

COVID 19: EXCEPTIONS FROM OBTAINING CONSENT TO PROCESS PERSONAL DATA

Take into account the following considerations on cases where it is not necessary to obtain authorization or consent for the processing of personal data. These guidelines may not be applicable in particular cases.

PRINCIPLE OF FREEDOM IN THE PROCESSING OF PERSONAL DATA

One of the principles established in Law 1581 of 2012 is the principle of freedom, by which the processing of personal data can only be exercised with the prior, express and informed consent of the Data Subject. Likewise, within the framework of this principle, personal data may not be obtained or disclosed without prior authorization, or in the absence of a legal or judicial mandate that relieves the consent.

Based on the above, it is important that any person who processes personal data, either as a Data Controller or as a Data Processor, ensures that it has obtained the authorization to process the information under the applicable law.

REQUIREMENTS TO OBTAIN AUTHORIZATION

In accordance with current regulations, in general terms, at the time of requesting authorization for the processing of personal data,

Data Controllers must inform Data Subject about (i) its name or legal name; (ii) the contact details of the Data Controller (such as its address, telephone number, e-mail address, and other contact details); (iii) the processing to which the personal data will be submitted; (iv) the purposes of the processing; (v) the rights to which the Data Subject is entitled; and (vi) ways to obtain or consult the Privacy Policy of the Data Controller.

Additionally, in a case sensitive data is going to be processed, Data Controller shall inform Data Subject that (i) since the data are sensitive, Data Subject is not obliged to grant its consent to their processing; and (ii) which of the data to be processed are sensitive and the purpose of said processing. It is important to note that sensitive data is understood as such information that may affect the privacy of the Data Subject or whose misuse may generate discrimination, such as those that reveal racial or ethnic origin, political orientation, religious or philosophical beliefs, or health-related data.

CASES WHERE AUTHORIZATION IS NOT REQUIRED

Article 10 of Law 1581 of 2012 establishes the cases in which it will not be necessary to obtain authorization for the processing of personal data. However, it is important to emphasize that these are exceptions to the general rule established by the principle of freedom mentioned above.

Besides, said rule establishes that whoever accesses and processes personal data within the framework of one of the exceptions must comply with the provisions contained in the Data Protection regime, especially those regarding the security and confidentiality of the information.

Therefore, the authorization will not be necessary in the following cases: a) Information required by a public or administrative entity in the exercise of its legal functions or by court order; b) Information of public nature; c) Cases of medical or health emergency; d) Processing of information authorized by law for historical, statistical or scientific purposes; or e) Data related to the Civil Registry of individuals.

CASES OF MEDICAL OR HEALTH EMERGENCY

In the framework of the State of Economic, Social and Ecological Emergency, it is important to analyze the exception to obtain authorization in cases of medical or health emergency.

In this regard, the Constitutional Court has recognized that this exception applies "(...) only in cases where, given the specific emergency, it is not possible to obtain the authorization of Data Subject or it is particularly problematic to manage it, given the circumstances of urgency, risk or danger to other fundamental rights, whether of Data Subject or third parties". In addition, the Superintendence of Industry and Commerce, as national authority in Data Protection, emphasized that data related to health is considered sensitive data, so its processing requires greater security measures, restriction of circulation, access and use.

In accordance with the above, although there are exceptions to the principle of freedom outlined in the law, those who process personal data, even if they are exempt from obtaining authorization, shall implement suitable and effective mechanisms to ensure and respect the rights of Data Subjects, adopt internal policies and procedures to ensure the security of the processed information and implement personal data management programs to fully comply with the Data Protection regime.



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