



The Sedona Conference

International Principles for Addressing Data Protection in Cross-Border Government & Internal Investigations: Principles, Commentary & Best Practices

(May 2018)

In the summer of 2013, The Sedona Conference’s Working Group on International Electronic Information Management, Discovery, and Disclosure (WG6) began a dialogue on developing practical guidelines and principles to help organizations, regulators, courts, and other stakeholders handle government or internal investigations that necessitate the transfer of Protected Data across national borders. That dialogue ultimately resulted in The Sedona Conference *International Principles for Addressing Data Protection in Cross-Border Government & Internal Investigations: Principles, Commentary & Best Practices* (“*International Investigations Principles*”).

WG6 began the dialogue that led to *International Investigations Principles* because while it recognized that its *International Principles on Discovery, Disclosure & Data Protection: Best Practices, Recommendations & Principles for Addressing the Preservation & Discovery of Protected Data in U.S. Litigation* (“*International Litigation Principles*”) offers helpful guidance to practitioners and courts in reconciling U.S. Litigation discovery obligations with data protection rights, it also recognized that *International Litigation Principles* is not always helpful, or even applicable, in the context of investigations.

The resulting *International Investigations Principles* provides eight Principles to guide Organizations in planning for and responding to investigations while ensuring that Protected Data is safeguarded at all times against avoidable risks of disclosure.

The eight Principles are:

1. Organizations doing business across international borders, in furtherance of corporate compliance policies, should develop a framework and protocols to identify, locate, process, transfer, or disclose Protected Data across borders in a lawful, efficient, and timely manner in response to Government and Internal Investigations.
2. Data Protection Authorities and other stakeholders should give due regard to an Organization’s need to conduct Internal Investigations for the purposes of regulatory

compliance and other legitimate interests affecting corporate governance, and to respond adequately to Government Investigations.

3. Courts and Investigating Authorities should give due regard both to the competing legal obligations, and the costs, risks, and burdens confronting an Organization that must retain and produce information relevant to a legitimate Government Investigation, and the privacy and data protection interests of Data Subjects whose personal data may be implicated in a cross-border investigation.
4. Where the laws and practices of the country conducting an investigation allow it, the Organization should at an early stage of a Government Investigation engage in dialogue with the Investigating Authority concerning the nature and scope of the investigation and any concerns about the need to produce information that is protected by the laws of another nation.
5. Organizations should consider whether and when to consent to exchanges of information among Investigating Authorities of different jurisdictions in parallel investigations to help minimize conflicts among Data Protection Laws.
6. Investigating Authorities should consider whether they can share information about, and coordinate, parallel investigations to expedite their inquiries and avoid, where possible, inconsistent or conflicting results and minimize conflicts with Data Protection Laws.
7. Courts and Data Protection Authorities should give due regard to the interests of a foreign sovereign seeking to investigate potential violations of its domestic laws.
8. A party's conduct in undertaking Internal Investigations and complying with Investigating Authorities' requests or demands should be judged by a court, Investigating Authority, or Data Protection Authority under a standard of good faith and reasonableness.

The full text of The Sedona Conference

*International Principles for Addressing Data Protection in Cross-Border Government
& Internal Investigations: Principles, Commentary & Best Practices*

is available free for individual download from The Sedona Conference website at https://thesedonaconference.org/publication/International_Investigations_Principles.

© 2018, The Sedona Conference. Reprinted courtesy of The Sedona Conference.