

37th International Conference of Data Protection and Privacy Commissioners

Amsterdam, 27 October 2015

Resolution on Transparency Reporting

The 37th International Conference of Data Protection and Privacy Commissioners:

- a) Recalling, and building on, the Resolution on Openness of Personal Data Practices¹ that was adopted at the 35th International Conference of Data Protection and Privacy Commissioners in 2013 in Warsaw, Poland;
- b) Recalling the Joint Statement of the European Data Protection Authorities united in the Article 29 Working Party² of November 26 2014;
- c) Recalling, also, the Resolution on mass surveillance³ adopted at the 9th General Assembly of the AFAPDP in June 2015 in Brussels;
- d) Recalling, also, the recent Working Paper of the International Working Group on Data Protection in Telecommunications (IWGDPT) on “Transparency Reporting: Promoting accountability when governments access personal data held by companies” adopted in April 2015⁴;
- e) Recognizing that government access to personal information held by organizations has been an issue of increasing debate and concern, yet noting with concern that such access remains opaque given secrecy around intelligence-gathering and law enforcement⁵;
- f) Observing that governments sometimes request personal information from organizations and that the legal basis for such request needs to be clear;
- g) Recognizing that organizations’ responses to such government access requests vary, sometimes requiring judicial authorization before releasing the information, while other times offering up personal information on a voluntary basis⁶;

- h) Recognizing that governments and organizations do not consistently maintain records of such government access requests and responses⁷;
- i) Recognizing heightened concerns of individuals about personal information provided to organizations for the sole purpose of accessing a good or service, being accessed and used by governments for policing or surveillance⁸;
- j) Recognizing some organizations have begun to issue transparency reports, but without consistent, comparable data;
- k) Emphasizing the importance of transparency reporting as a method of keeping the public informed, promoting accountability and retaining trust in digital communications and the online environment;

The 37th International Conference of Data Protection and Privacy Commissioners therefore resolves to:

1. Urge governments to keep records on the number, nature and purpose of lawful access requests for personal information held by organizations;
2. Urge governments to develop consistent reporting across jurisdictions, to better explain in open, non-technical language how often requests for personal data are made and for what purposes, with the goal of publishing such records on a regular basis;
3. Urge governments to remove legal or administrative hurdles to transparency reporting – whether through statutory prohibitions, non-disclosure provisions, technical standards or licensing requirements;
4. Urge organizations to conduct rigorous due diligence, including internal monitoring and reporting to senior management prior to responding to government requests for personal information, in order to ensure their lawful basis and maintain consistent records for reporting purposes;
5. Urge organizations across all sectors to document and explain to the public and relevant supervisory authorities their internal policies and procedures for dealing with security and law enforcement requests;
6. Urge organizations to publish transparent reports on the number of requests made, nature of responses and legal basis of government institutions for access to personal information of their customers and employees, and;

7. Urge all data protection authorities, oversight bodies and review agencies involved in supervision of surveillance activities to ensure trustworthy, independent and publicly accountable oversight where they have been given the powers to play this role.

The U.S. Federal Trade Commission abstains from this resolution, which relates to matters outside its jurisdiction.

Sources / explanatory notes:

¹ International Conference of Data Protection and Privacy Commissioners (ICDPPC), “Resolution on openness of personal data practices” (September 2013) – URL: <http://icdppc.org/wp-content/uploads/2015/02/Openness-resolution.pdf>

² Joint Statement of the European Data Protection Authorities United in the Article 29 Working Party (adopted 26 November 2014) - URL: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp227_en.pdf

³ Association of Francophone Data Protection Authorities (AFAPDP), “Resolution on mass surveillance” (June 2015) - URL: http://www.cai.gouv.qc.ca/documents/AFAPDP_R%C3%A9solution_Surveillance-de-masse_20150626.pdf; see also AFAPDP, “Resolution on openness of Personal Data Practices” (September 2013) – URL: https://www.priv.gc.ca/information/conf2013/res_06_openness_e.asp

⁴ International Working Group on Data Protection in Telecommunications (IWGDPT), “Working Paper on Transparency Reporting: Promoting accountability when governments access personal data held by companies” (April 2015) – URL: <http://www.datenschutz-berlin.de/attachments/1118/675.50.14.pdf?1435752521>

⁵ International Principles on the Application of Human Rights to Communications Surveillance, available at <https://en.necessaryandproportionate.org>.

⁶ Access, “Transparency Reporting Index” – URL: <https://www.accessnow.org/pages/transparency-reporting-index>

⁷ Freedom Online Coalition Working Group, “Privacy and Transparency Online” (May 2015) – URL: <https://www.freedomonlinecoalition.com/wp-content/uploads/2015/05/FOC-WG3-Draft-Executive-Summary-May-2015.pdf>; see also Telecom Transparency Project, “Governance of Telecommunications Surveillance” (May 2015) – URL: <http://www.telecomtransparency.org/portfolio-item/the-governance-of-telecommunications-surveillance/>

⁸ United Nations High Commissioner for Human Rights, “The right to privacy in the digital age” (June 2014) – URL: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf