

GDPR & Payroll Implications

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Today's Lecture

- Why has data become so much in demand?
- Why GDPR?
- Personal Data in Payroll processing
- Processing Payroll Data under data privacy legislation
- Documentation



*The intention of GDPR is to provide a **common** set of rules across the EU that can meet the **changing data protection landscape** of today's world and give the **adequate protection** to individuals - known as “data subjects”.*



Pregnancy and Power of Data



Why the hell are you sending these maternity coupons to my daughter?

“The world’s most valuable resource is no longer oil, but data”

- The Economist, May 2017



Data vs Personal Data



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Data vs Personal Data

facts and statistics collected together for reference or analysis

VS

any information relating to an identified or identifiable individual



Data

NETFLIX

amazon
prime video


HBOmax



Data

NETFLIX

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You have been employed by Netflix...

...your friends ask you, what is Netflix? What does it do?

How would you answer?



Data

About

Netflix has been a data-driven company since its inception. Our analytic work arms decision-makers around the company with useful metrics, insights, predictions, and analytic tools so that everyone can be stellar in their function. Partnering closely with business teams in product, content, studio, marketing, and business operations, we perform context-rich analysis to provide insight into every aspect of our business, our partners, and of course our members' experience with Netflix.

Personal Data



Personal Data





Weekends

Trains will not run to Brooklyn all weekend

Please take 3 yellow lines to Atlantic Ave-Barclays Center 4



*“If you are not paying for the product, then **you are the product**”*

*Tristan Harris
Former Design Ethicist, Google*



Why GDPR?



Central Bank served with a reprimand by Information and Data Protection Commissioner

Friday, 21 February 2020, 11:42

Last update: about 12 days ago

IT firm C-Planet fined €65,000 over massive voter data breach

Private information on some 337,000 Maltese voters was leaked online

January 17, 2022 | Ivan Martin | 64

3 min read



H&M fined €35 million for illegally storing employees' personal data

Ombudsman website is probed over security risk

Attackers could view complaints submitted by citizens

National | Daphne Caruana Galizia

February 21, 2020 | Jacob Borg | 44

HOME | GREEK NEWS | SOCIETY

Hellenic Data Protection Authority fines PWC for reported employee data breach

TornosNews.gr | 30.07.2019 | 15:26

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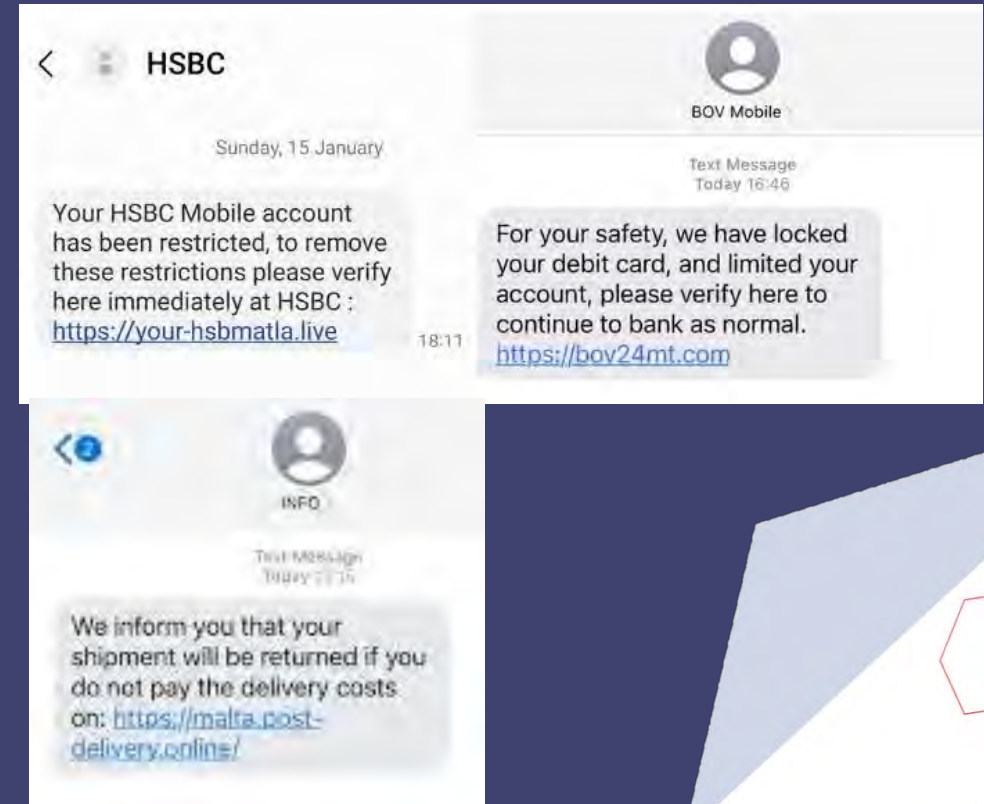
Value of Data

What value does company data have?

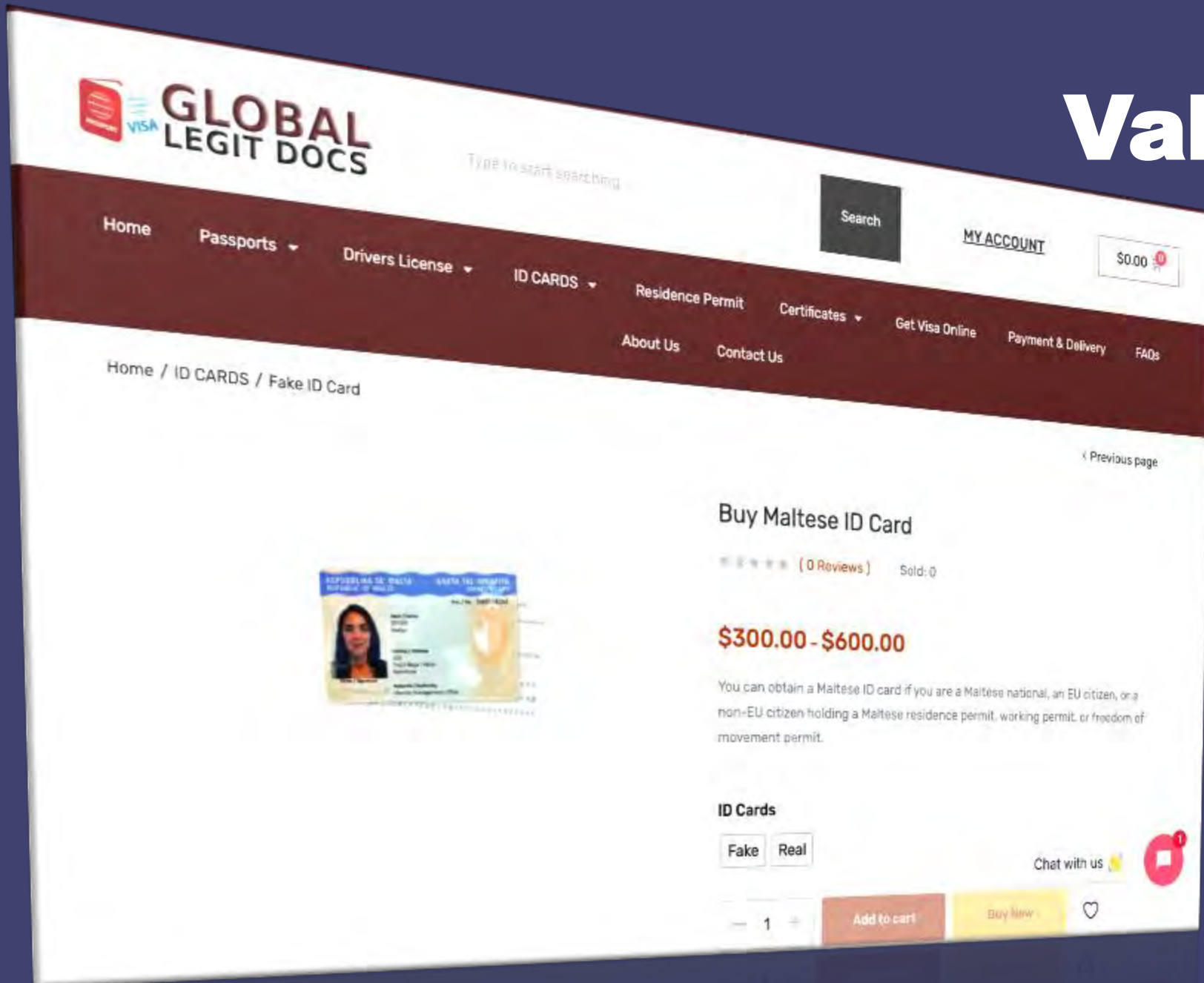
- Email addresses
- Mobile numbers

Copies of ID cards?

For what purpose?



Value of Data



<https://globallegitdocs.com/product/maltese-id-card>



Why GDPR?



What is the GDPR?

It repealed Directive 95/46/EC



Directive 95/46/EC



Macintosh Performa 6200



IBM Personal Communicator



Kodak DCS 460 Camera



Iomega Zip Drive



Motorola Tango Pager



IBM ThinkPad 701C



DVDs



Sony Handycam DCR-VX1000

GDPR



Office Tools Evolution





Do we need to bother with this law ?

Yes.

There are hefty penalties - up to €20 million or 4% of turnover

Various criminal offences for anyone who knowingly or recklessly acquires, discloses or retains personal data without the consent of the data controller (the employer).



How will it affect organisations ?

- impact on all the areas of business not just Payroll
- personal data of employees is affected
- employers process a lot of personal data about employees for different reasons



Definitions



Processing

Means any operation or set of operations which is performed on personal data or on sets of personal data,

- whether or not by automated means,
- such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;



Your turn...

Give some examples of why an employer processes personal data.

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Some examples...

- For payroll
- For benefits
- For insurance
- For background checks
- For training
- For legal reasons
- For disciplinary matters
- For performance reviews



Your turn...

Give some examples of personal data an employer processes.

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Some examples...

- Contact Details
- Financial
- Union Membership
- Health
- CCTV
- Files notes
- Tax Number
- Criminal?



Personal Data

- any information relating to an identified or identifiable natural person (**'DATA SUBJECT'**);
- an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;



Special Categories of Data

- racial or ethnic origin,
- political opinions,
- religious or philosophical beliefs,
- **trade union membership**,
- the processing of genetic data, **biometric data**
- data concerning **health**
- data concerning a natural person's sex life or sexual orientation

Special Categories of Data

[B] Criminal Convictions & Offences



Data Protection Act (Cap. 440)

The implications in the employment context

Identity Cards

Criminal History

Fines & Penalties

Damages - including Moral Damages



Processing of Special Categories

Only allowed to process in specific situations

1. **Explicit consent** from employee
2. Data made **public** by employee - social media
3. **Rights and obligations** under employment law - H&S
4. Establish, exercise to defend **legal claims**
5. Protect **vital interests** of employee or another person - only applicable when employee can't give consent
6. **Assessment** of the person's working capacity



Exercise

Identify (a) personal data, (b) special category of data and (c) out of scope

- Mr J. Borg
- Advisory 21 Ltd.
- info@advisory21.com.mt
- +356 2100 0001
- Police conduct certificate
- High blood pressure

The information/data above is fictitious and is being used for training purposes only



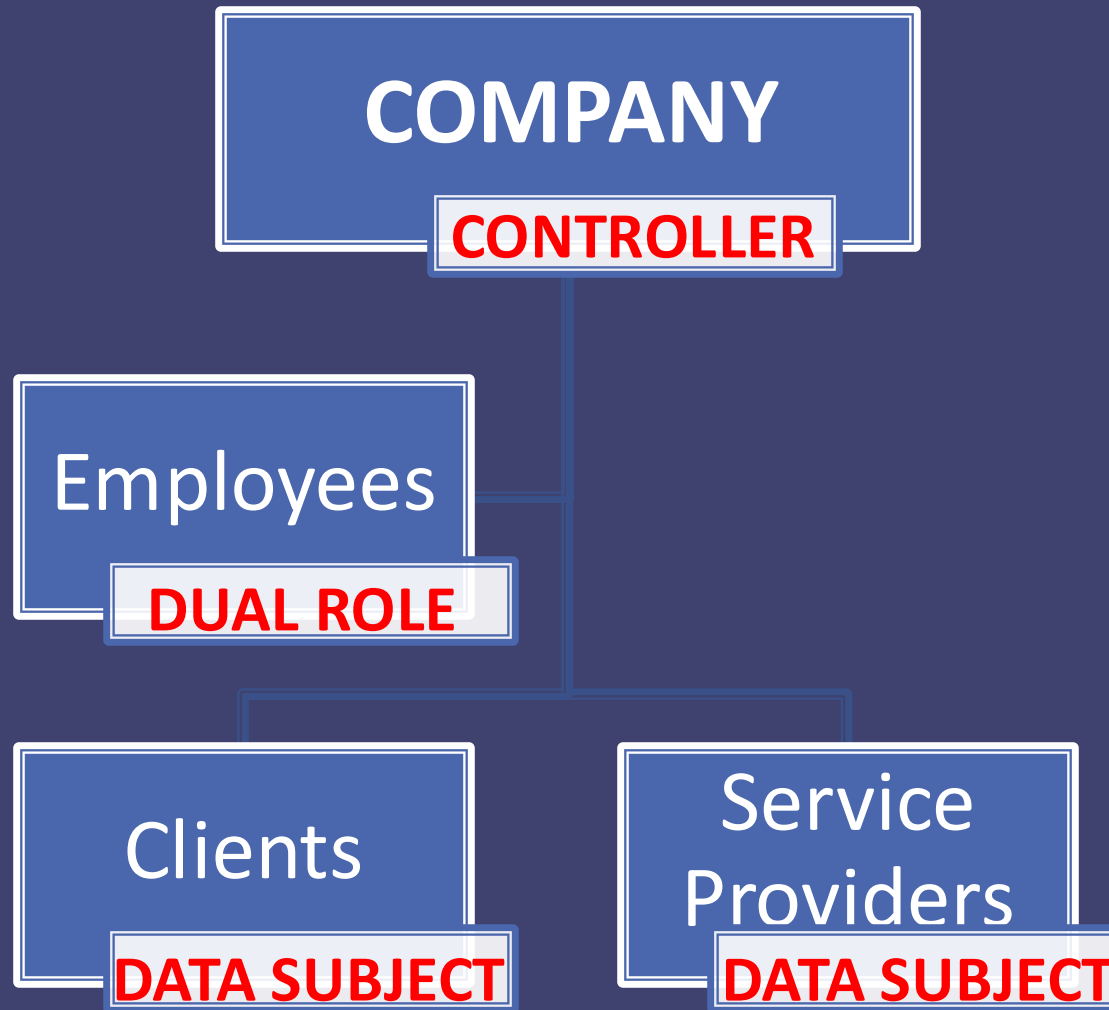
Controller & Processor

‘Controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;

‘Processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller (sub-contractor)



Controller & Processor



Controller & Processor



Employees
(DATA SUBJECTS)



Company
(CONTROLLER)



Payroll Software
(PROCESSOR)

Controller & Processor



Employees
(DATA SUBJECTS)



Company
(CONTROLLER)



Payroll Service Provider
(PROCESSOR)



Payroll Software
(SUB-PROCESSOR)

Data Processing Agreement

Content

- the subject matter of the processing;
- the duration of the processing;
- the nature and purpose of the processing;
- the type of personal data involved;
- the categories of data subject;
- the controller's obligations and rights.



Data Processing Agreement

- processing only on the controller's documented instructions;
- the duty of confidence;
- appropriate security measures;
- using sub-processors;
- data subjects' rights;
- assisting the controller;
- end-of-contract provisions; and
- audits and inspections.



Principles

- | 1 | lawful, fair and transparent |
|---|---|
| 2 | specific, explicit and legitimate purpose |
| 3 | adequate, relevant and limited to what is necessary |
| 4 | accurate & up to date |
| 5 | storage limitation |
| 6 | integrity and confidentiality |

Accountable

How to comply

Employers now also have a duty to show compliance with these principles.

Best way to show compliance is to have;

- detailed DP policy (Privacy Standard);
- detailed information to employees;
- good internal processes; and
- data processing agreement/s



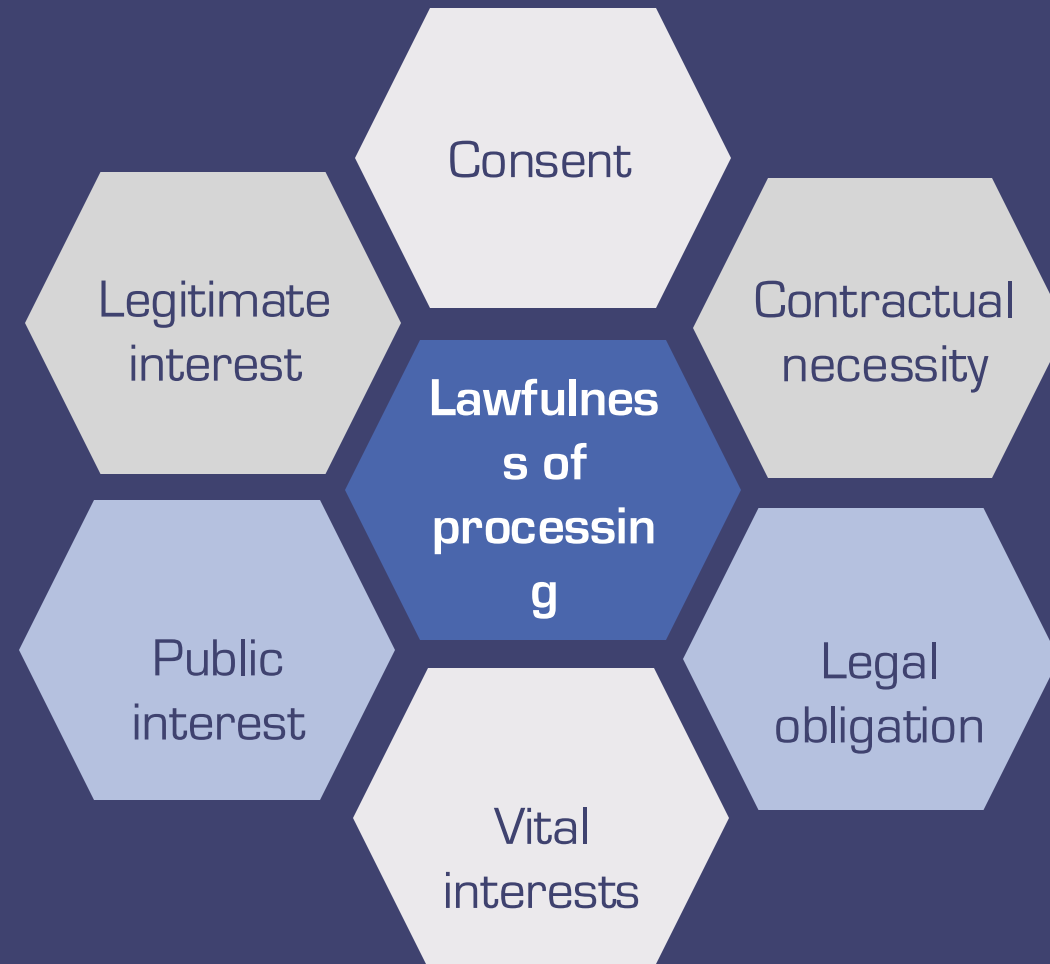
How to comply

EMPLOYEE INFORMATION	
Id Number	
Last Name	
First Name	
Phone	
Email Address	
Status	
House No./Name	
Street	
City	
Postcode	
Date of Birth	
Nationality	
Social Security #	
Tax Number	
Date of Employment	
Role	
Salary	
Employment Status	
Hours per Week	
Tax Status	
Bank Name	
Iban	
Swift Code	
If Part time do you work full time elsewhere?	
If yes kindly state PE Number	
Did you work elsewhere in the current year	
If yes kindly provide a copy of your last Payslip or P33 for tax purposes	

Company Information	
Business Name	
Door Number /Name	
Street	
City	
Postcode	
Telephone	
Industry (for WPC)	
PE Number	
VAT No	
Tax Number	
Principal Name & Role	

Legal Grounds

Processing is lawful if based on one of the following legal basis



The problem with Consent

Imbalance of power between employer and employee.

You cannot just insert a clause in the contract of employment - an employee would have not much option but to accept.



The problem with Consent

PWC Business Solutions fined **€150,000**

- i. has unlawfully processed the personal data of its employees contrary to the provisions of Article 5(1)(a) indent (a) of the GDPR since it used an inappropriate legal basis.
- ii. has processed the personal data of its employees in an unfair and non-transparent manner contrary to the provisions of Article 5(1)(a) indent (b) and (c) of the GDPR giving them the false impression that it was processing their data under the legal basis of consent pursuant to Article 6(1)(a) of the GDPR, while in reality it was processing their data under a different legal basis about which the employees had never been informed.
- iii. although it was responsible in its capacity as the controller, it was not able to demonstrate compliance with Article 5(1) of the GDPR, and that it violated the principle of accountability set out in Article 5(2) of the GDPR by transferring the burden of proof of compliance to the data subjects.



Relying on consent

Name circumstances when we have to rely on consent...



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1 Right to
information

4 Right to be
forgotten

2 Right of
access

5 Right to
restrict

3 Right to
rectify

7 Right to
object

6 Automated
processing

8 Data
portability

Breaches of security

Can you name examples of data breach incidents except for hacking?

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Breaches of security

- loss or theft of hard copy notes, USB drives, computers or mobile devices
- sending an email with personal data (eg. pay slip) to the wrong person
- a bulk email using 'to' or 'cc', but where 'bcc' (blind carbon-copy) should have been used
- a disgruntled employee copying a list of contacts for their personal use
- a break-in at the office where personnel files are kept in unlocked storage



Breaches of security

Data subject to be informed without undue delay

IDPC to be notified within 72 hours of breach

Clear internal process should be issued so that everyone knows in which situation a breach needs to be notified and who has responsibility to make those decisions.



Payroll Checklist



- Step 1 - Raise awareness
- Step 2 - Data audit
- Step 3 - Reasons that particular data is obtained
- Step 4 - Legal basis you will rely on
- Step 5 - Review/update employment contracts and policies
- Step 6 - Review/update your internal processes
- Step 7 - Review/update your external contracts and processes
- Step 8 - Data protection compliance responsibility
- Step 9 - Training
- Step 10 - Keep compliant

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