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Stn Upgrade\)](#); [Williams Nick IM](#); [Wilson James \(LO\)](#); [Wimpenny Peter](#); [Wood Malcolm IM](#); [Youdell Lara](#); [Youngs Katrina](#)
Subject: A message on new data protection legislation from TfL's Privacy and Data Protection Manager
Date: 27 January 2016 13:43:10

Hello all,

We write this month with news of a new piece of legislation that is going to have a direct impact on processing of personal information by TfL. To give you an overview of the "General Data Protection Regulation" I am handing over to James Newman, TfL's Privacy and Data Protection Manager. The message below highlights the key provisions expected to be in the final legislation text and James also explains some of the work that the Privacy team has already been doing in anticipation to prepare TfL for these changes.

As always do get in touch with any queries or issues you would like to raise. I also ask to hear from you with any ideas of topics that you would like covered in future monthly messages – perhaps there is a particular part of our [toolkit](#) that you would like us to focus on, or an element of [Information Governance](#) you would be keen to know more about. Do please get in touch with suggestions.

With best wishes,
Rebecca

IRM monthly message – a word from TfL's Privacy and Data Protection Manager

As many of you are involved in the processing of personal information relating to TfL's customers and staff, I thought it might be useful to just to flag up a new piece of legislation – the "General Data Protection Regulation" – which is currently being finalised by the institutions of the European Union. The Regulation is intended to enable people to exercise greater control over their personal data and implement updated rules that will allow businesses to make the most of the opportunities of the "Digital Single Market". Because it will effectively replace the UK Data Protection Act 1998 it will have a direct impact on TfL (both in terms of our operations and our relationships with various stakeholder groups). It is likely that this new law will be formally adopted in March/April of this year and from that point, a two year countdown to its full implementation will start to run, taking us to early 2018. Based on the information currently available, it's now almost certain that the key provisions will include:

- Fines of up to 4% of annual global turnover for breaches of data protection rules (for TfL this would in theory mean a maximum penalty of £440 million, rather than the existing £500,000 limit);
- A more rigorous standard of consent for the processing of personal data will be one of "freely given, specific, informed and unambiguous" (ie a clear affirmative indication) and "explicit" consent for the use of sensitive personal data (ie special categories of personal data relating to ethnicity, health, alleged criminal offences, etc). There are some variations to this to avoid the process of obtaining consent online being "unnecessarily disruptive";
- Personal data breaches will have to be notified to the relevant national privacy regulator "without undue delay" – and where feasible within 72 hours. Breaches unlikely to result in "a risk" to the rights and freedoms of data subjects will not need to be notified. The threshold for notifying the affected individuals would be breaches likely to pose "a high risk";
- Easier access for individuals to their own data and greater transparency on how personal data is processed;
- An individual right to data portability (making it easier for consumers to transfer their personal data between service providers);
- A "right to be forgotten" when an individual no longer wants their data to be processed (it will have to be deleted unless there are legitimate grounds for retaining it);
- Tougher restrictions on the use of profiling and the collection and use of personal data relating to individuals under the age of 16 (which will require the consent of a parent/guardian and reasonable efforts to verify that third party consent), but with flexibility for Member States to lower the threshold to 13 years of age;
- Joint and several liability for service providers (data processors) processing personal information on behalf of a data controller. This may have an impact on large-scale procurement and outsourcing activities where liability currently remains exclusively with the data controller (although this is already mitigated by TfL and other data controllers through the use of appropriate contractual indemnities);
- Greater emphasis on the requirement for organisations to adopt the concepts and practices of "privacy by design" (ie using Privacy Impact assessments which help to ensure that data protection safeguards are built into products and services from the early stages of development) and "privacy by default" (eg the use of techniques such as pseudonymisation to support big data innovation while protecting privacy);
- The removal of the current requirement for data controllers (including TfL and most of

its operating subsidiaries) to register with the relevant national privacy regulator. Instead they will be required to document evidence of their compliance with the new legal framework and make that evidence available for the regulator to inspect (on request);

- Promotion of a risk-based approach to compliance (to avoid a one-size-fits-all set of obligations).

To date, in anticipation of the GDPR, we've already made good progress in terms of preparing TfL for a number of these changes. This has involved updates to standard privacy and data protection ITT questions and contract clauses used to procure services from new TfL suppliers; the development of a Privacy Impact Assessment checklist which is being integrated into the Pathway project management tool; expanded content within the TfL website and intranet privacy pages; the creation of additional information sharing protocols and procedures with partner organisations engaged in law enforcement activities; the adoption of a framework agreement with Experian covering the provision of ID theft protection services in the event of a breach; updates to TfL's privacy and data protection eLearning; a series of planned changes to the TfL Data Protection Policy; site visits to service providers and suppliers processing personal data; and a shift towards the use of an opt-in (rather than opt-out) approach to obtaining consent to the processing of personal data.

Once the full text of the GDPR is available we will be able to identify any further measures TfL needs to adopt; and begin to provide detailed advice/guidance to individual business areas. As mentioned above, TfL and other data controllers have just over two years to prepare for the various changes to the way in which they collect and use personal information.

James Newman
Privacy and Data Protection Manager

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