

Wiewiorski Law Firm was established in 2004 and in the past few years it has become one of the biggest law firms in Wrocław. We provide advisory services for the largest investors operating in Wrocław Agglomeration and a few dozen smaller entrepreneurs from Lower Silesia and other parts of Poland.

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CERTAIN RESPONSIBILITIES OF PERSONAL DATA CONTROLLER

Protection of personal data is an issue that many entrepreneurs have found a problem. It is a consequence of complex regulations concerning the data that are imposed by both national and European Union's legal system, as well as of their strict interpretations conducted by responsible organs. As a result a person in charge of administrating personal data is often not fully aware of their responsibility concerning processing of it.

Who is the controller of personal data and what exactly is personal data?

According to the definition given by the Act of 29 August 1997 on Personal Data Protection it is understood as personal data any information concerning an identified person or information that allows to identify them. Thus personal data does not only include information that clearly indicates a specific individual (an obvious example would be name and surname), but also any piece of it that is linked to an identified or possible to identify person. This would be i.e. salary details or the type of a commodity bought by a specified individual.

One should remember that the bill (the Act on Personal Data Protection) applies to personal data processed in databases and IT systems, even if not within a database. As a general rule the bill does not provide protection for i.e. singled out data revealed in a publishing of any type.

The controller of personal data is, apart from other entities listed in the bill, a natural or legal person or an organized unit devoid of legal entity, that processes personal data as a part of its economic or

professional activity or for the accomplishment of its statutory goals and as such decides by which means and for what purpose would they be processed. That means that from legal point of view the controllers of personal data are i.e. employers who are obliged to protect their employees' and anyone's applying for a position personal data or entrepreneurs, in reference to the data of their clients (not if they are legal entities, naturally). Who processes personal data only on behalf of the controller (i.e. providing HR services) is not considered one.

Controller's responsibilities

The controller of personal data has to bear in mind the necessity of compliance with all the regulations concerning the data's protection included in both the bill and government orders. Apart from the duty of processing the data in compliance with the general rules expressed by the law (especially the principles of legality, compatibility, correctness, openness and temporal access), controller is obliged to secure the data and register databases. We would like to focus on the two latter issues more.



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Data security

According to article 36.1 of the bill the controller is obliged to apply technical and organizational means to secure the processed personal data in a way that is adequate for the perils and category of protected data, especially should he deny any unauthorized access to it, protect it from theft, loss, alteration or erasure. The controller is legally bound to prepare all the necessary documents on the way the data is processed and means applied to secure it. According to government orders, the documents include:

- a) **“security policy”** and
- b) **“instruction on the management of the IT network that processes personal data”**.

The content of the abovementioned documents is defined by government orders, although it raises doubts as it is not precise a regulation. Undoubtedly, in order to prepare the documents correctly one needs to take into consideration the interpretation of the regulations presented by Generalny Inspektor Ochrony Danych Osobowych (General Inspector for the Protection of Personal Data, hereinafter referred to as “GIODO”) and customs that have arisen as a result of practice.

From a legal point of view it might prove difficult to comply with the requirements concerning security procedures imposed by law (including i.e. issues of authorization, selection of supervisors, security level adjusted to the category each piece of information falls into etc.) However, it is not only a legal problem, as it is a must to provide the controller with IT support in order to meet all the technical requirements in compliance with law. It is therefore required from the controller to prepare diverse internal procedures to secure the processing of personal data (i.e. the procedure of granting authorization to process them).

Controller ought to remember about other documents connected with personal data, i.e. database of people authorized to process them or, when there is no legal basis to do this, approvals acquired from anyone whose data is to be obtained and processed. An important obligation of the controller is also the appointment of a data protection officer.

Registration of personal data

If a given database does not benefit from legal exemption, the controller is to register it at GIODO’s. I.e. it is the controller’s duty to register a database that includes personal data of his technical service clients. There is however no obligation to register databases that include personal data of one’s employees or – as a general rule – of candidates applying for a position.

It is GIODO that is responsible for supervision of the controller in terms of compliance with the requirements that fall within the scope of the bill and government orders. In case the controller contravenes with the law, GIODO applies the means according to administrative proceeding. In more severe cases the controller can suffer from criminal responsibility. Bearing in mind what has been said, it is definitely worth it to prepare and execute proper internal procedures before one is surprised by GIODO’s inspector knocking on the door.



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