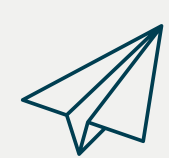


On 8 March, the State Data Protection Inspectorate issued 3 guidelines ([link](#)) which discuss processing of personal data in the context of employment relations. These guidelines provide answers to a number of practical questions that arise in the day-to-day activities of companies. The WALLESS data protection team provides a summary of key questions that the new guidelines address:



#### Can we check candidates' social media accounts?

The guidelines establish that social networks are used by candidates for their own personal purposes, so usually their data on social media accounts cannot be collected and processed for such purpose. Same rules apply to obtaining personal data from other publicly available sources. However, in certain cases (for instance, on the recommendations of competent European organizations operating in a certain field) this could be possible.



#### Can we invite former candidates to participate in new recruitment procedures?

You should delete candidates' personal data when the recruitment procedures are over unless a candidate grants a consent for further processing or legal acts establish additional data retention period. In particular, you may not invite former candidates to participate in new recruitment procedures, because this would constitute data processing for a new purpose - which requires an additional consent of the candidate.



#### Can we process employees' fingerprints?

You may process employees' fingerprints only in exceptional cases – for instance, if you obtain employee's consent, due to important public interest or on the basis of collective agreement in order to fulfill obligations or exercise specific rights in the field of employment and social security. In addition, in most cases, the employer must provide an alternative, less privacy-restricting means of access to the premises.



#### Can we process employees' personal data on the basis of consent?

The supervisory authority once again clarified that consent as a legal ground to process personal data of your employees shall be avoided – due to the nature of employment relations, such consent usually cannot be freely given. However, the guidelines provide examples when this is actually possible - for example, when wishing a happy birthday, capturing employee's image at internal events, informing a family member about an incident at work.



#### Can we open letters addressed to our employees?

If the letter is marked with the tag "deliver in person", it cannot be opened and must be delivered to that particular employee, but if a specific employee is indicated on the letter without such tag, such a letter can be opened if it can reasonably be expected that despite the fact that the letter is addressed to a specific employee, it is meant for the organization itself.



#### Can we require information about employees' criminal record?

A certificate stating that the employee has no criminal record can be requested only if the legal acts establish such legal requirement for the position the employee holds, e.g., the Law on Banks requires to ensure the impeccable reputation of bank managers.



#### Does the data protection officer have to be our employee?

Not necessarily - the data protection officer can be an employee but can also be an external service provider. If the service contract is concluded with a legal entity, a specific person must be delegated for this role.





### Can every employee be appointed as a data protection officer?

No, there are several restrictions. First of all, it is important to take into account the possession of expert knowledge of data protection (understanding of personal data processing operations, knowledge of information technology and data security, etc.). Also, an employee who determines the purposes and means of personal data processing may not be appointed - as a general rule, positions that may cause a conflict of interest may be, for example, CEO, COO, CFO, marketing / PR department manager, HR manager, IT manager or other similar positions.



### Can we access former employees' email inboxes?

Yes, you may access employees' inboxes for some time following their departure, however, you must ensure that the employee is informed about such processing and proper procedures are in place.



### Can we keep personal data of our former employees?

You may process personal data of your former employees for various purposes – for instance, the employer may monitor LinkedIn accounts of its previous employees in order to verify their compliance with the non-compete agreements. However, please note that such processing is subject to other requirements of the GDPR, such as informing employees about it. Also, former employees' personal data may be subject to mandatory retention periods (e.g., 50 years following the termination of employment relations for employment contracts).



### What should we do with former employees' data that was processed on the basis of consent?

It is necessary to assess what specific consent the employee has given. For example, if the consent specifies its validity period as "during the employment relationship", then you should stop such processing on the last day of employment.

**In conclusion, the new guidelines are very welcome for their practical and responsible approach to day-to-day issues faced by many employers. They will certainly bring clarity on how to properly process employees' personal data without harming the legitimate expectations and interests of the companies.**

**If you are interested in more information about the processing of personal data in the context of employment relations, do not hesitate to contact the WALLLESS data protection team:**



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