



Data Protection Frequently Asked Questions (FAQs)



Introduction

In today's digital age, protecting personal data is more important than ever. With so much of our lives online, it is easy to feel overwhelmed by the complexities of data privacy. From businesses to individuals, everyone has questions about how to keep sensitive information safe. In this article, we tackle some of the most common questions people have about data protection. Whether you are a business trying to stay compliant or just someone curious about your rights in the digital world, this guide is here to break things down in a simple and straightforward way.



Frequently Asked Questions (FAQs)

For developers in Nigeria, transaction documents are essential to defining their responsibilities, managing expectations, and safeguarding their financial and legal interests. Below are key clauses and practical considerations for developers, highlighting how these provisions can protect their interests in the Nigerian context:

What laws regulate data protection in Nigeria?

The primary legislation governing data protection is the Nigeria Data Protection (NDPA) which came into force in 2023. Prior to this Act, data protection was governed by the Nigeria Data Protection Regulation (NDPR) 2019. It is important to note that the NDPA did not repeal the NDPR, therefore, both legislation govern data protection in Nigeria.

Who needs to comply with the NDPA?

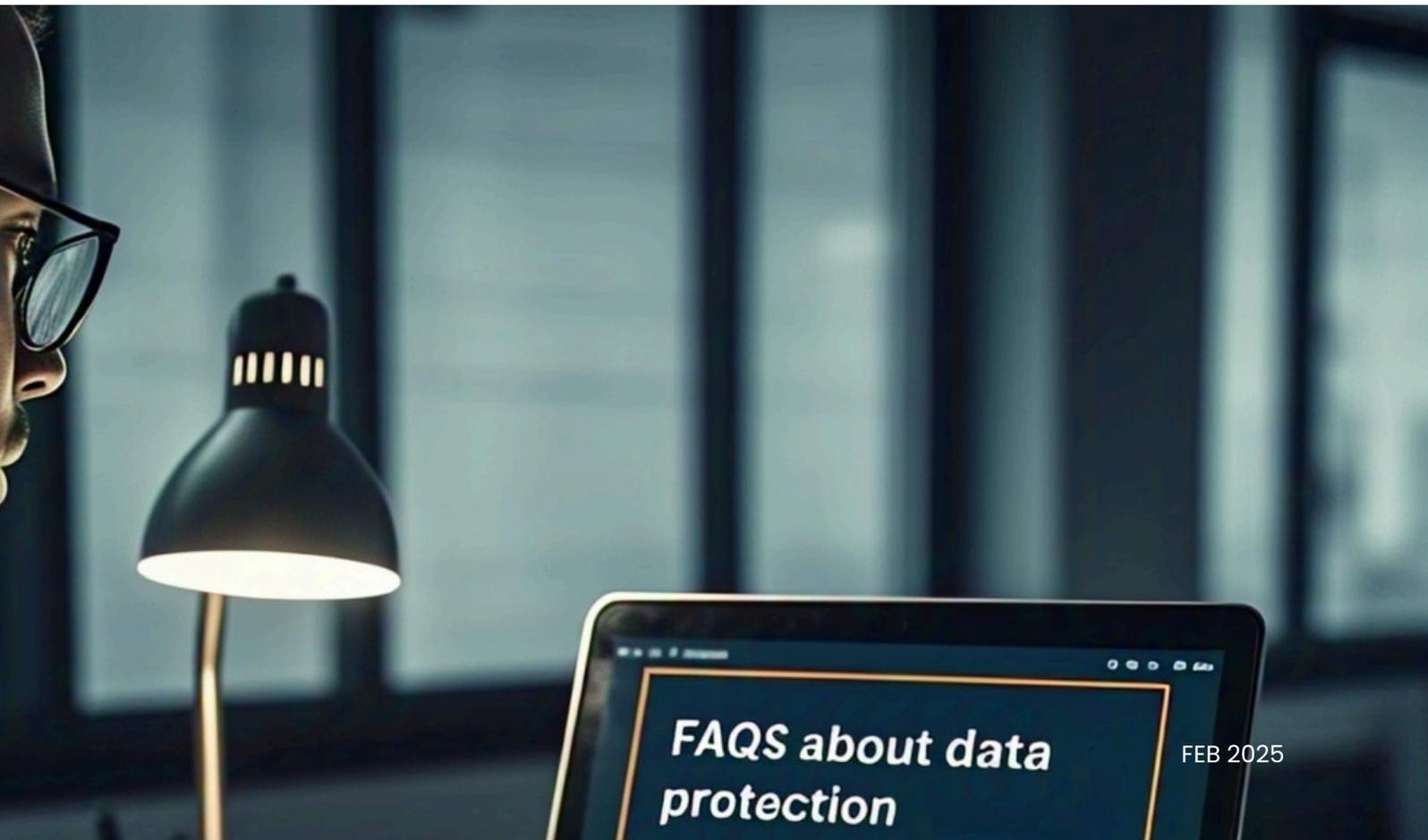
Any entity processing personal data of data subjects resident in Nigeria, whether such entities are based in Nigeria or not.

What is Personal Data?

Personal data means any information relating to an identified or identifiable natural person, also known as a data subject.

Who is a Data Subject?

Data subject refers to any individual person who can be identified, directly or indirectly, via an identifier such as a name, an ID number, location data, or through factors specific to the person's physical, physiological, genetic, mental, economic, cultural or social identity.



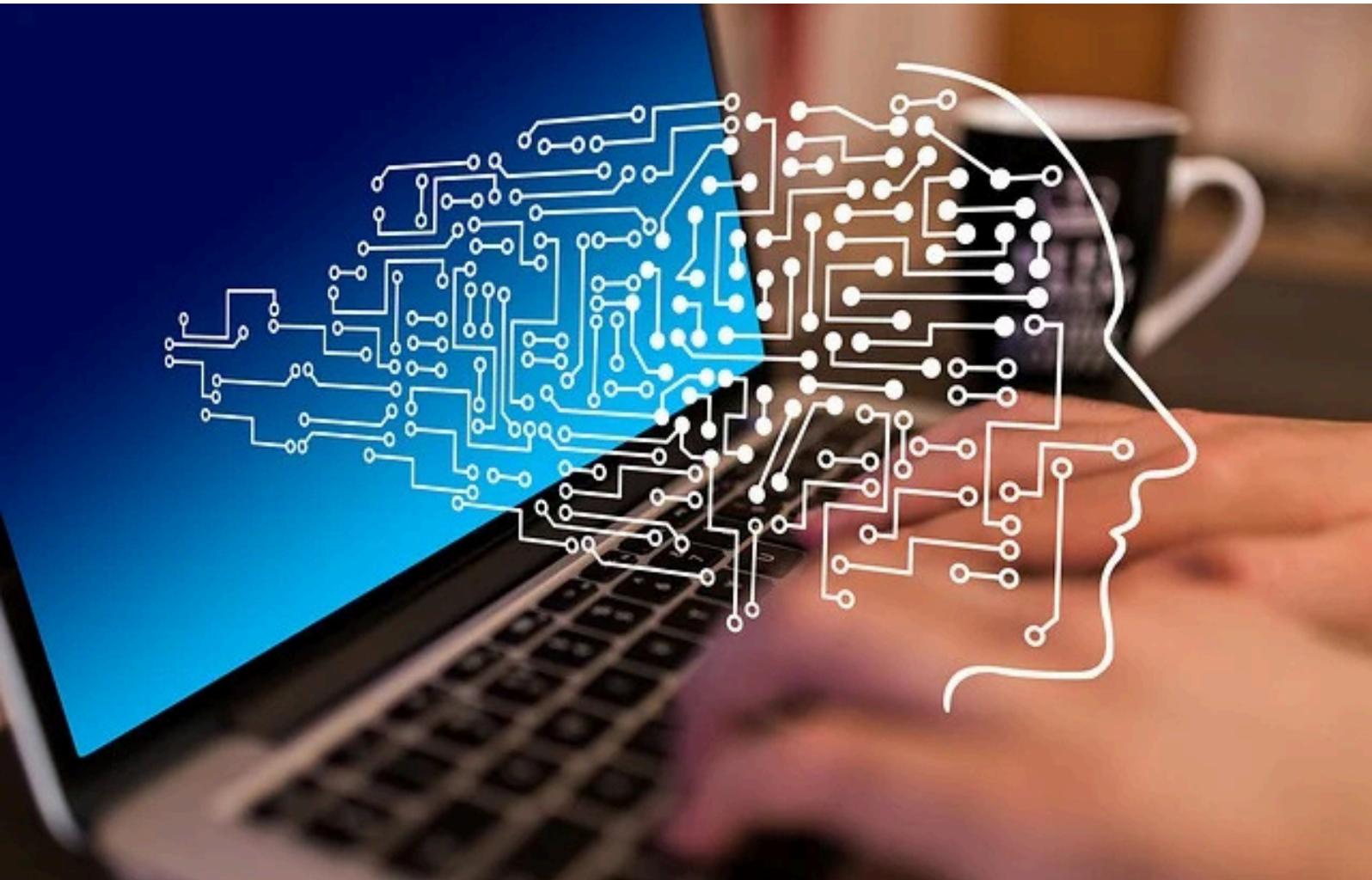
Who are Data Controllers and Data Processors?

A data controller determines the purposes and means of processing personal data. To simplify, a data controller collects the data and determines what it is to be used for. While a data processor is responsible for processing data on behalf of the data controller. Processing is the use of data to achieve a pre-determined objective. Basically, data processors use data to achieve a desired objective set by the data controllers.

What are the lawful bases for processing data?

The NDPA provides six (6) basis for processing data namely:

- Consent
- Performance of a contract
- Vital interest
- Legitimate interest
- Compliance with legal obligation
- Performance of a task in the public interest



What are the rights of data subjects under the NDPA?

Data subjects have the following rights:

- **Right to access:** Data subjects have the right to obtain confirmation from a data controller about whether their personal data is being processed and to request access to that data, including information on the purposes of processing, categories of data processed, and recipients.
- **Right to Rectification:** Data subjects can request the correction of inaccurate or incomplete personal data held about them by a data controller.
- **Right to Erasure (Right to Be Forgotten):** Data subjects may request the deletion of their personal data under specific circumstances, such as when the data is no longer necessary for the purposes it was collected or processed, or if the processing is unlawful.
- **Right to Restrict Processing :** This allows data subjects to limit the way their personal data is processed, especially in situations where the accuracy of the data is contested or the processing is not lawful.
- **Right to Data Portability:** Data subjects can request the transfer of their personal data to another data controller in a structured, commonly used, and machine-readable format.
- **Right to Object:** Individuals have the right to object to the processing of their personal data, particularly in cases where the processing is based on legitimate interests, direct marketing, or for research/statistical purposes.
- **Right to Withdraw Consent:** Data subjects can withdraw consent at any time for processing activities that rely on consent as the legal basis.
- **Right to Information:** Data controllers must provide data subjects with clear, accessible, and transparent information about data processing activities, including the purpose, legal basis, and duration of the processing.
- **Right Not to Be Subject to Automated Decision-Making:** Individuals can contest decisions made solely by automated processes, including profiling, which produce legal effects or significantly affect them.
- **Right to Lodge Complaints:** Data subjects can file complaints with the Nigeria Data Protection Commission (NDPC) if they believe their data protection rights have been violated.
- **Right to Seek Redress and Compensation:** Individuals may pursue legal action and seek compensation for damages resulting from violations of their rights under the NDPA.

What is a Data Protection Impact Assessment (DPIA)?

A DPIA is a process to identify and mitigate risks associated with processing personal data, particularly for high-risk activities that may affect data subjects. High risk activities can be classified as those processes capable of exposing personal identifiable information that could cause harm to data subjects.

How long can I keep personal data?

You can keep personal data only for as long as it is necessary to fulfill the purpose for which it was collected.

Can I transfer personal data outside Nigeria?

Yes, you can transfer data outside Nigeria, but only to countries with adequate data protection laws or when sufficient safeguards are in place, such as Standard Contractual Clauses (SCCs)



What action do I need to take as a data processor/controller for compliance?

As a data controller/processor, you are required to:

- Engage the services of a Data Protection Compliance Organisation ("DPCO") to conduct a detailed audit of your privacy and data protection practices.
- File Compliance Audit Returns (CAR) with the Nigeria Data Protection Commission (NDPC) if you have processed personal data of more than 1000 data subjects within a period of 6 months or more than 2000 data subjects within a period of 12 months.
- Register with the Nigeria Data Protection Commission (NDPC) as a data controller or processor of major importance if you fall under the categories outlined in the NDPC's Guidance Notice for the Registration of Data Controllers and Data Processors of Major Importance.
- Appoint a Data Protection officer (DPO) within 6 months of commencing business in line with the Nigerian Data Protection Regulation 2019.
- Engage the services of a DPCO to conduct capacity building and training for key members of the organisation on compliance with the relevant data protection laws and regulations.
- Engage the services of a DPCO or DPO to prepare the relevant data protection policies.

This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and Hamu Legal or serve as legal advice.

We are available to provide specialist legal advice on the readers' specific circumstances when they arise. For further enquiries, please reach out to our Intellectual Property and Data Privacy team at IP@hamulegal.com or awuese@hamulegal.com.



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