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Data protection and coronavirus: what you need to know

The Gibraltar Regulatory Authority (the "GRA"), as the Information Commissioner (the "Commissioner"), is the nominated authority responsible for the enforcement of data protection law in Gibraltar and upholding the rights of individuals and their privacy.

The Commissioner recognises the unprecedented challenges we are all facing during the Coronavirus (COVID-19) pandemic, and understands that, in the current climate, there may be a need to share information quickly, or to adapt the way work is conducted.

Please note that, in principle, data protection will not stop you from doing that. However, it is important that the balance of proportionality tips in favour of your proposed actions. In other words, if something feels excessive from the public's point of view, then it probably is.

Please note that the Commissioner's office is here to help – please find below answers to some questions you may be asking yourself.

1. During the pandemic, we are worried that our data protection practices might not meet our usual standard or our response to information rights requests will be longer. Will the Commissioner take regulatory action against us?

In principle, no. We understand that resources, whether financial or human, might be diverted away from usual compliance or information governance work during this extraordinary time. If an organisation is seen by the Commissioner to be acting reasonably and can justify their need to prioritise other areas or adapt their usual approach during this, the Commissioner will take a lenient approach and will not penalise such organisations.

Although we are unable to extend statutory timescales, we will through our own communications channels notify individuals that they may experience delays when

making information rights requests during the pandemic, and that we have taken the position that such delays will, in most cases, be understandable.

2. As a healthcare organisation, can we contact individuals in relation to COVID-19 without having prior consent?

Data protection and electronic communication laws do not stop HM Government of Gibraltar ("HMGoG"), the Gibraltar Health Authority or any other health professionals, from sending public health messages to people, either by phone, text or email as these messages are not direct marketing. Nor does it stop them from using the latest technology to facilitate safe and speedy consultations and diagnoses. Public bodies may require additional collection and sharing of personal data to protect against serious threats to public health in circumstances such as those currently being experienced.

3. More of our staff will be homeworking during the pandemic. What kind of security measures should my organisation have in place for homeworking during this period?

Data protection is not a barrier to increased and different types of homeworking. During the pandemic, staff may work from home more frequently than usual and they can use their own device or communications equipment. Data protection law doesn't prevent that, but you'll need to consider the same kinds of security measures for homeworking that you'd use in normal circumstances.

4. Can I tell my staff that a colleague may have potentially contracted COVID-19?

Yes. You should keep staff informed about cases within your organisation. Remember, you probably don't need to name individuals and you shouldn't provide more information than necessary. You have an obligation to ensure the health and safety of your employees, as well as a duty of care. Data protection doesn't prevent you from doing this.

5. Can I collect health data in relation to COVID-19 about employees or from visitors to my organisation? What about health information ahead of a conference, or an event?

You have an obligation to protect your employees' health, but that doesn't necessarily mean you need to gather lots of information about them. Proportionality is key.

6. It's reasonable to ask people to tell you if they have visited a particular country or are experiencing COVID-19 symptoms.

You could ask visitors to consider HMGoG advice before they decide to attend your offices. You could also advise staff to call 111 if they are experiencing symptoms associated with COVID-19 or if they have visited any countries currently designated as 'high-risk' by relevant authorities. This approach should help you to minimise the information you need to collect.

If that's not enough and you still need to collect specific health data, you should not collect more than you need, and you should always ensure that any information collected is treated with the appropriate safeguards.

7. Can I share employees' health information with relevant authorities for public health purposes?

Yes. It's unlikely your organisation will have to share information with authorities about specific individuals, but if it is necessary, then, in the circumstances, data protection law won't stop you from doing so.

For further information please contact the Commissioner's office by phone on +350 200 74636 or by email at privacy@gra.gi.