

THE DATA PROTECTION BILL : PRINCIPLES OF DATA PROCESSING

The New Data Protection Bill has made significant strides in encapsulating, as far as possible, the principles enshrined in the General Data Protection Regulation (GDPR). Part IV of the Bill expands on the 7 Principles of Data Protection. A discussion on this is available under the Tech Tuesdays Newsletter. For a deeper understanding, we recommend reading that paper before embarking on this week's issue.

Personal and Sensitive Data

One of the notable changes that this Bill will introduce is the distinction in the manner in which Personal and Sensitive Data ought to be processed. Whereas the current Act speaks to Sensitive Personal Data collectively, the new Bill separates the principles relating to the processing of the two types of data.

Personal Data is defined as any information relating to an identified or identifiable natural person, or data subject such as a name, an identification number, location data, an online identifier etc, whereas;

Sensitive Data relates to personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, criminal record or trade union membership. It also includes the processing of data relating to the foregoing.

Legal Basis for Processing Personal Data

In order to process either of the two categories of data above defined, a data controller must have at least one good reason for doing so known as a Legal Basis. The possible legal basis for processing Personal Data are listed under Section 26 of the Bill, and they include necessity, public interest, contractual obligations or most notably, consent.

Where data processing is based on consent, the data controller should be in a position to demonstrate that the data subject indeed consented to their data being processed. The best way to do this would be by way of a written declaration, crafted in simple, plain and intelligible language, specifying the data which the subject permits the data controller to process and signed by the data subject. Any consent not given in this manner is deemed invalid.

The data subject reserves the right to revoke his or her consent at any time in the same way that consent was given. In that event, the processing done prior to the withdrawal would not be affected. Prior to obtaining consent to process an individual's data, the data controller must inform the data subject of their right to withdraw consent at any time.

Where a data controller seeks to process data relating to a child, consent is given or authorised by the child's parent or guardian but the data controller should make reasonable efforts to ensure that consent is given jointly by the child and parent/guardian.

Join us next week on Tech Tuesdays as we discuss the principles surrounding the processing of sensitive personal data.

Article by Princess Musa Dube

If you have interest in an in-depth discussion on this subject matter or any Data Protection related 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.