

Tex. Bus. & Com. Code § 541.104

Section 541.104 - Duties Of Processor

(a) A processor shall adhere to the instructions of a controller and shall assist the controller in meeting or complying with the controller's duties or requirements under this chapter, including:

- (1) assisting the controller in responding to consumer rights requests submitted under Section 541.051 by using appropriate technical and organizational measures, as reasonably practicable, taking into account the nature of processing and the information available to the processor;
- (2) assisting the controller with regard to complying with the requirement relating to the security of processing personal data and to the notification of a breach of security of the processor's system under Chapter 521, taking into account the nature of processing and the information available to the processor; and
- (3) providing necessary information to enable the controller to conduct and document data protection assessments under Section 541.105.

(b) A contract between a controller and a processor shall govern the processor's data processing procedures with respect to processing performed on behalf of the controller. The contract must include:

- (1) clear instructions for processing data;
- (2) the nature and purpose of processing;
- (3) the type of data subject to processing;
- (4) the duration of processing;
- (5) the rights and obligations of both parties; and
- (6) a requirement that the processor shall:
 - (A) ensure that each person processing personal data is subject to a duty of confidentiality with respect to the data;
 - (B) at the controller's direction, delete or return all personal data to the controller as requested after the provision of the service is completed, unless retention of the personal data is required by law;
 - (C) make available to the controller, on reasonable request, all information in the processor's possession necessary to demonstrate the processor's compliance with the requirements of this chapter;
 - (D) allow, and cooperate with, reasonable assessments by the controller or the controller's designated assessor; and

(E) engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the requirements of the processor with respect to the personal data.

(c) Notwithstanding the requirement described by Subsection (b)(6)(D), a processor, in the alternative, may arrange for a qualified and independent assessor to conduct an assessment of the processor's policies and technical and organizational measures in support of the requirements under this chapter using an appropriate and accepted control standard or framework and assessment procedure. The processor shall provide a report of the assessment to the controller on request.

(d) This section may not be construed to relieve a controller or a processor from the liabilities imposed on the controller or processor by virtue of its role in the processing relationship as described by this chapter.

(e) A determination of whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends on the context in which personal data is to be processed. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains in the role of a processor.

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Added by Acts 2023 , Texas Acts of the 88th Leg.- Regular Session , ch. 995, Sec. 2, eff. 7/1/2024.
