

Jurisdiction	Colombia
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Questionnaire

I. Law concerning protection of personal information

- i. Does your country have a general law concerning the protection of personal information in the private sector at the present or in the near future?

Answer: Yes. Law 1581 of 2012 contains the general regulation on privacy and data protection.

- ii. Does your country have a general law concerning protection of personal information in the public sector at the present or in the near future?

Answer: In general terms, Law 1581 of 2012 applies to personal information handled by private or public entities. There is also a specific law on access to public information which is Law 1712 of 2014 (enacted on March 6th, 2014), this law was effective for the obliged subjects at a national level on September 6th, 2014, and for regional authorities on March 6th, 2015. Law 1712 of 2014 can be found at http://www.secretariassenado.gov.co/senado/basedoc/ley_1712_2014.html#33 or <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=56882> both are the official web sites of the congress and government.

- iii. Does your country have laws concerning protection of personal information which apply in individual (specific) sectors at the present or in the near future? (If yes,

please describe outline.)

Answer: Yes, Law 1266 of 2008, applies specifically to the handling of financial and commercial information, including also personal data, this law specifically regulates the report of information (from individuals or companies) to credit bureaus when there is a default in the payment obligations.

There are no additional specific laws for the handling of personal data in different sectors, however, note that regarding clinical histories there is specific regulation which in certain ways affects personal information.

Where all of the answers to the question of I.(i), (ii) and (iii) is “no”, please skip to IV.

II. The basic information of the regulation concerning protection of personal information.

- i. Please fill in the blanks below about all the law concerning personal information mentioned at I.. (please add a reply column as necessary,)

The title of the law : Statutory Law 1581 of 2012. General regulation on privacy and data protection. A text of the law is available in Spanish at <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=49981> or at http://www.secretariassenado.gov.co/senado/basedoc/ley_1581_2012.html both are official government and congress web sites.

① The definition of “Personal Information”	Personal Information is defined by the general regulation on data protection as any information related or that can be linked to one or many individuals, identified or identifiable.
② The scope in which the law applies	The general regulation on privacy applies to the handling of personal data performed by any public or private entity (including NGOs). The regulation would not be applicable to the following types of handling: <ul style="list-style-type: none">- The one performed in a domestic or personal scope.- To the national security and defense data bases, as well as to those related with the prevention and control of money laundering and financing terrorism.

	<ul style="list-style-type: none"> - To intelligence or counterintelligence data bases. - To journalistic information. - To census related information. <p>However, the excluded handlings must at all times apply the general principles of data protection regulation.</p>
③ The territorial scope	Independently of where the controller or processor is located, if the controller or processor handles data to which the Colombian law is applicable, to such handling the Colombian law will apply. The data protection authority has considered that data protection regulation would apply to any handling of data performed by a controller or processor, even if the controller/processor is located outside of Colombia if the data that is being handled was collected in Colombia and belongs to Colombian nationals or residents.
④ Enactment date	October 17 th , 2012
⑤ Effective date	October 17 th , 2012 However there was a transition regime as to which companies had up to 6 months to start complying with the law.

The title of the law : Law 1266 of 2008. Applicable law to the *habeas data* and to the handling of personal data, and specifically to financial, commercial, and services information. A text of the law is available in Spanish at http://www.secretariassenado.gov.co/senado/basedoc/ley_1266_2008.html which is the official congress web site.

① The definition of "Personal Information"	Any information related to one or many identified or identifiable persons (individuals or entities), or that can be linked to an individual or entity.
② The scope in which the law applies	This regulation applies to any data registered within a data base administered by any public or private entity (including NGOs)
③ The territorial scope	Applies to handling performed in Colombia by individuals or entities. This law is closely related with the handling of information on credit bureaus.
④ Enactment date	December 31 st , 2008
⑤ Effective date	December 31 st , 2008

Law 1266 of 2008 was recently by law 2157 of 2021 (enacted and effective as of October 29th, 2021) which included among others, in a specific way the accountability principle to this

regulation, as well as other requirements from the perspective of the privacy and data protection regulation contained in Law 1581 of 2012.

- ii. If there are any special instructions about the laws, please describe them.

Note that Colombian regulation considers that the legal base to process personal data is always consent. Consent may be obtained by writer or oral means, or by unequivocal conducts of the data subjects, but in all cases, consent must be available for future consult, access or review by the subject or the authorities. There are exceptions to obtaining consent such as when it refers to public information, or when the information is required by a public entity, or in cases of medical and sanitary emergencies, among others.

Note that in Colombia, the law does not specifically recognize as legal bases to process information aspects such as legitimate interest or performance of a contract.

Also, it is important to highlight that recently (February 2022) the government issued regulation in the applicability of Binding Corporate Rules, which will allow the international transfer of data among companies of a same corporate group, when the corresponding Binding Corporate Rules are compliant with local requirements and accepted by the local authorities.

III. OECD Privacy Principles

- i. If there are any provision of law which embody each OECD Privacy Principle in your country, please describe the outlines.

<https://www.oecd.org/sti/ieconomy/oecdguidelinesontheprivacyandtransborderflowsofpersonaldata.htm>

In general terms, note that the OECD privacy principles are recognized in Colombia by the local authority in charge of applying data protection regulation which is the Superintendence of Industry and Commerce. Most of the principles are incorporated within the General Regulation on Privacy and Data Protection, as outlined below; however, note that all principles are considered at some point by the law as we will comment.

- (a) Collection Limitation Principle: article 4.a of Law 1581 of 2012 refers to the legality principle which is related with the collection limitation.
- (b) Data Quality Principle: article 4.d of Law 1581 of 2012 specifically refers to this

principle.

- (c) Purpose Specification Principle: article 4.b of Law 1581 of 2012 includes this principle since collection of data must be based in a specific purpose.
 - (d) Use Limitation Principle: in general terms, Colombian regulation considers this principle since information should and can only be used for the purposes specifically authorized by the subject.
 - (e) Security Safeguards Principle: article 4.g of Law 1581 of 2012 specifically refers to this principle.
 - (f) Openness Principle: article 4.e of Law 1581 of 2012 incorporates this principle to Colombian law.
 - (g) Individual Participation Principle: even though this principle is not specifically considered in the article on principles, note that it is applicable, since data subjects have the rights considered by the individual participation principle.
 - (h) Accountability Principle: the accountability principle is recognized by one of the regulatory decrees of the general regulation on privacy (Decree 1377 of 2013, contained in article 2.2.2.25.6.1. and following of Decree 1074 of 2015). Also, the SIC has recognized this principle and issued specific guidelines on its application and implementation.
- ii. If there are any sectors in which any laws exclude the application of each OECD Privacy Principle, please describe the outline.

There are no sectors to which the application of the OECD Privacy principles has been specifically excluded.

- (a) Collection Limitation Principle
- (b) Data Quality Principle
- (c) Purpose Specification Principle

- (d) Use Limitation Principle
- (e) Security Safeguards Principle
- (f) Openness Principle
- (g) Individual Participation Principle
- (h) Accountability Principle

IV. Data Localization and Government Access

In your country, are there any systems having an impact on the rights of data subjects such as comprehensive government access to personal data or Data Localization? If yes, please describe them.

There are no systems that allow comprehensive government access. Government and public entities may access information from data subjects in specific situations, and at all times applying in general terms the principles of data protection regulation. As mentioned before there is a specific law on access to public information handled by public entities.

In general terms, the government and public entities may access data that is handled by the private sector, only when there is a specific court order or legal warrant, or when it refers to public registries.

Regarding data localization requirements, there is not a specific obligation on data localization in Colombia, thus personal data can be transferred outside of Colombian if the requirements to do so are met. In general terms, regulation makes a distinction between data transfers and data transmissions; a data transfer occurs when sending information by a controller or processor, to a third party that will also act as controller of information, whereas a transmission specifically refers to the handling of data by a processor on behalf of controller. Performing international data transfers is allowed to countries within the EU, as well as to countries that are accepted by the EU as adequate countries to handle information, also transfers are allowed to the United States and Japan, among others; transfers will require that the subject has granted consent not only for the transfer but for the handling of his/her

data. International transmissions may be performed even if there is no consent for the transmission, if the parties execute a Data Transmission Agreement, compliant with local requirements.

V. The Data Protection Authority

If there is the data protection authority, please write down the name and address of the authority

Yes. Superintendence of Industry and Commerce (SIC), and the Deputy Superintendent for Privacy and Data Protection. <https://www.sic.gov.co/tema/proteccion-de-datos-personales>