

Privacy in a Time of COVID-19



8 April 2020

The European Data Privacy Board and many Data Protection Authorities from across Europe have provided updates and reflected on data handling in a time of crisis. We have summarized the key takeaways to keep in mind.

With Europe taking drastic measures to curb the spread of COVID-19, it is clear that many things have to take a back seat, as governments and society work to stabilize the situation. The use of health data is very important to understand the spread of the disease, and which measures should be taken. However, it is also necessary that these health data are handled with due care. That is why the Data Protection Authorities (DPAs) from across Europe have provided reminders and guidelines for dealing with data privacy amid these unprecedented circumstances.



Data Privacy Considerations

Response timelines relaxed but not removed

The Dutch DPA ([AP](#)) have emphasized that the priority at this moment is to combat the virus, giving government organizations and businesses extended timelines to respond to their requests.

Maintaining Proportionality

Keep it sensible. As the UK DPA ([ICO](#)) put it – “if something feels excessive from the public’s point of view, then it probably is.”:

- **Don’t:** overreact – take time to consider if you’re collecting the right amount of data for your purpose.
- **Do:** Balance the interests, for example using a similar approach as in a Legitimate Interest Assessment.
- **Don’t:** use the data collected for additional purposes.
- **Do:** be transparent about what data you are collecting and why.
- **Don’t:** keep data indefinitely. You still have an obligation under GDPR to define a retention period and act accordingly.
- **Do:** consider what measures you will put in place to delete or anonymise the data once the purpose has been concluded.

Handling health data

Processing health data, including a person’s temperature or if they are infected with COVID-19, is classed as special category data, and is prohibited.

The Belgian DPA ([ADP](#)) has stated that: “companies and employers may not rely on Article 9(2)(i) GDPR (processing for reasons of “public interest in the area of public health”) unless they are executing explicit instructions issued by the Belgian authorities.” The Dutch DPA ([AP](#)) takes a similar stand stating that, even in this exceptional situation, an employer has no legal ground to process medical data of its employees and should follow instructions issued by the Dutch medical authorities.

As an employer you have an obligation to the health and safety of your employees. However, you also have specific obligations to protect their personal data. Given that the data in question with this crisis is special category data, a number of DPAs, including those of the [Netherlands](#), [Belgium](#) and [France](#) provide some do’s and don’ts for employers:

- **Don’t:** assess the health of your employees (e.g. systematic health checks or medical questionnaires). This is the role of a General Practitioner (GP) or company doctor.
- **Do:** encourage voluntary communication of symptoms or recent/planned travels.
- **Don’t:** disclose names of infected persons to other employees.

Exceptional circumstances, same principles

Overall DPAs acknowledge that these are exceptional circumstances, and that data is one of the most powerful tools we have to combat the spread of the disease. This does not, however, excuse data misuse. The DPAs were unanimous in their reminders that the principles of GDPR also apply in these times.

Contact us

Koos Wolters
Partner, Data Privacy
T: +31 20 656 4048
E: wolters.koos@kpmg.nl

Daniela Gonzalez Riedel
Senior Consultant, Data Privacy
T: +31 20 656 8349
E: gonzalezriedel.daniela@kpmg.nl