

From: [Harkirat Singh SIDHU](#)
To: [PDPC Consultation \(PDPC\)](#)
Subject: Proposed Advisory Guidelines for the Education Sector
Date: Friday, 6 June, 2014 11:29:21 AM

Thank you for allowing us the opportunity to comment on the draft advisory guidelines and the personal data protection laws in general. Our comments/queries are as follows:

(1) [Comment/Query relating to personal data protection in the education sector](#)

Unlike many more circumscribed activities, the field of education is very wide and the boundaries as to what an “educational purpose” is are very difficult to conclusively define.

While personal information will doubtless have to be collected from each student that enrolls in, say, a university, and while there are certain key uses which are central to an educational purpose, such as matriculation, course/ elective selection etc, there are a myriad number of more ambiguous examples which could fall within a reasonably foreseeable “educational purpose” when a student (and/or next-of-kin) provides his personal information to the university. Eg. Notification of events, latest happenings, scholarships, work and/or internship opportunities etc.

While the ideal position is for, and while every step should be taken to ensure that, students’ (and in some instances, next-of-kins’) consent to be expressly sought and obtained before their personal information is used/ disclosed, the truth is that there are too many instances within an education context where personal information would need to be used by an education institution. It would thus be impossible for an institution to fully anticipate all such situations in order to craft a blanket, but sufficiently detailed, express consent to be obtained at the outset, say, at matriculation.

At the same time, there could be envisaged many innocuous instances where it would seem eminently reasonable to use students’ (and next-of-kins’) personal information but where it would cause disproportionate administrative hardship and expense for a university to obtain express consent from the students to use their personal information. Indeed, a lot of such instances could be said to constitute standard practices which have taken place over many years. For instance, Example 3.11 of the Advisory Guidelines talks about a hypothetical situation where a commercial organisation DEF targeting high net worth individuals requests data from School ABC’s survey of its alumni. Quite apart from the illustrated issue, would one be able to assume that it would be deemed acceptable for the university to use former students’ personal information to conduct such a survey among its alumni in the first place? For one, there is a very arguable case that it is foreseeable when a student provides information at matriculation, that his data would be kept in a database for alumni purposes and activities (including post-graduation surveys). It can also be said that prior to the advent of the PDPA, post-graduation employment surveys were quite the norm and could be said to be entrenched standard practice among institutions of higher learning. For a university who has not already earlier obtained some form of earlier express consent to contact its graduates one-by-one to seek permission to conduct the survey (does the university need consent to contact alumni to seek permission even?) would surely cause more administrative disturbance and almost certainly reduce response rates.

The purpose of this submission is to argue that there can be many situations (too many to be contemplated before they arise) in the education context that, although ambiguous under the letter of the provisions in the PDPA, would appear to a reasonable person to be one where it would be eminently acceptable for an education institution to use previously-collected students' (and other relevant parties') personal information without having to seek express consent. It is submitted that in such situations, regard should be had to the practical exigencies and distinct circumstances in the education context, and the benefit of the doubt more readily given when deciding whether there was 'deemed consent' under Section 15 of the PDPA.

While this submission recognises that there are some entrenched practices that have to change with the introduction of the PDPA, and while it in no way suggests that standards of surveillance and enforcement should be lowered in the case of educational institutions, it argues that it would be extremely useful for the PDC to further elaborate on the definition of "educational purpose" or simply to expressly recognise in the Advisory Guidelines for the Education Sector that the ambit of "education purpose" is very wide, and further, that when the PDC considers whether a particular activity is deemed to be part of an educational purpose such that it would be acceptable for an institution to use existing personal information without first obtaining express consent by reason of Section 15 of the PDPA, it will consider practical realities, such as, but not limited to:- 1) the difficulty of obtaining express consent 2) the likelihood of harm and prejudice to data owners 3) Whether such an activity has been entrenched as standard and acceptable practice over the years, and last but not least 4) whether an ordinary person would think that such an activity is one that is reasonably expected/ accepted of an educational institution to undertake.

It is believed that such an express recognition of the unique circumstances of the educational context is important as it will go a significant way towards alleviating bottlenecks and easing the paranoia brought about by the pursuit of a strict and complete adherence of the PDPA provisions. That, it is submitted, is also in line with the European experience where the concept of 'legitimate expectation' comes into play when balancing the data protection rights of the individual against administrative and business efficacy, which would grind to a halt if the provisions of the PDPA were literally applied to the most extreme ends.

In Singapore, up till 2000, IHLs were set up as statutory boards and it was only in 2000, that SMU was set up under a different model ie. as a company limited by guarantee. In 2004/2005, both NUS and NTU were corporatized and now share the same corporate structure as SMU. We have to remind ourselves that if IHLs had remained as "statutory board" structures, they would have been benefitted under the government/public agency exemption provided under the PDPA. It would have been ideal if the same exemptions available to public agencies are extended to the IHLs as the benefits of corporatization should not be diluted by the extra burden of having to comply with the PDPA by IHLs which some view as being quasi-public in nature.

If it is not possible for IHLs to be treated as public agencies for purposes of the PDPA, then we believe that specific attention should be focused in the following areas :

1. Student exchanges – it is relevant to note that in many other jurisdictions, similar PDPA-type legislation have been in place for many years but it is our experience that our partner student exchange universities from all these different jurisdictions have never imposed or

required SMU to comply with their equivalent of the PDPA export of data obligations. It is important that long established student exchange practices not be made for cumbersome. We hope that appropriate exemptions can be provided or a list of jurisdictions/countries (i.e. safe harbour exemptions) that are deemed by PDPC as having equivalent PD protection be listed so that IHLs can have the comfort of knowing that they won't run foul of the PDPA if PD is shared with universities from those countries.

2. Academic research – it is important that academic researchers/institutions do not arrive at the view that the PDPA hinders research activities. The current “research” exemption has a “public interest” requirement and that is, in the absence of an advisory note from the PDPC, a very high bar to attain. It is our view that the “public interest” requirement be interpreted in a general manner e.g. any form of academic research should perhaps be viewed as being in the public interest. Again, how are other academic institutions operating in countries which have had PDPA-like legislation been able to share their research PD data with other foreign institutions without having to impose their PDPA type obligations on those foreign research institutions? We hope that similar exemptions can be provided for our IHLs as it is in the public interest that our researchers/IHLs be equally free to conduct and share and receive PD with their foreign counterparts but of course always complying with standard confidentiality obligations that are customary amongst academic researchers.

3. External Reviews – in the area of tenure reviews, it is the norm for institutions to send the research dossier of tenure-track faculty members to external reviewers based in foreign jurisdictions e.g. in the US or Europe. This is a long established academic practice. Confidentiality is assumed in all these arrangements. Is it right that PDPA obligations be imposed on these external reviewers? Will this discourage such external reviewers to participate in such Singapore-originating external reviews? Do other jurisdictions impose such obligations on them?

4. Admissions / Alumni – specific guidelines in these areas would also be helpful with a view to facilitating compliance.

(2) Comment/Query relating to the Do Not Call Registry and educational programmes

At present, any message sent by a public agency to promote any programme carried out by the public agency which is not for commercial purpose is not considered to be a “specified message”, and is therefore not subject to the laws relating to the Do Not Call Registry. As a not-for-profit Institute of Higher Learning, SMU's undergraduate programmes are offered on a non-commercial basis. As such it is submitted that messages relating to the promotion of such non-commercial undergraduate programmes should similarly not be considered “specific messages” under the Act.

It is SMU's mission, as an education and research institution, to disseminate knowledge. To that end, SMU routinely organizes talks, conferences, seminars and similar events to educate interested persons on a variety of topics and/or for persons to network and share knowledge. Would a message to promote such events be considered a “specified message”?

Once again, thank you for the opportunity to provide our input on the PDPA. Please do not hesitate to contact us if you have any questions relating to the above.

Regards,

Harkirat Singh Sidhu
Assistant Director, Office of Legal & General Affairs
Singapore Management University
DID: 65 6828 0481
Fax: 65 6828 0460
Administration Building, 81 Victoria Street, Singapore 188065
www.smu.edu.sg

Important - The information contained in this email (including all attachments) is confidential and may also be privileged. It is intended for the use only of the addressee(s) named. If you are not the intended recipient, kindly note that any dissemination, distribution, publication or copying of this email is strictly prohibited. If you have received this email in error, please accept our apologies and notify us immediately. Thereafter, kindly delete all copies from your system. Although reasonable precautions have been taken to ensure the integrity of this email and that it is virus free, SMU cannot be responsible for any change made to this email or the presence of any virus therein without its knowledge and/or consent. Unless it relates to the official business of SMU, any opinions, views and other information expressed in this document are those of the individual sender.