



FAQ: Coronavirus and Privacy

I run a business in Israel. May I collect information from my employees and business visitors about their medical condition and recent visits to foreign countries?

Yes, and it needs to be done in accordance with the law. You may ask an individual for personal information, such as their health condition, and digitally store it.

You must ask for their consent and provide a notice containing at least the following details:

- A statement that the individual is not under a legal duty to supply the information, rather it is of his or her own volition and consent;
- The purposes for which the information is requested; and
- To whom the information may be transferred and the purposes for such transfer.

Also, an employer's collection and use of employees' personal information require elevated standards of transparency by the employer. It also requires conformance with the principles of legitimate-purpose and proportionality:

- **Legitimacy.** Personal information regarding employees may be collected and processed only for essential purposes. This includes processing necessary to safeguard the vital interests of the employer and prevent grave harm to these interests. The collection and processing of certain information relating to pandemic risks are likely legitimate.
- **Proportionality.** Handling personal information regarding employees must be at the minimal scope, extent, and degree necessary for the legitimate purpose. Data minimization is key. Collect the least amount of information. Keep it for the shortest duration possible. Disclose it to a minimal number of people. Use it for the minimal purposes necessary to achieve the legitimate purpose of managing Coronavirus pandemic risks to individuals at the workplace.

What do I need to consider when I retain and use that information?

Here are some key points to consider:

- **Purpose-limitation** prohibits using information about an individual's private affairs for any purpose other than the purpose for which it was given. Therefore, you should limit your use of the information collected to the specific purposes for which you collected the information.

- **Information Security.** If the information you collect is retained in a digital database, it needs to be safeguarded as per these regulations. The regulations classify databases into four categories, each subject to an escalating degree of information security requirements. They contain detailed and prescriptive technical, organizational and administrative requirements for securing the information in databases.
- **Registration.** Certain databases, such as an HR/Employee DB, likely need to be registered with the Israeli Protection of Privacy Authority. It is primarily an administrative procedure, carried out by filling out a registration application. The Israeli government recently announced that it will minimize government agency operations during the Coronavirus pandemic period. Possibly, the Israeli Protection of Privacy Authority will not process new registration applications for the time being. However, even databases that have not been registered, for whatever reason, are still fully subject to the full scope of the law.

Can I share information about a person, such as an employee or visitor, whom I know, or reasonably suspect, has been infected or is ill with Coronavirus?

Disclosing such information may constitute an actionable invasion of privacy. Therefore, the infected individual should first be asked to consent to share their information.

However, even if they decline to consent, sharing their information may still be justified and defensible in certain circumstances. For example, if it is the only reasonable and practical way to alert those who have been in contact with the diagnosed individual at work, to protect their health and well-being. In that case, it may be defensible to name the individual as a diagnosed Coronavirus patient in a notice you issue to potentially affected co-workers.

Remember also that the risk arising from not properly and timely alerting about the health hazard likely outweigh the risk in invading a person's privacy by communicating his information to potentially affected co-workers.

The notice you issue should include the minimal personal information necessary to provide an effective alert. Also, it should be circulated to the minimal extent of people necessary to provide an effective alert. For instance, your company may have offices across the globe. You should issue a notice naming a diagnosed individual only to those offices or departments who might have come into contact with that person.

Your message should be factual and not judgmental, to protect the individual's reputation and dignity. You should also inform the individual beforehand that you will nevertheless communicate their information if they declined to give their consent in the first place.

It is also permissible to share information, including information about named individuals, with competent authorities, such as police or governmental healthcare agencies, to alert them to a Coronavirus risk and asking that they take action.

How has the strict European data protection and privacy regime been affecting European organizations processing Coronavirus related data of their employees and visitors?

The majority position across most, if not all EU privacy regulators, emphasizes that the GDPR does not hinder the fight against the Coronavirus pandemic crisis. Yet data protection authorities in the European Union are taking a range of diverging approaches to deal with the Coronavirus outbreak.

Many of the Coronavirus-related data protection questions largely rely on national laws, rather than the pan-EU GDPR. These national laws differ across the EU. They include national laws relating to employment or health and safety and the use of mobile location data to safeguard public security.

Some EU privacy regulators, such as the United Kingdom's ICO, take a more permissive approach allowing employers somewhat greater flexibility in collecting and processing personal data relating to the Coronavirus pandemic.

Other regulators, such as Belgium's data protection authority take a stricter approach, for instance by prohibiting employers from requiring employees to fill out a form about that employee's health situation or recent travels.

The European Data Protection Board (EDPB) recently indicated that employers may inform staff about Coronavirus cases and take protective measures, so long as they do not communicate more information than necessary. According to the EDPB, it may be necessary to reveal the name of employees who contracted the virus and national law may permit this. In that case, the concerned employees shall be informed in advance and their dignity and integrity shall be protected.

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