JOIC

JERSEY OFFICE OF THE INFORMATION COMMISSIONER

GUIDANCE
NOTE

Key Definitions
Data Protection (Jersey) Law 2018

CONTENTS

INTRODUCTION

1. This guidance relates to the Data Protection (Jersey) Law 2018 (the **DPJL**).

2. The DPJL is based around six principles of 'good information handling' (the **Principles**). These principles give people (the data subjects) specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.

3. This is part of a series of guidance to help organisations fully understand their obligations, as well as to promote good practice.

4. This guidance aims to provide explanations about the Principles, to help individuals understand their rights and to provide guidance to organisations about how they must process data in accordance with those Principles.

KEY DEFINITIONS

Who does the Law apply to?

- The Law applies to 'controllers' and 'processors'.
- A controller determines the purposes and means of processing personal data.
- A processor is responsible for processing personal data on behalf of a controller.
- If you are a processor, the Law places specific legal obligations on you; for example, you are required to maintain records of personal data and processing activities. You will have legal liability if you are responsible for a breach.
- However, if you are a controller, you are not relieved of your obligations where a processor is involved – the Law places further obligations on you to ensure your contracts with processors comply with the Law.
- The Law applies to processing carried out by organisations operating within Jersey. It also applies to organisations outside Jersey that offer goods or services to individuals in Jersey.
- The Law does not apply to certain activities including processing covered by the Law Enforcement Directive, processing for national security purposes and processing carried out by individuals purely for personal/ household activities.

What information does the Law apply to?

Data

- The Law defines 'data' as meaning any information that:
  » is being processed by means of equipment operating automatically in response to instructions given for that purpose;
  » is recorded with the intention that it should be processed by means of such equipment;
  » is recorded as part of a filing system or with the intention that it should form part of a filing system;
  » is recorded information held by a scheduled public authority and does not fall into any of the above three categories.

Personal data

- The Law applies to 'personal data' meaning any information relating to an identifiable, natural, living person who can be directly or indirectly identified in particular by reference to an identifier (the "data subject").
- This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people.
- The Law applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. This could include chronologically ordered sets of manual records containing personal data.
- Personal data that has been pseudonymised – e.g. key-coded – can fall within the scope of the Law depending on how difficult it is to attribute the pseudonym to a particular individual.

Special category personal data

- The Law refers to particularly sensitive information about an individual as "special categories of personal data". This is very similar to the concept of sensitive personal data under the previous data protection legislation.

- The special categories specifically include:
  - » genetic data;
  - » biometric data where processed to uniquely identify an individual;
  - » Racial or ethnic origin;
  - » Political opinion;
  - » Religious or philosophical beliefs;
  - » Trade Union membership;
  - » Data concerning mental or physical health;
  - » Sexual life or sexual orientation; and
  - » Criminal conviction or offence data or allegations of criminal activity.

- Biometric and genetic data are new concepts to local data protection legislation. Biometric data is defined in the Law as "personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person that allow or confirm the unique identification of that natural person, such as facial images or fingerprint data." Genetic data means "personal data relating to the inherited or acquired genetic characteristics of a natural person that give unique information about the physiology or the health of that natural person and that result, in particular, from an analysis of a biological sample from the natural person in questions such as DNA or RNA analysis".

What activities does the Law apply to?

Processing

- This means any operation (or set of operations) that is performed on personal data, whether manual or automatic, and includes:
  - » Collecting;
  - » Recording;
  - » Organizing;
  - » Structuring;
  - » Storage;
  - » Adaption or alteration;
  - » Retrieval;
  - » Consultation;
  - » Use;
  - » Disclosure by transmission;
  - » Dissemination or otherwise making available;
  - » Alignment or combination;
  - » Restriction;
  - » Erasure;
  - » Destruction.

MORE INFORMATION

5. Additional guidance is available on our guidance pages with more information on other aspects of the DPJL and AL.

6. This guidance has been developed drawing on the Commissioner's experience. It will be reviewed and considered from time-to-time in line with new decisions by the Commissioner and/or the Jersey courts.

7. It is a guide to our general recommended approach, although each individual case will likely be different and will be decided on the particular circumstances of the case.

8. If you need any further information about this, or any other aspect of the DPJL or AL, please contact us or see our website www.jerseyoic.org

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