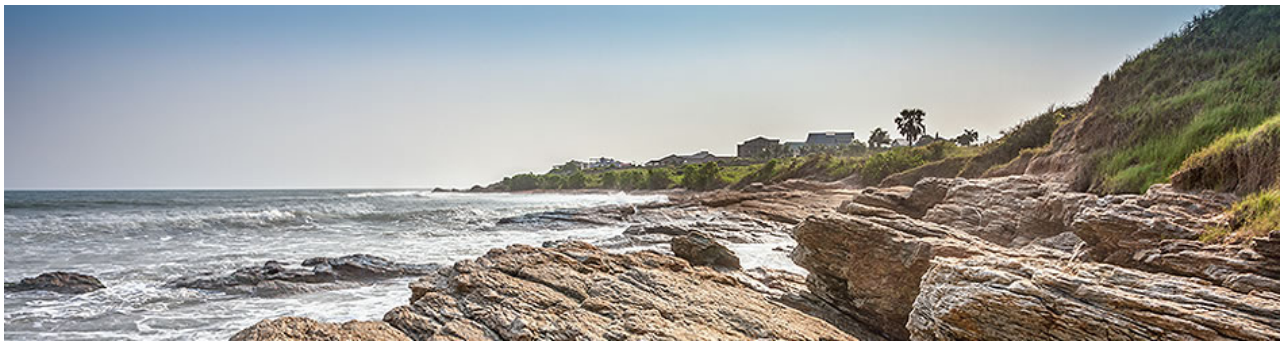
DATA PROTECTION LAWS OF THE WORLD

Ghana

GHANA



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LAW

The primary legislation governing privacy / data protection in Ghana is the Data Protection Act, 2012 (Act 843).

Other laws, examples of which are set out below, contain some privacy/data protection provisions:

1992 Constitution

Article 18(2) provides citizens with a fundamental right to privacy. The Article provides that *“no person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.”*

Electronic Communications Act, 2008 (Act 775)

A network operator or a service provider who is a holder of a Class Licence shall not use or permit another person to use or disclose confidential, personal or proprietary information of a user, another network operator or service provider without lawful authority unless the use or disclosure is necessary for the operation of the network or service, the billing and collection of charges, the protection of the rights or property of the operator or provider, or the protection of the users or other network operators or service providers from the fraudulent use of the network or service.

A person who intentionally uses or discloses personal information in contravention of the Act commits an offence and is liable on summary conviction to a fine of not more than one thousand five hundred penalty units or to a term of imprisonment of not more than four years or both.

Act 775 defines a Class Licence as *“a licence, other than an individual licence, granted on the same terms to each applicant in respect to a class of electronic communications networks or services or radio-communication services.”*

Electronic Communications Regulations, 2011 (L.I. 1991)

The principle of privacy and secrecy in electronic communications applies to the National Communications Authority, operators of electronic communications networks and providers of electronic communications services.

The operator is required to comply with international best practices in the industry to promote privacy, secrecy and security of communications carried or transmitted by the operator or through the communications system of the operator, and the personal and accounts data related to subscribers.

Credit Reporting Act, 2007 (Act 726)

The Bank of Ghana has the overall supervisory and regulatory authority under the Act to: (a) register, license and regulate bureaus, data providers and credit information recipients and their agents; and (b) control and supervise activities of the credit bureaus, data providers, credit information recipients and their agents.

The Act requires the recipient of a credit report to keep such report confidential while ensuring that the information contained in it is used solely for its specified purpose. A credit bureau, data provider or credit information recipient is required to observe the principles of: (a) equality of credit information subjects; (b) confidentiality of information; (c) non-interference in the private life of citizens; (d) respect for the rights, liberties and lawful interests of persons and legal entities; (e) accuracy and transparency of information; and (f) `privacy and secrecy of communication.

Credit Reporting Regulations, 2020 (L.I. 2394)

These regulations made pursuant to the Credit Reporting Act, 2007 (Act 726), set standards for the safety and security of credit information, standards for data submission by data providers as well as standards for privacy and data security which are to be observed credit bureaus. These include:

- Confidentiality of credit information;
- Controls and security measures to be taken by credit bureaus; and
- Standards to be observed in the processing of data submitted.

*A penalty unit is equivalent to GHS12 (approximately USD11.6 as at 22 December 2023).

Public Health Act, 2012 (Act 851)

Article 45 of the International Health Regulations (2005) of World Health Organisation Regulations which is annexed to Act 851 as the Seventh Schedule provides that *“health information collected or received by a State Party pursuant to these Regulations from another State Party or from WHO which refers to an identified or identifiable person shall be kept confidential and processed anonymously as required by national law.”*

Children’s Act, 1998 (Act 560)

The purpose of this Act is to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption, regulate child labour and apprenticeship, and provide for ancillary matters concerning children generally.

Act 560 provides that *“a child’s right to privacy must be respected throughout the proceedings at a Family Tribunal”.* In furtherance of this, the Act restricts participants to the sittings of the Family Tribunal to persons with an interest in the matter including parents of the child and officers of the Tribunal.

Act 560 further provides that it is an offence for any person to *“publish any information that may lead to the identification of a child in any matter before a Family Tribunal except with the permission of the Family Tribunal.”*

Cybersecurity Act, 2020 (Act 1038)

The purpose of this Act is to regulate cybersecurity activities in Ghana, promote the development of cybersecurity and to provide for other related matters. This Act permits interception of data under limited circumstances.

Act 1038 makes provision for certain authorized persons to apply to the courts for a production order to collect subscriber information or for an interception warrant to collect or record traffic data or content data stored in real time.

Applications made in this regard must indicate the measures to be taken to ensure that the data will be procured:

- whilst maintaining the privacy of other users, customers and third parties; and
- without the disclosure of the traffic data of any party not part of the investigation.

DEFINITIONS

- **Data** means information which (a) is processed by means of equipment operating automatically in response to instructions given for that purpose, (b) is recorded with the intention that it should be processed by means of such equipment, (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record.
- **Data controller** means a person who either alone, jointly with other persons or in common with other persons or as a statutory duty determines the purposes for and the manner in which personal data is processed or is to be processed.
- **Data processor** in relation to personal data means any person other than an employee of the data controller who processes the data on behalf of the data controller
- **Data subject** means an individual who is the subject of personal data.
- **Data supervisor** means a professional appointed by a data controller in accordance with section 58 to monitor the compliance by the data controller in accordance with the provisions of the Act.
- **Processing** means an operation or activity or set of operations by automatic or other means that concerns data or personal data and the:
    - collection, organisation, adaptation or alteration of the information or data;
    - retrieval, consultation or use of the information or data;
    - disclosure of the information or data by transmission, dissemination or other means available, or
    - alignment, combination, blocking, erasure or destruction of the information or data.

Definition sensitive personal data

The Data Protection Act does not make provision for 'sensitive personal data'. However 'special personal data', is defined as personal data which relates to:

- the race, colour, ethnic or tribal origin of the data subject;
- the political opinion of the data subject;
- the religious beliefs or other beliefs of a similar nature, of the data subject;
- the physical, medical, mental health or mental condition or DNA of the data subject;
- the sexual orientation of the data subject;
- the commission or alleged commission of an offence by the individual; or
- proceedings for an offence committed or alleged to have been committed by the individual, the disposal of such proceedings or the sentence of any court in the proceedings.

NATIONAL DATA PROTECTION AUTHORITY

Data Protection Commission ('Commission')

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REGISTRATION

A data controller who intends to process personal data is required to register with the Data Protection Commission. A data controller who is not incorporated in Ghana must register as an external company.

Upon registration, a data controller is issued a Certificate of Registration which is valid for two (2) years and must be renewed thereafter. The Data Protection Commission also maintains an online public search register of registered data controllers, which shows the status of the entity with the Commission as well as the expiry date of its current registration.

DATA PROTECTION OFFICERS

There is no specific requirement to appoint a data protection officer. However, under the Data Protection Act, 2012 (Act 843) a data controller may appoint a certified and qualified data supervisor to act as a data protection supervisor. The data protection supervisor is responsible for monitoring the data controller’s compliance with the provisions of the Data Protection Act. A person shall not be appointed as a data protection supervisor unless the person satisfies the criteria set by the Data Protection Commission.

COLLECTION & PROCESSING

Collection

A person shall collect data directly from the data subject unless:

- the data is contained in a public record;
- the data subject has deliberately made the data public;
- the data subject has consented to the collection of the information from another source;
- the collection of the data from another source is unlikely to prejudice a legitimate interest of the data subject;
- the collection of the data from another source is necessary for a number of expressly designated purposes (for example the detection or punishment of an offence or breach of law);
- compliance would prejudice a lawful purpose for the collection;
- compliance is not reasonably practicable.

A data controller must also ensure that the data subject is aware of:

- the nature of the data being collected;
- the name and address of the person responsible for the collection;
- the purpose for which the data is required for collection;
- whether or not the supply of the data by the data subject is discretionary or mandatory;
- the consequences of failure to provide the data;
- the authorized requirement for the collection of the information or the requirement by law for its collection;
- the recipient of the data;
- the nature or category of the data;
- the existence of the right of access to and the right to request rectification of the data collected before the collection.

Where collection is carried out by a third party on behalf of the data controller, the third party must ensure that the data subject has the information listed above.

Processing

A person who processes personal data shall ensure that the personal data is processed:

- without infringing the privacy rights of the data subject;
- in a lawful manner; and
- in a reasonable manner.

Under the Data Protection Act, a data controller or is required to ensure that personal data in respect of foreign data subjects is processed in compliance with data protection legislation of the foreign jurisdiction of that subject where personal data originating from that jurisdiction is sent to Ghana for processing.

TRANSFER

There are no specific provisions in the Act on the transfer of personal data. However, the sale and purchase of personal data or information is prohibited. Additionally, a person is prohibited from knowingly obtaining or knowingly or recklessly disclosing the personal data or the information contained in the personal data of another person.

A person who sells or offers to sell the personal data of another person commits an offence and is liable on summary conviction to a fine of not more than 2500 penalty units or to a term of imprisonment of not more than five years or to both.

A person who purchases, knowingly obtains, or knowingly or recklessly discloses personal data is liable on summary conviction to a fine of not more than 250 penalty units or to a term of imprisonment of not more than 2 years or to both.

A penalty unit is equivalent to GHS12 (approximately USD11.6 as at 22 December 2023).

SECURITY

- A person who processes data shall take into account the privacy of the individual by applying the data security safeguards.
- A data controller has an obligation to ensure that a data processor who processes personal data for the data controller, establishes and complies with the security measures provided for under the Act.

BREACH NOTIFICATION

Where there are reasonable grounds to believe that the personal data of a data subject has been accessed or acquired by an unauthorised person, the data controller or a third party who processes data under the authority of the data controller shall notify the Commission and the data subject of the unauthorised access or acquisition as soon as reasonably practicable after the discovery of the unauthorised access or acquisition of the data. The data controller shall take steps to ensure the restoration of the integrity of the information system.

The data controller shall delay the notification to the data subject where the security agencies or the Data Protection Commission inform the data controller that the notification will impede a criminal investigation.

ENFORCEMENT

Where the Commission is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commission shall serve the data controller with an enforcement notice to require the data controller to do any of the following:

- to take or refrain from taking the steps specified within the time stated in the notice;
- to refrain from processing any personal data or personal data of a description specified in the notice;
- to refrain from processing personal data or personal data of a description specified in the notice for the purposes specified or in the manner specified after the time specified.

A person who fails to comply with an enforcement notice commits an offence and is liable on summary conviction to a fine of not more than one hundred and fifty penalty units or to a term of imprisonment of not more than one year or to both. A penalty unit is equivalent to GHS 12 (approximately USD 2.20).

Further, an individual who suffers damage or distress through the contravention of the data protection obligations by a data controller is entitled to compensation from the data controller for the damage or distress notice.

In October 2020, the Data Protection Commission announced its implementation of an Enhanced Registration and Compliance Software to streamline the registration and renewal process for Data Controllers. There was also announced an extension of the transitional period under the Act during which existing Data Controllers were required to register with the Commission by six months (from 1st of October 2020 to 31st March 2021). During this period, it is reported that defaulting Data Controllers will be required to pay only the current year’s registration fee, with all fees for previous years (up to 2012) in which they were to register but defaulted, waived. Pursuant to the Act however, such extensions of the transitional period are required to be made by a Legislative Instrument, however our checks show that no Legislative Instrument has been passed for this purpose.

A penalty unit is equivalent to GHS12 (approximately USD11.6 as at 22 December 2023).

The Data Protection Commission requires all large data controllers[1] to have a certified data protection supervisor who has undergone training with the Commission. Where a data controller is renewing their license with the Commission, they are required to provide a Gap Analysis report which shows how the data controller has complied with the law and requirements of the Commission as well as areas for improvement. The Gap Analysis is usually done by the data protection supervisor; however, this can be done by a third party who has been certified by the Data Protection Commission. As part of the gap analysis, the data controller will be required to produce a data protection policy, a data protection impact assessment, a data retention policy, an incident report plan, as well as a breach report which should include all breaches no matter the magnitude. Data Controllers are also required to provide regular training, at least once every year, for anyone that deals with personal information on behalf the data controller.

1: Primary criterion: Data controllers with an annual turnover of GHS 5 million (approximately USD 430,337) and above; or minimum of 250 members or staff. Secondary criterion: Specialist industries no matter their turnover; specifically, upstream and midstream petroleum companies, telecommunication companies or operators (Class 1 license operators), banking / financial institution, credit bureaus, insurance companies, mining companies except quarries, members of groups of companies no matter their turnover which has one associate or subsidiary qualifying as a large data controller.

ELECTRONIC MARKETING

The Act prohibits a data controller from using, obtaining, procuring or providing information related to a data subject for the purpose of direct marketing without the prior written consent of the data subject. However, there are no specific provisions that relate to electronic marketing specifically.

ONLINE PRIVACY

The Data Protection Commission shall not grant an application for registration as a data controller where the appropriate safeguards for the protection of the privacy of the data subject have not been provided by the data controller.

The Cybersecurity Act, 2020 (Act 1038) Act 1038 makes provision for certain authorized persons (as specified below) to apply to the High Court for a production order to collect subscriber information[1] or for an interception warrant to collect or record traffic data[2] or content data[3] stored in real time.

An investigative officer[4] who makes an application for a production order to collect subscriber information must demonstrate to the satisfaction of the Court that there are reasonable grounds to believe that the subscriber information associated with a specified communication and related to or connected with a person under investigation is reasonably required for the purpose of a specific criminal investigation.

A senior investigative officer[5] who makes an application to the Court for an interception warrant to collect or record traffic data stored or in real-time must demonstrate to the satisfaction of the court that there are reasonable grounds to believe that the traffic data is required for the purposes of a specific criminal investigation.

A designated officer who makes an application to the Court for an interception warrant to collect or record content data shall demonstrate to the satisfaction of the Court that there are reasonable grounds to authorise the interception of content data and associated traffic data, related to or connected with a person or premises under investigation for one of the following purposes:

- in the interests of national security;
- the prevention or detection of a serious offence;
- in the interests of the economic well-being of the citizenry, so far as those interests are also relevant to the interests of national security; or
- to give effect to a mutual legal assistance request.

Applications made in this regard must indicate the measures to be taken to ensure that the data will be procured:

- whilst maintaining the privacy of other users, customers and third parties; and
- without the disclosure of the subscriber information, traffic data or data of any party not part of the investigation.

1: Act 1038 defines "subscriber information" as any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of the services of a service provider other than traffic or content data and by which may be established (a) the type of communication service used, the technical provisions taken in respect of the communication service and the period of service; (b) the identity, postal or geographic address, telephone and other access number of the subscriber, billing and payment information available on the basis of the service agreement or arrangement; and (c) any other information on the site of the installation of a communication equipment, available on the basis of the service agreement or arrangement;

2: Pursuant to Act 1038 “traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the origin, destination, route, time, date, size or duration of the communication or the type of underlying service;

3: Pursuant to Act 1038 “content data” means the communication content of the communication, that is, the meaning or purport of the communication, or the message or information being conveyed by the communication other than traffic data.

4: Pursuant to Act 1038 “investigative officer” means an officer of a law enforcement agency established by law.

5: Pursuant to Act 1038 “designated officer” means any of the following persons: (a) the Director-General of the Bureau of National Investigations; (b) the National Security Coordinator; (c) the Inspector-General of Police; (d) the Commissioner-General of the Ghana Revenue Authority; (e) the Director-General, Defence Intelligence;(f) the Executive Director, Economic and Organised Crime Office; (g) the Director-General, Narcotics Control Commission; (h) the Comptroller-General, Immigration Service; (i) the Director-General, Research Department of the Ministry of Foreign Affairs; (j) the Chief Executive Officer of the Financial Intelligence Centre; or (k) the Attorney-General, acting upon the request of a competent authority of a foreign country.

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DATA PRIVACY TOOL

You may also be interested in our Data Privacy Scorebox to assess your organization's level of data protection maturity.