

Commission de Contrôle des Fichiers de l'O.I.P.C. - Interpol  
Commission for the Control of Interpol's Files  
Comisión de Control de los Ficheros de la OIPC-Interpol  
لجنة الرقابة على محفوظات الم د ش ج - انتربول



## ANNUAL ACTIVITY REPORT - 2006

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C.C.F. - BP 6041 - 69411 Lyon Cedex 06 - France - e-mail : CCF@interpol.int

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## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
1. COMPOSITION OF THE COMMISSION IN 2006.....	1
2. THE INDEPENDENCE OF THE COMMISSION.....	2
3. ROLE OF THE COMMISSION .....	2
4. ONGOING PROJECTS CONCERNING THE PROCESSING OF PERSONAL INFORMATION .....	2
4.1 Revitalization of databases .....	2
4.2 Creation of a special INTERPOL - United Nations notice.....	2
4.3 Sex crimes against children.....	3
4.4 Other projects connected with the processing of personal information.....	3
5. PROCESSING OF REQUESTS.....	3
5.1 General provisions on the processing of individual requests .....	3
5.2 Communication of addenda to requesting parties .....	3
5.3 Inadmissible requests .....	3
5.4 Principle of confidentiality of individual requests.....	3
5.5 Co-operation by the National Central Bureaus .....	4
5.6 Information for the Organization's Members about the granting of political-refugee status to a wanted person .....	4
5.7 Deletion of information about wanted people from the interpol public website .....	4
5.8 Communication of information on interpol's public internet site .....	4
6. PROCESSING OF INFORMATION WITH FEW IDENTIFICATION DETAILS ABOUT THE PERSONS CONCERNED .....	4
7. SPOT CHECKS .....	5
7.1 Procedure .....	5
7.2 Retention of an item of information at the General Secretariat's initiative .....	5
7.2.1 <i>Calculation of postponement of the review deadline .....</i>	<i>5</i>
7.2.2 <i>Retention of information about a person who is not wanted .....</i>	<i>5</i>
7.3 Files whose review deadlines have expired.....	6
7.4 Indirect access to police information by NCBs: management of restrictions.....	6
7.5 Processing of information received via the public messaging network .....	6

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## INTRODUCTION

The aim of the present report is to provide a summary of the work of the Commission for the Control of INTERPOL's Files in 2006.

This document contains no personal information. It is intended for circulation to the general public, by publication in the Commission's section of the INTERPOL website, once it has been submitted to the General Assembly at its 76th session, which is to be held in November 2007.

## 1. COMPOSITION OF THE COMMISSION IN 2006

The five members of the Commission must be of different nationalities. Their terms of office began in January 2005 for a period of three years. In 2006, the composition of the Commission was as follows:

FUNCTION	MEMBER	ALTERNATE
Chairman	Mr Peter HUSTINX (Netherlands) European Data Protection Supervisor (Brussels)	Mr Kevin O'Connor (Australia) President, Administrative Decisions Tribunal
Member appointed by the French Government	Mr Pierre Leclercq (France) <i>Conseiller honoraire à la Cour de Cassation</i> (Honorary Adviser to the Court of Appeal)	Ms Pascale COMPAGNIE <i>Chef du Bureau des Libertés publiques au Ministère de l'Intérieur, de la Sécurité intérieure et des Libertés locales</i> (Head of the department for public freedoms at the Ministry of the Interior, internal security and local freedoms)
Data-protection expert	Mr Claudio Grossman (Chile) Dean of the American University Washington College of Law	Mr Bart De Schutter (Belgium) Chairman, Institute for European Studies - Free University of Brussels
Executive Committee member	Up to September 2006: Ms Agathe Florence Lele (Cameroon) <i>Commissaire Divisionnaire Directrice de la Police des Frontières</i> (Chief Superintendent, Director of Border Police)	Up to September 2006: Général Georges Boustani (Lebanon) Executive Committee Delegate
Executive Committee member	Since September 2006: Mr Mohand Amokrane MAHMOUD (Algeria) <i>Commissaire Divisionnaire Secretary General of the Direction Générale de La Sureté Nationale</i>	Since September 2006: Mr Ki-Ryun PARK (Korea) Director General of the Bureau of Foreign Affairs Korean National Police Agency
Information technology expert	Mr Iacovos THEMISTOCLEOUS (Cyprus) Head of the Information Technology Department of the Central Information Service, Cyprus Police	Captain Mohammad Sameh Fasha (Jordan)

## 2. THE INDEPENDENCE OF THE COMMISSION

By virtue of its composition, and as laid down in Article 1.3 of the Agreement between the French Government and the ICPO-INTERPOL General Secretariat, and Article 5(a) of the Rules relating to the Control of Information and Access to INTERPOL's Files, the Commission acts entirely independently. In 2006, it held three two-day sessions at the Organization's Headquarters in Lyon. Its sessions are held in camera.

## 3. ROLE OF THE COMMISSION

The Commission continued its discussions with the General Secretariat about its role.

The discussions on the Commission's role confirmed that there was a shared desire by the members of the Commission and the General Secretariat to provide the Organization with the best tools to ensure the Commission's independence, the effectiveness of its checks on the processing of information by INTERPOL, and the right of complainants to appeal against any processing of information about them by the Organization.

The discussions will continue at the forthcoming sessions, with particular emphasis on the procedures required to enable the Commission to perform all its functions to the full, it being understood that it is important to ensure that any development of its role does not take place at the expense of its current functions, particularly with regard to carrying out checks and providing advice.

While awaiting the results of such a study, the Commission pointed out the need to process individual requests within a reasonable period of time and as efficiently as possible.

## 4. ONGOING PROJECTS CONCERNING THE PROCESSING OF PERSONAL INFORMATION

In application of the Rules on the Control of Information and Access to INTERPOL's Files, the General Secretariat has to consult the Commission on any project concerning the processing of personal information. The Commission pointed out that, for it to be able to give an enlightened opinion and provide real, effective support to the General Secretariat, sufficient documentation must be provided during such consultations. The consultations must take place prior to implementation of the projects

### 4.1 Revitalization of databases

The Commission has been informed about a project to revitalize INTERPOL's databases, the aim of which is to simplify and harmonize the input of information.

The Commission made a number of general remarks and asked to be kept informed of developments regarding the projects.

### 4.2 Creation of a special INTERPOL - United Nations notice

The Commission was informed of the plans to create a special INTERPOL - United Nations notice for individuals on the UN 1267 Committee's list of people and entities associated with al-Qaeda and the Taliban. These notices are published by INTERPOL at the request of the United Nations 1267 Committee, to inform Member States that such individuals were the subject of United Nations sanctions and that, consequently, their assets were frozen and they were subject to a weapons embargo and travel ban.

The Commission asked for additional information about the new notices, so that it could give an opinion on the safety of the procedure from the point of view of the basic rights of the people concerned.

#### **4.3 Sex crimes against children**

The General Secretariat consulted the Commission about postponing the review date for retaining of information on persons who had committed sex offences against children.

The Commission concluded that, while INTERPOL's information processing rules allowed for a degree of flexibility so that the information could be retained as long as necessary for dealing with those offences, the reasons for extending the review dates of such files should always be carefully stated in order to avoid the systematic retention of such information without detailed examination of the files concerned.

#### **4.4 Other projects connected with the processing of personal information**

The Commission was consulted about various technical projects and co-operation agreements designed to improve the quality of international police co-operation through INTERPOL channels.

The Commission did not express any objections in principle concerning implementation of these projects in the light of the information it had been given. It nevertheless stressed the importance of ensuring compliance with the Organization's rules when these projects were implemented.

### **5. PROCESSING OF REQUESTS**

#### **5.1 General provisions on the processing of individual requests**

In the interests of efficiency and of all those concerned, the Commission would ask the General Secretariat to keep it informed, as requests are processed, of its work on all requests currently being examined by the Office of Legal Affairs, particularly with regard to questions asked by the Commission, and to action taken by the General Secretariat further to its recommendations. This should be done sufficiently in advance of each session.

#### **5.2 Communication of addenda to requesting parties**

The Commission ask the General Secretariat for authorization to inform a requesting party that an addendum to the notice had been issued, if the addendum did not contain any confidential information sent in by a country, but was solely the result of a study carried out by the INTERPOL General Secretariat's Office of Legal Affairs.

#### **5.3 Inadmissible requests**

The Commission confirmed its position whereby the right of access to INTERPOL's files could not be used to allow someone to obtain a "certificate of good behaviour" in a case in which a bank had asked the Commission to authenticate a letter that the Commission had sent to a requesting party.

#### **5.4 Principle of confidentiality of individual requests**

The Commission confirmed its position whereby, by virtue of the principle of free access to INTERPOL's files, the General Secretariat had to abide by the principle of confidentiality with regard to individual requests, which should not be entered in the General Secretariat's criminal databases or communicated to the National Central Bureaus. The Commission may nevertheless be obliged to communicate certain items of information to the INTERPOL General Secretariat or the National Central Bureaus so that the request can be processed.

#### 5.5 Co-operation by the National Central Bureaus

The Commission confirmed its position whereby, if a National Central Bureau did not reply to requests for additional information, confirmation of the validity of information, or authorization to divulge information to a requesting party, it would inform the National Central Bureau that:

- it concludes that the National Central Bureau is not opposed to the Commission disclosing the nature of the information recorded in the General Secretariat's files at the request of the National Central Bureau, or the lack of information sent by the Bureau;
- and it is likely to recommend that the General Secretariat destroy the file.

The Commission noted, however, that the National Central Bureaus generally communicate the additional information it asks them for. Nevertheless, if they did not, despite reminders, the Commission would conclude that the Bureaus concerned had failed in their duty to co-operate and had not provided the information needed to be able to examine whether or not the information in the INTERPOL General Secretariat's files had been processed in accordance with the applicable rules.

The Commission therefore recommended destroying the information about the people concerned in such cases.

#### 5.6 Information for the Organization's Members about the granting of political-refugee status to a wanted person

In the context of processing various individual requests, the Commission recommended that the General Secretariat issue addenda to a number of notices issued for requesting parties stating that they had been granted political-refugee status.

#### 5.7 Deletion of information about wanted people from the INTERPOL public website

The Commission had occasion to renew its recommendation that the General Secretariat withdraw the information about wanted people from INTERPOL's public Internet site, because addenda containing certain important information were not published there and that compromised the accuracy of the information concerned.

#### 5.8 Communication of information on INTERPOL's public Internet site

The Commission drew the General Secretariat's attention to the need to ensure that information relating to charges as communicated by the NCBs was not distorted when published on the Organization's public Internet site.

### 6. PROCESSING OF INFORMATION WITH FEW IDENTIFICATION DETAILS ABOUT THE PERSONS CONCERNED

The Commission considered that, when processing requests, a lack of detailed information allowing a wanted person to be identified was not necessarily in itself sufficient reason to refuse to process an item of information in INTERPOL's files. Nevertheless, the Commission recommended that the General Secretariat take a certain number of precautions, such as:

- Raising awareness among the National Central Bureaus and other sources of information about the need to provide as many identification details as possible and remind them of that on a regular basis;
- Contacting the sources of the information, when such problems occur, to ensure that they do not have details which are more specific than those they have already communicated;
- Drawing the users' attention to the lack of specific identity particulars regarding the person concerned, and alert them about the risk of similar names;

- Not issuing a notice if the risk of similar names is too great.

## 7. SPOT CHECKS

### 7.1 Procedure

In order to be able to advise the Organization effectively with regard to the processing of personal information, particularly for complex matters, given the number of parties concerned, the communication systems used or any connections between cases or individuals, the Commission had continued to work closely with the various departments (operational, technical, legal, etc.) at the General Secretariat.

Such co-operation has enabled the Commission and the General Secretariat to grasp significant aspects of police information processing, both to identify any problems to be dealt with and to find appropriate solutions for police co-operation - i.e. solutions which are suited to the needs of international police and judicial co-operation, with due respect for basic human rights.

The Commission stressed that it is faced with an ever-increasing workload which forces it to systematically establish priorities. It recently had to concentrate mainly on managing individual requests. But it stressed that it had to be able to continue carrying out spot checks and examining INTERPOL's projects on the processing of personal information so that it can play its role of adviser to the Organization to the full and support the latter's efforts to ensure respect for basic human rights in the context of its activities.

### 7.2 Retention of an item of information at the General Secretariat's initiative

#### 7.2.1 *Calculation of postponement of the review deadline*

The Commission carried out spot checks on the consequences of cancelling notices and diffusions, and on the methods for deciding on the retention of information, and turned its attention to the different methods for calculating the deadlines for examining the need to retain an item of information, which it considered to be complex compared with the rules in force.

The Commission noted that the calculation method used was complex and that the reasons were not always given. It pointed out that it was not easy for those responsible for processing the information to assess the justification for extending the deadline by five years on the basis of each new item of information received.

The Commission recommended the General Secretariat retain only one method for assessing the need to postpone the deadline for retaining an item of information, which would consist of recording a file for five years and examining the need to retain it at the end of that five-year period.

If the General Secretariat wished to continue to assess the need to retain a file for five years on the basis of each new item of information received, stringent rules should be laid down defining under what conditions a new item of information could justify postponing the deadline for assessing the need to retain a file.

Although new items of information which had led to a criminal file being opened, or which were inherent to the proceedings being taken against an individual, could justify any such postponement, a change in the date of birth or supplying an identity card number would not constitute such justification.

### 7.2.2 *Retention of information about a person who is not wanted*

The Commission made a general study of the cases and procedures for retaining, at the General Secretariat's initiative, items of information concerning a person who is not wanted.

The Commission's checks revealed that the deadline for examining the need to retain a file and keep the information available via direct access to users is almost always postponed by five years, at the General Secretariat's initiative:

- without an assessment on a case-by-case basis as to whether it is appropriate to do so,
- without consulting or informing the source of the information beforehand,
- without the reasons for the postponement being given in the files for each case, other than a simple reference to organized crime, for example.

The Commission emphasized that:

- the current practice of postponing the deadline for examining the need to retain an item of information, at the General Secretariat's initiative, either when the deadline has been reached or when a person is no longer wanted/missing, carries considerable responsibility;
- this is particularly so when it is carried out for a specific purpose other than that for which the information is sent to the General Secretariat, even if the general reason (i.e. combating international ordinary-law crime) is the same.

The Commission therefore concluded that:

- although the rules allow the General Secretariat to take the initiative and retain an item of information further to a request for cancellation from the source (Articles 14(c,3) and 15.3(c) of the RPI), care should be taken to ensure that the provisions of the RPI are scrupulously respected when carrying out operations of this type.

To allow the General Secretariat to continue to provide the best possible assistance to the police authorities responsible for combating international crime, with due respect for the principles laid down in INTERPOL's Constitution and the RPI, the Commission will continue to examine the issue with the General Secretariat.

### 7.3 **Files whose review deadlines have expired**

The Commission noted once more that the General Secretariat was still late with the processing of files whose deadline for examining the need to retain an item of information had expired.

To help the General Secretariat maintain respect for the basic rule regarding the maximum period for the retention of information, the Commission requested that, for its next session, a statistic report be remitted on the typology of the files affected by the processing backlog in the light of the source of the information, the type of criminality concerned and the status of the individuals concerned, in order to try to determine the reasons for the processing backlog.

### 7.4 **Indirect access to police information by NCBs: Management of restrictions**

Within the framework of the processing of individual requests, the Commission drew the General Secretariat's attention to the need to adopt clear rules of procedure to guarantee that requests to the General Secretariat by the National Central Bureaus for indirect access to police information would be processed in the same way irrespective of the General Secretariat department actually carrying out the processing.

### 7.5 **Processing of information received via the public messaging network**



The Commission did not have any objections in principle to the implementation of a draft procedural note drawn up by the General Secretariat concerning the processing in the General Secretariat's files, of information supplied about wanted individuals from its public Internet site.

Once the draft note had been implemented, the Commission would carry out spot checks on the actual methods that had been used to process the information, in order to advise the General Secretariat about any improvements that might need to be made to ensure that the processing was carried out in compliance with INTERPOL's rules.

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