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The effect of COVID-19 on data privacy

In response to the COVID-19 pandemic, entirely new ways of interacting are rapidly impacting business operations. Addressing cyber threats, privacy and security concerns has been overtaken by the need to address operational continuity, therefore gaps in protection have become opportunities for hackers, who are ready to exploit, as evidenced in recent attacks on a popular video conferencing platform.

The solution is strengthening defenses through awareness, assessment, mitigation and judicious collaboration.

Data is of great value to businesses and even greater to hackers. Governments across the world are resorting to gaining, storing and using personal data of individuals in order to temporarily prevent and control the pandemic, through solutions such as Bluetrace and ArogyaSetu applications. Such apps store and use personal data of individuals to track their location and manage health data in order to trace the location of the active/potential cases.

It is essential for users to both be aware and understand how this data is stored, protected and ethically used in the future, as a potential hack would not only cause reputational risk but also violate rights of individuals who have provided sensitive and personal information to governments and businesses alike.

We address some specific questions which we have recently received from clients and the wider community.

How can we ensure processing of data is lawful during the pandemic?

Although the law has provided citizens and residents of Bahrain with fundamental rights to be exercised, it also refers to events in which such rights can be restricted, as highlighted in Article 4 of the General Requirements for Legitimate Processing, which states that processing can take place in an emergency situation or for other important objectives of general public interest, such as public health, under which the current pandemic would be eligible.

The lawful basis for processing, can be for the protection of vital interests when processing is necessary to protect someone's life and freedom or public task.

The protection of vital interests is intended to be used only in a specific situation where no other lawful basis is applicable and used as a last resort, implicating that there is no need to obtain consent from the individual, because a clear and explicit consent must be obtained from the Data Owner in order to ensure data is collected and processed lawfully.

The public task can be an appropriate legal base if the processing is necessary for performing a task in the interest of the public. This is applicable for public authorities in order for them to execute their services. During this time, data protection principles such as data minimization and purpose limitation has to be followed.

Is personal data processing in the case of Coronavirus ethical?

It is important to note that processing that has a foothold in the law does not automatically mean it is right from an ethical perspective.

Although fundamental rights are provided to the data owner for the protection of their personal data, these rights can be restricted in situations such as a pandemic, where such data is required to protect other people's rights or the rights of the wider community.

Therefore a self-assessment (Data Protection Impact Assessment, DPIA) needs to be conducted to ensure that information being collected and processed does not have any impact on current processes, or that the data manager does not pose a risk during the processing of personal data.

A Data Protection Impact Assessment (DPIA) is a process which identifies and minimizes risks related to personal data processing.

Bahrain's Personal data protection law does not have any provisions to do so but under the General Data Protection Regulation (GDPR) and DPIA is a legal requirement if a data controller processes activity that is "likely to result in a high risk to the rights and freedoms of natural persons" (GDPR, Article 35).

To aid data managers to assess and manage their self-assessment, our technical team at Grant Thornton Bahrain have developed a automated checklist. To receive this please [register here](#)

What are the employer's obligations during a pandemic?

As an employer, you have an obligation to protect your employees and therefore, you are required to take certain measures, which include but are not limited to:

1. Ensure that your employees have not developed any symptoms, likewise if they have recently travelled to the one of countries considered as COVID19 hotspot then social distance measures are adopted.
2. You should not disclose or collect additional information than is necessary and ensure you restrict access to such information, along with applying appropriate safeguards.
3. Ensure you are compliant with all the articles mentioned under "Chapter II General Rules for the Legitimacy of Processing" in Bahrain's Personal Data Protection Law.

To navigate your data processing and compliance obligations during the current pandemic, contact our technical experts who are currently supporting Bahrain businesses to remain compliant.

Navneet Sharma

Director, IT Advisory
E navneet.sharma@bh.gt.com
T +973 35948802

Pratik Udapure

Assistant Manager, IT Advisory
E pratik.udapure@bh.gt.com
T +973 35583669