

**PUBLIC CONSULTATION ISSUED BY THE PERSONAL DATA PROTECTION
COMMISSION**

**PROPOSED ADVISORY GUIDELINES ON THE APPLICATION OF THE
PERSONAL DATA PROTECTION ACT TO SCENARIOS FACED IN THE
TELECOMMUNICATION SECTOR**

**SUBMISSION BY THE STARHUB GROUP TO THE
PERSONAL DATA PROTECTION COMMISSION**

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1. EXECUTIVE SUMMARY

StarHub welcomes the opportunity to provide feedback on the proposed advisory guidelines (“Proposed Guidelines”) on the application of the Personal Data Protection Act (“Act”) to scenarios faced in the telecommunication sector by the Personal Data Protection Commission (the “Commission”) and supports the need for legislation to keep pace with developments in the industry and market conditions.

The Proposed Guidelines play an important role in clarifying various scenarios faced in the telecommunication sector.

The key areas of StarHub’s response to the Proposed Guidelines are as follows:

- (i) The Proposed Guidelines should clarify that where IDA has allowed telecommunication operators to provide certain services and information to individuals without having to seek consent, these should supersede the requirements of the Act in relation to the consent, use and disclosure of personal data.
- (ii) The Commission should clarify the position in relation to the Transfer Limitation Obligation and the disclosure of personal data to roaming partners, for outbound roaming.
- (iii) For pre-paid mobile services, the ‘layered notice’ approach or stating the purposes for collection, use and disclosure of personal data on a separate notice should similarly apply in fulfilling the Consent Obligation, and not just the Notification Obligation.
- (iv) As there are no avenues for a telecommunication operator to obtain clear and unambiguous consent from individuals who purchase pre-paid mobile services, we suggest that an exemption be made for pre-paid mobile services, such that upon service activation, telecommunication operators are able to send one-time messages to the individuals to ask for clear and unambiguous consent.
- (v) The Proposed Guidelines should provide greater clarity on the types of messages which the Commission would consider as not being specified messages, by providing a list of common messages sent by telecommunication operators.
- (vi) Telecommunication operators which send specified messages on behalf of third parties, beyond merely enabling a specified message to be sent, should also be presumed not to have sent the message and not to have authorised the message to be sent.
- (vii) The Proposed Guidelines should clarify the position relating to bill inserts and promotional messages printed on bills.

- (viii) Telecommunication operators should be able to publicly make available a specified and limited list of the types of personal data held by the organisation that can be accessed and/or corrected. Further, the Proposed Guidelines should clarify that the Access Obligation does not require telecommunication operators to disclose the names of the specific organisations to whom an individual's personal data has been disclosed to.
- (ix) In relation to the Retention obligation, guidance from the Commission is sought on the time periods for which certain specified types of personal data, such as audio and CCTV recordings, should be retained.

StarHub is pleased to provide its comments on the Proposed Guidelines in the following section.

2. COMMENTS

	SUMMARY OF THE COMMISSION'S POSITION IN THE PROPOSED GUIDELINES ON THE APPLICATION OF THE ACT TO SCENARIOS FACED IN THE TELECOMMUNICATION SECTOR	STARHUB GROUP COMMENTS
	<u>Paragraphs 4.3 to 4.8 – Inbound and outbound roaming</u>	
1.	Paragraph 4.5 makes reference to IDA's consultation paper titled 'Review of End User Service Information Provisions in the Code of Practice for Competition in the Provision of Telecommunications Services 2012' in which IDA has proposed that for inbound roamers, consent is not required to provide roaming services and roaming-related information and charges.	We suggest that the Proposed Guidelines make clear that any such express statements in the regulatory codes to which telecommunication operators are subject, shall supersede the requirements of the Act in relation to the consent, use and disclosure of personal data.
2.	Paragraph 4.8 states that for outbound roaming, where there is exchange of data between a Singapore telecommunication operator and foreign telecommunication operators, the Singapore operator would need to comply with the Transfer Limitation Obligation in respect of such transfer of personal data out of Singapore.	<p>Such an obligation would require Singapore telecommunication operators to ensure that any personal data transferred out of Singapore to roaming partners would have to be provided a standard of protection that is comparable to the protection under the Act.</p> <p>In practice, this is difficult to achieve as privacy laws differ within jurisdictions and roaming agreements between operators are in a standard form which is provided by the GSM Association, so any deviations to the standard form may not be accepted by all roaming partners. As at 13 February 2014, StarHub has almost 500 roaming partners worldwide.</p> <p>We suggest that the Commission either: (a) clarify that the current provisions on confidentiality and/or data privacy in the standard form roaming agreements, and any amendments thereto, would suffice to comply with the Transfer Limitation Obligation; or (b) exempt Singapore telecommunication operators from the requirement to comply with the Transfer Limitation Obligation in relation to personal data transferred out of Singapore to roaming partners for the purpose of provision of roaming services, pursuant to the Commission's powers in section 26(2) of the Act.</p>

<u>Paragraphs 4.18 and 4.19 – Notification obligation for pre-paid mobile services</u>	
3.	<p>These paragraphs make reference to options that telecommunication operators can consider to fulfill the Notification Obligation, and that such options may be considered to be deemed consent as well.</p> <p>We suggest that the Proposed Guidelines should also make clear that the suggested approaches in fulfilling the Notification Obligation – namely, adopting a ‘layered notice’ approach or stating the purposes for collection, use and disclosure of personal data on a separate notice – should similarly apply in fulfilling the Consent Obligation. Hence, in adopting either of the two approaches, a telecommunication operator would have complied with the Consent Obligation as well.</p>
4.	<p>Paragraph 4.18 states that if operators choose either of the two approaches set out, they will still have to comply with Do Not Call provisions in relation to sending specified messages or obtaining clear and unambiguous consent.</p> <p>The Commission has rightly noted that the purchase of pre-paid cards for telecommunication services does not involve the signing of a written contract, and hence there is no avenue for telecommunication operators to seek clear and unambiguous consent for the purpose of the Do Not Call provisions, upon purchase of pre-paid cards by individuals at the point of sign-up.</p> <p>We also note that in the Advisory Guidelines on the Do Not Call Provisions issued on 26 December 2013 (“DNC Guidelines”), the Commission had made clear at paragraph 2.8 that a message sent to a Singapore telephone number where the purpose, or one of the purposes, is to obtain clear and unambiguous consent for the sending of specified messages, would be considered a specified message.</p> <p>Given the above, there are no avenues for a telecommunication operator to obtain clear and unambiguous consent from individuals who purchase pre-paid mobile services. We suggest that an exemption be made for pre-paid mobile services, such that upon service activation, telecommunication operators are able to send one-time messages to the individuals to ask for clear and unambiguous consent. Individuals may indicate their preference by replying to such messages. Such messages would not be unduly intrusive, as they can be added on to the text messages which are already sent to individuals upon service activation.</p>

Paragraph 5.4 – Specified messages under the Do Not Call Provisions

5. The Commission considers that a message sent to a Singapore telephone number solely to provide account information / product information relating to the ongoing use of the service / product by the individual would not constitute the sending of a specified message.

We suggest that the Proposed Guidelines provide greater clarity on the types of messages which the Commission would consider as falling within this category, namely messages excluded from the definition of specified messages. Similar to the examples given in the DNC Guidelines, we suggest that the Commission provide further clarity by providing a list of common messages sent by telecommunication operators. Some suggestions for examples are as follows:

Example Message	Treatment
<p>“Dear Customer, your mobile plan is up for renewal. Visit any [operator] shops by [deadline] with your NRIC/FIN and required supporting documents to recontract and get \$30 off [X handset]!”</p>	<p>This message falls within paragraph 1(e)(i) as its sole purpose is to provide notification concerning a change in the terms or features of an ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender.</p>
<p>“As a subscriber to [pay-TV channel], you are invited to attend an exclusive meet-and-greet session with the stars of [TV programme]!”</p> <p>“With \$X balance credits in your top-up, you can make IDD calls to your loved ones in Y country! Plus every 8 mins of talktime, gives you an additional 10 minutes FREE!</p> <p>“Welcome to <countryname>. Standard data roam rate is \$X/MB. To save on roaming charges, opt-in RoamEasy Daily</p>	<p>These messages fall within paragraph 1(e)(i) as its sole purpose is to provide notification concerning a change in the terms or features of an ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender.</p>

		at \$Y for 1st 50MB data block daily with ANY roaming operator in <countryname>. From 12 Dec 13 to 7 Feb 14, enjoy \$A per 50MB (U.P \$Y) for 2nd and subsequent 50MB data blocks used within the same day (till 23:59hr SG Time)”	
<u>Other Issues to be considered</u>			
	<u>Issues</u>	<u>Explanatory Notes</u>	
6.	Telecommunication operators which send specified messages on behalf of third parties, beyond merely enabling a specified message to be sent, should also be presumed not to have sent the message and not to have authorised the message to be sent.	The scope of Section 36(2) of the Act should be clarified in the guidelines to clarify that telecommunications operators who are required by their customers to send messages based on criteria selected by the customer, for example, customers within a particular location or vicinity will fall within the ambit of that section.	
7.	Bill inserts and promotional messages printed on bills	<p>With reference to advertisements included as inserts in bills (bill inserts) and promotional messages printed on bills themselves, such messages would not fall within the ambit of the Do Not Call Provisions, as they are not sent to a Singapore telephone number. However, they are still subject to the remainder of the provisions relating to personal data in the Act. We would suggest that the Commission clarify the position relating to such messages.</p> <p>We propose that the position should be that messages does <u>not</u> constitute a use of personal data as these messages are generally not targeted at any specific individuals, and hence the PDPA Provisions do not apply to the same.</p>	
8.	Telecommunication operators should be able to publicly make available a specified and limited list of the types of personal data held by the telecommunication operators that can be accessed and/or corrected at the request of the individual.	Sections 21 and 22 of the Act provide that organisations should provide individuals with access to their personal data and should correct personal data on request by the individual, under specified circumstances.	

		<p>Telecommunication operators collect vast amounts of personal data from customers as is necessary in order to render services to them. It would not be practically possible for telecommunication operators to allow customers to access, or correct, all the personal data collected by the operators. We suggest that it would be sufficient to comply with the Access and Correction Obligations, if telecommunication operators make publicly available a list of limited types of personal data that individuals may access and/or correct.</p> <p>We propose that this should be limited to the following types of personal data:</p> <ul style="list-style-type: none"> (i) NRIC, FIN or passport number (ii) Nationality (iii) Gender (iv) Racial or ethnic origin (v) Contact particulars (vi) Subscription details (vii) Service account number (viii) Billing details (ix) Contract start date (x) Interests (xi) Personal profile
9.	<p>In relation to the Access Obligation, on the request of an individual, an organisation is required to, inter alia, provide the individual with information about the ways in which the personal data (about the individual that is in the possession or under the control of the organisation) has been or may have been used or disclosed by the organisation within a year before the date of the request.</p>	<p>We suggest that the Commission clarify that the Access Obligation does not require telecommunication operators to disclose the names of the specific organisations to whom the personal data is disclosed to, as these are commercial arrangements with such organisations and doing so may put the operators in breach of their contractual agreements (and the confidentiality clauses therein) with such organisations. Instead, it would suffice for telecommunication operators to reveal categories of organisations (for instance, financial sector, healthcare sector) to the individuals.</p>

10.	In relation to the Retention Obligation we seek guidance from the Commission on the time periods for which certain specified types of personal data, such as audio and CCTV recordings, should be retained.	<p>Section 25 of the Act provides that an organisation shall cease to retain its documents containing personal data, or remove the means by which the personal data can be associated with particular individuals, as soon as it is reasonable to assume that the purpose for which that personal data was collected is no longer being served by retention of the personal data, and retention is no longer necessary for legal or business purposes.</p> <p>We submit that the Commission should provide guidance on the time periods for which certain specified types of personal data collected by telecommunication operators should be retained, for example:</p> <ul style="list-style-type: none">- CCTV recordings from telecommunication operators' shops- Audio recordings of calls with telecommunication operators' customers- Call detailed records for customers
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3. CONCLUSION

StarHub welcomes the opportunity to provide feedback on Proposed Guidelines by the Commission and supports the need for legislation to keep pace with developments in the industry and market conditions.

StarHub is grateful for the opportunity to comment on this matter.

StarHub Ltd
13 February 2014