

DATA PROTECTION AUTHORITY (JERSEY) LAW 2018
ARTICLE 14

PUBLIC STATEMENT

Data Controller: Brenwal Limited
Registration No: 58003

1. This is a public statement made by the Authority pursuant to Art.14 of the DPAJL 2018 following an Inquiry by the Authority.
2. Following an Inquiry commenced on 8 February 2022 pursuant to Art.21 of the Data Protection Authority (Jersey) Law 2018 (**DPAJL 2018**), the Authority has determined that Brenwal Limited (**Brenwal**) has contravened Art.8(1)(a) and Art.12(1) of the Data Protection (Jersey) Law 2018 (**DPJL 2018**).
3. On 11 May 2023, Brenwal was issued with a formal Reprimand together with orders to improve its compliance with the DPJL 2018 (which orders had to be completed within a stipulated timeframe).

Background

4. Brenwal installed and used a tracking device on a work-owned vehicle to try and establish the whereabouts of a certain Employee (**Employee A**) during work hours as they suspected that Employee A was not devoting all of their time to work duties, during their working hours. The tracker was in place for a month and monitoring Employee A's use of their work vehicle between the hours of 7:30am – 4:00pm.
5. Employee A was completely unaware that a tracker had been placed on their work-owned vehicle and, accordingly, unaware of the potential implications on them e.g., that their whereabouts were being constantly monitored during working hours and that the information gathered from the tracker could potentially be used in the context of disciplinary proceedings.
6. Whilst Brenwal had sufficient cause to monitor the Employee's activity and use of the work-owned vehicle, the circumstances in this case were not sufficient to justify covert recording and outweigh the Employee's right to privacy. Nowhere in any of the Employer's documentation was any indication given that Employee's use of the work vehicle (or their movements more generally) might be subject to surveillance of any kind.
7. It was also found that Brenwal's data protection lead failed to have an appropriate level of expertise in order to advise the business on data protection matters.

The contraventions of the DPJL 2018

8. The Authority found that Brenwal should not have carried out the covert monitoring of Employee A. It was not necessary and they had no lawful basis to do so which

was a contravention of Art.8(1)(a). The Authority also found that Brenwal lacked the relevant transparency information required by Art.12(1) and that Brenwal should have, in advance, made their staff aware that they could be subject to monitoring.

Sanctions and orders

9. Brenwal showed insufficient appreciation of the significance of some of the problems arising from the processing of personal data which were the subject of the investigation and tended to minimise the significant effect the processing had on the data subject, notwithstanding the fact that Employee A had left their job as a direct result, and upon discovery of, the monitoring.
10. However, there was mitigation available to Brenwal including:
 - a. the issue only came to light because Brenwal made a direct approach to the Authority notifying it of the issues raised;
 - b. Brenwal maintained open and candid correspondence with the Authority whilst enquiries took place and made early admissions;
 - c. Complete cooperation by Brenwal, including acting on the Authority's proposed orders once received (i.e. before any orders they were finalised and legally obliged to do so);
 - d. During the course of the Inquiry, Brenwal updated its policies and procedures (including in other areas unrelated to the initial scope of the inquiry) and sought the services of a data protection consultancy to assist with this process.
11. Considering the above factors, the Authority issued a formal reprimand and made a number of orders pursuant to Art.25(3) of the Authority Law regarding the education of Brenwal's staff, review and updating of their processes and deleting all personal data relating to the tracking of Employee A.
12. The Authority considered whether it would have been appropriate to issue a financial penalty by way of an administrative fine but in light of information provided to it, decided that an administrative fine would be disproportionate in the circumstances and that a public statement was to be preferred, such acting as a sufficient rebuke in respect of Brenwal's behaviour and such serving as a warning to other data controllers who may be tempted to act in a similar way.
13. The orders were completed with the timeframe required by the Authority.

Lessons Learned

14. Organisations can monitor their staff so long as this can be justified and there is a lawful basis for doing so. Monitoring staff can be intrusive; any monitoring needs to be reasonable, proportionate and not excessive.

15. Save for in extreme circumstances, organisations should make staff aware that the type of monitoring that is taking place, including where and in what circumstances, there may be potential for any covert monitoring. This is because staff are entitled to know what information is being collected about them and how it could impact on them. Or example, if trackers are placed on work vehicles, staff need to know that the trackers are in place and what is being measured (e.g. routes, hours of use) and why.
16. Organisations should always consider whether there are any less privacy intrusive means available to achieve the same results i.e. could you give further training or reinforce expectations about vehicle use first.
17. Sometimes it may be necessary to monitor staff without their knowledge if to tell them would defeat the purposes of the processing such as where you think their might be a crime being committed. This type of monitoring should only be done in specific, appropriate circumstances and strictly limited to the amount of time necessary. You should carry out a risk assessment (including any data protection impact assessment if necessary) before any monitoring takes place.
18. Any individual within an organisation performing the function of data protection lead/data protection office must possess the necessary skills and experience to allow them to fulfil their duties.

More Information

More information about how we regulate and enforce the DPJL 2018 can be found in our Regulatory Action and Enforcement Policy [here](#).