Submission to the Personal Data Protection Commission on the Public Consultation on the Proposed Regulations on Data Protection in Singapore

April 1, 2013

Submitted By:

Raymond Choo *
Regional Counsel,
Pitney Bowes (Asia Pacific) Pte Ltd

---

* The author welcomes and feedback and comments on his views expressed in this submission. He can be contacted at [redacted]

CONTENTS

A. Summary of major points

1. The author is of the view that for the purposes of the Personal Data Protection Act 2012 (the "Act") access requests should be made affordable and not at all costs to the individuals raising the access request. It should not be the prescribed rule that the organisation to whom the access request is made has to charge a minimal fee. Instead the organisation be given the *discretion* to decide whether to charge or waive the minimal fee payable for the access request(s) subject to a proposed maximum fee scale as predetermined by the Personal Data Protection Commission (the "Commission").

2. The author proposes that the Binding Corporate Rules (the "BCR") of an intra-group of companies have been recongised by the Data Protection Authority of a European Union (the "EU") Member State be regarded by the Commission as persuasive satisfying the Act and the accompanying regulations, subject to amendments.

B. Statement of Interest

The author is currently an in-house counsel in Pitney Bowes Asia Pacific Ltd.

The views expressed in this Submission are those of the author in his personal capacity and do not represent the views of, and should not be attributed to the Company.

C. Comments

1. Question in relation to the administration of requests for access to and correction of personal data – views / comments on the proposed manner in which an individual may make an access or correction request or the proposed positions relating to how organizations are to respond to such requests?

1.1 It should be noted that as much as individuals have a right to request from organisations to have access to and correction of their personal data, organisations too have the right to demand individuals to identify themselves in sufficient detail to enable the organisations concerned to find the requested information. More importantly, this would avert inadvertent disclosure of personal data to individuals who are not authorised to make such access requests or correction requests.

1.2 It is heartening that the Commission acknowledges that "organizations shall be entitled to charge an individual who makes an access request a minimal fee to recover the incremental costs directly related to the time and effort spent in responding to the access request." The

author is of the view that if there is no imposition of minimal fees payable on access requests, this may lead to a voluminous (and potentially frivolous) subject access requests. This ultimately would have an adverse effect on resource capabilities and budgets of the organizations, to the extent of placing unnecessary burden on Small Medium Enterprises (SME) who may not have the resources to address the requests.

1.3 In its Consultation Paper, the Commission referred to the UK regime where a maximum fee of £10 is payable for most types of access requests[1]. In the Regulations also provide for exceptions to this by stating that the maximum fees that can be charged for subject access requests for education records may be increased on a scale basis - the maximum fees for producing a hard copy of computer records is £50, whilst the maximum fees for copying paper records may run up to £50 for 500 pages or more[2].

1.4 Clearly by having a scaled approach on how much the organisation can charge for access requests has its merit as it prevents any arbitrary imposition of the cost with regard to access requests. Such an approach is also a more measured and targeted instead of the broad-based approach that "organizations will only allowed to recover a minimum fee proportionate to the time and effort spent to respond to the access request."

1.5 For businesses, the impact of complying with the provisions of the Act will vary depending on the nature of the business. Nevertheless, the author is of the view that access requests should be made affordable and not at all costs whether to the subject or the organization concerned.

1.6 Hence, the author proposes that the organisation to whom the access request is made be given the *discretion* to decide whether to charge or waive the minimal fee subject to the maximum fee as predetermined by the Commission such as on a scale fee basis that can be charged for the subject access requests.

2. Question in relation to the transfer of personal data outside Singapore – view / comments on binding corporate rules to protect personal data transferred out of Singapore

2.1 In the Consultation Paper, (paragraphs 7.4 and 7.11), the Commission states that in the case of intra-corporate transfers, "binding corporate rules ("BCR") would be an acceptable avenue to safeguard personal data transferred overseas.

[1] Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000, Regulation 3 reads "except as otherwise provided by regulations 4, 5 and 6 below, the maximum fee which may be required by a data controller under section 7(2)(b) of the Act is £10.

[2] Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000, Schedule, which is subject access requests in respect of health records.

2.2 Given that BCR are to be "legally binding and applicable to and enforced by every organisation within the transferring organisation's group", the author agrees with the Commission's view that due recognition of BCR as being effective in ensuring that intra-group transfers of data will benefit from a consistent level of protection. The BCR will also alleviate the administrative burden that each time a company transfers personal data to an intra-group company it has to enter into agreements with the recipient transferee intra-group company which agreements contain contractual clauses on the safeguarding of personal data.

2.3 The concept of giving due recognition to BCR of an intra-group of companies is not entirely new. Under the EU, provided that the BCR of multinational companies ("MNCs") and international organizations are recognised by the Data Protection Authority of an EU Member State as satisfying the EU privacy standards, the companies within the intra-group located within the EU Member States may transfer data to each other located within the EU[3].

2.4 The author proposes that to the extent that MNCs and international orgnisations have obtained the necessary authorisations for their BCRs from the relevant Data Protection Authority(s) in the EU, such authorisations should be regarded as *persuasive*, but not binding on the Commission, as satisfying reasonable privacy standards. And in cases where the local mandatory data protection standards exceed the BCR of the organisation concerned despite the prior approval of a Data Protection Authority of EU Member State, the Commission can specify and, if necessary, give directions to the organisation on amending or modifying the BCR so as to comply with the Act and the Data Privacy Regulations.

3. Questions in relation to the minimum age of individuals who may act for others and minimum age of individuals who may exercise his own rights and powers under the PDPA?

3.1 To the extent that a minor (that is individuals who are below 21 years of age) be able to exercise powers and rights conferred on him or her under the Act, the draft Regulations proposed that the individual be at least 18 years old, or being less than 18 years of age but above 14 years of age and understands the nature of the right or power and consequences of exercising the right or power. The Commission seeks views on the minimum age that an individual may exercise his own rights under the Act.

3.2 The author proposes that in both instances the appropriate minimum age of a minor exercising his own rights and powers under the Act should be the *same* as that of a minor who may be duly authorised to act on behalf of others pursuant to section 14(4) of the Act. Otherwise it would be a contradiction that, on the one hand, a minor may be exercising his own rights and powers

[3] European Union Article 29 Working Paper.

under the Act yet on the other hand be prohibited from being duly authorised to act on behalf of others pursuant to the provisions of the Act, and vice versa.

D. Conclusion

We live in a world where increasingly considerable personal data is being collected and used by companies for various purposes, including internal usage, marketing activities, etc.

At the end of the day, a balanced approach should be adopted with regard to the costs payable for the access requests of individuals and ensuring that there is an adequate level of protection of data privacy rights. The Commission should take cognizance that, from an organisation's perspective, providing information to the wrong individual may have more severe harmful consequences than not providing the requested information to the right individual at all.