



## Introduction to Data Protection and the General Data Protection Regulation

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# Myth Busting

GDPR doesn't apply to us as the information we hold isn't confidential	Wrong
Consent can be implied	Wrong!
Consent must be in writing	Wrong, but
GDPR only applies to personal data collected after 25 May 18	Wrong!
We're a small business – GDPR won't apply to us	Wrong!
Every data controller needs a Data Protection Officer	Wrong!
GDPR compliance focuses on a fixed point in time (such as the collection of data)	Wrong!
GDPR won't apply after Brexit	Wrong!
Every personal data breach will need to be reported to the ICO (or the affected individuals)	Wrong!

## Countdown to 25 May 2018!

- No *Grandfathering* of existing consents or procedures
- Data Protection becomes a fundamental right
- Consent requirements tougher
- Impact Assessments required
  - on the rights and freedoms of the data subjects, especially their right to protection of personal data
- “Privacy by design”
  - Parliament literally proposes that systems, software & devices be designed and built as to enable data protection and data subject’s rights by default
- Access Rights

## Jurisdictional Reach

- *Personal data* is not limited to the data of EU citizens or individuals within the EU
- The GDPR applies to any entity that is “established” in Europe, even if it is only a *processor* of data regarding Brazilian citizens based outside the EU
  - *applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not*
- Whether an entity is “established” turns on whether there is an effective and real exercise of activity (even if minimal) through stable (non-transitory) arrangements
  - A branch or a subsidiary can easily be an “establishment”
  - A travelling sales rep is unlikely to satisfy the requirements

# Other Important Issues and Agreements

- **Incidental Clauses**

- Minimum requirement that is required in every contract under which the data controller will make personal data available to a third party. Tend to be used when the processing is genuinely “incidental” to the core function of the primary contract
- Mandated by the GDPR

- **Data Processing Agreements**

- Required where a data controller provides personal data (e.g. target lists or a list of email addresses) to a third party, to process that data on your behalf under your instruction
- Various mandatory elements, including the organisational and technological measures
- Intra-group actions

- **Data Sharing Agreements**

- Recipient of personal data will independently determine how the data is used, rather than the data controller who provided the personal data
- Can be reciprocal - recipient will sometimes act as data controller and sometimes as data processor
- Fairly lengthy

# Could you handle this request?

Alexander Denoon  
11 Staple Inn

Please:

1. tell me if you hold any *personal data* about me ("*My Personal Data*")
2. provide me with a description of *My Personal Data* that you hold
3. provide an explanation as to why you are processing *My Personal Data*
4. tell me to whom you have disclosed *My Personal Data*
5. provide me with a copy of all of *My Personal Data* in an excel format
6. include an explanation of the data and from where the data was obtained
7. delete all of *My Personal Data*

## Directors' Personal Liability

- Responsibility for compliance with data protection obligations will fall on directors
- Wide range of scenarios where a director could be personally liable (e.g. a vulnerable network is compromised)
- Directors have a:
  - Duty to promote the success of the company
  - Duty to exercise reasonable skill, care and diligence
- A failure to understand and mitigate e.g. cyber risk, for instance by failing to implement appropriate security measures could amount to breach of these duties
- UK law implementing the GDPR may impose personal liability on directors



THANK YOU