



On Personal Data and their Protection

Unofficial translation

The Law of the Republic of Kazakhstan dated 21 May, 2013 No. 94-V.

Unofficial translation

This Law regulates the public relations in the scope of personal data, as well as determines the purpose, principles and legal bases of activity, related with collection, processing and protection of personal data.

Chapter 1. GENERAL PROVISIONS

Article 1. Basic concepts used in this Law

The following basic concepts shall be used in this Law:

1) biometric data – personal data that characterize physiological and biological features of the subject of personal data, on the basis of which may establish his (her) identity;

2) personal data – details, related to the subject of personal data, specific or defined on their basis, recorded on an electronic, paper and (or) other physical media;

3) blocking of personal data – actions on temporary termination of collection, accumulation, change, supplement, use, distribution, depersonalization and destruction of personal data;

4) accumulation of personal data – actions by inclusion in the database, contained the personal data;

5) collection of personal data – actions, directed to reception of personal data;

6) destruction of personal data – actions, in the result of commission of which is impossible to restore the personal data;

7) depersonalization of personal data – actions, in the result of commission of which determination of belonging of personal data to the subject of personal data is impossible;

8) the base, containing the personal data (hereinafter – base), a set of ordered personal data;

9) the owner of the base containing the personal data (hereinafter – owner), - the state body, individual and (or) legal entity, exercising the right of possession, use and disposition of base, contained the personal data in accordance with the Laws of the Republic of Kazakhstan;

10) operator of base, containing the personal data (hereinafter – operator), - the state body, individual and (or) legal entity, carrying out collection, processing and protection of personal data;

11) protection of personal data – a set of measures, as well as legal, organization and technical, carrying out for the purposes established by this Law;

12) processing of personal data – actions, directed to accumulation, storage, change, supplement, use, distribution, depersonalization, blocking and destruction of personal data;

13) use of personal data – actions with personal data, directed to implementation of purposes of activity of owner, operator and third person;

14) storage of personal data – actions on ensuring of integrity, confidentiality and availability of personal data;

15) distribution of personal data – actions, in the result of commission of which there is a transfer of personal data, as well as through the mass media or provision of access to the personal data by any method;

16) a subject of personal data (hereinafter – subject) – individual, to which the personal data are referred;

17) third person – a person, not being a subject, owner and (or) operator, but related to them (him (her) by consequences or legal relationship on collection, processing and protection of personal data.

Article 2. The purpose of this Law

The purpose of this Law shall be ensuring of protection of rights and freedoms of person and citizen upon collection and processing of his (her) personal data.

Article 3. The actions of this Law

1. The relations, related to collection, processing and protection of personal data shall be regulated by this Law.

2. Features of collection, processing and protection of personal data may be regulated by other Laws and acts of the President of the Republic of Kazakhstan.

3. An operation of this Law shall not be distributed to the relations, arising upon:

1) collection, processing and protection of personal data by the subjects exclusively for the personal and family needs, if upon that the rights of other individuals and (or) legal entities and requirements of the Laws of the Republic of Kazakhstan are not violated;

2) generation, storage and use of the documents of the National archive fund of the Republic of Kazakhstan and other archive documents, containing the personal data, in accordance with the legislation of the Republic of Kazakhstan on the National archive fund and archives;

3) collection, processing and protection of personal data, referred to the state secrets in accordance with the Laws of the Republic of Kazakhstan “On the state secrets”;

4) collection, processing and protection of personal data in the course of intelligence, counterintelligence, operational and search activity, as well as implementation of security measures on safety ensuring of protected persons and objects within the limits established by the Laws of the Republic of Kazakhstan.

Article 4. The legislation of the Republic of Kazakhstan on personal data and their protection

1. The legislation of the Republic of Kazakhstan on personal data and their protection shall be based on the Constitution of the Republic of Kazakhstan and shall consist of this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If by the international treaty, ratified by the Republic of Kazakhstan, made other rules than those that contained in this Law, the rules of the international treaty shall be applied.

Article 5. Principles of collection, processing and protection of personal data

Collection, processing and protection of personal data shall be carried out in accordance with the principles of:

- 1) observation of constitution rights and freedoms of person and citizens;
- 2) legality;
- 3) confidentiality of personal data of limited access;
- 4) equality of the rights of subjects, owners and operators;
- 5) safety ensuring of personality, society and the state.

Chapter 2. COLLECTION AND PROCESSING OF PERSONAL DATA

Article 6. Availability of personal data

The personal data on availability shall be divided into generally available and limited access.

Generally available personal data – the personal data, an access of which is free with consent of the subject or on which the requirements of observance of confidentiality are not distributed in accordance with the legislation of the Republic of Kazakhstan.

Generally available sources of personal data (as well as biographical reference books, phone, address books, generally available electronic information resources, mass media) shall be used for the purposes of information support of population.

Personal data of limited access – the personal data, an access of which is limited by the legislation of the Republic of Kazakhstan.

Article 7. Conditions of collection, processing of personal data

1. Collection, processing of personal data shall be carried out by the owner and (or) operator with consent of the subject or his (her) legal representative, except for the cases provided by Article 9 of this Law.

2. Collection, processing of personal data of deceased (recognized by a court as missing or declared deceased) subject shall be carried out in accordance with the legislation of the Republic of Kazakhstan.

3. Features of collection, processing of personal data in the electronic information resources, contained the personal data shall be established in accordance with the legislation of the Republic of Kazakhstan on information, in recognition of provisions of this Law.

Article 8. Procedure of giving (withdrawal) of consent of subject for collection, processing of personal data

1. The subject or his (her) legal representative shall give (withdraw) the consent for collection, processing of personal data in written form or in the form of electronic document or by other method with application of elements of protective actions, not contradicted to the legislation of the Republic of Kazakhstan.

2. The subject or his (her) legal representative may not withdraw the consent for collection, processing of personal data in the cases, if it is contrary to the Laws of the Republic of Kazakhstan, or in the existence of not executed obligation.

3. The subject shall have the right to consent to the collection, processing of personal data via his/her personal account on the “e-government” web portal and also by means of the mobile phone subscriber’s number registered in the “e-government” web portal by sending a one-time password or a short text message as a response to the notification of the “e-government” web portal.

Footnote. Article 8 as amended by the Law of the Republic of Kazakhstan dated 17.11.2015 № 408-V (shall be enforced from 01.03.2016).

Article 9. Collection, processing of personal data without the consent of subject

Collection, processing of personal data shall be carried out without the consent of subject or his (her) legal representative in the cases of:

- 1) carrying out activity of law-enforcement bodies and courts, execution proceeding;
- 2) carrying out of the state statistical activity;
- 3) use of personal data by the state bodies for the statistical purposes with compulsory condition of their depersonalization;
- 4) implementation of international treaties, ratified by the Republic of Kazakhstan;

5) protection of constitution rights and freedoms of person and citizen, if obtaining the consent of subject or his (her) legal representative is impossible;

6) carrying out of legal professional activity of the journalist and (or) activity of mass media or scientific, literary or other creative activity upon condition of observance of requirements of the legislation of the Republic of Kazakhstan on ensuring of rights and freedoms of persona and citizen;

7) publication of personal data in accordance with the Laws of the Republic of Kazakhstan, as well as personal data of candidates for elective public positions;

8) non-performance of responsibilities of the subject on presentation of personal data in accordance with the Laws of the Republic of Kazakhstan;

9) reception of information from individuals and legal entities by the state body, carrying out regulation, control and supervision of financial market and financial organizations in accordance with the legislation of the Republic of Kazakhstan;

10) in other cases, established by the Laws of the Republic of Kazakhstan.

Article 10. An access to the personal data

1. An access to the personal data shall be determined by the conditions of the consent of subject or his (her) legal representative, provided to the owner and (or) operator for their collection and processing, unless otherwise provided by the legislation of the Republic of Kazakhstan.

An access to the personal data shall be prohibited, if the owner and (or) operator, and (or) third person are refused to accept obligations on ensuring of carrying-out of requirements of this Law or may not provide them.

2. Application (request) of subject or his (her) legal representative respectively of the access to their personal data shall be filed to the owner and (or) operator in written form or in the form of electronic document or by other method with application of the elements of protective actions, not contradicted to the legislation of the Republic of Kazakhstan.

3. Relations between the owner and (or) operator, and (or) third person respectively of the access to their personal data shall be regulated by the legislation of the Republic of Kazakhstan.

4. Third parties may receive personal data contained in the information systems of state bodies through the “e-government” web portal given the consent of the subject provided from his/her personal account on the “e-government” web portal and also by means of the mobile phone subscriber’s number registered in the “e-government” web portal by sending a one-time password or a short text message as a response to the notification of the “e-government” web portal.

Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan dated 17.11.2015 № 408-V (shall be enforced from 01.03.2016).

Article 11. Confidentiality of personal data

1. The owners and (or) operators, as well as third persons, receiving an access shall ensure their confidentiality by observance of requirements to prevent their distribution without the consent of subject or his (her) legal representative or existence of other legal basis.

2. The persons who became known about personal data of limited access shall be obliged to ensure their confidentiality in connection with professional, official necessity, as well as labour relations.

3. Confidentiality of biometric data shall be established by the legislation of the Republic of Kazakhstan.

Article 12. Accumulation and storage of personal data

1. Accumulation of personal data shall be carried out by collection of personal data, necessary and sufficient for performance of tasks, carrying out by the owner and (or) operator , as well as third person.

2. Personal data is stored by the owner and (or) the operator, as well as by a third party, in the database, which is stored in the Republic of Kazakhstan.

The term of storage of personal data shall be determined by the date of achievement of purposes of their collection and processing, unless otherwise provided by the legislation of the Republic of Kazakhstan.

Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 24.11.2015 № 419-V (shall be enforced from 01.01.2016).

Article 13. Change and supplement of personal data

Change and supplement of personal data shall be carried out by the owner and (or) operator on the basis of application (request) of the subject or his (her) legal representative or in other cases provided by the Laws of the Republic of Kazakhstan.

Article 14. Use of personal data

Use of personal data shall be carried out by the owner, operator and third person only for the previously stated purposes of their collection.

Article 15. Distribution of personal data

1. Distribution of personal data shall be allowed, if upon that the rights and freedoms of subject are not violated, as well as the legal interests of other individuals and (or) legal entities are not affected.

2. Distribution of personal data in the cases, fallen beyond the scope of previously stated purposes of their collection shall be carried out with the consent of subject or his (her) legal representative.

Article 16. Trans-border transfer of personal data

1. Trans-border transfer of personal data – a transfer of personal data to the territory of the foreign states.

2. Trans-border transfer of personal data to the territory of the foreign states shall be carried out only in the case of ensuring of protection of personal data by these states in accordance with this Law.

3. Trans-border transfer of personal data to the territory of the foreign states, not ensuring protection of personal data may be carried out in the cases of:

1) existence of the consent of subject or his (her) legal representative to the trans-border transfer of his (her) personal data;

2) provided international treaties, ratified by the Republic of Kazakhstan;

3) provided by the Laws of the Republic of Kazakhstan, if it is necessary for the purposes of protection of constitutional order, protection of public order, rights and freedoms of person and citizen, health and morals of population;

4) protection of constitutional rights and freedoms of person and citizen, if reception of the consent of subject or his (her) legal representative is impossible.

4. Trans-border transfer of personal data to the territory of the foreign states may be prohibited or restricted by the Laws of the Republic of Kazakhstan.

5. Specifics for trans-border transfer of service information about subscribers and (or) users of communication services shall be determined by the Law of the Republic of Kazakhstan "On Communications".

Footnote. Article 16 as amended by the Law of the Republic of Kazakhstan dated 28.12.2017 No. 128-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 17. Depersonalization of personal data

Upon collection and processing of personal data, the owner and (or) operator, as well as third person shall be obliged to depersonalize them for conducting of statistical, sociological, scientific researches.

Article 18. Destruction of personal data

The personal data shall subject to destruction by the owner and (or) operator, as well as third person:

- 1) upon expiration of the term of storage in accordance with paragraph 2 of Article 12 of this Law;
- 2) upon termination of legal relations between the subject, owner and (or) operator, as well as third person;
- 3) upon entering of court decision into legal force;
- 4) in other cases, established by this Law and other regulatory legal acts of the Republic of Kazakhstan.

Article 19. Report on actions with personal data

1. In the existence of condition on notification of subject on transfer of his (her) personal data to the third person, the owner and (or) operator shall notify on that the subject or his (her) legal representative during ten business days, unless otherwise provided by the Laws of the Republic of Kazakhstan.

2. Requirements of paragraph 1 of this Article shall not be distributed in the case of:

- 1) exercise functions, provided by the legislation of the Republic of Kazakhstan by the state bodies, as well as carrying out activity by the private notaries, private judicial enforcement agents and lawyers;
- 2) carrying out collection and processing of personal data in the statistical, sociological or scientific purposes.

Chapter 3. PROTECTION OF PERSONAL DATA

Article 20. Guarantee of protection of personal data

1. The personal data shall subject to protection, which are guaranteed by the state.
2. Collection and processing of personal data shall be carried out only in the cases of ensuring of their protection.

Article 21. Purposes of protection of personal data

Protection of personal data shall be carried out by application a set of measures, as well as legal, organizational and technical, for the purposes of:

- 1) exercise of rights of privacy, personal and family secret;
- 2) ensuring of their integrity and security;
- 3) observance of their confidentiality;
- 4) exercise of right of access to them;
- 5) prevention of illegal collection and processing.

Article 22. Obligations of the owner and (or) operator, as well as third person on protection of personal data

1. The owner and (or) operator, as well as third person shall be obliged to take necessary measures on protection of personal data, ensuring:

- 1) prevention of unauthorized access to the personal data;
- 2) timely detection of facts of unauthorized access to the personal data, if such unauthorized access could not prevent;
- 3) minimization of adverse consequences of unauthorized access to the personal data.

2. Obligations of owner and (or) operator, as well as third person on protection of personal data shall arise from the date of collection of personal data and act up to the date of their destruction or depersonalization.

Article 23. Protection of electronic information resources, containing the personal data

Features of protection of electronic information resources, containing the personal data shall be established in accordance with the legislation of the Republic of Kazakhstan on informatization.

Chapter 4. RIGHTS AND OBLIGATIONS OF THE SUBJECT, OWNER AND (OR) OPERATOR

Article 24. Rights and obligation of the subject

1. The subject shall have a right to:
 - 1) know on existence of the owner and (or) operator, as well as third person of their personal data, as well as receive information, containing:
 - certification of the fact, purpose, resources, methods of collection and processing of personal data;
 - the list of personal data;
 - the terms of processing of personal data, as well as terms of their storage;
 - 2) require the change and supplement of personal data from the owner and (or) operator in the existence of the grounds, approved by the relevant documents;
 - 3) require blocking of personal data from the owner and (or) operator, as well as third person in the case of existence of information on violation of condition of collection, processing of personal data;
 - 4) require destruction of personal data from the owner and (or) operator, as well as third person, collection and processing of which are carried out with violation of the legislation of the Republic of Kazakhstan, as well as in other persons, established by this Law and other regulatory legal acts of the Republic of Kazakhstan;

5) withdraw the consent for collection, processing of personal data, except for the cases, provided by paragraph 2 of Article 8 of this Law;

6) give the consent (withdraw) to the owner and (or) operator for distribution of personal data in the publicly available sources of personal data;

7) protection of his (her) rights and legal interests, as well as compensation of moral and material damage;

8) exercise other rights, provided by this Law and other Laws of the Republic of Kazakhstan.

2. The subject shall be obliged to present his (her) personal data in the cases established by the Laws of the Republic of Kazakhstan.

Article 25. Rights and obligations of the owner and (or) operator

1. The owner and (or) operator shall have a right to carry out collection, processing of personal data in the manner established by this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. The owner and (or) operator shall be obliged to:

1) approve the list of personal data, necessary and sufficient for performance of tasks carried out by them, unless otherwise provided by the Laws of the Republic of Kazakhstan;

2) accept and observe the necessary measures, as well as legal, organizational and technical for protection of personal data in accordance with the legislation of the Republic of Kazakhstan;

3) observe the legislation of the Republic of Kazakhstan on personal data and their protection;

4) accept the measures on destruction of personal data in the case of achievement of purpose of their collection and processing, as well as in other cases, established by this Law and other regulatory legal acts of the Republic of Kazakhstan;

5) give evidence on obtaining the consent of the subject for collection and processing of his (her) personal data in the cases, provided by the legislation of the Republic of Kazakhstan;

6) communicate information, relating to the subject, during three business days from the date of reception of the application of subject or his (her) legal representative, if other terms are not provided by the Laws of the Republic of Kazakhstan;

7) in the case of a refusal to provide information to the subject or his (her) legal representative in the term, not exceeding three business days from the date of reception of application, represent substantiated response, if other terms are not provided by the Laws of the Republic of Kazakhstan;

8) during one business day:

change and (or) supplement the personal data on the basis of relevant documents, approving their reliability, or destroy the personal data upon impossibility of their change and (or) supplement;

block the personal data, relating to the subject, in the case of existence of information on violation of conditions of their collection, processing;

destroy the personal data in the case of detection of fact of their collection, processing with violation of the legislation of the Republic of Kazakhstan, as well as in other cases, established by this Law and other regulatory legal acts of the Republic of Kazakhstan;

withdraw blocking of personal data in the case of disconfirmation of the fact of violation of conditions of collection, processing of personal data.

Chapter 5. THE STATE REGULATION IN THE SCOPE OF PERSONAL DATA AND THEIR PROTECTION

Article 26. The competence of the Government of the Republic of Kazakhstan

The Government of the Republic of Kazakhstan shall:

1) develop the basic directions of the state policy in the scope of personal data and their protection;

2) carry out management of activity of central executive bodies, including in the structure of the Government of the Republic of Kazakhstan, local executive bodies, in the scope of personal data and their protection;

3) approve procedure of determination of the list of personal data by the owner and (or) operator, necessary and sufficient for performance of tasks, carrying out by them;

4) approve procedure of implementation of measures on protection of personal data by the owner and (or) operator, as well as third person;

5) exercise other functions, imposed to it by the Constitution, the Laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

Article 27. The competence of the state bodies

The state bodies within their competence shall:

1) develop and (or) approve the regulatory legal acts in the scope of personal data and their protection;

2) consider applications of individuals and (or) legal entities on issues of personal data and their protection;

3) take measures on bringing of persons, committed violation of the legislation of the Republic of Kazakhstan on personal data and their protection to the responsibility, established by the Laws of the Republic of Kazakhstan;

4) exercise other powers, provided by the Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 28. Supervision of application of this Law

1. The bodies of the Prosecutor's Office exercise supreme supervision over compliance with the law in the field of personal data and their protection.

2. The acts of procuracy supervision, made on the basis and in the manner established by the Law of the Republic of Kazakhstan "On Prosecutor's office", are compulsory for all types of bodies, organizations, civil servants and citizens.

Footnote. Article 28 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

Chapter 6. FINAL AND TRANSITIONAL PROVISIONS

Article 29. Responsibility for violation of the legislation of the Republic of Kazakhstan on personal data and their protection

Violation of the legislation of the Republic of Kazakhstan on personal data and their protection shall entail responsibility in accordance with the Laws of the Republic of Kazakhstan.

Article 30. Procedure of appeal and consideration of disputes

Actions (omission) of subject, owner and (or) operator, as well as third person upon collection, processing and protection of personal data may be appealed in the manner established by the Laws of the Republic of Kazakhstan.

Disputes arising upon collection, processing and protection of personal data shall subject to consideration in the manner established by the Laws of the Republic of Kazakhstan.

Article 31. The order of enforcement of this Law

1. This Law shall be enforced upon expiry of six months after its first official publication.

2. The owners and (or) operators shall be obliged to bring the regulatory legal acts and other documents into compliance with the requirements of this Law during three months from the date of enforcement of this Law.

3. Collection, processing of personal data, carried out according to the legislation of the Republic of Kazakhstan shall be recognized as relevant to the requirements of this Law before enforcement of this Law, if their further processing and protection correspond to the purposes of their collection.

The President
of the Republic of Kazakhstan

N.Nazarbayev

© 2012. «Institute of legislation and legal information of the Republic of Kazakhstan» of the Ministry of Justice of
the Republic of Kazakhstan