

5 Employment

Does an organisation need to seek the consent of a job applicant for the collection and use of his personal data?

5.1 Organisations may receive personal data from job applicants who provide it voluntarily through a job application, either in response to a recruitment advertisement or otherwise.

5.2 When an individual voluntarily provides his personal data to an organisation in the form of a job application, he may be deemed to consent to the organisation collecting, using and disclosing the personal data for the purpose of assessing his job application. If the individual is subsequently employed, it would be reasonable for the organisation to continue to use the personal data provided by the individual in the job application form for the purpose of managing the employment relationship with the individual, if required. If the organisation wishes to use the personal data for purposes for which consent may not be deemed or to which there is no applicable exception under the PDPA, the organisation must then inform the individual of those purposes and obtain his consent, unless relevant exceptions apply. Please see the section on The Consent Obligation in the Key Concepts Guidelines for more details.

Can organisations collect and use personal data on the job applicant from social networking sources (e.g. Facebook or Twitter)?

5.3 The PDPA does not require organisations to obtain the consent of the individual when collecting personal data that is publicly available. Examples of publicly available sources are newspapers, telephone directories and websites containing content which is generally available to the public. Where social networking sources are publicly available, the PDPA does not prohibit organisations from collecting personal data about the individual without his consent. Please refer to the section on “The Consent Obligation” in the Key Concepts Guidelines for more explanation of the ‘publicly available data’ exception.

Can organisations or recruitment agencies collect and use personal data on individuals from social networking sites or publicly available sources to contact them for prospective job opportunities?

5.4 The PDPA does not require organisations to obtain the consent of the individual when collecting or using personal data that is publicly available. Where the personal data is not publicly available, but is voluntarily made available by the individual on a job-search portal for being contacted for prospective job opportunities, the individual may be deemed to have consented to the collection, use and disclosure of his personal data for such purpose.

Can organisations use the information in business cards for recruitment?

- 5.5 The Data Protection Provisions in the PDPA do not apply to “business contact information”, which is defined in the PDPA as:

“an individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his personal purposes”.

- 5.6 If the individual provided his business card for purposes other than solely for personal purposes, then the organisation is not required to comply with the Data Protection Provisions of the PDPA in respect of the contact information set out in the business card.

5.7	<p>Example:</p> <p>At the registration booth of a corporate seminar, Sharon drops her business name card into a glass bowl by the side of the registration booth as she wishes to be on the seminar organiser’s mailing list for future invitations to similar seminars.</p> <p>Sharon’s business name card contains her name, position, business telephone number, business address, business electronic mail address and business fax number. As Sharon did not provide her business name card solely for personal purposes, the information on it will be considered business contact information. The PDPA does not apply and the seminar organiser does not need to seek Sharon’s consent to use the information on her business name card.</p>
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How long can an organisation keep the personal data of job applicants who are not hired?

- 5.8 After an organisation has decided which job applicant to hire, the personal data that the organisation had collected from the other job applicants should only be kept for as long as it is necessary for business or legal purposes. Organisations should note that job applicants have the right to obtain access and request corrections to their personal data held by the organisation. Please see the section on “The Access and Correction Obligation” in the Key Concepts Guidelines for more details.

Can job applicants ask the organisation to reveal how much information the organisation has on them or find out why they were not selected?

- 5.9 Under the PDPA, individuals have the right to obtain access and request corrections to their personal data held by organisations. Upon request, the organisation must also inform the individual of the ways in which the personal data had been used for

the past year. Thus, organisations must reveal to the job applicant who requests so, the personal data the organisation has on them. There are however exceptions to this obligation to provide access to personal data, including several mandatory exceptions. Please refer to the section on “The Access and Correction Obligation” in the Key Concepts Guidelines for more details.

- 5.10 For example, if the personal data in question is opinion data kept solely for an evaluative purpose, organisations are not required to provide the requested information to the individual. This means that organisations will not need to inform a job applicant of the opinions which were formed about him in the course of determining his suitability and eligibility for the job.

How does the PDPA apply to recruitment agencies?

- 5.11 Recruitment companies, employment agencies, head-hunters and other similar organisations (henceforth ‘recruitment agencies’) are subject to the Data Protection Provisions of the PDPA. Accordingly, unless an exception under the PDPA applies, recruitment agencies will have to inform job applicants of the purposes for which they are collecting using or disclosing their personal data, and obtain consent before doing so.
- 5.12 Recruitment agencies that are acting as data intermediaries are required to comply with fewer obligations under the PDPA. The PDPA provides that a data intermediary that processes personal data on behalf of and for the purposes of another organisation pursuant to a contract which is evidenced or made in writing will only be subject to the provisions in the PDPA relating to the safeguarding and retention of personal data in respect of such processing. In certain circumstances these recruitment agencies could qualify as data intermediaries. For more information on data intermediaries, please refer to the section on “Excluded Organisations” in the Key Concepts Guidelines.
- 5.13 Recruitment agencies should also note that a message sent solely to promote an employment opportunity would not be regarded as a specified message and would not be subject to the Do Not Call Provisions. Please refer to the section on the “Do Not Call Provisions” in the Key Concepts Guidelines for more information.

Personal Data of Employees

How does the PDPA apply to employment records of employees?

- 5.14 Most organisations maintain some form of employment records on their current employees, which may include contact information, resumes, performance indicators and remuneration histories. Organisations should inform the employees

of the purposes for the collection, use and disclosure of their personal data and obtain their consent prior to the collection, use and disclosure (as the case may be).

- 5.15 In many cases, consent could be obtained at the point of appointing the new employee. It may, however, also be necessary to obtain consent at various points during the employment relationship when the organisation requires more personal data or intends to use or disclose the employee's personal data for other purposes. Please also note that even if consent is given, employees may withdraw that consent under the PDPA.
- 5.16 Employers should also note that even if an exception applies such that consent need not be sought, the exception does not affect rights or obligations arising under any other law. Hence, even if an exception applies under the PDPA, employers are required to comply with their other legal obligations, for example, to protect confidential information of their employees or under the employment contract.

Collecting, using and disclosing employee personal data for evaluative purposes

- 5.17 Organisations may collect, use and disclose personal data without consent where this is necessary for evaluative purposes. (This is set out as exception 1(f) in the Second Schedule, 1(f) in the Third Schedule and 1(h) in the Fourth Schedule respectively). The term "evaluative purpose" is defined in section 2(1) of the PDPA and includes, amongst other things, the purpose of determining the suitability, eligibility or qualifications of an individual for employment, promotion in employment or continuance in employment.
- 5.18 Hence, the evaluative purpose exception allows employers to collect, use and disclose personal data without the consent of the individual or employee concerned for various purposes that are common in the employment context, for example:
- a) Obtaining a reference from a prospective employee's former employer to determine his suitability for employment; or
 - b) Obtaining performance records or other relevant information or opinions to determine the performance of an employee.

Collecting, using and disclosing personal data for the purpose of managing or terminating an employment relationship between the organisation and the individual

- 5.19 Under the PDPA, the collection by organisations of personal data from their employees that is reasonable for the purpose of managing or terminating their employment relationships, and the use or disclosure of such personal data for consistent purposes would not require the consent of their employees. This is

pursuant to exception 1(o) in the Second Schedule, 1(j) in the Third Schedule and 1(s) in the Fourth Schedule respectively. While consent is not required, employers are required to notify their employees of the purposes of such collection, use or disclosure.

- 5.20 The PDPA does not prescribe the manner of notification and organisations should determine the form and manner that would provide the individual with the required information that allows him to understand the purposes for which his personal data would be collected, used and disclosed. For example, organisations may determine in the particular circumstances if it would be appropriate to inform their employees of these purposes through employment contracts, employee handbooks, or notices in the company intranet. Organisations should also keep their employees updated about new purposes for which an employee's personal data may be collected, used and disclosed without consent. For the avoidance of doubt, where an organisation has sufficiently provided a general notification to employees on the purposes for which their personal data may be collected, used and disclosed, for example for performance appraisals, the Commission does not expect organisations to notify employees of the same purpose prior to each time that the organisation engages in such activities. Please refer to the section on "The Notification Obligation" in the Key Concepts Guidelines for more details.
- 5.21 Purposes that could fall within the purpose of managing or terminating an employment relationship can include:
- a) Using the employee's bank account details to issue salaries;
 - b) Monitoring how the employee uses company computer network resources;
 - c) Posting employees' photographs on the staff directory page on the company intranet; and
 - d) Managing staff benefit schemes like training or educational subsidies.
- 5.22 Employers would need to seek consent for purposes that are not related to, or the collection of personal data that is not relevant to the management or termination of an employment relationship (unless any other exception under the PDPA applies). In particular, employers would need to obtain consent when collecting, using or disclosing employee personal data for business or client purposes not related to managing or terminating an employment relationship.

5.23	<p>Example:</p> <p>Organisation ABC engages a courier company to deliver a parcel to organisation XYZ. XYZ requires the full name and NRIC number (personal data) of the employee which will be dispatched by the courier for this delivery for the purposes of allowing the courier to enter XYZ’s office premises. Before disclosing the personal data of its employee, the courier company should obtain the employee’s consent to do so.</p> <p>Such consent can be obtained on a case by case basis, or once-off through the employment contract or other appropriate means.</p>
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What is the difference between the exception for evaluative purposes and the exception for the purpose of managing and terminating an employment relationship?

- 5.24 There are instances where employers have to collect the same set of personal data for both the purposes of (i) managing or terminating the employment relationship and (ii) evaluation. The difference between the two purposes lies in the requirement to notify individuals for purpose (i) but not for purpose (ii). In other words, employers need only inform employees of the purpose for managing and terminating the employment relationship, and not of the evaluative purpose.

5.25	<p>Example:</p> <p>An employer collects information about the projects an employee has worked on to determine whether to promote him (an evaluative purpose), and to conduct audits on his finance claims (a purpose for managing and terminating an employment relationship).</p> <p>The employer need only notify the employee that his personal data is being collected for audit purposes. The employer does not need to obtain consent from the employee for the collection of his personal data or inform him that he is being evaluated for promotion to a higher job grade.</p>
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- 5.26 Employers should note that even though some exceptions in the PDPA can apply in the employment context, organisations should still act based on what a reasonable person would consider appropriate in the circumstances. Please see the section on “Reasonableness” in the Key Concepts Guidelines.

How long can organisations continue to hold personal data of former employees?

- 5.27 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 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. The Retention Limitation Obligation does not specify a fixed duration of time for which an organisation can retain personal data as each organisation has its own specific business needs.
- 5.28 Organisations may continue to retain personal data about the former employee that was collected during his employment period for as long as there is a valid business or legal purpose. For example, organisations that have a policy of retaining personal data of former employees for the purpose of considering them for future job opportunities can continue to do so as a valid business purpose. However, organisations should not retain personal data without a clearly defined purpose. Organisations should note that holding personal data for an indeterminate duration of time increases the risk of a contravention of the Data Protection Provisions, as organisations have other obligations in relation to the personal data held. Please see the section on the “Retention Limitation Obligation” in the Key Concepts Guidelines for more information.

Are organisations responsible if their employees do not comply with the PDPA? Are volunteers considered employees?

- 5.29 Under the PDPA, an organisation is responsible for the personal data in its possession or under its control, including for any breaches of the PDPA caused by their employees acting in the course of their employment. In particular, any act done or conduct engaged in by an employee in the course of his employment shall be treated as done or engaged in by his employer, whether or not it was done or engaged in with the employer’s knowledge or approval.
- 5.30 In relation to offences under the PDPA by an employee of an organisation, the organisation will not be liable if it took such steps as were practicable to prevent the employee from doing the act or engaging in the conduct that constitutes the offence. Organisations should develop and implement policies and practices that comply with the PDPA, and communicate such policies and practices to their employees.
- 5.31 Organisations should note that the PDPA defines “employee” to include a volunteer, and “employment” to include working under an unpaid volunteer work relationship.

Do the exceptions to the Consent Obligation for the collection, use and disclosure of personal data of employees also apply to individuals that may act on behalf of an organisation, but are not the organisation's employees?

- 5.32 The exception relating to “managing or terminating an employment relationship” only apply when there is an employment relationship. Where an organisation is collecting the personal data of individuals that are not its employees for a specific purpose, this specific exception would not apply. However, other exceptions may apply, for example where the organisation is required under written law to collect personal data of such individuals in order to assess whether the qualifications of such individuals comply with regulatory requirements.