

## **4 Photography, Video and Audio Recordings**

- 4.1 Photography, video and audio recordings are increasingly ubiquitous with such capabilities being included in more devices. While not all photographs, video and audio recordings capture personal data, some clearly do.
- 4.2 An image of an identifiable individual captured in a photograph or video recording is personal data about that individual. An audio recording may comprise personal data if an individual can be identified from that audio recording, or from that recording and other information that the organisation has or is likely to have access to. For example, an individual may be identified from his voice<sup>6</sup>, or voice and other information disclosed in or related to the audio recording, or from his voice coupled with his image captured in a video recording of the individual.
- 4.3 The Commission does not expect that the PDPA will greatly affect adoption of such technologies. Nevertheless, the Commission considers it useful to provide guidance on certain applications of the Data Protection Provisions in the PDPA to photography, video and audio recordings, including those recorded through the use of Closed-Circuit Television Cameras (“CCTVs”) and drones.
- 4.4 The following sections and examples outline certain concepts and the application of some of the Data Protection Provisions in the PDPA to photography, video and audio recordings. It should be noted that the scenarios provided address particular aspects of the PDPA, and are not meant to exhaustively address every obligation in the PDPA that would apply in that scenario.

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<sup>6</sup> An individual may be identified from his voice, for example, where the voice clip is sufficiently clear and of a sufficient duration.

## Photography and Videography

### Does a photographer or videographer need to obtain an individual's consent to take a photograph or video recording of the individual?

- 4.5 Among other obligations, the Data Protection Provisions require consent from the individual to be obtained for the purposes of the collection, use or disclosure of his personal data. Exceptions to this Consent Obligation may apply depending on the circumstances, for example where the photographer is acting in his personal or domestic capacity, such as when he takes photographs or video recordings for his own personal purposes at a gathering for family and friends.
- 4.6 A professional photographer or videographer who takes a photograph or video recording of an identifiable individual in the course of his business will be required to obtain consent unless he is taking the photograph or video recording on behalf of and for the purposes of another organisation pursuant to a contract in writing. In such a situation, the other organisation will be required to comply with the Data Protection Provisions. Similarly, if the photographer or videographer is an employee acting in the course of his employment with an organisation, he will not be required to comply with the Data Protection Provisions and instead his employer will be required to comply<sup>7</sup>. In this regard, it would be advisable for employers to put in place systems and processes to prevent employees from engaging in conduct that could cause the organisation to breach the Data Protection Provisions.

4.7	<p><b>Example: Photo-taking by an individual acting in a personal or domestic capacity</b></p> <p>Diana, an employee of Organisation XYZ, attends Organisation XYZ's corporate social responsibility event. At the event, she meets her friend Dawn. During a break in the programme, they have a personal chat and catch up on each other's personal lives. During the chat, Diana takes a photograph of the two of them to update her friends of the encounter via social media. Diana then uploads the photograph and displays it on her personal social media page.</p> <p>In this instance, Diana would likely be considered to be an individual acting in a personal or domestic capacity, and would not be required to comply with the Data</p>
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<sup>7</sup> Section 53(1) of the PDPA provides that any act done or conduct engaged in by a person in the course of his employment shall be treated as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer's knowledge or approval. In reality, whether the individual is acting in the course of employment may not always be clear and may require a factual inquiry.

	<p>Protection Provisions in respect of the photo-taking and subsequent disclosure of the photograph via her social media account.</p> <p>Notwithstanding the above, the Data Protection Provisions may apply in other contexts where Diana is not acting in a personal or domestic capacity. For example, if the photograph is subsequently published for Organisation XYZ’s publicity purposes (such as in Organisation XYZ’s corporate brochures or website) instead of for Diana’s personal purposes, the Data Protection Provisions are likely to apply to Organisation XYZ in respect of the collection, use and disclosure of the photograph. For example, Organisation XYZ will have to obtain Dawn’s consent before publishing her photograph for Organisation XYZ’s business purpose.</p>
4.8	<p><b>Example: Video recording by an individual acting as an employee</b></p> <p>Eric, another employee of Organisation XYZ, is tasked by the management of Organisation XYZ to take video recordings at the corporate social responsibility event and make them available on Organisation XYZ’s webpage. In this instance, as Eric is an employee acting in the course of his employment with Organisation XYZ where he takes video recordings for his assigned purpose, the PDPA does not impose the Data Protection Provisions on him directly. Organisation XYZ would be required to comply with the Data Protection Provisions instead. As a practical measure, Organisation XYZ may assign Eric to ensure its compliance with certain obligations, such as obtaining consent from the individuals that Eric takes video recordings of. In this regard, please refer to subsequent sections of these guidelines for information on obtaining consent.</p>

Does a photographer or videographer need to obtain an individual’s consent to take a photograph or video recording of the individual in a public place?

- 4.9 The PDPA sets out various exceptions to the Consent Obligation. An organisation may wish to evaluate whether any exception applies in respect of its particular circumstances. In particular, there is an exception for the collection, use and disclosure of personal data that is publicly available<sup>8</sup>. For example, when the individual appears at an event or location that is open to the public, taking a photograph of the individual would likely be collection of personal data that is publicly available for which consent is not required. In this regard, the Commission has set out that a location or event would be considered “open to the public” if members of the public can enter or access the location with few or no restrictions,

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<sup>8</sup> Under the PDPA, “publicly available”, in relation to personal data about an individual, means personal data that is generally available to the public, and includes personal data which can be observed by reasonably expected means at a location or an event at which the individual appears and that is open to the public.

and generally a location would less likely be considered “open to the public” if there are more restrictions to access. Further, there can be private spaces within public spaces, and a location is not open to the public merely because members of the public may look into the premises or location. As good practice, an organisation that collects, uses or discloses personal data that is publicly available may still wish to obtain consent from the individuals in question. Please refer to the Key Concepts Guidelines for a more detailed discussion on this exception.

How may an individual’s consent be obtained for photo-taking or video recording at a private event/space?

- 4.10 The Data Protection Provisions do not prescribe the ways in which consent may be obtained for photo-taking or video recording. As set out in the Key Concepts Guidelines, consent can be obtained in various ways. Generally, as good practice, an organisation should obtain consent that is in writing or recorded in a manner that is accessible for future reference, for example, as the organisation may be required to prove that it had obtained consent.
- 4.11 In addition, consent may be deemed to have been given by an individual in situations where the individual voluntarily provides his personal data to an organisation for a purpose, and it is reasonable that he would voluntarily provide the data. In the context of photo-taking or video recording, deemed consent may apply where the individual voluntarily permits a photograph or video recording to be taken of him for the organisation’s intended purpose, and it is reasonable that he would do so.
- 4.12 Please refer to the Key Concepts Guidelines for further elaboration on the Consent Obligation.

4.13	<p><b>Examples: Consent for photo-taking at a private function</b></p> <p>Organisation ABC holds a private function for a select group of invited clients and wishes to take photographs of attendees for its internal newsletter with their consent.</p> <p>In fulfilling its obligation to obtain consent, the measures that Organisation ABC may take to better ensure that the attendees are aware of the purpose for which their photographs are collected, used and disclosed, could include:</p> <p style="margin-left: 20px;">a) Clearly stating in its invitation to clients that photographs of attendees will be taken at the function for publication in its internal newsletter; or</p>
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	<p>b) Putting up an obvious notice at the reception or entrance of the function venue to inform attendees that photographs will be taken at the event for publication in its internal newsletter.</p> <p>Alternatively, Organisation ABC may obtain consent from the attendees by clearly indicating that photographs will be taken at the event for its corporate purposes on the confirmation of attendance form which guests would sign and return to the organisation. In this case, Organisation ABC would be considered to have obtained consent from the guests who signed and returned the form.</p>
4.14	<p>Kevin attends Organisation DEF's private function. During the function, Organisation DEF's photographer informs Kevin that she is taking photographs for publication in Organisation DEF's internal newsletter, and asks Kevin if he would like to have his photograph taken. By allowing his photograph to be taken, Kevin would be considered to have given consent for the photograph to be collected, used or disclosed for the stated purpose.</p> <p>To better ensure that guests are aware of the purpose of photo-taking, Organisation DEF may wish to take actions such as those in paragraph 4.13.</p> <p>For avoidance of doubt, Organisation DEF's photographer would not need to separately obtain consent from attendees if their consent had already been obtained by Organisation DEF for such photo-taking at the function, e.g. in the circumstances described in paragraph 4.13 above.</p>

Is a photographer or videographer required to obtain consent from individuals in the background when a photograph or video recording is taken?

- 4.15 As noted above, consent will generally be required for taking a photograph or video recording of an identifiable individual although consent may be deemed to have been given, or an exception may apply, depending on the circumstances. This is true as well for identifiable individuals who are in the background when a photograph or video recording is taken. It should also be noted that where an individual in the background is not identifiable from the photograph or video recording (such as if the image is too small or obscured), the photograph or video recording will not constitute personal data of that individual.

Do professional photographers or videographers<sup>9</sup> need to sign contracts with the event organiser before they can provide photography or videography services at an event?

- 4.16 The PDPA does not prescribe the contractual arrangements that organisations may wish to enter into in order to ensure that they comply with their obligations under the PDPA. Where they do enter into such a contract, the PDPA provides that the performance of a contractual obligation shall not be an excuse for contravening the PDPA<sup>10</sup>.
- 4.17 The PDPA does not require a professional photographer or videographer to enter into a contract with an event organiser. However, it would be a good practice for the parties to enter into a contract. Generally, if a professional photographer or videographer is engaged by an organisation to take photographs or video recordings of identifiable individuals, and wishes to be considered a data intermediary processing personal data on behalf of and for the purposes of the organisation pursuant to a contract that is evidenced or made in writing<sup>11</sup>, the photographer or videographer should enter into such a contract, which may set out (among other things) each party's responsibilities and liabilities, including the scope of the photographer's or videographer's obligation to process personal data on behalf of and for the purposes of the organisation that engaged him. The organisation on whose behalf the photographer or videographer is acting may also wish to stipulate in a contract security and other data protection obligations on the photographer or videographer in order to ensure that the organisation does not contravene its obligations under the PDPA.
- 4.18 Where the photographer or videographer is not a data intermediary processing personal data on behalf of and for the purposes of the organisation pursuant to a contract that is evidenced or made in writing, he would be subject to all the obligations under the Data Protection Provisions, unless any relevant exception applies. For example, the photographer or videographer would be required to obtain consent on or before taking a photograph or video recording of an identifiable individual, unless an exception to the Consent Obligation applies.

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<sup>9</sup> The term "professional photographer or videographer" in this section encompasses self-employed individuals as well as organisations that provide professional photography or videography services.

<sup>10</sup> Section 4(6)(a) of the PDPA.

<sup>11</sup> In such instances, the professional photographer or videographer would only be required to comply with the Protection Obligation and Retention Limitation Obligation, and would not be required to comply with the remaining obligations under the Data Protection Provisions (including the Consent Obligation).

4.19	<p><b>Example: Whether a professional videographer is a data intermediary processing personal data on behalf of and for the purpose of another organisation pursuant to contract evidenced or made in writing</b></p> <p>Abel, a freelance videographer, is hired by Organisation ABC to be its videographer at its private function. Abel and Organisation ABC sign a contract that clearly states (among other things) that Abel will be taking video recordings at the function on behalf of and for the purposes of Organisation ABC, and that Organisation ABC will obtain consent from the attendees. In such an instance, Abel will be considered a data intermediary processing personal data on behalf of and for the purposes of another organisation pursuant to a contract that is evidenced or made in writing, and Abel need not obtain consent from the individuals he takes video recordings of at the event.</p> <p>After the function, Abel selects some of the video recordings and publishes them on his webpage to promote his work. Abel will not be considered a data intermediary and will be required to comply with the Data Protection Provisions, including obtaining consent from the individuals in the video recordings in order to use or disclose the video recordings for this purpose.</p> <p>In another engagement, Abel is hired by Alice, an individual acting in her personal or domestic capacity, to be her videographer at her private function. Abel will be considered a data intermediary subject only to the Protection and Retention Limitation Obligations where he processes personal data on behalf of and for the purposes of Alice, pursuant to a contract that is evidenced or made in writing. In the absence of such contract, Abel will be required to comply with all the Data Protection Provisions.</p>
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Does the exception for collection of personal data “solely for artistic or literary purposes” apply to the taking of photographs or video recordings of individuals?

- 4.20 In accordance with paragraph 1(g) of the Second Schedule, an organisation is permitted to collect personal data about an individual without the individual’s consent if the personal data is collected solely for artistic or literary purposes. Such collected data may also be used or disclosed for purposes consistent with the purpose of collection.
- 4.21 The terms “artistic” and “literary” are not specifically defined in the PDPA. The Commission is of the view that it would likely be in line with the purpose of the PDPA for these terms to take their ordinary meanings. However, the Commission notes that the parameters as to what would constitute “artistic” purposes may be strongly

subjective. Accordingly, while organisations taking photographs or video recordings solely for artistic or literary purposes may rely on the exception, where it is feasible for organisations to obtain the individual’s consent before taking a photograph or video recording of the individual or where it is uncertain that an organisation’s purpose would be considered solely “artistic” or “literary”, the Commission would advise organisations to obtain the individual’s consent as best practice.

Is an individual who submits a photograph or video recording taken when acting in a personal or domestic capacity for a competition, still acting in a personal or domestic capacity?

- 4.22 An individual’s submission of a photograph or video recording for a competition is, on its own, insufficient to determine whether he is acting in a personal or domestic capacity. Such a determination would have to be made based on all the material facts of the case.

4.23	<p><b>Examples: Submission of photographs for a competition</b></p> <p>Alan is a professional photographer. He takes a photograph of his aunt Betty at a family event, and subsequently submits it for a competition for professional freelance photographers organised by Organisation ABC. The winner of the competition will receive a contract to provide services as the official photographer at an event conducted by Organisation ABC. Alan is unlikely to be considered to be acting in a personal or domestic capacity, and the Data Protection Provisions will apply to his use or disclosure of the personal data unless any other exceptions apply.</p>
4.24	<p>Alan submits the same photograph of his aunt Betty for a photography competition organised by Social &amp; Recreational Club DEF on the club member’s favourite family member. The competition is open to all members of the social and recreational club and the prize is a free holiday for the winner and his favourite family member. Alan is likely to be considered to be acting in a personal or domestic capacity, and the Data Protection Provisions will not apply to his use or disclosure of the personal data.</p>

Can individuals withdraw consent for the publication of photographs or video recordings, or request under the PDPA for the removal of photographs or video recordings that have been published?

- 4.25 The PDPA provides that individuals may at any time withdraw any consent given or deemed to have been given under the PDPA for the collection, use or disclosure of their personal data for any purpose by an organisation by giving reasonable notice



to the organisation<sup>12</sup>. An organisation that receives notice of the withdrawal of consent must (among other things) cease, and cause its data intermediaries and agents to cease, to collect, use or disclose the photographs or video recordings, as the case may be (unless an exception applies).

- 4.26 Where an organisation has already collected the personal data, the withdrawal of consent will only apply to its continued use or future disclosure. However, this does not affect an organisation's collection, use and disclosure of personal data without consent where this is required or authorised under the PDPA or other written law. In such cases, organisations may consider refraining from any future collection, use or disclosure of the personal data as a matter of discretion. Paragraph 4.30 below provides an example of how an organisation may give effect to an individual's withdrawal of consent when it relates to a photograph or video recording of a group of individuals.
- 4.27 Where photographs or video recordings of an identifiable individual have been taken (for example, where the photographs or video recordings are taken for marketing purposes) but have yet to be published in a publicly available manner, the individual may withdraw consent for the collection, use or disclosure of the photographs or video recordings in accordance with the PDPA. The withdrawal of consent would affect all continued use and future disclosure. For avoidance of doubt, the withdrawal of consent would not affect any requirement or authorisation under any written law to collect, use or disclose personal data without consent. For example, under the PDPA, organisations are not required to obtain consent for the collection, use or disclosure of publicly available personal data. In such cases, an organisation that receives a withdrawal of consent may wish to cease further use or disclosure of the photographs or video recordings in question as good practice.
- 4.28 The PDPA does not provide a right for individuals to request that an organisation ceases to retain their personal data per se. Thus, an organisation which receives a notice of withdrawal of consent for publication of a photograph or video recording is not necessarily required to delete that photograph or video recording from all its records and documents, and may retain personal data in accordance with the Retention Limitation Obligation (e.g. where retention is necessary for legal or business purposes). However, where the organisation's activities involving the personal data are in breach of the Data Protection Provisions, the organisation may be directed by the Commission to (among other things) cease retaining such personal data.

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<sup>12</sup> Please refer to the sections in the Key Concepts Guidelines relating to withdrawal of consent for more details.

4.29	<p><b>Example: Withdrawal of consent for publication in an annual report</b></p> <p>Organisation ABC publishes a photograph of a client, Mr Y, in its annual report distributed to shareholders and clients. Mr Y subsequently withdraws his consent to the publication of the photograph. Organisation ABC is required under the PDPA to cease future publication of the photograph, unless such disclosure without Mr Y's consent is required or authorised under the PDPA or other written law, for example, if the photograph is already publicly available. However, it is not required to recall copies of its annual report, which had been circulated prior to the withdrawal, so as to remove the photograph. It may also be able to continue to retain the photograph subject to the Retention Limitation Obligation.</p>
4.30	<p><b>Example: Withdrawal of consent by an individual in a group photograph</b></p> <p>Organisation ABC obtains consent from and takes a photograph of a group of individuals at a private event, for publication in its internal newsletter. A member of that group, Mr Z, subsequently withdraws his consent for the publication of the photograph. Organisation ABC is required under the PDPA to cease future publication of the photograph, unless such disclosure without Mr Z's consent is required or authorised under the PDPA or other written law, for example, if the photograph is already publicly available, or Organisation ABC is able to effect the withdrawal of consent (e.g. by masking the image of the individual) before publishing the photograph.</p>
4.31	<p><b>Example: Collection in breach of Data Protection Provisions</b></p> <p>Jessie informs Organisation XYZ that it had collected her personal data without her consent by taking an identifiable video recording of her, and asks it to destroy the video recording. Organisation XYZ determines that its collection (and any subsequent use or disclosure) of Jessie's personal data may have been in breach of the Data Protection Provisions. In this case, Organisation XYZ should cease any further use or disclosure of Jessie's personal data. Where the purpose for which the personal data was collected is no longer being served by the retention and retention is no longer necessary for legal or business purposes, Organisation XYZ should also cease such retention<sup>13</sup>.</p>

<sup>13</sup> To be clear, Organisation XYZ's ceasing to retain Jessie's personal data does not necessarily absolve Organisation XYZ of any breach of the Data Protection Provisions, nor preclude the Commission from taking action against Organisation XYZ if the Commission determines that Organisation XYZ had indeed breached the Data Protection Provisions.

Does the PDPA affect the copyright in a photograph or video recording?

- 4.32 The Data Protection Provisions do not affect any right conferred or obligation imposed by or under other laws, including the Copyright Act. In particular, the PDPA does not affect copyright subsisting in a photograph, video recording or other item in respect of which copyright is protected under the Copyright Act (“copyright item”). Hence, organisations which collect, use or disclose personal data in a copyright item must comply with the Data Protection Provisions in respect of that personal data, except to the extent of any inconsistency between the Data Protection Provisions and other written law. For example, an organisation that seeks to take a photograph or video recording of an individual would need to comply with the Notification Obligation and Consent Obligation, unless an exception under the PDPA applies (as discussed above).

**Closed-Circuit Television Cameras (“CCTVs”)**

- 4.33 CCTVs are commonly used to capture video recordings, and some of them may also be equipped with audio recording capabilities. The paragraphs below pertain to the use of CCTVs, and generally apply regardless of whether the CCTVs record video only or both video and audio.

Do organisations always have to provide notifications when CCTVs are deployed?

- 4.34 The PDPA requires organisations to inform individuals of the purposes for which their personal data will be collected, used or disclosed in order to obtain their consent. Organisations should thus provide notifications in order to fulfil their obligation to obtain consent for the collection, use or disclosure of CCTV footage. Please see the sections on the “Consent Obligation” and “Notification Obligation” in the Key Concepts Guidelines for more details.
- 4.35 However, where consent is not required (e.g. if the collection, use or disclosure falls within an exception in the Second, Third or Fourth Schedules respectively), the PDPA does not require organisations to provide notification (except for collection, use or disclosure for the purpose of managing or terminating the employment relationship between the individual and the organisation, which requires notification). Where notification is not required, organisations may still wish to provide notifications in such instances as good practice.

Where should notices be placed?

- 4.36 Notices or other forms of notifications should generally be placed so as to enable individuals to have sufficient awareness that CCTVs have been deployed for a particular purpose. For example, it may be appropriate to place a notice at points of

entry to a building or prominent locations in a venue or a vehicle, where individuals are able to read the notice prior to collection of their personal data.

What should such notices state?

- 4.37 The PDPA does not prescribe the content of notifications. To be clear, the notice should not just contain an image or graphic of a CCTV. Generally, organisations should indicate that CCTVs are operating in the premises, and state the purpose of the CCTVs (e.g. the CCTVs are installed for security purposes) if such purpose may not be obvious to the individual. Further, where CCTVs deployed record both video and audio, organisations should indicate that both video and audio recordings are taking place.

Is notification still required if CCTVs are there to covertly monitor the premises for security reasons, and notification of the CCTV's location would defeat the purpose of using the CCTVs?

- 4.38 The Commission does not require the placement or content of notifications to reveal the exact location of the CCTVs. Organisations may provide notice that CCTVs are deployed in the general locale instead of indicating the specific points where the CCTVs are installed. Where personal data may be collected without consent and notification of purposes will not be required by the PDPA (e.g. where the personal data is publicly available<sup>14</sup>), organisations are nevertheless advised to provide notification as good practice.

4.39	<p><b>Example:</b></p> <p>Organisation XYZ deploys CCTVs for security purposes at the entrance to its office premises. It provides a notification at the entrance to its office which clearly and prominently states the use and purpose of video surveillance. Such notification would be considered sufficient for Organisation XYZ's purpose.</p>
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If my organisation installs CCTVs that also capture footage beyond the boundaries of our premises, is that allowed?

- 4.40 The PDPA requires that an organisation consider what a reasonable person would consider appropriate under the circumstances in meeting its obligations under the PDPA. An organisation is not prohibited by the PDPA from having CCTVs that collect footage beyond the boundaries of its premises. Organisations should, however,

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<sup>14</sup> Please refer to Chapter 12 of the Key Concepts Guidelines for more information on the concept of “publicly available”.

consider the extent of coverage that is reasonable for the purpose of installing the CCTVs. Organisations should put in place appropriate notification in all areas where personal data would be collected by the CCTV, and obtain consent for such collection, as well as any use and disclosure of personal data unless consent is not required because one of the exceptions in the respective Second, Third or Fourth Schedule of the PDPA applies.

- 4.41 However, the organisation should bear in mind that there may be other considerations that may affect its ability to collect CCTV footage of areas beyond its premises (e.g. limits on filming of restricted areas).

Is an organisation required to provide access to CCTV footage if it also reveals the personal data of other individuals?

- 4.42 Generally, an organisation is required to provide the individual access to personal data requested, unless the request falls within one of the prohibitions under section 21(3) of the PDPA or any exception under the Fifth Schedule.

- 4.43 For example, one of the prohibitions in section 21(3)(c) is in respect of providing access to an individual's personal data or other information if that provision could reasonably be expected to reveal personal data about another individual. However, the Commission is of the view that this prohibition would not apply in circumstances where:

- a) the other individual has given consent to the disclosure of his personal data; or
- b) any of the exceptions under the Fourth Schedule of the PDPA apply to the extent that the organisation may disclose personal data of the other individual without consent (e.g. the personal data of the other individual is publicly available); or
- c) the organisation is able to provide the individual access to the requested personal data without revealing the personal data of the other individual. For example, the organisation should consider if it is able to mask out the personal data of the other individual in order to provide access to the requested personal data.

- 4.44 Please refer to Chapter 15 of the Key Concepts Guidelines for more information on the Access Obligation.

Must an organisation provide access to CCTV footage if it doesn't have the technical ability or it is too costly to mask the other individuals whose personal data are captured in the footage?

- 4.45 Generally, an organisation is required to provide for access requests. In the case of CCTV footage, this would include being able to provide access to CCTV footage where the personal data of other individuals present in the CCTV footage are masked as required (e.g. where consent of the individuals for such disclosure is required, but has not been obtained).
- 4.46 The organisation may charge an individual a reasonable fee to recover any incremental costs of responding to the access request<sup>15</sup>. The organisation should provide access to the CCTV footage with the personal data of other individuals in the same footage masked as required, so long as the applicant agrees to pay the fee for the organisation to respond to the access request, unless a relevant exception or prohibition applies.
- 4.47 For example, organisations are not required to provide access if the request is frivolous or vexatious, or if the burden or expense of providing access would be unreasonable to the organisation or disproportionate to the individual's interest. If an organisation intends to rely on this or other exceptions from the requirement to provide access provided for in the Fifth Schedule, it should be able to provide supporting evidence to justify its decision.

Is an organisation required to provide a copy of CCTV footage pursuant to an access request for the footage?

- 4.48 Organisations should provide a copy of the CCTV footage and have the option of charging the individual a reasonable fee for providing the copy.
- 4.49 If the CCTV footage resides in a form that cannot be provided to the individual in physical or electronic copies, (e.g. the data cannot be extracted from a special machine owned by the organisation), or if it is prohibitively costly to provide the footage in the aforementioned formats, then the organisation may provide the individual a reasonable opportunity to examine the requested data in person, with appropriate masking of the personal data of other individuals where required.

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<sup>15</sup> If an organisation wishes to charge an access fee, the organisation must give the individual a written estimate of the fee. If the organisation wishes to charge a fee higher than the original written estimate, it must inform the individual in writing of the increased fee. The organisation may refuse to provide access to the individual's personal data until the individual agrees to pay the relevant fee.

Can compromising an organisation's security arrangements or competitive position be sufficient reason to deny access to CCTV footage?

- 4.50 The Commission's view is that, depending on the specific facts and circumstances, compromising an organisation's security arrangements or harming an organisation's competitive position could be a sufficient basis to deny access to CCTV footage if there is an applicable exception in the Fifth Schedule or prohibition in providing access in section 21. An example would be where the provision of the personal data in the CCTV footage could reasonably be expected to threaten the safety of another individual. However, where an organisation denies access on this basis, the Commission expects the organisation to be able to provide strong justifications as to why it is unable to accede to the access request. The Commission will have to make a determination based on the facts of the particular case, should a complaint be received.

Can two or more individuals make an access request for the same CCTV footage containing their personal data, if they consent to their own personal data being revealed to the others making the access request?

- 4.51 Yes. It would be reasonable for certain groups of individuals (e.g. a married couple, parents of a class of students etc.) to make an access request for the same footage containing their personal data. Organisations may apply the same considerations in determining whether to provide access as they would for a request made by a single individual. Organisations may provide access without masking out the other individuals in the footage if the other individuals have given consent to the disclosure of their personal data<sup>16</sup>. Please refer to Chapter 15 of the Key Concepts Guidelines.

Is an organisation required to accede to requests to delete CCTV footage?

- 4.52 No. The PDPA does not require an organisation to delete personal data upon request from an individual. Section 25 of the PDPA requires an organisation to 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.
- 4.53 Nonetheless, individuals may at any time, upon giving reasonable notice, withdraw any consent given or deemed to have been given under the PDPA in respect of the collection, use or disclosure of their personal data for any purpose by an

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<sup>16</sup> Organisations should consider if any other prohibitions may also apply with respect to providing access to personal data requested.

organisation. Section 16 of the PDPA sets out a number of requirements that the organisation must comply with in relation to a withdrawal of consent. This does not affect any legal consequences arising from a withdrawal of consent. Please refer to Chapter 12 of the Key Concepts Guidelines for more information on withdrawal of consent.

Is there a requirement that CCTV footage or video stills be of minimum resolution when provided to individuals upon request?

- 4.54 The PDPA does not prescribe any minimum resolution. However, given that the requirement is for the organisation to provide the personal data in its possession or under its control, the organisation should provide the CCTV footage in the form and of the resolution it holds for its purposes.

Can the organisation require that the individual sign a contract to agree not to disclose to any third party the CCTV footage to be provided to him?

- 4.55 The PDPA does not prohibit this. However, such a contract would not override any rights or obligations under the PDPA. Organisations should also note that individuals acting in a personal or domestic capacity are not subject to the Data Protection Provisions of the PDPA.

Where an organisation is providing a copy of the CCTV footage upon request of an individual, must the copy be a video or can it be provided in other formats?

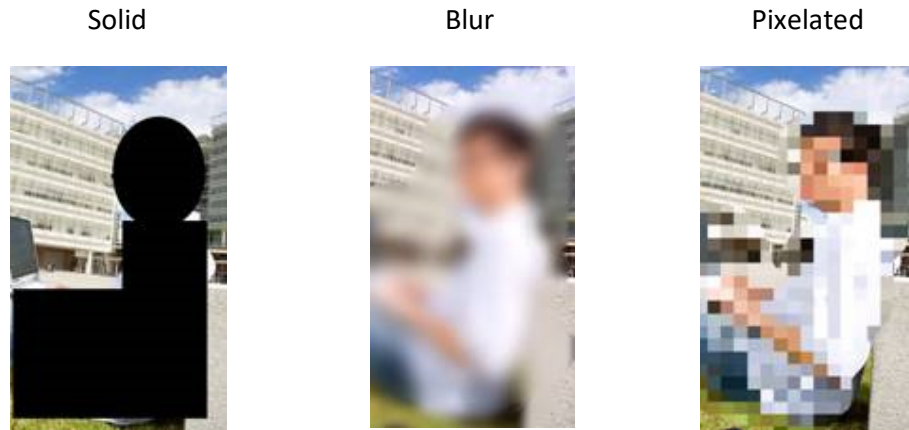
- 4.56 The PDPA does not specify the format of the personal data to be provided in relation to an access request made by an individual. In the case of personal data captured in CCTV footage, organisations may respond to access requests for CCTV footage by providing either still frames of the footage or the actual footage itself, with appropriate masking of the personal data of other individuals, unless a relevant exception under section 21 applies.

What does “video masking” or “masking” refer to?

- 4.57 “Video masking” of images refers to the process of concealing parts of the video from view. This may include masking certain body parts or inanimate objects that could potentially disclose the personal data of an individual. The common types of masking include (i) solid colour masked areas; (ii) blurred masking; or (iii) pixelated masking. Where solid colour masking is used, no details or movement in the scene covered by the masked area can be viewed. However, when pixelated or blurred masking is used, the resulting image enables a partial outline to be seen but with detailed features obscured. This may be a less foolproof method as it is possible for pixelated or blurred images of individuals to still be identifiable. Examples of the different



masking techniques are shown below. These can be applied to both video and still imagery.



### Drones

- 4.58 Increasingly, organisations are making use of drones that may be equipped with photography, video and/or audio recording capabilities. The subsequent paragraphs pertain to the use of drones by organisations, and generally apply regardless of whether the drones are equipped with photography, video and/or audio recording capabilities. To be clear, the Data Protection Provisions do not impose any obligation on an individual acting in his personal or domestic capacity.

#### What should organisations consider when using drones?

- 4.59 Organisations will need to consider whether the drones they deploy are likely to capture personal data of individuals, and may wish to evaluate whether any exception under the PDPA applies in respect of its particular circumstances.
- 4.60 The use of drones with photography, video and/or audio recording capabilities are generally subject to the same considerations and obligations under the PDPA as that of other equipment with similar capabilities. Organisations should also be mindful that the operation of drones is subject to the guidelines and requirements of other authorities. For instance, organisations should not operate a drone within the boundaries of any prohibited area (i.e. protected area or special event area)<sup>17</sup>. Enquiries may be made to the Civil Aviation Authority of Singapore.

#### What should organisations do if the drones used are likely to capture personal data?

- 4.61 Among other obligations, the Data Protection Provisions require organisations to inform individuals of the purposes for which their personal data will be collected,

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<sup>17</sup> See Division 4 of the Air Navigation Act (Cap 6) and Part III of the Public Order Act (Cap 257A).

used and disclosed in order to obtain their consent. An organisation must thus provide notification of the purposes for the collection, use or disclosure of personal data captured by its drones, in order to fulfil the obligation to obtain consent<sup>18</sup>. The notifications should specify if photography, video and/or audio recording is taking place and should generally be placed so as to enable individuals to have sufficient awareness that drones are in operation in the general locale. For example, it may be appropriate to place a notice at points of entry to the area of operation, where individuals are able to read the notice prior to entry.

- 4.62 The PDPA sets out various exceptions to the Consent Obligation. In particular, there is an exception for the collection, use and disclosure of personal data that is publicly available<sup>19</sup>. For example, when the individual appears at an event or location that is open to the public, a photograph, video or audio recording taken of the individual at such an event or location would likely be personal data that is publicly available, and organisations may collect, use or disclose such personal data without consent. In such instances, organisations may still wish to provide notifications as good practice. Some possible methods of providing notification include placing signages at entrances to the spaces where the drone is flown, at prominent locations along the approved flight path (or carried/worn by safety marshals), or at the launch site, etc. Please refer to the Key Concepts Guidelines for more details on the Consent Obligation, Notification Obligation and publicly available exception.

What should organisations do if personal data was unintentionally collected by the drones?

- 4.63 The Commission would encourage organisations to ensure that they adhere to the pre-determined flight path of drones and adopt policies restricting or prohibiting the use of any personal data that is unintentionally collected (e.g. when drones accidentally veer off-course from the pre-determined flight path and collect personal data without consent)<sup>20</sup>.

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<sup>18</sup> Where a drone operator is capturing photographs, video and/or audio recordings on behalf of and for the purposes of another organisation pursuant to a contract in writing, the other organisation is required to comply with the Data Protection Provisions. If the drone operator is an employee acting in the course of his employment with an organisation, he will not be required to comply with the Data Protection Provisions, instead his employer will be required to comply.

<sup>19</sup> Under the PDPA, “publicly available”, in relation to personal data about an individual, means personal data that is generally available to the public, and includes personal data which can be observed by reasonably expected means at a location or an event at which the individual appears and that is open to the public.

<sup>20</sup> To be clear, the deletion of the personal data does not necessarily absolve an organisation of any breach of the Data Protection Provisions, nor preclude the Commission from taking action against the organisation if the Commission determines that the organisation had indeed breached the Data Protection Provisions.