



OFFICE OF THE PERSONAL DATA  
PROTECTION INSPECTOR

## **Recommendations on Personal Data Processing for Direct Marketing Purposes**

*Recommendations aim the protection of citizens' personal data within the scope of direct marketing, raising awareness of organizations involved in direct marketing and prevention of inconsistent interpretation of the law.*

*The document is prepared on the basis of Georgian legislation<sup>1</sup>, Recommendation (85) 20 of the Committee of Ministers of the Council of Europe<sup>2</sup> and best practice of the European countries<sup>3</sup>.*

### **Definition of Direct Marketing**

Direct marketing is offering good, services, employment or requesting to carry out any type of activity (e.g. request to visit company's website) to customers via SMS, postal mail, telephone call, email, other telecommunication means or via direct communication with the customer.

### **Direct Marketing Provider**

Direct marketing is carried out by the public institution, individual or a legal entity, which defines the means of data processing for the purpose of direct marketing, or carries out data processing personally or through a data processor (e.g. advertising agency).

### **Subject of Direct Marketing and his/her Rights**

Subject of direct marketing is any individual (customer), who receives offer on service or a product as a result of his/her personal data processing.

The Law of Georgia on Personal Data Protection establishes the **rights** of the **subject** of direct marketing:

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<sup>1</sup> Constitution of Georgia, 24.08.1995; Law of Georgia on Personal Data Protection, 28.12.2011;

<sup>2</sup> Rec. (85) 20 on the protection of personal data used for purposes of direct marketing – Committee of Ministers, Council of Europe, 25.10.1985;

<sup>3</sup> UK, France, Ireland.

- Right to know about the source of data collection, the identity of the direct marketing provider, purpose of data processing and legal grounds;
- Right to know what data are processed about him/her and to request their correction, updating, addition, blocking, deletion and destruction at any time;
- Right to demand termination of use of his/her data for direct marketing purposes at any time (despite the fact whether he/she has issued a consent), in a form, which was used for marketing or use any available and adequate means;
- Right to refuse transfer of his/her data to a third party;

If direct marketing provider fails to protect these rights, and the customer believes that his/her personal data are processed illegally, he/she can apply to the Personal Data Protection Inspector or the Court.

## Data Collection

For the purposes of direct marketing, personal data may be collected:

1. From publicly available sources  
*or*
2. From the customer him/herself;

Only the below-listed data can be collected from publicly available sources: **name, last name, address, telephone number, email address, and fax number.**

It is important that the information is made public legally – by the data subject himself/herself, upon his/her consent or in cases when public availability of some data is established by the law. Use of personal data published in violation of the law for direct marketing purposes is prohibited.

For the purposes of direct marketing, personal data are often gathered from the data subject (customer). For instance, when shopping for some items, an individual leaves his/her contact details and wishes to be notified about new merchandises.

In case if other type of data are gathered about the subject (besides name, address, telephone number, email address and fax number), **it is necessary to obtain data subject's written consent.** Written consent is a voluntary consent on data processing for direct marketing purposes, expressed after the receipt of relevant information, which is signed by the subject or otherwise marked in writing or any equal form (e.g. electronically expressed consent on the terms of the contract).

## Obligations of Direct Marketing Provider

For the purposes of direct marketing, personal data must be processed legally and fairly. It is restricted to send such a notification to a data subject, which could infringe his/her dignity.

Data should be processed in an amount, which is necessary to achieve the purpose of direct marketing. Processed data must be adequate to the purpose and must be proportionate. Authenticity and accuracy of the data must be ensured. Data must be kept for a term which is required for achieving direct marketing purposes.

### Direct marketing provider is obliged to:

- Provide complete information to the customer about the sources of data;
- Provide the customer with its contact information;
- Provide the customer with the opportunity to request termination of the use of data in a form, which is used for direct marketing and/or define available and adequate means for such a request (e.g. when sending a commercial notification, indicate telephone number or a website, where one can refuse to receive such notifications);
- Take organizational or technical measures, which allow for protection of data from accidental or illegal destruction, amendment, disclosure, obtaining, any other form of illegal use or accidental or illegal loss.
- Cease processing of customer's personal data for direct marketing purposes **within 10 working days** from the request (cease data processing even in case when direct marketing is carried out via advertising agencies), which includes deletion of data from the database and termination of notifications.

Direct marketing provider is advised to have personal data protection policy, which will be available to all stakeholders on company website or otherwise.

## Direct Marketing via Advertising Agency

Often direct marketing providers use the service of advertising agency; in such cases relations between the parties must be regulated by the contract, which provides for data security measures.

### The following is restricted:

- Conclusion of the contract with a person, whose operation or purpose provides threat to improper processing of data;
- Further processing of personal data transferred by the direct marketing providers for any other non-contractual reasons;

- Transfer of the right by the advertising agency to process data to other person without the consent of the direct marketing provider.

Legality of personal data processing is the responsibility of the direct marketing provider. Therefore it shall monitor data processing and make sure that the advertising agency takes all necessary and technical measures for protection of data.

In case of a dispute, advertising agency is obliged to provide the direct marketing provider with the data at its hand, immediately upon request. In case of termination of the contract or termination of the operation, data processing should be ceased and data should be immediately handed over to the direct marketing provider, if advertising agency received the data from such provider.

Advertising agency must be given only those personal data, which are necessary for direct marketing. Transfer of information should not endanger individual's privacy.

If advertising agency gathers, stores and sorts out personal data on its own, then such agency acts as the data controller and is obliged to fulfil the obligations under the Law of Georgia on Personal Data Protection.

### **Purchase of Databases Containing Personal Data**

Often, individuals and legal entities gather personal data, in order to sell databases to advertising agencies. In such case, the direct marketing provider is obliged to make sure that the data is obtained/gathered legally (it must check data subject's consent, public availability of the information, source, etc.) and ensure protection of customers' rights.

In case of purchase of databases, direct marketing provider is obliged to ensure protection of personal data and their legal processing.