



THE RIGHT TO THE
**PROTECTION OF
PERSONAL DATA** IN MEXICO

GUIDE



NATIONAL INSTITUTE FOR TRANSPARENCY, ACCESS TO INFORMATION
AND PERSONAL DATA PROTECTION



SECRETARIAT OF PERSONAL DATA PROTECTION
| GENERAL DIRECTORATE OF PREVENTION AND
PRIVACY SELF REGULATION

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HUMAN RIGHTS IN MEXICO

In Mexico, the protection of personal data is recognized in the Mexican Constitution as a fundamental right. This, in addition to those rights established within the international treaties to which our country is a party. As such, it is not necessary to be a Mexican citizen to exercise these rights.

WHAT IS PERSONAL DATA PROTECTION?

The right to the Protection of Personal Data is one of the human rights recognized by the Mexican Constitution. This right (established by article 16 second paragraph) grants all individuals the protection of their personal data, to access them, rectify them and cancel them, as well as to express their opposition, in the terms established by law.

WHAT IS PERSONAL DATA?

Personal data is any information concerning an individual that may be identified or identifiable. It is the information that describes us, that provides us with an identity, it characterizes and differentiates us from other individuals.



WHAT IS PERSONAL DATA PROCESSING?

The processing of personal data involves the collection, use, disclosure or storage of personal data. The use of personal data covers any action of access, handling, use, transfer, communication or disposal of personal data.

HOW IS PERSONAL DATA PROTECTION REGULATED IN MEXICO?

The Law on personal data protection has separate regulations for the private and public sector. The public sector law also is itself divided into federal and local levels.

Thus, the use of personal data by the **private sector**, including companies, banks, insurance companies, hotels, travel agencies, airlines, doctors, lawyers, accountants, among others, is regulated, at the national level, through a single law: The Federal Law on the Protection of Personal Data Held by Private Parties (LFPDPPP, by its acronym in Spanish).

The National Institute for Transparency, Access to Information and Personal Data Protection (INAI, by its acronym in Spanish) is the authority responsible for enforcing the law in the private sector, throughout the country.

For the **public sector**, the main legal frame is the General Law for the Protection of Personal Data held by Obligated Parties (LGPDPSSO, by its acronym in Spanish), which regulates the processing of personal data by any government agency.



The authority responsible for applying this law at the federal level is the INAI.

Additionally, within each of the States of the Mexican Republic, there is a legal framework for the processing of personal data by any public-sector institution. In addition, there is a Data Protection Authority in each State of the Mexican Republic in charge of ensuring compliance with the law.

A common basis for the private and the public sector are the principles and duties regarding the protection of personal data that are found in the regulations that apply to them, which assure data owners that the processing of their information is carried out properly.

WHAT ARE THE RIGHTS YOU HAVE WHEN YOU **PROVIDE YOUR PERSONAL DATA**, IN ACCORDANCE WITH THE PRINCIPLES AND DUTIES PROVIDED BY LAW?

- a. Your personal data cannot be used for illicit activities or against the provisions of the Mexican laws on protection of personal data and international treaties to which the Mexican State is a party. Likewise, public institutions can only process your personal data for the exercise of their legal functions.
- b. Before handing in your information, you must be provided with the privacy notice, in which they will inform you who will use your personal data, which personal data are they requesting, the purpose for their use, with whom they will be shared and how to exercise your rights.

- c. The personal data provided must be used in accordance with what you were informed in the privacy notice and should not be obtained in a fraudulent manner.
- d. In any situation that is not specifically considered as an exception provided in the law, your consent for the use of your personal data must be required.
- e. The necessary measures must be taken for the personal data to be accurate, correct, updated and complete. Personal data must also be deleted when they are no longer necessary, or when the purpose for which they were obtained has been fulfilled.
- f. Your personal data should be used only for the purposes outlined in the privacy notice.
- g. They can only request the personal data that are necessary, adequate and relevant to fulfill the purposes for which they are collected and should be the minimum necessary to accomplish the purpose indicated in the privacy notice.
- h. Those who process your personal data must take the necessary measures to comply with all their obligations, including the possibility of self-regulation or observe best practices in the matter.
- i. Your personal data must be safeguarded under adequate security measures, to prevent its loss, alteration, destruction, damage, use, access or unauthorized treatment.
- j. Your personal data must be processed in such a way that they are not disseminated or shared with third parties, unless there is consent or a legal obligation.



WHAT TO DO IN CASE PERSONAL DATA ARE NOT PROCESSED IN ACCORDANCE WITH THESE PRINCIPLES AND DUTIES?

The INAI is responsible for monitoring compliance with personal data regulations by individuals and public institutions at the federal level.

In this sense, if you are aware of any misuse of personal data by a private organization or a federal public institution, which is contrary to the principles and duties outlined in the previous point, you may submit to the INAI a complaint, through the means indicated below.

When the complaint is against a public institution of any State of the Mexican Republic, you may complain before the corresponding Data Protection Authority.

The process on how to submit a complaint is explained below:

A **In case of a complaint against a public FEDERAL institution**, any individual may turn to the INAI, by submitting in person a written document with no particular formalities at the Institute's address or mailing through certified post sent to: Insurgentes Sur No. 3211, Col. Insurgentes Cuicuilco, Alcaldía Coyoacán, CP 04530, Mexico City, Mexico.

You can also submit your complaint by sending it by email to investigayverifica@inai.org.mx

It is suggested to consult the requirements to submit the application, which can be found in the following link: <http://inicio.inai.org.mx/FormatosINAI/FormatodenunciaLGPDPSSO.PDF>



In the case of a complaint against those controllers at the state and municipal levels, the complaint must be filed with the Data Protection Authority, belonging to the corresponding State of the Mexican Republic, by using the means established by each authority.

B In the case of a complaint against a company or private entity, any person may also present it, in writing, before the INAI at:

- The INAI's offices, at the aforementioned address;
- By certified mail, with a signed receipt, at the aforementioned address;
- By email at the address verificacion@inai.org.mx, or
- Through the IFAI-PRODATOS, system available at: www.datospersonales.org.mx

THE ARCO RIGHTS

Additionally, as the owner of your personal data you have the right to access them, rectify them, request that they be deleted, as well as to oppose their use, as long as this does not imply a risk to either public or national security; public health or the rights of third parties.

Also, when your personal data is held by a public-sector entity, you can exercise the right to data portability which consists in the possibility of obtaining a copy of your personal data in a structured and commonly used format, as long as they are treated in a similar way by the data controller with whom you intend to exercise this right.



HOW TO EXERCISE ARCO RIGHTS?

Only you, as the owner of your personal data or, when appropriate, your representative, may request the exercise of ARCO and portability rights. Therefore, prior to the exercise of the rights in question, the data subject must prove their identity, with an official identification document (such as a passport). In the case of the exercise of the rights being conducted through a representative, the representative must provide the following:

- I. Simple copy of the data subject's official ID;
- II. The representatives 'official ID, and
- III. Public instrument; through a simple power of attorney letter -signed before two witnesses and annexing the copy of the official ID of all the parties signing the power, or through an in-person statement made by the data subject.

You must present your request to the data controller – for either the public sector or the private sector– that holds the personal data, through the mechanisms indicated in the privacy notice.

Being a data controller from the federal, state or municipal public sector, you can also submit an ARCO request through the website of the National Transparency Platform (PNT, by its acronym is Spanish), available at:

<https://www.plataformadetransparencia.org.mx/web/guest/inicio>

In both cases, the data controller must notify you, within 20 working days, whether your request can proceed. Regarding costs, it is important to know that the exercise of ARCO rights is free, and therefore, charges may only be applied in order to recover the costs of reproduction, certification or sending information.

TO WHOM **CAN YOU TURN** TO IF YOUR ARCO RIGHTS REQUEST IS NOT ANSWERED OR IF YOU ARE DISSATISFIED WITH THE CONTROLLER'S RESPONSE?

When you are not satisfied with the response provided to a request for the exercise of ARCO rights, or when the data controller has not responded to your request, you can go before the INAI to present your complaint.

A When the complaint is filed because the response is considered inadequate or due to a lack of response on behalf of a company or a private sector entity, you shall file the complaint to the INAI who will initiate a Data Protection Procedure against the response to your request, issued by the data controller, or for the lack of response.

The means to present a request for data rights protection are:

- In person, at the INAI's offices at the aforementioned address;
- By certified mail, with a signed receipt, at the aforementioned address;
- Through the IFAI- PRODATOS system (only if you have an electronic signature), available at: www.datospersonales.org.mx

We suggest to consult the requirements and formats required to present the request, which are available at:

<http://inicio.inai.org.mx/FormatosINAI/SolicitudPD.pdf>



B When the complaint is against the response provided or due to lack of response from a public FEDERAL institution, you must file a petition for review with the INAI.

The means to present a petition for review are as follows:

- Through a letter directed at the INAI's aforementioned address;
- By certified mail, with a signed receipt, at the aforementioned address;
- Through the National Transparency Platform, available at:
<https://www.plataformadetransparencia.org.mx/web/guest/inicio>

It is suggested to consult the requirements to submit the application, in the format located at:

<http://inicio.inai.org.mx/FormatosINAI/FormatoRRVF.docx>

In the case of complaints against a LOCAL public institution, you may submit a petition for review through the National Transparency Platform, or at the address and in the formats of the Data Protection Authority of the State of the Mexican Republic.

AND IF I REQUIRE MORE INFORMATION?

If you require more information or advice on the right to protection of personal data, we offer you the following means:



800-835-4324



Insurgentes Sur No. 3211,
Col. Insurgentes Cuicuilco,
Alcaldía Coyoacán, C.P. 04530,
Ciudad de México.



atencion@inai.org.mx



www.inai.org.mx

We also suggest you consult the Guide for Personal Data Subjects, available at:

https://home.inai.org.mx/?page_id=3402





Instituto Nacional de Transparencia, Acceso a la
Información y Protección de Datos Personales