

HEAD IN THE CLOUD?

One of the issues highlighted on 9 July 2019 at the European Data Protection Board's ('EDPB') 12th plenary session was the US CLOUD (Clarifying Lawful Overseas Use of Data) Act (the 'CLOUD Act') and it's possible 'reach' into Jersey and EU businesses. This has in turn led to a press release from Jersey's IOC.

The purpose of the CLOUD Act is to assist the investigations of US law enforcement authorities by;

"ordering electronic communications services providers or remote computing service providers to preserve, backup, or disclose the contents of a wire or electronic communication and any record or other information pertaining to a customer or subscriber within their possession, custody or control "regardless of whether such communication, record, or other information is located within or outside of the United States".

Note this is irrespective of where the data is stored.



HOW COULD THIS AFFECT YOU?

You could be compelled to answer a request by US law enforcement authorities for the disclosure of personal data that is subject to the provisions of the GDPR/Jersey Data Protection (Jersey) Law.

Ignoring the request could have serious consequences for your business and key personnel in any dealings you have with the United States.

On the other hand, blind compliance with such a request without consideration of our own data protection principles leaves you exposed to complaint from the data subject and scrutiny from the JOIC.



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HOW CAN OBEN HELP?

If you receive a 'request' from the US authorities – even potentially one supported by a decision of a US Court – you must ensure that compliance will not put you in breach of your own local obligations under the Data Protection (Jersey) Law, 2018 and/or GDPR.

It is possible that you can strike the balance to comply with both.

If you cannot it is important to understand the consequences and risks.