

Making Sense of Data Protection Act, 2012 (843)- Individual's rights and regulator's powers

Introduction

- ✓ *What is Data Protection?*
- ✓ *The Data Protection Act, 2012 (Act 843)*
- ✓ *Rights of Individuals*
- ✓ *Powers of Data Protection Commission*

What is Data Protection?

- Information management practices.
- Legal protection of personal information.
- Data Protection is the relationship between collection and dissemination of data, technology, the public expectation of privacy, and the legal and political issues surrounding them.

Key Words

- ▶ Data Controller / Data Processor
- ▶ Data Subject
- ▶ Processing
- ▶ Personal Data
- ▶ Special personal data / Sensitive Data

Data Protection Act, 2012 (Act 843)

The Data Protection Act, 2012 (Act 843) sets out the rules and principles governing the collection, use, disclosure and care for your personal data or information by a data controller or processor.

❖ ***Why data protection?***

In Ghana, the recognition of the right to privacy with respect to the processing of personal data or information led to the passage of the Act 843 to further guarantee the right to privacy enshrined under Article 18(2) of the 1992 Constitution.

❖ ***How does Act 843 work?***

The Act provides standard principles that must be complied with by all who process personal information across the country and beyond. The law applies to all forms of personal data or information stored on both electronic and non-electronic platforms.

❖ ***When Does the Act come into effect?***

The Act was assented to in May 2012 and came into force in accordance with Section 99 on 16th October 2012.

Data Protection Act, 2012 (Act 843) cont'd

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❖ **Governing Body**

11 member board appointed by the President in accordance with Article 70 of the Constitution. The Governing Body of was inaugurated in November 2012.

❖ **Data Protection Principles (sec 17)**

The Act also sets out the principles governing the processing of personal information.

❖ **Data Protection Register**

The Act sets out modalities for the establishment of the Data Protection Register and the application process for registration.

❖ **Exemptions**

The Act defines areas for exemption from strict implementation of the Act. These include information given for purposes of public order, public safety, public morality, national security, public interest, education, regulatory activity, etc.

❖ **Enforcement**

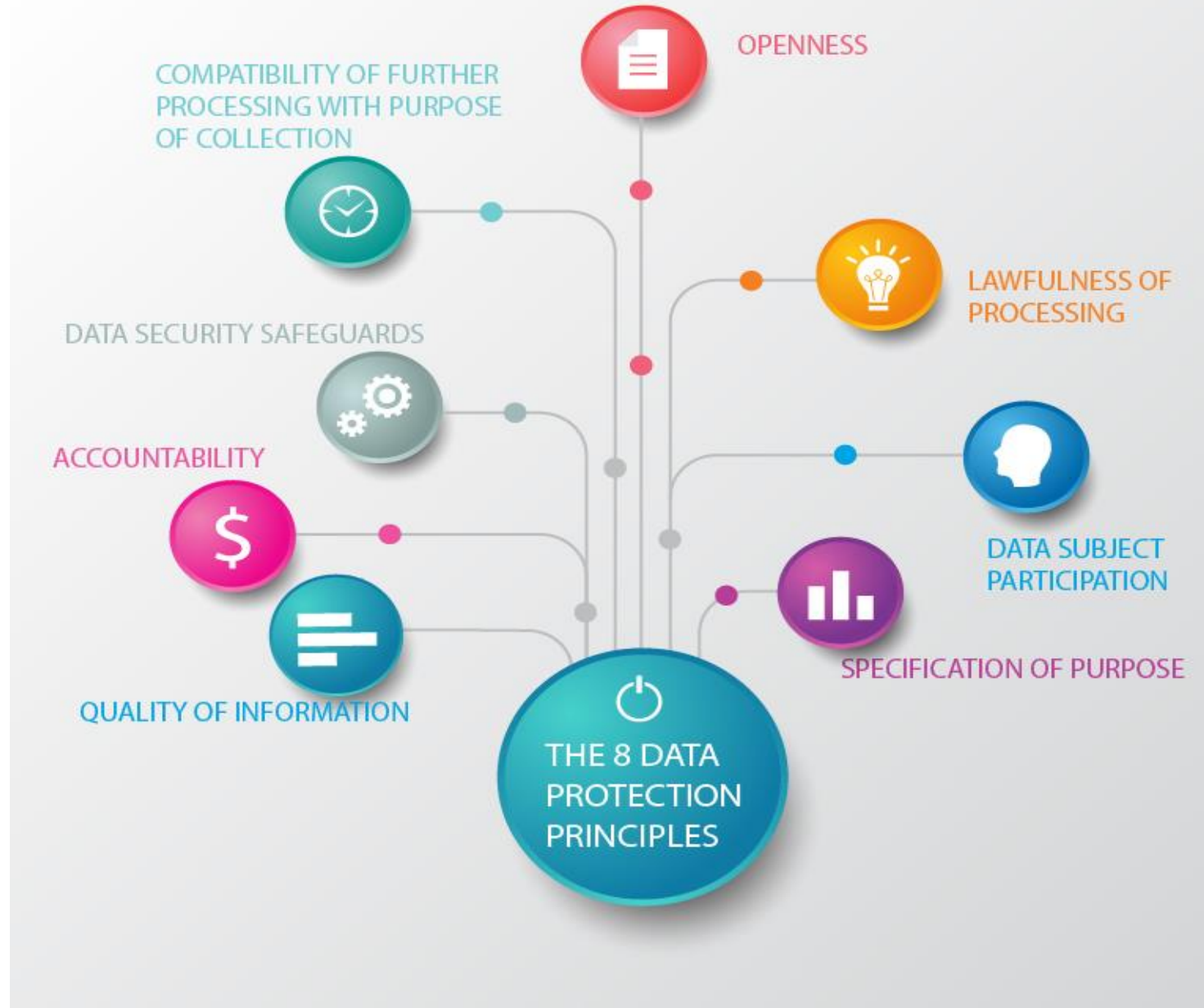
The Act defines the methods for enforcement of its provisions.

Purpose of the Act

- ▶ Balance the individual's right to privacy against an organisation's need to use data.
- ▶ Define "rules" to follow when processing personal data.
- ▶ Empower the individual - defined rights of data subjects.
- ▶ Prescribes sanctions for non-compliance.

The data protection principles (s17)

A person who processes data shall take into account the privacy of the individual by applying the following principles



RIGHTS OF INDIVIDUALS

Access to personal information (Section 35)

- ▶ Inform the data subject of the processing.
- ▶ Let them know who is actually doing the processing whether the data controller or another person on behalf of the data controller.
- ▶ Description of the personal data held.
- ▶ Inform the data subject about information available to the data controller and source
- ▶ Purpose for which the data is being or is to be processed.
- ▶ Who/ Whom the data may be disclosed or shared with.
- ▶ Communication with the data subject must be clear and easy to understand.
- ▶ Inform the individual of the reason behind a decision that was made using their information where the processing constitutes the sole basis for the taking of a decision which significantly affects that individual except where such information involved a trade secret.

Condition for Access

Data controller must be given information **reasonably** required to:

- ▶ Identify the person making the request.
- ▶ Enable him find the information that person requires.

When can Access be refused?

- ▶ Compliance with the request will compromise another person's information.
- ▶ Exception may however be given:
 - ▶ when the third party consents to the disclosure of their information.
 - ▶ It is **reasonable** in all the circumstances to comply with the request without the consent of the other individual.
- ▶ **Note:** A data controller cannot rely on the above exception to refuse access to the information being sought if it can be communicated without the disclosure of the identity of the third party concerned.

- ▶ If information is being processed for the purpose of investigation or by the order of the court.
- ▶ Access to information will impair security.
- ▶ Access to information may harm international relationships.
- ▶ Information kept for the purpose of statistics and research
- ▶ Information kept for archival purposes.

A data controller must comply with the request for access **promptly** and in any event **within forty days** from the date of receipt of the request.

Right to amend your personal information

- ▶ A data subject may request a data controller to
 - ▶ correct or delete personal data about them that is **inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully**, or
 - ▶ destroy or delete a record of personal data about the data subject being held by the data controller that the data controller **no longer has the authorisation to retain**.
- ▶ A data controller must comply with the request or provide the data subject with credible evidence in support of the information.

- ▶ Where the data controller and the data subject are unable to reach an agreement and if the data subject makes a request, the data controller shall attach to the record an indication that a request for the data has been made but has not been complied with.
- ▶ Where the data controller complies with the request, the data controller shall inform each person to whom the personal data has been disclosed of the correction made.
- ▶ The data controller shall notify the data subject of the action taken as a result of the request.

Other Rights

- ▶ Right to prevent processing of your personal information. (Section 39)
- ▶ Rights to freedom from automated decision making (Section 40)
- ▶ Right to prevent processing of personal data for direct marketing purpose (Section 41)
- ▶ Rights in relation to exempt manual data (Section 42)
- ▶ Right to seek compensation for failure to comply through courts (Section 43)
- ▶ Right to complain to the Data Protection Commission

Data Subject Participation Checklist

- ▶ Do you have a process in place to deal with data subject access requests, i.e. would you be able to identify, locate and supply a copy of all of an individual's personal data, if they were to ask for it?
- ▶ Have you considered whether your processing of an individual's personal data is likely to cause them damage or distress?
- ▶ If an individual asks you to stop marketing to them, would you be able to easily comply with this request?
- ▶ Does your business make any automated decisions? If so, is there a process in place to make manual decisions if an individual requests you to do so, e.g. a referral or appeals process?
- ▶ Do you have a procedure in place to handle compensation requests, for example as part of a complaints procedure?

Powers of the Commission

- ▶ Power to halt the further processing of personal data
- ▶ conduct assessments (audits) to ensure compliance
- ▶ Investigate any complaint under this Act and determine it in the manner the Commission considers fair (Section 3)
- ▶ Power to enforce compliance with the Act (Section 3)
- ▶ Implementation of good codes of practice
- ▶ Power to refuse registration (Section 48)
- ▶ Provide Guidelines and implement good codes of practices to ensure compliance. (Sec 86)
- ▶ Implement and monitor compliance with the provisions of the Act (Sec 3)
- ▶ Making sure DC/DPs meet the security requirements of the DPA
- ▶ Making sure DC/DPs comply with international data privacy standards.

Thank you