

GUIDANCE NOTE ON TELECOMMUNICATIONS SERVICE PROVIDERS WHO MERELY PROVIDE A SERVICE THAT ENABLES A SPECIFIED MESSAGE TO BE SENT

1. INTRODUCTION

- 1.1 This document responds to a request from an organisation (hereinafter referred to as “the **Organisation**”) for informal guidance in relation to its handling of personal data in a particular situation; and highlights measures that the Organisation (and other organisations in a similar position) may take to better ensure compliance with its obligations under the Personal Data Protection Act 2012 (hereinafter referred to as the “PDPA”). For the purposes of anonymity, the Organisation’s identity has been redacted.
- 1.2 The purpose of this document is to provide clarity on the application of the PDPA only. This document does not serve as an opinion of the Personal Data Protection Commission (hereinafter referred to as the “**PDPC**”) or legal advice on whether the Organisation is in compliance with the Act. The Organisation and any other organisations referring to this document should seek appropriate advice, including professional legal advice, to ensure that it is in compliance with the PDPA.
- 1.3 The PDPC has issued Advisory Guidelines on Key Concepts in the PDPA (the “**Key Concept Guidelines**”) and Advisory Guidelines on the PDPA for Selected Topics (the “**Guidelines on Selected Topics**”) on 24 September 2013. Organisations may also wish to refer to these Guidelines, published on the PDPC’s website at www.pdpc.gov.sg, for more information.

2. SUMMARY OF REQUEST AND VIEWS

- 2.1 The Organisation sought the views of the PDPC on whether it qualifies as a telecommunications service provider who merely provides a service that enables a specified message to be sent, as set out in section 36(2) of the PDPA.

3. SUMMARY OF INFORMATION PROVIDED

- 3.1 Based on the information provided by the Organisation, the PDPC understands the following:
 - (i) The Organisation offers a platform that delivers Short Message Service (“SMS”) messages on behalf of its customers to the end users of those customers.
 - (ii) The Organisation maintains but does not generate nor have ownership of, nor control over, the lists of recipients of the messages. These lists are obtained from the Organisation’s customers; who compile, upload and have control of these lists. The Organisation has no input into the substantive message content. The Organisation does not decide when messages should be sent to customers’ end-users and does not initiate or authorise the sending of the message. The Organisation’s only role is to run the platform and maintain its availability to the customers.
 - (iii) The Organisation has represented to PDPC that these services fall within the scope of its Services-Based Operator (“**SBO**”) licences, issued under the Telecommunications Act (Cap 323).

- (iv) The Organisation does not perform any marketing through SMS messages on its own account and simply transmits messages on behalf of its customers.

4. THE DO NOT CALL REGISTRY PROVISIONS

4.1 Part IX of the PDPA provides for the setting up of a Do Not Call (“**DNC**”) registry and contains obligations that apply in relation to persons sending specified messages to Singapore telephone numbers. As long as a specified message is addressed to a Singapore telephone number, the relevant provisions in Part IX PDPA could apply, regardless of how the message was sent.

4.2 Section 36(2) of the PDPA states that:

“For the purposes of this Part, a telecommunications service provider who merely provides a service that enables a specified message to be sent shall, unless the contrary is proved, be presumed not to have sent the message and not to have authorised the message to be sent.”

4.3 It is the PDPC’s view that, based on the PDPC’s understanding of the information provided by the Organisation regarding the services that it provides (summarised in paragraph 3.1 above), the Organisation can be considered a telecommunications service provider who merely provides a service that enables a specified message to be sent as defined under Section 36(2) of the PDPA, and thus be presumed not to have sent the message and not to have authorised the sending of the message. However, should the Organisation provide other value added services that change the services described in para 3.1 above, then the Organisation would need to review if section 36(2) of the PDPA still applies; for example, if the Organisation uses its own database of individuals to send out messages to its customers.

4.4 The PDPC would like to highlight that there are situations where an organisation that is sending a specified message, not for its own account, but for another organisation, may still have a duty to check the DNC registry. An example would be a scenario where an organisation engages the services of a call centre. In this scenario, an organisation gives the call centre a message, a list of individuals to call and a list of information regarding a product. The call centre then makes calls on the organisation’s behalf. In such a scenario, the call centre would be considered a sender of the specified message(s) and would not be able to rely on the presumption in section 36(2) of the PDPA.