

Jurisdiction	Republic of Kazakhstan
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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?

GRATA Kazakhstan: Yes, above information on personal data protection is contained in the Law of the Republic of Kazakhstan on Personal data and its Protection (hereinafter – the “**Law on Personal Data**” dated 21 May 2013.

- 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?

GRATA Kazakhstan: Yes, the Law on Personal Data is containing provisions on the personal data protection, including information in the public sector.

- 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.)

GRATA Kazakhstan: The Law of the Republic of Kazakhstan on Communications dated 5 July 2004 establishes that service information about subscribers is the information about subscribers intended solely for the purposes of conducting counterintelligence activities and operational search activities on communication networks, which includes:

- information about subscriber numbers, including information about individual identification numbers (for individuals) or business identification numbers (for legal entities) of the owners of subscriber numbers;
- information about identification codes of cellular subscriber devices, including information about individual identification numbers (for individuals) or business identification numbers (for legal entities) of owners of cellular subscriber devices;
- billing information (information about the services received by the subscriber);
- the location of the subscriber device on the network in accordance with the requirements of the technical regulations;
- addresses in the data transmission network;

- addresses of access to Internet resources in the data transmission network;
- internet resource identifiers;
- data transmission network protocols.

The above-mentioned service information about subscribers is used exclusively for conducting operational search activities and counterintelligence activities.

Also, the storage of service information about subscribers is carried out exclusively on the territory of the Republic of Kazakhstan. It is prohibited to transfer service information about subscribers outside the Republic of Kazakhstan, except in cases of providing communication services to subscribers of the Republic of Kazakhstan located abroad¹.

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 : [The Law of the Republic of Kazakhstan on Personal Data and its Protection dated 21 May 2013](#)

① The definition of “Personal Information”	Information related to a subject of personal data, recorded on electronic, paper and (or) other material media ² . For the purposes of understanding, we note that the subject of personal data is an individual to whom personal data relates ³ (hereinafter – the “Subject”)
② The scope in which the law applies	The Law on Personal Data regulates relations related to the collection, processing and protection of personal data ⁴ . This law applies to the relations of individuals, both in the private and public sectors. The Law on Personal Data DOES NOT apply to the

¹ Paragraph 6.1 of the Decree of the Government of the Republic of Kazakhstan on Approval of the Rules for the Collection and Storage of Service Information about Subscribers by Telecom Operators dated March 30, 2010;

² Subparagraph 2 of the Article 1 of the Law on Personal Data;

³ Subparagraph 16 of the Article 1 of the Law on Personal Data;

⁴ Paragraph 1 of the Article 3 of the Law on Personal Data;

	<p>relations arising from:</p> <p>1) collection, processing and protection of personal data by subjects exclusively for personal and family needs, if the rights of other individuals and (or) legal entities and the requirements of the laws of the Republic of Kazakhstan are not violated;</p> <p>2) formation, storage and use of documents of the National Archival Fund of the Republic of Kazakhstan and other archival documents containing personal data in accordance with the legislation of the Republic of Kazakhstan on the National Archival Fund and archives;</p> <p>3) collection, processing and protection of personal data classified as state secrets in accordance with the Law of the Republic of Kazakhstan on State Secrets dated 15 March 1999;</p> <p>4) collection, processing and protection of personal data in the course of intelligence, counterintelligence, operational and investigative activities, as well as the implementation of security measures to ensure the safety of protected persons and objects within the limits established by the laws of the Republic of Kazakhstan.</p>
③ The territorial scope	Republic of Kazakhstan

The title of the law : N/A

① The definition of "Personal Information"	
② The scope in which the law applies	
③ The territorial scope	

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

GRATA Kazakhstan: In this case it should be noted that the cross-border transfer of personal data to the territory of foreign states is carried out only if these states ensure the protection of personal data⁵. Thus, such states include states that have joined the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Strasbourg, January 28, 1981).

III. OECD Privacy Principles

i. If there are any provision of law which embody each OECD Privacy Principle in your

⁵ Paragraph 2 of the Article 16 of the Law on Personal Data;

country, please describe the outlines.

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

For the purposes of understanding, we note that the operator of a database containing personal data is understood to be a state body, an individual and (or) a legal entity that collects, processes and protects personal data⁶.

Also, the owner of the database containing personal data is a state body, an individual and (or) a legal entity exercising, in accordance with the laws of the Republic of Kazakhstan, the right to own, use and dispose of the database containing personal data⁷.

It should be noted that the collection, processing and protection of personal data in the Republic of Kazakhstan are carried out in accordance with the principles of⁸:

- 1) respect for the constitutional rights and freedoms of man and citizen;
- 2) legality;
- 3) confidentiality of restricted access personal data;
- 4) equality of rights of subjects, owners and operators;
- 5) ensuring the security of the individual, society and the state.

(a) Collection Limitation Principle

GRATA Kazakhstan: Yes, according to the Law on Personal Data, the collection and processing of personal data is carried out by the owner and (or) the operator, as well as by a third party with the consent of the Subject or his legal representative⁹.

Also, the processing of personal data should be limited to achieving specific, predetermined and legitimate goals¹⁰. Processing of personal data incompatible with the purposes of personal data collection is not allowed¹¹.

Personal data, the content and volume of which are excessive in relation to the

⁶ Subparagraph 10 of the Article 1 of the Law on Personal Data;

⁷ Subparagraph 9 of the Article 1 of the Law on Personal Data;

⁸ Article 5 of the Law on Personal Data

⁹ Paragraph 1 of the Article 7 of the Law on Personal Data;

¹⁰ Paragraph 8 of the Article 7 of the Law on Personal Data;

¹¹ Paragraph 9 of the Article 7 of the Law on Personal Data;

purposes of their processing, is not subject to processing. Specifically, the legislation of the Republic of Kazakhstan allows the collection of personal data only to the extent necessary to achieve predetermined specific goals. In case of intentional collection of personal data, the volume of which exceeds the pre-established goals, such collection of personal data will be contradict with the legislation of the Republic of Kazakhstan.

Also, the legislation of the Republic of Kazakhstan provides for liability for illegal collection or processing of personal data. So, there is a fine in the amount of from 65 to 500 US dollars.

(b) Data Quality Principle

GRATA Kazakhstan: Yes, as we mentioned above, the processing of personal data should be limited to achieving specific, predetermined and legitimate goals. Processing of personal data incompatible with the purposes of personal data collection is not allowed.

Personal data, the content and volume of which are excessive in relation to the purposes of their processing, are not subject to processing. Specifically, the legislation of the Republic of Kazakhstan allows the collection of personal data only to the extent necessary to achieve predetermined specific goals. In case of intentional collection of personal data, the volume of which exceeds the pre-established goals, such collection of personal data will be contradict with the legislation of the Republic of Kazakhstan.

Also, the legislation of the Republic of Kazakhstan provides for liability for illegal collection or processing of personal data. So, there is a fine in the amount of from 65 to 500 US dollars.

(c) Purpose Specification Principle

GRATA Kazakhstan: Yes, the use of personal data should be carried out by the owner, the operator and a third party only for the previously stated purposes of their collection¹². In practice, personal data is collected through online services, including government services. So, the Subject receives a notification that this resource uses personal data and the Subject must consent to the collection and processing of his personal data. There are also documents on the resources that indicate for what purposes personal data is collected and processed, such as the "Privacy Policy".

¹² Article 14 of the Law on Personal Data;

Usually, the purpose of collecting personal data is indicated at the time of collection and prior to giving the consent to such collection.

(d) Use Limitation Principle

GRATA Kazakhstan: Yes. As was mentioned above, the use of personal data should be carried out by the owner, the operator and a third party only for the previously stated purposes of its collection. Also, the collection and processing of personal data carried out with the consent of the Subject or without the Subject's consent at the request of the authorized bodies of the Republic of Kazakhstan.

The collection and processing of personal data is carried out without the consent of the Subject or his legal representative in the following cases¹³:

- 1) carrying out the activities of law enforcement agencies, courts and other authorized state bodies that initiate and consider cases of administrative offenses, enforcement proceedings;
- 2) implementation of state statistical activities;
- 3) the use of personal data by state bodies for statistical purposes with the obligatory condition of their depersonalization;
- 4) implementation of international treaties ratified by the Republic of Kazakhstan;
- 5) protection of the constitutional rights and freedoms of man and citizen, if obtaining the consent of the Subject or his legal representative is impossible;
- 6) carrying out legitimate professional activities of a journalist and (or) the activities of television, radio channels, periodicals, news agencies, online publications or scientific, literary or other creative activities, subject to compliance with the requirements of the legislation of the Republic of Kazakhstan to ensure human and civil rights and freedoms;
- 7) publication of personal data in accordance with the laws of the Republic of Kazakhstan, including personal data of candidates for elected public positions;
- 8) non-fulfillment by the Subject of its obligations to submit personal data in accordance with the laws of the Republic of Kazakhstan;
- 9) receiving information from individuals and legal entities by the state body

¹³ Article 9 of the Law on Personal Data;

regulating, controlling and supervising the financial market and financial organizations in accordance with the legislation of the Republic of Kazakhstan;

9-1) receipt by state revenue bodies for tax (customs) administration and (or) control of information from individuals and legal entities in accordance with the laws of the Republic of Kazakhstan;

9-2) transfer of a backup copy of electronic information resources containing personal data of restricted access to a single national backup platform for storing electronic information resources in cases provided for by the laws of the Republic of Kazakhstan;

9-3) the use of personal data of business entities related directly to their business activities for the formation of a register of business partners, subject to compliance with the requirements of the legislation of the Republic of Kazakhstan.

Also, access to personal data is determined by the terms of the consent of the Subject or his legal representative provided to the owner and/or operator for its collection and processing, unless otherwise provided by the legislation of the Republic of Kazakhstan.

Access to personal data should be prohibited if the owner and (or) the operator and (or) a third party refuse to assume obligations to ensure compliance with the requirements of the Law on Personal Data or unable to provide them¹⁴.

Third parties may receive personal data contained in the objects of informatization of state bodies and (or) state legal entities through the e-government web portal, subject to the consent of the Subject, confirmed through the state service¹⁵.

(e) Security Safeguards Principle

GRATA Kazakhstan: According to the legislation of the Republic of Kazakhstan, the collection and processing of personal data can be carried out only if its protection is ensured¹⁶.

The protection of personal data is carried out by applying a set of measures,

¹⁴ Paragraph 1 of the Article 10 of the Law on Personal Data;

¹⁵ Paragraph 3 of the Article 10 of the Law on Personal Data;

¹⁶ Paragraph 2 of the Article 20 of the Law on Personal Data;

including legal, organizational and technical, in order to¹⁷:

- 1) realization of the rights to privacy, personal and family secrets;
- 2) ensuring its integrity and safety;
- 3) protection for its confidentiality;
- 4) exercising the right to access;
- 5) preventing its illegal collection and processing.

(f) Openness Principle

GRATA Kazakhstan: Based on the accessibility principle, personal data is divided into the data in public and restricted access.

Publicly available personal data are personal data or information that in accordance with the legislation of the Republic of Kazakhstan is not subject to confidentiality requirements, access to which is free with the consent of the Subject¹⁸.

Also, there are special databases in the Republic of Kazakhstan that contain personal data. However, access to them can be carried out only with the consent of the Subject or at the request of authorized bodies.

(g) Individual Participation Principle

GRATA Kazakhstan: Yes. Information about the Subject, the collection and processing of which was carried out in violation of the legislation of the Republic of Kazakhstan, is excluded from publicly available sources of personal data within one working day at the request of the Subject or his legal representative or by a court decision or other authorized state bodies¹⁹.

Also, the change and addition of personal data is carried out by the owner and (or) the operator on the basis of the request (request) of the Subject or his legal representative²⁰.

If the collection and processing of personal data is detected without the consent of the Subject or his legal representative, personal data is subject to destruction, which

¹⁷ Article 21 of the Law on Personal Data;

¹⁸ Article 6 of the Law on Personal Data;

¹⁹ Article 6 of the Law on Personal Data;

²⁰ Article 13 of the Law on Personal Data;

could be processed based on the request of the Subject²¹.

Also, the Subject has the right to²²:

1) know about the presence of the owner and (or) the operator, as well as a third party, of its personal data, as well as to receive information containing:

- confirmation of the fact, purpose, sources, methods of collecting and processing personal data;
- list of personal data;
- terms of processing of personal data, including the terms of its storage;

2) require the owner and/or operator to change and supplement its personal data if there are grounds confirmed by relevant documents;

3) require the owner and (or) the operator, as well as a third party to block its personal data in the event of information about a violation of the terms of collection, processing of personal data;

4) require the owner and (or) the operator, as well as a third party, to destroy its personal data, the collection and processing of which was carried out in violation of the legislation of the Republic of Kazakhstan, as well as in other cases established by the Law on Personal Data and other regulatory legal acts of the Republic of Kazakhstan;

5) revoke consent to the collection, processing, dissemination in publicly available sources, transfer to third parties and cross-border transfer of personal data, except in cases provided for in paragraph 2 of Article 8 of the Law on Personal Data;

6) give consent (refuse) to the owner and/or operator to distribute its personal data in publicly available sources of personal data;

7) to protect their rights and legitimate interests, including compensation for moral and material damage;

8) to exercise other rights provided for by the Law on Personal Data and other laws of the Republic of Kazakhstan.

²¹ Article 18 of the Law on Personal Data;

²² Paragraph 1 of the Article 24 of the Law on Personal Data;

(h) **Accountability Principle**

GRATA Kazakhstan: Yes, the owner and/or operator, as well as a third party, are obliged to take the necessary measures to protect personal data in accordance with the Law on Personal Data and the procedure determined by the Government of the Republic of Kazakhstan, ensuring²³:

- 1) prevention of unauthorized access to personal data;
- 2) timely detection of unauthorized access to personal data, if such unauthorized access could not be prevented;
- 3) minimizing the adverse consequences of unauthorized access to personal data;
- 4) granting access to the state technical service to informatization facilities that use, store, process and distribute restricted personal data contained in electronic information resources for the purpose of conducting a security survey of the processes of storage, processing and dissemination of restricted personal data contained in electronic information resources in accordance with the procedure determined by the authorized body.

ii. If there are any sectors in which any laws exclude the application of each OECD Privacy Principle, please describe the outline.

(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**

²³ Paragraph 1 of the Article 22 of the Law on Personal Data;

(h) **Accountability Principle**

GRATA Kazakhstan: All of the above principles may not be applicable when carrying out activities by law enforcement agencies, courts and other authorized bodies of the Republic of Kazakhstan as well as cases stipulated by the legislation of the Republic of Kazakhstan.

So, as we mentioned above, the collection and processing of personal data is carried out without the consent of the Subject or his legal representative in cases specified in question d).

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.

GRATA Kazakhstan: As we mentioned earlier, there are databases of personal data in the Republic of Kazakhstan. Also, access to personal data can be obtained only with the consent of the Subject. However, in the case of activity by the courts, as well as by the authorized bodies of the Republic of Kazakhstan, the collection of personal data may be carried out without the consent of the Subject.

With regard to localization, it should be noted that the storage of personal data is carried out by the owner and (or) the operator, as well as by a third party in the database located on the territory of the Republic of Kazakhstan²⁴.

The legislation of the Republic of Kazakhstan allows duplication of the database on the territory of foreign states that ensure the protection of personal data²⁵. However, such a database should primarily be located on the territory of the Republic of Kazakhstan.

V. The Data Protection Authority

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

GRATA Kazakhstan: Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan.

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²⁴ Paragraph 2 of the Article 12 of the Law on Personal Data;

²⁵ Paragraph 2 of the Article 16 of the Law on Personal Data;