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Submission to the Personal Data Protection Commission Singapore
on the Public Consultation on Proposed Regulations on Personal Data Protection in Singapore

18 March 2013

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Personal Data Protection Commission Singapore
(via email pdpc consultation@pdpc.gov.sg)

Dear Sirs

PUBLIC CONSULTATION ON PROPOSED REGULATIONS ON PERSONAL DATA PROTECTION IN SINGAPORE

1. In response to the public consultation of the proposed Regulations on personal data protection in Singapore issued by the Personal Data Protection Commission Singapore ("PDPC") on 5 February 2013, we are pleased to submit our comments.

2. While SPH appreciates the importance of protecting individual's privacy, SPH feels that the proposed Regulations could better serve their purpose by balancing between the privacy of individuals and commercial practicality. For instance, the administrative burden on organisations as set out in the proposed Regulations could be rather daunting.

3. In this response, SPH will suggest some revisions to the proposed Regulations so that organisations may find it easier to operate without compromising the privacy of individuals.

Summary of major points

4. SPH strongly advocates that the proposed Regulations should minimise procedures that are administratively onerous on organisations. Such onerous administrative procedures may inefficiently divert an organisation's resources.

5. The proposed Regulations set down procedures for requests for access to and correction of personal data. The Fifth Schedule of the Personal Data Protection Act ("PDPA") provides that an organisation can reject "vexatious" and "frivolous" requests for access to information. SPH will go further to propose that the Regulations can help avoid the invocation of this provision by permitting organisations to have policies on limiting the number of requests from an individual within a certain period, and the flexibility of imposing stepped-up fee structure to curb unreasonable requests.

6. The binding corporate rules should be simplified. Paragraph 7.12 of the proposed Regulations should be removed. An organisation's chief data protection officer should be responsible for ensuring the compliance of paragraph 7.12.

7. SPH proposes that there be a minimum age of 18 years for minors to exercise rights and powers in respect of personal data. We do not think it is necessary to set another category for minors aged above 14 years but below 18, as this would complicate matters and would mean that organisations would have to make a judgement call in the second category. A clear minimum age would be unambiguous and easy to implement.

8. It is submitted that the Regulations should make it clear that organisations that have exercised reasonable due diligence in establishing the identity of an individual representing a deceased person, should not be penalised. An organisation would have done its due diligence if it has taken all reasonable efforts to ascertain that the individual is the person who is so authorised to act under the priority list. An example of reasonable efforts would include getting the individual to submit relevant documents to prove his relationship with the individual he is representing and to declare and undertake that he/she is the person that he/she purports to be on the priority list.

A. Administration of Requests for Access to and Correction of Personal Data – Question 1

Access to and Correction of Personal Data (Question 1)

9. Paragraph 3.7(b) proposes a response time of 30 days from individual's request to access his data, or within a "reasonable soonest time" if it is impossible to meet this 30 days timeline. Paragraph 5 sets out the details of the imposition of minimal fee for access request.

10. SPH notes that the Fifth Schedule of the PDPA sets out situations whereby organisations are not required to grant access, including rejecting frivolous and vexatious requests. However, laypeople may find it hard to grasp this concept of "frivolous" and "vexatious" requesrts. To minimise disputes between individuals and an organisation, SPH would like to suggest that the proposed Regulations be more specific in dealing with situations whereby individuals make unreasonable requests for access, say, every other day.

11. SPH recommends the following:

(a) Organisations be allowed to set policies that individuals should not be allowed to request for access to his personal data more than a certain number of times within a certain period, as well as specifying that individuals should not be making a new request within a certain number of days after the last request. This has two immediate advantages: (i) it reduces disputes as to what amounts to "frivolous" or "vexatious" requests; and (ii) it prevents numerous requests which would impede the operational efficiency of organisations;

(b) Although paragraph 5 permits organisations to impose a minimal fee for access request, SPH is of the view that the proposed Regulations should go one step further by giving organisations the liberty to impose a stepped-up fee for each further request made by individuals, especially if made after a short duration of an earlier request. Firstly, this addresses the issue of an organisation expending time and resources to cater to an individual's additional requests within a short span of time. Secondly, it conveys the message to individuals that each of their requests will cost the organisation additional resources, thereby discouraging unreasonable requests. Again, this will also help eliminate "frivolous" and "vexatious" requests.

12. SPH believes that the above recommendations will minimise the number of disputes between individuals and organisations. This may also cut down the number of individuals' complaints to the PDPC when individuals do not agree with organisations on what amounts to "frivolous" and "vexatious" requests. However, SPH fully understands that it may not be possible to eliminate all such disputes.

13. SPH is glad that paragraph 5 allows charging of minimal fees and organisations to reject requests from individuals who do not pay the fees or deposit. However, it is felt that the concept of "incremental costs" needs to be elaborated. Paragraph 5 explains what does not constitute incremental costs. Perhaps the PDPC should consider giving illustrations or examples of what incremental costs are. A case in point is the Personal Information Protection Act of British Columbia in Canada. That legislation defines that "*Minimal means that what you charge must cover only the actual costs you incurred in producing the record*". Further, the word "actual" is relatively easier to understand than "incremental". It appears that the word "incremental" may be more suitable for SPH's recommendation on stepped-up fees to be charged to individuals for additional requests. Organisations may be asked to produce proof of incremental costs to justify the stepped-up fees. SPH proposes that the PDPC adopts the word "actual" instead of "incremental" costs.

On the suggestion that organisations give a written estimate of the fee, SPH is of the view that there will be practical difficulties of doing so at the outset. If the suggestion of actual costs is accepted, then organisations may be able to inform individuals who request for access that they would be charged the actual costs of retrieving and producing the data requested.

B. Transfer of Personal Data Outside Singapore – Questions 1 and 2

Protection of Personal Data Outside Singapore (Question1)

14. SPH has no comments on Question 1.

Contractual Clauses and Binding Corporate Rules (Question 2)

15. The obligations listed under paragraph 7.5 are very detailed and will require careful and clear drafting. Just as Singapore's organisations require clarity and guidance from the Guidelines issued by the PDPC on the PDPA provisions, overseas jurisdictions would find it equally difficult to comprehend Singapore's personal data protection laws. For instance, the concept of "purpose" may not be similarly defined in other countries or it may not even exist as a concept under their laws. Also, what is considered "unreasonable" in Singapore may be considered as "reasonable" in some overseas jurisdictions. It is inevitable that organisations will have to go through the learning curve in drafting contractual clauses acceptable to the PDPC or clauses which would be legally binding and enforceable. Hence, it is hoped that the PDPC adopts a light touch approach if some of the clauses fall short of the requirements. The Regulations and/or the PDPC should also give assurance to organisations that they will not be penalised for contravention of the PDPA and the Regulations if their contractual clauses do not meet all of the requirements. More elaboration and guidance will be required as to the extent of contravention to warrant a penalty. It would certainly be helpful to organisations if the PDPC could draw up sample clauses on its website for organisations to adopt. This will eliminate any ambiguity.

16. Unlike contractual clauses, legally binding corporate rules for personal data protection is a new concept. As they concern the entire corporate group's data flow and management, implementation across the group will be an uphill task. SPH would like to point out that organisations may not be able to bind associated companies (companies in which the group has 50% or less effective shareholding) in their group or joint-venture companies (even if they hold more than 50%) with the corporate rules, as the group does/may not have management control over these companies. It would be useful if the Regulations could clarify that the requirement for

binding corporate rules would not cover associated companies and/or companies in which the group has no effective control as well as joint-venture companies. Further, the proposed Regulations have not indicated whether organisations are obliged to disclose their binding corporate rules to the public. SPH would like to suggest that the Regulations clarify that organisations have no such obligation as this would be an internal matter.

17. Paragraph 7.12(b) is too extensive in its requirement for data flow and management. In an increasingly complex business environment, the amount of personal data within a corporate group is not only voluminous but the data that is transferred may overlap and the process may be very complicated. Paragraph 7.12(b) has not explained the relevance of all the details in binding the group companies. Going down to details such as categories of data; type of individuals affected by data transferred; and identification of each country or territory in question, will be administratively and operationally costly and cumbersome, not to say unproductive. SPH feels that this requirement is operational in nature and is better left to the chief data officer (the "Chief DPO") to manage. SPH believes that it will be adequate to take a "broad brush" approach by stating in the corporate rules that the group companies should adhere to rules set down by the Chief DPO from time to time. It will be the Chief DPO's responsibility to record and manage the records such as categories of data, data transferred, and individuals affected by the transfer, etc. It is also the Chief DPO's duty to ensure compliance within the group.

C. Individuals Who May Act for Others Under the PDPA – Questions 1 to 5

Areas for which individuals may act for other individuals (Question 1)

18. There are many different areas under the PDPA for which an individual may act for other individuals. For example, a sister may help her brother, who is a minor, to book air tickets and arrange for his travel. In the course of doing that, she may provide his personal data to the tour agency. In line with the "light-touch" approach set out in earlier consultations on personal data protection, it is recommended that the Regulations do not regulate all areas under the PDPA. It would be more appropriate to give guidance through the Guidelines to be issued by PDPC.

19. Therefore, SPH is of the view that Paragraph 8.1 is correct in setting out at the outset that the Regulations should focus on the classes of persons (as opposed to "areas") who may act for minors and deceased persons or any other individuals who lack capacity to act. SPH agrees with the proposed method of registration.

Extent of minor's exercise of rights and powers (Question 2)

Minimum age below which individuals cannot exercise rights and powers (Question 3)

20. SPH would recommend just one minimum age i.e. 18 years. The provision of allowing individuals under 18 years but above 14 years who understand the nature of the rights and powers and their consequences to exercise rights under the PDPA would mean that organisations would have to make a subjective judgement call. It would be easier to have one minimum age, i.e. 18 years to avoid ambiguity and to provide certainty to organisations having to administer the PDPA requirements.

Proposed priority list relating to individuals acting for deceased individuals (Questions 4 and 5)

21. SPH supports the priority list in paragraph 9.9 as it would leave less room for ambiguity. While SPH agrees that a priority list would give some certainty to organisations, SPH feels that the Regulations should stipulate that organisations that have exercised reasonable due diligence in establishing the identity of an individual representing a deceased person based on the priority list, should not be penalised.

    It is also submitted that an organisation would have done its due diligence if it has taken all reasonable efforts to ascertain that the individual is the person who is so authorised to act under the priority list. An example of reasonable efforts would include getting the individual to submit relevant documents to prove his relationship with the individual he is representing and to declare and undertake that he/she is the person that he/she purports to be on the priority list.

Conclusion

22. SPH would like to take this opportunity to thank PDPC for the opportunity to participate in the public consultation exercise for the proposed Regulations. We hope MDA will look into our feedback and the issues raised and address them accordingly.

23. SPH's comments and suggestions are premised on striking a sound balance between privacy protection and commercial realism. In line with the light touch approach emphasised in earlier consultations, our feedback centres on commercial practicality to reduce operational setbacks.

24. The administration process for access to and correction of information should not be wrought with procedures that will divert an organisation's resources disproportionately to handle requests particularly those unreasonable and frivolous ones. Rather, the Regulations should allow organisations to use a fee structure that will deter unreasonable requests so that organisations do not have to establish that requests are "vexatious" or "frivolous" before denying them.

25. SPH looks forward to future involvement in the public consultation process.

26. Please contact the undersigned (email: limmlg@sph.com.sg) if you have any queries or require any clarification.

Yours faithfully

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