



Data Protection

Audiotranscript

Disclosure for an individual-specific purpose: restrictions

[Beat Rudin]: For a disclosure of personal data to be lawful, it is not enough for it to be justified by a legal basis, or the data subject's consent in isolated cases, and also proportionate. Even if all of these things are true, we still need to verify whether the disclosure needs to be restricted for other reasons.

This is covered in § 29 of the Information and Data Protection Act, which stipulates that disclosure of personal data in isolated cases must be refused or deferred in full or in part if a specific legal confidentiality obligation or overriding public or private interest precludes it. If this is the case, then either the information should not be disclosed at all, or the disclosure should be restricted. If the disclosure is restricted, this means that for example certain data are not disclosed or the disclosure is merely temporarily restricted or delayed. In other words, in certain cases the disclosure will need to wait until the relevant reason for confidentiality no longer applies.

Specific confidentiality obligations may include, in particular, professional secrecy rules. One example of this is medical confidentiality. These types of professional secrecy rules may completely preclude disclosure of personal data or require it to be restricted in accordance with applicable sectoral legislation. This may mean, for example, that the personal data need to be anonymized; that is, that all individual-specific references need to be completely removed.

Other specific legal confidentiality obligations include those contained within other cantonal or federal sectoral legislation, for example on tax secrecy, social welfare secrecy, social insurance secrecy or the duty of confidentiality for victim support and counseling services. In all such cases, disclosers should check whether the specific disclosure actually is precluded by this duty of confidentiality. Often, the corresponding legislation will also contain exemption clauses. Thus, for example, the tax secrecy regulations contain supplemental provisions allowing administrative assistance to be provided to other authorities.

But legal secrecy obligations may not be the only thing standing in the way of data disclosure; there may also be overriding public or private confidentiality interests.

The rules here are set out in § 29 para. 2 IDG. According to these, a public confidentiality interest may prevent a disclosure if this would compromise the security of the state or public safety, or if it would adversely affect the relationship with another canton, the Federation or other countries. The same applies where the disclosure would adversely affect the free shaping of opinion and policies by the public bodies, if it would weaken a negotiating position (for example contract negotiations), or if it would influence the execution of specific official measures in line with their objectives, in particular policing measures. Nevertheless, the potential adverse impact must reach a certain intensity in order to act as a block to data being disclosed.

Private as well as public confidentiality interests exist. They may act as an obstacle to disclosure of information about a person if this would constitute an invasion of the data subject's privacy. Another situation in which disclosures should not be made is in cases where this would reveal professional, industrial or trade secrets, or copyrights of a private individual. And finally, a conflicting private confidentiality interest exists in cases where the disclosure pertains to information which has been shared with the public body voluntarily by third parties and the public body has assured these third parties that the information will be kept confidential.



This last reason for a restriction should not be presumed prematurely, however. The public body may not evade disclosures by assuring confidentiality whenever it likes. For example, the public body may, in specific cases, run the risk of contravening the principle of public access to official records, to which it is always subject.

And just because a private or public confidentiality interest exists, that does not necessarily mean that data disclosure must be restricted in all cases. This is only the case where the relevant confidentiality interest overrides a disclosure interest. Thus, in every individual case potential disclosers should assess what carries more weight – the disclosure interest or the confidentiality interest.