



Consultation on the draft Data Protection Bill 2012

Prepared by the Data Protection Working Group

September 2012

Background

1. On 18th August 2009, the Governor-in-Cabinet established a Data Protection Working Group (“DPWG”), with representatives from both the public and private sectors, to make recommendations for the introduction of data protection legislation in the Cayman Islands.
2. The proposals contained in the draft Data Protection Bill 2012 (the “draft Bill”) have been noted by Cabinet and a general public consultation period approved.

Consultation Process

3. This document accompanies the draft Bill and the DPWG invites comments from any and all individuals, entities, groups, organisations or associations with an interest in or views on the topic.
4. Respondents may in particular consider the following questions:
 - a. Many new and different types of individual rights and protections are included throughout the draft Bill. Are these rights and protections granted to individuals sufficient? If not, what additional rights and protections would you recommend?
 - b. Are the limited exemptions in Part 4 of the draft Bill appropriate? Are there any other exemptions which you consider to be essential in order to protect Cayman’s key industries? Bear in mind that any such exemptions must still allow the legislative regime to meet internationally accepted data protection standards.
 - c. Will oversight and enforcement powers in Parts 5 and 6 of the draft Bill be adequate to ensure compliance with the Law and meet the stated objectives? If not, what changes would you recommend?
 - d. Does the draft legislation cause you any concerns not covered above? If so, please explain them, giving as much detail as you can.
5. Written submissions must be received by Friday, 2nd November 2012 and may be sent by post to:

Secretary to the Data Protection Working Group
c/o The Cabinet Office
Government Administration Building Box 105
133 Elgin Avenue
Grand Cayman KY1-9000
CAYMAN ISLANDS

Or by email to: consult@dataprotection.ky

Or by fax to: 1 345 946 1652

6. During the consultation period, the DPWG will be prepared to give presentations on the draft Bill and related issues to interested groups. Additional explanatory briefs on specific topics will also be published by the DPWG.
7. For more information go to www.dataprotection.ky or contact the Secretary to the Data Protection Working Group as outlined in paragraph 5 or on 1 345 244 3607.

The Need for Data Protection

8. In modern society, more and more personal information is being collected, processed and shared by governments, companies, social media, private organisations and even individuals. This can be done without the permission or even knowledge of the individual, and sometimes little effort is made to ensure the accuracy of the information or to keep it private. This has caused increasing concern worldwide and has led to the enactment of data protection legislation in most developed countries.
9. Data protection legislation seeks to protect an individual's rights with respect to the collection, use and sharing of his or her personal data.
10. In 1995 the European Commission ("EC") created a framework that allows European member states and other, non-member countries to develop national legislation with an internationally accepted minimum level of data protection. There are now over forty countries worldwide which have enacted European-style data protection laws at the national or federal level and many more are in the process of doing so.
11. The attached Bill has been drafted with the aim of achieving EC recognition of the Cayman Islands' data protection regime. Such approval would allow personal data to flow between the Cayman Islands and all other approved countries without the need for additional safeguards or contracts.
12. International businesses and their clients expect jurisdictions to have in place comprehensive data protection regimes that satisfy their compliance requirements and facilitate the easy transfer of personal information throughout their organisations. The DPWG believes that the draft Bill will meet these requirements and will create a robust and proportionate data protection regime that will enhance Cayman's reputation and competitiveness in the global marketplace.
13. The draft Bill has been developed in line with international best practices but a conscious effort has also been made to ensure that it reflects the specific needs of the Cayman Islands.
14. The Bill is also consistent with the requirements of the Bill of Rights, Freedoms and Responsibilities in the Cayman Islands Constitution Order 2009 to promote respect for every person's private and family life, home and correspondence.

The Draft Cayman Islands Data Protection Bill 2012

15. The data protection principles from the draft Bill and a brief description of the origination and evolution of the internationally accepted principles are attached to this paper at Appendix A.
16. The DPWG reviewed data protection legislation in various countries. The draft Bill, which was modelled in part on Jersey's data protection legislation, -
 - a. applies to all types of personal data, whether held digitally or on paper (as long as the paper documents form part of a filing system);

- b. applies to both public and private sectors;
 - c. places limits on how personal data may be used or shared with third parties;
 - d. includes specific provisions concerning protection of particularly sensitive personal data;
 - e. grants specific rights to individuals, including the rights to gain access to information about themselves, ensure that information is accurate and demand that use of the information be stopped;
 - f. grants remedies to affected individuals when the data protection principles defined in the Bill are contravened, including compensation in certain cases; and
 - g. requires individuals, businesses and other organisations that handle personal data to register with the Information Commissioner, and imposes other obligations on them.
17. The DPWG has reviewed a number of proposed changes to the EC data protection framework and has taken these into account when drafting the Bill. The draft Bill has also been simplified and strengthened.
 18. Other laws and/or regulations that address certain types of processing or sectorial risks may complement and supplement the main law to provide additional protections, for example to deal with electronic communication or health care data.
 19. A legislative review will be carried out prior to implementation of a Data Protection Law to ensure a clear and consistent framework for the protection of privacy and individual rights and freedoms and the regulation of personal data usage in the Cayman Islands.

Oversight and Compliance

20. Data protection requires effective oversight to ensure compliance and process complaints.
21. It is proposed that the Information Commissioner's Office ("ICO"), currently responsible for oversight of the FOI Law, will take on a similar role for data protection and will be given the powers, responsibilities and resources necessary to ensure successful functioning of the legislation once implemented.
22. Appeals and complaints related to data protection issues will be heard by the Information Commissioner. The ICO will also maintain the appropriate public registers, carry out public education and awareness, act as an international liaison for data protection issues and report to the Legislative Assembly annually once the law comes into effect.
23. Decisions by the Information Commissioner may be appealed to the Grand Court.
24. Certain breaches of the law are criminal offences and offenders may be fined or sentenced to a prison term upon conviction by a court. Other breaches may result in monetary penalties.

Scope, Exemptions and Restrictions

25. The draft Bill defines “Processing” as the collection, organisation, storage, alteration, use, disclosure or destruction of data. It can be done electronically or using a manual filing system.
26. The provisions of the draft Bill will apply to all processing of personal data in the Cayman Islands, except by an individual in the course of a purely personal or household activity.
27. In order to protect individual rights and freedoms and important public interests there are limited exemptions from the data protection principles and restrictions on individual rights.
28. Exemptions are currently provided for the following reasons:
 - National security
 - Crime and taxation
 - Health, Education or Social Work
 - Regulatory Activity
 - Journalism, Literature or Art
 - Research, History or Statistics
 - Legal requirements or proceedings
 - Purely domestic purposes
 - Conferring of Crown honours/dignities
 - Corporate finance
 - Negotiations with the data controller
 - Legal professional privilege
29. Exemptions are detailed and remove the obligation to comply with specific data protection principles or other provisions under specific circumstances. The activities listed in paragraph 28 are not exempt from all legal requirements and the relevant sections of the draft Bill provide more detail on when each exemption may apply.

Implementation of Data Protection

30. The DPWG recommends that after the Data Protection Bill is passed into Law by the Legislative Assembly it should be implemented over at least a twelve month period, with phased registration of data controllers occurring first. Training and guidance will be provided and at the end of the implementation period the full provisions of the Law should be brought into effect by Order of the Governor.
31. The number and length of registration and implementation phases will be dependent upon the resources available to the supervisory authority, the success of the registration procedures and the response from data controllers. The draft Bill therefore grants the Information Commissioner discretion to vary the phases and their timing.

Conclusion

32. The proposed data protection legislation will impact every individual and organisation in the Cayman Islands by granting new rights to individuals and imposing new requirements for the protection of personal data.
33. Please take this opportunity to review the draft legislation and provide the DPWG with your views. Paragraph 4 above asks some questions that you may wish to answer, but do not feel constrained by these. We welcome your comments on any aspect of the draft Bill.

Data Protection Principles

The following data protection principles are contained in Schedule 1 to the draft Data Protection Bill. They arise from the EC framework and are similar to the principles for the protection of personal data that were first espoused in the OECD [*Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data*](#) (1980) and upheld in the Council of Europe's [*Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*](#) (1981) prior to [*Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data*](#) being issued by the EC.

1. **First Principle:** Personal data shall be processed fairly. In addition, personal data may be processed only if certain conditions are met, for example the data subject has consented to the processing, or it is required under a law or to protect the individual's vital interests.
2. **Second Principle:** Personal data shall be obtained only for one or more specified, explicit and legitimate purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. **Third Principle:** Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are collected or processed.
4. **Fourth Principle:** Personal data shall be accurate and, where necessary, kept up to date.
5. **Fifth Principle:** Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose.
6. **Sixth Principle:** Personal data shall be processed in accordance with the rights of data subjects under the Data Protection Law, for example subject access.
7. **Seventh Principle:** Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. **Eighth Principle:** Personal data shall not be transferred to a country or territory unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

These principles ensure that evolving technology and innovative practices cannot circumvent the requirements of the legislation. Each data controller is accountable for complying with these principles for all personal data that are held by that data controller.