

The Colorado DPA and the precedent it sets for nonprofits

US consumer data privacy legislation is evolving at pace. As of October 2022, laws have been enacted in 5 states and are in draft in a further four. Until the Colorado Data Privacy Act (DPA) was passed in 2021 nonprofits had been excluded. It's possible that other states may craft laws in a similar vein to Colorado so it sets quite the precedent for the sector. Meanwhile, federal legislation may also have deep implications for nonprofits (eventually). This document looks at the Colorado DPA and what you can do to respond even if it doesn't apply to your organization.

Colorado Data Privacy Act

- Effective July 1, 2023 (builds on consumer rights and security requirements enacted in 2021).
- No explicit exemption for nonprofits so generally assumed that they are included.
- Applies to organizations processing the personal data of 100,000 or more CO residents per year, or processing at least 25,000 and deriving value for sale/exchange of data.
- Along with a lot of other preparation, organizations must provide a tool for consumers to globally opt out of contact and their data being processed.

A couple of definitions

Personal data is any information that can be connected to a human. Names, addresses, emails, geographic locators, family connections, employers...the list is long. *Processing* is any kind of handling of personal data – acquiring it, storing it, analyzing it and so on. Taken together, you can see that these terms broadly cover what nonprofits do on a daily basis.

Challenges: delays in getting guidance

As of October 2022, the specifications for the “global opt-out tool” have not yet been published. Sector-specific guidance from lawmakers has not been given, nor have statements from software providers (of the ones I checked) on what they are doing to help organizations comply. A major lesson learned from similar data protection legislation elsewhere is **do not wait for sector-specific help to arrive**. This legislation targets corporations (and by extension, Big Tech) but affects so many different types of organizations, nonprofits get lost in the mix.

Challenges: determining record volume

The thresholds for compliance have interesting implications for how nonprofits count their constituents. *Processing* includes storage, so it's not just records that are actively being used. *Personal data* includes a lot of things about anyone, so it's not just donors. When calculating record volume to determine whether the Act affects you, include donors, prospects (especially those you screen for wealth profiling), alumni, volunteers, supporters, and all other types of individuals. If you routinely archive long-lapsed donors by putting their gifts on an anonymous

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record to reduce your database size, and you keep any kind of personal information on those gifts (even just a name), they should each be counted individually. Once you've calculated a total, if you don't meet the threshold now, might you in the next few years?

Using the precedent set by this Act

As noted above, by not excluding nonprofits the Act lays out what we might expect from any similar legislation in the coming years. If your organization is not required to comply with the Colorado DPA, but has the time and resources to use it as a playbook, you'll be very well placed to respond to future legislation that does apply to your state or organization size. Keep in mind that the general trend is for more data privacy laws, not less, and consumers will increasingly expect more rights to their information and careful handling of it.

Things you can do right now

- Carry out an inventory of your data and all the places it is held.
- Look at data volume: is there a surplus? Embrace data minimization to reduce unnecessary storing of personal information that you do not need.
- Examine the ways in which you are collecting donor preferences (if at all), their opt-ins and opt-outs.
- Research and educate yourself, then get staff on board now so it's second nature by the time legislation arrives.
- Start incorporating language about preferences and privacy into your marketing and stewardship (if you don't already). Seize opportunities to demonstrate to your donors how seriously you take this.

Further resources

- An essential guide to the Colorado DPA and what nonprofits need to be doing to comply: goldendatalaw.com/blog/5-tips-for-nonprofits-on-colorados-new-privacy-law
- Track what's happening in your state, and the states in which you have constituents: iapp.org/resources/article/us-state-privacy-legislation-tracker
- Track federal legislation: iapp.org/resources/article/us-federal-privacy-legislation-tracker
- Overview of the growth of legislation (if you need to convince your staff and board): iapp.org/resources/article/the-growth-of-state-privacy-legislation-infographic
- Free (no email required) downloads available at amydaultrey.com/resources:
 - **Future proofing data handling at KSU** – one organization's approach and tips you can use right away.
 - **GDPR in the United States** – a white paper on the topic with lessons learned from how nonprofits in the UK experienced the implementation of the EU GDPR.
 - **GDPR in the US - Key Points** – just the key points from the white paper.
 - **Letting Data Go - Making data minimization your friend** – a brief guide to getting started with reducing your surplus data.