

**Presentation to the institution
Of surveyors of Uganda on the
Data protection and privacy
Act, 2019.**

Kenneth Muhangi

Data Protection and Privacy Act, 2019 was passed into law and subsequently assented to by the president. The Act seeks to protect the privacy of the individual and of personal data regulating the collection and processing of personal information, provides for rights of data subjects and obligations of data collectors, data processors and data controllers.

Jurisprudence on Data protection and privacy is emerging in Uganda and the globe at large. With the emergence of Technology and the Internet of things (IOT), Big data is a major contribution to this development. Legal scholars and technology enthusiasts regard data as the new oil. Technology companies have invested heavily in data collection and processing for target advertising, sale, guide companies to make strategic decisions, inter alia.

Cambridge Analytica is the most recent classical example on the relation of personal data and elections, the data analytics company a political consulting firm combined misappropriation of digital assets, data mining, data brokerage with strategic communication, it conducted operations in 68 countries.

In Kenya, the data mining company is alleged to have mined voter's data to help Uhuru Kenyatta win the elections. According to the New York Times, Cambridge Analytica experimented and found that privacy rules are lax or non-existent and the company therefore relied on government owned data without any sanction.

Introduction

Relevance of Data Protection and Privacy Act to Surveyors

The Institution of Surveyors of Uganda has professional membership of over 1500 members whose daily work expose them a lot to personal information which is prone to abuse. This training is meant to educate surveyors on the general principles governing Data protection.

Key pieces of information that are commonly stored by businesses, for example client's personal data, transactions or data collection need to be protected. This is to prevent that data from being misused by third parties for fraud and identity theft.

Land surveyors, valuation surveyors and quantity surveyors hold clients' valuable information for example bills of quantities, surveys, mapping, typographic maps, hydrographic charts, photogrammetric data and mappings derived from cadastral and topographic information including thematic and special purpose mapping, hydrographic charting and digital records.

personal data is defined as any information relating to an identified or identifiable person referred to as a data subject.

An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, academic, genetic, mental, economic, cultural or social identity of that natural person.

Personal data, is for all intents and purposes confidential information that cannot be shared without the express consent of the data subject . In fact, Sections 17 & 18 of the Computer Misuse Act, 2011 and section 35 of the 2019 Act, criminalize the unauthorized release/disclosure of such data.

This is inline with Article 27 (2) of the Constitution that provides that, “No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.” In other jurisdictions such as Kenya, there is a proposal to amend the Constitution to specifically provide for the right to privacy of personal data as a human right and measures of enforcement where there is infringement.

Section 9 of the 2019 Act prohibits the collection and processing of data that relates to religious, philosophical, political opinion, sexual, financial, health status or medical records of an individual. The exceptions being if the data is collected or processed by Uganda Bureau of Statistics, collection mandated by law on an employer, information given freely and with the consent of the data subject and collected in furtherance of the legitimate activities of a body or association.

What is personal data?

Principles of data protection

- Accountability to the data subject for data collected, processed, held or used.
- Fair and lawful collection and processing of data.
- Relevant and necessary use of data.
- Retention of data only for as long as is necessary.
- Quality control of the data collected, processed, used or held.
- Transparency and participation of a data subject in the collection, processing, use and holding of the personal data.
- Observe security safe guards in respect of personal data.

Consent

Processing personal data is generally prohibited, unless the law expressly allows it, or the data subject has consented to the processing.

Section 7 however provides other legal bases for collection and processing of personal data where the collection is;

- a) necessary for the proper performance of a public duty by a public body;
- b) for national security
- c) for the prevention, detection, investigation, prosecution or punishment of an offence or breach of law
- d) for the performance of a contract to which a data subject is party
- e) for medical purposes
- f) for compliance with a legal obligation to which the data controller is subject.

In all other cases, Section 7 (3) gives the data subject the mandate to object to the collection or processing of personal data.

The requirement for consent may also be removed if it is not reasonably practicable to obtain the consent of the data subject.

For children, Section 8 requires a data controller or processor to seek consent of the parent/legal guardian before dealing with any data relating to a minor. The known exceptions are if the processing of data is necessary to comply with the law or for research and/or statistical purposes.

Undue influence

In *Bank of Credit and Commerce International SA v. Aboody* [1992] 4 All ER 955, the UK Court of Appeal classified this doctrine into two types: Actual and Presumed.

Under actual undue influence, the claimant must prove that he or she was induced to sign a contract or agreed to a transaction under applied undue influence; whereas in presumed undue influence, the claimant only has to prove that there was enough trust and reliance between the parties that the side committing the wrong abused that relationship by exerting undue influence and inducing them into an ambiguous transaction.

For consent to be informed and specific, the data subject must be notified about the controller's identity, what kind of data will be processed, how it will be used and the purpose of the processing operations as a safeguard. The data subject must also be informed about his or her right to withdraw consent anytime.

Data processing

Data processing is defined under section 2 of Data protection and privacy, as any operation which is performed upon collected data by automated means or otherwise, including retrieval, consultation or use of the information or data disclosure of the information or data by transmission, dissemination or otherwise making available.

The law governing data processing according to section 2 includes disclosure of the information and data by transmission. According to the Oxford Advanced Learner's Dictionary, 8th Edition Transmission is defined as the act or process of passing something from one person, place or thing to another. Disclosure is defined as the act of making something known that was previously selected or known. Therefore, reading section 2 and section 7 of data protection and Privacy Act together, data processing includes the revelation of data by the data processor.

This ability to withdraw consent cannot be divorced from the now established right to be forgotten. The right to be forgotten, was first introduced by the European Court of Justice (ECJ) in a case involving Google Spain , where the ECJ affirmed that data subjects have a "right to be forgotten" and held that Google must delete "inadequate, irrelevant or no longer relevant" data from its results when a member of the public requests it.

Section 16 of the Act, provides that a data subject may request a data controller to correct, update or destroy/delete personal data if that data is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully.

processing includes the revelation of data by the data processor.

Security

In regards security, the 2019 act provides guidelines for securing data. Section 20 provides that a data controller shall take measures to;

- a) Identify reasonably foreseeable internal and external risks to personal data under that person's possession or control;
- b) Establish and maintain appropriate safeguards against the identified risks;
- c) Regularly verify that the safeguards are effectively implemented; and
- d) Ensure that the safeguards are continually updated in response to new risks or deficiencies.

Additionally, under Section 22 (3), a data controller shall observe generally accepted information security practices and procedures, and specific industry or professional rules and regulations.

Offences.

1. Unlawful obtaining or disclosing of personal data.
2. Unlawful destruction, deletion, concealment or alteration of personal data.
3. Sale of personal data.

General advice to surveyors

1. The Institution of Surveyors should provide mechanisms to ensure that every member or firm comply with the Act (obtain consent of the data subject and general compliance).
2. Every Firm should ensure that any personal data held by the office is securely stored.
3. Surveyors should undertake to develop data protection policies in order to comply with the Act.
4. Surveyors should include the extent of permissible disclosure of data in order to protect themselves of liability incase of any breach.
5. Appoint a data protection officer in their organization. This office/person is the focal person for compliance with the Act.

TMT Team



Kenneth Muhangi
Managing Partner



Rtd Hon. Justice John Patrick Tabaro
Consultant



Rtd Hon. Justice Dr. Yorokamu Bamwine
Consultant



Bonita Mulelengi
Senior Associate



Margaret Nyakusemera Kabanyoro
Junior Associate



Judith Kagere
Junior Associate

Contact Us

📍 Floor 3, Plot 4 Hannington Road
Kampala, Uganda, P.O. Box 37366,

☎ +256 414 530 114 / +256 414 531 078

✉ partners@ktaadvocates.com