

## 14 The Notification Obligation

- 14.1 As noted in the previous sections on the Consent Obligation and the Purpose Limitation Obligation, organisations must inform individuals of the purposes for which their personal data will be collected, used and disclosed in order to obtain their consent. The organisation's collection, use and disclosure is limited to the purposes for which notification has been made to the individuals concerned.
- 14.2 Section 20 of the PDPA sets out the obligation of organisations to inform individuals of these purposes. In particular, section 20(1) requires an organisation to inform the individual of:
- a) the purposes for the collection, use and disclosure of his personal data, on or before collecting the personal data; or
  - b) any purpose for use or disclosure of personal data which has not been informed under sub-paragraph (a), before such use or disclosure of personal data for that purpose.
- 14.3 This obligation to inform individuals of the purposes for which their personal data will be collected, used and disclosed is referred to in these Guidelines as the Notification Obligation.
- 14.4 The Notification Obligation does not apply in the circumstances specified in section 20(3). That is, organisations are not required to inform individuals of the purposes for which their personal data will be collected, used or disclosed if:
- a) the individual is deemed to have consented to the collection, use or disclosure of his or her personal data under section 15 of the PDPA; or
  - b) the organisation is collecting, using or disclosing the personal data without the consent of the individual concerned in accordance with section 17 of the PDPA (that is, in the circumstances specified in the Second, Third and Fourth Schedules to the PDPA).
- 14.5 It is important for an organisation to identify the purposes for which it is collecting, using or disclosing personal data by establishing the appropriate policies and procedures. These would enable the organisation to identify what personal data it needs to collect, use and disclose for its business purposes and to ensure that the personal data collected is consistent with the purposes identified. It would also minimise the risk of collecting, using or disclosing personal data in contravention of the Data Protection Provisions.
- 14.6 The following paragraphs consider three important issues relating to the Notification

Obligation:

- a) when an organisation must inform the individual of its purposes;
- b) the manner and form in which the organisation should inform the individual of its purposes; and
- c) the information and details to be included when an organisation states its purposes.

When an organisation must inform the individual of its purposes

- 14.7 Under section 20 (1) and (4) of the PDPA, an organisation must inform the individual of the purposes for which his personal data will be collected, used or disclosed on or before such collection, use or disclosure (as the case may be). For example, this may take place when an individual is entering into a contract with an organisation under which the organisation requires certain personal data from the individual.
- 14.8 In other situations, an organisation may need to inform the individual before entering into a contract with the individual. For example, an insurance advisor may need to obtain certain personal data from an individual before the insurance company enters into a contract of insurance with the individual. Where an organisation needs to collect, use and/or disclose personal data on a periodic basis, it must inform the individual before the first collection of the data.

The manner and form in which an organisation should inform the individual of its purposes

- 14.9 The PDPA does not specify a specific manner or form in which an organisation is to inform an individual of the purposes for which it is collecting, using or disclosing the individual's personal data. An organisation should determine the best way of doing so such that the individual is provided with the required information to understand the purposes for which his personal data is collected, used or disclosed.
- 14.10 Relevant factors affecting an organisation's determination of the appropriate manner and form of notification to an individual of its purposes may include the following:
- a) the circumstances and manner in which it will be collecting the personal data;
  - b) the amount of personal data to be collected;
  - c) the frequency at which the personal data will be collected; and

- d) the channel through which the notification is provided (e.g. face-to-face or through a telephone conversation).

14.11 It is generally good practice for an organisation to state its purposes in a written form (which may be electronic form or other form of documentary evidence) so that the individual is clear about its purposes and both parties will be able to refer to a clearly documented statement of the organisation's purposes in the event of any dispute. For example, organisations may state their purposes in the service agreement between the organisation and the individual or in a separate data protection notice provided to the individual. The latter may be appropriate in situations where an organisation needs to obtain personal data from an individual either before, or independently of, any agreement with the individual.

#### Providing notification through a Data Protection Policy

14.12 The PDPA requires organisations to develop and implement policies and procedures that are necessary for the organisation to meet its obligations under the PDPA. In addition, organisations are required to make information available on such policies and procedures. Organisations may wish to develop a Data Protection Policy (also referred to as a Privacy Policy) to set out its policies and procedures for complying with the PDPA<sup>14</sup>. An organisation may choose to notify individuals of the purposes for which it collects, uses and discloses personal data through its Data Protection Policy.

14.13 The Data Protection Policy may be provided to individuals as required, in the form of a physical document, on the organisation's website or some other manner. Organisations which choose to provide notification to individuals through a Data Protection Policy should note the following:

- a) Where the policy is not made available to an individual as a physical document, the organisation should provide the individual with an opportunity to view its Data Protection Policy before collecting the individual's personal data. For example, when an individual signs up for services at an organisation's retail shop, the retailer could provide the individual with an extract of the most relevant portions of the Data Protection Policy in a physical document.
- b) If an organisation's Data Protection Policy sets out its purposes in very general terms (and perhaps for a wide variety of services), it may need to provide a more specific description of its purposes to a particular individual

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<sup>14</sup> Please see the section on "The Accountability Obligation" more information.

who will be providing his personal data in a particular situation (such as when subscribing for a particular service), to provide clarity to the individual on how his personal data would be collected, used or disclosed.

- 14.14 For the avoidance of doubt, organisations are not required to make available to individuals information related to the organisation’s internal corporate governance matters (e.g. expense policies or corporate rules) unrelated to the organisation’s data protection policies and practices as part of their Data Protection Policy, so long as the Accountability Obligation is met. Please refer to the section on “The Accountability Obligation” for more information on the requirement for organisations to develop and implement policies and practices that are necessary for the organisation to meet its obligations under the PDPA and to make information about those data protection policies and practices available.

Example:

Sarah signs up for a membership at a gym. The application form contains an extract of the most relevant portions of the Data Protection Policy in a physical document. For example, it states that Sarah’s address details will be used for sending her a gym membership card and other communications related to her gym membership. The sales representative of the gym informs her that the full Data Protection Policy is available on the gym’s website and provides her with relevant information to locate it. In this case, the gym has informed Sarah of the purposes for which her personal data will be collected, used or disclosed.

Information to be included when stating purposes

- 14.15 An organisation should state its purposes at an appropriate level of detail for the individual to determine the reasons and manner in which the organisation will be collecting, using or disclosing his personal data. As explained earlier in the section on “Purposes”, an organisation need not specify every activity it will undertake in relation to collecting, using or disclosing personal data when notifying individuals of its purposes. This includes activities that are directly related to the collection, use or disclosure of personal data or activities that are integral to the proper functioning of the overall business operations related to the purpose. For example, if an organisation wishes to obtain consent to collect or use personal data for the purpose of providing a service to an individual, the organisation does not need to seek consent for: (a) every activity it will undertake to provide that service; and (b) internal corporate governance processes such as allowing auditors to access personal data as part of an audit.
- 14.16 In considering how specific to be when stating its purposes, organisations may have

regard to the following:

- a) whether the purpose is stated clearly and concisely;
- b) whether the purpose is required for the provision of products or services (as distinct from optional purposes);
- c) if the personal data will be disclosed to other organisations, how the organisations should be made known to the individuals;
- d) whether stating the purpose to a greater degree of specificity would be a help or hindrance to the individual understanding the purpose(s) for which his personal data would be collected, used, or disclosed; and
- e) what degree of specificity would be appropriate in light of the organisation's business processes.

Example:

An electronics store sells products online through its website. It informs individuals purchasing products through its website of the purposes for which it will be collecting, using and disclosing personal data, including that the contact details provided by the customers will be disclosed to other companies in the electronics store's corporate group and outsourced marketing company for the purposes of marketing the products of the various companies in its corporate group from time to time. In this case, the electronics store would be considered to have stated a sufficiently specific purpose.

In another case, the electronics store informs individuals purchasing products through its website that the personal data provided may be used and disclosed for valid business purposes. In this case, the electronics store would not be considered to have stated a sufficiently specific purpose.

#### Good practice considerations relating to the Notification Obligation

- 14.17 Informing the individual of the purposes for which his personal data will be collected, used or disclosed is an important aspect of obtaining consent for the purposes of the Data Protection Provisions. Hence organisations should endeavour to ensure that their notifications are clear, easily comprehensible, provide appropriate information and are easily accessible.
- 14.18 In considering how to notify individuals of their purposes, organisations should consider:
  - a) Drafting notices that are easy to understand and appropriate to the

intended audience, providing headings or clear indication of where the individuals should look to determine the purposes for which their personal data would be collected, used or disclosed and avoiding legalistic language or terminology that would confuse or mislead individuals reading it;

- b) Using a 'layered notice' where appropriate, by providing the most important (e.g. summary of purposes) or basic information (e.g. contact details of the organisation's Data Protection Officer) more prominently (e.g. on the first page of an agreement) and more detailed information elsewhere (e.g. on the organisation's website). A layered approach is useful when individuals do not want to read all the information at the point of transaction, or when the medium of transaction is not suitable for conveying detailed information (e.g. telephone conversation);
- c) Considering if some purposes may be of special concern or be unexpected to the individual given the context of the transaction, and whether those purposes should be highlighted in an appropriate manner;
- d) Selecting the most appropriate channel(s) to provide the notification (e.g. in writing through a form, on a website, or orally in person); and
- e) Developing processes to regularly review the effectiveness of and relevance of the notification policies and practices.

**Example:**

A supermarket surveys a group of shoppers on its premises to find out ways to improve customer experience. It collects personal data such as the names and contact details of the shoppers through a survey form which it hands to shoppers. The first line of each survey form clearly and legibly states that "Your personal data will be used by the supermarket or its appointed survey company for analysis of survey responses to find out ways to improve customer experience at our supermarket, or to contact survey respondents for follow-up queries on the survey responses for such analysis.". The supermarket would be considered to have provided appropriate notification in this scenario.

An estate agent places a guest book at the reception counter in a show flat. Individuals who visit the show flat are asked to provide their name, address and income information in the guest book. The receptionist greets every individual who enters the show flat and explains verbally that his personal data is collected for the estate agent's market research and product planning purposes and that it would not be used to contact individuals after they leave the show flat. The real estate agency would be considered to have provided appropriate notification in this case.

Use and disclosure of personal data for a different purpose from which it was collected

- 14.19 The Data Protection Provisions recognise that there will be circumstances in which an organisation would like to use or disclose an individual's personal data for purposes which it has not yet informed the individual of or for which it has not yet obtained the individual's consent.
- 14.20 Where an organisation wishes to use or disclose personal data for purposes which it has not yet informed the individual or for which it has not yet obtained the individual's consent, organisations need to inform individuals of those purposes and obtain consent (the "Notification" and "Consent Obligation").
- 14.21 In determining if personal data can be used or disclosed for a particular purpose without obtaining fresh consent, an organisation should determine:
- a) whether the purpose is within the scope of the purposes for which the individual concerned had originally been informed, for example, if it would fall within the organisation's servicing of the existing business relationship with the individual;
  - b) whether consent can be deemed to have been given by the individual in respect of use or disclosure for that purpose; and
  - c) whether the purpose falls within the exceptions from consent in the Third and Fourth Schedules to the PDPA.
- 14.22 If the purpose does not fall within sub-paragraphs (a) to (c) above, then the organisation must obtain the individual's fresh consent for use and disclosure for the new purpose.

**Example:**

Sarah currently has a membership with a spa. Her spa wants to use her personal data for the purposes of sending her greeting cards and the spa's annual newsletter in the post while her spa membership is still active. These purposes would fall within sub-paragraph (a) above, as part of the organisation's servicing of the existing business relationship with the individual, for which consent would have been previously obtained.

Sarah's spa wants to send her information about an affiliate company's hair salon promotions. The spa would need to obtain Sarah's consent before sending information promoting new services that Sarah has not signed up for, as that is unlikely to fall within sub-paragraphs (a) to (c) above.