



Privacy Act Ghana

This guidebook provides an overview of Ghana's Data Protection Act to help you comply with your privacy-related responsibilities. Educating yourself is key when it comes to building your business on a solid foundation.

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Introduction



Ghana has a longstanding tradition of protecting privacy. Its 1992 Constitution guarantees a fundamental right to privacy of home, property, correspondence, and communication. In the years following its constitution, Ghana enacted several laws to protect privacy in areas such as communication and health.

In 2012, Ghana enacted a comprehensive law, the Data Protection Act. The Act is among the earliest dedicated data protection laws in Africa.

This course will provide an overview of the Data Protection Act.

Scope and Applicability

The Data Protection Act applies to any entity that collects or processes personal data in Ghana. The Act applies to both private and public sector organizations.

Ghana's Data Protection Act also applies to entities outside of Ghana that process personal data that originates from Ghana. The law thus has a wide extraterritorial approach similar to that of the EU's General Data Protection Regulation (GDPR).

The Players

There are some key players that are defined by the Act.

A **data subject** is an individual who is the subject of personal data.

A **controller** is a person or entity that determines the purposes and manner of processing personal data.

A **processor** is any person other than an employee of the data controller who processes the data on behalf of the data controller.

The **Data Protection Commission (DPC)** is an independent body charged with the protection of personal data. The DPC implements the Data Protection Act, monitors compliance, and considers complaints submitted under the Act.

Personal Data



The Data Protection Act applies when personal data is involved.

Personal data is data about an individual who can be identified from the data or is capable of being identified from other data.

Examples of personal data include phone numbers, email addresses, home addresses, photos, financial statements, health records, and academic records.

Special Personal Data



The Data Protection Act defines a category of sensitive data called “special personal data” that receives extra protection.

Special personal data can only be processed if the data subject has consented or if processing is necessary. Necessary instances for processing data include the vital interests of the data subject, legal obligations or rights, legal proceedings, medical purposes, and a few other specific purposes.

Special Personal Data

Special personal data includes data about:

- racial, ethnic, or tribal origin
- religious beliefs or other beliefs of a similar nature
- political opinion
- commission or alleged commission of an offense
- physical, medical, mental health or mental condition, or DNA

Lawful Processing

The Data Protection Act has six legal bases for processing data. They include:

- consent of the data subject
- authorized or required by law
- contract involving the data subject
- protection of the data subject's legitimate interests
- necessary to perform a statutory duty; or
- legitimate interest of the data controller or a third party

Ghana's legal bases to process personal data are very similar to those of the GDPR.

Principles of Data Processing



The Data Protection Act contains eight general principles of data processing. These principles include:

Principles of Data Processing

Accountability

Effective measures for compliance must be adopted.

Lawfulness of Processing

The processing of data must be done in a manner compliant with the laws of Ghana in all respects.

Specification of Purpose

Data must be processed for specific purposes.

Compatibility of Further Processing with Purpose of Collection

Secondary processing of data for new purposes must be compatible with the initial purpose.

Quality of Information

Data must be complete, accurate, up to date.

Openness

Data subjects must have clear, precise, and accessible information about the processing of their data.

Security Safeguards

Data must be protected by technical and administrative measures.

Data Subject Participation

Data subjects must consent to the use of their data.

Processing Personal Data of Foreign Data Subjects



Controllers or processors must comply with data protection legislation of the country of foreign data subjects.

This requirement to respect the legal protections that foreign data subjects have in their home countries is a rather unique dimension of Ghana's Data Protection Act. The requirement is not included in the data protection law of many other countries.

Individual Rights



The Data Protection Act provides for the following data subject rights:

Right to Access

Data subjects have a right to obtain specific details about the personal data collected or maintained about them. Data subjects have a right to learn the identities of third parties with whom their personal data is shared.

Right to Correct or Delete

A data subject may request the correction or deletion of personal data that is inaccurate, irrelevant, excessive, out of date, misleading, or unlawfully obtained.

Right to Prevent Processing of Personal Data

Data subjects have a right to stop any prohibited processing of their personal data. The Act bars the processing of data that would cause unwarranted damage or distress to an individual.

Right to Prevent Processing of Personal Data for Direct Marketing

Personal data can't be used for direct marketing without the prior written consent of the data subject.

Right to Notice and Restriction of Solely Automated Decisions

Data subjects have the right to be notified of solely automated decisions that significantly affect them. Data subjects have a right to demand that any decisions affecting them not be based solely on an automated process.

Right to Withdraw Consent

At any time, data subjects can withdraw their consent to process their data.

Right to Compensation

Data subjects who suffer damage or distress from violations of the Act have a right to compensation.

Individual Rights

Right to Complain to the Data Protection Commission

Data subjects have a right to bring a complaint to the Data Protection Commission.

Responsibilities of Organizations



Under the Data Protection Act, organizations that process personal data have many important responsibilities.

Registration in the Data Protection Register

Before processing personal data, controllers must register with the DPC. This registration is subject to renewal every two years.

Data Protection Supervisor

The wording of the Act and DPC guidance strongly suggests appointing a Data Protection Supervisor (a position akin to a CPO or DPO) is not a requirement.

Notice

Data controllers must inform data subjects about the data they collect and the purposes for the collection of the data, among other things.

Responsibilities of Organizations

Security Measures

The data controller must take the necessary steps to secure the integrity and safety of personal data in their possession or control. The measures adopted must be appropriate and reasonable.

Respond to Data Subject Requests

Data controllers must respond to data subject requests regarding the exercise of their rights.

Prohibition on Data Purchases and Sales Without Consent

Data controllers may not purchase or knowingly obtain personal data without the data subject's consent.

Data controllers also can't sell or disclose personal data without the data subject's consent.

Data Breach Notification



Under the Data Protection Act, data controllers must notify the DPC and the data subject when there are reasonable grounds to believe that the personal data has been accessed or acquired by an unauthorized person.

Notification must be as soon as reasonably practical after the discovery of the breach.

If you discover a data breach or if you notice anything suspicious, please let us know immediately by calling the Service Desk or emailing them at servicedesk@herbalife.com.

Transfers of Data to Processors



Data controllers must have a written contract with any data processor that processes personal data on their behalf. The contract must require confidentiality and security measures.

International Data Transfer



The Data Protection Act does not contain any overt restrictions on the transfer of personal data to other jurisdictions.

When a data controller transfers personal data to a data processor outside of Ghana, the data controller must ensure that the data processor complies with the relevant laws of Ghana.

Enforcement

The Data Protection Act is enforced by an independent body called the Data Protection Commission, or DPC for short.

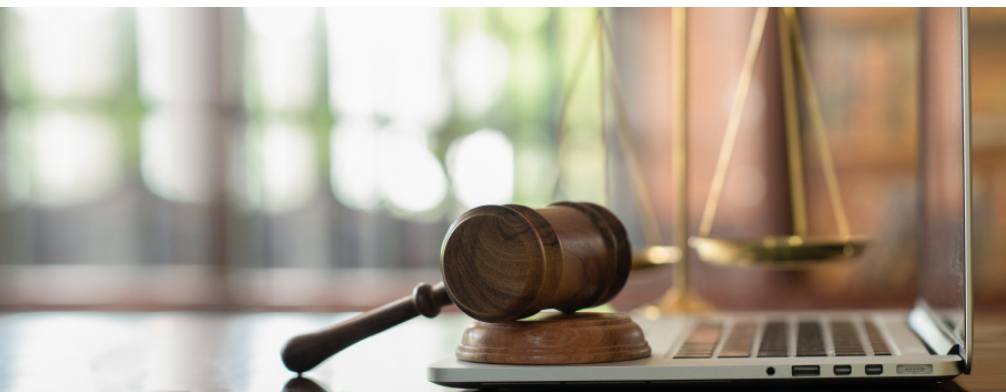
The DPC can order organizations to stop processing personal data or to take steps to comply with the Act.

There are various sanctions listed in the Act. Sanctions are assessed in terms of penalty units. Each penalty unit is 12 Ghanaian cedis. A penalty unit is about US \$2. The maximum penalty in the Act is for 5,000 penalty units, or about US \$10,000.

Imprisonment is also a penalty under the Act. The maximum prison term is up to 10 years, which is one of the longest prison terms in privacy laws around the world.

Individuals who suffer damage or distress from violations of the Act are entitled to compensation.

Conclusion



Ghana's Data Protection Act is a powerful comprehensive privacy law rooted in Ghana's longstanding constitutional protection of privacy as a fundamental right. The Act provides for many data subject rights and organizational responsibilities. It is essential to follow this law carefully.