

**RESPONSE TO THE PUBLIC CONSULTATION ON
THE PROPOSED REGULATIONS ON PERSONAL DATA PROTECTION
IN SINGAPORE**



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SUMMARY

1. We suggest that individuals who request for access to their personal data should pay for the real cost of recovery. [Paragraphs 1.1 to 1.3]
2. For the purposes of complying with section 26(1), it is suggested that a "white list" and/or a model clause be provided. [Paragraphs 2.1 and 2.2]
3. We suggest that it be clarified that a parent may give consent on behalf of a minor who is above 14 years of age. [Paragraphs 3.1 to 3.3]

COMMENTS

1. ADMINISTRATION OF REQUESTS FOR ACCESS TO AND CORRECTION OF PERSONAL DATA

- 1.1. The Public Consultation on the Proposed Regulations proposes that organisations be permitted to only charge a minimal fee for an access request. The fee may only be for recovering the incremental costs directly related to the request for the time and effort spent by the organisation in responding to the access request.
- 1.2. It is suggested that this is too narrow. Instead, the organisation should be entitled to recover the real cost of accessing the data. Organisations are currently facing rising costs in all areas, and to limit them to recovering only such a narrow category of costs incurred will impose too great a burden on organisations. In addition, organisations will simply seek to then recover these costs by dividing it out among all users of their services rather than the specific individuals who have caused them to incur this cost.
- 1.3. It is suggested that individuals who wish to request for access should accept that they should pay for the real costs of recovery. This will also act as a means of ensuring that only individuals with a real concern will raise such access requests.

2. TRANSFER OF PERSONAL DATA OUTSIDE SINGAPORE

- 2.1. Section 26(1) of the Personal Data Protection Act ("**PDPA**") provides that an organisation shall not transfer any personal data to a country or territory outside Singapore except in accordance with requirements prescribed under the PDPA to ensure that organisations provide a standard of protection to personal data so transferred that is comparable to the protection under the PDPA.
- 2.2. We suggest that the regulations empower the Personal Data Protection Commission ("**PDPC**") to provide a white list of minimum obligations and standards that would amount to "comparable protection". This is because there are many different obligations under the PDPA and, in stipulating or determining whether there is a comparable standard, some of the standards provided may exceed the level of protection under the PDPA and some may be lower than the level of protection. It is not possible to determine whether such a level of protection is as a whole comparable to that under the PDPA. The only other alternative would be for organisations to regard the PDPA as setting a minimum standard in all respects, which would be too onerous an obligation.
- 2.3. For the same reasons, we further suggest that the PDPC provide a model clause that may be used to comply with the requirement in section 26(1).

3. INDIVIDUALS WHO MAY ACT FOR OTHERS

- 3.1. The Proposed Regulations on Personal Data Protection in Singapore provide that consent may be given by minors between 18 to 21 years of age, and minors less than 18 years of age but above 14 years of age if the minor understands the nature of the right or power and the consequences of exercising the same.

- 3.2. We suggest that for the purposes of clarity, the Regulations also stipulate that for minors above 14 years of age, the consent of their parents will also be sufficient. This is because the position at law is not clear. In England, the Court of Appeal decision of *Re R (A minor) (Wardship: Consent to Treatment)* [1992] Fam 11 made it clear that for minors above 14 years who had capacity under English law to consent to medical treatment, the parent also had a concurrent power of consent that could be exercised. There does not appear to be a similar decision in Singapore, and the position is not dealt with generally in legislation.
- 3.3. To ensure that organisations can be assured that reliance on the consent of a parent of a minor is sufficient, it is suggested that a provision for the same be included in the regulations.