Data Breach Management Policy and Procedure (DP-Pol-152)

Title	Breach Management Policy & Procedure
Department:	Data Protection
Owner:	Manager, Quality Assurance & Risk Management
Approving body:	Executive Board
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Related Documents	

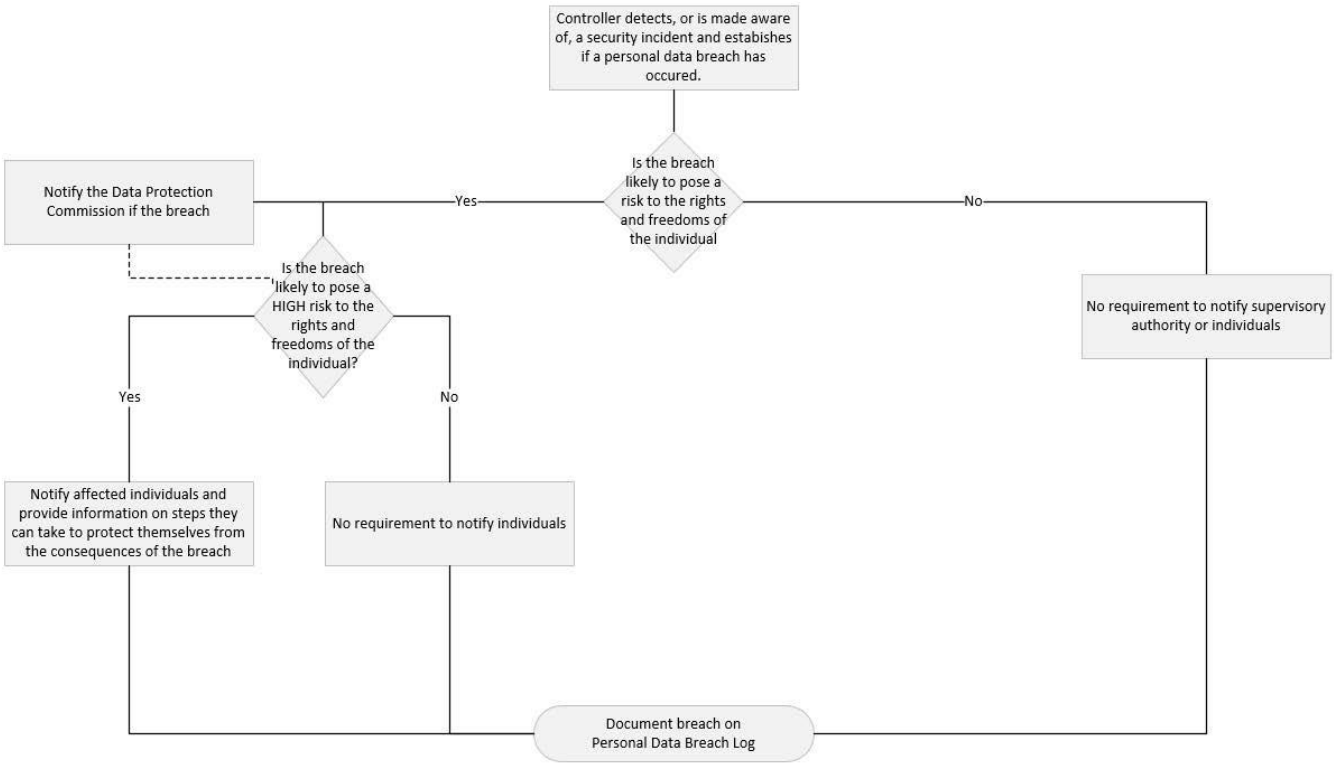
- **What is a Personal Data Breach?**

A 'personal data breach' means that there has been accidental disclosure, loss, damage, destruction or alteration of any information that could be used to identify an individual.

Such mishandling of personal data at any stage of the data processing is a personal data breach. Processing in this regard includes collection, recording, organisation, structuring, storage, alteration, retrieval, consultation, transmission, dissemination, combination, restriction, erasure or destruction.

Any Personal Data Breach impinges on an individual's right to privacy.

A Personal Data Breach that poses a **risk** to the privacy of the individual must be reported to the Data Protection Commission. A Personal Data Breach that poses a **high risk** to the privacy of the individual must be communicated to the individual. All Personal Data breaches (whether they are reportable or not) must be logged internally.



NB: Personal Data Breaches at non EU establishments where EU data is being processed are also bound by the notification obligations

- **RCPI's Commitment to the Prevention of Personal Data Breaches?**

1.1 RCPI ensures that the appropriate technical and organisation measures are in place to protect personal data from unlawful or unauthorised processing and accidental loss, destruction or damage.

1.2 RCPI ensures that the appropriate contractual arrangements are in place with any processors used by RCPI to ensure that a breach is reported and RCPI is therefore in a position to comply with its obligations. Processors must report a suspected breach and co-operate with RCPI in the course of the verification and investigation of the breach. The processors must be prompt in all communications to enable RCPI to meet its obligation to report the breach within 72 hours.

1.3 RCPI acknowledges that while the regulator might advise on the notification of individuals, it is primarily the responsibility of RCPI to take steps to help individuals protect themselves in the event of a data breach.

- **What must I do in the event of a Personal Data Breach?**

1.4 Inform the Data Protection Officer if you have any concern that there may have been a data security incident of any kind (not just a confirmed Personal Data Breach).

1.5 Once there is a reasonable degree of certainty that a Personal Data Breach of any kind has occurred, RCPI must act promptly to contain the breach, recover the data if possible, notify the regulator and, where appropriate communicate with the affected data subjects.

1.6 While it is reasonable to undertake a short period of investigation to confirm if there has been a Personal Data Breach, acting upon breach must not be delayed. Where appropriate, the regulator must be informed within 72 hours and the data subjects may need to be informed of the steps they can take to protect themselves from the consequences of the breach.

1.7 The Data Protection Commission considers an organisation to be aware of a Personal Data Breach once there is a reasonable degree of certainty that an incident has occurred and expects to be informed with 72 hours. Failure to do so can result in sanctions or fines for RCPI.

1.8 There is no penalty for reporting a Personal Data Breach and later withdrawing the notification e.g. if an encrypted USB stick with critical information was misplaced and then found and there were no consequences of the temporary loss for the data subject.

- **How do I assess the extent of the consequences of the Personal Data Breach?**

1.1 Immediately that a Personal Data Breach has been confirmed, a risk assessment must be carried out.

1.2 The value of completing the assessment is that knowing the extent of the risk to the individuals will help RCPI to take effective steps to contain the breach and to determine if the regulator and the data subjects need to be informed.

NB: The primary consideration during the risk assessment is the protection of the privacy of the individual.

1.3 Convene a meeting of the appropriate people to assess the extent of the breach. You should include the DPO, the Department Manager, IT and Helpdesk.

1.4 Consider the following criteria of risk, assessing the likelihood and severity of adverse effects of the breach for the data subjects

Type of breach:

- Personal Data Breaches can be broadly described in three categories

  - Confidentiality breach – unauthorised or accidental disclosure of personal data
  - Integrity breach – unauthorised or accidental alteration of personal data
  - Availability breach – unauthorised or accidental loss of access to personal data

The number of affected individuals:

- As a rule of thumb, the higher the number affected the higher the risk. Although, a breach of one person's data could have equally significant consequences.

Special characteristics of the individual:

- Are the data subjects children or vulnerable individuals?

The nature, sensitivity and volume of personal data:

- The more data about an individual that is breached the more the risk to the individual.
- Moreover, the combination of data that is mishandled could make the Personal Data Breach more high risk e.g. a customer home delivery list could reveal who has asked for their deliveries to be stopped for two weeks.

Ease of identification of individuals:

- How easy will it be for the data subjects to be identified by the mishandled?
- Could this data be combined with other publicly available data to identify individuals?
- Could the data subjects be identified either directly or indirectly by the breach?

Severity of consequences for the individual:

- How permanent is this breach?
- What are the intentions of the party who may have had unauthorised disclosure of Personal Data to them? Has a system been hacked? Or, was the breach to a trusted organisation that can be trusted to follow instructions to contain or recover the data?
- Are there risks to the rights and freedoms of individuals? According to the GDPR the risks are :
    - Discrimination
    - Identity theft or fraud
    - Financial loss
    - Damage to reputation
    - Loss of confidentiality of personal data protected by professional secrecy
    - Unauthorised reversal of pseudonymization
    - Any significant economic or social disadvantage
    - Prevention of exercise of control over their personal data
    - Revelation of racial / ethnic origin, political opinions, religious / philosophical beliefs, trade union membership, genetic data, data concerning health, data concerning sex life, criminal convictions / security measures
    - Analysis or prediction of aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements

NB: If any of the personal data breached is Special Category Data, it must automatically be assumed that this breach is of high risk to the individual regardless of any other factors that may make the breach appear to be low risk. According to the GDPR special category data are:

- Race
- Ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic data
- Biometrics (where used for ID purposes)

- Health data
- Sex life
- Sexual orientation

1.5 Where the likelihood of harm to the individual is low the breach may still, on consideration of all possible consequences, be reportable for other reasons.

- **Do I need to notify the Data Protection Commissioner?**

1.6 If there is any risk whatsoever to the right to privacy of the individual, the breach must be reported to the Data Protection Commissioner. Generally, all Personal Data Breaches will need to be reported.

1.7 The breach must be reported without undue delay and within 72 hours of the organisation becoming aware of the breach at the latest. If the notification is late, it must be accompanied be reasons for the delay.

1.8 If it is not possible to provide all the information about the breach in one go, it can be provided in phases without undue further delay.

1.9 The Data Protection Commissioner must be notified via the DPC Breach notification form which can be found, along with relevant email addresses, at https://dataprotection.ie/docs/GDPR-Overview/m/1718.htm

NB: Consult the Head of Public Affairs before submitting the Breach Incident Form to the DPC

- **Do I need to communicate the breach to the Data Subjects?**

1.1 While a data breach that poses a risk to the rights and freedoms of the individual must be reported to the commissioner, a breach that poses a high risk must be reported to the individuals

1.2 NB: The purpose of informing the data subjects is to ensure that they are aware of the risks to them and that they can take the appropriate steps to protect themselves.

1.3 The notification to the individuals must include the following:

- A description of the nature of the breach
- The name of the DPO or other relevant contact point
- A description of the likely consequences of the breach
- The actions taken by the controller to address the breach and appropriate measure to mitigate the breach e.g. that the breach has been notified to the regulator and appropriate advice has been received and specific advice to the individual such as resetting passwords

1.4 The data subjects should be contacted directly unless this would involve a disproportionate effort to do so. Where a bulk communication is required it must be transparent in both language and channel e.g. including details of the breach as part of a press release would not be considered sufficient notification. Examples of appropriate channels would be emails, SMS, direct messaging, prominent banners on websites, postal notification and prominent advertisements in print media. Do not use the channel the sustained the security compromise.

1.5 On receipt of the Data Breach Notification the Data Protection Commission can advise, or order, that the data subjects be informed of the breach.

1.6 There are only three conditions under which the individual does not need to be informed:

- Appropriate technical and organisational measure are in the place to protect the data (i.e. state of art the encryption)
- Immediately following the breach steps were taken to ensure that the high risk to individuals was not likely to materialise
- It would take disproportionate effort to inform the individuals In response, the commissioner may:
- Deem that the conditions under which it is not necessary to report a breach have been met.
- Find the conditions have not been satisfactorily met to reduce the high risk to individuals and order that the individuals be informed
- Deem that the decision not to inform the individuals is unfounded and employ its sanctions and powers
- If there is insufficient data for the individual to contact the data subject, and they subsequently make a data access request then as part of the response to the SAR the details of the breach must be provided.

- **How do I close out the Personal Data Breach?**

3.1 All Personal Data Breaches, whether they have been reported to the Data Protection Commission or not, must be recorded on the RCPI PDB Log. This is in part because the regulator may request to see information about our management of breaches under the principle of accountability in demonstrating compliance with Article 34 of the GDPR. Moreover, as part of the on-going risk assessment in the organisation, it helps us to identify and address the types of risks to which RCPI is exposed.

3.2 In completing the log you must include, the details of the breach, the cause, the personal data affected, the consequences of the breach, remedial action and the justification for decisions made (particularly where the breach was not notified or why there was a delay in notification).

3.3 Update the relevant DPIA and data processing logs to reflect the occurrence/resolution of the incident

- **Useful Links**

Recommendations for a Methodology for the Assessment of the Severity of a Personal Data Breach

https://www.enisa.europa.eu/publications/dbn-severity

Personal Data Breach Section of the Data Protection Commission website

https://www.dataprotection.ie/docs/GDPR-Overview/m/1718.htm

Appendix 1 – WP29 Examples of Personal Data Breaches and Reporting Requirements

Example	Notify the supervisory	Notify the data subject?	Notes/recommendations
i. A controller stored a backup of an archive of personal data encrypted on a USB key. The key is stolen during a break-in.	No	No	As long as the data are encrypted with a state of the art algorithm, backups of the data exist the unique key is not compromised, and the data can be restored in good time, this may not be a reportable breach. However if it is later
ii. A controller maintains an online service. As a result of a cyber attack on that service, personal data of individuals are exfiltrated. The controller has customers in a single	Yes, report to the supervisory authority if there are likely consequences to individuals	Yes, report to individuals depending on the nature of the personal data affected and if the severity of the likely consequences to individuals is high.	
iii. A brief power outage lasting several minutes at a controller's call centre meaning customers are unable to call the controller and access their records.	No	No	This is not a notifiable breach, but still a recordable incident under Article 33(5). Appropriate records should be maintained by the controller.
iv. A controller suffers a ransomware attack which results in all data being encrypted. No back-ups are available and the data cannot be restored. On investigation, it becomes clear that the ransomware's only functionality was to encrypt the data, and that there was no other malware present in the system.	Yes, report to the supervisory authority, if there are likely consequences to individuals as this is a loss of availability.	Yes, report to individuals, depending on the nature of the personal data affected and the possible effect of the lack of availability of the data, as well as other likely consequences.	If there was a backup available and data could be restored in good time, this would not need to be reported to the supervisory authority or to individuals as there would have been no permanent loss of availability or confidentiality. However, if the supervisory authority became aware of the incident by other means, it may consider an investigation to assess compliance with the broader security
v. An individual phones a bank's call centre to report a data breach. The individual has received a monthly statement for someone else. The controller undertakes a short investigation (i.e. completed within 24 hours) and establishes with a reasonable confidence that a personal data breach has occurred and whether it has a systemic flaw that may mean other individuals are or might	Yes	Only the individuals affected are notified if there is high risk and it is clear that others were not affecte	If, after further investigation, it is identified that more individuals are affected, an update to the supervisory authority must be made and the controller takes the additional step of notifying other individuals if there is high risk to them.

vi. A controller operates an online marketplace and has customers in multiple Member States. The marketplace suffers a cyber-attack and usernames, passwords and purchase history are published online by the attacker.	Yes, report to lead supervisory authority if involves cross-border processing.	Yes, as could lead to high risk.	The controller should take action, e.g. by forcing password resets of the affected accounts, as well as other steps to mitigate the risk. The controller should also consider any other notification obligations, e.g. under the NIS
vii. A website hosting company acting as a data processor identifies an error in the code which controls user authorisation. The effect of the flaw means that any user can access the account details of any other user.	As the processor, the website hosting company must notify its affected clients (the controllers) without undue delay. Assuming that the website hosting company has conducted its own investigation the affected controllers should be reasonably confident as to whether each has suffered a breach and therefore is likely to be considered as having "become aware" once they have been notified by the hosting company (the	If there is likely no high risk to the individuals they do not need to be notified.	The website hosting company (processor) must consider any other notification obligations (e.g. under the NIS Directive as a digital service provider). If there is no evidence of this vulnerability being exploited with any of its controllers a notifiable breach may not have occurred but it is likely to be recordable or be a matter of non-compliance under Article 32.
viii. Medical records in a hospital are unavailable for the period of 30 hours due to a cyber-attack.	Yes, the hospital is obliged to notify as high-risk to patient's well-being and privacy may occur.	Yes, report to the affected individuals.	
ix. Personal data of a large number of students are mistakenly sent to the wrong mailing list with 1000+ recipients.	Yes, report to supervisory authority.	Yes, report to individuals depending on the scope and type of personal data involved and the severity of possible	
x. A direct marketing e-mail is sent to recipients in the "to:" or "cc:" fields, thereby enabling each recipient to see the email address of other recipients.	Yes, notifying the supervisory authority may be obligatory if a large number of individuals are affected, if sensitive data are revealed (e.g. a mailing list of a psychotherapist) or if other factors present high risks (e.g. the mail contains the	Yes, report to individuals depending on the scope and type of personal data involved and the severity of possible consequences.	Notification may not be necessary if no sensitive data is revealed and if only a minor number of email addresses are revealed.