



GPA

Global Privacy Assembly

Policy Strategy Work Stream Three: *the relationship between privacy/data protection and other rights and freedoms*

Working Group Report – adopted October 2020

Chair authority: OPC Canada

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Executive Summary

In October 2019, the Global Privacy Assembly (“GPA”) conference members adopted the *Resolution on the Conference’s Strategic Direction* and the Conference Strategic Plan for 2019-2021 (“Policy Strategy”). In order to assist with the implementation of the Policy Strategy, three work streams were created.

The GPA Policy Strategy Working Group Work Stream Three (“PSWG3”) is one of the three work streams. The PSWG3’s mandate derives from “Pillar #3 Action IV” of the Policy Strategy, which commits to developing a narrative highlighting the integral relationship of privacy and/or data protection to other rights and freedoms, building on the 2019 *Resolution on Privacy as a Fundamental Human Right and Precondition for Exercising other Fundamental Rights*.

The narrative, in highlighting linkages between data protection and other rights, will aim to encourage global progress in the recognition of privacy as a fundamental human right and help GPA members promote the calls for action as outlined in the *Resolution on Privacy as a Fundamental Human Right and Precondition for Exercising other Fundamental Rights*. This directly aligns with and supports the GPA Policy Strategy, which seeks to leverage the opportunity to reduce inconsistencies across policy positions, develop clearer messages to multi-national actors, while at the same time making the best use of the GPA’s collective resources.

The PSWG3 has developed a work plan that sets out a four-phased approach for developing the narrative over a two-year period. The four phases include: 1. researching and information gathering, culminating in the development of a compendium of resources on which the preparation of the narrative will be based 2. developing a draft narrative, 3. receiving external feedback on the draft narrative, and 4. finalizing the narrative for adoption by the GPA membership at the 2021 annual conference. The work plan also includes parallel actions, such as encouraging members to develop public calls to reform national laws as needed to protect human rights, work with local counterparts on effective regulation of the political ecosystem, and develop a proposal for a GPA privacy and human rights champion award.

For the first year (2020), the PSWG3 has focussed on gathering and collating information from data protection authorities (DPAs) and GPA observer organizations from around the globe. We have also commenced the groundwork for developing the draft narrative based on the information shared to date.

Introduction

The creation of the PSWG3 stems from the *Resolution on the Conference's Strategic Direction* and the Conference Strategic Plan for 2019-2021 ("Policy Strategy"), adopted at the 41st annual conference in Tirana, Albania in 2019. The PSWG3 was one of three work streams established under the GPA Policy Strategy Working Group in January 2020 to assist with the implementation of the GPA Policy Strategy. The PSWG3's mandate is taken from "Pillar #3 Action IV" ("Action IV") of the Policy Strategy, which directs the GPA to develop a narrative to highlight the integral relationship of data protection and other rights and freedoms.

Action IV recognizes that at a global level, data protection and privacy rights are enshrined in important international rights-based instruments, such as the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, and that it is important for the GPA to highlight and clarify linkages between data protection and other rights. Other rights include: freedom of expression, the right to free and fair elections, liberty and security, and political rights and freedoms.

Action IV commits to having the narrative build on the *Resolution on Privacy as a Fundamental Human Right and Precondition for Exercising other Fundamental Rights*, which was also adopted at the 2019 conference.

Currently, the PSWG3 is chaired by the Office of the Privacy Commissioner of Canada (OPC Canada) and is comprised of the following members:

Argentina, Agencia de Acceso a la Información Pública (AAIP) Australia, Office of the Victorian Information Commissioner

Belgium, Data Protection Authority

Canada, Office of the Information and Privacy Commissioner for Newfoundland and Labrador

Council of Europe Data Protection Commissioner (COE)

Dubai International Financial Centre Authority (GPA Observer)

European Data Protection Supervisor (EDPS)

European Union Agency for Fundamental Rights (FRA) (GPA Observer)

Gabon, Commission Nationale pour la Protection des Données à Caractère Personnel

Germany, Federal Commissioner for Data Protection and Freedom of Information (watching brief only)

Mexico, Federal Institute for Access to Information and Data Protection (INAI)

Mexico, State of Mexico Transparency, Public Information Access and Personal Data Protection Institute of Estado de México and municipalities (INFOEM)

Poland, Personal Data Protection Office

San Marino, Autorità Garante per la protezione dei dati personali

Switzerland, Federal Data Protection and Information Commissioner

Tunisia, National Personal Data Authority

United Kingdom, Information Commissioner's Office (ICO)

United States, Federal Trade Commission (watching brief only)

The PSWG3 has conducted several activities since its inception in January 2020. This includes the development of a two year work plan that sets out a four phased approach for developing the narrative over a two-year period. The four phases include: Phase 1: research and information gathering, culminating in the development of a compendium of resources on which the preparation of the narrative will be based; Phase 2: developing a draft narrative; Phase 3: receiving external feedback on the narrative draft; and Phase 4: finalization of the narrative and consideration for adoption by the GPA membership at the 2021 annual conference.

The work plan also includes actions that run parallel to the narrative development, such as encouraging members to develop public calls to reform law as needed to protect human rights, encouraging members to work with local counterparts on effective regulation of the political ecosystem, and to develop a proposal for a GPA privacy and human rights champion award and identify potential recipients. These actions are intended to take place in 2021.

Following the approval of the work plan, the PSWG3 completed phase one. Phase one included gathering research and information from DPAs and GPA observer organizations via a questionnaire, asking them to describe and submit experiences (both positive and negative), and compiling examples of policy positions, statements, jurisprudence or other publications. To date, a compendium of resources have been compiled, based on the information received.

There are several previous GPA resolutions that inform the PSWG. The two resolutions that mandate and form the basis of this work include:

- [*Resolution on the Conference's Strategic Direction*](#)
- [*Resolution on Privacy as a Fundamental Human Right and Precondition for Exercising Other Fundamental Rights*](#)

Other resolutions that have informed our work include:

- [*Resolution on Human Rights Defenders*](#)
- [*Resolution on Cooperation with the U.N Special Rapporteur on the Right to Privacy*](#)

Working Group Activities

COVID-19

The impact of the novel coronavirus (“COVID-19”) has affected the PSWG3 timelines for the 2020 year. To accommodate GPA members and observers who were experiencing resource pressures related to the pandemic, the PSWG3 extended timelines for the submission of questionnaire responses, positive and negative experiences and other documents. As well, delays were experienced in commencing phase two of the work plan, resulting in the postponement of the timelines anticipated for the first draft of the narrative. We will be updating the work plan following the annual conference in October 2020, to reflect the impact of COVID-19.

Phase 1

From January to July 2020, the PSWG3 gathered and collated research and information as set out in phase one of the work plan. We have prepared a compendium of resources, based on the information gathered. This information will be used in developing the first draft of the narrative (phase two).

Specifically, the PSWG3 administered a questionnaire, asked Members to submit their experiences (both positive and negative), and sought publications such as research, policy positions, statements, jurisprudence, or otherwise.

Questionnaire

The PSWG3 canvassed its own members, as well as signatories of the 2019 *Resolution on Privacy as a Fundamental Human Right and Precondition for Exercising Other Fundamental Rights*, and members of other regulator networks [such as the Asia Pacific Privacy Authorities (“APPA”) network and the Common Thread Network (“CTN”) network] with a questionnaire on developments in various jurisdictions.

The questionnaire sought information on whether, in each respondent’s jurisdiction, privacy is specifically recognized in domestic law as a human right, how privacy/data protection laws relate to political or democratic activities, privacy laws have recently been reformed, how prominent international instruments feature in domestic analysis of privacy and/or data protection issues, and current discourse on privacy/data protection and other rights and freedoms.

Positive and Negative Examples

PSWG3 members were also asked to submit examples (positive or negative) that could demonstrate the integral relationship of privacy/data protection to other rights and freedoms. PSWG3 members compiled various sources – such as statements, policy positions, and case law.

Research

PSWG3 members also submitted research, such as case law, policy positions, investigations, statements related to privacy/data protection and its relationship to other rights and freedoms. This included research related to the Inter-American Court of Human Rights, the UN Human Rights Council, the European Court of Human Rights and the European Court of Justice. This research is ongoing and expected to continue into 2021, though early results will be reflected in a first draft of the narrative.

Forward looking plan 2020-2021

Next Steps

In 2020-2021, the PSWG3 will revisit and update the work plan to adjust for any COVID-19 related delays. Despite these delays, the PSWG3 intends to commence phases two – four of the work plan, and consider actions that run parallel to the development of the narrative.

Phase Two – Drafting the Narrative

Based on the information compiled and collated during phase one, including the compendium of resources that was prepared, the PSWG3 will begin to prepare a first draft of the narrative.

Phase Three– Receiving External Feedback

During phase three of the work plan, views of stakeholders will be sought. These stakeholders include international and domestic human rights agencies, the [U.N. Special Rapporteur](#) on the Right to Privacy, and civil society groups. We also intend to present the draft narrative to relevant stakeholders, such as at [Rights Con](#) in 2021 and/or to groups such as the Global Alliance of National Human Rights Institutions (GANHRI) and Geneva International.

Phase Four of the Work plan – Final Narrative

Following the conclusion of the first three phases, we intend to present and recommend a final narrative to be considered for adoption at the 2021 GPA annual conference.

Parallel Actions

Three parallel actions are proposed for 2021. Each of these actions will be evaluated and further explored by the PSWG3 following the 2020 annual conference.

The three parallel actions proposed are as follows:

1. Encourage members to develop a public call to their respective legislatures or governments to reform law as needed to protect broader human rights: This could include the distribution of documents developed by DPAs who have issued public calls for legislative reform, such as examples of legislative provisions or policy statements that advocate the recognition of privacy as a human right. In line with the objectives of the GPA's Policy Strategy, members could borrow and adapt these documents as appropriate to suit their respective jurisdiction's legislative regimes.
2. Encouraging GPA members to work with local counterparts and regulators on the effective regulation of political ecosystems: Encouragement could include compiling and sharing examples from DPAs who have issued public calls for legislative reform to protect broader human rights. For

example, this could include facilitating the sharing and distribution of text used by DPAs (examples of legislative provisions, policy statements) that explicitly advocate the recognition of privacy as a human right. In line with the objectives of the GPA Policy Strategy, members could leverage individual policy efforts and make best use of the GPA's collective resources for the benefit of citizens around the globe.

3. Develop a proposal for a GPA privacy and human rights champion award: Each Working Group member would identify one local civil society group, media outlet or citizen advocate (i.e. a rights champion) who deserves recognition for their work on privacy and other rights and freedoms.

Conclusion

We would like to thank GPA members, including PSWG3 members and our counterpart networks, for providing the vital information needed to begin drafting the narrative on the integral relationship of privacy/data protection and other rights and freedoms. We look forward to continuing this work, hearing the views of our fellow GPA community, and presenting the narrative at the 2021 annual conference.