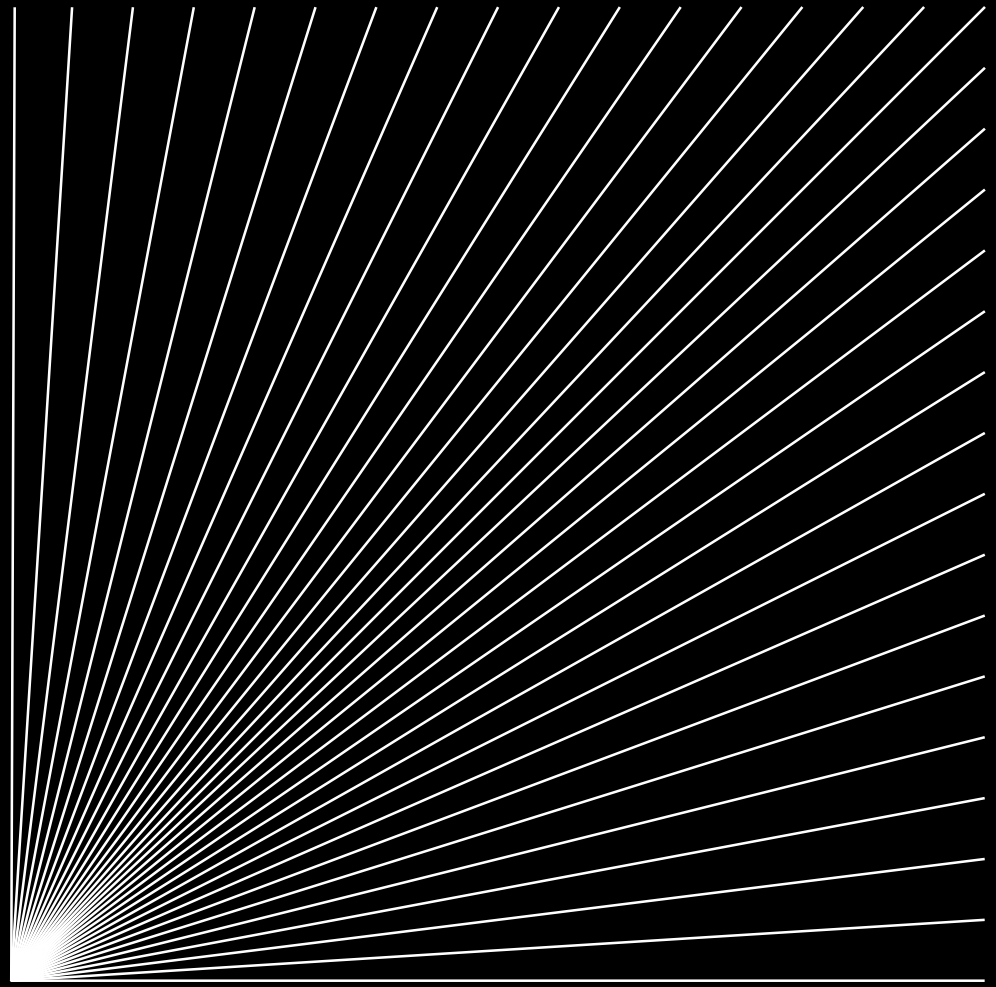
DIFC Data Protection Talks

Talk #4: Inspections and Supervision

Date: 21 June 2022

The future is here.



Discussion

Why does the Commissioner's Office conduct inspections, and how often?

How do I know my business is being inspected and what should I do?

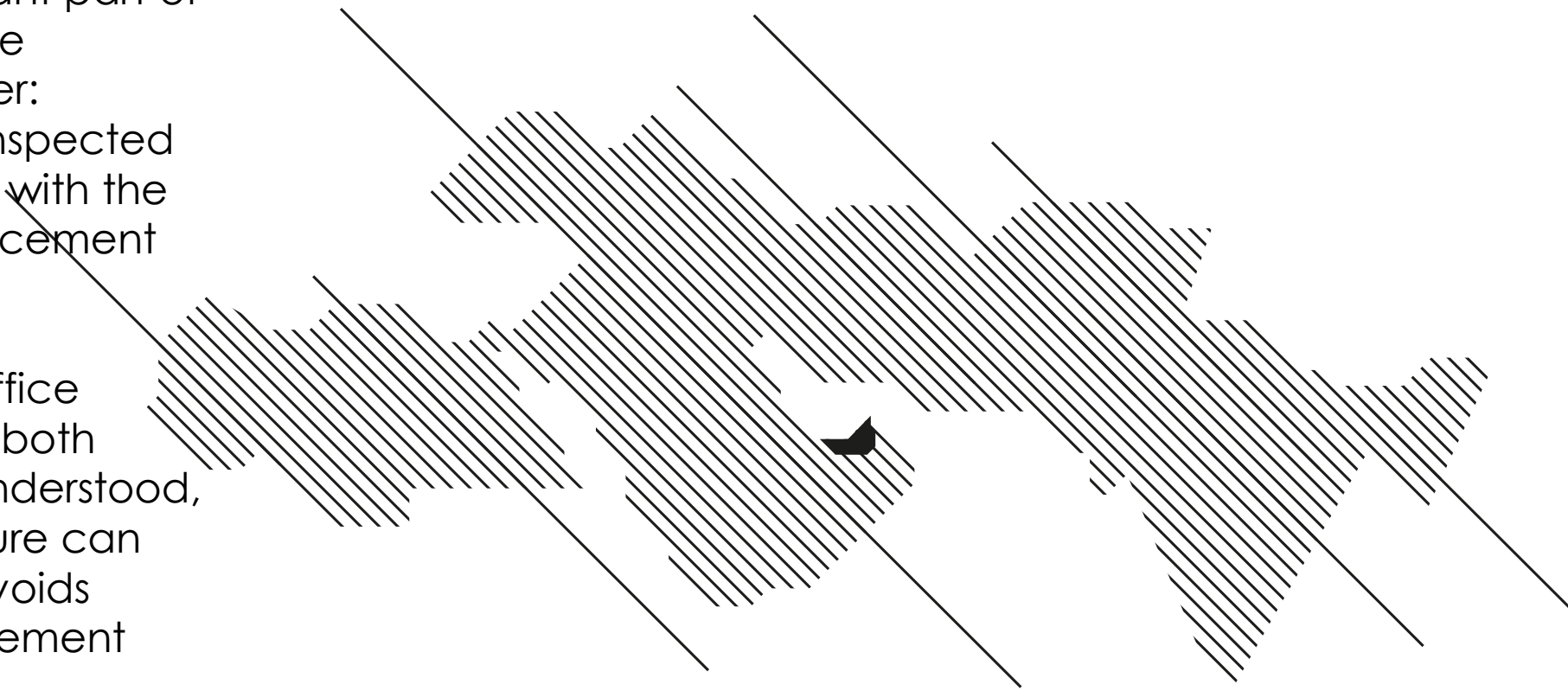
What are your burning questions?

Why does the Commissioner's Office conduct inspections and how often?

Inspections are an important part of any regulatory compliance program to gauge whether:

a) the company being inspected knows how to comply with the law (and avoids enforcement action); and

a) The Commissioner's Office learns what issues are both understood and misunderstood, so a compliance culture can grow properly (and avoids having to take enforcement action)



Article 46(3)(b)

Inspections are a key tool for the Commissioner's Office to assure accountability of a DIFC-based entity.

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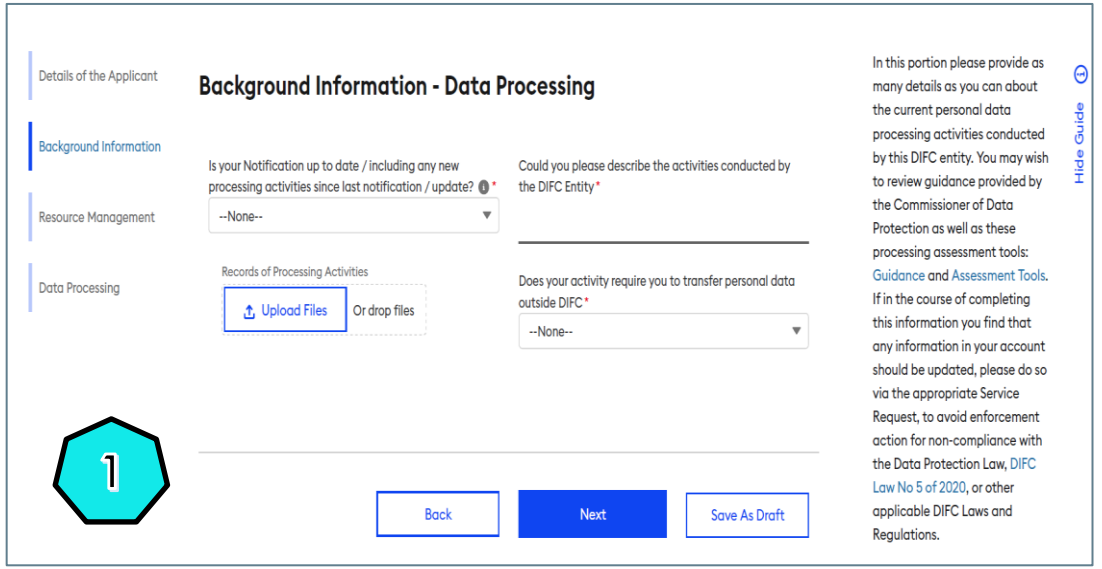
Automated inspections at least, per year. Previously it was only 2 per month via manual inspections.

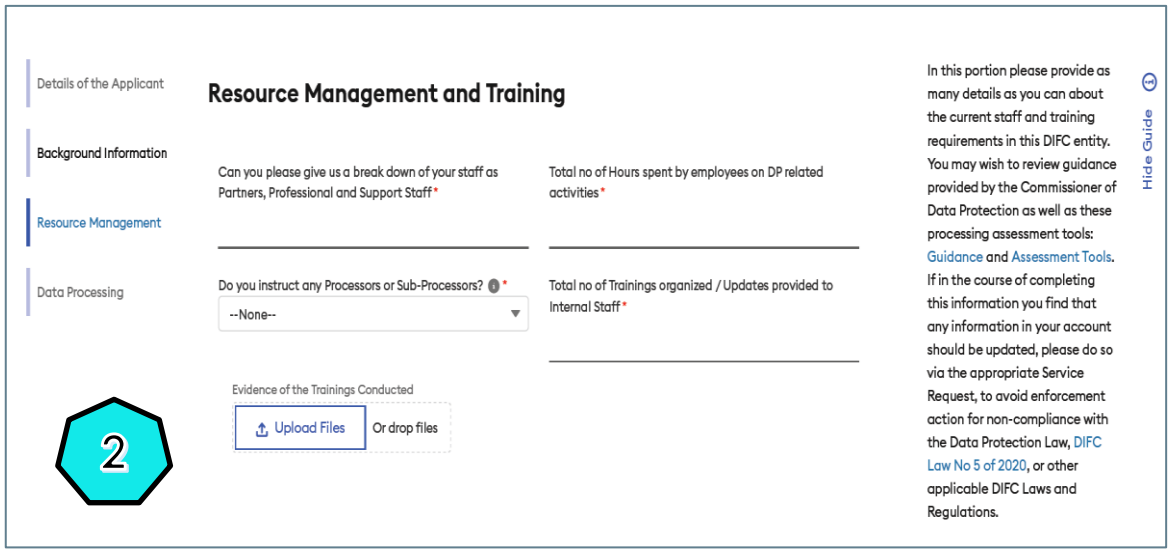
Guidance

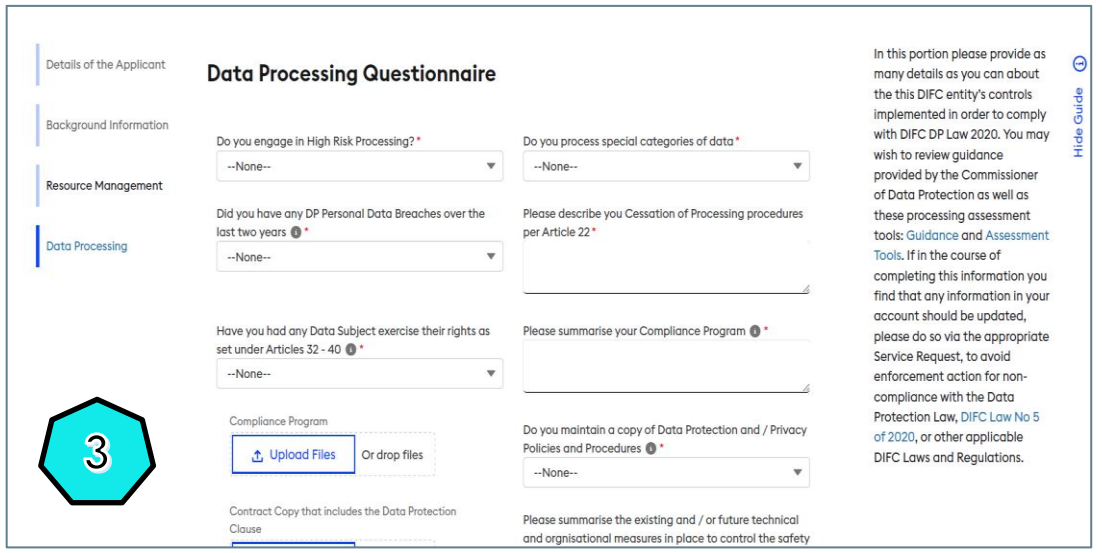
General DP Law compliance guidance is available here

How do I know my business is being inspected and what should I do?

1. **Email from DIFC Portal is sent – "Inspection Questionnaire" in subject**
2. **The email indicates it's a DP inspection, with a due date with an SR number**
3. **The action is in Pending Items / search for the SR number from the email.**
4. **Complete the 3 questionnaire sections: Background information, Resource Management & Training, and Data Processing**
5. **<u>We cannot grant extensions</u>. Please provide as much information as possible anyway, *even if you think the company is not compliant*. We can return for more information if needed.**
6. ***If you don't respond at all, we will follow up and may have to take further supervisory or enforcement action.***

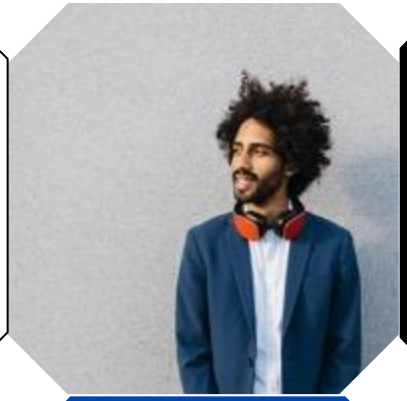






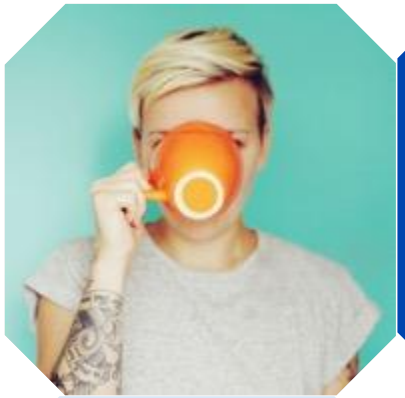
What kinds of questions should we consider regarding DP inspections?

What if I know my company is not compliant with the DP Law 2020 when being inspected?



What if I don't respond to an inspection request?

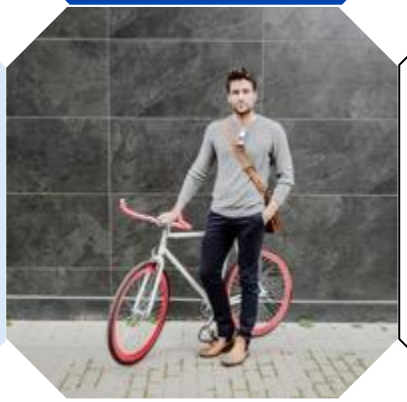
What activities does my business perform?



How many Processors are we sharing data with and what DP laws are in place where they operate?

Where does my company collect Personal Data?

Can I request an extension to respond to an inspection request?



Does any data leave the DIFC?

Have I evaluated the risk that processing creates regarding the personal data we store?

What are YOUR burning questions?

How do you navigate differences between the mainland and free zone data protection regulations? What about localization requirements in DIFC vs UAE?	The mainland DP Law and the DIFC DP Law are rather similar. We will have to wait to see what the implementing regulations look like – they are pending. But generally, if you comply with the DIFC DP Law, you could be close to overall compliance with the UAE DP Law. Currently, the DP Law in DIFC does not contain localization requirements, but we are unsure what will happen with the UAE DP Law.
Are there are any data protection related filings to be made in the DIFC?	The primary requirement is if your company processes personal data, to notify the Commissioner's Office, as set out in Article 14(7). This is one of the major areas of non-compliance. If you appoint a DPO, there is an annual DPO assessment that must be filed as well.
What is the key difference between UK GDPR and DIFC Data Protection Law?	Very little. In fact, DIFC DP Law is being evaluated for equivalence with the UK GDPR. Please see the press release from August 2021, providing information about the UK and DIFC collaboration.
What is the biggest challenge you are finding organizations are reaching out to the DIFC with when it comes to data protection?	The most common issue we get asked about most is about international transfers of personal data and what to do to ensure compliance with the many different laws on this. The EU is on one end of the spectrum for specific, technical requirements, and other regulators have their own degrees of requirements. DIFC's requirements are set out in our Data Export & Sharing Handbook. Please have a look at the Data Export & Sharing link of the DIFC website for more support.
Why are board members thinking that privacy function is only a 'good to have' function? How can we break that mental barrier?	Lack of regulator supervision and enforcement (due largely to lack of resources) is one part of the reason why Boards of companies may see DP compliance as less than urgent. If you can get away with speeding down the highway, won't you keep doing it? Same with non-compliance with DP Laws. Also, the impact and education about ethical data management is not well understood by many organizations. Communicate, Communicate, Communicate!!!
Is it mandatory for all companies, including foundations, prescribed corporations, and partnerships, to have a data protection policy? **Does one still need to file for compliance (aka a notification) even if currently there are no employees in the organisation?**	Yes – if the company processes personal data in any way, it should have at least an appropriate level of compliance structure in place, including a privacy policy. To be fair, most PCs don't process personal data, nor do certain types of holding companies. But this decision can only be made by those in the company itself.
Are data controller permits required any more?	No. Please see FAQs for further information.

What are YOUR burning questions? (/2)

Due to budget limitations, please advise methods of implementing a privacy program using open-source tools and free solutions.	Please look at the DIFC Guidance website. There are loads of templates for policies, a compliance checklist available, contract document templates, etc., available, and lots of assessment tools to help you understand your obligations. There is even a free compliance maturity tool provided by a third party that may help. Always check the DIFC DP website and sub-menus such as the Guidance site above for updates. Linked In, Twitter and general email communications to portal users are all sources of updates as well.
Does the Office of the Commissioner of Data Protection have plans to become a data-lead regulator?	Excellent question. The Commissioner's Office has arguably already done so, by creating a DP Law that makes sense for the types of businesses in DIFC, that looks at thematic trends, and keeps accountability at the heart of supervision.
What are the requirements for adding Standard Contractual Clauses to (intra-company) agreements? **Is it necessary to replace our currently still valid data export clauses with the new version released on DIFC website?**	The requirements for implementing the SCCs are set out in the DIFC DP Law Article 27, and the DIFC Regulations, Regulation 5. In short, if your company transfers personal data (exporter) to an importer in another jurisdiction not on the "adequate countries" list (even within the same group), then the SCCs are one of the possible safeguards that may be used. The updated DIFC SCCs should replace the old ones *ideally* by 31 December 2022 (so you have some time). Please have a look here for the SCCs template and here for the guidance of how to use them (Section 3(C) in particular!)
Article 41(1) definition of breach is very wide. Despite online guidance please define severity threshold to notify the Commissioner.	If you check the "Should I Notify a Breach?" Assessment, there are 3 fundamental questions as the end: *Please tell us if any of the following high risk factors apply:* •*Someone's physical safety is in immediate danger* •*Someone's psychological safety is at immediate risk* •*There is immediate risk of serious financial harm*
How can consent be managed in the absence of specific rules in the region?	At least for DIFC, consent guidance is available here.
How do we deal with marketing outside of DIFC?	Guidance is available about marketing and electronic communications here. This guidance provides insight about compliance with other e-privacy laws, i.e., PECR and the EU-driven requirements.

Contact

For further information
please contact:

DIFC DP Commissioner's Office
commissioner@dp.difc.ae

+971 4 362 2222

Gate Building
Level 14
DIFC, Dubai, UAE
PO Box 74777