REDCLOVER ADVISORS

Privacy Notice Roadmap: Business Guide

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What is a Privacy Notice?

A Description of Data Processing Activities	Your privacy notice should be an accurate description of the personal information you collect and how you use, disclose, retain, protect, and destroy it.
A Description of Individuals' Privacy Rights	Your privacy notice should include information on rights that individuals have over the personal information that you hold about them, including how they can exercise those rights.
A Place to Find Contact Information	Your privacy notice should include contact information so that individuals can ask questions or submit complaints about the ways you handle their personal information.

What is a Privacy Notice *Not*?

A Contract Between You and an Individual	Your privacy notice is not a contract. Individuals do not "agree to" a privacy notice because they're using your website or services. It is a one-directional statement to the public containing the information above.
A Privacy Policy	Your privacy notice is not a privacy policy. A privacy policy is an internal document that tells employees about the organization's privacy responsibilities and commitments. A privacy notice is a statement to the public or impacted individuals about your privacy and data handling practices.
Set It and Forget It	Your privacy notice should evolve over time, as your business practices and the privacy landscape change. Some privacy laws require yearly updates, but updates should also happen when you make substantive changes to your handling of personal information.

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What Should a Privacy Notice Include?

Your privacy notice describes how your company processes personal information (PI), or information that can reasonably be linked to a natural person.

Depending on jurisdictions where your company operates, you will have different elements that you are required to include in your privacy notice. In general, the following information must be included.

What PI You Collect and How

The categories of personal information you collect about individuals, including examples, and the methods you use to collect it.

Why and How You Use PI

The purposes for which you use personal information and how you process it for those purposes.

Categories of PI You Disclose

The categories of personal information that you share with third parties, including any sale and sharing for commercial or business purposes.

Categories of Recipients of PI

The types of entities to which you disclose personal information These may be service providers, other businesses, the government and more.

Privacy Rights

The rights that individuals have over the personal information that you have collected about them, including how to exercise those rights.

How Long You Retain PI

The duration you will retain personal information, or how you will determine the length of retention.

How You Safeguard PI

Information on how you maintain the confidentiality, integrity and accessibility of the personal information you process.

Effective Date & Contact Information

Information on when the notice became effective and how you will communicate changes and contact information for people to ask privacy questions.

What Should a Privacy Notice Include?

Some privacy and data protection laws require disclosures of specific processing activities, so you'll want to check the laws for your jurisdictions for requirements around the following:

Children's PI

Many laws require that you indicate whether you knowingly collect personal information from children. Note that the age of a child differs by jurisdiction.

International Transfers

Some jurisdictions have data localization rules requiring notice and approved transfer mechanisms in place for transferring personal information outside the region.

Financial Incentives

If you have a loyalty program or similar that requires consumers to allow you to process their personal information in certain ways, you may need to include information about the program in your privacy notice.

Sale and Sharing of PI

Some laws require that you specifically call out what personal information you sell or share, for what purpose and with what types of third parties.

Non-Discrimination

Some laws prohibit discrimination against individuals who exercise their privacy rights and require companies to include this right to non-discrimination in their privacy notice.

Direct Marketing

Certain laws have specific rules around consent and disclosures when using personal information for direct marketing.

Cookie Use and Management

Providing notice and choice around how you use cookies is a common require ment. Additionally, you may need to include information a bout how your site handles universal opt-out tools.

Rights Request Metrics

Some companies may meet the threshold for including metrics around how many privacy rights requests they receive and how they respond to them.

Presenting Your Privacy Notice

Much like privacy and data protection laws define rules around what must be included in your privacy notice, they also set rules around how your privacy notice should be presented. While this is fairly standard across jurisdictions, some specifics differ so be sure to check the details in the laws applicable to your company.

WHEN TO PRESENT A PRIVACY NOTICE

Most laws require companies to present their privacy notice prior to or at the time they collect personal information from an individual. If you collect personal information from sources other than the individual, those rules differ — you may need to present a privacy notice upon first communication or upon disclosure of the personal information to a third party.

WHERE TO PRESENT A PRIVACY NOTICE

Your privacy notice must be accessible everywhere you collect personal information. That may be a website, app, physical location, or elsewhere, so you need to ensure it can be presented in writing, verbally, or electronically. Notably, if you collect personal information on all pages of your website, you need to ensure there's a link to your privacy notice from each page -– including in the footer will help ensure that!

ACCESSIBILITY

Most privacy laws require that companies make their privacy notice conspicuous and easily findable and accessible by anyone interested in finding out how their personal information is handled. Additionally, some privacy laws require that privacy notices meet accessibility standards for people with disabilities.

HOW TO PRESENT A PRIVACY NOTICE

Privacy notices should use friendly, easily understood and easy to navigate. Layered notices that include a summary of the most important information, that links to more details is a best practice. Additionally, using imagery or videos, gamification and (at a minimum) plain language to describe your practices help individuals understand and interact with your notice—and might even make it fun! Be sure to consider your audience. For example, if your website is likely to be accessed by children, you need to ensure you're communicating to them in ways that help them know their rights and how to exercise them.

Ensure Accuracy with a Data Inventory

Drafting and publishing your privacy notice only happens after an in-depth fact-finding process that results in a comprehensive data inventory. To draft an accurate and comprehensive notice, you must have a data inventory that provides a good understanding of how personal information flows through your organization.

COLLECTION POINTS

Take stock of where you collect personal information, what and how you collect it at each point. This may be electronic, in person, or over the phone.

PURPOSES

Identify the business purpose for collecting elements of personal information. If you operate outside the U.S., you may also need to identify a legal basis.

USES

Talk to business units to identify how they use the information the company collects – especially heavy data users like sales, marketing and customer support.

DISCLOSURES

Find out what personal information you share with third parties, why and with whom. This includes both vendors and other data controllers.

LOCATION

Know where you store personal information and whether you transfer it and to what countries. The location of personal information may impact your obligations.

RETENTION

Understand your criteria for determining how long you will retain personal information. These criteria may come from laws outside the privacy realm, so be sure to work with legal.

DELETION & DE-IDENTIFICATION

Once a retention period is up, you need to understand how you destroy or delete that personal information. There may be instances where de-identifying personal information makes sense for your business, but de-identified data may come with some obligations of its own, depending on the jurisdiction.

DRAFTING PRIVACY NOTICES

Set Yourself Up for Success

Know Your Practices

To have an accurate privacy notice, you must understand your company's data handling practices and continue to monitor them as they evolve.

Any time your practices change, you will need to update your privacy notice to reflect those changes – including the effective date.

Know Your Laws

The privacy and data protection laws applicable to your company will drive your obligations on what to include in your privacy notice.

These laws are changing all the time, so it's important to keep abreast of new and amended privacy laws in areas where you do business.

1 DRAFT YOUR NOTICE

Using the information you learned about your data handling practices and applicable laws, you can draft your privacy notices.

Note, you may need more than one for different audiences (e.g., employees, job applicants, consumers) or in all the languages for the regions in which you operate.

2 GET APPROVAL

A privacy notice is a legal document that you may be held accountable to under unfair and deceptive practices laws.

It's important to get sign off from legal and your leadership team prior to publishing it.

3 EVOLVE

Privacy laws change, business practices change, and that means your privacy notice needs to change.

Set up a cadence (some laws require a yearly review) to review and revise your privacy notice against your practices and your legal obligations.

CAUTION!

Your privacy notice is a set of rules you write for yourself. It is a legal document that must accurately represent your practices or you could face unfair and deceptive practice violations.