

DECISION OF THE PERSONAL DATA PROTECTION COMMISSION

Case Number: DP-1408-A054

(1) Comfort Transportation Pte Ltd (UEN No.
199303821R)

(2) CityCab Pte Ltd (UEN No. 199502839G)

...Respondents

Decision Citation: [2016] SGPDPC 17

GROUND OF DECISION

23 September 2016

BACKGROUND

1. On 15 August 2014 and 22 August 2014, the Personal Data Protection Commission ("**Commission**") received complaints from [Redacted] ("**First Complainant**") and [Redacted] ("**Second Complainant**") against Comfort Transportation Pte Ltd ("**1st Respondent**") and CityCab Pte Ltd ("**2nd Respondent**") respectively for disclosing their personal mobile phone numbers to customers who booked the taxis driven by them.
2. Pursuant to section 50 of the Personal Data Protection Act 2012 ("**PDPA**"), the Commission carried out an investigation into the matter.

MATERIAL FACTS AND DOCUMENTS

3. The 1st and 2nd Respondents (collectively, the "**Respondents**"), are companies within a group that operate a taxi business. Commencing some time in 2013, the Respondents provided a mobile application ("**the App**") that allowed passengers to make current or advanced bookings. The App is owned by the 1st Respondent. Upon booking a taxi through the App, the mobile phone number of the taxi driver will be sent to the booking passenger's mobile phone together with a confirmation of the taxi booking.
4. The Complainants, in separate complaints alleged that their mobile numbers are their personal data, and the Respondents are obliged to protect such data in accordance with the PDPA. The First Complainant, in particular, asserted that the 1st Respondent is not permitted to disclose his mobile number to the booking customers without his consent. The First Complainant claimed that he did not provide such consent to the 1st Respondent.

5. The Commission understands that the mobile phone numbers that were disclosed were obtained from the Hirer Application form and/or New Relief Application Form (collectively, the “**Application Forms**”) for the hire of a taxi submitted by new drivers. At the material time when the Respondents’ mobile phone numbers were collected from them, the App had not been introduced and there is therefore no question that consent to disclose their mobile phone numbers through the App could have been obtained from them.
6. The practice of giving passengers the mobile phone number of drivers who accepted their advanced bookings started in September 2013 and was extended to current bookings in July 2014:
 - (a) On 23 September 2013, the Respondents, in a joint circular, informed their taxi drivers of the initiative to release to passengers the mobile phone numbers of drivers who have accepted their advanced bookings.
 - (b) On 9 July 2014, the Respondents, again in another joint circular, informed their taxi drivers of the initiative to extend the release of the mobile phone numbers of the driver to passengers who have made current bookings.
7. Further, when a driver’s bid for an advanced or current booking is successful, the taxi’s in-vehicle mobile data terminals (“**MDT**”) would show a message prompt containing an “OK” button and a note at the bottom that the driver’s personal mobile phone number will be released to the passenger for “*ease of communication*”.

THE COMMISSION’S FINDINGS AND ASSESSMENT

8. The nature of the relationship between the Complainants and the Respondents is central to understanding how the mobile phone number ought to be treated. Based on the information and documents obtained in the investigation, the Commission concludes that the taxi drivers of the Respondents (which includes both Complainants in this matter) were not employees of the Respondents, but were independent hirers plying their trade as taxi drivers on their own account, for the following reasons:
 - (a) The business of a taxi driver falls under the definition of “business” under section 2(1) of the Business Registration Act (Cap. 32) (“**BRA**”) read with the First Schedule of the BRA. This means the business of a taxi driver is recognised as a business (as opposed to a form of employment), albeit it is a business that is exempt from registration under the BRA;
 - (b) The Taxi Hiring Agreement and the terms and conditions issued by the Respondents identify their taxi drivers as “hirers”. This evinces the intention that

the relationship that the Respondents intended to have with the Complainants was that of a contract to lease a motor vehicle intended to be used by the Complainants to carry on their business as taxi drivers; and

(c) Crucially, the taxi fare was not collected on behalf of nor paid to the Respondents, but paid to and kept by the Complainants *in toto*. The Respondents are paid, and only receive, the hiring charges of the taxis from the Complainants.

9. In view of the foregoing, the Commission concludes that the taxi service provided by the taxi drivers of the Respondents falls within the definition of a “business” under Section 2(1) of the PDPA. This means that the mobile phone numbers that are used for, or relate to, the business can potentially fall within the definition of “business contact information”, and hence be exempted from Parts III to IV of the PDPA (ie the main data protection provisions).
10. The relevant provision exempting the application of Parts III to IV of the PDPA to “business contact information” is found at Section 4(5) of the PDPA. “Business contact information” has been defined in the PDPA to mean “an individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his personal purposes”.¹ There is nothing in this definition that prevents a mobile phone number from use as a “business telephone number”, nor is it desirable to exclude mobile phone numbers from the scope of this term since many businesses and individuals provide their mobile phone numbers in the course of their trade or business.
11. The more fundamental question is whether the Complainants’ mobile phone numbers can be business contact information when, at the time that they were collected and used, there was no legal concept of “personal data” nor the distinction between “personal data” and “business contact information”, since the PDPA had not been enacted. The PDPA has retrospective effect pursuant to section 19 of the PDPA, which applies to personal data collected before its enactment and used for a consistent purpose after its entry into force. To give full effect to the PDPA, particularly when it is applied to personal data collected before its entry into force and that continues to be used for a consistent purpose thereafter, it is necessary to adopt a sensible and pragmatic approach. If the *conduct* of the parties at all material times discloses an *intention* to treat the disclosure and use of the Complainants’ mobile phone numbers as disclosure and use for the purpose of their *business* as taxi drivers, the conclusion must naturally be that these were business telephone numbers within the meaning of business contact information; notwithstanding that the legal concept did not exist before the enactment of PDPA.

12. Having considered the facts of this case, the Commission concludes that the mobile phone numbers were, at the material time, disclosed and used as business telephone numbers and accordingly, are the business contact information of the taxi drivers; thereby exempting the Respondents from complying with Parts III to IV of the PDPA in respect of the mobile phone numbers. The reasons and considerations for this conclusion are summarised as follows:
13. First, the mobile phone numbers of the Complainants were collected when they applied to hire a taxi from the Respondents. As discussed above, the nature of the relationship between the Complainants and Respondents was commercial as between lessors of taxis and sole proprietors carrying on the business of taxi driving.
14. Second, commencing September 2013, the mobile phone numbers were used by both parties for the purpose of the Complainants' business as taxi drivers when the Respondents started to disclose the mobile phone numbers to passengers as a means of contacting the taxi driver for advanced bookings. In this regard, it also bears noting the following facts, highlighted above:
 - (a) The Complainants were specifically informed that the mobile numbers of the taxi drivers would be disclosed to passengers who have accepted their advanced bookings. Likewise, the taxi drivers would receive a prompt on the MDT informing taxi drivers that their mobile numbers would be released to passengers; and
 - (b) None of the Complainants had challenged or objected to this practice or to their mobile numbers being disclosed to passengers who made the advanced bookings in that period of time.
15. Third, the practice of disclosing the Complainants' mobile phone numbers to passengers for advance bookings was extended to current bookings from July 2014. The conduct of the Respondents was consistent as the extension was for the same purpose as before, viz, to provide passengers a means of contacting the taxi drivers. This provides passengers with a consistent level of service for both advance and current bookings. It was a natural and foreseeable extension as the means of direct communications between taxi driver and passenger with a booking is necessary and desirable, whether the booking is made in advance or otherwise.
16. Fourth, the provision of direct means of communications between taxi driver and passenger with a booking is consistent with the nature of the commercial relationship between Complainants and Respondents. After taxi driver and passenger are matched through the booking service, the Respondents have no

ability to control the Complainants as they are not employees. Since each taxi driver plies his trade on his own account, driver and passenger should therefore communicate directly for matters concerning the delivery of the taxi service, e.g. clarifying the precise location for embarkation, delays in pick up or arrival at pick up location, cancellation of booking, etc.

17. It is therefore clear to the Commission that the mobile phone numbers were used as business telephone numbers and therefore are in the nature of business contact information. Since the Complainants' mobile phone numbers are business contact information for the purposes of the PDPA, the Respondents are not bound by the provisions in Parts III to VI of the PDPA in respect of the disclosure of the taxi drivers' mobile numbers to booking customers, in particular, the need to obtain the taxi drivers' consent prior to disclosing the mobile numbers under Sections 13, 14, 15 and 20 of the PDPA. In the premises, the alleged acts or omissions complained of by the Complainants do not amount to breaches under the PDPA.
18. For the reasons set out above, the Commission found that the Respondents have not contravened the PDPA, and decided to take no further action on the complaints made under the PDPA.

YEONG ZEE KIN
COMMISSION MEMBER
PERSONAL DATA PROTECTION COMMISSION

¹ Section 2(1) of the PDPA.