

A. COVER PAGE

Personal Data Protection Commission
Republic of Singapore
Attn: Mr. Amos Tan
Commission Member

Comments on Proposed Regulations for Personal Data Protection Act

Dear Sir,

Thank you for the opportunity to submit our comments on the above.

We are pleased to submit the attached for your review and consideration.

Thank you.

Yours Sincerely,

KK Lim

Lim Kian Kim (KK LIM)
19 March 2013

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B.SUMMARY OF MAJOR POINTS

1. Commission should consider setting the minimum fee to be collected at \$5 per request to provide an effective mechanism to fulfil the access – correction principle.
2. Data owner should be able to access collected data in any form whether it is structured or unstructured.
3. Access to inspect data should be free as opposed to making copies which should be paid as in the current industry practice such as banks.
4. Correction of data that are erroneously collected by organizations should be free so as to incentivize accurate collection of data in the first place.
5. Organizations seeking exemption from section 26 on transfer of data outside Singapore should be subject to legal and data protection audit.
6. Obtaining consent from the data owner at the point of collection is the most cost effective and efficient method to protect the interests of data owners before transferring their data out of Singapore. Data owners should be able to withdraw their consent through Short Messaging Service provided by the collecting company.
7. Companies deploying the Binding Corporate Rules (BCR) should provide full and complete details of their transfer mechanism for Singapore data owners on their websites. In addition, data owners should be informed if there is an onward transmission of their data to third parties including requests from foreign governments or government related entities.
8. The administration of a deceased's data should follow the current Intestate Succession Act in terms of priority of rights to avoid unnecessary conflict in terms of administering the estate of the deceased, if there is a separate scheme under the PDPA. An adult should be defined as 18 years of age in line with the current definition of an adult under the Civil Law Act for commencing proceedings.

C. COMMENTS

QUESTION IN RELATION TO THE ADMINISTRATION OF REQUESTS FOR ACCESS TO AND CORRECTION OF PERSONAL DATA

Question: Do you have any views/comments on the proposed manner in which an individual may make an access or correction request or the proposed positions relating to how organization are to respond to such requests?

Fee chargeable

- a. The Commission may want to be prescriptive in setting the minimum fee to be collected rather than leave it to the organizations concerned. The minimum suggested fee is SGD \$5 per request. This will potentially:
- (i) prevent a situation where organizations charge too high a fee to discourage access;
 - (ii) avoid unnecessary dispute/s as to what constitutes a fair charge between the company and the data owner; and
 - (iii) provide a sufficient balance between the need for genuine access and frivolous and vexatious requests from data owners.

Avoid the distinction between structured and unstructured data

- b. Data owners should also be able to access collected data regardless of whether it is structured or unstructured. This is to prevent organizations from refusing to provide the access on the basis that the data is unstructured and therefore it is too expensive to "comb" their databases. As long as the data has been collected, it is immaterial to the data owners as to the final form the data is stored in.

Distinction between making copies and inspection of records per se

- c. The fee chargeable should be levied on data the owner who desires a copy of the data collected. However those who want to inspect the data should be granted free access as the purpose is not so much to have a copy but to ensure that the data collected is accurate. It is suggested that no fee should be imposed on such request reasonably made subject to operational requirements of the company. For example, the data owner can only inspect specific data related to him or her but not data that is "mixed" with another party.

Correction of erroneous data collected – No fee to be imposed.

- d. Where the request is to correct wrong information collected by the organization, the request should be free. The logic behind this position is simple: why do we need to pay for the mistake/s made during collection by the organization? Are we unknowingly rewarding mistakes instead of encouraging organizations to collect information accurately and responsibly as the Act intended in the first place, if we allow an organization to impose a fee for correction of erroneous data?

QUESTIONS IN RELATION TO THE TRANSFER OF PERSONAL DATA OUTSIDE SINGAPORE

Question 1: Do you have any views/comments on other means of ensuring the protection of personal data transferred out of Singapore?

Legal and data protection audit requirement for comparable protection exemption

- a. The current term used under the Act is “comparable protection” in terms of transferring personal data outside of Singapore. The Commission may also exempt any organization from this requirement. It is suggested that a legal and data protection audit should be imposed on any organization seeking to be exempted from the comparable protection requirement for transferring data to a country outside of Singapore. The Commission may impose the functional areas to be audited for this due diligence exercise.

Obtaining consent at point of collection for transferring data

- b. Consent should be obtained from the data owner for the data to be transferred to a third country at the collection point. The collecting entity need to explain the reason for the transfer and collection process should follow the “content” principles of EU Data Protection Directive (WP 12).¹ The countries where the data is to be transferred to should also be listed.

This approach will: (i) provide a simple and cost effective protection method for both the data owner and the collecting organization;(ii) excludes the receiving organization from unnecessary regulatory burden as the regimes for cross border transfers are different in many countries; and (iii) promote consistency in managing consent across all countries and within the entity operating in different countries.

The withdrawal of consent can be automated through a Short Messaging Service (SMS) provided by the collecting organization. The downside of this approach is whether the consent is genuinely obtained. For example, an employee literally has no choice in this situation if required by the employer unless an opt-in requirement is included as one of the legal and data audit requirements. In addition, a data owner must be able to withdraw consent without suffering any penalty financially or otherwise from the collecting entity.

Contractual clauses to protect transfer of data

- c. The other suggestion is the use of standard contract clauses that reflects our PDPA for transferring data outside of Singapore. The benefits include (i) legal certainty; (ii) obviate the need to seek individual consent; (iii) being a tailored solution for that particular data that is being moved from Singapore to the external location. However note that the standard contractual clauses must be adopted ‘word for word’ and being a static

¹ Working Document: Transfers of Personal Data to Third Countries; Applying Articles 25 and 26 of *EU Data Protection Directive*. The content principles are purpose limitation; data quality and proportionality; transparency, security, right to access, rectification and opposition and restrictions on onward transfers. Note that compliance with the principles does not equate or pass the “adequacy” compliance test of EU Data Protection Directive.

document is not amenable to changing usage of the data and or technologies.

Question 2: Question: Do you have any views/comments on the proposed requirements for contractual clauses and binding corporate rules to protect personal data transferred out of Singapore?

Binding Corporate Rules (BCR)

- a. Corporations should expose their BCR on their websites in relation to handling personal data from Singapore for the data owners. A potential model to adopt is the International Chamber of Commerce form² for transfer of data.
- b. Corporations should provide the following information: (i) The mechanisms they used for compliance including their contractual agreements with their sub-contractors; (ii) Description of their processes and data flows; (iii) Mechanisms for reporting and recording changes; and (iv) Data protection safeguards and (v) Dispute resolution mechanism in Singapore.
- c. BCR should specify that data owners will be informed and their permission sought for release of their data under the following situations:
 - If there is a commercial requirement in situations such as mergers and acquisitions, and that the personal data would be given to a 3rd party for that purpose; and
 - If there is a requirement from a foreign Government or related entities requesting such data about the owners

3. QUESTIONS IN RELATION TO INDIVIDUALS WHO MAY ACT FOR OTHERS UNDER PDPA

Question 1: Do you have any views/comments on the areas for which individuals may act for others individuals under the PDPA that should be prescribed?

- a. Following the Intestate Succession Act in terms of priority of rights to administer the estate will align both statutes concerning a deceased person. This will also avoid a situation of unnecessary conflict in terms of administering the estate of the deceased if there is a separate scheme under the PDPA.
- b. An adult should be defined as 18 years of age in line with the current definition of an adult under the Civil Law Act for commencing proceedings.

Question 2: Do you have any views / comments on the extent to which minors should be able to exercise rights and powers conferred on them under the PDPA?

² www.iccwbo.org "Standard Application for Approval of Binding Corporate Rules for Transfer of Personal Data"

a. The current proposed scheme under clauses 9.3 and 9.4 should be adopted for the reasons mentioned therein.

Question 3: In particular, do you have views on the minimum age below which individuals should not exercise their own rights and powers under the PDPA?

Nil

Question 4: Do you have any views/comments on the proposed priority list in relation to individuals that may act for deceased individuals?

Nil

Question 5: In particular, do you have any views on the appropriate priority list and /or whether priority should be given equally to all relatives (or to relative within certain categories such as spouse and children, parents and siblings etc) for the purposes of the PDPA?

a. The proposed priority list under clause 9.9 as in the proposed regulation should be adopted for the reasons mentioned therein.

D.CONCLUSIONS

- a. It is suggested that the proposed regulations should be aligned with related legislature to avoid unnecessary administrative challenges for data owners and their next of kin.
- b. Organizations transferring data outside of Singapore should be subject to stringent oversight so as not to negate the legislative intent of PDPA.

END OF SUBMISSION