

INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY COMMISSIONERS

2011/GA/RES/004
Agenda Item III: (a)

Resolution on **Data Protection and Major Natural Disasters**

General Assembly

**33rd International Conference of Data Protection
and Privacy Commissioners**
November 1, 2011
Mexico City



**RESOLUTION
ON DATA PROTECTION AND MAJOR NATURAL DISASTERS**

Mexico City

Proposer: Privacy Commissioner, New Zealand

Co-sponsors:

- Data Protection Commission, Austria
- Privacy Commissioner, Australia
- Privacy Commissioner of Canada
- Data Protection Commissioner, Ireland
- Federal Data Protection Commissioner, Switzerland
- Privacy Commissioner, Victoria, Australia

The 33rd International Conference of Data Protection and Privacy Commissioners:

Noting that:

- (a) Major natural disasters:
 - a. devastate the lives of individuals and the people that care for them;
 - b. destroy property including information and communications infrastructure;
 - c. disrupt government services, businesses, communities and economies;
 - d. create extreme anxiety for families of people missing in the disaster zone;
- (b) Public responses to a major natural disaster may warrant:
 - a. special efforts to protect the vital interests of victims;
 - b. extraordinary processing of personal information to compensate for the loss of usual documentation, disrupted access to databases, communication difficulties and other challenges;
 - c. use of personal information held by organisations beyond their usual business purposes;
- (c) Data protection and privacy laws:

- a. limit the permissible purposes for disclosure of personal information held by organisations; but
 - b. allow the disclosure of information in certain exceptional circumstances, although such exceptions are often narrowly drawn;
- (d) The interconnected nature of the modern global economy means that:
- a. major natural disasters will have implications beyond any one country's borders;
 - b. individuals from many countries may be in any disaster zone and be amongst the responders;
 - c. personal information from within and beyond a disaster zone will be affected or be needed as part of an emergency response:

Therefore resolves to encourage:

1. **Data protection authorities and privacy enforcement authorities:**
 - a. to review whether their domestic data protection and privacy laws are suitably framed and flexible to best serve the vital interests of individuals in the event of a major natural disaster and, if warranted, to recommend reform;
 - b. to periodically check their own preparations and consider whether they need take further administrative steps to be able best to serve their communities in advance of, or following, a major natural disaster;
 - c. to provide advance guidance to their communities about the operation of data privacy law in natural disasters including, in particular, aspects that will assist in ensuring effective public responses;
2. **Governments** to give consideration to the data protection and personal information handling issues in their civil defence planning, including:
 - a. to ensure that public bodies are aware of provisions of data privacy laws that facilitate prompt and secure sharing of personal information essential to disaster response;
 - b. to have effective information protection and recovery plans for public services that will be vital in the first responses to a disaster;
 - c. to meet the needs of families to learn the fate of missing relatives;
 - d. to ensure that any special measures that may limit the normal operation of data protection law are appropriately justified, proportional to the emergency, contain appropriate safeguards and endure only for so long as warranted by the disaster;
 - e. to continue to respect the privacy and dignity of disaster victims, survivors and their families;
3. **International organisations** to consider the issues arising from major natural disasters in their reviews of the international instruments on privacy and data protection;

4. **Businesses** to be diligent in their planning for major natural disasters, noting:
 - a. the importance of resilient businesses to their employees, customers and communities;
 - b. the desire to quickly return to normal operation which may depend upon access to business records preserved through off-site back up or remote storage.
-

EXPLANATORY NOTE

Background

This resolution focuses upon the effects of major natural disasters on the handling of personal information and the protection of privacy. It is concerned with the operation of data protection laws in times of extreme natural emergency and the ways in which laws can help or hinder effective disaster responses.

Many countries face sudden natural disasters involving extreme weather events or movements of the earth that lead to immediate loss of life and longer term issues such as homelessness, unemployment and a depressed economy. Disaster can strike in minutes without warning but the disruption may continue to be felt for years. The effects of major natural disasters stretch well beyond a locality. The interconnected nature of today's world is such some effects stretch beyond national borders.

Most attention is naturally focused on the life and welfare of individuals and upon the physical effect on homes and buildings, businesses and infrastructure. However, information is intimately connected with all aspects of human activity and the resolution highlights the position of personal information in the context of a major natural disaster. Barriers to the flow of information, or the unavailability of information, have the potential to hamper disaster responses or longer term welfare or economic recovery. The resolution highlights the need for anyone concerned with the protection of personal information, and the wellbeing of individuals, to consider the issues in advance and make the best preparations.

The resolution is directed to authorities, governments, international organisations and businesses.

Data Protection Authorities and Privacy Enforcement Authorities

The resolution calls upon authorities to review whether the laws under which they operate are equal to the conditions that may be created by a major natural disaster. For example, as a result of reviews following the Bali bombing and Indian Ocean Tsunami, [Australia](#) made special provision its privacy law for declarations of emergency to ensure sufficient discretion exists to release information for disaster related purposes. After a parliamentary review of its private sector privacy law that considered the issue of natural disasters, [Canada](#) plans to amend the law to provide more discretion to make disclosures to identify injured or deceased individuals and to inform next of kin.

The resolution also encourages authorities to review their own preparations. Part of this may involve giving guidance to organisations subject to the law. An authority that has proactively done this, the Privacy Commissioner for the Australian State of Victoria, has, for example, released an information sheet on [emergencies and privacy](#) to assist government agencies.

Study of other countries experiences may point to particular information issues to watch out for. One example is the

Governments

Most governments have civil defence programmes that prepare their countries for disasters and review and apply the lessons of major events. The resolution calls upon governments to give special consideration to the personal information issues that might arise from disasters. This is critical in highly networked societies.

One example is the US Federal Emergency Management Administration (FEMA) which has integrated [privacy impact assessment](#) into its programmes.

The focus of the resolution is upon major disasters rather than smaller, more localised, events. Unlike smaller events, major natural disasters can create a long term disruption to aspects of normal information handling arrangements as well as requiring extraordinary recovery responses. Governments may sometimes conclude that special measures are needed in such emergencies. In such cases a proportionate approach should be taken that will foster the public good while preserving good standards of data protection. If special measures are taken that suspend some aspect of data protection law, or broaden the exemptions for sharing information, care must be taken to ensure that information is safeguarded and only put to the proper purposes in responding to the emergency. For example, public bodies involved in responding to a disaster should have a disposal plan for personal information it has obtained when no longer needed for the response.

Loss of availability of government databases for prolonged periods, or permanent loss of physical records, can create difficulties for normal processes of identity authentication. There may also be new risks of identity fraud that may involve scams on victims or the government. Flexibility in adapting information processes, perhaps involving third party authentication, may be essential to avoid further hardship for victims seeking government entitlements. Good data protection should not be neglected in planning for such possibilities.

Government responses should continue to respect the privacy and dignity of individuals. For example, in later phases of recovery it will often be possible to restore a degree of personal control to individuals as to who will get access to information that government or welfare agencies holds about them.

International organisations

The international privacy instruments issued by the OECD (1980), Council of Europe (1981) and European Union (1995) are currently being reviewed. It is therefore timely to consider the issues arising from major natural disasters. Any guidance that the international organisations can provide on these complex issues will assist governments and authorities working at domestic level.

The work of the International Committee of the Red Cross is acknowledged. The ICRC has long experience responding to natural disasters and has issued guidance on relevant information issues such as those involving families and missing people and in relation to data protection responsibilities in delivering humanitarian assistance.

Businesses

Responsible businesses already include disaster recovery in their risk management planning. The resolution encourages and supports such initiatives given the importance of business continuity to the lives of individuals and communities.