

Summary

In present-day society more and more personal information is being collected. The nature of the collection has also changed: more sensitive and potentially prejudicial information is collected. The advent of computers and the development of new telecommunications technology, linking computers in networks (principally the Internet) and enabling the transfer of information between computer systems, have made information increasingly important, and boosted the collection and use of personal information. The risks inherent in the processing of personal information are that the data may be inaccurate, incomplete or irrelevant, accessed or disclosed without authorisation, used for a purpose other than that for which they were collected, or destroyed. The processing of personal information poses a threat to a person's right to privacy. The right to identity is also infringed when incorrect or misleading information relating to a person is processed. In response to the problem of the invasion of the right to privacy by the processing of personal information, many countries have adopted "data protection" laws. Since the common law in South Africa does not provide adequate protection for personal data, data protection legislation is also required. This study is undertaken from a private law perspective. However, since privacy is also protected as a fundamental right, the influence of constitutional law on data protection is also considered. After analysing different foreign data protection laws and legal instruments, a set of core data protection principles is identified. In addition, certain general legal principles that should form the basis of any statutory data protection legislation in South Africa are proposed. Following an analysis of the theoretical basis for data protection in South African private law, the current position as regards data protection in South-Africa is analysed and measured against the principles identified. The conclusion arrived at is that the current South African acts can all be considered to be steps in the right direction, but not complete solutions. Further legislation incorporating internationally accepted data protection principles is therefore necessary. The elements that should be incorporated in a data protection regime are discussed.

Key terms

Data protection; protection of privacy in personal information; processing of personal information or data; computers and privacy; right to privacy; right to identity; European Union Directive on data protection; OECD Guidelines on data protection; European Council Convention on data protection; South African private law.