



Tech Tuesdays

With Musa.

Published: 14th May 2024

THE RIGHTS OF A DATA SUBJECT VERSUS THE RESPONSIBILITIES OF A DATA CONTROLLER.

It is reasonable to assume that hundreds of different organizations store and process a vast amount of personal data about you. As a data subject, the Data Protection Act gives you a number of legally enforceable rights. Conversely, as a data controller or processor, you also have certain responsibilities towards your data subjects. This week, we unpack the rights of data subjects vis-à-vis the responsibilities of data controllers.

The Right to Be Informed of How Your Personal Data Is Used

Anyone who collects personal data, be it an employer, a school or website operator is required to provide the data subject with information about how it uses or intends to use the subject's data¹. This can be done by way of a privacy policy. A privacy policy is a document which explains how the organization collects, handles and processes the data of its data subjects. A privacy policy also explicitly states whether your information will be kept confidential or if it might be shared with or sold to other organizations.

The Right of Access

As a data subject, you have the right to receive a copy of the personal data that an organization holds about you. This is called a subject access request. The data controller may appoint a Data Representative whose job it is to ensure that they comply with the law as well as deal with any subject access requests².

In terms of the Act, a copy of your data ought to be provided to you within a reasonable time and at a reasonable charge, if any¹. What amounts to reasonable is not defined by the Act and is therefore open to interpretation depending on the circumstances of each case.

Should a data controller refuse to give you access to the personal data they have about you, you have a right to be given a reason for same. Following

¹ See Section 28(b)

² See Section 36

³ Section 30(1) (a) and (b)

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which, you have a right to challenge such refusal by submitting a complaint to the Data Commissioner.

However, certain types of data controllers can legitimately refuse to provide you with the personal data they have about you. Last week, we mentioned that any organization processing personal data must have a legal basis for doing so, and we mentioned that public bodies can rely on public interest as a legal basis. Thus, the police, for example, can legitimately refuse your request if your personal data is being used to investigate a crime. Similarly, if the data is required for statistical purposes, scientific research, or for the purposes of promoting public health, the data controller would not be required to give you access to same⁴.

The Right to Have Your Personal Data Deleted, Rectified or Amended

As a data subject, you may challenge any data that a data controller holds about you by submitting a complaint under of Section 42 of the Act and if the challenge is successful, you may insist that the data be permanently deleted, rectified, completed or amended, whichever is suitable under the circumstances. The right to have your personal data permanently deleted is often referred to as the right to be forgotten.

Article by Princess Musa Dube

If you have interest in an in-depth discussion on this subject matter or any Data Protection issues, feel free to contact us at info@gobhozalegalpractice.co.bw Tel: **3116371**

***Disclaimer:** This article is for information purposes only and should not be taken as legal advice.*

⁴ Section 29(3)