



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority

A public consultation document issued by the  
Telecommunications Regulatory Authority of the  
Kingdom of Bahrain

**Privacy and Data Protection Regulation**

29 November 2017

LAD 1117 247

The address for responses to this document is:

The General Director

Telecommunications Regulatory Authority ("The Authority")

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the

Authority's email address at [LAD@tra.org.bh](mailto:LAD@tra.org.bh)

The deadline for responses is **14 January 2018**

## Instructions for submitting a response

The Telecommunications Regulatory Authority (“the Authority”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than **4pm on Sunday 14 January 2018**.

Responses to this document should be sent to:

The General Director  
LAD@tra.org.bh  
Telecommunications Regulatory Authority  
P.O. Box 10353,  
Manama, Kingdom of Bahrain

Responses should include:

- the name of the company/institution/association etc;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and e-mail address)
- in the case of responses from individual consumers, name and contact details.

The Authority expects respondents to provide comments in response to each of the questions set out in this document. The Authority invites respondents to substantiate their responses, wherever possible, by providing factual evidence to support their responses.

In the interest of transparency, the Authority will make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate requests for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.<sup>1</sup>

Respondents are required to clearly mark any information included in their submission which considered confidential. Where such confidential information is included respondents are required to provide both a confidential and non-confidential version of their submission. If a submission is marked confidential in its entirety, reasons for this should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

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<sup>1</sup> The Authority, “A Guidance Paper issued by the Telecommunications Regulatory Authority on its treatment of Confidential and Non-Confidential Information:”, Guidance Paper No.2 of 2007, 10 September 2007 [http://www.tra.org.bh/en/pdf/Confidentiality\\_Guidelines\\_Final.pdf](http://www.tra.org.bh/en/pdf/Confidentiality_Guidelines_Final.pdf)

## Section 1 Introduction

1. This section is intended to provide a brief overview of the background to this consultation.
2. This Consultation is issued pursuant to the Authority's Consultation Process Regulation issued by the Authority on 10 August 2003.
3. Pursuant to Article 3(b)(1) of the Telecommunications Law of the Kingdom of Bahrain (hereinafter referred to as "the Law") the Authority must carry out its duties in the manner best calculated to, amongst other things, protect the interests of consumers and Users in respect of the provision of service, the quality of service and the protection of personal particulars and privacy of services.
4. Article 3(c)(18) of the Law requires the Authority to exercise all powers and take all actions as may be reasonably necessary with respect to any matters deemed necessary to give effect to the provisions of the Law.
5. Pursuant to the term titled 'Privacy and Confidentiality' in the following licenses:
  - Individual Mobile Telecommunications License;
  - Individual International Telecommunications Services License;
  - Internet Services Provider Class License;
  - Individual Internet Exchange License;
  - Individual National Fixed Services License;
  - Value Added Services Class License;
  - Individual Very Small Aperture Terminal License; and
  - Individual License for Paging Services,Licensees must use all reasonable endeavours to ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any person to who it provides the licensed services by establishing and implementing procedures for maintaining privacy and confidentiality of such information.
6. In the global digital economy, data processing is growing in importance due to increased data usage and value of different forms of data. Every day, large amounts of information are transmitted, collected, stored, and used in different ways. This is enabled by breakneck improvements in technology and communication.
7. As the economy shifts further into a connected information space, the relevance of data protection and the need for controlling privacy further increases.
8. On one hand, the age of information brings with it many benefits, such as new business models, wider scope of innovation, and increased efficiency and convenience with regard to collecting, storing and using data. On the other hand, how

this data is processed raises concerns regarding privacy and the security of information.

9. The Authority is therefore seeking the views of respondents in relation to the draft Privacy and Data Protection Regulation (herein referred to as the "Regulation").
10. This Regulation aims to harmonise rules pertaining to privacy and data protection across the telecommunications industry preventing unnecessary collection and misuse of personal data. It aims to protect against deliberate act of misuse, as well as the accidental loss or destruction of data. It defines consent and requires data controllers to put in place mechanisms to demonstrate the same.
11. The Authority believes that it is important for all interested parties to see the views of others during a consultation. As such, the Authority will publish a summary of all the responses received on the Authority's website as part of the consultation report. In our consultation report, the Authority will give reasons for its decisions and will give an account of how the views of those concerned helped shape those decisions.
12. The Authority supports any pro-consumer measures that complement its proposals contained in this consultative document, whether they are introduced voluntarily by service providers, or otherwise, as long as they are provided in accordance with other legal provisions and/or decisions published by the Authority or by other competent regulatory bodies in the Kingdom.
13. This consultation document is without prejudice to the legal position or the rights and duties of the Authority to regulate the provision of telecommunications services. Any views expressed in this document are not binding on the Authority and are without prejudice to the final form and content of any decisions the Authority may make.
14. This consultation document including the proposed Regulation is not a substitute for any regulation or law and does not constitute legal advice. Inappropriate reliance ought to not therefore be placed on the contents of this document.
15. The Regulation will be kept under review and amended as appropriate in the light of further experience and developing law and practice and any change to the Authority's powers and responsibilities.
16. Capitalized terms used throughout this document shall have the same meaning attributed to them by the Regulation and the Law.

## **Section 2**

### **REVIEW OF REGULATION AND CONSULTATION QUESTIONS**

#### **Article 1: Definitions**

Article 1 provides a list of defined terms which should serve to assist in the better reading of the Regulation and in the process reduce legal certainty.

1. Do you agree with the proposed definitions? Which definitions would you revise? Are additional terms necessary?
2. Do you have any other comments on Article 1 of the Regulation?

#### **Article 2: Scope**

The scope of the Regulation is as follows:

- a. the Regulation shall apply to the Processing of Personal Data by Licensed Operators, in connection with the operation of Telecommunications Networks or the provision of Telecommunications services in the Kingdom of Bahrain; and
- b. the Regulation provides a framework for the protection of the confidentiality of Communications and the privacy of individuals, and defines the responsibilities and obligations of Licensed Operators in this regard.

3. Do you agree with the scope of the Regulation set out in Article 2? If not, please give reasons why and provide suggestions for further clarity.

#### **Article 3: Applicability**

Article 3 of the Regulation sets out the applicability of the Regulation to natural persons only. Therefore, the Regulation does not apply to company data, unless this consists of information about a natural person, including but not limited to, company directors, employees, sub-contractor employees, and the like.

Processing activities by competent authorities in line with the laws of the Kingdom of Bahrain do not fall within the scope of applicability of the Regulation. The processing of personal data by competent authorities, for the purposes provided in this Article, shall continue to be regulated by the laws applicable in that respect, for instance, national

security, defence and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Notwithstanding that provided in Article 3.2, Licensed Operators must adhere to their obligations to furnish any Personal Data to competent authorities if and when requested by competent authorities under the laws of the Kingdom of Bahrain.

4. Do you agree with the provision on the applicability of the Regulations? If not, please give reasons why.

#### **Article 4: Territorial Scope of the Regulation**

Pursuant to Article 4.1, the Regulation applies to the processing activities of Personal Data by Licensed Operators which are established in the Kingdom of Bahrain. This Regulation applies to Licensed Operators irrespective of that data subject's nationality, domicile or citizenship. In other words, the Regulation applies to processing activities conducted by a Licensed Operator in relation to individuals who reside in the Kingdom of Bahrain, but also in relation to foreign nationals visiting or working in the Kingdom of Bahrain.

5. Do you agree with the provisions of Article 4, and if not, why?

#### **Article 5: Requirements Imposed on Data Controllers**

Article 5 sees that, prior to the act of processing Personal Data, a Licensed Operator must ensure that the Data Subject to whom that Personal Data relates, is informed about and has consented to that processing activity. By means of subscribing to the services provided by a Licensed Operator, the Regulation presumes that Data Subjects would have provided their consent to the activities which are inherent to the provision of that service. These activities are listed in Article 5.1 (a) to (h). For instance, a Licensed Operator is not required to take any additional measures to prove a Data Subject's consent for processing that Data Subject's data for billing purpose, once the latter has subscribed to the services offered by that Licensed Operator. The handling of billing information is considered as an activity inherent to the provision of that very service.

Article 5.2 clarifies that Licensed Operators shall only process data for necessary purposes listed in Article 5.1. By way of an example, this means that a Licensed Operator,

who collected data and attained consent from a Data Subject for the purpose of billing, may not proceed to use that data for statistical or research purposes, unless the Licensed Operator attains prior consent from the Data Subject for that new purpose of processing.

In fact, where a Licensed Operator intends to process Personal Data for any purpose other than the purposes provided in Article 5.1, in terms of Article 5.3, the Licensed Operator must adhere to Data Subject consent and information requirements under Articles 6, 7, 8 and 9.

The requirements under Article 5.4 (a) to (e) ensure 'data quality' and include standards of accuracy and retention by Licensed Operators. Under Article 5.4(a), no more data should be processed for the purpose for which it is required. By way of an example, Licensed Operators may only obtain from data subjects that information which is necessary for the purpose of that particular activity. For instance, if personal data is required for directory services, the name and surname of the data subject is required; however, information related to the Data Subject's credit card details may be deemed irrelevant and excessive for the purposes of providing a directory service.

Although the principle under Article 5.4(b) is self-explanatory, it is up to the Licensed Operator to ensure that any Data Subject's data is up-to-date. As a result, Licensed Operators should provide for methods for data subjects to check and clarify their details. In terms of Article 5.4(c) it is up to the Licensed Operator to correct or erase incorrect or inaccurate data.

According to the principle under Article 5.4(e), personal data shall not be kept for longer than is necessary, and Licensed Operators should adhere to the laws of the Kingdom of Bahrain on data retention for this purpose.

6. Do you agree with the provisions set out in Article 5, and if not, indicate which principles you are contesting and why? Do you foresee the requirement to transfer personal data outside the Kingdom of Bahrain and if so what are the circumstances that give rise to this requirement?

## **Article 6: Criteria of Processing Personal Data**

Personal data processed for activities, other than those listed in Article 5.1, may only be processed by a Licensed Operator in a fair and lawful manner where this is in accordance with the provisions of Articles 6 to 9 of the Regulation.

Article 6 sees that, prior to the collection and processing of personal data indicated in Article 5.4, a Licensed Operator must attain consent from the data subject to whom that data relates. The definition for consent in Article 1.2 indicates that consent must be clear, freely given by the data subject, must follow pursuant to information provided by the Licensed Operator in terms of Article 9, and must not be assumed. Therefore, a clear 'opt-in' should be provided to a data subject upon collection of data, for instance by way of a tick box or signature box, signifying consent for inclusion in a research study conducted by the Licensed Operator. Assumed consent, such as correspondence to the effect that 'unless we hear from you to the contrary your data shall be processed...' is an ineffective method of obtaining consent in line with the Regulation.

Furthermore, processing of personal data may take place where: (i) Article 6.1(b) - the controller has entered into a contractual relation with the data subject and the processing is necessary for contractual performance; (ii) Article 6.1(c) – processing is necessary for Licensed Operator to comply with the laws of the Kingdom of Bahrain; and (iii) Article 6.1(d) – processing is necessary to protect vital interests of data subjects, for instance, in emergency situations.

Processing for the purposes of direct marketing is an activity which requires informed consent from a Data Subject to whom that data relates. In terms of Article 6.2, Licensed Operators must process personal data for marketing purposes in accordance with applicable laws and regulations in the Kingdom of Bahrain.

7. Do you agree with the conditions for the processing of personal data by Licensed Operators as set out in Article 6? If not please give reasons why.

### **Article 7: Conditions of Consent**

Article 7 introduces conditions of consent which should be read in conjunction with the definition of 'consent' under Article 1.2, and the requirement for consent for processing under Article 6.1(a). Article 7.1 indicates the manner in which clear and unambiguous consent should be collected by Licensed Operators.

In terms of Article 7.2, the onus of proof is on the Licensed Operator to show that the data subject consented to the processing of the relevant personal data by the Licensed Operator.



In terms of Article 7.3, Licensed Operators must have in place mechanisms to allow the data subjects to withdraw their consent to the processing of their personal data, for instance through 'unsubscribe' links or through contacting customer care.

8. Do you agree with the conditions for consent in Article 7? If not provide the reasons why.

### **Article 8: Processing of Sensitive Personal Data**

Sensitive personal data is defined in Article 1.2 and refers to data that reveals race or ethnic origin, membership of a trade union, or health of a data subject. The nature of this information is highly sensitive to an individual and therefore Licensed Operators must adhere to stricter requirements provided in Article 8.1 and 8.2, before processing this data.

9. Do you agree with the requirements of processing sensitive personal data in Article 8? If not, please give reasons why with suggested changes.

### **Article 9: Information to Data Subjects**

Article 9 requires that certain information must be made readily available to a data subject when a Licensed Operator first obtains data. The information provided by the Licensed Operator, would enable a data subject to make an informed decision on whether they wish to consent to the processing of their personal data for the purposes provided by the Licensed Operator. This information requirement is only incumbent on Licensed Operators intending to process personal data in accordance with Article 5.4 and Article 8.

A common method of compliance with this requirement is by the provision of a notice or a clause in an agreement, setting out the required information.

10. Do you agree with the provisions of Article 9? If not please provide reasoning as to what you do not agree with and why

### **Article 10: Rights of Access**

In terms of Article 7.3, Licensed Operators must have in place mechanisms to allow the data subjects to withdraw their consent to the processing of their personal data, for instance through 'unsubscribe' links or through contacting customer care.

8. Do you agree with the conditions for consent in Article 7? If not provide the reasons why.

### **Article 8: Processing of Sensitive Personal Data**

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9. Do you agree with the requirements of processing sensitive personal data in Article 8? If not, please give reasons why with suggested changes.

### **Article 9: Information to Data Subjects**

Article 9 requires that certain information must be made readily available to a data subject when a Licensed Operator first obtains data. The information provided by the Licensed Operator, would enable a data subject to make an informed decision on whether they wish to consent to the processing of their personal data for the purposes provided by the Licensed Operator. This information requirement is only incumbent on Licensed Operators intending to process personal data in accordance with Article 5.4 and Article 8.

A common method of compliance with this requirement is by the provision of a notice or a clause in an agreement, setting out the required information.

10. Do you agree with the provisions of Article 9? If not please provide reasoning as to what you do not agree with and why

## Article 10: Rights of Access

Article 10 sees that, upon a request of the Data Subject made, the Licensed Operator must provide the Data Subject (without excessive delay and without expense) written information as to whether Personal Data concerning the Data Subject is processed.

Article 10.1 requires that if such data is processed, the Licensed Operator must provide to the Data Subject information about the following:

- a) actual information about the Data Subject which is processed;
- b) where this information has been collected;
- c) the purpose of the Processing; and,
- d) Recipients or categories of Recipients to whom the data is disclosed.

11. Do you agree with the right of access of a Data Subject to their Personal Data, in particular the form of provision of information by the Data Controller? If not, please provide reasoning as to what you do not agree with and why.

## Article 11: Rectification

12. Do you agree with the provisions of Article 11? If not please provide your reasons for your conclusion.

## Article 12: Processor

The definition for processor in Article 1.2 provides that a processor is any person who processes personal data on behalf of the Licensed Operator. By way of an example, a Licensed Operator may enter into a contract with a company to carry out a mail marketing campaign. In this scenario, the Licensed Operator would give clear instructions (what material to send out, to whom and by what date) to the marketing company to complete the engagement. The marketing company is entitled to use the personal data provided by the Licensed Operator only within the parameters of the Licensed Operator's instructions. In this case, the marketing company is considered as a processor regarding the specific processing activity carried out on behalf of the Licensed Operator.

13. Do you agree with the provisions of Article 12, and if not, please provide reasons and suggested changes.

### **Article 13: Security of Processing**

In terms of Article 13, Licensed Operators are required to take appropriate technical and organisational measures in accordance with the laws of the Kingdom of Bahrain, to ensure that: (i) personal data is kept secure; (ii) personal data may only be accessed by authorised personnel; (iii) personal data is protected, when stored or transmitted, against accidental or unlawful destruction or accidental loss, and to prevent any unlawful forms of Processing, in particular, any unauthorised disclosure, dissemination or access, or alteration of Personal Data; and (iv) internal security procedures and policies are in place.

14. Do you agree with the provisions of Article 13? If not, please give reasons why.

15. In particular, do you agree that all licensed operators should take all appropriate:

- a) measures to implement appropriate technical and organisational measures to ensure a high level of protection of personal data; and
- b) steps to protect, so far as possible, the security of processing personal data? If not, please give reasons why.

### **Article 14: Notification of a Personal Breach**

16. Do you agree with the provisions of Article 14? If not, please give reasons why.

17. In particular:

- a) Do you agree with the definition of personal data breach in article 1.2 of the regulation?
- b) Do you agree that all licensed operators should be obliged to notify and report to the Authority about personal data breaches? If not, please give reasons why.
- c) Do you agree with the information to be reported? If not, please give reasons why.
- d) Do you agree with the timescales for notification and reporting? If not, please give reasons why.
- e) Do you agree that the Authority may, where it thinks it appropriate, inform:
  - f) the public of the occurrence of the personal data breach, or require the Licensed Operators to inform the public; and/or
  - g) security organs or concerned government entities of such report? If not, please give reasons why.

18. Do you envisage any conflicts or discrepancies between the obligations imposed on Licensed Operators under this Article, and those imposed by virtue of any other law in the Kingdom of Bahrain?

## **Article 15: Confidentiality of Communications**

Article 15 ensures the confidentiality of data subject communications by prohibiting the recording, monitoring or intruding in customer communications and related Traffic Data unless this complies with or is allowed under the laws of the Kingdom of Bahrain, for instance, the monitoring by competent authorities, in the event of public security or the investigation of crimes.

19. Do you agree with the requirements under Article 15? If not, please give reasons why.

## **Article 16: Access to Subscriber Terminal Equipment**

Spyware, web bugs, hidden identifiers and other similar devices can enter a data subject's terminal equipment, without their knowledge, in order to gain access to information, to store hidden information or to trace the activities of the data subject, and this may seriously intrude upon their privacy. As a result, Article 16.1 provides that storing or access to user terminal equipment may not be carried by Licensed Operators.

An exception to Article 16.1 lies in Article 16.2, so that where instructed by competent authorities in terms of the laws of the Kingdom of Bahrain, Licensed Operators may gain access or store information on Data Subject terminal equipment.

Furthermore, notwithstanding Article 16.1, intrusion devices, such as 'cookies', can be a legitimate and useful tool, for example, in analysing the effectiveness of website design and advertising, and in verifying the identity of users engaged in on-line transactions. Where these devices facilitate the transmission of a communication or the provision of a Telecommunications services requested by the data subject, their use is allowed in terms of Article 16.3. This is, however, subject to an obligation imposed on Licensed Operators to provide clear and precise information about the purposes of cookies or similar devices so as to ensure that users are made aware of information being placed on the terminal equipment. Users should have the opportunity to refuse to have a cookie or similar device stored on their terminal equipment.

20. Do you agree with the requirements under Article 16? If not, please give reasons why.

### **Article 17: Traffic Data**

21. Do you agree with the definition of traffic data provided in Article 1.2?
22. Do you agree with the provisions of Article 17? In particular:
- a) the retention periods provided in this Article;
  - b) the restrictions placed for the processing of personal data by persons authorised by the Licensed Operator, including any processors.
23. Do you envisage any conflicts or discrepancies between the obligations imposed on Licensed Operators under this Article, and those imposed by virtue of any other law in the Kingdom of Bahrain?

### **Article 18: Location Data**

24. Do you agree with the definition of location data provided in Article 1.2 and the provisions of Article 18? If not, please give reasons why.
25. In particular, do you agree with
- a) the requirement for processing Data Subject location data in anonymity to the extent and duration necessary for the provision of the value added service;
  - b) the requirement imposed on Licensed Operators to provide information to Data Subject requests for information in relation to Location Data;
  - c) the right of the Data Subject to refuse, free of charge, the processing of location data for each network connection or for each transmission of communication;
  - d) the right of the Data Subject to temporarily refuse the processing of location data; and
  - e) the right of the Data Subject to withdraw their consent to the processing of location data.

### **Article 19: Retention of Data**

26. Do you agree with the provisions of Article 19? If not, please give reasons why.

## **Article 20: Directory Services**

Article 20 enshrines the right of Data Subjects to include their personal data in a Licensed Operator directory.

27. Do you in particular agree with the following requirements, and if not indicate why:

- a. Licensed Operators must inform Data Subjects to be included in such directories of the purposes of the directory and of any particular usage which may be made of such directory;
- b. Licensed Operators provide the means for Data Subjects to allow or refuse their personal data to be included in the Directory;
- c. Data Subjects are given the opportunity to access, verify, correct or withdraw personal data from the directory;
- d. Licensed Operator must ensure that Data Subject information is updated regularly;
- e. A limit is imposed on the personal data inputted in the directory relating and that this is restricted to what is necessary to identify the Data Subject, namely name and surname, and the number allocated to him;
- f. The Regulation shall not apply to editions of directories already produced or placed on the market in printed or off-line electronic form; and,
- g. The provision of access to the directory to any other third party Licensed Operator on request, as provided in Regulation 20.4.

## **Article 21: Enforcement**

Under this Article, where the Authority finds that a Licensed Operator failed to comply with the provisions of the Regulation, the Authority shall apply the measures and sanctions provided under the Telecommunications Law.

## **Article 22: Cost Allocation**

28. Do you agree with the provisions of Article 22? If not, please give reasons why.



**Article 23: Confidentiality**

29. Do you agree with the provisions of Article 23? If not, please give reasons why.

**Article 24: Effective Date**

30. Do you agree with the effective date of entry into force of this Regulation, as provided in Article 24.1? If not, please give reasons why.