

Table of contents

1. Data categories (subscriber information, traffic data, content data)....	1
1.1. Definitions under domestic legal system.....	1
2. Procedures for the conservation of stored computer data	3
2.1 Expedited preservation of stored computer data (Art. 29)	3
2.2 Expedited disclosure of stored data (Art. 30)	4
2.3 Requests for stored computer data: subscriber, traffic, content data (Art. 31)	4
2.4 Requests fo real-time traffic data collection (Art. 33).....	7
2.5 Requests for interception of content data (Art. 34).....	7

This fact sheet has been prepared by the Council of Europe's Cybercrime Programme Office (C-PROC) in order to facilitating international cooperation. It does not necessarily reflect the official positions of the State covered or the Council of Europe.



www.coe.int/cybercrime

1. Categories of Data (subscriber information, traffic data, content data)

1.1. Definitions under domestic legal system

Subscriber information	There is no definition in Peruvian criminal legislation.
Traffic data	There is no definition in Peruvian criminal legislation.
Content data	There is no definition under Peruvian criminal law.

Peruvian criminal legislation defines computer data as any representation of facts, information or concepts expressed in any way that lends itself to computer processing, including programs designed to enable a computer system to execute a function, in accordance with the provisions of the ninth supplementary provision of Law N°30096.

This provision does not distinguish among subscriber information, traffic data and content data, so the procedure to obtain this type of information is through the restrictive measure of lifting the secrecy of communications, which is authorized by court order, pursuant to the provisions of Law N°27697, Law that grants the Prosecutor the power to intervene and control communications and private documents in exceptional cases, dated April 12, 2002.

2. Procedures for the preservation of stored computer data

2.1 Expedited preservation of stored computer data (Art. 29)

General observations

Since the entry into force of the Convention of Budapest in Peru, dated December 01, 2019, no such request has been received to date; however, due to their nature, these requests should be directed to the 24/7 NETWORK, point of contact, which is the International Judicial Cooperation and Extradition Unit of the Attorney General's Office of Peru. Also, in order to provide urgent attention, requests for international judicial assistance may be sent to the emails ucjieperu@mpfn.gob.pe, rgala@mpfn.gob.pe and lrodriguez@mpfn.gob.pe¹

Procedures in force

Requests for preservation

Although it is true that in the Book VII of the Peruvian Criminal Procedure Code there is no procedure for the attention of this type of request; however, due to a recent request of the Argentine authorities by virtue of the 24/7 Network, and the pandemic originated by COVID-19, such request was submitted electronically and was dealt with through the following steps:

Step 1: Confirmation of receipt by email.

Step 2: Assignment of case number.

Step 3: This Unit issued an Attorney Disposition, stating the applicable legal instrument and the urgent need for the preservation of the computer data, and the request for the preservation was sent to the service providers.

Step 4: After the preservation of the data was carried out, the Peruvian Central Authority informed the requesting foreign authority the submittal of its request for judicial assistance

Given the nature of the requests for preservation, these will be processed in an urgent manner.

Urgent requests for MLA

Step 1: Reception of the request, which can be submitted by email if permitted by the Bilateral Treaty, or in its absence the request is sent directly by the foreign Central Authority or through diplomatic channels

Step 2: Assignment of the case number.

Step 3: Review of the formal requirements of the request by the responsible official of the Central Authority, after which the request is sent to the competent preparatory investigation judge.

Step 4: The judicial authority is responsible for deciding the origin of the request, for which it has a maximum of two days after issuing the admission resolution, it is responsible for acting the required diligence and in the case of needing information, and it is the judge who submits requests to the service providers.

¹Alternate Point of contact of the 24/7 Network.

Step 5: The result of the diligence, after which the Peruvian Central Authority sends it to the requesting foreign authority. In cases of urgency it is sent in advance via email, without prejudice of the subsequent communication through diplomatic channels.

2.2 Expedited disclosure of stored data (Art. 30)

General observations

Peruvian legislation does not establish a mechanism by which the requested Party sends to the requesting Party the sufficient volume of data relating to traffic so that the service provider can be identified in the event that it is discovered that such provider that belongs to another State Party has participated in the transmission of the communication; however, we consider that the mechanism of spontaneous transmission of information could be used, it has been used by Peru and has allowed to send various information to foreign countries in order to assist in their investigations.

Procedures in force

Step 1: Confirmation is received from the judicial authority of the preservation of data and the information that a services provider from other State has participated in the transmission of such communication.

Step 2: The Peruvian Central Authority informs the requesting foreign authority about the preservation of data and requires the submittal of the request for judicial assistance.

Step 3: The Peruvian Central Authority, via spontaneous transmission of information, forwards the data relating to traffic to the foreign authority so that the services provider from the other State who was involved in the transmission of the communication, can be identified.

Procedures for mutual judicial assistance

2.3 Requests for stored computer data: subscriber, traffic, content data (Art. 31)

▶ Requests for subscriber information

▶ Requests for content data

▶ Requests for traffic data

General observations

As we pointed out in previous lines, Peruvian legislation does not distinguish among subscriber information, traffic data and content data, so the same procedural rules apply to obtaining all types of data, therefore, the information is presented in a consolidated manner.

Competent Authorities

In accordance with Article 512 of the Peruvian Criminal Procedure Code, the Attorney General's Office is the Central Authority in matters of international judicial cooperation, duties that are being performed by the International Judicial Cooperation and Extradition Unit, whose head is Rocío Gala Galvez

Currently, the office has a website which can be accessed via the following link: <https://www.mpfm.gob.pe/ucjie/>, and is located at General Trinidad Moran Avenue 990- Lince district.

Relevant points of contact

The International Judicial Cooperation and Extradition Unit of the Attorney General's Office of Peru is responsible for handling requests for subscriber information, traffic data or content data, as well as requests for international judicial assistance. The email ucjieperu@mpfn.gob.pe is available for receiving requests.

Previous consultations

For previous consultations with the Peruvian competent National Authority and/or 24/7 point of contact, please consult the following information before sending the request:

1. Preliminary consult is not essential but it is highly recommendable for the purposes of the proper elaboration of requests for international judicial assistance.
2. The following email addresses are available for consultation purposes: rgala@mpfn.gob.pe and lrodriguez@mpfn.gob.pe²
3. The Peruvian Central Authority may review the draft of the requests for cooperation, prior coordination with the requesting party and at its request.

Accepted legal basis/ mechanisms for MLA requests

The following legal instruments/mechanisms listed below are applicable to the request for mutual judicial assistance as a legal basis:

1. Budapest Convention on Cybercrime, a legal instrument applicable among State Parties.
2. Relevant bilateral treaties, in case the requiring State has not signed or the Convention on Cybercrime is not in force.
3. Principle of Reciprocity.

Content of the request

Pursuant to Article 530(1) of the Peruvian Criminal Procedural Code, a request for international judicial assistance must contain the following:

- a) The name of the foreign authority in charge of the investigation or prosecution;
 - b) The criminal offense to which the case refers and description of the matter, the nature of the investigation or prosecution, and the list of the facts to which the request refers;
 - c) A complete description of the assistance requested;
2. When the particular evidence to be obtained is not known, it is sufficient to mention the facts to be proven.
 3. If the request does not comply with the provisions of this article or when the information provided is not sufficient for its processing, the requesting State may be asked to amend its request or complete it with additional

² Alternate Point of contact of the 24/7 Network.

information. During that period the national authority may adopt generic assistance acts in the investigation or provisional measures, such as account blocking, seizure or preventive confiscation, in order to avoid irreparable damage.

Applicable legal requirements

Legal requirements for the provision/obtaining of the subscriber information, traffic and content data, in the Peruvian legislation:

In accordance with the provisions of the Article 528(2) of the Peruvian Criminal Procedural Code, a request for international judicial assistance or a rogatory letter shall only proceed when the penalty of imprisonment for the offense under investigation or trial is not less than one year and provided that the crime is not exclusively subject to military legislation.

The legal requirement for obtaining the subscriber information, the traffic data and content data are the same, for which the provisions of Article 532 of the Criminal Procedural Code apply.

Likewise, it is specified that in order for the service provider to render such information it is necessary that the competent judge previously issues the resolution to lift the secrecy of communications.

Confidentiality requirements

Article 535(2) of the Peruvian Criminal Procedural Code stipulates that the national judicial authority when accepting the request for assistance or, in its case and subsequently the Attorney General's Office may order that the information or evidence provided to the requesting State be kept confidential.

It is the responsibility of the Attorney General's Office to coordinate with the central authority of the requesting country to determine the conditions of confidentiality that are mutually convenient.

Urgent requests

The criteria of urgency regarding requests for subscriber information, traffic data and content data are linked with the volatility of data or the immediate risk to life and limb of people, and the referred justification must be provided by the requesting State.

Likewise, it is specified that the prioritization criteria are urgency due to procedural deadlines that will soon expire, volatility of data and the seriousness of the offenses under investigation.

Translation

The request for judicial assistance must be submitted in the original language, accompanied by a translation into Spanish.

Limitations

Article 535(1) of the Peruvian Criminal Procedural Code establishes the limitation for the use of information, which states that documents, records, information or evidence in application of the judicial assistance may not be disclosed or used for different purposes than those specified in the rogatory letter, without prior consent of the Attorney General's Office, which is called Principle of Specialization.

2.4 Requests for real-time traffic data collection (Art. 33)

2.5 Requests for interception of content data (Art. 34)

General observations

Under Peruvian legislation, the rules that apply to the collection of subscriber information, traffic data and content data, are those that apply for the requests of real-time traffic data collection and data interception, so we refer to the information outlined above.

Likewise, it is pertinent to point out that by virtue of the provisions of the Article 230(4) of the Peruvian Criminal Procedural Code which regulates the tapping, recording or registration of telephone communications or other means of communications, it is established that the concessionaires of the public communication services must facilitate, immediately, the geolocation of cell phones and the diligence of the tapping, recording and registration of the communications that has been order by judicial resolution, in real time and without interruption, 24 hours a day, 365 days a year, under the warning of being liable for the responsibilities of law in case of failure to comply. The servers of the indicated companies must keep secrecy about them, unless they are summoned as witnesses of the procedure.

Said concessionaires shall grant Access, compatibility and connection of their technology with the Intervention and Control System of the Peruvian National Police. Likewise, when for reasons of technological innovation the concessionaires renew their equipment and software, they will be obliged to maintain compatibility with the Intervention and Control System of the Peruvian National Police.