

PROTECTION OF PERSONAL DATA IN POSSESSION OF PRIVATE ENTITIES

On July 6, 2010 the Federal Law for the Protection of Personal Data became effective and its Regulations entered into force on December 22, of that same year. These bodies of law provide that any individual or entity who is in the possession of personal data of other identified or identifiable individuals is under the obligations of making use, disclosing and storing such information in compliance with the provisions of these statutes. Personal data may be collected and expressed in numerical, alphabetical, graphic, photographic, acoustic or any other manner.

The law does not apply when the data refers to individuals in their capacity as merchants, professionals, service providers to any company or individuals engaging in business activities.

Requirements for the Collection of Personal Data

Prior consent, either express or tacit, from an individual is required before collecting his/her personal data.

Express consent may be obtained in any of the following manners:

- (i) Orally, in the individual's presence or through the use of any technology allowing for oral communication;
- (ii) In writing, by means of a document bearing the individual's autograph signature, fingerprint, electronic signature or any other means authorized by the laws in force;
- (iii) Through electronic, optical or any other technological means;
- (iv) By any other unequivocal means.

Express consent shall be required in the following instances:

- When required by law
- When the data solicited are of a financial or patrimonial nature
- When the data solicited are of a sensitive nature, that is, those of an intimate nature, or those which if misused may give rise to discrimination or entail placing the person at grave risk¹
- This is required by the person held responsible for the use given to the data or the data are provided with the consent of the individual who provides them.

¹ To exemplify, data regarding ethnicity or race, present or future health status, genetic information, religious, philosophical and moral beliefs, labor union affiliations, political preferences and sexual orientation. Data bases with sensitive information can only be created when done as mandated by law or the responsible person requires the data for legitimate and concrete reasons consistent with the explicit activities and purposes pursued.

Tacit consent. Tacit consent occurs when the individual is provided with a privacy notice and he/she does not expressly state his/her opposition

No express consent from an individual shall be required to collect, use, store and disclose personal data when:

- (i) It is so provided by law;
- (ii) The data are contained in sources for which public access is available;²
- (iii) The personal data are subject to prior processing to prevent them from being matched with the person to which they belong, or are contained in data bases that do not allow the person's identification by reason of the manner in which they are structured, their content or degree of disaggregation.
- (iv) When the purpose of any such collection, use, storage or disclosure is that of complying with obligations arising from a legal relationship existing between the individual and the person responsible or as a result of an order of an authority.
- (v) In emergency cases involving potential damage or injury to a person or his/her property.
- (vi) Such data are indispensable to provide medical care, and for preventive sanitary or diagnostic purposes, to provide medical treatment or in the management of health-related services, insofar as the person involved is not in a condition to grant his/her consent, as provided in the General Health Law and other applicable legal provisions, provided that the person making use of such data as herein specified be bound by professional secrecy or other equivalent obligation.

Obligations Binding Upon the Person or Entity Collecting Personal Data

The individual or legal entity collecting personal data is bound by the following obligations:

- (i) Obtaining proof of consent to collect and use personal data;
- (ii) Providing the person whose data are being collected with the privacy notice and ensuring that such privacy is maintained.
- (iii) Making use of the data exclusively for the purposes set forth in the privacy notice, since the data may not be used for purposes which are not compatible with or analogous to those for which they were originally collected and specified in the privacy notice;
- (iv) Establishing and maintaining the administrative, technical and physical safety measures required to protect personal data from being damaged, lost, altered or destroyed and to prevent the unauthorized access or use or misuse.

² To exemplify: electronic, optical and other means of communication through whatever technology, telephone directories, judicial bulletins and journals, and social means of communication. This requires that consultation of the data base be available by any person not legally prevented from doing so, or with no other requirement than the payment of a fee.

- (v) Maintaining and updating the data for the purposes for which they were collected.
- (vi) Processing all applications made by title holders in exercising their rights.

Privacy notice

The Privacy notice must be worded in simple terms, contain the necessary information expressed in clear and comprehensible language, structured and designed to facilitate its understanding. Without detriment to the guidelines as determined by the Ministry of the Economy, the notice must contain at least the following information:

- (i) The identity and address of the individual or entity collecting the data;
- (ii) The purpose for collecting and use to be given to the data;
- (iii) The options offered and means to be taken to limit the use or disclosure of the data;
- (iv) The means available to the title holders to exercise the rights of access, correction, cancellation or opposition;
- (v) Any data transfers which may take place, if any.
- (vi) The procedure by which the person responsible for the data shall inform the data title holders of any changes in the privacy notice, as provided in the Law.
- (vii) When sensitive data are involved, the privacy notice must expressly state this circumstance.

The privacy notice must be made available to the data title holders in printed, digital, visual or sound formats or by means of any other type of technology, provided compliance with the obligation of informing such individuals is ensured, as follows:

- When personal data have been obtained in the individual's presence, the privacy notice must be provided in a clear and concise manner, at the time data are collected, and be included on the form used to collect the data, unless the privacy notice was delivered in advance.
- When personal data are collected directly from individuals by means of electronic, optical, sound or visual means, or by any other technological means, the person responsible for the data must provide such individuals forthwith his/her/its identity and address and inform them on the purpose for which they are collected and the use to be given to them. Individuals must also be informed on the means to have access to the complete text of the privacy notice.
- When the person responsible for the data makes use of remote or local electronic or optical means of communication or of any other type of technology allowing such person to collect personal data automatically and simultaneously at the time the individual establishes contact, such individuals must be informed on the use being made of such technologies, on the fact that these technologies collect personal data and the manner in which such applications may be disabled.
- When it is impossible to convey the privacy notice to the individual or doing so requires a disproportionate effort taking into account the number of individuals involved or the time the data have been stored, the person responsible for the

data may, prior authorization having been obtained from the IFAI (*Instituto Federal de Acceso a la Información y Protección de Datos*), to implement remedial measures as provided in the Law.

Rights of Individuals Providing Personal Data

Individuals have the right to:

- (i) Exercise the rights of access, rectification, cancellation and opposition in regard to their data;
- (ii) Have access and be aware of the privacy notice governing the collection and intended use to be given to their personal data;
- (iii) File action for the protection of their personal data before the IFAI claiming the violation of their rights;
- (iv) Revoke the consent given to make use of their personal data.

Sanctions

Infringement of the provisions of the Law, to wit: the failure to provide the privacy notice, the failure to adequately protect personal data, the failure to honor the rights of the individuals to which the personal data belong may result in the application of sanctions in amounts of up to 20 million pesos.

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