



PRIVACY LAW UPDATE

For the first time ever, the Israeli Law, Information and Technology Authority and Database Registrar imposed an administrative fine on a company for its use of a database in violation of the Israeli Privacy Law. The Registrar clearly intended to send a message by imposing a hefty fine in the amount of NIS 177,000 (about US\$50,000). As this could signal more aggressive enforcement by the Registrar, companies are well advised to review their privacy practices to make sure they comply with the Privacy Law.

If you have any questions regarding the matters in this legal update, please contact the following attorneys or call your regular Meitar contact.

1. Summary of the Facts

Marketing Point and Traiding (yes, it's really spelled that way!) Ltd., a telemarketing company, used information from a database which had been illegally downloaded from the Israeli Population Registry (by a third party) for marketing purposes. Having obtained a person's contact details from the database, Marketing Point contacted individuals on or close to their birthdays to offer "birthday benefits" upon purchase of a product it distributes. The Registrar imposed 59 separate fines of NIS 3,000 each, for:

- violation of the **purpose restrictions**: using information obtained from a database which required to be registered for a purpose different from that for which the database was established by the Population Registry; and
- violation of the **managing or possession restrictions**: managing or possession of an unregistered database.

David Mirchin

TEL. 972 3 610 3199

FAX. 972 3 610 3667

dmirchin@meitar.com

2. Analysis of the Privacy Law

Although the Registrar did not publish an official communication on this case, he is quoted as follows: "Use of an illegal database, even if 'leaked' and posted online, is a violation of the Privacy Law. The imposition of economic penalties on a party which makes an illegal use of information, especially for commercial gain, is an efficient way to protect privacy."

Based on that quote--the only statement in this matter--this IT Update attempts to analyze the violation of the Privacy Law, and what actions users of data and databases in Israel should take to avoid ending up with a same fate as Marketing Point.

It appears, based on the Registrar's brief comments on the case, that Marketing Point violated two provisions of the Privacy Law:

2.1. Purpose restrictions on database use: The Privacy Law provides that data may only be used for the purpose which it was given. This is embodied in the general principle in Section 2(9) of the Privacy Law that *"using, or passing onto another, information on a person's private affairs, otherwise than for the purpose for which it was given"* is an infringement of privacy.

This is reinforced with respect to databases containing personal data. These databases must under certain circumstances be registered, and it is a violation of Section 8(b) of the Privacy Law if a person uses information in a database required to be registered *"except for the purposes for which the database was established"*.

Marketing Point used information from a database to solicit individuals for offers, which was a purpose clearly different from the original purpose of the Population Registry.

2.2. Possession restrictions on unregistered databases: The Privacy Law prohibits possessing or managing a database which is required to be registered, and has not been registered (and for which an application for registration hasn't been filed.) If the personal information in this database was obtained for a different purpose, then the Database Registrar may refuse to register it. In such a case, Marketing Point is possessing and using an impermissible database, which is apparently the situation here.

3. Summary and Recommendations

In light of this enforcement action and the stiff fine imposed by the Database Registrar, we remind

clients of some of their obligations under the Privacy Law:

3.1. Companies owning, possessing or managing a database must register the database in certain specified situations, such as if the database includes sensitive information, or information about more than 10,000 people.

3.2. If personal information is provided by an individual for a particular purpose, companies may not use or transfer that information for a different purpose without such individual's consent.

3.3. Companies may not operate, hold or use a database for direct mail purposes, unless it is registered. The company should indicate that "direct mail approaches and services" are two of the specified purposes for which the database is being registered.

3.4. When making direct mail approach, the approach needs to clearly include:

- a statement that it is a direct mail approach and the registration number of the database used;
- notice that the recipient has the right to be deleted from the database and whom to address for that purpose; and
- the identity and address of the data base and its sources.

If you have any questions, feel free to contact us.

This update is provided by our firm for informational purposes only and is not intended as legal advice.

MEITAR LIQUORNIK GEVA & LESHEM BRANDWEIN | LAW OFFICES | WWW.MEITAR.COM

16 Abba Hillel Silver Rd. Ramat Gan, 52506, Israel,
Tel. + 972 3 6103100 Fax. + 972 3 6103111