

Privacy Please – Indirect Collection of Data

Introduction

Business organizations often find themselves in situations where they may need to collect personal data beyond that of a data subject. A common example is where a data subject is filling out a form and an employer requires the data subject to provide the name, phone number, address, and other contact details of their next of kin for emergency purposes or payment of certain benefits. The effect of this is that the employer now has personal data belonging to an employee's next of kin without having collected it directly from the next of kin. The collection of the data of the next of kin is deemed as an indirect collection of personal data. Ideally, when processing personal data, it must be clear to the data subject that personal data concerning them are collected, used, consulted, or otherwise processed, and to what extent the personal data will be, processed.

Thus, in the example provided above where a data controller is collecting personal data indirectly, it may be difficult to comply with this requirement, for instance, the next of kin is not aware of the use and processing of its personal data. This article, therefore, offers useful insights into key considerations for the indirect collection of data and the compliance requirements under Nigerian privacy laws.

From the Nigeria Data Protection Bureau to the Nigeria Data Protection Commission

As noted above, prior to the enactment of the Act, data protection regulation was mainly carried out by the NITDA. However, on January 13, 2022, the Honourable Minister of Communications and Digital Economy was reported to have advised the president of Nigeria of "an urgent need to establish an institution that will focus on data protection and privacy for the country". This ultimately led to the creation of the NDPB which began operations on February 4, 2022, as an offshoot of NITDA.

Indirect Collection of Personal Data

It is pertinent to note that collecting personal data through the delegate or representative of a data subject may not necessarily amount to indirect collection where it can be deemed that the data subject has consented to same through the representative. For instance, the collection of a personal data of a child from the parent or legal guardian¹. Indirect collection of personal data can also occur where a data controller obtains data belonging to a data subject from a third party. A typical example may be the collection/processing of data on a website or social media platform.

Indirect collection of personal data under Nigerian privacy laws

Prior to the Nigeria Data Protection Act (NDPA), there was a gap in Nigerian privacy laws with respect to the concept of "indirect collection." The Nigeria Data Protection Regulation (NDPR) did not specifically address the indirect collection of personal data. It however provided that where the controller intends to further process personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject, prior to that further processing, information on that other purpose, and with any relevant further information.² The case of *Rihanna vs Topshop* underscores the need to obtain the consent of the data subject.³ However, the NDPA has closed the gap as it now expressly provides that before a data controller collects personal data, other than directly from the data subject, the data controller shall inform the data subject of the following⁴:

- a) The identity, residence or place of business of, and means of communication with the data controller and its representatives, where necessary;

¹ Section 31 of the NDPA

² Article 3.1(7)(m)

³ *Robyn Rihanna Fenty v Arcadia Group Brands Ltd (T/A Topshop)* [2013] EWHC 2310 (Ch)

⁴ Article 27(2)

- b) The specific lawful basis of processing the personal data under the NDPA, and the purposes of the processing for which the personal data are intended;
- c) The recipients or categories of recipients of the personal data, if any;
- d) The existence of the rights of the data subject under the NDPA;
- e) The retention period for the personal data;
- f) The right to lodge a complaint with the Nigeria Data Protection Commission in accordance with the NDPA; and
- g) The existence of automated decision-making, including profiling, the significance and envisaged consequences of such processing for the data subject, and the right to object to and challenge such processing.

The NDPA however goes further to provide data controllers with two exceptions with regard to providing the information detailed above. These exceptions are, (i) where the data subject has already been provided with such information (listed above) or (ii) where provision of such information is impossible or would involve a disproportionate effort or expense.

Based on the above there is now additional protections for data subject against unlawful or unsanctioned data dealing such as sharing and broking, whether generated from open source or from a legitimate initial data controller or processor, thereby expanding the principle of transparency.

This new inclusion is similar to the provision of Article 14 of the GDPR where the data controller has an obligation to provide the data subject with the listed information above within a reasonable time when the data has been collected indirectly.⁵

Key Considerations for Business

The coming into effect of the NDPA means businesses will need to consider the now explicit requirements for the indirect collection of personal data, some of the critical considerations are:

- A. Internal Policies:** Businesses engaging in the indirect collection of data from data subjects such as data brokerage firms will need to formulate or review their existing internal policies to adapt to the provisions of the NDPA. The policies will need to comply with the conditions prescribed for data controllers before such indirect collections take place.
- B. Terms and Conditions:** Businesses will need to make sure that its data processing contracts specify the terms and conditions under which personal data will be collected indirectly. These terms and conditions should mirror the provisions of the NDPA and adopt international best practices.

Conclusion

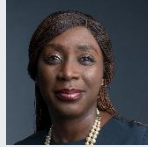
This new provision is distinct from further processing and third-party processing arrangements. Where a data controller who had no interaction with the data subject intends to obtain the data of such data subject from a different source, for separate purpose(s), further authentication, in the form of disclosure and establishment of the lawful basis for processing, is required.

We anticipate a revised or new implementation framework or regulation that will provide contextual implications for this provision.

Aluko & Oyeboode is a registered Data Protection Compliance Organisation (DCPO), and we can assist organisations to facilitate their data protection compliance plans in line with the prevailing practices.

⁵ GDPR, Recital 61 to Article 14

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