



Ref. No: 0712-609/2007/2

Subject: Opinion on registration of whistle blowing schemes

Having regard to the fact that authentic explanation of the law can only be provided for by the National Assembly, and not binding opinion by the proposer of the law, the Information Commissioner on the basis of Article 49 (1) (7) of Personal Data Protection Act (Official Gazette of the Republic of Slovenia, No. 94/07-official consolidated text, hereinafter PDPA) and Article 2 of Information Commissioner Act (Official Gazette of the Republic of Slovenia 113/05, hereinafter ICA) herewith provides you with its not binding opinion as regards your question.

Your question was as follows:

Could you please confirm whether a company wishing to implement a whistle blowing scheme in Slovenia is obligated to register it with the Slovenian Data Protection Authority?

Notification of the Supervisory Body as regards data filing systems is set forth in Article 27 of the PDPA. However, taking a closer look at whistle blowing schemes, one could argue, whether a whistle blowing scheme could represent a data filing system, which should then as such be notified to the National Supervisory Body for Personal Data Protection i.e. the Information Commissioner. A whistle blowing scheme would (speaking very broadly) usually include allegations, opinions, suspicions and observations about a specific person or group of persons that presumably have been involved in unlawful activities. These may include, but are not limited to: accounting and auditing violations, threats to the safety of another employee, moral harassment, sexual harassment, discrimination, insider trading, conflict of interests, serious environmental breaches or threats to public health, disclosure of manufacturing secret, serious risks to the company's information system security, etc.

Whether these allegations are facts or not is to be established only through a thorough investigation and cannot be judged upon in advance. As such, these allegations could hardly be treated as personal data, since they represent personal opinion of the whistle blower. Furthermore, the intent of Register of Filing Systems that is managed and maintained by the Information Commissioner, as set in Article 28 of the PDPA, is to rehearse the right of the individual to access his or her own data in a way that anyone can consult the register and find out which data about him or her are processed by a certain data controller. The Information Commissioner is of the opinion that allegations that violations of laws and regulations have occurred do not constitute facts about the individual - until they have been rightfully investigated - and thus do not represent personal data. As such they need not be registered with the Information Commissioner.

However, once the allegations have been thoroughly investigated, the facts that arise from these investigations can constitute personal data, but it is not necessary that they be processed as a separate filing system, but rather as a part of the existing company's personnel files, which should already be registered with the Information Commissioner (unless the company has less than 50 employees, as stipulated in Article 7 (4) of the PDPA).

On the other hand, should the company autonomously choose to have a specific (separated) filing system on investigated cases of whistle blowing, containing hard and investigated facts about identified or identifiable individual(s), this filing system than clearly needs to be registered with the Information Commissioner.

Kindest regards,

Information Commissioner
Nataša Pirc Musar

