union: Tools and Human Rights Protection, p. 1

<sup>87</sup> Interpol Global DNA Profiling Survey, p. 3

<sup>88</sup> Recommendation No. R (92) 1 of the Committee of Ministers to the Member States on the Use of Analysis of Deoxyribonucleic Acid (DNA) within the Framework of the Criminal Justice System

<sup>89</sup> Austrian Federal Law Regarding the Organization of the (Internal) Security Management and the Practice of the State Police

<sup>90</sup> DNA and Law Enforcement in the European Union: Tools and Human Rights Protection, p. 10

## 6. STAFF MANAGEMENT ISSUES

According to the OSCE Guidebook on Democratic Policing, the recruitment, assignment and promotion policies of police agencies must be free of any form of discrimination. The selection and promotion of police officers must be transparent and based on their knowledge, skills, attitudes and good character.<sup>[91]</sup>

Inappropriate procedures of police selection, appointment and promotion may occur at the following three stages: the police selection and recruitment stage; selection for managerial positions; and employee transfer and promotion. Having pre-defined, knowledge and experience based criteria and clear procedures for decision-making on these three stages will lead to a transparent and well developed career system in the police service.<sup>[92]</sup>

According to the OSCE, police independence is an important feature of the rule of law, therefore, police organization must be free of political association and interference. The practice of appointing police officers to positions on the basis of political preference must be eradicated, since such practice destroys public trust.<sup>[93]</sup>

While democratic governments often have a role in appointing the most senior police leaders, other appointments and promotions should be regarded as an internal police matter where the governing authorities only have the right to question and confirm transparent selection results. Additional transparency can be achieved by involving service commissions or civilian oversight bodies.<sup>[94]</sup>

Accountability is also a crucial component. Accountability, as a democratic principle, involves a system of internal and external checks and balances aimed at ensuring that police perform the functions expected of them to a high standard and are held responsible if they fail to do so. An oversight system aims to prevent the police from misusing their powers, to prevent political authorities from misusing their control over the police, and most importantly, to enhance public confidence and establish police legitimacy. Accountable policing means that the police accept being questioned about their decisions and actions and accept the consequences of being found guilty of misconduct.<sup>[95]</sup>

Citizens must have the right to file complaints against the police. The following mechanisms are considered to be good practice in this regard:

- Review of procedures – the complaint review system requires regular reviews in order to assess whether it meets current needs.
- Independent supervisory body – having an independent, external body that oversees the entire complaint review process is considered good practice. This body must have access to all complaints against the police and be authorized to initiate investigations without any complaints. The supervisory body must be able to intervene in the investigation process and request a repeat investigation if the police investigation was unsatisfactory.
- Complaint statistics – keeping statistics on complaints filed against the police, including their content and results, is considered good practice. In many cases, the police tries to hide such facts from the media. However, in reality, ensuring transparency of all areas, including problems, failures and mistakes, shows that the police cares about its legitimacy and in this way increases public trust.<sup>[96]</sup>
- Ensuring that statistics are reliable and that there is a clear distinction between filed, substantiated and unsubstantiated complaints, and an indication of the level of public confidence

This chapter reviews the legal provisions regulating recruitment, transfer, disciplinary proceedings, incentives and dismissal in the Ministry of Internal Affairs, considering international experience and recommendations.

<sup>91</sup> Guidebook on Democratic Policing, §131

<sup>92</sup> Police Ethics for Preserving Personal and Professional Integrity, p. 62

<sup>93</sup> OSCE Mission in Kosovo, the Role of Capacity-building in Police Reform, 2005, p. 20

<sup>94</sup> Guidebook on Democratic Policing, §116

<sup>95</sup> Handbook on Police Accountability, Oversight and Integrity, p. 9

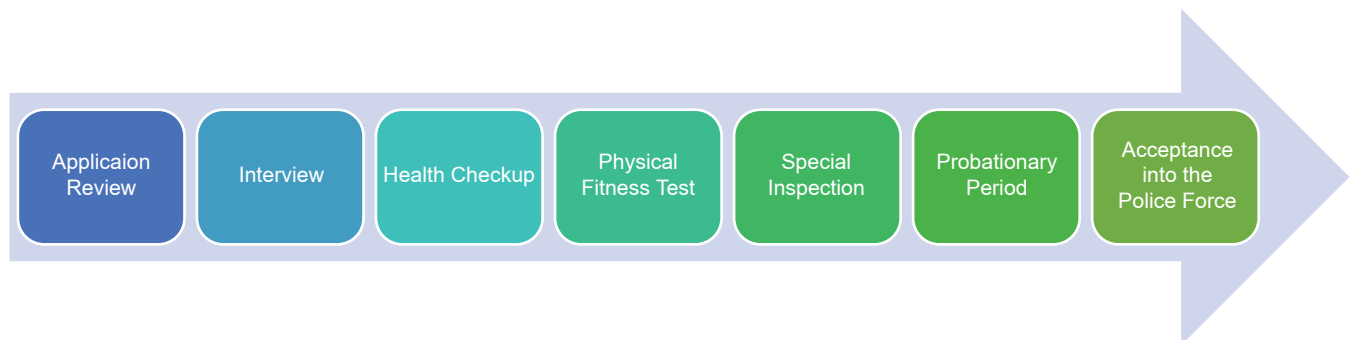
<sup>96</sup> Guidebook on Democratic Policing, §116

## 6.1. RECRUITMENT

Recruitment of employees in the Ministry of Internal Affairs is regulated by the Law of Georgia on Police and the Minister's Order on Service in the Ministry of Internal Affairs. Recruitment of citizens in the police force is conducted through a special competition. A vacant position may be filled without this competition by a person that already works in the police and holds the required special or military rank.

Competitions are conducted by permanent Special Competition Committees, which (except those in LEPLs) are created and staffed by the Minister.

The main stages of recruitment are:



The Special Inspection is the stage that is least clearly defined on the normative level.

According to information provided by the Ministry of Internal Affairs,<sup>[97]</sup> the goals and methods of the Special Inspection are regulated by a Minister's Order that has been classified and is therefore inaccessible to persons without special permission to access state secrets. Even though the goals and the methods used in this procedure are unknown, it's results can be significant:<sup>[98]</sup>

- A negative assessment at the Special Inspection stage may result in the rejection of a candidate.
- Based on a negative assessment at the Special Inspection stage, the Special Competition Committee may decide to dismiss an employee that has been appointed for a probationary period before this period is over.

According to the information provided by the Ministry of Internal Affairs, the work is in progress for the purpose of improving police recruitment and training procedures.

## 6.2. EMPLOYEE TRANSFER

According to an order of the Minister of Internal Affairs, Ministry employees may be transferred to higher, equal or lower positions based on or in the event of a:

- Promotion
- Transfer to another position of equal level
- Staff-management measures
- Health problems, on the basis of a conclusion by the Ministry's Healthcare Service
- Work interests
- Resignation
- Certification results
- Official employee assessment procedure set by the Minister
- Disciplinary action

An employee transfer is carried out through an order of the Minister or an authorized person, with indication of a specific reason from the above list.

<sup>97</sup> Letter №1859260 of the Minister of Internal Affairs

<sup>98</sup> Order №995 of the Minister of Internal Affairs, December 31, 2013, Article 26

The most problematic of the above reasons is employee transfer based on ‘work interests’, which is a vague wording that contains risks of leading to unfair practice. Decisions on employee transfer are made singlehandedly by the Minister or an authorized person without the involvement of vocational or collegial bodies.

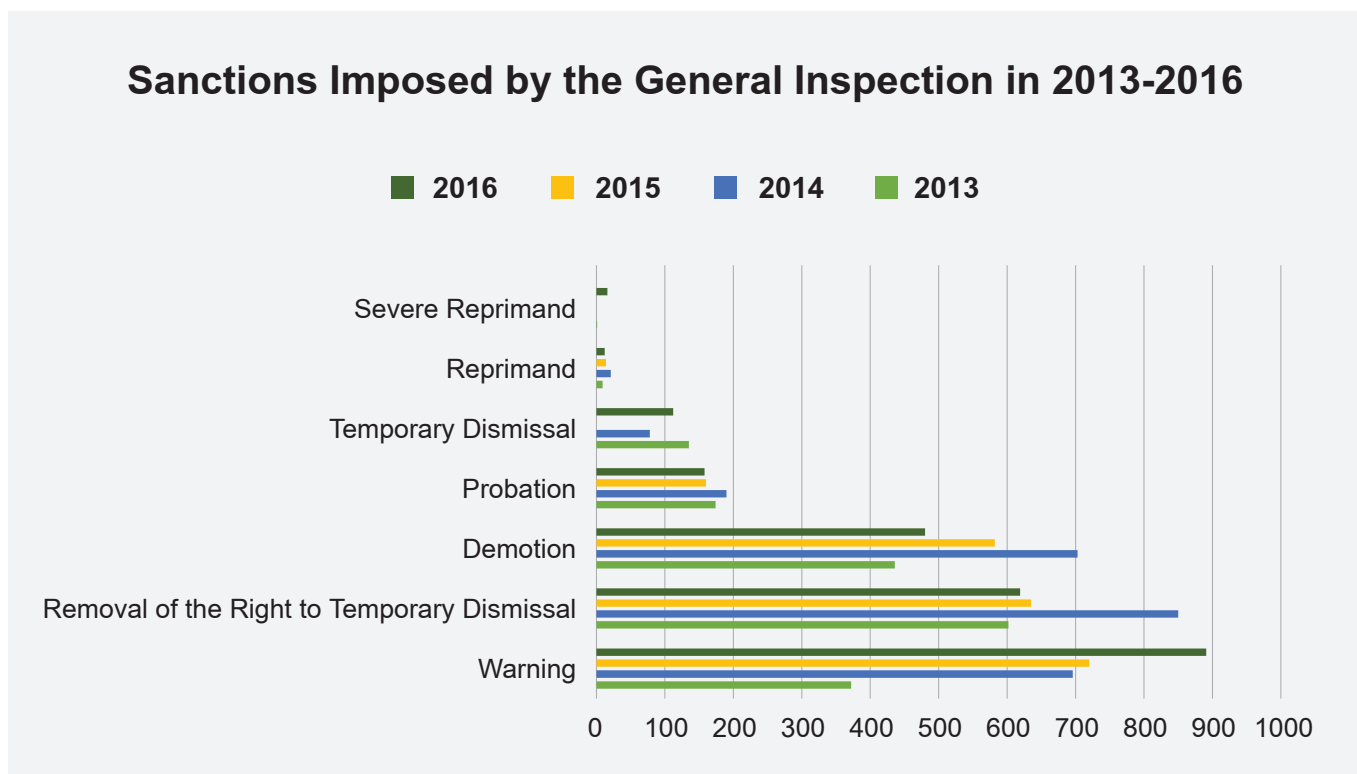
The legislation also provides for an exception, when the Minister may issue an order to promote, transfer or dismiss an employee without them going through the legally prescribed professional training programs.<sup>[99]</sup> This provision is also vague, since it does not define clearly the circumstances when the Minister may exercise this exception.

### 6.3. DISCIPLINARY RESPONSIBILITY

According to an order of the Minister of Internal Affairs, the decision to take a disciplinary measure against a Ministry employee lies with his/her immediate superior or overseeing public official, who issues the decision in a written form, which includes the evidence for the misconduct. Depending on the gravity of the misconduct, disciplinary liability may also be imposed on the perpetrator’s direct superior.<sup>[100]</sup>

Neither the Statute nor any other legal act specify what type of misconduct may result the disciplinary measure against the direct superior (for example, to what extent should the superior have known or have had the opportunity to know about the misconduct of committed by his/her subordinate). This reduces the chance that a superior will report a misconduct of their subordinate, since such an act could potentially result in disciplinary measures against them. This weakens the effective and proactive control of the norms of ethics from superiors.<sup>[101]</sup>

**Graph N12: Sanctions Imposed by the General Inspection in 2013-2016<sup>[102]</sup>**



A significant problem in this regard is the fact that employees that have been subjected to the disciplinary process are not equipped with adequate legal protection mechanisms. Alleged perpetrators are not included in the process of deciding the disciplinary sanction, and are not given the opportunity to prove their innocence. According to the Disciplinary Statute, the disciplinary body solicits explanation from the potential perpetrator, collects information and

<sup>99</sup> Order №995 of the Minister of Internal Affairs, Article 79

<sup>100</sup> Order №989 of the Minister of Internal Affairs, Article 4

<sup>101</sup> Political Neutrality of the Police System, p. 46

<sup>102</sup> Letter №206048 of the Minister of Internal Affairs



documents to confirm the misconduct, and makes the final conclusion whether the misconduct actually took place or not. In this way, a single body is responsible for 'prosecution' as well as decision-making. Such a system contains risks, especially since disciplinary proceedings are not sufficiently clear and alleged perpetrators do not enjoy effective protection guarantees.

The possibility to appeal the results of the inquiry conducted by the General Inspection is not regulated. The law also does not obligate the disciplinary body to inform the complainant/victim of the circumstances and arguments identified during the inquiry, which served as the basis for the decision. The fact that the General Inspection has very low institutional independence seriously called into question the effectiveness of the whole disciplinary response mechanism. These risks are not balanced by adequate procedural safeguards, since the complainant/victim does not enjoy even minimum opportunities to monitor the progression of the case.<sup>[103]</sup>

## 6.4. EVALUATION AND INCENTIVES

The Law on Police provides for forms of incentivizing police officers for their excellent performance, long service and for completing tasks of particular complexity or importance. According to the information provided by the Ministry of Internal Affairs, the Ministry uses an electronic document management system, which keeps track of the work performed by the employees of structural and territorial units.<sup>[104]</sup>

A more detailed rule for incentivizing employees is defined by the December 31, 2013 Minister's Order N989, according to which, employees may be incentivized based on a recommendation issued by their immediate supervisors or overseeing public officials. The recommendation must include the description of the employee and their specific merit, on the basis of which they may be granted an incentive. This order also lists the persons authorized to issue incentives.

The rules for issuing bonuses in public institutions are defined by the July 15, 2014 Government Resolution N449, according to which, bonuses shall be issued based on performance evaluation (in public institutions where such evaluation system exists) and / or substantiation.

**Chart N13: Salaries, Supplements, Bonuses in 2014-2015.**

	Salary, Supplement, Bonus (2014)	Salary, Supplement, Bonus (2015)
Public Officials	42,480,107.83	36,046,558.37
Other Employees	285,995,295.85	270,298,628.96
Supernumerary Employees	11,727,950.10	11,333,948.14

Substantiation must include the bonus amount, its relation (percentage) with the employee's monthly salary, and information on the total amount of bonuses received by this person in the current year. The government resolution does not expressly require that the substantiation include a person's professional competence and excellent performance. According to the resolution, bonuses may be issued only once per quarter and the bonus amount may not exceed an employee's monthly salary. However, exceptions to this rule can be made if the head of the public institution petitions their superior official or, in the absence of such (absence of a state control body in case of LEPLs), the Prime Minister.

The Minister of Internal Affairs is authorized to provide an employee with a special salary supplement, compensation, onetime assistance or other social protection measure and benefit through an individual administrative legal act. The bylaw does not contain any reference to the grounds, based on which the Minister may exercise this authority. The Minister is also authorized to transfer real estate, ancillary buildings and attached land that is owned by the Ministry to an employee for residential purposes. Such an employee may also receive ownership rights for this real estate on the basis of the Ministry's recommendation. In such cases, the purpose of transferring ownership rights to an employee is unclear.<sup>[106]</sup>

<sup>103</sup> Political Neutrality of the Police System, p. 48-49

<sup>104</sup> Letter №2438457 of the Minister of Internal Affairs

<sup>105</sup> Letter №2552264 of the Minister of Internal Affairs

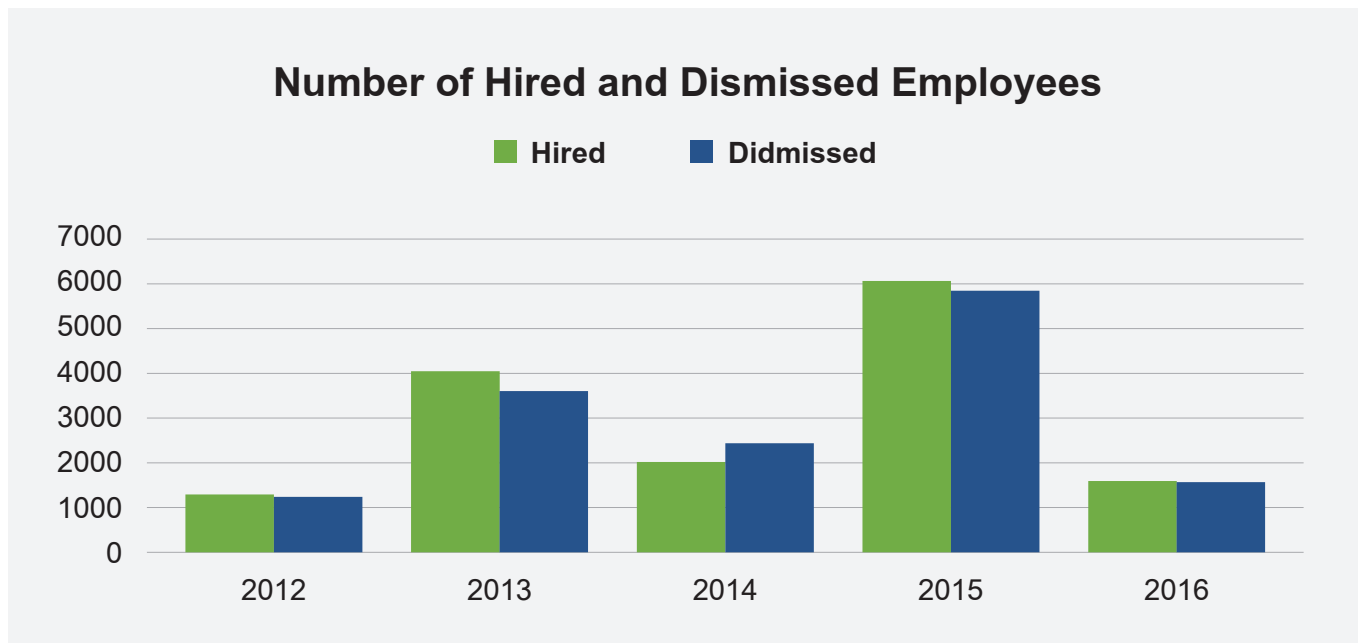
<sup>106</sup> Order №997 of the Minister of Internal Affairs on the Approval of the Rules for Granting Social Protection and Material Support to the Employees of the Ministry of Internal Affairs

The methods used by the Ministry of Internal Affairs to incentivize its employees are not based on clearly defined professional criteria, which creates risks of disregard of the principles of transparency and accountability.

## 6.5. DISMISSAL

The decision to dismiss a police officer is made by the Minister of Internal Affairs or an authorized person. Procedural vagueness is a problem here as well.<sup>[107]</sup> For example, it is not clear what criteria are used by the Ministry to rearrange/dismiss employees during downsizing, and to what extent does the Ministry take into account professional criteria in this process. The need to elaborate clear procedures is evident, considering the high level of staff outflow from the Ministry.

**Graph N14: Number of Hired and Dismissed Employees in the Ministry.**



## 6.6. SUMMARY

The legal provisions regulating personnel issues in the Ministry of Internal Affairs are vague and concentrated on the level of bylaws. At the same time, mechanisms of external control over police activities are limited, while the Minister is equipped with broad powers for deciding personnel related issues.

Therefore, the following measures need to be taken in order to ensure transparency and accountability of the process of managing personnel issues within the Ministry of Internal Affairs:

- Clear legal procedures must be set for employee recruitment, transfer, incentives and dismissal.
- A system of individual assessment of police officers must be introduced.
- A collegial body must be created that will make staffing decisions based on professional criteria.
- The General Inspection must be granted greater operational and institutional independence. Clear procedures must be adopted for disciplinary proceedings, and adequate mechanisms of protection of both the police officer as well as the victim must be introduced.
- The activities of the General Inspection must be made more transparent. The public must be periodically informed of the measures taken by the General Inspection in response to violations.

<sup>107</sup> The Law of Georgia on Police, Article 41



