DECISION OF THE PERSONAL DATA PROTECTION COMMISSION

Case Number: DP-1411-A265

JUMP ROPE (SINGAPORE)
(UEN No. T13SS0090E)

… Respondent

Decision Citation: [2016] SGPDPC 21

GROUNDS OF DECISION

24 November 2016

A. BACKGROUND

1. On 1 December 2014, the Personal Data Protection Commission ("**Commission**") received a complaint against Jump Rope (Singapore) (the "**Respondent**") from a complainant (the "**Complainant**") alleging that his personal data had been disclosed in an email sent to various Singapore government schools.

2. The Commission commenced an investigation under Section 50 of the Personal Data Protection Act 2012 ("**PDPA**") to ascertain whether there had been a breach by the Respondent of its obligations under the PDPA.

B. MATERIAL FACTS AND DOCUMENTS

3. The Respondent is a non-profit society registered with the Registry of Societies that promotes and manages the sport of rope skipping, and provides training to students in Singapore schools. The Respondent was set up by the President of the Respondent, [redacted], who is also the owner and director of Emotion Learning Pte. Ltd. ("**Emotion**") and Eltitude Pte. Ltd. ("**Eltitude**"). Emotion and Eltitude are companies in the business of providing enrichment and CCA education, and enrichment and sports coaching services to schools respectively.

4. Based on the Respondent's response to the Commission during the investigation, the Commission understands that the Complainant was a former employee of Emotion and Eltitude, who held the designation of Part Time Instructor. The Complainant went through an in-house training program conducted by Emotion, and obtained a certificate in rope skipping coaching, which was issued by the Respondent.

5. The Respondent alleged that the Complainant had breached his contract of employment with his employers and had engaged in some unethical activities during the course of his employment. As a result, the Respondent blacklisted the Complainant and revoked his certification.

6. The President of the Respondent then decided to send an email to various government schools involved in the sport of jump rope to notify them of the blacklisting of the Complainant and the revocation of his certification. In this regard, an email dated 28 November 2014 originating from the email address admin@jumpropesingapore.com was sent to around 30 government schools ("**Email**"). The Email stated, among other things, that disciplinary action had been taken against the Complainant, and that he was on the Respondent's blacklist. The Email set out the Complainant's name and NRIC number (and the name and NRIC number of another individual), and stated that persons on the blacklist are not suitable for instructing and coaching duties in schools. The Respondent advised all schools not to engage the named persons to avoid the teaching of wrong values to their pupils.

7. In addition, the Respondent stated that as a non-profit rope skipping society with the mission to monitor and protect the interest of the sport and the children, the Respondent considered it necessary to inform the schools involved in rope skipping, so that the schools could take precautions. The Email was sent to around 30 government schools involved in rope skipping, and it was solely meant to inform the schools of the situation. The Respondent's stated intentions in sending the Email was to provide schools with information which may be important in their decision when engaging rope skipping instructors, so that the schools can better decide in engaging the appropriate people to teach, instruct and coach their students. The Respondent reiterated that the disclosure of the personal data of the Complainant was meant solely to help schools in decision making when engaging rope skipping instructors.

8. Having carefully considered the relevant facts and circumstances, including the statements and representations made by the Respondent, the Commission has completed its investigation into the matter, and sets out its findings and assessment herein.

C. THE COMMISSION'S FINDINGS AND ASSESSMENT

9. The nub of the Respondent's claim is that it had good intentions when it informed the various government schools involved in the sport of jump rope of the blacklisting of the Complainant and the revocation of his certification. In particular, the following points were noted:

(a) The Respondent claimed that it had advised all schools not to engage the named persons so as to avoid the teaching of wrong values to their pupils; and

(b) The Respondent claimed that it had decided to send out the Email to the various government schools to notify them of the blacklisting of the Complainant and the revocation of his certification so that the schools "can better decide on engaging the right people to teach, instruct and coach [their students]", and to take precautions against engaging the wrong rope skipping instructors.

10. It is clear that consent for disclosure of the Complainant's personal data in an email communicating that he had been blacklisted was not obtained. This is not a case where consent was obtained earlier in time when he was first employed; and there is no evidence to show that the Complainant was notified nor gave consent for disclosure, before or after the Complainant had been disciplined and dismissed. In a suitable case, there can be valid business or legal reasons for the blacklisting to be disclosed in order to warn the Respondent's clients, notwithstanding that it may contain some personal data about the Complainant. It may not be desirable to expect organisations to obtain consent from the person(s) that is the subject of the disciplinary action, dismissal and blacklisting, as consent is unlikely to be forthcoming in all cases. However, the organisation should still comply with the neighbouring obligations of consent, namely, the notification obligation and the purpose limitation obligation. This means disclosing the blacklist containing the former employee's personal data only for purposes that a reasonable person would consider appropriate in the circumstances, and notifying the former employee about the disclosure to be made.

11. In a suitable case, disclosure of personal data that is relevant to the matter, by an organisation without consent nor notification, may be made if it is reasonable to do so. This is because the standard of "reasonableness" underpins the PDPA, as specifically provided for under Section 11(1) of the PDPA. Section 11(1) of the PDPA provides that "*[i]n meeting its responsibilities under this Act, an organisation shall consider what a reasonable person would consider appropriate in the circumstances*". In this regard, an organisation can inform its clients that Person A (name and former designation) has left its employment on a specific date. Further, the Commission considers that it is conceivable that there can be circumstances where an organisation may be acting reasonably in disclosing personal data in respect of a blacklisting to warn others, without consent, and apart from the scheduled exceptions; but

these are limited, and very much depends on the context and circumstances in which the disclosure was made. For example, if there was credible evidence of fraudulent conduct that a former member of staff is misrepresenting his status of employment and association with his former employer, it may be reasonable for the former employer to write to existing customers informing them of the facts. The former employer should, however, also inform the former member of staff of the communication to be made to the existing customers, so that the disclosure of personal data is made transparent to the member of staff concerned.

12. In this case, not only has the Respondent failed to obtain consent from the Complainant for the disclosure made pursuant to Sections 13 to 15 of the PDPA, the Respondent's actions have gone beyond what is reasonable in the circumstances. The Commission has not found any business or legal reasons that justifies the Respondent's actions in writing to its clients to inform them of the blacklisting. It is not uncommon for employees to leave for various reasons, including for poor performance and breaches of codes of conduct. In the absence of evidence that the Complainant's post-employment conduct had put the Respondent's trade reputation or potential clients at risk, the Respondent's measure of writing to name and shame the Complainant is not an appropriate or reasonable step to take.

13. Given the potential adverse effect or consequence on the Complainant from the disclosure of such information to third parties, in particular, the impact on future engagements of the Complainant's services for jump rope activities, the Respondent ought to have taken the extra care and precautions in relation to the protection and disclosure of personal data of the Complainant. But based on the assessment above, it did not appear to the Commission that the Respondent had afforded the appropriate care, protection and sensitivity to the data that it was disclosing. The Respondent's actions in the circumstances were unreasonable.

14. For completeness, the Commission considered whether Section 20(4) of the PDPA, which provides that an organisation must inform the individual of the purpose of disclosure where the collection, use or disclosure was made for the purpose of managing or terminating the employment relationship between the organisation and the individual, is applicable in the present case. In the Commission's view, Section 20(4) of the PDPA is not relevant as it deals with collection, use or disclosure for the purpose of either managing an ongoing employment relationship or for the purpose of terminating an employment relationship. In the

present case, the employment relationship between the Complainant and the Respondent had already been terminated by the time the disclosure through the Email took place.

15. On account of the above, the Respondent is in breach of Sections 11, 13, and 20 of the PDPA.

D. ENFORCEMENT ACTION BY THE COMMISSION

16. Given the Commission's findings that the Respondent is in breach of Sections 11, 13 and 20 of the PDPA, the Commission is empowered under Section 29 of the PDPA to give the Respondent such directions as it deems fit to ensure compliance with the PDPA. This may include directing the Respondent to pay a financial penalty of such amount not exceeding $1 million as the Commission thinks fit.

17. In considering whether a direction should be given to the Respondent in this case, the Commission considered the following:

    (a) the disclosures were made to a limited number of government schools;

    (b) the personal data that was disclosed was limited, and was in relation to limited individuals; and

    (c) the Respondent had been cooperative with the Commission and forthcoming in its responses to the Commission during the Commission's investigation.

18. In view of the factors set out above, and having regard to the overall circumstances of the matter, the Commission has decided not to issue any direction to the Respondent to take remedial action or to pay a financial penalty. Instead, the Commission has decided to issue a Warning to the Respondent for breach of its obligations under Sections 11, 13 and 20 of the PDPA.

YEONG ZEE KIN
DEPUTY COMMISSIONER
PERSONAL DATA PROTECTION COMMISSION