

CORONAVIRUS: DATA PRIVACY CHALLENGES

As the Coronavirus (Covid-19) outbreak continues to spread, entities are implementing an increasing number of measures to prevent contamination of their premises and amongst their staff all over the world. These measures sometimes require them to collect, analyse and share information about individuals, but it does raise data protection challenges. What types of personal data can be collected, and how? Can it be shared with other entities?

Q: Does the Law on Protection of Personal Data (the "PPD") (Law No. 6698) allow companies to collect travel and health data for Coronavirus containment (e.g. information on recent travel, exposure to contaminated individuals, symptoms)?

Travel data can be collected provided that the data protection conditions are satisfied by the company. Companies may rely on "legitimate interest" ground under the PPD for collecting and processing travel data. Under the PPD, sensitive information (which includes health information) is afforded a higher level of privacy protection than other types of special personal data. Specifically, implementation of medical tests (i.e. temperature scanning and blood tests) would raise complications within scope of the PPD. In the context of Coronavirus, explicit consent of the individual would likely to be required if a company seeking questions in relation with the individual's health unless the following conditions are satisfied.

Q: How do you lawfully collect personal data under the PPD?

Data controllers should satisfy the following requirements before collecting health data (without seeking explicit consent of data subjects).

- **Lawfulness:** the legal basis for collecting health data should be limited to the following purposes: (i) protection of public health, (ii) preventative medicine, (iii) medical diagnosis, (iv) treatment and nursing services. Otherwise, data controllers should seek explicit consent of individuals.
- **Sensitive data:** health data may only be collected by professionals subject to professional secrecy obligation (e.g. medical doctors, health care personnels) or authorised healthcare institutions (e.g. hospitals). Given its sensitive nature, health data can only be collected by occupational health doctors within the organisation of a company and handling of such data by other departments (e.g. human resources) would cause violation of privacy laws.
- **Transparency:** individuals, about whom personal data is collected, should receive a privacy disclaimer, before or at the moment of collection, that details the main purpose of the data use. The processors can either (i) update the existing privacy notices if they do not cover disease containment or (ii) create a new privacy notice dedicated to Coronavirus. Under the PPD, failure to send privacy disclaimer is subject to monetary fine.
- **Data Minimisation:** As a general principle under the PPD, the amount of personal data should not be more than what is necessary for the relevant data processing purpose. Accordingly, data controllers should select the least intrusive data collection method.
- **Additional Safeguards:** processing sensitive data requires adoption of measures required by the Data Protection Authority, including execution of confidentiality agreements with employees, training employees in relation with data privacy, introduction of authority matrix, etc.

Q: What personal data could be collected?

In accordance with the data minimisation principle, data controllers should only collect necessary personal data. The amount of data collection should be kept at minimum (see below table for details) in order to analyse and evaluate the risk that an individual is infected with Coronavirus.

<i>Data likely deemed as necessary</i>	<i>Data unlikely deemed necessary</i>
<ul style="list-style-type: none"> • Presence of coronavirus symptoms • Confirmation as to whether the person recently travelled to epidemic regions, which currently includes, amongst others, China, Italy, Iran, France, Spain and South Korea. • Close contact with individuals who have recently been in epidemic regions and/or showing Coronavirus symptoms. 	<ul style="list-style-type: none"> • Nationality of the patient • Countries visited other than epidemic regions and countries visited before incubation period. • Identity of the individuals to whom that individual has been exposed.

Q: Does the PPD allow Coronavirus-related data transfer?

Domestic transfer of health data without data subject's consent is allowed under the PPD provided that (i) appropriate level of data protection measures have been taken and (ii) any of the foregoing data processing grounds exists. In that case, the data transferor should ensure that data sharing does not reduce the level of data protection. Additionally, the Data Protection Authority's approval for data transfer undertaking should be obtained for cross-border data transfers under the current legal framework.

CONTACTS



İtir Çiftçi
Partner
T +90 212 339 00 77
E itir.ciftci@yeginciftci.av.tr



Deniz Göcük
Senior Associate
T +90 212 339 00 70
E deniz.gocuk@yeginciftci.av.tr



Berk Kispet
Associate
T +90 212 339 00 66
E berk.kispet@yeginciftci.av.tr

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.yeginciftci.av.tr

© Yegin Ciftci 2020

Registered office: Kanyon Ofis Binası Kat 10,
Büyükdere Cad. No. 185, 34394 Levent,
Istanbul, Turkey