Data Protection
Video Transcript

When does data protection apply?

[Beat Rudin]: Data protection law comes into play when someone is processing personal data.

That someone can be a private individual. But it can also be an offices of the public administration: as well as federal office or cantonal or municipal public institutions. And finally, that "someone" can also be acting on behalf of an independent institution – such as the university.

[Danielle Kaufmann]: This differentiation of the context in which data protection law comes into play is highly relevant. The difference plays a role in determining which data protection law is applicable.

But back to personal data. Personal data is defined as information that relates to a specific or identifiable person. What form this information exists in is entirely irrelevant. It doesn't matter if the personal data is on a piece of paper, visible on a computer screen, or whether it is an image or audio recording. The only thing that matters is that this data has a personal information content – i.e., it tells you something about a person.

[Beat Rudin]: Personal data must be clearly distinguished from factual data – i.e. information that does not relate to a person. How thick the tar-layer of a cantonal street is or what the temperature of a body of water is – these are examples of factual data. They must be clearly distinguished from personal data, because data protection laws only apply to personal data.

Take an office locking plan, as an example. Which key fits which lock: that's factual data; which person has which key and can open which doors with it: that's personal data.

[Danielle Kaufmann]: But for information to count as personal data, it has to refer not simply to person in general, but to specific or identifiable persons. Data that refers to the average person in a group, or other statistical data, is therefore not personal data.

For example, the statement that students at the University of Basel are on average 23.73 years old certainly refers to persons, but not to any identifiable person. However, the information revealing that a specific individual in this group is female and 20 years old represents personal data.

[Beat Rudin]: A person can be identified in two ways: directly or indirectly.

The data can refer to a person directly – for example last name, first name and date of birth. These details it is clear to which person the information is referring.

If a person lives alone at an address, the address alone also makes the person unambiguously identifiable. If multiple persons live at the same address, a person only becomes unambiguously identifiable in combination with age information.

[Danielle Kaufmann]: Identifiability can also be indirect, for example via a customer number, patient number, OASI number or a students matriculation number.

When such numbers are accessible, everyone who has access can find out which individual is behind this data.

[Beat Rudin]: Public directories can also make people identifiable. For example The *"mayor of the municipality of Bettingen in 1997"* is unambiguously identifiable.

[Danielle Kaufmann]: But there are ways to alter personal data so that data protection law no longer applies. The goal is to alter the data so that it can no longer be related to a particular person. In other words: the personal reference is removed. You can achieve this by, among other approaches, anonymizing or pseudonymizing data.

[Beat Rudin]: You can anonymize a dataset by removing any information that makes the person concerned identifiable.

Pseudonymizing is basically the same, except that you use a pseudonym – a key or code – to ensure that the personal reference is recoverable for anyone who has access to the key or code. For the individuals who have access to the key, the pseudonymized data is personal data, but for everyone else, it is not.

Data protection law comes into play when personal data is processed. In short processing is everything that you do with personal data: from collecting, to storing, to using, combining it with other data – all the way to destroying it.

[Danielle Kaufmann]: To summarize: data protection applies when the following three criteria are met:
First, the data refers to a person, not only to an object or facts; It is therefore a matter of personal data, not simply factual data.
Second, the person is directly or indirectly identified or at least identifiable.
Third, this data is being processed.