



# RIGHTS AND OBLIGATIONS UNDER THE LAW





# 1. Obligations of the Data Controller

---

In Article 3 of the Personal Data Protection Law No.6698, the data controller is defined as “the natural or legal person who determines the purposes and means of processing personal data and is responsible for the establishment and management of the data filing system”.


The data controller may process personal data personally or authorize a third party to perform data processing. Such natural or legal persons, who process personal data on behalf of the data controller upon its authorization, are named as "data processor" pursuant to subparagraph (ğ) of paragraph 1 of Article 3 of the Law No.6698. In the Law No.6698, some obligations regarding the protection of personal data have been introduced for data processors as well as data controllers.

While the data controller has many obligations under the law, some of them are explained in detail below:



## a. Obligation to Inform

---



The legislator grants the persons whose personal data are processed the right to obtain information about by whom, for what purposes and for what legal reasons this data can be processed, to whom and for what purposes that personal data may be transferred, and considers these issues within the scope of the data controller's obligation to inform. Accordingly, the data controller is obliged to provide the following information to the data subject, either personally or through the person authorized, at the time when personal data are obtained within the framework of Article 10 of the LawNo.6698:

- Identity of the controller and of his representative, if any,
- For what purpose personal data will be processed,
- To whom and for what purpose personal data can be transferred,
- Methods and legal basis of collection of personal data,
- Other rights referred to in Article 11.

On the other hand, with the "Communiqué on the Procedures and Principles to be Complied with in Fulfilling the Obligation to Inform" published in the Official Gazette dated 10.03.2018 by Personal Data Protection Authority, a regulation was made on the procedures and principles to be followed by the data

controllers within the scope of the obligation to inform, and these issues will need to be taken into account when fulfilling the obligation to inform by data controllers.

In cases where the data processing activity is dependent on the explicit consent of the data subject or the activity is carried out within the scope of another condition in the Law No.6698, the obligation of the data controller to inform the data subject continues. In other words, the data subject should be informed whenever his/her personal data is processed and the purpose of processing personal data is changed.

If there is an obligation to register with the Data Controllers Registry, the information to be given to the data subject within the framework of the obligation to inform must be consistent with the information disclosed to the Registry. The fulfillment of the obligation to inform does not depend on the request of the data subject. The obligation to inform can be fulfilled with a unilateral declaration. The proof of fulfillment of the obligation to inform belongs to the data controller.




## b. Obligations concerning Data Security

---

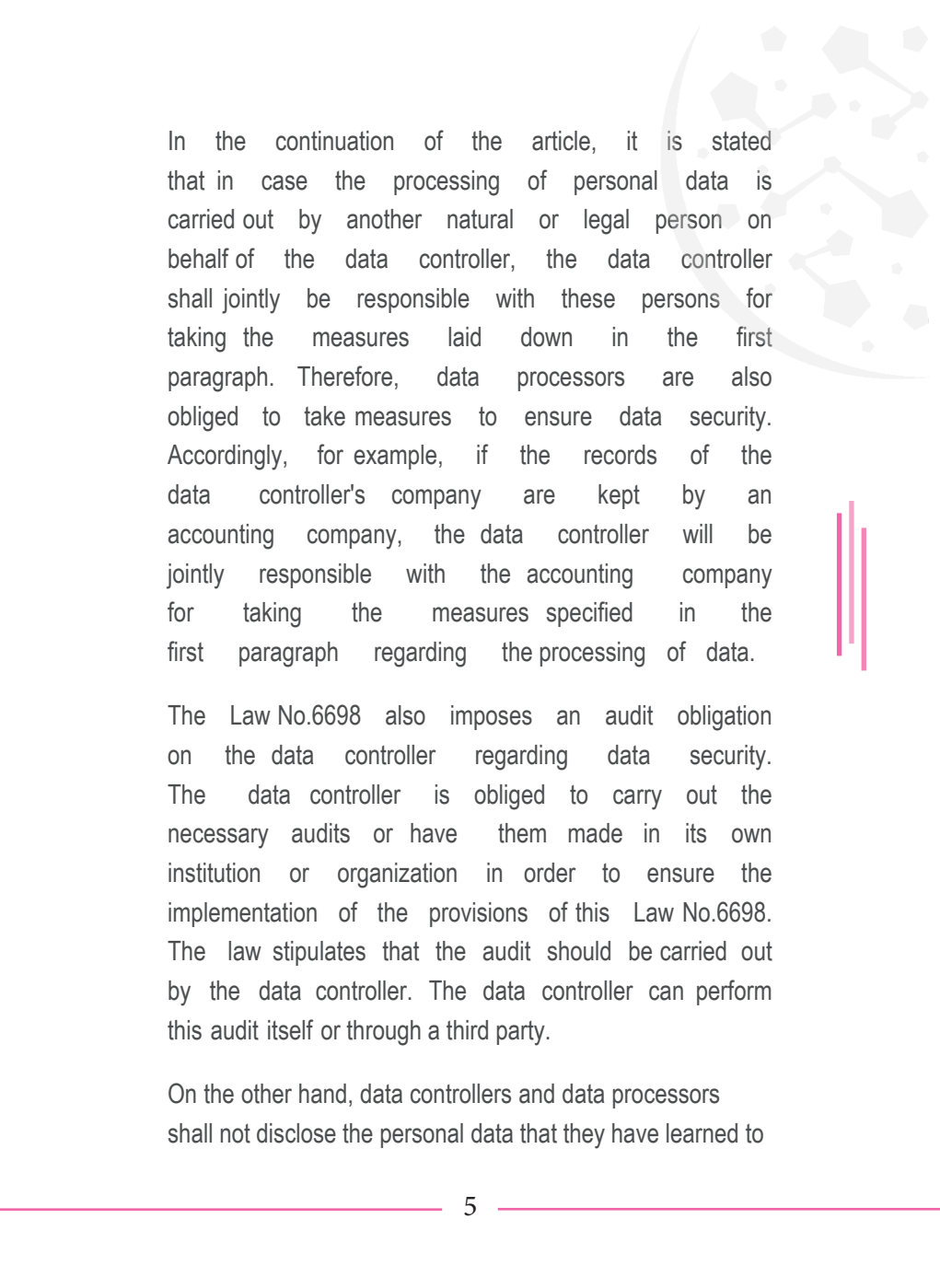
According to Article 12 on data security of the Law No.6698, the data controller is obliged:

- to prevent unlawful processing of personal data,
- to prevent unlawful access to personal data,
- to ensure protection of personal data.



In order to fulfill these obligations, the data controller is obliged to take all necessary technical and organizational measures to provide the appropriate level of security.

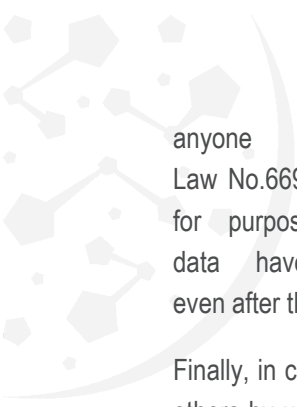
In addition, taking regulatory action in order to determine the obligations regarding data security is among the authority and duty of the Board. However, it may be possible to take additional measures depending on the nature of the personal data processed on a sectoral basis, based on the minimum criteria to be determined by the Board.




In the continuation of the article, it is stated that in case the processing of personal data is carried out by another natural or legal person on behalf of the data controller, the data controller shall jointly be responsible with these persons for taking the measures laid down in the first paragraph. Therefore, data processors are also obliged to take measures to ensure data security. Accordingly, for example, if the records of the data controller's company are kept by an accounting company, the data controller will be jointly responsible with the accounting company for taking the measures specified in the first paragraph regarding the processing of data.

The Law No.6698 also imposes an audit obligation on the data controller regarding data security. The data controller is obliged to carry out the necessary audits or have them made in its own institution or organization in order to ensure the implementation of the provisions of this Law No.6698. The law stipulates that the audit should be carried out by the data controller. The data controller can perform this audit itself or through a third party.

On the other hand, data controllers and data processors shall not disclose the personal data that they have learned to



anyone contrary to the provisions of this Law No.6698 and neither shall they use such data for purposes other than that for which the personal data have been processed. This obligation shall continue even after the end of their term of office.



Finally, in case the processed personal data are obtained by others by unlawful means, the data controller shall notify the data subject and the Board as soon as possible. Where necessary, the Board may announce such breach at its official website or through in any other way it deems appropriate.

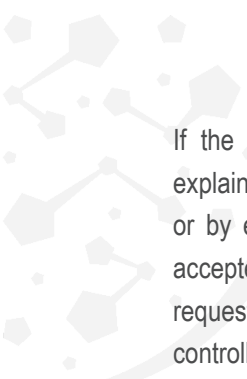
The measures to be taken regarding data security should be appropriate to the structure and activities of each data controller, and and risks to which it is subject. Therefore, a single model regarding data security cannot be foreseen. In determining the appropriate measures, the size of the company or the financial balance sheet, as well as the nature of the work done by the data controller and the protected personal data are also important. For instance, the data controller who processes special categories of personal data, although on a small scale, should take higher standards of protection.




## c. The Obligation to Answer the Applications Made by the Data Subject and to Fulfill the Board Decisions

According to Article 13 of the Law No. 6698 and the Communiqué on the Procedures and Principles of Application to the Data Controller published in the Official Gazette dated 10.03.2018 on the basis of that Article, data controllers should conclude requests by data subjects in written or, as stipulated in the aforementioned Communiqué, made by means of the registered electronic mail (KEP) address, secure electronic signature, mobile signature or the e-mail address previously notified to the data controller by the data subject and registered in the data controller's system, or requests made through a software or application developed for the purpose of application; free of charge as soon as possible and within thirty days at the latest, according to their nature.

However, if the action requires an extra cost, the data controller may request the fees in the tariff determined by the Board from the data subject.



If the data controller accepts the request or refuse it by explaining its reason, it shall notify the data subject in writing or by electronic means. If the request in the application is accepted, the data controller fulfills the requirements of this request. If the application is arised from the fault of the data controller, the fee is refunded to the relevant person.



In cases where the application is refused, the response is insufficient or the application is not answered in due time; the data subject may lodge a complaint with the Board within thirty days as of he or she learns about the response of the data controller and in any case within sixty days as of the request date.

If the Board determines the existence of a violation as a result of the examination to be carried out on the matters falling within its task, upon a complaint or ex officio where it has learnt about the alleged infringement, the Board shall decide that the identified infringements shall be remedied by the relevant data controller and notify this decision to the relevant parties. The data controller must implement this decision without delay and within thirty days at the latest after the notification.

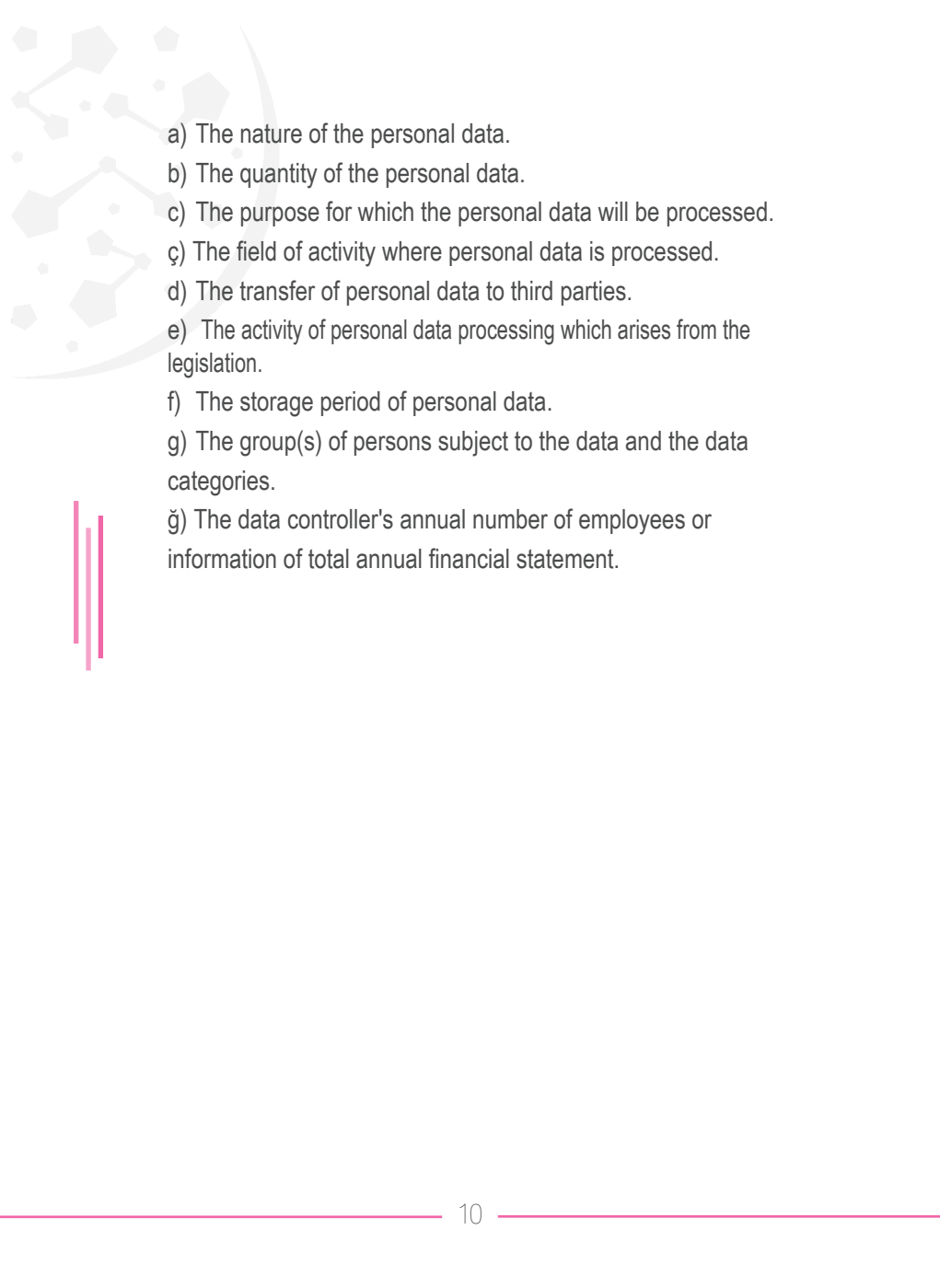
## d. Obligation to Register with the Data Controllers' Registry

---

According to Article 16 of the Law No.6698, the Data Controllers' Registry is kept by the Presidency and is made publicly available under the supervision of the Personal Data Protection Board. Again, according to this article, natural and legal persons who process personal data must register with the Data Controllers' Registry prior to the start of data processing.

However, in paragraph 2 of Article 16 of the Law No.6698, it is stated that the Board may provide derogation from the obligation of registration with the Data Controllers' Registry, by taking into account the objective criteria set by the Board, such as the nature and quantity of the data processed, the data processing arising from the law or the transferring the data to third parties.

By virtue of this provision, the aforementioned criteria were determined by the Board and these criteria were listed in the By-Law on the Data Controllers Registry published in the Official Gazette dated 30.12.2017. The criteria in question:

- 
- a) The nature of the personal data.
  - b) The quantity of the personal data.
  - c) The purpose for which the personal data will be processed.
  - ç) The field of activity where personal data is processed.
  - d) The transfer of personal data to third parties.
  - e) The activity of personal data processing which arises from the legislation.
  - f) The storage period of personal data.
  - g) The group(s) of persons subject to the data and the data categories.
  - ğ) The data controller's annual number of employees or information of total annual financial statement.

## e. Obligation to Notification

---

Another obligation of the data controller is, in case the data processed are obtained by others unlawfully, to notify the data subject and the Board within the shortest time. Where necessary, the Board may announce such a case at its website or through in any other way it deems appropriate.

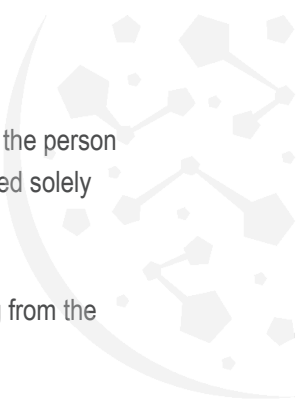


## 2. Rights of Data Subject

---

Within the framework of Article 11 of the Law No.6698, the data subject always has the right to request to the data controller about him/her;

- to learn whether his/her personal data are processed or not,
- to demand for information as to if his/her personal data have been processed,
- to learn the purpose of the processing of his/her personal data and whether these personal data are used in compliance with the purpose,
- to know the third parties to whom his personal data are transferred in country or abroad,
- to request the rectification of the incomplete or inaccurate data, if any,
- to request the erasure or destruction of his/her personal data,
- to request reporting of the operations relating to the rectification, the erasure or destruction of personal data, to third parties to whom his/her personal data have been transferred,

- 
- to object to the occurrence of a result against the person himself/herself by analyzing the data processed solely through automated systems,
  - to claim compensation for the damage arising from the unlawful processing of his/her personal data.






### 3. Obligations of Data Processor

---

Data processor means the natural or legal person who processes personal data on behalf of the data controller upon its authorization. These persons are a separate natural or legal person determined by the data controller by purchasing a service. Any natural or legal person can be both a data controller and a data processor at the same time.

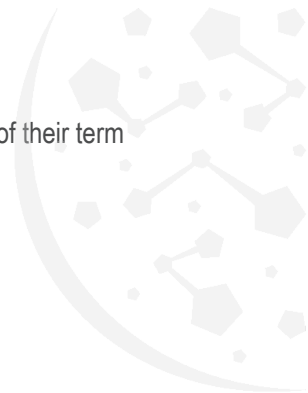


In case the processing of personal data is carried out by another natural or legal person on the basis of the authority given by the data controller and on behalf of the data controller, the data controller shall jointly be responsible with the data processor for taking the all necessary technical and organizational measures to provide an appropriate level of security for the purposes of preventing unlawful processing of personal data, preventing unlawful access to personal data, ensuring protection of personal data.

In addition, the data processors shall not disclose the personal data that they have learned to anyone contrary to the provisions of this Law No.6698, neither shall they use such data for purposes other than that for which the personal data have been processed.



This obligation shall continue even after the end of their term of office.









Nasuh Akar Mah. 1407. Sokak No:4 06520

Balgat-Çankaya/Ankara // [www.kvkk.gov.tr](http://www.kvkk.gov.tr)

Tel: 0 (312) 216 50 00 // Faks: 0 (312) 216 50 52