

GENERAL NOTICE NO. 3/2024

THE ESWATINI DATA PROTECTION AUTHORITY (EDPA) - FINAL DECISION ON THE REGISTRATION OF DATA CONTROLLERS AND DATA PROCESSORS

In March 2022 the Data Protection Act was passed to provide for the collection, processing, disclosure, and protection of personal information. The Act designates the Eswatini Communications Commission as the Eswatini Data Protection Authority (EDPA) charged with the mandate to administer and foster compliance to the Act. Section 5 of the Act enjoins the Commission to maintain a register of all Data controllers and Data processors. Pursuant to this provision, the EDPA shall establish a data protection register and register organisations, businesses, institutions, government Ministries, NGOs, public bodies, religious institutions, and any other entities who in their ordinary business are collecting or processing personal information. By registering, entities are fulfilling the Notification Requirement under Section 46 (2) (a-f) and it's a process by which the Data Controllers and Data Processors inform the Commission of the following:

- I. Who they are;
- II. The type(s) of personal data it holds;
- III. The nature of processing of personal information they engage in;
- IV. The purpose of the processing;
- V. A description of the categories of data subjects ;
- VI. Who they share the personal information with;
- VII. Whether or not they transfer personal information outside Eswatini;
- VIII. How they ensure the protection of the personal information they collect or process; and
- IX. Who their contact person for data protection issues is (Data Protection Officer).

In terms of Section 46(8) of the Act, “A data controller shall process personal information only upon notification to the Commission”.

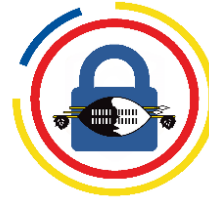
Following the public consultation process on the matter, the EDPA hereby issues a final Decision on the registration of data controllers and data processors. In reaching the final Decision, the EDPA has considered comments received during the consultation period. The Decision shall come into effect on 1 March 2024.

The decision is available on the Commission's website www.esccom.org.sz and www.edpa.org.sz.

Chief Executive
Eswatini Communications Commission



**ESWATINI
COMMUNICATIONS
COMMISSION**



**ESWATINI
DATA PROTECTION
AUTHORITY**

**ESWATINI DATA PROTECTION AUTHORITY (EDPA) - FINAL
DECISION ON THE REGISTRATION OF DATA
CONTROLLERS AND DATA PROCESSORS, 2024**

Introduction

The Data Protection Act was passed in March 2022 to provide for the collection, processing, disclosure, and protection of personal information. The Act designates the Eswatini Communications Commission as the Eswatini Data Protection Authority (EDPA) charged with the mandate to administer and foster compliance with the Act.

Section 5 of the Act enjoins the Commission to maintain a register of all data Controllers and data processors. Pursuant to this provision, the Commission shall establish a data protection register and register all organisations, businesses, institutions, Government Ministries, NGOs, public bodies, religious institutions, and any other entities that in their ordinary business are collecting or processing personal information. By registering, entities are fulfilling the Notification Requirement under Section 46 (2) (a-f), this is a process by which the Data Controllers and Data Processors inform the Commission of the following:

- I. Who they are.
- II. The type(s) of personal data it holds.
- III. The nature of the processing of personal information they engage in.
- IV. The purpose of the processing.
- V. A description of the categories of data subjects.
- VI. Who do they share personal information with.
- VII. Whether or not they transfer personal information outside Eswatini.
- VIII. How they ensure the protection of the personal information they collect or process; and
- IX. Who their contact person is for data protection issues (Data Protection Officer).

In terms of Section 46(8) of the Act, **“A data Controller shall process personal information only upon notification to the Commission”**.

Power to issue Decisions.

- I. This Decision is made in accordance with Section 5(1)(y) of the Data Protection Act 2022 which empowers the Commission to **“make such decisions and authorizations as may be necessary in carrying out the functions of the Commission”**.

Citation and Commencement

2. (1) This Decision may be cited as the Eswatini Data Protection Authority Decision on Registration of Data Controllers and Data Processors, 2024.
- (2) This Decision shall come into effect on 01 March 2024.

Scope and Purpose of the Decision

3. (1) The Act provides a statutory obligation for all Entities that process personal data to register with the Commission. The Act further places an obligation on the Commission to maintain a register of Entities registered as either Data Controllers or Data Processors.
- (2) This Decision is premised on:
 - I. The Data Protection Act, 2022
 - II. International best practice.

Interpretation

4. In this Decision, unless the context otherwise requires -
 - “**Act**” means the Data Protection Act, No 5. of 2022.
 - “**Annual Turnover**” refers to the total income made by an Entity over a year.
 - “**Commission**” means the Eswatini Communications Commission, established by the Eswatini Communications Commission Act No. 10 of 2013.
 - “**Data Controller**” means a public or private body which or any other person designated by law, who alone or together with others, determines the purpose of and means for processing personal information, regardless of whether or not such data is processed by that party or by a data processor on its behalf, where the purpose and means of processing are determined by law;
 - “**Data Processor**” refers to a natural or legal person, or public body which processes personal information for and on behalf of a data Controller and under the instructions of a Data Controller, and excludes persons who are authorised to process data under the direct authority of a Data Controller;
 - “**Eswatini Data Protection Authority**” means the Eswatini Communications Commission

“Data subject” means a person who is the subject of the processing of personal information and who is identified or identifiable;

“Entity” or **“Entities”** means a Data Controller and/or Data Processor.

“Personal data or information” means information about an identifiable individual that is recorded in any form, including without restricting the generality of the foregoing -

- (a) information relating to the race, national or ethnic origin, religion, age, or marital status of the individual;
- (b) information relating to the education or the medical, criminal, or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any unique identifying number, symbol, or other assigned to the individual;
- (d) the address, fingerprints, or blood type of the individual;
- (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
- (f) correspondence sent to a data Controller by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; and
- (g) the views or opinions of any other person about the individual.

“Processing” means an operation or activity or any set of operations, whether or not by automatic means relating to –

- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use;
- (b) dissemination by means of transmission, distribution, or making available in any other form; or
- (c) merging, linking, as well as blocking, degradation, erasure, or destruction, of information;

“Register of Data Controllers and Data Processors” means the list of registered Entities maintained and published by the EDPA in terms of Section 5(1)(k) read together with Section 46(7).

“Sensitive Personal Data” means –

- (a) genetic data, data related to children, data related to offences, criminal sentences or security measures, biometric data as well as, if it is processed for what it reveals, personal information revealing racial or ethnic origin, political opinions, or affiliations, religious or philosophical beliefs, affiliation, trade-union membership, gender, and data concerning health or sex life; or
- (b) any personal information otherwise considered by the laws of Eswatini as presenting a major risk to the rights and interests of the data subject, in particular unlawful or arbitrary discrimination.

Types of Entities

- 5. (1) The Act defines two types of Entities that process personal data, namely: Data Controllers and Data Processors. The Act confers similar obligations upon the Data Controller and Data Processor, with only slight variations such as in instances of notification of data breaches.
- (2) An Entity can register as both a Data Controller and a Data Processor with regard to any Processing operation. Where an Entity is both a Data Controller and Data Processor, it shall register only as a Data Controller and will be required to pay only registration fees as a Data Controller.

Data Controllers

- 6. (1) The Act defines a Data Controller as a public or private body which or any other person designated by law, who alone or together with others, determines the purpose of and means for processing personal information, regardless of whether or not such data is processed by that party or by a data processor on its behalf, where the purpose and means of processing are determined by law.
- (2) Data Controllers must comply and demonstrate compliance with all the data protection principles and meet all obligations under the Act and all regulatory frameworks that may be in place from time to time. Data Controllers are also responsible for the compliance of Data Processors contracted to process Personal Data on their behalf.
- (3) Data Controllers established or resident in Eswatini and Data Controllers outside Eswatini that process the Personal Data of individuals located in Eswatini must register

with the Commission.

Checklist: Are you a Data Controller?

- You decide to collect or process the Personal Data.
- You decide what the purpose or outcome of the Processing is to be.
- You decide what Personal Data should be collected.
- You decide which individuals to collect Personal Data about.
- You obtain a commercial gain or other benefit from the Processing, except for any payment for services from another Controller.
- You are Processing the Personal Data as a result of a contract between you and the Data Subject.
- The Data Subjects are your employees.
- You make decisions about the individuals concerned as part of or as a result of the Processing.
- You exercise professional judgement in the Processing of the Personal Data.
- You have a direct relationship with the Data Subjects.
- You have complete autonomy as to how the Personal Data is processed.
- You have appointed the processors to process the Personal Data on your behalf.

Data Processors

7. (1) The Act defines a Data Processor as a natural or legal person, or public body which processes personal information **for and on behalf of a data Controller and under the instructions of a Data Controller**, and excludes persons who are authorized to process data under the direct authority of a Data Controller;
- (2) There must be a contractual relationship between the Data Processor and the Data Controller that clearly defines the relationship.
- (3) The Data Processor has no decision-making power over the Personal Data that they are Processing.

Checklist: Are you a Data Processor?

- You have a contract to process Personal Data on behalf of a Data Controller.
- You are following instructions from the Data Controller regarding the Processing of Personal Data.
- You do not decide to collect Personal Data from Data Subjects.
- You do not decide what categories of Personal Data should be collected from Data Subjects.
- You do not decide the lawful basis for the processing of the personal data.
- You do not decide what purpose or purposes the personal data will be used for.
- You do not decide whether to disclose the personal data or to whom.
- You do not decide how long to retain the personal data.
- You may make some decisions on how data is processed but implement these decisions under a contract with the Data Controller.

Mandatory Registration

8. (1) No Entity shall act as a Data Controller or Data Processor unless registered with the EDPA.
(2) All Data Controllers and Data Processors shall register unless exempted by the Commission.
(3) A registration certificate issued by the Commission under the Act shall be valid for one (1) year and shall be renewable annually upon payment of annual renewal fees. On the lapse of the one (1) year period, an intention to renew the certificate will be issued by each Entity for the EDPA's consideration.

Threshold for Registration

9. (1) Where a Data Controller or Data Processor processes the personal information of more than ten (10) data subjects, registration shall be mandatory.
(2) Where a Data Controller or Data Processor processes sensitive personal information of more

than Five (5) data subjects, registration shall be mandatory.

(3) Registration of Entities in the following sectors is mandatory and the Commission reserves the right to update the sectors from time to time.

Entities Processing Personal Data in the following sectors **shall register**.

- Political canvassing, or trade unions
- Crime prevention (including operation of public CCTV systems)
- Processing, handling, and keeping of criminal records.
- Credit Bureaus
- Travel agencies
- Advertising, marketing, and public relations for others
- Pensions administration
- Provision of childcare
- Businesses that process genetic data
- Gambling
- Education (schools and institutions of higher learning)
- Health administration and provision of patient care
- Hospitality and hotel industry
- Private investigation
- Real estate / Property management (including the selling of property)
- Credit reference agencies
- Provision of financial services and advice
- Provision of Insurance services
- Businesses and employers
- Businesses that offer higher purchase
- Social security
- Telecommunications industry
- Businesses that wholly or mainly in collect debts
- Debt administration
- Vehicle hire services.
- Internet Service Providers
- Collection of tax
- Mobile money services
- Utilities companies
- State owned enterprises
- Government Ministries and departments
- NGOs
- Religious institutions
- Pharmacies
- Provision of Aviation services
- Accounting and Audit firms
- Professional bodies
- Funeral Parlors

Registration Fees

10. (1) The fees prescribed in this Decision are based on a number of considerations including:

- a) Annual Turnover for private and state-owned entities
- b) Whether your Entity is a public Entity or a Government Ministry
- c) Whether your Entity is a non-profit making Entity or religious institution.

Registration and Annual Renewal Fees schedule

11. (1) Once-off Registration Fee shall be payable by each Entity per the category (A) – (K)

(2) Save for Entities under category A, the Annual Renewal Fee shall be payable by each Entity.

Category	Annual Turnover		Fees	
	Exceeds	Does not Exceed	Registration Fee	Annual Renewal Fee
Category A	E0	E500,000	E500	-
Category B	E500,001	E1,000,000	E3,000	E5,000
Category C	E1,000,001	E25,000,000		E6,000
Category D	E25,000,001	E50,000,000		E10,000
Category E	E50,000,001	E75,000,000		E15,000
Category F	E75,000,001	E100,000,000		E20,000
Category G	E100,000,001	No Limit		E30,000
Category H - Government Ministries (offering government	Not Applicable			E3,000

services including government hospitals and clinics, Government schools)			
Category I - Private Schools		E1,000	E1,000
Category J - Religious Institutions		E500	E500
Category K - Non-Governmental Organisations (NGOs)		E1,000	E1,000

Government Ministries

12. Government Ministries shall register as Data Controllers and pay registration and annual renewal fees in accordance with the categories stated in II above on behalf of their respective departments that process personal information.

State-owned Enterprises

13. All Public Enterprises who in their line of business process personal data shall be required to register as a Data Controller or a Data Processor and pay Registration Fees and Annual Renewal fees in accordance with the categories stated in II above.

Schools

14. (1) Schools process personal information and some fall within sensitive data as defined by the Act. The Ministry for Education shall be registered as a data Controller for Government schools and pay the registration fees payable by Government Ministries.

(2) Private schools shall pay Registration Fees and Annual Renewal fees in accordance with the categories stated in II above.

Institutions of Higher education

15. Institutions of Higher education fall within the ambit of the Act and shall be registered as Data Processors or Data Controllers and pay Registration Fees and Annual Renewal fees in accordance

with the categories stated in II above.

Change in registered particulars / details.

16. Where there is a change in any of the particulars, the Data Controller or Data Processor must, within 14 days of the date of the change, notify the EDPA in writing or electronically of the nature of the change through dataprotection@esccom.org.sz

Registration Certificate

17. (1) The EDPA shall issue a registration certificate to a Data Controller or a Data Processor who meets the requirements for registration within fourteen days (14) days from the date of receipt of proof of payment.
- (2) The registration certificate may be provided in a digital format or a physical copy and all Data Controllers or Data Processor shall be required to display the certificate in their premises.
- (3) The registration certificate will be valid for one (1) year, renewable annually unless revoked or varied by the Commission.
- (4) A data Controller or Data Processor shall apply for renewal of the certificate 3 months before the expiry date.
- (5) An annual renewal fee shall be payable within one (1) month of the issue of the renewal certificate.
- (6) A Data Controller or Data Processor who fails to make an application for renewal and/or fails to pay an annual renewal fee shall cease to process personal information.

Cancellation or Variation of Registration Certificate

18. (1) The Commission may vary the certificate of registration where a data Controller or data processor applies for the variation or where the Commission deems the variation necessary.
- (2) The Commission may cancel the registration certificate before its date of expiry where the registration certificate holder:
- a) applies for the cancellation.
 - b) has ceased to process personal information.
 - c) has submitted false or misleading information.
 - d) fails to make an application for renewal within the specified period.
 - e) fails to pay for the annual renewal fee as stipulated.

- f) fails to comply with requirements of the Act or terms and conditions specified in the certificate.

Offences

19. (1) A Data Controller or a Data Processor who: -

- a) processes personal data without registering in accordance with the Act and this decision;
- b) provides false or misleading information for the purpose of registration;
- c) fails to renew a certificate of registration and continues to process Personal Data after the expiry of the certificate.

commits an Offence and shall be dealt with in accordance with the enforcement measures provided for under the Act.

Review of Decision

20. The EDPA may review the Decision from time to time.

ANNEX I - Practical guide on registration

HOW TO REGISTER AND OTHER CONSIDERATIONS (separate online registration forms available on Data Protection

Website registration: <https://www.edpa.org.sz>)

STEP 1: IDENTIFY IF YOU ARE A DATA CONTROLLER OR DATA PROCESSER (OR BOTH)

If you are both a Data Controller and a Data Processor, you will be required to register only as a Data Controller

STEP 2: PROVIDE BASIC INFORMATION

- Provide details of your Entity in the registration form
- Provide contact details of the appointed data protection Office. This could be a Data Protection Officer that acts for many Entities, including a group of companies; or a Data Protection Officer that acts only for your Entity.
- If you have not appointed a Data Protection Officer, you can provide a contact person of an individual the Commission can liaise with.

STEP 3: IDENTIFY THE CLASSES AND CATEGORIES PERSONAL DATA PROCESSED

- For 'description of Personal Data,' you should provide only the kinds/ types of Personal Data you process. For example, if an organization collects names and identification numbers of clients, you should write only the **classes of information** processed, which are "names" and "ID numbers." **Do not write the actual names and telephone numbers of all your clients.**
- For the 'category of Data Subjects,' you should list the categories of individuals which relate to the list of data that you have stated. For example, employees, customers, patients, shareholders, directors, suppliers, students, and participants are categories of individuals.
- For the 'purpose of Processing,' you should state the reasons for the Processing. For example, payroll, invoicing, patient care, knowing your client, due diligence, etc.

STEP 4: LIST THE SENSITIVE PERSONAL DATA PROCESSED

- Please tick the box applicable or not applicable.
- If applicable, state the purposes for which you are Processing the relevant sensitive Personal Data.
- If not applicable, please proceed to the next step.

STEP 5: TRANSFER OF PERSONAL DATA OUTSIDE ESWATINI

- If you transfer Personal Data outside Eswatini, list all the countries where your Entity transfers or will

transfer Personal Data. (Also fill in the Transfer Data Form)

- If not applicable, please proceed to the next step.

STEP 6: RISKS AND SAFEGUARDS FOR THE PROTECTION OF PERSONAL DATA

- You should list the risk(s) to Personal Data, for example, unauthorized access, unlawful disclosure, and theft amongst others.
- You should also describe the safeguards and security measures in place to protect Personal Data. For example, physical access control, fine-grained access control, visitors' logbooks, privacy notices, information security policy (firewall, antivirus amongst others), and email policies amongst others.

STEP 7: PAYMENT OF REGISTRATION FEE

- Upon completion of the registration process an invoice will be issued for payment of the registration fees.
- Payment shall be made by:
 - i. EFT

STEP 8: REGISTRATION CERTIFICATE

- The Commission shall issue a registration certificate to an applicant for registration as a Data Controller or a Data Processor who meets the requirements for registration within fourteen days (14) days from the date of receipt of payment.
- The registration certificate will be valid for one (1) year, renewable annually unless revoked or varied by the Commission.