

Data Protection Newsletter

Proposed Amendment to the Ministerial Ordinances of the Act on the Protection of Personal Information of Japan: Individual Related Information (Part IV)

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This Part IV covers the details of Individual Related Information. Please refer to Part I to this newsletter for a general introduction of the proposed amendment to the ministerial ordinances of the Act on the Protection of Personal Information (“APPI”)¹, Part II for an overview of the data breach notification in the case of Data Breach Incidents², and Part III for the details of pseudonymously processed information³. *The amendment to the ministerial ordinances of the APPI was finalized and published on March 24, 2021. There are no changes from the proposal.

The 2020 Amendment created a new category of information called “Individual Related Information,” which does not fall under the definition of personal data on the transferor’s side because the transferor is not able to identify the individual but is supposed to become personal data on the transferee’s side because the transferee is able to identify the individual with information which the transferee can easily access. For example, an individual’s IP address, internet browsing history, and cookies might fall within Individual Related Information, if a transferor is not able to identify the individual based on the information but the transferee is able to identify the individual using information which the transferee holds.

¹ https://www.nishimura.com/en/newsletters/data_protection_210303.html

² https://www.nishimura.com/en/newsletters/data_protection_210309.html

³ https://www.nishimura.com/en/newsletters/data_protection_210316.html

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Under the 2020 Amendment, a business operator handling Individual Related Information must not disclose Individual Related Information to a third party without first confirming that the third party has obtained consent from the relevant data subjects in the case where the third party is expected to use the Individual Related Information as personal information, as a general rule. In addition, a business operator handling Individual Related Information must, when having transferred Individual Related Information to a third party, generally keep records regarding the transfer. The purpose of these new regulations is to prevent infringement of the rights and interests of an individual from the use of information that can identify a specific individual by a third party.

In particular, the proposal of the Enforcement Rules provides that:

- the method for the confirmation process to be conducted by a business operator must be an appropriate method such as receiving a declaration from a third party;
- the method of keeping records regarding the confirmation process must be a method of retention using written documents, electromagnetic records or microfilm;
- the matters to be recorded include (i) the fact that the business operator has confirmed that the third party has obtained consent from the relevant data subjects (and, in the case of transfer to a third party located outside of Japan, the fact that the business operator has confirmed that the data subjects has been provided (a) the name of the country in which the third party is located, (b) information relating to the legal system for the protection of personal information in the foreign country obtained by an appropriate and reasonable method, and (c) information relating to specific measures to protect personal information that are being taken or will be taken by the third party), (ii) the date on which the Individual Related Information was transferred, (iii) the name or appellation of the third party and its address (and, in the case where the third party is a legal entity, the name(s) of the representative(s) thereof), and (iv) the categories of transferred Individual Related Information; and
- the record retention period will basically be three years.

Online businesses such as app businesses, targeted advertising businesses, and platforms would have to assess the impact of the “Individual Related Party” on their businesses.



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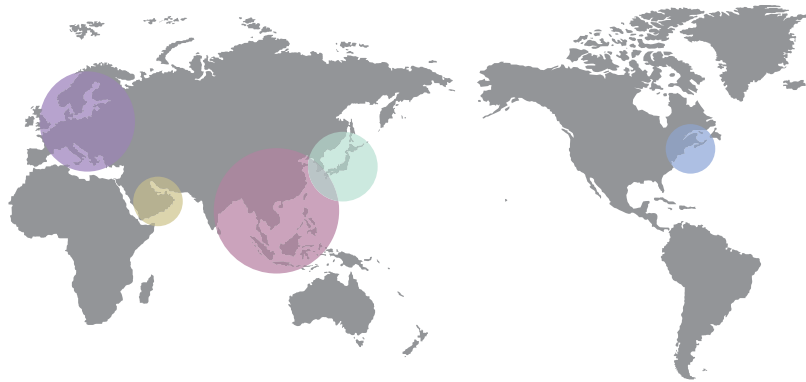
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