



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

**CLOSING NOTE FOR PUBLIC CONSULTATION ON PROPOSED ADVISORY  
GUIDELINES FOR THE EDUCATION SECTOR**

**11 SEPTEMBER 2014**

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## **PART I**

### **2 Background and Introduction**

- 2.1 The Commission launched a public consultation on 16 May 2014 on the Proposed Advisory Guidelines on the application of the Personal Data Protection Act 2012 (“**PDPA**”) to scenarios faced in the education sector (“**education guidelines**”).
- 2.2 The education guidelines aim to complement the more general guidelines issued by the Commission by addressing issues and scenarios specific to the education sector.
- 2.3 The consultation closed on 6 June 2014, 12 noon with two responses from an education institution (“**EI**”) and a consulting firm. Please refer to the Commission’s website for the full list of respondents and their submissions<sup>1</sup>. The Commission thanks all respondents for their comments and participation.
- 2.4 The responses received focused on asking the Commission to elaborate on or adjust the existing illustrations in the education guidelines, and on raising new issues regarding the applicability of the PDPA.
- 2.5 The Commission has carefully considered all the comments and has endeavoured to address them as fully as possible in the finalised guidelines.
- 2.6 This closing note for the education guidelines (“**closing note**”) seeks to:
- a) summarise the key issues in this consultation, and
  - b) address common issues or queries which were raised by several respondents.
- 2.7 This closing note should be read in conjunction with the finalised education guidelines.

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<sup>1</sup> <https://www.pdpc.gov.sg/personal-data-protection-act/public-consultations/responses-received-at-6-june-2014>

## **PART II: OVERVIEW OF ISSUES – EDUCATION GUIDELINES**

### **3 Consent for “educational purposes”**

#### Feedback received

- 3.1 One respondent highlighted the challenges in conclusively defining the boundaries and activities which would constitute “educational purposes”. Therefore, it might be difficult for EIs to fully anticipate the circumstances in which consent might be obtained, or deemed, at the outset from the student such as during the matriculation process. The respondent noted that express consent might not be able to encompass all the situations in an educational context. To address this, the respondent proposed that in situations where a reasonable person would consider it acceptable for an EI to use previously collected students’ (and other relevant parties’) personal data without having to seek express consent or even rely on deemed consent, for consideration to be given to the practical exigencies and distinct circumstances in the education context,
- 3.2 The same respondent also proposed that the Commission should either (a) elaborate on the definition of “educational purposes”; or (b) recognise that the ambit of “educational purposes” was very wide, and the Commission would consider certain factors when determining if an activity falls within the definition of “educational purposes”, such as the difficulty of obtaining express consent, the likelihood of harm and prejudice to data controllers, whether such an activity would have been entrenched as standard and acceptable practice over the years, and whether an ordinary person would think that such an activity would be one that would be reasonably expected/accepted of an EI to undertake.

#### Scope of “educational purposes”

- 3.3 The term “educational purposes” is not defined or used in the PDPA. While the Commission recognises that each organisation would face unique circumstances, organisations should specify purposes at an appropriate level of detail for an individual to determine the reasons for which they are collecting, using or disclosing personal data. If it is not clear whether the term “educational purposes” would cover the activities that an EI has in mind, the Commission would advise the EI to consider elaborating or expanding on the notified purposes for clarity, based on factors such as the specific facts of the case, in addition to its business and operational needs. In this regard, the Commission would also suggest referring to the Advisory Guidelines on Key Concepts in the PDPA (“**Key Concepts Guidelines**”) for guidance on providing notification and stating purposes.

#### Use of existing personal data collected before 2 July 2014

- 3.4 On the use of existing personal data, the Commission had previously clarified in the Key Concepts Guidelines that an organisation may continue to use personal data that was collected before the appointed day (i.e. 2 July 2014) for the purposes for which it was collected unless consent is withdrawn under the PDPA, or the individual had otherwise indicated that he/she does not consent to such use.

## 4 Overseas transfer of personal data

### Feedback received

- 4.1 One respondent requested clarification on the application of the Data Protection Provisions to some scenarios involving the transfer of personal data overseas. In particular:
- a) The respondent noted that in other jurisdictions where data protection legislation had been in place for many years, universities which had partnered the respondent on student exchange-related programmes or activities had neither imposed nor made it a requirement for the respondent to comply with the applicable data protection laws in those other jurisdictions. In view of this, the respondent proposed for the Commission to provide appropriate exemptions or develop a “white list” of jurisdictions which offered comparable or equivalent standards of data protection to assure EIs that they would be complying with the PDPA when sharing personal data with universities from those countries;
  - b) The respondent queried how academic institutions operating in countries which had data protection legislation had been able to share their research data (which might include personal data) with other foreign institutions without having to impose data protection obligations on those foreign research institutions; and
  - c) In the area of tenure reviews, the respondent highlighted the established academic practice for EIs to send the “research dossier” of tenure-tracked faculty members to external reviewers based in foreign jurisdictions such as the United States or Europe. While confidentiality is assumed in all of these arrangements, the respondent expressed concern over PDPA’s obligations being placed on these external reviewers, and whether that might discourage external reviewers from participating in such Singapore-originating activities.

### Transfer of personal data overseas is subject to Data Protection Provisions

- 4.2 The Commission notes that the governance of overseas transfers of personal data is a feature of most data protection laws. In Singapore’s context, Regulations issued under the PDPA specify various avenues under which EIs may transfer personal data overseas. Some avenues that may be relevant to the scenarios described by the respondent include when<sup>2</sup>:

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<sup>2</sup> Organisations may wish to refer to Chapter 19 of the Key Concepts Guidelines for further details on avenues for transfer of personal data overseas.

- a) the EI has taken appropriate steps to ensure that the recipient overseas is bound by legally enforceable obligations (e.g. under any law or through a contract) to provide the personal data transferred a standard of protection that is at least comparable to that under the PDPA:
- b) (subject to conditions)<sup>3</sup> the individual provides consent to the transfer;
- c) the transfer is necessary for the performance of a contract between the organisation and the individual; and
- d) the personal data is data in transit or publicly available in Singapore.

4.3 The Commission would advise EIs in Singapore to assess how best to comply with the Transfer Limitation Obligation under the PDPA based on their specific needs.

4.4 In relation to the development of a 'white list', the Commission opines that such an approach would be premature at this juncture. The Commission may consider such arrangements when the regime in Singapore is more mature. The Commission has included examples in the finalised guidelines to provide some guidance to EIs on the application of the Transfer Limitation Obligation to the scenarios given by the respondent. EIs that face other unique situations may approach the Commission for clarity through avenues such as informal guidance.

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<sup>3</sup> For example, the organisation should provide the individual with a reasonable summary of the extent to which the personal data transferred to those countries or territories will be protected to a standard comparable to the protection under the PDPA.

## 5 Other issues

### Scope of “public interest”

- 5.1 One respondent commented that the “public interest” requirement under the “‘research’ exemption”<sup>4</sup> would be a very high bar to attain. The respondent suggested adopting a more “general” interpretation of the “public interest” requirement, such as for any academic research to be considered as being in the public interest.
- 5.2 The Commission notes that whether the “public interest” requirement in these exceptions is met in the case of a particular use or disclosure of personal data will depend on the specific facts of the case. The Commission is thus unable to take the view that all academic research would necessarily be in the public interest.
- 5.3 The Commission would also like to clarify that the exceptions for research purposes are intended to address specific situations (that satisfy the prescribed conditions), and are not meant to enable research involving personal data to be conducted without consent in all circumstances. Organisations should generally obtain consent for such purposes unless it can be determined that these (or any other) exceptions apply.

### Personal data collected for security purposes

- 5.4 A respondent commented that one scenario in the proposed education guidelines relating to the collection of an individual’s personal data such as NRIC for security purposes may be generalised to the collection of personal data in other organisations as part of a security measure. The respondent added that an individual should not be compelled to surrender his NRIC irrespective of the organisation’s policies, and suggested that organisations record only partial NRIC numbers (e.g. last 5 digits), regardless if the collection was done manually or digitally.

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<sup>4</sup> The Commission assumes that the respondent is referring to paragraph 1(i) of the Third Schedule to the PDPA and paragraph 1(q) of the Fourth Schedule to the PDPA. These paragraphs provide for the use and disclosure of personal data without consent for a research purpose (including historical or statistical research) respectively. These exceptions apply only if certain conditions are fulfilled. One of these conditions is that linkage of the personal data to other information is not harmful to the individuals identified by the personal data and the benefits to be derived from the linkage are clearly in the public interest.



5.5 The Commission would like to clarify that the PDPA does not specifically prescribe policies governing collection and retention of the physical NRIC or NRIC numbers by organisations. Organisations will need to look at the specific facts of the case when assessing the reasonableness of collecting personal data such as NRIC numbers, and will have to comply with the relevant provisions under the PDPA when deciding to do so. For example, an organisation that wishes to collect NRIC numbers of individuals for a specific purpose should notify and obtain consent from the individuals of that purpose; and adopt reasonable security measures to protect the NRIC numbers it has collected. The Commission had previously published guidance on related matters and would suggest that interested parties refer to the Advisory Guidelines on the PDPA for Selected Topics (“Selected Topics Guidelines”) for more information.

#### Obligations for data intermediaries (“DIs”)

5.6 One respondent sought clarification on two scenarios in the proposed education guidelines relating to DIs:

- a) An EI engaged an external vendor – via a written contract– to provide transportation services for its students (paragraph 4.5): The respondent pointed out that the vendor should not use the personal data of the students beyond the purposes of providing transportation services (e.g. the vendor should not use the students’ personal data to send marketing and promotional materials to them).
- b) An EI engaged a consulting firm via a contractual agreement to conduct an email survey to study the perceptions on job placement quality and quality of training among its upcoming cohort of graduates (paragraph 4.6): The respondent commented that the consulting firm should not conduct any other email surveys beyond the terms of agreement which it had established with the EI.

5.7 The Commission would like to clarify that the examples mentioned above were meant to illustrate when a third party vendor would be considered a DI (i.e. only where it is processing personal data on behalf of another organisation), and correspondingly, the obligations under the Data Protection Provisions that are applicable to the DI in respect of its processing of personal data for the purposes of the other organisation pursuant to a written contract (i.e. the Protection Obligation and the Retention Limitation Obligation). In the illustrations provided by the respondent, where the third party vendor undertakes activities for its own purposes, it will have to comply with all the relevant Data Protection Provisions (e.g. it would need to obtain the individuals’ consent unless any exceptions apply) in respect of those activities because the vendor is no longer performing the functions of a DI.

Messages to promote programmes/talks/seminars/conferences are subject to the Do Not Call (“DNC”) Provisions

- 5.8 A respondent sought clarification if messages that promoted its academic programmes, talks, seminars, and conferences would be subject to the DNC Provisions.
- 5.9 The Commission has previously clarified in the Advisory Guidelines on the DNC Provisions that a message which promotes a good or service will generally be considered as a specified message. As such, the DNC Provisions would likely apply to the promotional messages cited by the respondent.

## **PART III**

### **6 Conclusion**

- 6.1 The Commission will continually assess the need to issue guidelines in future on other topics to facilitate understanding and compliance of the PDPA obligations.
- 6.2 There are other resources available to organisations apart from guidelines issued by the Commission. Organisations should visit [www.pdpc.gov.sg](http://www.pdpc.gov.sg) for more information on the following:
- How to contact the Commission for general queries
  - Answers to Frequently Asked Questions
  - Training, workshops and learning facilities to help organisations gain further insights into the requirements of the PDPA
  - The Commission's informal guidance process
- 6.3 This closing note should be read in conjunction with the finalised guidelines. Once again, the Commission thanks all respondents for their comments and participation in this public consultation.