

Employment Law Plus on

Personal Data Breaches

jkelly@employmentlawplus.com

01235 861919

What is a personal data breach?

What is a personal data breach?

- Breach of security leading to
 - destruction
 - Loss or loss of availability
 - alteration
 - unauthorised disclosure
 - unauthorised access
- Could be your data processor's breach

72

Notify ICO:

- Without undue delay
- Where feasible, not later than 72 hours of awareness
- Where likely to result in risk to rights/freedoms of a person
 - Focus on potential negative effects for people

Tell ICO at least:

- Nature of personal data including
 - Categories of PD
 - Approx number of data subjects affected
 - Categories of PD records
 - Approx number of PD records
- Your contact point
- Likely consequences of breach
- Measures taken/proposed to address breach

To provide information to data subject

Tell individuals where likely to be high risk to rights/freedoms:

- Without undue delay
- With nature of breach
- Your contact point
- Likely consequences of breach
- Measures taken/proposed to address breach

Record all breaches:

- Facts
- Effects
- Remedial action
- Impact assessment
- Reporting and notification
- Why it happened and how can avoid in future

What questions may the ICO ask your organisation after reporting a breach?

- Have you told individuals?
- Has the person responsible been identified?
- What part of your data protection policy applies to the breach?
- What training have you given your staff?
- Is there any media coverage?
- Have you told any other bodies or regulators?

What happens if you don't report a breach?

- ICO website: “Failing to notify a breach when required to do so can result in a significant fine up to 10 million euros or 2 per cent of your global turnover”

Getting prepared

- Appoint team to deal with breaches
- Train them on how to determine if it is reportable and the requirements
- They prepare a Response Plan
- Prepare a draft data breach reporting template letter
- Train staff in recognising and reporting breaches
- Check your IT systems allow you to obtain the requirement info about the breach fast
- Know what data you have where

Getting prepared

- Formulate a comprehensive data protection policy
- Train staff in data protection policy
- Contractual obligation on data processors to
 - notify breaches immediately and relevant information
 - comply with reasonable DP policies
- Don't delay reporting a breach because you don't yet have all the information
- See [ICO.org.uk](https://ico.org.uk) on personal data breaches

Employment Law Plus

- Practical and commercial solutions to HR challenges

jkelly@employmentlawplus.com

01235 861919