



GPA

Global Privacy Assembly

Working Group on COVID-19 Related Privacy and Data Protection Issues

Report – July 2021

Chair: Philippines National Privacy Commission

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Executive Summary

The Working Group on COVID-19 related privacy and data protection issues (COVID-19 Working Group) was established through the [Resolution on the Privacy and Data Protection Challenges arising from the COVID-19 Pandemic](#) that was adopted during the 42nd GPA 2020 Conference on 15 October 2020.

The mandate of the COVID-19 Working Group is in line with the GPA's strategic priority to maximize the GPA's voice and influence in responding to emerging issues and providing guidance and assistance to the GPA community, governments, relevant organizations and other stakeholders. The Working Group also contributes on strengthening the collective capacity of the GPA community through the hosting of workshops and webinars in order to adequately respond to data protection and privacy issues arising from the COVID-19 pandemic.

Particularly, the work of the COVID-19 Working Group aligns with the Pillars of the Policy Strategy, in the following manner:

- Pillar 1 – The Working Group collates and organizes the practices and responses of the GPA community to produce a Compendium of Best Practices. The Working Group, through its capacity building activities, contributes to the formulation of global standards and practices.
- Pillar 3 – The data protection and privacy issues responded to and currently being evaluated by the Working Group also involve intersection with the themes on ethics: they concern, among others, the design and implementation of digital solutions and contact tracing applications, digital economy in alternative working arrangements and the shift to digital transactions, children's privacy in terms of e-learning platforms, relationship with other rights and freedoms and data governance in the public sector, as ultimately the assistance rendered to aid health authorities, governments and relevant public agencies in designing and developing measures to respond to the Covid-19 pandemic respectful of the rights to privacy and data protection of individuals.

As the temporary Working Group only has a mandate of one (1) year, this Annual Report presents an opportunity to provide an overview of the work undertaken in the past year as well as plans moving forward.

In the conclusion of its mandate, the COVID-19 Working Group is proposing a Resolution to continue and broaden its work with the establishment of a working group on data sharing for the public good, evolving its mandate to focus on privacy and data protection issues and concerns related to sharing of personal data as the global pandemic response shifts towards economic recovery. This is in line with the draft GPA Strategic Plan for 2021-2023.

Introduction

With a recognition of the continuing privacy and data protection challenges posed by the COVID-19 pandemic, the Resolution on the Privacy and Data Protection Challenges arising from the COVID-19 Pandemic was adopted during the 42nd GPA 2020 Conference on 15 October 2020 and established a new temporary Working Group on COVID-19 related privacy and data protection issues (COVID-19 Working Group).

The Working Group continues the work of the GPA COVID-19 Taskforce to build and strengthen the GPA's collective capacity in responding to data protection and privacy issues arising from the COVID-19 pandemic. Specifically, the Working Group in 2020-21 planned to:

- Make recommendations for and coordinate the GPA's responses on privacy and data protection issues arising in the context of the COVID-19 pandemic and the road to recovery, particularly those issues and priorities identified through the GPA COVID-19 survey and share information across the membership;
- Engage with GPA members and observers with a view to keeping the Compendium of Best Practices updated as new privacy and data protection issues emerge as part of the ongoing COVID-19 recovery response;
- Collaborate with relevant international organizations, networks and privacy advocates in strengthening the capacity of GPA members and observers and sharing of information on the other pressing issues identified through the GPA COVID-19 survey;
- Report on the progress of the Working Group, and the scope of any related considerations for future working arrangements, to the 2021 closed session.

The Working Group has two (2) sub-groups: (1) Sub-Group on Emerging Issues led by Hong Kong PCPD and (2) Sub-Group on Regulatory Capacity Building led by Dubai IFC.

The COVID-19 Working Group is chaired by the Philippines National Privacy Commission (NPC) and members include representatives from both GPA Members and Observers from the following countries and organisations:

Australia, Belgium, Burkina Faso, Canada, Council of Europe, Dubai International Financial Centre Authority, EU Fundamental Rights Agency, European Data Protection Supervisor, Gabon, Georgia, Germany, Hong Kong, International Committee of the Red Cross, Ireland, Israel, Italy, Ivory Coast, Japan, Jersey, Macao, Mauritius, Mexico, New Zealand, OECD Data Governance and Privacy Unit, Peru, Philippines, Republic of Korea, San Marino, Senegal, Switzerland, Turkey, United Kingdom, UN Global Pulse, Uruguay, US Federal Trade Commission.

In its one year of existence, the Working Group has conducted various activities in line with its mandate. Through the Sub-group 1, the Working Group conducted the Survey on Emerging Privacy Issues to identify the most pressing privacy issues at that time of the COVID-19 pandemic and the Survey on Experience and Best Practices in Response to COVID-19 to gather information, relevant experiences, and best data protection practices to be compiled into the second part of the Compendium of Best Practices in Response to COVID-19.

On 31 March 2021, through the Working Group’s efforts, the GPA Executive Committee published the “Joint Statement on the Use of Health Data for Domestic or International Travel Purpose”, encouraging organizations to minimize data collection to only that information that can contribute to the protection of public health while also factoring in reasonable retention periods and privacy by design measures at the outset.

For capacity building, the Working Group held a webinar on Jurisdiction Reports on COVID-19 Responses during the Philippines NPC Privacy Awareness Week 4th National Data Privacy Conference 2021 held last 28 May 2021. The webinar highlighted how data protection authorities have responded to the privacy and data protection challenges brought about by the COVID-19 pandemic. Our collaborative webinar with OECD was held in June this year as a follow-up session on the two (2) previous workshops last April 2020 and September 2020. The three (3)-day workshop focused on the approaches of governments in response to the health crisis, data privacy challenges in the workplace, use of health data in relation to domestic and international travel, and vaccination programs.

Working Group Activities

Terms of Reference, Work Plan, and Portfolio

As a new Working Group, the COVID-19 Working Group set out to adopt its Terms of Reference, Work Plan, and Portfolio in the first few months of its existence.

The Terms of Reference outlines the working arrangements of the Working Group. The Work Plan sets out, among other things, the major outputs to be delivered by the two (2) Sub-groups.

The COVID-19 Working Group Portfolio included two (2) new strategic issues, apart from the three (3) original strategic issues identified in the Resolution adopted during the Closed Session last October 2020. These are:

1. Alternative working arrangements;
2. Use of e-learning and online schooling technologies;
3. Sharing of data between hospitals and health ministries, and other relevant government bodies;
4. Processing of personal data for vaccination programs; and
5. Processing and sharing of health data with regard to travel and passenger data.

Working Group Meetings

From January to April, the Working Group held meetings on a fortnightly basis and thereafter, met once a month. Updates on the activities of each sub-group is usually discussed during meetings.

During Working Group Meetings, Working Group members were invited by the Chair to present their relevant jurisdiction reports, allowing members to raise concerns confronting their jurisdictions and share their experiences in response to the pandemic. It has become a venue for updates on the latest COVID-19 developments within their region or respective jurisdictions. WG members who have shared jurisdiction reports include:

- Office of the Privacy Commissioner of Canada
- Data Protection Commission, Ireland
- Federal Data Protection and Information Commissioner, Switzerland
- Personal Information Protection Commission, Japan
- Jersey Office of the Information Commissioner
- Office of the Privacy Commissioner, New Zealand
- The Federal Commissioner for Data Protection and Freedom of Information, Germany

Sub-Group 1 on Emerging Issues

Sub-group 1 on Emerging Issues is led by the Office of the Privacy Commissioner for Personal Data, Hong Kong, China (PCPD). The main objective of Sub-group 1 was to identify the emerging privacy issues arising from the COVID-19 pandemic and engage with the wider GPA community in exploring and providing guidance on these issues.

Joint statement on the use of health data for domestic or international travel purposes

The first major output facilitated by Sub-group 1 was a joint statement highlighting the importance of the principles of necessity, proportionality and privacy by design in the sharing of health data for domestic or international travel purposes during the COVID-19 pandemic. Health passport initiatives have been rapidly developing worldwide since the beginning of 2021. These initiatives may involve mass scale sharing of health data across borders and across a range of entities. There was an urgent need to provide relevant guidance on data protection in this regard and the COVID-19 Working Group agreed that a public statement on the issue should be published as soon as possible. Consequently, the UK ICO spearheaded the drafting of the public statement together with other members of Sub-group 1. The draft statement was supported by all COVID-19 Working Group members, and then submitted by the Working Group Chair, Commissioner Raymund Enriquez Liboro of NPC Philippines to the GPA Executive Committee for their consideration. It was adopted by the GPA Executive Committee and published as the [GPA Executive Committee joint statement on the use of health data for domestic or international travel purposes](#) (Joint Statement) on 31 March 2021.

The Joint Statement recommended governments and other organisations to consider and pay due regard to a set of data protection principles when processing health data for the purposes of international travel, in order to build trust and confidence with the public. The principles included, for example:

- Embedding ‘privacy by design and default’ principles into the design of any systems, apps or data sharing arrangements regarding the processing of health data for the purposes of international travel by conducting a formal and comprehensive assessment of the privacy impact on individuals before the commencement of any processing;
- Clearly defining the purpose for the collection, use and disclosure of personal data for alleviating the public health effects of COVID-19. Personal data must not be used in a manner incompatible with the purpose;
- Protecting the data protection rights of vulnerable individuals, who may not be able to use, or may not have access to, electronic devices, and considering alternative solutions to ensure that such individuals do not suffer discrimination; and
- Fully assessing the cyber security risk of any digital systems or apps, taking full account of the risks that can emerge from different actors in a global threat context.

The Joint Statement received positive feedback from members and was considered generally successful in achieving the purpose of complementing efforts made at a national or regional level, and contributing to a positive, co-ordinated privacy outcome internationally which reflects common global principles of data protection and privacy.

Surveys on emerging privacy issues and best privacy practices

In March 2021, Sub-group 1 conducted the *Survey on Emerging Privacy Issues* with GPA members and observers to identify the most pressing privacy issues at that time of the COVID-19 pandemic which required internationally coordinated action from the GPA and/or the COVID-19 Working Group, as well as to determine the best way that the GPA and/or the COVID-19 Working Group might provide support to the GPA community on the privacy issues concerned. Members and observers were asked to rate how pressing the privacy issues were in their respective jurisdictions. A total of forty one (41) GPA members and observers responded to the survey.

The survey results showed that the following six privacy issues were considered more pressing by the respondents:

- i. Processing and sharing of personal data collected in vaccination programmes to facilitate international travel and domestic activities;
- ii. Processing and sharing of health data (e.g. COVID-19 test results), travel history and/or contact history to facilitate international travel and domestic activities;
- iii. Handling of health data in 'health passports' and / or 'health codes';
- iv. Health monitoring of incoming travellers;
- v. Handling of personal data in contact tracing measures (e.g. contact tracing apps); and
- vi. Handling of children's or students' data associated with the use of e-learning and online schooling technologies.

The respondents also indicated that issuing a statement on general principles, publishing guidance and compiling best practices from different jurisdictions were preferable actions to be taken by the GPA to address the six (6) identified privacy issues.

Based on the results of the aforesaid survey, a second Sub-group 1 survey, the *Survey on Experience and Best Practices in Response to COVID-19*, was subsequently conducted in June and July 2021. The second survey focused on gathering information, relevant experiences, and best data protection practices regarding the following four (4) topics, which were streamlined from the aforementioned six (6) privacy issues:

- i. Health passports;
- ii. Health monitoring of incoming travellers and returning nationals;
- iii. Contact tracing measures; and
- iv. Handling of children's or students' data in e-learning technologies.

GPA members' and observers' responses to the survey will be compiled into the second part of the *Compendium of Best Practices in Response to COVID-19*, to be published at or before the GPA Closed Sessions 2021. (Note: The first part of the Compendium was published at the GPA Closed Sessions 2020.) The second part of the Compendium is essentially a document collating the key data protection principles and recommended best practices for addressing privacy issues of the aforementioned four topics arising from the COVID-19 pandemic. We hope that the second part of the Compendium will be of valuable reference for data protection and privacy authorities as well as for health authorities, businesses and other stakeholders.

Sub-Group 2 on Regulatory Capacity-Building

Sub-group 2 on Regulatory Capacity Building is led by Dubai International Financial Centre Authority. Sub-group 2 of the Covid 19 Working Group has its focus on regulatory capacity building, specifically how regulators can increase effectiveness while economizing time and effort in doing so. The end result is to transform the knowledge developed through the sub-group work plan into supervisory guidance and support that is in very high demand.

Businesses, schools, government agencies, and many other entities are collecting and processing personal data in ways they have never had to consider before. Prior to the pandemic, restaurants did not have to take temperatures of customers, children at schools did not have to be careful about telling others about who in their family was ill or not, employees only ever booked holiday leave and there was no vaccination update or requirements to share close contact information with Human Resources, contact tracing apps would have seemed intrusive, unnecessary and disproportionate, and the question “what is personal data?” could not be as easily answered as it is now. As a result, data protection regulators had to re-envision and interpret guidance about how to ethically and effectively manage all of these new issues and more, building the capacity to support these organizations in innovative and collaborative ways.

In order to assess the impact on new, challenging issues impacting regulatory capacity, and develop an approach to tackling them, Sub-group 2 put together the following plan, keying in on lessons learned and ways forward to supplement the Sub-group 1 compendium where sensible to do so and create useful guidance tools:

Survey on Regulatory capacity building lessons learned

Sub-group 2 conducted a focus group style outreach survey of controllers and processors in, setting out questions to understand capacity building lessons learned, regarding:

- COVID-19 data collection updates and guidance - How privacy regulators can support controllers, processors and data subjects with respect to covid-related guidance and interpretation of health authorities’ guidelines / requirements vis a vis data protection obligations;
- Privacy obligations under applicable employment law and employee data collection – what measures are controllers / processors taking in incorporating covid-related data collection obligations into their group policies (i.e. DPIAs, access control improvements, access request response policies to cover covid-related issues);
- Challenges regarding children’s data collection as well as that of teachers and staff, and parents’ expectations as to controls;
- Levels of confidence that controllers, processors and data subjects have in mandatory regulatory sharing requirements and the safeguards around them, and how privacy regulators support clear, up to date information about their expectations where a breach occurs; and
- Contact tracing apps and how flexible privacy regulators should be regarding risks and issues related to the development of this technology.

To help identify and mitigate gaps in regulatory supervision and support, a survey was conducted in the early part of 2021 to gather feedback from as many sectors as possible about:

- issues, new and old, dealt with during and still enduring as a result of the pandemic;
- concerns about regulatory enforcement versus innovation to create apps and tools for health and safety;

- what kind of policies and practices they had and have put in place as a result of the pandemic; and
- a variety of other queries about how feedback from the local regulator would assist pandemic-related processing operations.

The survey can be reviewed at this link: <https://survey.alchemer.com/s3/6191656/Global-Privacy-Assembly>

Based on the results of the survey, the Sub-group 2 developed a report and reviewed it with Sub-group 1 for the purposes of supplementing the second part of the *Compendium of Best Practices in Response to COVID-19*. The report broke the survey results down into several main themes:

- Communications and guidance;
- Organizational / operational impact of Covid 19 restrictions on data subjects' rights;
- Sharing, security and breach reporting;
- Privacy tech / IT development, framework and design; and
- Supervision and enforcement.

Capacity-building activities

The COVID-19 Working Group held a webinar on Jurisdiction Reports on COVID-19 Responses during the Philippines NPC Privacy Awareness Week 4th National Data Privacy Conference 2021 held last 28 May 2021. The webinar highlighted how data protection authorities have responded to the privacy and data protection challenges brought about by COVID-19 pandemic.

Last 21-22 June 2021, a collaborative workshop was held with the Organisation for Economic Co-operation and Development (OECD) entitled, *One Year Later: Addressing the Data Governance and Privacy Implications of the COVID-19 Pandemic and the Road to Recovery*. A follow-up session on the two (2) previous workshops last April 2020 and September 2020, the three (3)-day workshop focused on the approaches of governments in response to the health crisis, data privacy challenges in the workplace, use of health data in relation to domestic and international travel, and vaccination programs.

Forward looking plan 2021-2022

In the remaining months of 2021, the Working Group intends to focus on:

- Publication of the 2nd part of the Compendium of Best Practices;
- Capacity-building activities in collaboration with relevant stakeholders; and
- Exploring further engagement on the Joint statement on the use of health data for domestic or international travel purposes with relevant stakeholders such as the World Health Organization (WHO) and International Air Transport Association (IATA).

As the mandate of the temporary Working Group concludes this year, the COVID-19 Working Group is proposing a Resolution to continue and broaden its work with the establishment of a working group on data sharing for the public good, evolving its mandate to focus on privacy and data protection issues and concerns related to sharing of personal data as the global pandemic response shifts towards economic recovery.

Conclusion

With the conclusion of its mandate, the COVID-19 Working Group would like to express its sincere gratitude to all members of the COVID-19 Working Group and the wider GPA community for their sustained support and valuable contributions in achieving the working group's deliverables.

We look forward to our continued partnership and collaboration as the Working Group evolves its mandate to focus on privacy and data protection issues and concerns related to sharing of personal data as the global pandemic response shift towards economic recovery, with the proposal of establishing of a working group on data sharing for the public good.