Israeli Privacy Protection Authority's Report of Audit on Data Processing and Data Storage Sector

Client Update - November 2020

To our distinguished clients,

On November 2, 2020, the Israel Privacy Protection Authority ("**IPPA**") published an audit report (the "**Report**") detailing its findings in a sector-wide audit conducted amongst entities operating in the database storage and processing sector in Israel (the "**Audit**"). The Audit was conducted in entities providing various services, such as SaaS (Software as a Service), which include applications, interfaces and services for database owners, and including hosting websites which collect personal data. Others examined in the framework of the Audit were entities which provide platform services (PaaS – Platform as a Service) and infrastructure services (IaaS - Infrastructure as a Service) which mainly include the provision of storage services to database owners.

The Israeli Protection of Privacy Law 5741-1981 (the "**Privacy Law**", all quotes hereafter are non-binding translations from the original Hebrew language) defines a "possessor, for the purpose of a database", as "a person who has a database in his possession permanently and is permitted to use it". The position of the IPPA, as reflected in the Report, is that an entity that provides storage or backup services for information, is considered a "possessor", even if the information is encrypted and the keys to such encryption are not held by such entity (and are held only to the database owner). Accordingly, such encryption does not release the aforesaid entity from its liabilities and obligations as a possessor, in accordance with the provisions of the Privacy Law and the regulations promogulated thereunder (the "**Regulations**").

In the Report the IPPA noted that there is a lack of clarity regarding the scope of the Privacy Law and the Regulations as they apply to all the entities belonging to the sector audited in the Report and that in some areas there is insufficient compliance with the Privacy Law and Regulations.

In addition, the IPPA stated that it intends to continue enforcing its policies on database owners and possessors through sector-wide audits and repeated audits of the entities who were previously audited in the Audit.

Therefore, we recommend to our clients who are engaged the data storage and processing industries to ensure they are in compliance with the provisions of the Privacy Law and the Regulations.

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The following is a summary of the findings in the Report:

The Audit questionnaires sent to the audited entities examined (among others) four main criteria -

1. Organizational Control and Corporate Governance - the existence of an annual work plan regarding data security and privacy protection, and allocation of tasks and responsibilities thereunder.
2. Database Management - the manner in which consents for the collection and use of information are obtained from data subjects, the extent to which the use of the information collected is aligned with purpose for which it was collected, and the manner in which data subjects are provided with the right to inspect and correct information pertaining to them.
3. Information Security - The audited entities' compliance with the provisions of the Protection of Privacy Regulations (Data Security) 5777-2017.
4. Use of Outsourcing Services – the manner in which engagements are made by database owners and possessors, with third parties conducting processing activities on their behalf and the manner in which data security is maintained under such engagements.

Among the Report's findings in the various areas examined, we found it appropriate to note the following deficiencies:

1. Many of the audited entities were found to have significant failures to comply with their obligations to conduct data security audits, risk assessments and penetration tests (for databases which are subject to the applicable security levels according to the Regulations).
2. With regards to the outsourcing of information processing activities, many of the audited entities did not comply with the provisions of the Privacy Law and the Regulations (both as the entities conducting processing activities for database owners and when using sub-processors for their own needs).
3. Among approximately a third of the audited entities, there was a medium and low level of compliance with respect to the existence and implementation of organizational controls and corporate governance measures. Among others, some of the audited entities did not present appointment letters for officials (who needs to be appointed according to the Privacy Law) and/or did not report the appointment of such officials to the Registrar of Databases, as required under the Privacy Law.
4. Some of the audited entities, which apply the ISO27001 standard, were under the impressions that the compliance with said standard satisfies the requirements of the Privacy Law and Regulations. This is contrary to the Registrar of Databases guidelines which permit using ISO27001 standard as a benchmark only under certain circumstances and only with respect to some of the Regulations.

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Further in the Report, the IPPA provides clarifications and recommendations to entities belonging to the audited sector. These clarifications and recommendations relate to the following matters:

1. Organizational Control and Corporate Governance
    a) Entities should verify the registration of all the databases they own/possess in accordance with the provisions of the Privacy Law and ensure that the information provided to the Registrar of Databases is accurate and matches the Company's internal documents.
    b) Entities should execute data security audits, risk assessments and penetration tests as required under the Regulations.

2. Database Management.
    a) The IPPA emphasizes that the consents of data subjects must be obtained as required under law in order to enable the collection, storage and use of information pertaining to such data subjects.
    b) The IPPA also emphasized that entities holding five databases or more are required to submit to the Registrar of Databases each year, a list of the databases they possess, the names of the database owners, details regarding their information security officer, and additional details as required under law.

3. Data Security – The IPPA recommended ensuring the existence of data security procedures that include all issues referred to in the Regulations and examining their validity from time to time, as required under the Regulations. This includes compliance with field of access rights, audits, physical security, security incidents and more.

4. Direct Mail – in case direct mailing is conducted, care must be taken to indicate the details listed in Section 17f of the Privacy Law (including, that the approach is made by way of direct mailing, identity and address of the database owner, the source of the information, to whom the information will be provided, the right to be deleted from a direct mail database and more).

The full Report (in Hebrew) can be found here.

We will be happy to help your organization ensure compliance with the privacy protection and information security provisions that apply to it.

The above information is only general information and does not constitute an opinion or legal advice. Separate professional advice should be obtained before taking legal or other action in connection with the issues we have reviewed.

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