

# SWISS LAW CHEAT SHEET

## SWISS FEDERAL ACT ON DATA PROTECTION [GS1] [GS2] [GS3] (DATA PROTECTION ACT, FDP) OF 2020

### DEFINITIONS

#### PROCESSOR

According to Article 5(k) Processor means a private person or federal body that processes personal data on behalf of the controller.

#### PERSONAL DATA

According to Article 5(a) Personal data means any information relating to an identified or identifiable natural person.

#### PROCESSING

According to Article 5(d) Processing means any handling of personal data, irrespective of the means and procedures used, the collection, storage, keeping, use, modification, disclosure, archiving, deletion or destruction of data.

#### CONTROLLER

According to Article 5(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.

#### SENSITIVE PERSONAL DATA

According to Article 5(c) Sensitive personal data means, data relating to religious, philosophical, political or trade union-related views or activities, data relating to health, the private sphere or affiliation to a race or ethnicity, genetic data, biometric data that uniquely identifies a natural person, data relating to administrative and criminal proceedings or sanctions, data relating to social assistance measures.

#### DATA SUBJECT

According to Article 5(b) Data subject means a natural person whose personal data is processed.

### INTERDEPENDENCY WITH EU GDPR

While distinct, the GDPR and the Swiss FDP are interdependent in terms of data protection. They share common principles and facilitate cross-border data transfers, which are critical for businesses operating in both the EU and Switzerland. Their mutual recognition ensures that businesses adhere to both frameworks, encouraging cooperation among data protection authorities. Because these laws are constantly evolving, ongoing adjustments are required to maintain compliance and global data privacy standards, reflecting the dynamic nature of the legal landscape.

### RIGHTS OF DATA SUBJECT

Chapter 4 provides for the Rights of Data Subject. Article 25 to 29 provides the rights and restriction on the rights of Data Subject as per the legislation.

#### RIGHT TO INFORMATION

Individuals have the right to request and receive information from data controllers regarding the processing of their personal data. This includes details about the controller's identity, processed data, purpose, retention period, data source, automated decisions, recipients, and more. Consent options for health data communication are provided, and controllers must offer information free of charge within 30 days, with potential exceptions.

#### RIGHT TO DATA PORTABILITY

They can also ask for data transfer to another controller without disproportionate effort.

#### INFORMATION ON AUTOMATED INDIVIDUAL DECISIONS (ART. 21)

It provides legal text outlines the rights of data subjects concerning automated individual decisions. Individuals have the right to request their personal data from a controller in electronic format if automated processing occurs and is based on consent or a contract.

#### PROTECTION OF PERSONALITY RIGHTS (ART. 32)

It provides for the protection of personality rights, granting data subjects the authority to request actions safeguarding their rights. This includes prohibiting specific data processing activities, restricting disclosure to third parties, and requesting deletion or destruction of personal data.

### PRINCIPLES

#### PURPOSE LIMITATION

Personal data should only be collected for a specific purpose that the data subject can recognize, and any further processing should be compatible with this original purpose.

#### LAWFULNESS

Personal data must be processed lawfully.

#### ACCURACY

Data processors must ensure the accuracy of the data and take appropriate measures to correct, delete, or destroy incorrect or incomplete data, considering the form and extent of processing and the risk it poses to the data subject's rights.

#### DATA RETENTION

Personal data should be destroyed or anonymized when it is no longer required for the purpose of processing.

#### VOLUNTARY AND INFORMED CONSENT

If consent is required, it must be given voluntarily, based on appropriate information, and explicitly for specific instances of processing.

### PENALTIES

- + Individuals providing false or incomplete information, violating duties may face fines up to **250,000 francs**.
- + Fines for intentional false info to FDPIC or non-cooperation in investigations under Article 49.
- + Private individuals may face fines for actions like disclosing data abroad without meeting requirements.
- + Professionals disclosing secret Personal data may face fines up to **250,000 francs**.
- + Non-compliance with FDPIC or appeal court decisions may result in fines.
- + Corporate liability under Federal Act on Administrative Criminal Law; fines up to **50,000 francs**.

