

FAH DATA PROTECTION POLICY

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1. Introduction

In 2018 the European Union (EU) operationalised the General Data Protection Regulations (GDPR) that govern how companies handle personal data. Consequently, in 2019 Kenya enacted its own Data Protection Act. The regulations seek to protect the privacy of individuals by enforcing responsible processing of personal data. This includes embedding principles of lawful processing, minimising the collection of data, ensuring the accuracy of data and adopting security safeguards to protect personal data.

Financing Alliance for Health (FAH) is committed to protecting the privacy and confidentiality of the personal data we collect, process, and store. This Data Protection Policy outlines FAH's commitment to comply with applicable data protection laws and regulations and sets forth the principles and practices governing the protection of personal data within our organization.

2. Scope

This policy applies to all personal data collected, processed, and stored by FAH, either electronically or physical, and regardless of the source or format of such data (printed and digital information, text and images, documents and records, data and audio recordings). This policy applies to all employees, contractors, and third parties who are authorized to access, use, or handle personal data on behalf of FAH.

3. Responsibilities

FAH is committed to complying with all relevant Kenyan legislation and applicable global legislations. The organisation will ensure that it protects the rights of data subjects and that the data it collects, and processes is done in line with the required legislation. As such, All FAH stakeholders must comply with this policy, breach of which could result in disciplinary action. See responsibilities outlined below:

Data Protection Officer: FAH has appointed the Analyst, IT and Operations as the designated Data protection officer. FAH shall publish the contact details of the data protection officer on the website.

The data protection officer shall;

1. Advise FAH and their employees on data processing requirements provided under the Data Protection Act 2019 and The GDPR.
2. Ensure that FAH complies with the Data Protection Act.
3. Facilitate capacity building of staff involved in data processing operations.

4. Provide advice on data protection impact assessment.
5. Cooperate with the Data Commissioner and any other authority on matters relating to data protection.
6. Conduct risk assessments, and update controls and procedures to mitigate the risk of data breaches.

Management:

1. The Board will ensure that there are adequate and effective systems and processes in place to safeguard data.
2. The Chief Executive Officer (CEO) is responsible for ensuring staff, vendors, and partner organisations are aware of the policy and are supported to implement and work by it, as well as create a culture that encourages a focus on data protection.
3. The Head of Operations and Risk is responsible for establishing and maintaining this Data Protection Policy, ensuring its communication to all employees, and providing the necessary resources and support for its implementation.
4. The Head of Operations and Risk will report any key data protection related events to the CEO and board as appropriate.
5. Head of Operations and Risk will also provide governance oversight of activities under this policy.

Employees:

1. All employees of FAH are responsible for reading, understanding and complying with the Data Protection policy.
2. Report suspicions of breaches promptly.
3. Ensure third parties they work with are aware of the contents of this policy.

4. Principles

Lawfulness, Fairness, and Transparency: FAH will only collect, process, and store personal data for legitimate purposes, and do so in a fair and transparent manner, ensuring that individuals are informed about how their data is being used.

Purpose Limitation: Personal data will be collected for specified, explicit, and legitimate purposes and will not be processed in a manner that is inconsistent with those purposes.

Data Minimization: FAH will only collect and retain personal data that is adequate, relevant, and necessary for the purposes for which it is processed.

Accuracy: FAH will take reasonable steps to ensure that personal data is accurate, complete, and up-to-date, and will promptly rectify any inaccuracies identified or erase any inaccurate data.

Storage Limitation: Personal data will be kept in a form that allows identification of individuals for no longer than is necessary for the purposes for which it is processed.

Security: Appropriate technical and organizational measures will be implemented to ensure the security of personal data and protect it from unauthorized access, disclosure, alteration, or destruction.

Accountability: FAH will be accountable for complying with applicable data protection laws and regulations and for demonstrating compliance through appropriate policies, procedures, and documentation.

Confidentiality: Data will be stored in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected.

FAH will collect data only where a valid explanation is provided whenever information relating to family or private affairs is required.

5. Rights of a data subject

FAH has a duty to notify data subjects of their rights before processing data. FAH will therefore inform data subjects of their rights to;

1. Be informed of the use to which their personal data is to be put.
2. Access their personal data in custody of FAH.
3. Object to the processing of all or part of their personal data.
4. Correction of false or misleading data.
5. Deletion of false or misleading data about them.
6. The fact that personal data is being collected.
7. The purpose for which the personal data is being collected.
8. The third parties whose personal data has been or will be transferred to, including details of safeguards adopted.
9. The contacts of FAH and on whether any other entity may receive the collected personal data.
10. A description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

11. The data being collected pursuant to any law and whether such collection is voluntary or mandatory.
12. The consequences if any, where the data subject fails to provide all or any part of the requested data.

Exercise of rights of data subjects

A right conferred on a data subject may be exercised;

1. Where the data subject is a minor, by a person who has parental authority or by a guardian.
2. Where the data subject has a mental or other disability, by a person duly authorised to act as their guardian or administrator or
3. In any other case, by a person duly authorised by the data subject.

6. Collection of personal data

FAH shall collect personal data directly from the data subject. Personal data may be collected indirectly where;

1. The data is contained in a public record.
2. The data subject has deliberately made the data public.
3. The data subject has consented to the collection from another source.
4. The data subject has an incapacity, the guardian appointed has consented to the collection from another source.
5. The collection from another source would not prejudice the interests of the data subject.

7. Lawful processing of personal data

FAH will only process data where they have a lawful basis to do so. FAH shall not process personal data unless;

1. The data subject consents to the processing for one or more specified purposes; or
2. The processing is necessary;
 - a. For the performance of a contract to which the data subject is a party or to take steps at the request of the data subject before entering a contract.
 - b. For compliance with any legal obligation to which FAH is subject.
 - c. To protect the vital interests of the data subject or another natural person.
 - d. For the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
 - e. For the performance of any task carried out by a public authority.

- f. For the exercise, by any person in the public interest, of any other functions of a public nature.
 - g. For the legitimate interests pursued by the FAH by a third party to whom the data is disclosed, except if the processing is unwarranted in any case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject or
 - h. For historical, statistical, journalistic, literature and art or scientific research.
3. Further processing of personal data shall be in accordance with the purpose of collection.
 4. FAH staff must not access data which they are not authorized to access nor have a reason to access.
 5. Staff must ensure that they delete, destroy, or anonymize any personal data that is no longer needed for the specific purpose for which they were collected.

8. Data protection impact assessment

Where a processing operation is likely to result in high risk to the rights and freedoms of a data subject, by virtue of its nature, scope, context and purposes, FAH shall, prior to the processing, carry out a data protection impact assessment.

9. Conditions of consent

FAH shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.

Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on prior consent before its withdrawal.

10. Processing of personal data relating to a child

FAH shall not process personal data relating to a child unless—

- a. consent is given by the child's parent or guardian.
- b. and the processing is in such a manner that protects and advances the rights and best interests of the child.

FAH shall incorporate appropriate mechanisms for age verification and consent to process personal data of a child.

Mechanisms contemplated under subsection (2) shall be determined based on—

- a. available technology.

- b. volume of personal data processed.
- c. proportion of such personal data likely to be that of a child.
- d. possibility of harm to a child arising out of processing of personal data and
- e. such other factors as may be specified by the Data Commissioner.

11. Restrictions on Processing

FAH shall, at the request of a data subject, restrict the processing of personal data where—

- a. accuracy of the personal data is contested by the data subject, for a period enabling FAH to verify the accuracy of the data.
- b. personal data is no longer required for the purpose of the processing, unless FAH requires the personal data for the establishment, exercise or defence of a legal claim.
- c. processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead; or
- d. data subject has objected to the processing, pending verification as to whether the legitimate interests of FAH overrides those of the data subject.

Where processing of personal data is restricted under this section—

- a. the personal data shall, unless the data is being stored, only be processed with the data subject's consent or for the establishment, exercise or defence of a legal claim, the protection of the rights of another person or for reasons of public interest; and
- b. FAH shall inform the data subject before withdrawing the restriction on processing of the personal data.
- c. FAH shall implement mechanisms to ensure that time limits established for the rectification, erasure or restriction of processing of personal data, or for a periodic review of the need for the storage of the personal data, is observed.

12. Processing sensitive personal data

FAH will process sensitive personal data only when:

- a. The processing is carried out in the course of legitimate activities with appropriate safeguards and that the processing relates solely to the staff and the personal data is not disclosed outside FAH without the consent of the data subject.
- b. The processing relates to personal data that has been made public by the data subject.
- c. Processing is necessary for:
 - i. The establishment, exercise or defence of a legal claim.

- ii. The purpose of carrying out the obligations and exercising specific rights of the Data controller or of the data subject.

Protecting the vital interests of the data subject or another person where the data subject is physically or legally incapable of giving consent.

13. Automated individual decision making

Every data subject has a right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning or significantly affects the data subject. This will not apply where the decision is—

- a. necessary for entering or performing a contract between the data subject and FAH.
- b. authorised by a law to which the FAH is subject and which lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests; or
- c. based on the data subject's consent.

Where FAH takes a decision, which produces legal effects or significantly affects the data subject based solely on automated processing—

- a. FAH must, as soon as reasonably practicable, notify the data subject in writing that a decision has been taken based solely on automated processing; and
- b. the data subject may, after a reasonable period of receipt of the notification, request FAH to—
 - i. reconsider the decision; or
 - ii. take a new decision that is not based solely on automated processing.

FAH, upon receipt of a request under subsection (3), shall within a reasonable period of time—

- a. consider the request, including any information provided by the data subject that is relevant to it;
- b. comply with the request; and
- c. by notice in writing inform the data subject of—
 - i. the steps taken to comply with the request; and
 - ii. the outcome of complying with the request.

14. Commercial use of data

FAH shall not use, for commercial purposes, personal data obtained unless it;

1. has sought and obtained express consent from a data subject.
2. anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.

15. Limitation to retention of personal data

FAH shall retain data only as long as may be reasonably necessary to satisfy the purpose for which it is processed unless the retention is;

- a. Required or authorized by law.
- b. Reasonably necessary for a lawful purpose
- c. Authorised or consented by the data subject or
- d. For historical, statistical, journalistic literature and art or research purposes

FAH shall delete, erase, anonymize or pseudonymise personal data not necessary to be retained in a manner as may be specified at the expiry of retention period.

16. Conditions of transfer

FAH may transfer personal data to another country only where the transfer is necessary;

- a. For the performance of a contract between the data subject and FAH or implementation of precontractual measures taken at the data subject's request
- b. For the conclusion or performance of a contract concluded in the interest of the data subject between FAH and another person ie other governments
- c. for any matter of public interest
- d. for the establishment, exercise or defence of a legal claim.
- e. in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent.
- f. For the purposes of compelling legitimate interests pursued by FAH which are not overridden by the interests, rights and freedoms of the data subjects.

17. Exemptions to principles of processing personal data

Journalism, literature and art

The principles of processing personal data shall not apply where—

- a. processing is undertaken by a person for the publication of a literary or artistic material;
- b. FAH reasonably believes that publication would be in the public interest; and

Research, history and statistics

The further processing of personal data shall be compatible with the purpose of collection if the data is used for historical, statistical or research purposes and the FAH shall ensure that the further processing is carried out solely for such purposes and will not be published in an identifiable form.

18.Data Breach

In line with regulatory requirements, FAH will report to the Data Protection Commissioner any data breach within 72 hours of being aware. FAH will also communicate the data breach to the data subject as soon as is practical unless the identity of the data subject cannot be established.

Grantees and partners of FAH must report breaches of FAH data in their custody within 48 hours.

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