

Speech of the Data Protection Commissioner

Data Protection Office

Workshop on “The Data Protection Act 2017”

(Came into force 15 January 2018)

Date: 06 March 2018

Time: 9h20

**Venue: InterContinental Mauritius Resort, BalACLava
Fort, Coastal Road, BalACLava.**

**Honorable Minister of Technology Communication and Innovation,
Mr. Yogida Sawmynaden,**

- **The Permanent Secretary, Mrs Moorghen,**
- **Members of the Diplomatic corps,**
- **Dr Peter Tobin,**
- **Heads of ministries, departments, parastatals, and private organisations**
- **Distinguished Guests,**
- **Ladies and Gentlemen,**
- **All protocols observed**

Good Morning,

Allow me to welcome you all to this workshop themed the “**Data Protection Act 2017**” in spite of the weather challenges.

Privacy is considered to be an international fundamental human right and a rare gem in today’s world. So it has become imperative for us to protect it given its vulnerable nature.

Ladies and Gentlemen,

It seems like only yesterday that the two-year phase of adaptation to the European Union's General Data Protection Regulation commonly known as GDPR of 2016/679 started. For the uninitiated, GDPR builds on the previous European Union directives of 1995 and provides better protection for consumers, and improved privacy considerations for organisations. Furthermore, it puts the onus on businesses to change their entire ethos towards data protection for a safe and secure digital world.

25th of May 2018 is the day in Europe that all data protection requirements of businesses will have to be changed. However, this not only affects European businesses but every company or enterprise that processes personal data of European citizens outside Europe.

Thus, for instance, our BPO companies are threatened with loss of business should they not timely comply with the requirements of the GDPR. The Data Protection Office in collaboration with its parent Ministry and the State Law office came up with a new law namely the **Data Protection Act 2017** to align our legal framework with the GDPR and to cement Mauritius's position in Africa at the forefront of technological innovation, international data sharing and protection of personal data.

Distinguished Guests,

Most of you handle personal data at work for example Payroll info, employee/clients' details, people's expenditures amongst others. It is your responsibility to keep that information secure and ensure that individuals' rights are respected, with the risk of enforcement action and damaging publicity for your company if you get that wrong. The new Act places more responsibility on you to handle information correctly.

Since the world has changed a lot since 2004, not only technology but business models, people's attitudes to their data, their demand that their information is properly looked after. Therefore, our Data Protection Act had to be changed too.

The question that you would surely ask is: “**What is new in the Data Protection Act 2017**”. This is the purpose of this workshop: to educate you on the new requirements to make you aware of your responsibilities and protection rights under the Act.

To begin with, the major changes that have been brought in the new Act are as follows:

1. Existing data protection principles and key definitions such as consent and personal data have been modernised.
2. The introduction of new concepts such as:

- a. Data protection impact assessments;
 - b. Notification by controllers of personal data breaches to the Data Protection Office and data subjects;
 - c. Voluntary certification mechanisms and data protection seals & marks for controllers; and
 - d. Rights to object to automated individual decision-making including profiling for data subjects.
3. The new Act also simplifies:
- a. the registration and renewal process of controllers and processors;
 - b. the complaints' mechanism and the procedures related to hearings conducted by the Data Protection Office;
 - c. the ease of doing business, in particular in terms of free flow of data from EU or other parts of the world to Mauritius.

Being transparent and providing accessible information to individuals about how you will use their personal data is another key element of the new law.

Obligations on Controllers and Processors

A number of obligations have been imposed on controllers and processors under Part IV of the Act, to ensure that processing of personal data is done in a fair and lawful manner.

Accountability and Principles relating to Processing of Personal Data

The Data Protection Act 2017 increases accountability of controllers, which will make you as organisations implement controlled business processes resulting in better administration, greater productivity and efficiency, and higher levels of security. The principles relating to the processing of personal data are broadly similar to the previous law. In short:

- Lawfulness, transparency,
- Purpose limitation,
- Data minimization,
- Accuracy,
- Storage limitation,
- Processing in accordance with the rights of data subjects.

Your organisation will not only be responsible for adhering to these principles but should also be able to demonstrate compliance with them. For example, you will have to maintain a record of processing activities including details such as:

- the purpose of processing personal data,
- description of categories of data subjects,
- personal data and recipients,
- transfer of personal data to other countries,

- time frames for erasures and restrictions,
- organisational and technical measures in place and make these available to the Data Protection Office upon request.

Collection of personal data

Where you collect personal data directly from a data subject, you should ensure that the subject is given all information including the purpose for which the data is being collected, its intended recipients, the existence of the right to withdraw consent at any time, the period for which the personal data will be stored among others.

Conditions for Consent

In that respect, section 24 on conditions for consent impose on controllers the burden of proof for establishing the data subject's consent to the processing of their personal data for specified purposes. In other words, your respective organisations must be able to provide evidence that consent has been obtained.

Ladies and Gentlemen,

Processor

The Data Protection Act 2017 brings a change in the rules if you're a processor, i.e. processing personal data on behalf of another business – you'll have more direct compliance responsibilities than under the previous law.

Dear participants,

Notification of personal data breach and Communication of personal data breach to data subject

Data breach reporting is another feature. You'll be obliged to notify the Office, within 72 hours, wherever feasible of a breach where it is likely to result in a risk to the rights and freedoms of individuals.

Controllers are also required under section 26 of the Act to notify breaches to affected data subjects without undue delay unless the breach is unlikely to result in a high risk.

Distinguished Guests,

Personal data of children and Security of processing

The Act now caters for the processing of personal data concerning children.

The need for implementing appropriate security and organisational measures have always been part of the previous legislation. It has now been enhanced with the introduction of new requirements such as:

- pseudonymisation and encryption of personal data,
- Maintaining ongoing confidentiality, integrity, availability, access, and resilience of processing systems and services.
- Restoring the availability of and access to personal data, in the event of a physical or technical incident;
- Testing and evaluating the effectiveness of technical and organisation measures.

Ladies and Gentlemen,

Data protection impact assessment

A data protection impact assessment is a good practice tool that the Data Protection Office has championed for a long time. It is now legally required in certain circumstances. Therefore, where processing operations are likely to result in high risk to the rights and freedoms of

data subjects by virtue of their nature, the Act requires organisations to conduct an impact assessment prior to the processing of personal data.

Transfer of personal data outside Mauritius

With the new legislation, transfer of personal data to another country may take place only if the controller has adduced appropriate safeguards with respect to the protection of personal data to this office or has complied with the conditions laid down in the provisions relating to the transfer of personal data outside the country.

Dear invitees,

Rights of the data subject (Individual)

The rights of data subject have been reviewed and enhanced. With the new law, it becomes more important to inform the individual, or the customer whose data you process, about what happens to their data. What you have to be aware on the rights of the data subject is as follows:

- The right to access personal information
- Controls introduced on automated individual decision making
- Rectification, erasure or restriction of processing of personal information
- The right to object to processing

Distinguished Guests,

To enhance transparency, **certification** (Section 48) has been introduced to:

- help controllers and processors to demonstrate legal accountability;
- build confidence and trust in the organisation with all stakeholders, as well as with the wider public;
- allow data subjects to quickly assess the level of data protection of relevant products and services;
- ensure legal certainty for cross-border data transfers;

Certification is voluntary but enables controllers and processors to demonstrate compliance with the Data Protection Act.

Dear Participants,

The Data Protection Act 2017 brings out several benefits. For instance:

- Increased accountability of controllers will make organisations implement controlled business processes resulting in better organisation, greater productivity and efficiency, and higher level of security.

- ✓ Being compliant will also help organisations to gain and strengthen customer trust, confidence and loyalty.
- Enhanced data subjects' rights will give individuals greater control over their personal data.
- Legal and practical certainty for economic operators and public authorities will be reinforced.
- The new data protection framework will significantly improve the digital legal landscape to respond to the new EU requirements for adequacy, thereby attracting foreign investors.
- Certified organisations will be recognised as providing adequate privacy protection thus giving legal certainty for cross-border data transfers.
- Risk of data breaches will be minimised.

Ladies and Gentlemen,

Those organisations which will succeed under the new law will be those who recognise that the key feature of the Act is to put the individual at the heart of their data protection policies.

On this note, I am confident that today's workshop will be fruitful and that, together, we will achieve a giant step towards enforcing the new Act.

Last but not least, I would like to extend my heartfelt gratitude to our Honourable Minister who has provided his unflinching support in materialising this new law which will change the entire privacy landscape of our country.

Thank You for your attention.