

PRACTICAL GUIDANCE TO AN ORGANISATION ON THE APPLICATION OF EXCEPTIONS TO CONSENT

Background

1. An organisation (A) has sought guidance from the Personal Data Protection Commission (PDPC) regarding the applicability of the Legitimate Interests Exception (LIE) for the scenario where A needs to share personal data (PD) without consent with a public agency and its partners to support initiatives aimed at the well-being of individuals of a certain demographic (Individuals B), such as for distribution of gifts/care packages and delivery of services.
2. A receives PD from various public agencies in order to deliver services to its clients, including conducting engagement activities.
3. The public agencies that disclosed such PD may impose certain requirements on A, such as (a) requiring fresh consent to be obtained, and (b) expressly restricting how the PD can be used or disclosed by A. For (a), PDPC has advised that A can pre-fill the consent forms with the PD to make it easier to obtain consent. If an Individual B refuses to give consent, A may re-seek consent at an appropriate juncture, such as when there is a new programme or scheme. For (b), A faces challenges during its “outreach” activities when A is unable to seek fresh consent from Individuals B because they cannot be contacted, e.g. not at home or refuse to open the door.
4. A wishes to rely on exceptions such as LIE to share PD of Individuals B without their consent with third parties in such a situation.

PDPC’s assessment

5. The applicability of the exceptions in the PDPA depends on the terms of the data sharing agreement that are imposed by the public agency. A should consider the terms of the agreement to understand their effect. Where the terms only define the purpose for which the PD was disclosed by the public agency, e.g. the public agency stated that it was disclosing the PD to A only for the purpose of outreach, the terms do

not expressly restrict A to only the stated purpose. Pursuant to Division 1 of Part 2 of the Second Schedule to the PDPA, A can use PD disclosed by a public agency if the use of the PD by A is consistent with the purpose of the disclosure by the public agency. Additionally, section 17(2)(b) of the PDPA permits organisations that have legitimately collected personal data to use and disclose the same if they are able to rely on any of the exceptions in the First Schedule and Parts 2 and 3 of the Second Schedule. In these circumstances, A is not precluded from relying on other applicable exceptions under the PDPA to collect, use or disclose the PD for other legitimate purposes.

6. Where the terms explicitly prohibit A from using or disclosing the PD beyond the stated purpose, A may wish to clarify with the public agency in question and seek its agreement for A to use and disclose the PD as long as A complies with the PDPA, specifically in the circumstances or for the purposes, and subject to any condition, in the First and Second Schedules to the PDPA. Doing so addresses the bilateral restrictions imposed by the public agency. Having done so, A will still need to identify relevant exceptions in the First and Second Schedules to the PDPA. This depends on the circumstances of each case.

7. There are a number of exceptions under the PDPA that are potentially applicable in these situations. First, A may consider relying on the following exceptions:

- i. The collection, use or disclosure of the PD is for the vital interests of Individuals B (see Part 1 of Schedule 1 to the PDPA). For example, when A receives information (including PD) that an Individual B may be in a potentially dangerous situation, A may use the PD to contact Individual B or disclose the PD to relevant third parties to assist Individual B.
- ii. The collection, use or disclosure of the PD is necessary for “evaluative purposes”, which include the purpose of determining the suitability, eligibility or qualifications of Individual B for grant of financial or social assistance, or the delivery of appropriate health services, under any scheme administered by a public agency.
- iii. The use of the PD is for business improvement purposes (see Division 2 of Part 2 of the Second Schedule to the PDPA). For example, A may use the PD to plan and organise outreach activities more efficiently, better personalise each outreach, proactively identify Individuals B who are eligible for new/relevant services, and better assess their eligibility for applied schemes.

iv. The disclosure of the PD to a public agency, where the disclosure is necessary in the public interest.

8. Further, PDPC is of the view that, generally, A may rely on LIE as there is a clear benefit to Individuals B from the onward sharing of PD with the public agency in question and its partners, enabling them to receive care and financial assistance promptly.

9. A has also conducted a risk assessment to determine any negative effects on the individual that may arise from sharing their PD without consent. The adverse effects to Individuals B are assessed to be relatively low but are not absent in the event of a data breach. These include: (a) potential to be targeted by scammers if demographic information is leaked; (b) the PD may be inaccurate as A was unable to validate the PD received from the source agency, leading to a misdirection of services. To mitigate these risks, A has proposed to put in place appropriate measures such as Data Sharing Agreements, Data Request Forms, clearly established accountability of each party, and ensuring that the PD is encrypted. On balance, the PDPC concurs with A that the benefits outweigh the adverse effects to Individuals B. As a reminder, A must make public the reliance on LIE such as on their website or reports.

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