The Role of the Data Protection Officer

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Introduction

• Adrian Ross
• GRC consultant
  - Infrastructure services
  - Business process re-engineering
  - Business intelligence
  - Business architecture
  - Intellectual property
  - Legal compliance
  - Data protection and information security
  - Enterprise risk management
IT Governance Ltd: GRC One-stop shop

IT governance, risk and compliance

Cyber resilience

- Information security and ISO 27001
- Penetration testing
- Data protection
- Incident response management

Governance and risk management

- Business continuity management and ISO 22301
- IT governance
- Service management
- Project management
- COBIT®
- ITIL® and ISO 20000
- PRINCE2® and PMBOK®

Consultancy and certification

Security testing

Training and qualifications

Software tools

Toolkits and publications

All verticals, all sectors, all organisational sizes
Agenda

• An overview of the regulatory landscape
• Territorial scope
• Remedies, liabilities and penalties
• Security of personal data
• Data protection officer
The nature of European law

- Two main types of legislation:
  - Directives
    - Require individual implementation in each Member State
    - Implemented by the creation of national laws approved by the parliaments of each Member State
    - European Directive 95/46/EC is a Directive
    - UK Data Protection Act 1998
  - Regulations
    - Immediately applicable in each Member State
    - Require no local implementing legislation
    - EU GDPR is a Regulation
Article 99: Entry into force and application

This Regulation shall be binding in its entirety and directly applicable in all Member States.

KEY DATES

- On 8 April 2016 the Council adopted the Regulation.
- On 14 April 2016 the Regulation was adopted by the European Parliament.
- On 4 May 2016, the official text of the Regulation was published in the EU Official Journal in all the official languages.
- The Regulation entered into force on 24 May 2016, and applies from 25 May 2018.

Articles 1 – 3: Who, and where?

- Natural person = a living individual
- Natural persons have rights associated with:
  - The protection of personal data
  - The protection of the processing personal data
  - The unrestricted movement of personal data within the EU
- In material scope:
  - Personal data that is processed wholly or partly by automated means;
  - Personal data that is part of a filing system, or intended to be.
- The Regulation applies to controllers and processors in the EU irrespective of where processing takes place.
- It applies to controllers not in the EU
Remedies, liabilities and penalties

• **Natural Persons have rights**
  - Judicial remedy where their rights have been infringed as a result of the processing of personal data.
    - In the courts of the Member State where the controller or processor has an establishment.
    - In the courts of the Member State where the data subject habitually resides.
  - Any person who has suffered material, or non-material, damage shall have the right to receive compensation from the controller or processor.
  - Controller involved in processing shall be liable for damage caused by processing.

• **Administrative fines**
  - Imposition of administrative fines will in each case be effective, proportionate, and dissuasive
    - taking into account technical and organisational measures implemented;
  - € 10,000,000 or, in the case of an undertaking, up to 2% of the total worldwide annual turnover of the preceding financial year
  - € 20,000,000 or, in case of an undertaking, 4% total worldwide annual turnover in the preceding financial year
Data breaches in the UK

- January to March 2016 - 448 new cases
- Data breaches by sector
  - Health (184)
  - Local government (43)
  - Education (36)
  - General business (36)
  - Finance, insurance and credit (25)
  - Legal (25)
  - Charitable and voluntary (23)
  - Justice (18)
  - Land or property services (17)
  - Other (41)

Source: UK Information Commissioner’s Office
Key facts about cyber breaches

Which organisations suffered data breaches in 2015?
• 69% of large organisations
• 38% of small organisation

What was the median number of breaches per company?
• Large organisations: 14
• Small organisations: 4

What was the average cost of the worst single breach?
• Large organisations: £1.46m - £3.14m
• Small organisations: £75k - £311k

What will happen next year?
• 59% of respondents expect more breaches this year than last

• *PwC and BIS: 2015 ISBS Survey*

60% of breached small organisations close down within 6 months – National Cyber Security Alliance
What sorts of breaches?

Of Large Organisations:

• External attack – 69%
• Malware or viruses – 84%
• Denial of service – 37%
• Network penetration (detected) – 37%
  - (if you don’t think you’ve been breached, you’re not looking hard enough)
• Know they’ve suffered IP theft – 19%
• Staff-related security breaches – 75%
• Breaches caused by inadvertent human error – 50%

_PwC and BIS: 2015 ISBS Survey_
Article 33: Personal data breaches

- The definition of a personal data breach in GDPR:
  - A 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
Section 4: Data protection officers

Article 37: Designation of the data protection officer

• DPOs appointed in three situations:
  - Where the processing is carried out by a public body;
  - Where core activities require regular and systematic monitoring of personal data on a large scale;
  - Where core activities involve large-scale processing of sensitive personal data.
Section 4: Data protection officers

• **Article 37: Designation of the data protection officer**

  - Group undertakings can appoint a single DPO
  - Where controller or processor is a public authority a single DPO may be appointed for several such authorities depending on structure and size
  - DPO can represent categories of controllers and processors
  - DPO designated on the basis of professional qualities and knowledge of data protection law, but not legally qualified
  - May fulfill the role as part of a service contract
  - Controller or processor must publish DPO and notify supervisory authority
Section 4: Data protection officers

Article 38: Position of the data protection officer

- Controller and processor must ensure proper and timely involvement of the DPO
- Controller and processor must provide support through necessary resources
- DPO has a large degree of independence
- Protected role within the organisation
- Direct access to highest management
- Data subject has clear access to DPO
- Bound by confidentiality in accordance with EU law
- No conflict of interest arising from additional tasks or duties
Section 4: Data protection officers

Article 39: Tasks of the data protection officer:

- to inform and advise of obligations;
- to monitor compliance;
- to provide advice with regard to data protection impact assessments;
- to monitor performance
- to cooperate with the supervisory authority;
- to liaise with the supervisory authority;
- to have due regard to risk associated with processing operations.

To advise on data protection impact assessments
Data protection impact assessment

- Article 35: Data protection impact assessment
- The controller shall seek the advice of the DPO
  - where a process is using new technologies, and taking into account the nature, scope, context and purposes of the processing, there is a high risk to the rights and freedoms of natural persons
  - DPIA is particularly required where:
    - Taking into account automated processing including profiling there are legal effects concerning natural persons;
    - The processing is on a large scale of special categories of data or personal data related to criminal convictions;
    - A systematic monitoring of publicly accessible area on a large scale.
Data protection impact assessment

• **Article 35: Data protection impact assessment**
• A data protection impact assessment shall contain the following:
  - a systematic description of the purposes and means of the processing:
  - any legitimate interest pursued by the controller;
  - an assessment of the necessity and proportionality of the processing operations;
  - an assessment of the risks to the rights and freedoms of data subjects;
  - the measures envisaged to address the risks;
  - adherence to approved codes of conduct;
  - any consultation with data subjects on intended processing;
  - any processing in relation to a law to which the controller is subject;
  - any processing that changes the risk profile.
Prior consultation

• **Article 36: Prior consultation**
• Controller shall consult the supervisory authority prior to processing where the DPIA indicates a “high risk to the rights and freedoms of the data subjects”:
  - Supervisory authority shall provide written advice to the controller
  - Request for controller to provide further information
  - Information on purposes and means
  - Information on measures and safeguards
  - The contact details of the DPO
  - A copy of the data protection impact assessment
  - Any other information requested
Section 4: Data protection officers

- The realities of the role of the data protection officer
  - Legal knowledge of data protection Regulation is not enough
  - Must also have information security knowledge and skills
  - An understanding of how to deliver C, I and A within a management framework
  - A good understanding of risk management and risk assessments
  - Familiarity with and adherence to codes of conduct for industry sector
  - A good understanding of compliance standards and data marks
  - Able to carry out and interpret internal audits information security standard
  - Understand and be able to articulate privacy by design to delivery functions
  - Able to coordinate and advise on data breaches and notification
  - Able to make a cyber security incident response process work.
  - Leads co-operation with supervisory authority
Section 4: Data protection officers

• Where does the role sit within the organisation
  - Outside delivery functions of IT or Business
  - The role is about delivering compliance
  - You can’t have compliance under the direction of the delivery team
  - The DPO should sit within a Risk, Compliance or Governance function.
  - Independent of the business with direct access to the Board
  - An effective DPO should ensure that Data Protection is on Board Agenda
  - Company Directors now being considered personally liable for Data Breaches
  - Begin with EU GDPR Foundation Course
GDPR - Summary

• Complete overhaul of data protection framework
  - Covers all forms of PII, including biometric, genetic and location data
• Applies across all member states of the European Union
• Applies to all organisations processing the data of EU citizens – wherever those organisations are geographically based
• Specific requirements around rights of data subjects, obligations on controllers and processors, including privacy by design
• Administrative penalties for breach up to 4% revenue or €20 million
  - Intended to be “dissuasive”
• Data subjects have a right to bring actions (in their home state) and to receive damages if their human rights have been breached
• Fines to take into account “the technical and organisational measures implemented…”
Cyber security assurance

• GDPR requirement – data controllers must implement:
  - “appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing is performed in accordance with the regulation.”
  - Must include appropriate data protection policies
  - Organizations may use adherence to approved codes of conduct or management system certifications “as an element by which to demonstrate compliance with their obligations”
  - ICO and BSI are both developing new GDPR-focused standards

• ISO 27001 already meets the “appropriate technical and organisational measures” requirement
• It provides assurance to the board that data security is being managed in accordance with the regulation
• It helps manage ALL information assets and all information security within the organisation – protecting against ALL threats
IT Governance: GDPR one-stop shop

- Accredited training – 1-Day Foundation Course
- Practitioner course, classroom or online
- Pocket guide [www.itgovernance.co.uk/shop/p-1830-eu-gdpr-a-pocket-guide.aspx](http://www.itgovernance.co.uk/shop/p-1830-eu-gdpr-a-pocket-guide.aspx)
- Consultancy support
  - Data audit
  - Transition/implementation consultancy
  - [www.itgovernance.co.uk/dpa-compliance-consultancy.aspx](http://www.itgovernance.co.uk/dpa-compliance-consultancy.aspx)
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