



Public Consultation Response on Guidelines 02/2024 Article 48 GDPR | Flo Health UK Limited

Acknowledgment

We would like to express our gratitude for the opportunity to submit industry feedback to the European Data Protection Board (“**EDPB**”) in relation to Guidelines 02/2024 on Article 48 (“**draft Guidelines**”) of the GDPR (General Data Protection Regulation), published on December 3rd, 2024.

In developing these draft Guidelines, we appreciate that the EDPB envisioned that organisations located in the European Union might receive requests to share personal data from administrative authorities of third countries for a wide range of reasons and, as such, the draft Guidelines take into account a variety of scenarios.

On this basis, we would like to provide further context about organisations like our own operating within the digital wellbeing sector who are particularly concerned about requests we may receive from law enforcement authorities located in third countries such as the U.S.

Introduction

At Flo, our purpose is to build a better future for female health. We're the world's most popular female health app, helping 380 million women and people who have periods understand their bodies better.

Flo is committed to supporting women and people who menstruate at every stage of their health journey, from their first period through to getting pregnant, throughout pregnancy, and into menopause. Our all-in-one app offers our members the tools they need to understand and manage their health better. For clarification, Flo offers educational wellness services, which are solely led by user input, and Flo does not diagnose or treat its users.

Flo Health UK Limited is a registered data controller in the United Kingdom. While we appreciate that we are not a data controller in the EU, we nevertheless closely follow the guidance of the EDPB and appreciate the adoption of EU principles in the United Kingdom. Flo subsidiaries are located in the European Union, and our lead supervisory authority is the Lithuanian Supervisory Authority.

General Comments

We are particularly focused on protecting our users. While the scenario has admittedly not posed a dilemma for Flo yet, law enforcement authorities from third countries could exert their powers to force European companies to disclose user data and ultimately use that data to issue criminal sanctions against those users. This includes, for example, requests for disclosure of metadata and location data or data directly related to pregnancy, pregnancy loss, and abortion.

Flo is not a political entity, however, we recognise the extreme distress that users may feel if their health data should be used against them by law enforcement officials pursuing criminal cases.



Such fears could also lead to a reduction in the use of educational digital health technology due to the perceived risk of potential harm.

Flo has released technological solutions to address these concerns, which users may opt in to. Flo's **Anonymous Mode feature** gives users access to the Flo app without sharing any information that identifies them. This means that if Flo ever receives an official request to identify an Anonymous Mode user by name or email, it won't be possible to satisfy that request. This feature is optional and free, and available for all Flo users, regardless of location.

However, not every female health app has the resources to devote to such an undertaking. Building Anonymous Mode was an expansive endeavor, requiring significant resourcing and financial investment. That is why we chose to open-source our Anonymous Mode feature, making the technology available to all. Still, organisations that cannot afford to innovate or operationalise such solutions heavily rely on authoritative guidance from institutions such as the EDPB, which can offer additional clarity empowering organisations to review and reject requests without fear of sanctions and penalties.

We believe that now more than ever, everyone deserves to understand their body better without worrying about who can access their personal data—particularly their health data. This is why we request that the EDPB consider introducing even further guidelines in this specific context, addressing the disclosure of personal data to law enforcement authorities located in third countries.

We believe that the establishment of such guidance will not only empower organisations to confidently review requests from law enforcement, but also empower individuals to feel in greater control of their private health and wellness information.

Conclusion

While we recognise that the EDPB has explicitly stated that, as an aim, this draft Guidelines are not intended to introduce fundamental new requirements, we believe that the current framework governing the disclosures of personal data to law enforcement authorities in third countries can more specifically address the risks of harm to individuals as well as the potential adverse public health outcomes.

At Flo, the protection and safety of our users is of paramount priority. We therefore request that the EDPB, in light of its significant role in safeguarding the fundamental rights of individuals per the Charter of Fundamental Rights, consider using the full extent of its powers to provide organisations with additional robust legal grounds and examples under which they may reject requests from law enforcement officials for the disclosure of personal, sensitive or special category data.

We respectfully request your consideration of these issues in the digital wellness context.

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