

PRACTICAL GUIDANCE TO QUERIES BY SWIMMING BUSINESS

- 1 A swimming business owner (the “Organisation”) has sought guidance from the Personal Data Protection Commission (the “Commission”) on the application of the PDPA to its business process.
- 2 According to information provided by the Organisation, it will generate randomly generated 8-digit numbers (e.g. 9123 2342), which will not be attached to other information such as names or addresses of individuals. The Organisation will check these randomly generated numbers through the DNC Registers, and send SMS messages to the numbers that are not registered with the DNC Registers. The Organisation will also include in the SMS messages an option to unsubscribe, and will only send messages to the numbers within the month after checking the numbers against the DNC Registers.

Application of the PDPA

- 3 The PDPA contains two main sets of provisions, covering personal data protection (the “DP Provisions”) and the Do Not Call Registers (the “DNC Provisions”), which organisations are required to comply with. The Organisation should consider how the two sets of obligations apply to its business activities.

Application of the Do Not Call Provisions

- 4 Generally, the DNC Provisions apply to the organisation when it sends specified messages to a Singapore telephone number. A specified message¹ may be in the form of a voice call, text message or fax message. In most instances, a marketing message of a commercial nature would be a specified message within the meaning of the PDPA.
- 5 One obligation under the DNC Provisions requires the organisation to check the DNC Registers before sending a specified message unless (a) the user or subscriber of the Singapore telephone number has given clear and unambiguous consent in evidential form, or (b) the organisation is exempted under the Personal Data Protection (Exemption from Section 43) Order 2013, or (c) if the message is excluded under the Eighth Schedule of the PDPA².
- 6 Based on the information provided by the Organisation, the Exemption Order does not appear to apply as no ongoing relationship has been established between the Organisation and the individual who will be receiving the SMS message. Furthermore, the Organisation has not expressed any intention to obtain the necessary consent from the individual(s) to whom the SMS messages

¹ Please refer to section 37 of the PDPA for the definition of “specified message”.

² Section 37(5) provides that a specified message will not include any of the messages referred to in the Eighth Schedule to the PDPA. The messages referred to in the Eighth Schedule are therefore not specified messages for the purpose of the DNC Provisions and are not subject to the application of those provisions. Please refer to the PDPA for more details.

will be sent. In addition, an SMS message marketing the Organisation's business or services would not fall within the Eighth Schedule. Hence, as the list of randomly generated 8-digit numbers may potentially contain Singapore telephone numbers of individuals, the Organisation is advised to check the DNC Registers before sending such an SMS message marketing its swimming business or services to the numbers.

- 7 The Commission notes that the Organisation intends to check the list of randomly generated numbers against the DNC Registers and would not be sending SMS messages to those numbers which are registered on the "Do Not Text Register". Furthermore, we note that the Organisation intends to include an unsubscribe facility in the message itself.
- 8 The Organisation should note that the PDPA requires that a marketing text message must include information identifying the sender and how the recipient can contact the sender³.

Whether the organisation is considered to have collected, used or disclosed "personal data" in accordance with PDPA

- 9 Personal data is defined under the PDPA as "data, whether true or not, about an individual who can be identified from that data; or from that data and other information to which the organisation has or is likely to have access."
- 10 Based on the business process described by the Organisation in paragraph 2, the Commission is of the view that at the point of generation, the randomly generated 8-digit numbers, on their own, would not be considered personal data to the organisation, as they are unlikely to lead to the identification of any individuals by the organisation. However, the randomly generated number(s) may be determined to constitute personal data if the Organisation receives additional information regarding the numbers, such as by submitting the randomly generated number(s) for checking against the DNC Registers, and receiving results from the DNC Registers, as elaborated below:

Numbers which are "registered" on the DNC Registers

- (a) Results confirming that numbers are registered on the DNC Registers indicate that these are active numbers in use by individuals who have registered the number(s) on the DNC Registers. If the active numbers begin with 8 or 9, the Organisation⁴ would be considered to have collected "active mobile numbers" which are likely to be considered personal data.
- (b) If the numbers are considered personal data as described in (a) above, the Organisation will have to ensure compliance with the PDPA when it collects,

³ Please refer to Part IX of the PDPA for the full information on the obligations imposed under the DNC Provisions.

⁴ The Organisation had shared that it intends to send messages using SMS messages.

uses or discloses the personal data, among other things, to obtain consent of the relevant individuals for a purpose that has been notified to the individual, such as for marketing purposes (e.g. sending marketing messages to their numbers), unless any exception (to the consent obligation) applies. To clarify, checking of numbers against the DNC Registers does not render the data publicly available⁵ under the PDPA, therefore the exception for publicly available data would not apply.

- (c) The Organisation should also ensure compliance with other DP obligations such as protecting personal data in its possession or under its control by making reasonable security arrangements; and ceasing to retain personal data or remove the means by which the personal data can be associated with particular individuals when it is no longer necessary for any business or legal purpose.

Numbers which are “not registered” on the DNC Registers

- (d) While a “not registered” status on the DNC Registers confirms that a Singapore telephone number (or randomly generated Singapore telephone number, as the case may be) is not registered on the DNC Registers, it does not validate that the number is an active telephone number or not. Assuming the organisation does not have any more information about this number (i.e. that it remains, on its own, a string of 8-digit numbers at the point it is randomly generated), the organisation is not considered to have collected personal data.
- (e) Nevertheless, the Organisation should consider the circumstances in which it might acquire more information about the numbers such that they would be considered personal data. For example, the Organisation sends an SMS to one of the “not registered” 8-digit numbers and receives a request from an individual to unsubscribe to the SMS message. In this instance, the Organisation has obtained information indicating that the 8-digit number is an active mobile number in use by an individual and would be considered to have collected personal data.

- 11 In the event of a complaint or dispute, the Organisation will need to consider the specific facts of the case if it wishes to demonstrate that the numbers it collected are not considered personal data.

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⁵ Please refer to Chapter 12 of the Advisory Guidelines on Key Concepts in the PDPA for more information on exceptions to the Consent Obligation.