



What to do in the event of Personal Data Breach



Introduction

Surfshark, a cybersecurity company, reported that Nigeria recorded 82,000 data breaches in Q1 2023.¹ Similarly, the Commissioner of the Nigerian Data Protection Bureau, Dr. Vincent Olatunji, stated that over 110 companies are undergoing data breach investigation by Nigerian Data Protection Bureau.² He noted that the companies under investigation include banks, telecommunications firms, gaming companies, and digital lending companies.

Under the Nigeria Data Protection Act 2023, companies that deal with the personal data of their customers/end-users can either be classified as data controllers (an individual or entity that determines the purposes and means of processing personal data) and a data processor (an individual or entity that processes data on behalf of another entity or at the direction of a data controller) This edition of TMT Thursday explores the obligation of these companies following a data breach under the NDPA.

¹Omoyele Omoruyi "Nigeria sees 64% increase in data breaches, recording an outstanding 82,000 episodes in Q1 2023" Available at [https://tech-next24.com/2023/05/23/nigeria-records-82000-data-breach-in-q1/#:~:text=Nigeria%20sees%2064%25%20increase%20in%20data%20breaches%2C%20recording%20an%20outstanding,82%2C000%20episode%20in%20Q1%202023&text=Nigeria%20recorded%2082%2C000%20data%20breaches,2023%20\(January%20to%20March\)](https://tech-next24.com/2023/05/23/nigeria-records-82000-data-breach-in-q1/#:~:text=Nigeria%20sees%2064%25%20increase%20in%20data%20breaches%2C%20recording%20an%20outstanding,82%2C000%20episode%20in%20Q1%202023&text=Nigeria%20recorded%2082%2C000%20data%20breaches,2023%20(January%20to%20March)) Accessed on July 9, 2023.

²Damilola Olufemi "110 companies under investigation for data breaches – NDPB" Available at <https://punchng.com/110-companies-under-investigation-for-data-breaches-ndpb/> Accessed on July 9, 2023.

What is Personal Data Breach?

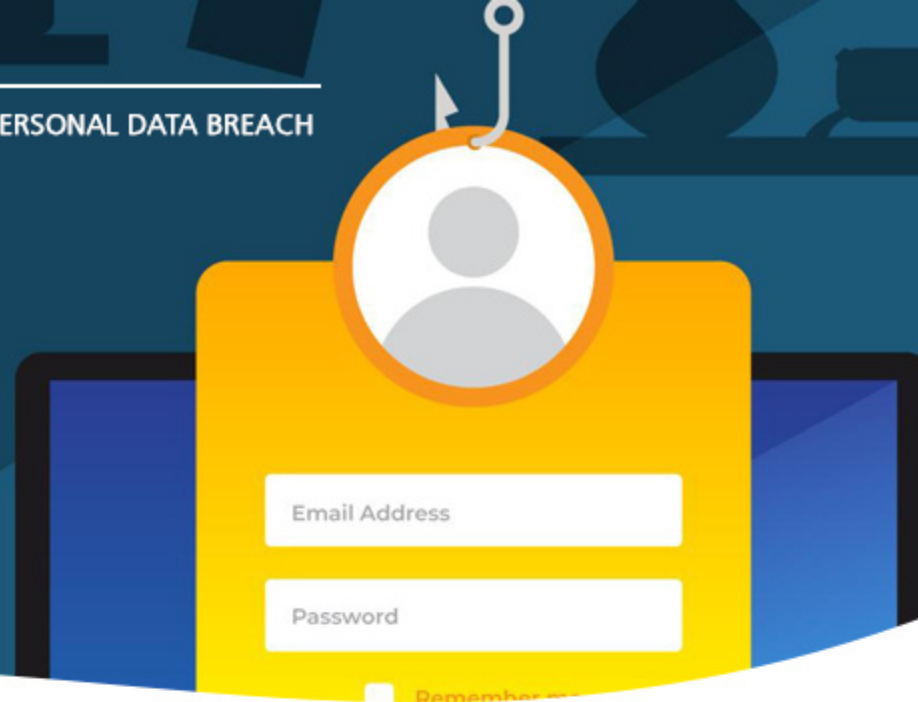
Personal data breach entails a breach of security of a data controller or data processor leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.³ Data controllers and data processors owe the data subject a duty to keep personal data secure, protect from unauthorized access, loss, destruction or damage.⁴ A data controller is required to take appropriate measures ensure the security and confidentiality of data.⁵ Failure to comply with this duty of care may lead to a data breach.

An example of a of data breach occurred in a popular tertiary institution in Nigeria (the “**Institution**”). In this case, an unidentified individual (the “**Hacker**”) claimed to have had unauthorized access to the Institution’s data kept in its management information system and notified the Institution that he/she gained access to the personal data of students, lecturers, alumnus and alumnae, stakeholders, parents and guardian of the students (altogether “**Data Subjects**”).

³Section 65 Nigerian Data Protection Act 2023

⁴Section 24 (1) (f) Nigerian Data Protection Act 2023

⁵Section 39 (1) Nigerian Data Protection Act 2023



The Hacker claimed to have access to personal data such as the name, phone number, and address. The Hacker also claimed to have to have access financial data of the victims: bank details and credit card information.

The Institution responded to this allegation by with a public notice (the “Notice”). In the Notice the Institution admitted that there was a violation of the Institution’s data security management system but claimed that the information the Hacker has accessed to are only inconsequential records not sensitive data of the alleged victims.

Obligations in the event of Data Breach

Section 40 of the NDPA provides for the obligations of a data controller and data processor in the event of a personal data breach. Where a personal data breach occurs with respect to personal data being stored or processed by a data processor, the data processor shall notify the data controller or data processor that engaged it and respond to all information request related to such breach.⁶

⁶Section 40(1) Nigerian Data Protection Act 2023



A data controller shall inform the Nigerian Data Protection Commission (**NDPC**) where there is a personal data breach likely to affect the rights of individuals. The breach shall also be communicated to the data subjects who will be advised on measures to take to mitigate the possible adverse effects of the data breach.⁷

The notification to NDPC shall contain:

- a description of the circumstances of the loss or unauthorised access or disclosure;
- the date or time period during which the loss or unauthorised access or disclosure occurred;
- a description of the personal information involved in the loss or unauthorised access or disclosure;
- an assessment of the risk of harm to individuals as a result of the loss or unauthorised access or disclosure;

⁷Section 40(2) and (3) Nigerian Data Protection Act 2023

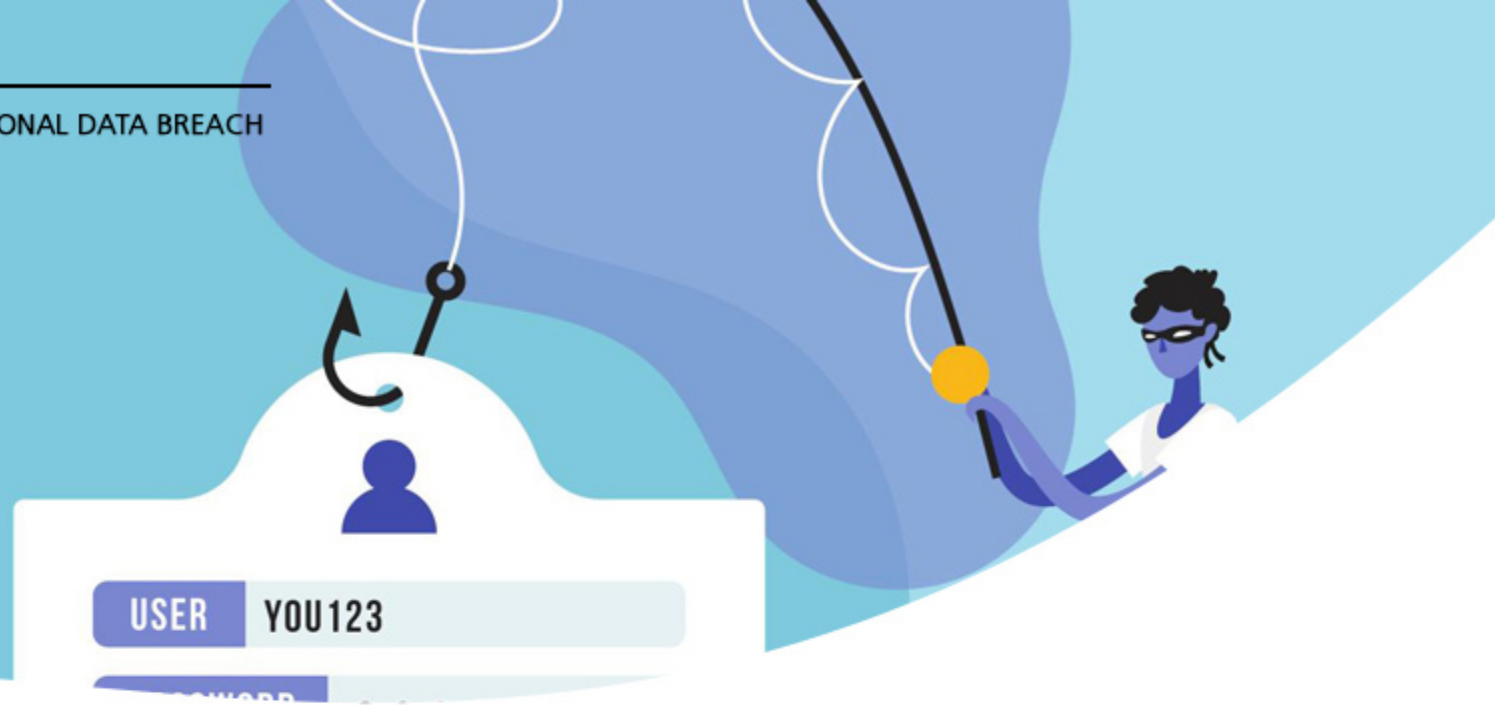


- an estimate of the number of individuals to whom there is a real risk of significant harm as a result of the loss or unauthorized access or disclosure;
- a description of steps the data controller has taken to reduce the risk of harm to individuals;
- a description of any steps the data controller has taken to notify individuals of the loss or unauthorized access or disclosure.⁸

In addition to the above, the notice to NDPC (the data controller in the appropriate cases) and communication to the data subjects shall state:

- the name and contact information for a person who can answer NDPC's questions about the data breach, on behalf of the the data controller or data processor;
- the likely consequence of the personal data breach; and

⁸Paragraph 9.2 & 9.3 of the Nigerian Data Protection Regulation Implementation Framework



- the measures taken or proposed to be taken to address the personal data breach, including, where appropriate measures taken to mitigate its possible adverse effects.⁹

A data controller or data processor is required to keep record of all data breach, the effects and remedial action taken.¹⁰

Conclusion

Data controller or data processor must take appropriate measures to eliminate protect personal data from personal data breach. However, in the unfortunate event of data breach, a data controller or processor must comply with the procedure highlighted in the NDPA, the Nigeria Data Protection Regulation (the “**NDPR**”) and the NDPR Implementation Framework.

⁹ Section 40(4) Nigerian Data Protection Act 2023

¹⁰ Section 40(8) Nigerian Data Protection Act 2023