

Second study commission questionnaire 2010

Civil issues regarding the protection of privacy (With particular focus on such matters as affected by the internet)

Report

Iceland

A. Laws and regulations:

What laws apply to protection of privacy issues in your legal system?

1) a) In the public sector:

In Iceland privacy is protected by:

Article 71, in the Icelandic constitution, protects individuals against privacy violations. Although the right is not absolute, it may be limited by law, for reasons of the rights of others.

The European Convention on Human Rights has been incorporated into Icelandic law, by the law No 62/1994. The right to privacy is protected by Article 8.1 of the European Convention on Human Rights which provides that everyone has the right to respect for his private and family life, his home and his correspondence. The right is not absolute, it may be limited on the grounds enumerated in Article 8.2. of the Convention.

In Article 228 and 230 in the Penalty law, No 19/1940, there is also a protection against privacy violations, and infringements of the provisions of this Act, are punishable by means of fines or a prison.

In Information act No 50/996 that applies to state and municipal administration, and the individual's right to information, there is a wide protection against privacy violations. In article 5 there are set restrictions on the right due to private interests, where it says that the public may not be granted access to materials concerning individuals' private or financial affairs which it is reasonable or natural to keep secret, unless the person concerned gives his approval. The same restrictions shall apply to access to materials which concern important financial or commercial interests of enterprises or other legal persons. In article 6 there are set restrictions on the right to information due to public interests, where it says that public access to materials may be restricted when it is demanded by important public interests, providing that the materials contain information about, for example the security or defence of the state, or relations with other states or international organizations.

Act on the protection and processing of personal data No 77/2000 implements Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The purpose of the act, is to promote the practice of personal data being processed in conformity with the fundamental principles of data protection and the right to privacy. The act applies to any automated processing of personal data and to manual processing of such data if it is, or is intended to become, a part of a file.

In act on Administration of the State No 37/1993, which also applies to municipal and state administration, there are some articles concerning the protection of privacy, for example article 18 and 19.

b) In the private sector:

In the private sector, *the act on the protection and processing of personal data No 77/2000*, is the main act concerning these matters. In the articles of the act there is a wide protection from disclosure to third parties of personal information collected in the world of e-commerce, concerning all the matters mentioned.

In the 9.th chapter of *act on the Post and Telecom administration* there is also a protection of privacy regarding records of customer's usage, (telephone, online activity.)

2. What laws apply with respect to the investigation and enforcement of privacy rights:

- Act on the protection and processing of personal data No 77/2000. The protection is strong and the laws are binding.

An individual files a complaint, and sends it to the data protection authority, and it can be done via the internet.

The data protection authority is in fact a privacy commissioner, and it is the data protection authority that enforces the laws.

There is a right to a court remedy, but the the Data protection authority can take legally binding decisions in all matters concerning processing of personal data.

B. Private sector Initiatives.

1. Do particular companies, industries or professional associations in your country govern themselves regarding the protection of privacy? For example, are their privacy policies, professional codes, voluntary industry standards?

An organisation which processes personal data, including customer data, third party data and employee data should have a privacy policy. The act on protection and procession of personal data 77/2000, also requires that websites have a privacy statement. This is a public declaration of how the organisation applies the data protection principle to data to data processed on its website.

2. Who or what body, if any, ensures that these standards are met?

The Data protection commissioner ensures that these standards are met. A contravention of the provisions of the act can result in investigation and enforcement action by the commissioner.

C. International and Cross Border Issues.

According to *article 29 in the Act of protection and processing of personal data*:

Transfer of personal data to a country that provides an adequate level of personal data protection:

The transfer of personal data to another country is permitted if the laws of that country provide an adequate level of personal data protection. A country which complies with the European Union Directive 95/46/EC, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, is considered having fulfilled the requirements. The same applies to those countries or places which the Data Protection Authority lists in an advertisement in the Law and Ministerial Gazette, having considered the decisions of the Commission of the European Union. When considering whether a country, which does not comply with Directive 95/46/EC, fulfils the requirements of Paragraph 1, that country's rules on the processing of personal data and on good business practices, and the security measures taken by the recipient, shall be among the factors taken into account.

According to *article 30*:

Transfer of personal data to a country that does not provide an adequate level of personal data protection.

The transfer of personal data to a country that does not provide an adequate level of personal data protection is prohibited, unless: 1) the data subject has consented to the transfer, or 2) it is necessary for the fulfilment of obligations under international law or as a result of Iceland's membership of an international organization, or 3) such a transfer is authorized in another legislative act, or 4) the delivery is necessary to establish or fulfil a contract between the data subject and the controller, or 5) the transfer is necessary to establish or fulfil a contract in the interest of the data subject, or 6) the delivery is necessary in order to protect vital interests of the data subject, or 7) if dissemination is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims or 8) the data in question are accessible to the general public. The Data Protection Authority can authorize the transfer of data to a country referred to in Paragraph 1, if it determines that special circumstances warrant it, even if the conditions of the provision are not met. In such cases the nature of the data, the planned purpose of the processing and its duration are among the factors that shall be taken into account. The Data Protection Authority can authorize the transfer of data to third countries even if they have not been thought of as providing the citizens with an adequate level of privacy protection. This is contingent upon the controller having, in the opinion of the Authority, provided sufficient guarantees to meet these concerns.

Answers to questions number 2 and 3 are enclosed in the text above.

Ingveldur Einarsdóttir.