



Enabling global identity
Protecting digital trust

Swiss Data Protection Act

Appendix 11

Applicable Provisions of the Swiss Federal Act on Data Protection (FADP)

Note: The following is an excerpt of the Swiss Federal Act on Data Protection of 25 September 2020 ("FADP", Status as of 1 September 2023)

Chapter 1 Purpose, Scope of Application and Federal Supervisory Authority

Art. 1 *Purpose*

This Act has the purpose of protecting the personality and fundamental rights of natural persons whose personal data is processed.

Art. 2 *Personal and material scope of application*

¹ This Act applies to the processing of personal data of natural persons by:

- a. private persons;
- b. federal bodies.

² It does not apply to:

- a. personal data being processed by a natural person exclusively for personal use;
- b. personal data being processed by the Federal Assembly and parliamentary committees as part of their deliberations;
- c. personal data being processed by institutional beneficiaries under Article 2 paragraph 1 of the Host State Act of 22 June 2007¹ who enjoy immunity from jurisdiction in Switzerland.

³ The applicable procedural law regulates the processing of personal data and the data subject's rights in court proceedings and in proceedings governed by federal procedural regulations. This Act applies to first instance administrative proceedings.

⁴ The public registers for private legal transactions, and in particular the access to these registers and the data subject's rights, shall be regulated by the specific provisions of the applicable federal law. If the specific provisions do not contain any rules, this Act applies.

Art. 3 *Territorial scope of application*

¹ This Act applies to circumstances that have an effect in Switzerland, even if they were initiated abroad.

² For rights under private law, the Federal Act of 18 December 1987² on Private International Law applies. In addition, the provisions on the territorial scope of application of the Criminal Code³ are reserved.

Art. 4 *Federal Data Protection and Information Commissioner*

[note: not relevant in the context of GLEIF-LOU]

¹ SR 192.12
² SR 291
³ SR 311.0

Chapter 2

General Provisions

Section 1 Definitions and Principles

Art. 5 Definitions

In this Act:

- a. *personal data* means any information relating to an identified or identifiable natural person;
- b. *data subject* means a natural person whose personal data is processed;
- c. *sensitive personal data* means:
 1. data relating to religious, philosophical, political or trade union-related views or activities,
 2. data relating to health, the private sphere or affiliation to a race or ethnicity,
 3. genetic data,
 4. biometric data that uniquely identifies a natural person,
 5. data relating to administrative and criminal proceedings or sanctions,
 6. data relating to social assistance measures;
- d. *processing* means any handling of personal data, irrespective of the means and procedures used, in particular the collection, storage, keeping, use, modification, disclosure, archiving, deletion or destruction of data;
- e. *disclosure* means transmitting personal data or making such data accessible;
- f. *profiling* means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- g. *high-risk profiling* means profiling that poses a high risk to the data subject's personality or fundamental rights by matching data that allow an assessment to be made of essential aspects of the personality of a natural person;
- h. *breach of data security* means a breach of security that leads to the accidental or unlawful loss, deletion, destruction or modification or unauthorised disclosure or access to personal data;
- i. *federal body* means an authority or service of the Confederation or a person entrusted to carry out public tasks on behalf of the Confederation;
- j. *controller* means a private person who or federal body which, alone or jointly with others, determines the purpose and the means of processing personal data;
- k. *processor* means a private person or federal body that processes personal data on behalf of the controller.

Art. 6 Principles

¹ Personal data must be processed lawfully.

² The processing must be carried out in good faith and be proportionate.

³ Personal data may only be collected for a specific purpose that the data subject can recognise; personal data may only be further processed in a manner that is compatible with this purpose.

⁴ They shall be destroyed or anonymised as soon as they are no longer required for the purpose of processing.

⁵ Any person who processes personal data must satisfy themselves that the data are accurate. They must take all appropriate measures to correct, delete or destroy data that are incorrect or incomplete insofar as the purpose for which they are collected or processed is concerned. The appropriateness of the measures depends in particular on the form and the extent of the processing and on the risk that the processing poses to the data subject's personality or fundamental rights.

⁶ If the consent of the data subject is required, such consent is only valid if given voluntarily for one or more specific instances of processing based on appropriate information.

⁷ The consent must be explicitly given for:

- a. processing sensitive personal data;
- b. high-risk profiling by a private person; or
- c. profiling by a federal body.

Art. 7 Data protection by design and data protection by default

¹ The controller is obliged to arrange the data processing in technical and organisational terms so that the data protection regulations, and in particular the principles under Article 6, are respected. It shall take account of this from the planning stage.

² The technical and organisational measures must in particular be appropriate with regard to the state of the art, the nature and the extent of the data processing and the risk that the processing poses to the data subject's personality or fundamental rights.

³ The controller is obliged to ensure by means of suitable default settings that the processing of personal data is limited to the minimum required for the purpose intended, unless the data subject specifies otherwise.

Art. 8 *Data security*

¹ The controller and the processor shall guarantee a level of data security appropriate to the risk by taking suitable technical and organisational measures.

² The measures must make it possible to avoid breaches of data security.

³ The Federal Council shall issue provisions on the minimum requirements for data security.

Art. 9 *Processing by processors*

¹ The processing of personal data may be assigned by contract or by the legislation to a processor if:

- a. the data is processed only in the manner in which the controller itself is permitted to do it; and
- b. no statutory or contractual duty of confidentiality prohibits assignment.

² The controller must satisfy itself in particular that the processor is able to guarantee data security.

³ The processor may only assign processing to a third party with prior approval from the controller.

⁴ It may claim the same grounds for justification as the controller.

Art. 10 *Data protection officer*

[note: not relevant in the context of GLEIF-LOU]

Art. 11 *Code of conduct*

[note: not relevant in the context of GLEIF-LOU]

Art. 12 *Record of processing activities*

¹ The controller and the processor shall each maintain a record of their processing activities.

² The controller's record shall as a minimum contain:

- a. the identity of the controller;
- b. the purpose of processing;
- c. a description of the categories of data subjects and the categories of processed personal data;
- d. the categories of recipients;
- e. if possible, the retention period for the personal data or the criteria for determining this period;
- f. if possible, a general description of the measures taken to guarantee data security under Article 8;
- g. if the data are disclosed abroad, details of the State concerned and the guarantees under Article 16 paragraph 2.

³ The processor's record shall contain information on identity of the processor and of the controller, the categories of processing carried out on behalf of the controller, and the information mentioned in paragraph 2 letters f and g.

⁴ The federal bodies shall notify the FDPIC of their records of processing activities.

⁵ The Federal Council shall provide exceptions for legal entities that have fewer than 250 employees and whose data processing poses a negligible risk of harm to the personality of the data subjects.

Art. 13 *Certification*

¹ The manufacturers of data processing systems or programs and controllers and processors may have their systems, products and services evaluated by recognised independent certification bodies.

² [note: not relevant in the context of GLEIF-LOU]

Section 2

Data Processing by Private Controllers with Registered Office or Domicile Abroad

Art. 14 *Representative*

¹ [note: not relevant in the context of GLEIF-LOU]

Art. 15 *Duties of the representative*

¹ [note: not relevant in the context of GLEIF-LOU]

Section 3 Cross-Border Disclosure of Personal Data

Art. 16 *Principles*

¹ Personal data may be disclosed abroad if the Federal Council has decided that the legislation of the State concerned or the international body guarantees an adequate level of protection.

² In the absence of a decision by the Federal Council under paragraph 1, personal data may be disclosed abroad only if an adequate level of data protection is guaranteed by:

- a. a treaty under international law;
- b. data protection clauses in an agreement between the controller or the processor and its contractual partner, notice of which has been given to the FDPIC beforehand;
- c. specific guarantees drawn up by the competent federal body, notice of which has been given to the FDPIC beforehand;
- d. standard data protection clauses that the FDPIC has approved, issued or recognised beforehand; or
- e. binding corporate rules that have been approved in advance by the FDPIC or by the authority responsible for data protection in a State that guarantees an adequate level of protection.

³ The Federal Council may provide for other suitable guarantees in line with paragraph 2.

Art. 17 *Exceptions*

¹ In derogation from Article 16 paragraphs 1 and 2, personal data may be disclosed abroad in the following cases:

- a. The data subject has explicitly consented to disclosure.
- b. Disclosure is directly connected with the conclusion or performance of a contract:
 1. between the controller and the data subject; or
 2. between the controller and its contractual partner in the interests of the data subject.
- c. Disclosure is necessary in order to:
 1. safeguard an overriding public interest; or
 2. establish, exercise or enforce legal rights before a court or another competent foreign authority.
- d. Disclosure is necessary to protect the life or the physical integrity of the data subject or a third party, and it is not possible to obtain the consent of the data subject within a reasonable time.
- e. The data subject has made the data generally accessible and has not explicitly prohibited processing.
- f. The data originate from a statutory register that is public or accessible to persons with a legitimate interest, provided the statutory requirements for access are met in the case concerned.

² The controller or the processor shall inform the FDPIC on request about the disclosure of personal data under paragraph 1 letters b number 2, c and d.

Art. 18 *Publication of personal data in electronic form*

If personal data are made generally accessible by means of automated information and communications services in order to provide information to the general public, this is not deemed to be disclosure abroad, even if the data are accessible from abroad.

Chapter 3 Duties of the Controller and of the Processor

Art. 19 *Duty to provide information when collecting personal data*

¹ The controller shall inform the data subject in an appropriate manner when collecting personal data; this duty to provide information also applies if the data is not collected from the data subject.

² It shall provide the data subject on collecting the data with the information required for the data subject to exercise their rights under this Act and to guarantee transparent data processing; it shall provide the following information as a minimum:

- a. the controller's identity and contact details;

- b. the purpose of processing;
- c. if applicable, the recipients or the categories of recipients to which personal data is disclosed.

³ If the data is not collected from the data subject, the controller shall also inform the data subject of the categories of processed personal data.

⁴ If the personal data are disclosed abroad, the controller shall also inform the data subject of the State or the international body to which such data are disclosed and if applicable of the guarantees under Article 16 paragraph 2 or the application of an exception under Article 17.

⁵ If the data is not collected from the data subject, the controller shall also inform the data subject of the information specified in paragraphs 2–4 at the latest one month after receiving the data. If the controller discloses the personal data before the expiry of this deadline, it shall inform the data subject at the time of disclosure at the latest.

Art. 20 *Exceptions from the duty to provide information and restrictions*

¹ The duty to provide information under Article 19 ceases to apply if one of the following requirements is satisfied:

- a. The data subject already has the information concerned.
- b. The processing is required by law.
- c. The controller is a private person who is required by law to preserve confidentiality.
- d. The requirements of Article 27 are satisfied.

² If the personal data is not collected from the data subject, the duty to provide information also ceases to apply if any one of the following requirements is satisfied:

- a. It is not possible to provide the information.
- b. Providing the information requires disproportionate effort.

³ The controller may restrict, delay or dispense with the provision of the information in the following cases:

- a. It is required to do so because of overriding third party interests.
- b. Providing the information defeats the purpose of the processing.
- c. The controller is a private person and the following requirements are satisfied:
 - 1. The controller is required to do so because of its own overriding interests.
 - 2. The controller does not intend to disclose the personal data to third parties.
- d. The controller is a federal body and any one of the following requirements is satisfied:
 - 1. The measure is required to satisfy overriding public interests, in particular to protect Switzerland's internal or external security.
 - 2. The communication of the information may compromise an enquiry, an investigation or administrative or judicial proceedings.

⁴ Legal entities that belong to the same group of companies are not third parties within the meaning of paragraph 3 letter c number 2.

Art. 21 *Duty to provide information in the case of an automated individual decision*

¹ The controller shall inform the data subject about any decision that is based exclusively on automated processing and that has a legal consequence for or a considerable adverse effect on the data subject (automated individual decision).

² It shall on request allow the data subject to express their point of view. The data subject may request that the automated individual decision be reviewed by a natural person.

³ Paragraphs 1 and 2 do not apply if:

- a. the automated individual decision is directly connected with the conclusion or the processing of a contract between the controller and the data subject and the data subject's request is granted; or
- b. the data subject has explicitly consented to the decision being automated.

⁴ If the automated individual decision is issued by a federal body, it must designate the decision accordingly. Paragraph 2 does not apply if, in accordance with Article 30 paragraph 2 of the Administrative Procedure Act of 20 December 1968⁴ (APA) or another federal act, the data subject is not entitled to a hearing before the decision is taken.

Art. 22 *Data protection impact assessment*

¹ If processing is likely to result in a high risk to the data subject's personality or fundamental rights, the controller shall carry out a data protection impact assessment beforehand. If several similar processing procedures are planned, a joint assessment may be carried out.

² The existence of a high risk, in particular when using new technologies, depends on the nature, extent, circumstances and purpose of the processing. A high risk arises in particular:

⁴ SR 172.021

- a. in the case of the large-scale processing of sensitive personal data;
- b. if public areas are systematically monitored on a large scale.

³ The data protection impact assessment shall include a description of the planned processing, an evaluation of the risks to the data subject's personality or fundamental rights and a description of the measures to protect personality and fundamental rights.

⁴ Private controllers are exempt from having to carry out a data protection impact assessment if they are required by law to process the data.

⁵ A private controller may dispense with carrying out a data protection impact assessment if it uses a system, product or service that is certified under Article 13 for the intended use, or if it complies with a code of conduct under Article 11 that satisfies the following requirements:

- a. The code of conduct is based on a data protection impact assessment.
- b. It provides for measures to protect the personality and the data subject's fundamental rights.
- c. It has been submitted to the FDPIC.

Art. 23 *Consultation of the FDPIC*

¹ [note: not relevant in the context of GLEIF-LOU]

Art. 24 *Notifications of data security breaches*

¹ [note: not relevant in the context of GLEIF-LOU]

Chapter 4

Rights of the Data Subject

Art. 25 *Right to information*

¹ Any person may request information from the controller on whether personal data relating to them is being processed.

² The data subject shall receive the information required to be able to exercise their rights under this Act and to guarantee transparent data processing. In every case, they are entitled to the following information:

- a. the identity and the contact details of the controller;
- b. the processed personal data as such;
- c. the purpose of processing;
- d. the retention period for the personal data or, if this is not possible, the criteria for determining this period;
- e. the available information about the source of the personal data, if it has not been collected from the data subject;
- f. if applicable, whether an automated individual decision has been taken and the logic behind the decision;
- g. if applicable, the recipients or the categories of recipients to which personal data is disclosed, as well as the information specified in Article 19 paragraph 4.

³ The data subject may consent to having personal data relating to their health communicated by a health profession of their choice.

⁴ If the controller arranges for personal data to be processed by a processor, it remains under a duty to provide information.

⁵ No one may waive their right to information in advance.

⁶ The controller must provide information free of charge. The Federal Council may provide for exceptions, in particular if the effort required is disproportionate.

⁷ The information shall in general be provided within 30 days.

Art. 26 *Limitations on the right to information*

¹ The controller may refuse to provide information, or restrict or delay the provision of information if:

- a. a formal law so provides, in particular in order to preserve professional secrecy;
- b. this is required to safeguard overriding third-party interests; or
- c. the request for information is obviously unjustified, in particular if it does not serve the purpose of data protection or is clearly frivolous.

² Furthermore, it is possible to refuse, restrict or delay the provision of information in the following cases:

- a. The controller is a private person and the following requirements are satisfied:
 - 1. The controller's own overriding interests require the measure.
 - 2. The controller does not intend to disclose the personal data to third parties.
- b. The controller is a federal body, and one of the following requirements is satisfied:
 - 1. The measure is required to satisfy overriding public interests, in particular Switzerland's internal or external security.
 - 2. The communication of the information may compromise an enquiry, an investigation or administrative or judicial proceedings.

³ Legal entities that belong to the same group of companies are not third parties within the meaning of paragraph 2 letter a number 2.

⁴ The controller must indicate why it is refusing, restricting or delaying the provision of the information.

Art. 27 *Limitation on the right to information for the media*

¹ [note: not relevant in the context of GLEIF-LOU]

Art. 28 *Right to data portability*

¹ Any person may request the controller to deliver the personal data that they have disclosed to it in a conventional electronic format if:

- a. the controller is carrying out the automated processing of the data; and
- b. the data are being processed with the consent of the data subject or in direct connection with the conclusion or the performance of a contract between the controller and the data subject.

² The data subject may also request the controller to transfer their personal data to another controller if the requirements in paragraph 1 are met and no disproportionate effort is required.

³ The controller must deliver or transfer the personal data free of charge. The Federal Council may provide for exceptions, in particular if the effort is disproportionate.

Art. 29 *Restrictions on the right to data portability*

¹ The controller may refuse, restrict or delay the delivery or transfer of personal data for the reasons set out in Article 26 paragraphs 1 and 2.

² The controller must give reasons why it has decided to refuse, restrict or delay the delivery or transfer.

Chapter 5

Special Provisions on Data Processing by Private Persons

Art. 30 *Breaches of personality rights*

¹ Any person who processes personal data must not unlawfully breach the data subjects' personality rights.

² A breach of personality rights arises in particular if:

- a. personal data are processed contrary to the principles of Articles 6 and 8;
- b. personal data are processed contrary to the express wishes of the data subject;
- c. sensitive personal data are disclosed to third parties.

³ In general no breach of personality rights arises if the data subject makes the personal data generally accessible and has not explicitly prohibited any processing.

Art. 31 *Grounds for justification*

¹ A breach of personality rights is unlawful unless it is justified by the consent of the data subject, by an overriding private or public interest, or by the law.

² The controller may have an overriding interest in the following cases in particular:

- a. The controller processes personal data relating to a contracting party in direct connection with the conclusion or the performance of a contract.
- b. The controller is or intends to be in commercial competition with another person and for this purpose processes personal data that are not disclosed to third parties; legal entities that belong to the same group of companies as the controller are not regarded as third parties for the purposes of this provision.

- c. The controller processes personal data to verify the creditworthiness of the data subject, provided the following requirements are satisfied:
 1. The matter involves neither sensitive personal data nor high-risk profiling.
 2. The data are only disclosed to third parties if the third parties require the data for the conclusion or the performance of a contract with the data subject.
 3. The data are no more than ten years old.
 4. The data subject has attained the age of majority.
- d. The controller processes the personal data professionally and exclusively for publication in the editorial section of a periodically published medium or the controller uses the data, if they are not published, as an aid to their own personal work.
- e. The controller processes the personal data for purposes not related to specific persons, in particular for research, planning or statistics, provided the following requirements are satisfied:
 1. The controller anonymises the data as soon as the purpose of processing permits; if anonymity is impossible or if it requires disproportionate effort, the controller shall take appropriate measures to prevent the identification of the data subject.
 2. If the matter involves sensitive personal data, the controller shall disclose such data to third parties in such a manner that the data subject is not identifiable; if this is not possible, it must be guaranteed that the third parties only process the data for purposes unrelated to the data subject's person.
 3. The results are published in such a manner that data subjects are not identifiable.
- f. The controller collects personal data relating to a public figure that relate to that person's public activities.

Art. 32 *Legal rights*

¹ The data subject may request that incorrect personal data be corrected unless:

- a. a statutory provision prohibits the correction;
- b. the personal data are processed for archiving purposes that are in the public interest.

² Actions to protect the personality are governed by the Articles 28, 28a and 28g–28l of the Civil Code⁵. The applicant may in particular request that:

- a. a specific data processing activity be prohibited;
- b. a specific disclosure of personal data to third parties be prohibited;
- c. personal data be deleted or destroyed.

³ If neither the accuracy nor the inaccuracy of the relevant personal data can be established, the applicant may request that the data be marked as being disputed.

⁴ The applicant may also request that any correction, deletion or destruction, prohibition of processing or disclosure to third parties, marking as disputed or judgment be communicated to third parties or be published.

Chapter 6

Special Provisions on Data Processing by Federal Bodies

[note: not relevant in the context of GLEIF-LOU]

Chapter 7

Federal Data Protection and Information Commissioner

[note: not relevant in the context of GLEIF-LOU]

⁵ SR 210

Chapter 8 Criminal Provisions

[note: not relevant in the context of GLEIF-LOU]

Chapter 9 Conclusion of International Treaties

Art. 67

The Federal Council may conclude international treaties relating to:

- a. international cooperation between data protection authorities;
- b. the mutual acknowledgement of an adequate level of protection for the disclosure of personal data abroad.

Chapter 10 Final Provisions

[note: not relevant in the context of GLEIF-LOU]

