

GUIDANCE NOTE ON APPLICATION OF PERSONAL DATA PROTECTION ACT 2012 TO ISSUES AND CIRCUMSTANCES RAISED BY A RELIGIOUS INSTITUTION

1. INTRODUCTION

- 1.1 This document responds to a request from a religious institution (the “**Applicant**”) and its constituent departments, as well as a retail chain (the “**Retail Chain**”) that shares a common mission with the Applicant, for informal guidance in relation to their handling of personal data; and highlights measures that the Applicant (and other organisations in a similar position) may take to better ensure compliance with their obligations under the Personal Data Protection Act 2012 (Act 26 of 2012) (hereinafter referred to as the “**PDPA**”).
- 1.2 The purpose of this document is to provide clarity on the application of the PDPA only. This document does not constitute legal advice or an opinion of the Personal Data Protection Commission (hereinafter referred to as the “**PDPC**”). Individuals and organisations referring to this document should seek appropriate advice, including professional legal advice, to ensure that they are in compliance with the PDPA.
- 1.3 The PDPC has issued Advisory Guidelines on Key Concepts in the PDPA (the “**Key Concept Guidelines**”), Advisory Guidelines on the Personal Data Protection Act for Selected Topics (the “**Guidelines on Selected Topics**”) and Advisory Guidelines on the Do Not Call (“**DNC**”) Provisions (the “**DNC Guidelines**”). References will be made to these documents where relevant. For further information, please download a copy of these documents from www.pdpc.gov.sg.

2. SUMMARY OF REQUEST AND VIEWS

- 2.1 The Applicant has proposed certain methods of communicating with various persons that the Applicant’s departments make contact with in the course of providing their services. These persons include participants of the Applicant’s activities, students and their parents, customers and volunteers. The Applicant sought the views of the PDPC on whether the proposed methods of communication are in compliance with the DNC provisions in the PDPA.
- 2.2 Further, the Applicant has also requested for PDPC’s views on whether certain IT security arrangements proposed by them are reasonable in respect of the Applicants’ personal data obligations under the PDPA.
- 2.3 Where the Applicant’s application for informal guidance also discloses certain data protection issues, PDPC will also provide its views on compliance with the data protection obligations.

3. SUMMARY OF INFORMATION PROVIDED

- 3.1 Based on the information provided by the Applicant, the PDPC understands that:

- i. The Applicant's constituent departments deal with religious events, student care, youth and arts, information technology, a religious school, and management of volunteers.
- ii. Participants in the Applicants' activities generally sign up for activities by filling out a registration form.
- iii. The Applicant contacts participants and volunteers through SMSes and phone calls to update or remind these participants and volunteers on activity and event details, starting times, class cancellation and postponement.
- iv. The Applicant may also contact parents of students attending its student care centre to inform, invite or check on these students' attendance in the student care centre's programmes and services. PDPC assumes in this guidance that any calls made by the student care centre to these parents are in relation to the programmes and services which the parents and/or their children have signed up for with the student care centre.
- v. The Applicant may send out ad hoc emails to update persons who have signed up to the Applicants' mailing list, or signed up as volunteers.
- vi. The Applicants' information technology department controls access to various applications and services through the use of password protected user accounts and different security levels of access rights.
- vii. The Applicant's religious school sends SMSes, emails and makes phone calls to its students' parents to enquire after these students or update them of school events. Only parents who indicate in the school's registration form that they consent to receiving telephone calls from the religious school are contacted. The school's registration form states that urgent messages are sent via SMS or email, and requires parents to indicate whether a child's father, mother, or guardian should be contacted as the key contact person for school and student matters;
- viii. The Retail Chain markets and promotes certain products and services in its own capacity and not on behalf of the Applicant.

4. THE PERSONAL DATA PROTECTION ACT 2012

- 4.1 Organisations, such as the Applicant's, are required to comply with the DP provisions in Parts III to VI of the PDPA (the "**DP provisions**") when it comes into force on 2 July 2014. When considering what they should do to comply with the DP provisions, organisations should note that they are responsible for personal data in their possession or under their control (see section 11(2) of the PDPA).
- 4.2 Once the DP provisions in the PDPA come into force, organisations will generally be required to comply with nine main obligations (each of which may have related obligations or sub-obligations) if they undertake activities relating to the collection, use or disclosure of personal data. Further details on the nine obligations can be obtained from the Key Concept Guidelines and Guidelines for Selected Topics.

4.3 Further, Part IX of the PDPA (the “**DNC provisions**”) provides for the setting up of a DNC Registry and contains obligations that apply in relation to persons sending specified messages to Singapore telephone numbers. From 2 January 2014, organisations in Singapore must comply with the DNC provisions specified in Part IX of the PDPA before sending specified messages to any Singapore telephone number. A specified message, defined in section 37 of the PDPA, generally refers to any message that offers, advertises or promotes goods, services or other items specified under that section as one of its purposes. Under section 43 of the PDPA, if the Applicants intend to send a specified message that is addressed to a Singapore telephone number, the Applicants would have to either:

- i. check the DNC Registry to confirm that the number is not registered;
- ii. obtain clear and unambiguous consent and be able to evidence that consent in written or other form, so as to be accessible for subsequent reference;
- iii. see if the message falls within any of the exclusions from the meaning of specified message listed in the 8th Schedule of the PDPA; or
- iv. see if the message falls within the scope of the Personal Data Protection (Exemption from Section 43) Order 2013 (the “Exemption Order”). The Exemption Order allows organisations to send text or fax messages on related products and services to customers and members with whom they have an ongoing relationship, without the need to check the DNC Registry.

4.4 For the avoidance of doubt, the obligations in the DNC provisions apply in respect of all specified messages sent to any Singapore telephone number on or after 2 January 2014 and will continue to apply concurrently with the DP provisions from 2 July 2014.

Clear and unambiguous consent in evidential form to send specified messages under the DNC provisions

4.5 The PDPC recognises that whether consent obtained is clear and unambiguous would depend on the specific facts and circumstances of each case. Generally, some factors that will be considered when determining whether consent obtained was clear and unambiguous include:

- (a) whether the Applicants had notified the prospective recipient of the specified message, clearly and specifically that specified messages would be sent to his or her Singapore telephone number; and
- (b) whether there was positive affirmative action from the prospective recipient that he or she consented to receiving the specified message from the organisation.

4.6 Organisations that intend to rely on consent to send a specified message to a Singapore telephone number registered on the DNC Registry are advised to obtain clear and unambiguous consent in an opt-in format from the prospective recipient, in written or evidential form accessible for future reference.

4.7 Clear and unambiguous consent is unlikely to be construed to have been obtained from a failure, or inaction, on the part of the prospective recipient to

opt-out. In general, the PDPC does not recommend that organisations adopt an opt-out approach when obtaining consent to send specified messages.

- 4.8 In the event of an investigation, the PDPC will consider the actual circumstances, including the substantive effect of the actual arrangements employed, in determining whether the necessary requirements under the PDPA are met.

Deemed consent under the DP provisions

- 4.9 PDPC would like to highlight that, for deemed consent under section 15 of the PDPA to apply, the onus would be on the Applicants to ensure that the individual is aware of the purpose for which his personal data would be collected, used or disclosed. For the avoidance of doubt, deemed consent obtained under section 15 of the PDPA would not apply to the Applicants' obligations under the DNC provisions. For ease of reference, section 15 of the PDPA reads as follows:

“Deemed consent

15.—(1) An individual is deemed to consent to the collection, use or disclosure of personal data about the individual by an organisation for a purpose if —

(a) the individual, without actually giving consent referred to in section 14, voluntarily provides the personal data to the organisation for that purpose; and

(b) it is reasonable that the individual would voluntarily provide the data.

(2) If an individual gives, or is deemed to have given, consent to the disclosure of personal data about the individual by one organisation to another organisation for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data for that particular purpose by that other organisation.”

- 4.10 For further details, the Applicants may wish to refer to paragraphs 11.23 - 1.29 of the Key Concept Guidelines.

Religious, Youth, and Arts-Related Events and Activities

- 4.11 Based on the PDPC's understanding of the Applicant's operations, it is unlikely that contacting participants who have signed up for events and activities organised by the Applicant (for reasons including providing reminders, calling for volunteers, sending details of events and activities such as starting times, class cancellations, etc) would fall within the definition of a specified message, as long as the messages sent by the Applicants do not offer to supply, advertise or promote any goods or services or other items listed under section 37 of the PDPA to the participants.
- 4.12 In this regard, it is likely that such messages would fall within the exclusions listed in paragraph 1(d)(i) of the 8th schedule to the PDPA; being message(s), the sole purpose of which is to facilitate, complete or confirm transaction(s) that the recipient(s) of the message(s) had previously agreed to enter into with the sender.

4.13 If the Applicant has a membership base and intends to send specified text or fax messages to its members, the Applicant may wish to consider whether it can rely on the Exemption Order to do so. In the event the Applicant is unable to rely on the Exemption Order but still intends to send specified text or fax messages to its members, it will have to check the DNC Registry and fulfil its obligations under the DNC provisions before doing so.

Student Care Centre

4.14 It is unlikely that calling parents or guardians to inform or check on their children's attendance at the student care centre's programmes and services that they have signed up for would fall within the definition of a specified message; as long as the calls do not offer to supply, advertise or promote any goods or services or other items listed under section 37 of the PDPA to the parents or guardians. The Applicant should note that calls to parents or guardians inviting them to sign their children up for new programmes and services would likely fall within the definition of specified messages. However, the Applicant may be able to rely on the Exemption Order to send such specified messages by way of fax or text messages, if at the time of the transmission of the message, the student care centre has an ongoing relationship with the parents or guardians and the purpose of the message relates to the subject of the ongoing relationship.

4.15 PDPC notes that the student care centre's registration form does not comprehensively state how the Applicant may use the personal data it collects. The form currently only informs that personal data collected may be used in case of an emergency and to verify the identity of persons authorised to fetch the students attending the student care centre's programmes and services.

4.16 In order to fulfil the Notification Obligation under the PDPA, the Applicant should consider how it can better notify individuals of the purposes for which their personal data is being collected, used, or disclosed.

Religious School

4.17 The Applicant may wish to consider clarifying the scope of the "school and student matters" it is concerned with. Currently, these matters appear to include both administrative and urgent notifications. The Applicant may wish to clarify the scope by specifying broad categories of purpose (such as "updates about school events" and "enquires about a child's well-being") in the registration form, and/or by providing examples of those matters.

4.18 The Applicant may wish to consider whether SMSes sent by the religious school can fall within the scope of the Exemption Order when it sends SMSes that offer, advertise or promote the supply of goods or services.

Information Technology Department

4.19 The PDPA requires organisations to protect personal data in its possession by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks. Each organisation should consider adopting security arrangements that are reasonable and appropriate in the circumstances.

4.20 There is no "one size fits all" security solution for organisations and the PDPA does not prescribe any specific security arrangements that the Applicant's IT

department has to undertake. PDPC is therefore unable to confirm if the Applicant's IT department's security arrangements would be considered adequate or appropriate.

Sending of Ad-Hoc Emails

- 4.21 The DNC provisions do not cover the sending of emails.
- 4.22 However, the DP provisions will apply to the use of email addresses. The Applicant may wish to consider clarifying the scope of the mailing list that it retains or emails that it sends. The Applicant should consider whether individuals who provided their email addresses were clearly notified of the purposes for which their email addresses were collected and whether these individuals' consent to the collection, use or disclosure of the email addresses (as the case may be) had been obtained. Individuals who indicate an interest to be on the Applicant's mailing list and provide their email address for such a purpose may be deemed to have given consent.

Collection of Personal Data before Appointed Day

- 4.23 Section 19 of the PDPA allows organisations to continue to use personal data collected before the appointed day for the same purposes for which that personal data was collected without obtaining fresh consent, so long as the purposes are reasonable, unless the individual has withdrawn consent or the individual has indicated to the organisation that he does not consent to the use of the personal data (whether before, on, or after the appointed day). For ease of reference, section 19 of the PDPA reads as follows:

“Personal data collected before appointed day

19. Notwithstanding the other provisions in this Part, an organisation may use personal data about an individual collected before the appointed day for the purposes for which the personal data was collected unless —

(a) consent for such use is withdrawn in accordance with section 16;
or

(b) the individual, whether before, on or after the appointed day, has otherwise indicated to the organisation that he does not consent to the use of the personal data.”

- 4.24 The Applicant should note that the PDPA does not require an organisation to notify individuals and obtain consent for such reasonable existing uses. However, the Applicant will have to determine whether the personal data had in fact been collected before the appointed day for the intended purposes and also consider how this may be proved if challenged by the individual. In this regard, it should also be noted that the applicability of section 19 of the PDPA is dependent on whether the personal data was collected before the appointed day.
- 4.25 Marketing and telemarketing are reasonable existing uses. However, the Applicant must ensure that the use of data for telemarketing is in compliance with the DNC provisions.

The Retail Chain

- 4.26 PDPC notes that both the Retail Chain's privilege application form and redemption list contain a clause seeking consent from individuals to send them promotions, and product and programme updates via email, mail and/or SMS. An opt-in check box is printed next to the clause.
- 4.27 If an individual fills up the application form or the redemption list, and ticks the box, it is likely that clear and unambiguous consent has been obtained from that individual for the Retail Chain to send him telemarketing messages by SMS.
- 4.28 The Retail Chain may consider limiting the scope of the clauses to provide greater clarity to individuals as to the types of information that the individual may receive. For example, the clauses may be modified to say "promotion, product and programme updates conducted or sold by the Retail Chain only". The Retail Chain may also wish to review the process that it intends to adopt for individuals seeking to withdraw consent.

5. OTHER COMMENTS

- 5.1 Today, organisations collect, use and disclose personal data about individuals, including subscribers, and employees. These individuals trust such organisations to collect, use or disclose their personal data as it is intended for and to keep their personal data safe. Practising good personal data management can increase business efficiency and effectiveness, boost customer confidence and enhance the Applicant's public image. The PDPC hopes that this guidance note will highlight the requirements of the PDPA and help the Applicant review their current personal data protection processes and adopt good practices.

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