E-NEWSLETTER

Information Commissioner

E-Newsletter 01/20

GRA
GIBRALTAR REGULATORY AUTHORITY

Welcome to the first newsletter issued by the Information Commissioner (the "Commissioner") this year. Our newsletters aim to provide you with news, updates, developments and additions to our website in relation to data protection matters and our work as the statutory body responsible for the enforcement of data protection laws.

AWARENESS EVENTS & COMMUNITY ENGAGEMENT

The Commissioner is of the view that public awareness about data protection has increased in recent years. This view is supported by the continuous increase in the number of data protection complaints and inbound enquiries received by his office. As a result of greater data protection awareness, the Commissioner feels the public are better able to exercise their rights in respect of their personal data and easily identify relevant data protection issues.

The Commissioner carried out a Data Protection Survey (the "Survey") to learn about the public's –

- awareness of data protection generally;
- awareness in regard to the use of their personal data by third parties; and
- trust in how personal data is being handled by public and private sector service providers.

The Survey consisted of 17 questions, predominantly Likert-scale questions, and was made available on the Commissioner's social media platforms, including Facebook, Twitter and LinkedIn for a period of three months, from October 2019 to January 2020.

A REPORT ON THE RESULTS DERIVED FROM THE SURVEY WAS PUBLISHED ON DATA PROTECTION DAY 2020

The Survey found that the majority of individuals are concerned about not having control over the information that they provide to organisations and feel that data protection is important.

In the following, the Commissioner outlines some of the Survey's main findings:

- Nine out of ten individuals show concern about not having control over the information they provide to organisations, which highlights the importance and need for data protection.

- The results show that the public recognises the increase in personal data processing in today's world, but that individuals nonetheless care about the information they share with organisations, even when doing so in return for free services. Combined, the results highlight the importance of data protection to the public, particularly in an increasingly digital and data driven world.

- Three quarters of respondents stated that they would be "very concerned" if organisations used information about them for a different purpose to the one it was collected for. The result highlights the importance of ensuring that data is used in a transparent manner and in accordance with the expectations of data subjects.

- The results clearly indicate that the public's experience and/or views in relation to the public sector are significantly poorer than those regarding the private sector.

- Health and medical institutions were identified as the sector that should be of most concern to the Commissioner in terms of non-compliance with data protection law.

Going forward, the Commissioner will continue to explore the further development of public engagement to learn about the public's concerns and general perception in relation to data protection as well as raising awareness of data protection rights and obligations.

DOWNLOAD THE FULL REPORT FROM OUR WEBSITE

DATA PROTECTION DAY

Data Protection Day is an annual event celebrated internationally every 28th of January. It commemorates the importance of privacy and data protection. To mark Data Protection Day 2020, the Commissioner's office published a report on the results derived from the above-mentioned Survey.

CONTROL YOUR PRIVACY CAMPAIGN

The Commissioner's office continues in his efforts to raise awareness about data protection law and privacy through his "Control Your Privacy" campaign ("CYP campaign"). The CYP campaign specifically aims to assess the risks to privacy arising from digital technology and to promote its responsible use, so that individuals have sufficient knowledge and understanding to make informed decisions about the opportunities offered by digital technology and equally about the risks associated with the same. Launched in January 2014, the CYP campaign involves a combination of activities including social media campaigns, workshops, public awareness events and school presentations.

In November 2019, the Commissioner's office began this academic year's awareness raising campaign in local schools. So far, eight presentations have been delivered to students between the ages of 13 and 16 years. The Commissioner's office has scheduled a further two presentations to be delivered to Year 7 and Year 11 students at Westside School by the end of the 2019-20 academic year.

Recognising that privacy and data protection may be a difficult subject to discuss and teach to children, the Commissioner's office incorporates various exercises and examples in his presentation to enable an interactive, fun and informative session. The exercises and topics included in the presentation are current, and touch upon elements of social media and online gaming which, according to previous surveys, a high percentage of students are familiar with.

The aforesaid presentations delivered to students break down data protection jargon into practical terminology and provide an insightful understanding into the world of privacy settings and how to best protect personal data.

DATA PROTECTION GUIDANCE & ASSISTANCE

Providing guidance on data protection legislation and practicalities relating thereto is an area that has been given greater priority by the Commissioner in order to assist organisations in their efforts to comply with the EU General Data Protection Regulation 2016/679 (the "GDPR") and the Data Protection Act 2004 (the "DPA").

To date, the Commissioner's office has published eighteen guidance notes (which includes one in the form of a discussion paper), three of which, as described in the following, have been published this quarter.

BLOCKCHAIN DISCUSSION PAPER

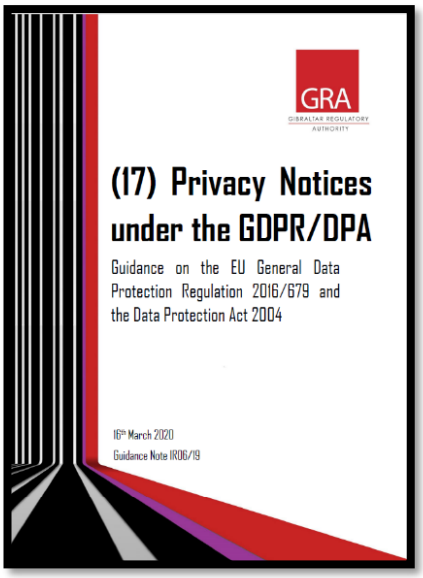
Taking into consideration the irrefutably growing impact of blockchain technology and data protection risks that may arise, the Commissioner published a discussion paper that outlines key issues regarding the relationship between blockchain and the GDPR as understood by the Commissioner. Beyond outlining the Commissioner's initial views, the main purpose of the paper is to facilitate discussion and engagement with various stakeholders in ongoing efforts to collaborate, examine and address data protection issues within the area of blockchain.

PRIVACY NOTICE

The DPA and the GDPR require organisations to be transparent about when and how they use personal data. This requires organisations to proactively provide respective individuals with certain information when collecting and processing their personal data. The notice that organisations use to provide this information to individuals is commonly referred to as a 'Privacy Notice'.

A 'Privacy Notice' should not be confused with a 'Privacy Policy', which is a term commonly used to describe an internal document that details an organisation's internal personal data handling arrangements to ensure compliance with data protection law.

This Guidance Note provides advice on how data controllers can provide the information that should be provided to individuals (i.e. 'transparency requirements', when collecting and processing their personal data) and includes a template which organisations may use as a guide.



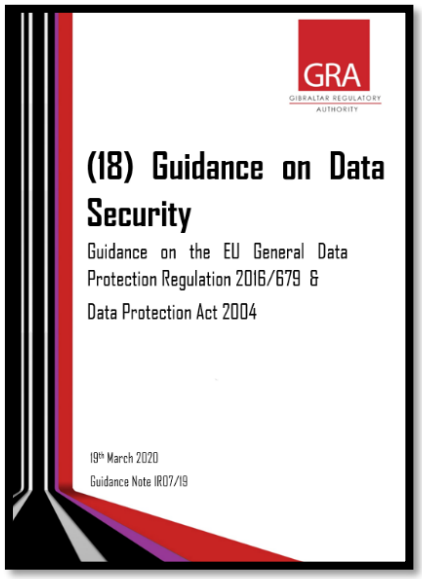
DATA SECURITY

Data controllers often hold a vast about of personal data on individuals, both in physical and electronic form. As electronic storage and processing becomes increasingly inexpensive and more accessible, larger amounts of information are being held and processed.

This increase in personal data processing has given rise to new challenges, as evidenced by recent high-profile data security breach related cases. Most recently, these have seen companies such as British Airways, Facebook and the Marriott chain of hotels potentially facing record-breaking fines for not having adequate security measures in place.

Data security covers a broad range of aspects including, for example, the need to restrict access to data on a need to know basis; staff training; ensuring third-party processors have appropriate security measures; physical security; and cyber-security related threats.

To determine what security measures are appropriate, organisations need to carry out a risk assessment. This Guidance Note includes a risk assessment methodology that may be used, followed by a list of organisational and technical security measures that should be considered and implemented as appropriate.



ALL OUR GUIDANCE NOTES AND DISCUSSION PAPERS ARE AVAILABLE ON OUR WEBSITE – CLICK HERE

DATA PROTECTION AND CORONAVIRUS: WHAT YOU NEED TO KNOW

The Commissioner recognises the unprecedented challenges we are all facing as a result of 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. In principle, data protection will not stop you from doing that, but it is important that the balance of proportionality tips in favour of your proposed actions.

In this document the Commissioner provides answers to some questions you may be asking yourselves in respect of data protection regulation during the current COVID-19 pandemic.

COVID-19

In order to help manage the risk of cross-contamination in our community, the Gibraltar Regulatory Authority closed its public counter at 3pm on Monday 16th March 2020.

For the time being, the Commissioner's office will also not be carrying out any data protection inspections, on-site visits, or engaging in face to face meetings.

SOCIAL MEDIA CAMPAIGNS

The Commissioner's office makes use of social media platforms to disseminate guidance and engage with the public. In addition to ad hoc guidance and social media messages based on "current news", the Commissioner's office carries out social media campaigns on topical matters that run for several weeks. In this first quarter of 2020, the Commissioner's office carried out or initiated the following social media campaigns –

GUIDANCE ON THE USE OF CCTV

A social media campaign commenced in November 2019 and ran for 12 weeks into the first quarter of 2020, providing summary guidance on the use of Closed-Circuit Television (CCTV).

THE RIGHTS OF AN INDIVIDUAL UNDER THE GDPR

The current social media campaign, which commenced in February 2020 and will run for a period of 8 weeks, will provide helpful guidance on the rights of an individual under the GDPR.

IN ADDITION TO THE USE OF OUR SOCIAL MEDIA PLATFORMS, ALL SOCIAL MEDIA CAMPAIGNS ARE UPLOADED IN PDF FORMAT ON OUR WEBSITE.

CONFERENCES, WORKSHOPS & EVENTS

67th Meeting of the International Working Group on Data Protection in Technology

Further to the Commissioner's office's recent publication of a discussion paper on the interplay between blockchain technology and data protection, two members from the Commissioner's office were due to attend the 67th meeting of the International Working Group on Data Protection in Technology which was to be held in Tel Aviv on the 4th and 5th March 2020 and included discussions on Blockchain. The event was being hosted by the Privacy Protection Authority of Israel.

However, the event was postponed due to the recent coronavirus (COVID-19) outbreak and following recommendations from the Israeli Health Ministry. During the event, delegates were to discuss various current issues including: The Role of the Right to Data Portability; The Risks emerging from the Tracking and Targeting Ecosystem (Web Tracking); Voice-controlled devices; Sensor Networks (Smart Dust); Blockchain/Distributed Ledger Technology; Smart Cities; Facial recognition; Developments with regard to Big Tech Companies; and Privacy and International Standardisation.

Workshop for Data Protection Officers (DPOs)

In March 2019, the Commissioner's office launched his programme for the organisation of periodic data protection workshops for DPOs in Gibraltar, as part of their efforts to promote awareness and provide assistance to data controllers in relation to their data protection obligations.

The workshops present DPOs with an opportunity to broaden their understanding of data protection law and also provide the Commissioner's office with a better insight into the issues and/or challenges faced by data controllers.

A third round of workshops were scheduled for the 24th and 25th March 2020 at the University of Gibraltar. However, the Commissioner decided to postpone the workshop until further notice due to the Coronavirus (COVID-19).

If you would like to attend a future DPO Workshop, please contact us by email using: dpoworkshops@gra.gi

INVESTIGATIONS

An investigation is any process which sees the Commissioner's office taking action either as the result of a complaint or as a result of information obtained as part of his day-to-day functions, and which raises doubts as to whether the DPA and/or the GDPR is being complied with.

In the first quarter of 2020, a total of three investigations have been closed, with several others ongoing. The following provides an investigation summary for the cases closed during this quarter.

[IV14/18B] RESIDENT OF SIR WILLIAM JACKSON GROVE (THE "RESIDENT")

The investigation concerned the use of a CCTV system by a resident at Sir William Jackson Grove.

Articles breached: 5(1)(a), 5(1)(c), 5(1)(f) and 32 of the GDPR.
The Resident was required to take corrective action to comply with the GDPR.

The Commissioner issued the Resident with an Enforcement Notice and a Notice of Intent to issue a monetary penalty.

[IV42/18] PRICEWATERHOUSECOOPERS LIMITED ("PWC")

The investigation concerned a response to a Subject Access Requests ("SAR").
Articles breached: Article 12 of the GDPR.

PWC's response to the SAR was outside the prescribed timeframe but the Commissioner was otherwise satisfied with the response. The Commissioner also noted that PWC's failure to provide a response within the prescribed timeframe was accidental and did not reflect common business practice.

[IV39/18] THE ROYAL GIBRALTAR POLICE (THE "RGP")

A complaint was received regarding Subject Access Requests ("SAR") submitted to the RGP.

The RGP breached section 61(6) of the DPA for not having appropriate measures in place to correctly identify a SAR and facilitate the exercise of an individual's right of access.

The RGP were also in breach of section 54 of the DPA for not adequately responding to the SARs within the prescribed timeframe.

The RGP were required to take corrective action in order to ensure compliance with the DPA and respond to the SARs.

A reprimand was issued to the RGP in accordance with the Commissioner's powers under Schedule 13, Paragraph 2(c) of the DPA.

ENFORCEMENT

The Commissioner's actions when a contravention is identified, are subject and proportionate to the circumstances of each case. In most cases, data controllers are cooperative and take corrective action when asked to review the arrangements they have in place to ensure compliance with the DPA and/or the GDPR.

In the more serious cases, the Commissioner may request that a data controller commit to carry out specific tasks to improve data protection compliance. In circumstances where a data controller does not satisfactorily cooperate with the Commissioner's requests, the Commissioner may use his enforcement powers, such as issuing an Enforcement Notice and/or Information Notice.

The enforcement action taken by the Commissioner in the first quarter of 2020 is listed in the following -

- One Enforcement Notice for the above-referenced investigation IV14/18B.
- One Notice of Intent to issue a monetary penalty for the above-referenced investigation IV14/18B.
- One written Reprimand to the Royal Gibraltar Police for the above-referenced investigation IV39/18.

In addition to the above, a further two written Reprimands were issued as follows –

- To the Gibraltar Savings Bank, in relation to the investigation referenced IV33/18, for failure to comply with Articles 5 and Article 6 of the GDPR, as well as for previous infringements of data protection legislation.

- To Petfre (Gibraltar) Limited, in relation to the investigation referenced IV44/18, for failure to comply with Articles 5(1)(f), Article 32 and Article 28(1) of the GDPR, as well as for previous infringements of data protection legislation.

COMPLAINTS PROCEDURES

In order to streamline and expedite investigation procedures, the Commissioner introduced a new layer to the investigation process. In the first instance, upon receipt of a complaint, the Commissioner's Office will encourage the matter to be amicably resolved between the parties. Failing this, and upon receipt of material proving that the parties involved have attempted to amicably resolve the issue(s), but have been unsuccessful, the Commissioner will intervene, escalating the matter into a full investigation where necessary.

Since the introduction of the abovementioned process in May 2019, a total of 54 complaints have been received, of which 4 were not progressed due to insufficient evidence or lack of cooperation from the complainant. Of the remaining 46, the Commissioner's office has resolved a total of 23 complaints by engaging with the individual and organisation to address the concerns and/or by facilitating an amicable resolution. A further 27 complaints are ongoing, with 8 of these being progressed into a full investigation as explained above.

DATA BREACHES

There are certain incidents that organisations need to tell us about.

A personal data breach is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are the result of both accidental and deliberate causes. It also means that a breach is about more than the loss of personal data.

In this first quarter of 2020, a total of 5 data breach notifications were received and subsequently investigated. Three of these investigations have been closed in this first quarter.

QUICK-FIRE ADVICE

In the first quarter of 2020, the Commissioner's office has received over 40 incoming enquiries, most of which were in relation to the disclosure of personal data.

WHAT SHOULD A DATA CONTROLLER CONSIDER WHEN THEY RECEIVE A REQUEST FOR PERSONAL DATA WHICH RELATES TO SOMEONE OTHER THAN THE REQUESTER?

- If the requester is acting on behalf of the data subject, seek appropriate evidence of authority/consent from the data subject.
- In order for a disclosure of personal data to be lawful, it must satisfy one of the 'lawful bases' specified in Article 6 of the GDPR.
- If the disclosure would not be lawful, fair and transparent, you must not disclose the information.
- You should not disclose personal data if it would contravene any of the data protection principles. You should refer in all cases to the principles listed in Article 5 of the GDPR.
- You must consider the likely consequences of disclosure in each case. Personal information must not be used in ways that have unjustified adverse effects on the individual concerned.
- Prior to the disclosure of personal data, you must consider the nature of the information and judge the level of distress or damage likely to be caused by the disclosure. The greater this is, the more likely that the interests of the individual concerned will override any legitimate interests in disclosure. You must give extra weight to the interests of the individual if they are a child or a vulnerable adult.
- The consequences of disclosure may be less serious if the same or similar information is already in the public domain.

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