

Enforcing the Data Protection Act and ensuring compliance

Interview with the Director of the Ghanaian Commission

In April 2015, Ghana's data protection commission began registering data controllers ('the Commission'). It has now registered over 500 controllers and recently announced that it has commenced prosecutions against data controllers who have failed to register. *Data Protection Law and Policy* spoke with Teki Akuetteh Falconer, Executive Director of the Commission, about its development and future plans.

What were the key takeaways for businesses, from your conference in January 2016?

Some of the takeaways include:

- The acknowledgement that implementation of data protection is not only a regulatory requirement but is fundamental to building integrity and trust in a business.
- The need to critically look at formulating policies that will facilitate implementation of data protection in their businesses.
- The need to continue to raise awareness and train more staff within businesses.

How has the registration of controllers and processors progressed and have there been any challenges?

The registration of controllers has progressed slowly since April 2015, and we attribute this to a general environment of apathy towards laws in our society and lack of awareness on the value data protection brings. We continue to educate and raise awareness as well as enforce the Data Protection Act 2012 ('the Act') to tackle both challenges. We have registered about 500 data controllers to date.

Has the Commission ever refused registration under Section 48 for inadequate data protection safeguards?

Yes. We have used our powers of refusal, though a data controller is usually given the opportunity to put in place adequate measures.

What are the enforcement powers available to the Commission and does it intend to use any of these powers in the near future?

The Commission has the power to issue an enforcement notice where a data controller contravenes any of the data protection principles.

An enforcement notice can take the form of requesting a data controller to take or to refrain from taking a particular action or step within a certain time frame. Such actions may include refraining from the processing personal data, correction, erasure or destruction to personal data.

The Commission has the power to make assessments. We also have the power to investigate complaints, make determinations as well as prosecute offences under the Act.

We have commenced the prosecution of data controllers for failing to register. In the near future, we will be issuing more

enforcement notices as a result of investigations that are currently on-going.

Is the Commission developing enforcement cooperation arrangements with other authorities?

The Commission is open to enforcement cooperation and has been part of the dialogue by the International Conference of Data Protection & Privacy Commissioners. We have not yet entered into any specific arrangements. I believe this will happen soon since the Commission has begun its enforcement activities.

Are the funding issues you raised in our last interview continuing to affect the Commission's activities?

We continue to have funding challenges but not as before. We now have some assured revenue stream from the registration fees and it goes a long way in helping fund our operations.

Is there a specific sector or topic which the Commission will be focusing on over the next 12 months?

Over the next 12 months our focus will be on ensuring compliance amongst data controllers. In order to achieve this, we will issue a general compliance guide that provides a step-by-step approach to implementing the Act, monitor compliance through the auditing of data controllers as well as develop guidelines for key sectors such as security, health, education, finance and communications.

What is your perspective on the changing landscape of data protection in other regions of the world, such as in Europe?

I believe the landscape is changing in the right direction to the extent that it champions the rights of the data subjects in Europe irrespective of the jurisdiction in which their information is being processed. I must say that our Data Protection Act has similar provisions to the General Data Protection Regulation ('GDPR').

If a Ghanaian business complies with our local laws, it will to a large extent be complying with the GDPR, especially because Section 18(2) of our Act states that foreign data subjects' personal data shall be processed in compliance with the data protection legislation of the foreign jurisdiction of that subject, where personal data is sent to this country for processing.

An effective implementation of the GDPR will definitely call for more enforcement cooperation and collaboration among data protection regulators to enable us to bridge the jurisdiction gap.

Contact via the editorial team