

Testing times for data privacy

Insights - 19/06/2020

This article first appeared in Connect Jersey magazine.

Like icebergs, data privacy issues have a habit of lying in wait. If encountered, the full extent of the problem may not be known until after it is too late.

Data privacy has been a topic high on the 2020 agenda. Its relevance in the context of the pandemic is, undoubtedly, the bulky portion of the berg that skulks beneath troubled socio-economic waters.

At different points since the winter of 2019, life changed dramatically for all nations. It is worth reflecting upon how data issues have been brought to the fore as part of the global response to COVID- 19.

Almost overnight, we were asked to consolidate our professional and personal worlds in to a single, confined space. For many, these challenging environments had, to that point, occurred in very separate places and times. This unprecedented upheaval brought with it a myriad of data privacy concerns. Many businesses have spent inordinate sums of money over a number of years devising systems and environments tailored to the pursuit of data protection compliance, to include mitigating the risks of personal data breaches. The thought of confidential client papers piling high on dining room tables, cohobitees working for different organisations talking across each other in kitchen client calls, and 'domestic' attitudes to locking away documents and securing properties, is enough to bring any company's Head of Risk out in a cold sweat.

Away from the professional context, the pandemic is testing the ability of high profile data controllers, such as our government and connected institutions, to comply with data privacy principles and to communicate clearly and effectively the approach they are taking. Also, it is testing the ability of Jersey's citizens to use the instructions or tools available to them in order to make informed and educated decisions about choices that they feel may impact their privacy.

In recent years the data protection narrative has been dominated by the rising rights of living persons and the obligations upon those that use their information to do so responsibly. That remains as true today as it did when Jersey upgraded its data laws just over two years ago. However, some might

argue that the extent to which the pandemic has put the responsibility into the hands of living persons (individually and collectively) to help our island chart a course through the crisis has caused the narrative to develop. Whether it is a tracking app, government survey, or medical procedure, data subjects now find themselves in the spotlight. The ability and willingness of people to separate truth from disinformation, could, for example, determine whether potentially lawful strategies, with ambitions to accelerate our journey back from the current restrictions, are dismissed as an invasion of essential liberties, or, conversely, whether personal details are disclosed by citizens to third parties unnecessarily or used inappropriately.

In addition to good hygiene and good decision-making as the path of the pandemic unfolds, the importance of good information (to include good information practices and sensible responses to them) should not be overlooked.

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