



PERSONAL DATA
PROTECTION COMMISSION
S I N G A P O R E

**ADVISORY GUIDELINES ON REQUIRING CONSENT FOR MARKETING
PURPOSES**

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PART I

1 Introduction

- 1.1 These Guidelines should be read in conjunction with the document titled “Introduction to the Guidelines” and are subject to the disclaimers set out therein.
- 1.2 The Personal Data Protection Act 2012 (“PDPA”) contains two main sets of provisions, covering personal data protection (the “Data Protection Provisions”) and the Do Not Call Registry (the “Do Not Call Provisions”), which organisations are required to comply with. The focus of these Guidelines is to indicate how sections 14(2)(a) and 46(1), which fall within the Data Protection Provisions and Do Not Call Provisions respectively, will be interpreted by the Commission.
- 1.3 As with all Guidelines issued by the Commission, these Guidelines are not meant to be an exhaustive representation of the circumstances which these two sections may apply to and do not prescribe how organisations may wish to ensure compliance with the PDPA.

PART II: Overview of the relevant PDPA provisions and general principles

2 Obtaining consent under the Data Protection Provisions

2.1 Section 13 of the PDPA, on the **requirement to obtain consent**, states that:

An organisation shall not, on or after the appointed day, collect, use or disclose personal data about an individual unless –

- (a) the individual gives, or is deemed to have given, his consent under this Act to the collection, use or disclosure, as the case may be; or
- (b) the collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under this Act or any other written law.

2.2 Section 13 of the PDPA prohibits organisations from collecting, using or disclosing an individual's personal data unless the individual gives, or is deemed to have given, his consent for the collection, use or disclosure of his personal data. This requirement to obtain consent does not apply where collection, use or disclosure of an individual's personal data without consent is required or authorised under the PDPA or any other written law. This obligation to obtain the individual's consent is referred to in these Guidelines as the Consent Obligation. Sections 14 to 17 of the PDPA set out further provisions relating to the Consent Obligation. Please refer to the **Advisory Guidelines on Key Concepts in the PDPA** ("Key Concepts Guidelines") for more information on these provisions.

2.3 Section 14(2)(a) sets out one of the **requirements organisations must comply with when obtaining consent under the Data Protection Provisions**, as follows:

- (2) An organisation shall not –
- (a) as a condition of providing a product or service, require an individual to consent to the collection, use or disclosure of personal data about the individual beyond what is reasonable¹ to provide the product or service to that individual; ...

2.4 Section 14(3) provides that any consent given under the circumstances in section 14(2) is not validly given for the purposes of the PDPA.

3 Obtaining consent under the Do Not Call Provisions

3.1 An organisation that wishes to send a “specified message” (as defined in the PDPA)² to a Singapore telephone number must comply with the Do Not Call Provisions.

3.2 In brief, a message (whether sent via a voice call, text message or fax message) is a “specified message” if the purpose of the message, or one of its purposes, is –

- (a) to advertise, promote or offer to supply or provide any of the following:
- i. goods or services³;
 - ii. land or an interest in land; or
 - iii. a business opportunity or an investment opportunity; or
- (b) to advertise or promote a supplier/provider (or a prospective supplier/provider) of the items listed in sub-paragraphs (a)(i) to (iii) above.

¹ Please refer to Chapter 9 of the Key Concepts Guidelines for an elaboration on the concept of “reasonableness”.

² Please see section 37 of the PDPA for the definition of “specified message”.

³ Please see section 36(1) of the PDPA for the definition of “goods” and “services” for the purposes of the Do Not Call Provisions.

- 3.3 One significant obligation under the Do Not Call Provisions provides that an organisation will have to check the Do Not Call Registry before sending a specified message, unless the user or subscriber of the Singapore telephone number has given clear and unambiguous consent in evidential form or the organisation is exempted under the Personal Data Protection (Exemption from Section 43) Order (S 817/2013). Please refer to the Key Concepts Guidelines and the **Advisory Guidelines on the Do Not Call Provisions** (“DNC Guidelines”) for more information on the Do Not Call Provisions.
- 3.4 Section 46(1) sets out one of the **requirements organisations must comply with when obtaining consent under the Do Not Call Provisions** as follows:

(1) A person shall not, as a condition for supplying goods, services, land, interest or opportunity, require a subscriber or user of a Singapore telephone number to give consent for the sending of a specified message to that Singapore telephone number or any other Singapore telephone number beyond what is reasonable to provide the goods, services, land, interest or opportunity to that subscriber or user, and any consent given in such circumstance is not validly given.

4 Comparison of sections 14(2) and 46(1) of the PDPA

- 4.1 For the purposes of the discussion in the subsequent paragraphs, we shall refer to “product or service” (used in the context of section 14(2)) and “goods or services” (used in the context of section 46(1)) collectively as “**item**”.
- 4.2 Although sections 14(2)(a) and 46(1) relate to different parts of the PDPA and have slightly different requirements, they are similar in establishing the key principle that an organisation cannot, as a condition of providing a certain item, require an individual to give his consent for the purposes of the PDPA⁴ beyond what is reasonable to provide the item.

⁴ As elaborated upon in the preceding paragraphs, section 14(2)(a) of the PDPA relates to consent to the collection, use or disclosure of personal data; and section 46(1) of the PDPA relates to consent to the sending of a specified message to a Singapore telephone number.

5 Effect of sections 14(2)(a) and 46(1) of the PDPA

- 5.1 The effect of section 14(2)(a) (read with section 14(3)⁵) and section 46(1) is that organisations cannot refuse to provide an individual an item because the individual does not consent for the purposes of the PDPA⁶, unless it is reasonable to require consent so as to provide the item.
- 5.2 In determining whether an organisation can require an individual to consent for the purposes of the PDPA⁷, the Commission will consider the relevant facts of the particular situation⁸. Factors that may be considered in assessing whether it is reasonable to require consent would include:
- (a) the amount and type of personal data for which consent is required;
 - (b) the purpose of the collection, use or disclosure of the personal data for which consent is required;
 - (c) the nature of the item being provided, including whether there is any benefit tied to the item, for example, whether the item is being provided without monetary payment to the organisation. Please refer to paragraphs 8.1 to 8.8 of these Guidelines which illustrate this in greater detail; and
 - (d) what a reasonable⁹ person would consider appropriate in the circumstances, including the personal data and purpose for which consent may be required in light of the nature of the item being provided.

⁵ Section 14(3) of the PDPA provides that any consent given in any of the circumstances in section 14(2) is not validly given for the purposes of the PDPA.

⁶ Please refer to footnote 4.

⁷ Please refer to footnote 4.

⁸ Please refer to paragraphs 12.15 to 12.21 of the Key Concepts Guidelines and paragraphs 14.1 to 14.5 of the DNC Guidelines for more information.

⁹ Section 11(1) of the PDPA states that an organisation shall, in meeting its responsibilities under the PDPA, consider what a reasonable person would consider appropriate in the circumstances. Please also refer to Chapter 9 of the Key Concepts Guidelines for more information on the concept of "reasonableness".

PART III: Application of sections 14(2)(a) and 46(1) of the PDPA to marketing purposes

6 Definition of “marketing purposes”

6.1 These Guidelines will focus on the application of sections 14(2)(a) and 46(1) to situations where organisations wish to require an individual’s consent for:

- (a) sending marketing materials to the individual (whether by post, text, voice call, email or otherwise); or
- (b) using the individual’s personal data for any other marketing activities by the organisation (e.g. publishing customers’ personal data in publicity materials).

6.2 For ease of reference within these Guidelines only, the purposes listed in 6.1 (a) and (b) above will be referred to as “**marketing purposes**”.

7 Requiring consent for marketing purposes

7.1 If organisations wish to obtain consent for marketing purposes¹⁰, they should generally provide the individuals the option whether or not to give consent to the marketing purposes, and should not deny provision of the item to the individuals simply because they do not give consent for the marketing purposes.

7.2 However, the Commission recognises that there are certain situations where organisations can require consent for marketing purposes. For example, organisations may provide offers, discounts or lucky draw opportunities to individuals that are conditional on the collection, use or disclosure of their personal data for specified purposes. The Commission will assess whether an organisation can require an individual’s consent for marketing purposes based on the facts of the particular situation as described in paragraph 5.2, where relevant.

¹⁰ For sample clauses for obtaining and withdrawing consent in relation to marketing purposes (as well as other purposes), please refer to the Guide on “Sample Clauses for Obtaining and Withdrawing Consent” on the PDPC website. Organisations and individuals may wish to adapt these sample clauses to their particular circumstances.

8 Application to common scenarios

8.1 This portion of the Guidelines seeks to illustrate the principles articulated in the above paragraphs through the use of common scenarios¹¹.

	Example	Treatment
8.2	<p><u>Signing up for a car cleaning service</u></p> <p>Ken would like to sign up for a car cleaning service with Organisation XYZ.</p> <p>Organisation XYZ makes it a condition of providing its service that it will share Ken’s personal data such as his name, and residential address with third party marketing agencies in order for the agencies to mail Ken marketing information about products offered by Organisation XYZ.</p>	<p>In this case, requiring Ken to consent to the collection, use and disclosure of his personal data for such a purpose is likely to be beyond what is reasonable to provide the car cleaning service to Ken.</p>
8.3	<p><u>Using personal data in publicity materials</u></p> <p>Organisation XYZ conducts various educational and enrichment courses.</p> <p>Organisation XYZ makes it a condition for every student who enrolls to provide consent for Organisation XYZ to collect, use and disclose his/her name, photograph and school examination scores in Organisation XYZ’s publicity materials.</p>	<p>Requiring individuals to consent to the collection, use and disclosure of their personal data for such a purpose is likely to be beyond what is reasonable to provide the educational and enrichment courses to the individuals.</p>
8.4	<p><u>Offering a complimentary item</u></p> <p>Mary has enrolled in a weight management programme with Organisation ABC. Organisation ABC offers Mary the option of receiving a complimentary digital weighing machine on the condition that Mary consents to Organisation ABC’s collection, use and disclosure of her photo, name and</p>	<p>In this case, Organisation ABC may be able to require Mary, who wishes to receive the digital weighing machine, to consent to the collection, use and disclosure of her personal data in publicity materials.</p>

¹¹ All the examples cited in the Guidelines set out the Commission’s general positions for illustrative purposes only. As mentioned in paragraph 5.2, in determining whether it would be reasonable to require consent, the Commission will consider all relevant facts of the particular situation.

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	Example	Treatment
	<p>testimony in publicity materials to market Organisation ABC's weight management programme.</p>	<p>If Mary does not consent to the collection, use and disclosure of her personal data for publicity purposes, she would still be able to sign up for the weight management programme and refuse the digital weighing machine.</p>
<p>8.5</p>	<p><u>Providing a free mobile application</u></p> <p>Organisation ABC releases a free mobile application in addition to a paid version.</p> <p>The terms and conditions of the application state that individuals who download the free application must consent to the collection and use of their name and email address for the purpose of sending them marketing emails about Organisation ABC's products and services.</p>	<p>In this case, Organisation ABC may be able to require individuals who wish to download the free application to consent to the collection and use of their personal data for the purpose of sending such marketing emails.</p> <p>Individuals who do not wish to receive marketing messages from Organisation ABC can choose not to download and use the free application, and select the paid version instead.</p>
<p>8.6</p>	<p><u>Redemption of complimentary parking coupon</u></p> <p>Shopping Centre ABC allows shoppers to redeem a 2-hour complimentary parking coupon with every \$100 spent.</p> <p>A shopper who chooses to redeem the complimentary parking coupon must provide consent for Shopping Centre ABC to send SMSes about promotions by its shopping centre tenants to his Singapore telephone number.</p>	<p>In this case, Shopping Centre ABC may require shoppers who wish to redeem the complimentary parking coupon to consent to receiving such marketing SMSes.</p> <p>Shoppers who do not wish to receive such marketing SMSes can choose to decline the complimentary coupon.</p>
<p>8.7</p>	<p><u>Providing a voucher</u></p> <p>At Organisation ABC's road show, customers who spent more than \$100 are offered a \$20 storewide voucher on the condition that they consent to receiving, through their Singapore</p>	<p>In this case, Organisation ABC may require the customer who wishes to receive the storewide voucher to consent to receiving such marketing SMSes.</p>

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Example		Treatment
	telephone numbers, marketing SMSes from Organisation ABC about its products.	Customers who do not wish to receive such marketing SMSes can choose to decline the voucher.
8.8	<p><u>Offering a lucky draw</u></p> <p>Fashion Retailer ABC makes it a condition for every customer who wants to participate in a lucky draw it is administering to provide consent to the collection and use of his name and email address for the purpose of sending him marketing emails about Fashion Retailer ABC's products and services.</p>	<p>In this case, Fashion Retailer ABC may require customers who wish to participate in the lucky draw to consent to the collection and use of his name and email address for the purpose of sending them marketing emails about Fashion Retailer ABC's products and services.</p> <p>Customers who do not wish to receive such marketing emails can choose not to participate in the lucky draw.</p>

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