

ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS



**ADVISORY GUIDELINES ON ENFORCEMENT OF THE
DATA PROTECTION PROVISIONS**

ISSUED BY THE PERSONAL DATA PROTECTION COMMISSION

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PART I: INTRODUCTION AND OVERVIEW

1. Introduction

- 1.1 The Personal Data Protection Act 2012 (the “PDPA”) establishes a general data protection law in Singapore that governs the collection, use and disclosure of individuals’ personal data by organisations. The PDPA’s provisions setting out the obligations of organisations in relation to data protection are in Parts III to VI of the PDPA (the “Data Protection Provisions”). Organisations engaged in telemarketing activities are also required to comply with the provisions relating to the Do Not Call Registry that are set out in Part IX of the PDPA (the “Do Not Call Provisions”). The Personal Data Protection Commission (the “Commission”) is established under the PDPA with the key functions of, amongst others, promoting the awareness of data protection in Singapore, and administering and enforcing the PDPA.
- 1.2 These advisory guidelines (these “Guidelines”) are issued by the Commission pursuant to section 49(1) of the PDPA to provide guidance on the manner in which the Commission will interpret the PDPA’s provisions relating to the enforcement of the Data Protection Provisions. Where relevant, reference is made to the provisions of the regulations issued under the PDPA, including the following:
 - 1.2.1 Personal Data Protection Regulations 2014 (S 362/2014) (the “PDP Regulations”); and
 - 1.2.2 Personal Data Protection (Enforcement) Regulations 2014 (S 455/2014) (the “Enforcement Regulations”).
- 1.3 These Guidelines are advisory in nature and are not legally binding on the Commission, or any other party. They do not modify or supplement in any way the legal effect and interpretation of any laws cited including, but not limited to, the PDPA and any subsidiary legislation (such as regulations and rules) issued under the PDPA. Accordingly, these Guidelines shall not be construed to limit or restrict the Commission’s administration and enforcement of the PDPA. The provisions of the PDPA and any regulations or rules issued thereunder will prevail over these Guidelines in the event of any inconsistency. These Guidelines do not constitute legal advice.
- 1.4 These Guidelines should be read in conjunction with other advisory guidelines issued by the Commission from time to time, which explain in detail the obligations that organisations have to comply with under the PDPA.

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2. Overview of enforcement framework and approach

2.1 The PDPA confers various powers on the Commission to enforce the Data Protection Provisions. Broadly, these powers may be categorised as follows:

2.1.1 Powers relating to alternative dispute resolution

These powers generally relate to the manner by which a complainant and an organisation may resolve the complainant's complaint, for example, through mediation or other modes of dispute settlement.

2.1.2 Powers relating to reviews

These powers enable the Commission to review an organisation's reply to a request made by an individual under section 21 or 22 of the PDPA and to confirm the organisation's reply or direct the organisation to take certain action in relation to the individual's request.

2.1.3 Powers relating to investigations

These powers enable the Commission to determine whether an organisation is complying with the PDPA and to direct an organisation that is not complying to take the appropriate action to ensure its compliance.

Each of the above is discussed further in Parts II, III and IV respectively of these Guidelines.

2.2 In general, when considering whether, and how, to exercise its powers to enforce the Data Protection Provisions, the Commission's approach takes into account two main objectives. These are:

2.2.1 to facilitate the resolution of an individual's complaint relating to an organisation's contravention, or alleged contravention, of any of the Data Protection Provisions; and

2.2.2 to ensure that organisations comply with their obligations under the Data Protection Provisions and, in the event an organisation does not comply with any of the Data Protection Provisions, to ensure that it takes the appropriate corrective measures and any other necessary action in a timely manner.¹

2.3 In relation to the first objective above, a key purpose of the PDPA is to enable individuals to better protect their personal data, in accordance with the Data Protection Provisions.² Where an individual's rights under the Data Protection

¹ In some cases, as described further in these Guidelines, the Commission may impose a financial penalty on an organisation that contravenes the Data Protection Provisions.

² See PDPA, section 3.

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Provisions may have been infringed by an organisation, the individual may wish to have specific corrective measures or other actions taken to address his complaint. From the organisation's perspective, the PDPA requires organisations to develop and implement a process to receive and respond to complaints that may arise with respect to the application of the PDPA.³ Related to this, organisations may, as a good practice, wish to address complaints in an appropriate manner having regard to their customer relationship management or public relations so as to facilitate the resolution of such complaints by the organisation concerned.

- 2.4 Where the Commission receives a complaint from an individual relating to a contravention, or possible contravention, of any of the Data Protection Provisions by an organisation, the Commission will generally prefer to facilitate the resolution of the matters raised in the complaint or application between the individual and the organisation concerned instead of immediately exercising its powers of investigation under the PDPA. In this regard, the Commission believes that a mutually accepted resolution which addresses the concerns of the complainant would best meet the immediate interests of both the complainant and the organisation.
- 2.5 It should however be noted that the Commission is not empowered to award damages to a complainant⁴. As such, the Commission will generally prefer to take other measures (such as facilitation and alternative dispute resolution mechanisms like mediation) to encourage the parties to discuss the issues in a complaint and find a mutually acceptable resolution, which may include compensation. For more information on the measures that the Commission may take when seeking to facilitate the resolution of a complaint, please refer to Part II of these Guidelines.
- 2.6 In relation to the second objective set out in paragraph 2.2 above, the Commission notes that there may be cases where many individuals may be affected by an organisation's contravention of the Data Protection Provisions. Even where only an individual or a few individuals are affected, a particular contravention may cause significant harm to the individual(s) or may warrant stronger action by the Commission. There may also be cases where an organisation contravened the Data Protection Provisions intentionally or negligently, or it did not have the necessary policies, procedures and processes in place to ensure its compliance with the Data Protection Provisions.
- 2.7 In view of the above, it is therefore an important objective of the Commission to ensure that organisations comply with their obligations under the Data Protection Provisions. The Commission may therefore conduct a review or an investigation in certain cases and, based on the outcome of the review or investigation, direct the organisation to take certain actions. For more information on reviews and investigations by the Commission, please refer to Parts III and IV respectively of these Guidelines.

³ See PDPA, section 12.

⁴ Individuals have a private right of action under section 32 of the PDPA.

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- 2.8 For the avoidance of doubt, the two main objectives described in the preceding paragraphs are not intended to be mutually exclusive or to preclude the Commission from taking any action under the PDPA for other reasons. Where the Commission considers it appropriate, the Commission may commence an investigation even if the complainant and the organisation have reached an agreement that resolves the issues in the complainant's complaint. This may include situations where the facts of the case disclose issues of general public interest, or there are other individuals who may be affected by the conduct of the organisation.

PART II: ALTERNATIVE DISPUTE RESOLUTION

3. Commission's powers relating to alternative dispute resolution⁵

3.1 Section 27 of the PDPA sets out the Commission's powers in relation to the resolution of complaints. These include:

3.1.1 Under section 27(1) of the PDPA, if the Commission is of the opinion that any complaint by an individual against an organisation may be more appropriately resolved by mediation, the Commission may, with the consent of the complainant and the organisation, refer the matter for mediation.

3.1.2 Under section 27(2) of the PDPA, the Commission may direct a complainant or an organisation or both to attempt to resolve the complaint of the individual in the way directed by the Commission.⁶

3.2 The PDPA generally recognises that a complainant and an organisation may resolve the issues in a complaint by negotiation, mediation or other modes of dispute settlement. Where the complainant and the organisation are able to resolve the issues in a complaint and reach an agreement on the matter including, for example, any actions to be taken by the organisation to address the complaint, the Commission will consider the agreement reached in determining whether to take any further enforcement action. In particular, the PDPA provides that the Commission may suspend, discontinue or refuse to conduct an investigation where the parties involved (that is, the complainant and the organisation) mutually agree to settle the matter (among other situations).⁷

3.3 It should be noted that the Commission's powers in relation to alternative dispute resolution do not include deciding on disputes between a complainant and an organisation or ordering an organisation to compensate a complainant who suffers a loss as a result of a contravention of any of the Data Protection Provisions by the organisation. The PDPA provides that individuals who suffer loss or damage as a direct result of a contravention of Part IV, V or VI of the PDPA may commence civil proceedings in the courts against the organisation. This is referred to in the PDPA as a right of private action.⁸

⁵ Section 27 of the PDPA is entitled "Alternative dispute resolution". This term generally refers to various processes for resolving disputes that are typically regarded as "alternatives" to civil proceedings in the courts. These may include, for example, negotiation, mediation, conciliation and arbitration.

⁶ The Commission's power under section 27(2) of the PDPA is subject to 27(1) of the PDPA and hence would not apply in relation to cases where the Commission is of the view that a matter may be resolved by mediation.

⁷ See PDPA, section 50(3).

⁸ See PDPA, section 32. For more information on the right of private action, please refer to section 33 of these Guidelines.

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4. Commission's approach to resolving complaints

- 4.1 Upon receiving a complaint⁹, the Commission will first consider whether it may be more appropriately resolved by adopting some or all of the measures described in section 5 of these Guidelines. Where the Commission receives a query or other information concerning an organisation's compliance with the Data Protection Provisions, the Commission may also, in appropriate cases, adopt some or all of the measures described in section 5 of these Guidelines to encourage the organisation to take the appropriate action to address the issues raised and ensure its compliance with the Data Protection Provisions.
- 4.2 In considering whether to take any of the measures described in section 5 of these Guidelines, the Commission will generally consider the following factors:
- 4.2.1 whether, in the Commission's view, the issues in the complaint (including the conduct of the organisation that is the subject of the complaint):
- (a) relate solely to the complainant (or whether other individuals may be affected by the organisation's conduct in question); or
 - (b) may be more effectively resolved through discussions between the complainant and the organisation;
- 4.2.2 whether the remedies or other corrective action preferred by the complainant:
- (a) are within the Commission's powers; or
 - (b) may be voluntarily provided by the organisation; and
- 4.2.3 whether the organisation concerned has the required policies and processes in place to address complaints.
- 4.3 In the event the complaint is subsequently resolved, the Commission will generally not proceed with an investigation unless the circumstances are such that, in the Commission's view, an investigation is warranted. For more information on the Commission's considerations in this regard, please refer to section 15 of these Guidelines.

⁹ This may include a complaint that an organisation has contravened any of the Data Protection Provisions or an application for a review in relation to an organisation's obligations under section 21 or 22 of the PDPA.

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5. Measures to facilitate resolution of a complaint

5.1 Where appropriate, the Commission may, take any or all of the following measures when seeking to facilitate the resolution of a complaint.

5.1.1 Encouraging self-resolution

The Commission encourages individuals who have a concern with an organisation's conduct with respect to their personal data to first approach the organisation, clarify the reasons for the organisation's conduct¹⁰ and seek an appropriate resolution of the matter. This is especially important in cases where an individual may be unclear as to an organisation's data protection policies or specific aspects of the organisation's collection, use or disclosure of his personal data. In such situations, the Commission notes that the individual would be best placed to clarify the matter with the organisation concerned.

For example, the mere fact that an individual has not consented to the use of his personal data by an organisation does not indicate that the organisation has breached the PDPA. This is because there are a number of situations where an organisation is permitted to use an individual's personal data without his consent under the PDPA.

In addition, where an organisation is using an individual's personal data in accordance with the PDPA and the individual would like the organisation to stop using his personal data, the individual will have to give reasonable notice to the organisation to withdraw his consent. The Commission cannot withdraw consent on behalf of the individual.

5.1.2 Referring a complaint to an organisation

The Commission also encourages organisations to deal directly with a complainant's concerns in an appropriate manner. Hence, another basic step that the Commission may take is to refer a complaint to the organisation (for example, through its data protection officer).

When referring an individual's complaint to an organisation, the Commission will generally forward a copy of the complaint and disclose the individual's identity to the organisation so that the organisation is better able to address the complainant's concerns.

5.1.3 Facilitating resolution

Where the Commission has referred a complaint to an organisation, the Commission will generally monitor the progress of discussions between the complainant and the organisation. If necessary, the Commission

¹⁰ To assist individuals in contacting organisations about their concerns, individuals may wish to refer to the template letter at <http://www.pdpc.gov.sg/individuals/complaints-and-reviews/report-a-personal-data-protection-concern-as-a-guide>.

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may facilitate the resolution of the complaint. For example, the Commission may request the data protection officer of the organisation (or such other appropriate representative of the organisation) to meet with or contact the complainant with or without a member of the Commission to discuss the complainant's concerns.

5.1.4 Referring a complaint to mediation

If a complainant and an organisation are unable to resolve the matter directly and require additional assistance, the Commission may refer the matter for mediation by a qualified mediator. The Commission will only do so if both the complainant and the organisation agree that the matter be referred to mediation.

For more information on the mediation bodies to which the Commission may refer a complaint, please refer to the Commission's website¹¹.

The complainant and the organisation are not limited to using the above mediation services but may, if they so agree, use other mediation services or other alternative dispute resolution services to resolve the complaint.

5.1.5 Directing the parties to attempt to resolve the complaint

In certain situations, the Commission may, pursuant to section 27(2) of the PDPA, direct the complainant, the organisation, or both, to attempt to resolve the complainant's complaint in the manner directed by the Commission. Before making such a direction, the Commission may consider the manner in which the complaint may be more appropriately or more expeditiously resolved.

For example, if a complaint arises from a broader contractual dispute between a complainant and an organisation and the contract between the parties requires them to submit disputes to arbitration, the Commission may consider whether to direct the parties to resolve their dispute (insofar as it relates to the individual's complaint) via arbitration.

Where the Commission issues a direction under section 27(2) of the PDPA, the complainant or the organisation concerned may apply for the Commission to reconsider its direction under section 31 of the PDPA and may also appeal against the direction under section 34 of the PDPA. For more information on applying for reconsideration, please refer to Part VII of these Guidelines.

¹¹ <https://www.pdpc.gov.sg/legislation-and-guidelines/mediation>.

PART III: REVIEWS

6. Commission's power to review

- 6.1 Section 28 of the PDPA sets out the Commission's powers in relation to the conduct of a review. In particular, section 28(1) of the PDPA provides that the Commission may, on the application of an individual (referred to below and in the Enforcement Regulations as the applicant),¹² review the following matters:
- 6.1.1 an organisation's refusal to provide access to personal data requested by the applicant in a request under section 21 of the PDPA (an "access request"), or a failure to provide such access within a reasonable time;
 - 6.1.2 a fee required by an organisation from the applicant in relation to the applicant's access request or a correction request; or
 - 6.1.3 an organisation's refusal to correct personal data requested by the applicant in a request under section 22 of the PDPA (a "correction request"), or a failure to make such a correction within a reasonable time.
- 6.2 Under the PDPA, organisations are required to provide access to, and correct, an individual's personal data that is within their possession or control upon request by the individual and in accordance with sections 21 and 22 of the PDPA respectively. An organisation's obligations under sections 21 and 22 of the PDPA are collectively referred to by the Commission as the "Access and Correction Obligation". For more information on the Access and Correction Obligation, please refer to the Key Concepts Guidelines¹³.
- 6.3 Where the Commission receives an application for a review under section 28 of the PDPA, the Commission will first consider whether the matter may be resolved in the manner set out in Part II of these Guidelines. The Commission may therefore adopt some or all of the measures described in Part II before commencing a review. In the event the matter is resolved in the manner described in Part II, the Commission will generally not proceed with the review.

¹² The term "applicant" is defined in regulation 2 of the Enforcement Regulations as either the complainant referred to in section 28 of the PDPA (that is, the party who applies for a review) or the individual or organisation who applies for reconsideration under section 31 of the PDPA. In Part III of these Guidelines, applicant refers solely to a party who applies for a review under section 28 of the PDPA.

¹³ <http://www.pdpc.gov.sg/resources/advisory-guidelines>.

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7. Applying to the Commission for a review

7.1 An individual who has made an access request or a correction request to an organisation may apply to the Commission under section 28(1) of the PDPA for the Commission to review the organisation's reply to his request in the following situations:

7.1.1 where the organisation refuses to give access to personal data or make the correction requested by the individual and the individual is dissatisfied with the reasons given by the organisation for its refusal or the organisation does not give any reasons for its refusal;

7.1.2 the organisation has failed to give access to personal data or make the correction requested by the individual within a reasonable time;

7.1.3 the organisation requires the individual to pay a fee, or agree to pay a fee, before it responds to an access request and the fee exceeds what would be reasonable,¹⁴ or

7.1.4 the organisation requires the individual to pay a fee, or agree to pay a fee, before it responds to a correction request.¹⁵

For more information on how to make an access request or a correction request to an organisation, please refer to the section on "The Access and Correction Obligation" in the Key Concept Guidelines.

Matters to note before applying to the Commission for a review

7.2 Before applying to the Commission for a review, individuals should note and, if necessary, clarify the following with the organisation concerned as this would likely facilitate a quicker resolution of any dispute or issues of concern they may have with the organisation:

7.2.1 Reasons for the organisation's refusal to provide access to personal data or make a correction requested

The PDPA sets out a number of situations in which an organisation is not required to provide personal data requested by an individual under section 21 of the PDPA¹⁶ (for example, where the personal data or

¹⁴ Individuals may apply for a review before or after paying any such fee. However, in the event the fee is not paid, the organisation is not required to provide access to the personal data requested by the individual unless the Commission disallows the organisation from charging the fee upon completion of the review. Please also note that the Commission may not review a fee that has been paid if a significant period has passed since the fee was paid.

¹⁵ Individuals may apply for a review before or after paying any such fee. However, please note that the Commission may not review a fee that has been paid if a significant period has passed since the fee was paid.

¹⁶ See PDPA, section 21 (2), (3) and (4) and Fifth Schedule.

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information requested for could reasonably be expected to reveal personal data about another individual), or make a correction requested by an individual under section 22 of the PDPA¹⁷ (for example, where the correction request is in respect of any examination conducted by an education institution, examination scripts, and, prior to the release of examination results). Subject to the PDPA and the PDP Regulations,¹⁸ organisations are required to provide a reply to the individual even if they refuse to provide the personal data or make the correction requested by the individual. In such situations, the PDPC would strongly encourage organisations to provide the reason(s) for their decision to refuse the individual's request so that the individual is aware of and understands their reason(s).

If an individual is unclear as to the reasons for an organisation's refusal to provide access to personal data or make the correction requested, or the organisation has not communicated its reasons to the individual, the individual should first clarify this directly with the organisation.

7.2.2 Timing of the organisation's response in complying with the access and correction requirement

The PDPA generally requires organisations to provide the personal data, or make the correction, requested by an individual under sections 21 or 22 of the PDPA as soon as reasonably possible. In addition, if the organisation is unable to provide the personal data or make the correction requested within 30 days after receiving the request, the organisation must inform the individual, in writing, within 30 days, of the time by which it will respond to the individual's access or correction request.¹⁹

If an individual has not heard from an organisation within 30 days of his access request or correction request, he should confirm with the organisation that it has received his request and clarify with the organisation on the time frame within which it will reply to the request.²⁰

Where an organisation has specified the period within which it will respond to the individual's access request or correction request, the individual should not apply for a review until the specified period has expired or the circumstances are such that the period specified by the organisation exceeds what would be a reasonable period. Individuals may also wish to check with the organisation if there has been any delay,

¹⁷ See PDPA, section 22 (2), (4), (6) and (7) and Sixth Schedule.

¹⁸ See PDPA, section 21 (4) and PDP Regulations, regulation 6.

¹⁹ See PDP Regulations, regulation 5.

²⁰ If the circumstances are clear such that a reasonable period is less than 30 days, the individual may similarly check with the organisation after the expiry of that period if he has not received any reply from the organisation by then.

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whether due to any unforeseen circumstances or other reasons, such that the organisation may require additional time in order to respond to their request.

7.2.3 Fee required by an organisation

The PDP Regulations permit organisations to charge a reasonable fee for services provided to fulfil an access request so that the organisation can recover the incremental costs of responding to the request.

An organisation that wishes to charge such a fee must provide a written estimate of the fee to the individual and is not required²¹ to provide the personal data requested until the individual agrees to pay the fee.²² The final fee chargeable should thereafter be communicated to the individual so that payment for the provision of the personal data may be made. Organisations may not charge a fee in relation to fulfilling a correction request.²³

Individuals should note that where a fee is levied, it may exceed the cost of producing a copy of the document containing the personal data, as such fee may include other incremental costs to reflect the time and effort required to respond to the request.

Submitting a review application to the Commission

7.3 When submitting a review application to the Commission, the review application should include the following information:

7.3.1 the reasons for making the application (for example, failure of the organisation to provide the personal data requested within a reasonable time);

7.3.2 a copy of the access or correction request submitted to the organisation (if that is not available, the applicant should provide a clear description of the personal data which he had requested access to, or the correction he had requested for);

7.3.3 a copy of the organisation's reply to the access or correction request, including any interim replies;

²¹ Organisations may, if they so decide, provide the personal data requested even if the fee has not yet been paid by the individual. However, any agreement between the individual and the organisation under which the individual is required to pay the fee for the personal data provided by the organisation pursuant to the individual's access request is subject to any decision by the Commission under section 28(2) of the PDPA in the event the individual applies to the Commission for a review of the fee under section 28(1) of the PDPA.

²² See PDP Regulations, regulation 7(1) to (3).

²³ See PDP Regulations, regulation 7(4).

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- 7.3.4 a copy of all other correspondence between the applicant and the organisation relating to the access or correction request (for example, correspondence clarifying the reasons for the organisation's reply); and
- 7.3.5 the facts and circumstances of the key events that took place in relation to the submission of the applicant's access or correction request.
- 7.4 An application for review may also be made by submitting a duly completed form as set out on the Commission's website and including the information and copies of documents specified in the form.
- 7.5 Review applications may be submitted by post, by email or in person to the Commission.

8. Procedure during a review

- 8.1 The procedures that the Commission will adopt in a review under section 28(1) of the PDPA are mainly set out in Part II of the Enforcement Regulations.

Serving a copy of the review application to the organisation concerned

- 8.2 The following describes in brief the procedure for a review set out in the Enforcement Regulations:

8.2.1 Upon commencing the review, the Commission will:

- (a) serve a copy of the review application and any accompanying documents on the organisation concerned (referred to in the Enforcement Regulations as the "respondent"); and
- (b) require the respondent to submit, within a period specified by the Commission, a response setting out the respondent's explanation to the matters or issues raised in the complaint and any other information or document required by the Commission.

Submission of a response by the respondent

- 8.3 In most cases, respondents will be required to submit a response within 14 days of the date of the notice of review application. The respondent may apply to the Commission in writing for an extension of the time frame for submission of the response, subject to the Commission's approval of such request for extension of time. In general, the Commission will give the respondent a reasonable period, taking into account the scope of the applicant's application and the issues raised therein, to submit the response.

8.3.1 The respondent shall submit its response in accordance with the Enforcement Regulations.²⁴ Amongst other requirements, each

²⁴ See the Enforcement Regulations, regulation 6(2).

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response must be made in writing, signed by the respondent or an authorised representative of the respondent and contain all relevant information and documents that the respondent wishes to refer to or rely upon in its response.

8.3.2 If the respondent fails to submit a response within the time frame specified by the Commission in its notice (including any extension thereof granted by the Commission), the Commission may either:

- (a) proceed to make its decision based on the information and documents obtained by the Commission during the review (including any additional information and documents obtained by the Commission pursuant to its powers);²⁵ or
- (b) commence an investigation into the conduct of the organisation (in which case, the Commission may suspend the review pending the outcome of the investigation).²⁶

8.3.3 The respondent should inform the Commission if the response contains information the respondent considers to be confidential, and provide a written statement giving reasons why the information is confidential. The Commission will give due consideration to these reasons when deciding whether to grant confidential treatment.

Inviting the applicant to submit a reply to the organisation's response to the review application

8.4 Where the respondent submits a response, the Commission may, where it considers it appropriate:

- (a) serve a copy of the response on the applicant; and
- (b) invite the applicant to submit to the Commission, within a period specified by the Commission, a written reply to the respondent's response as the applicant may wish to give.²⁷

8.4.1 In considering whether to serve a copy of the organisation's response to the applicant, the Commission would consider all relevant factors, including but not limited to the fact that the response could contain information about the organisation's internal policies or practices. Respondents should note that the Commission will generally invite the

²⁵ See section 10 of these Guidelines.

²⁶ See paragraph 11.1 of these Guidelines.

²⁷ For the avoidance of doubt, the applicant is not required to submit a reply if he does not wish to provide any reply to the respondent's response. The applicant may choose to inform the Commission in writing at any time with the period specified by the Commission if he does not wish to submit a reply.

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applicant to submit a reply if the response raises issues relating to the applicant (e.g., the applicant's conduct).

8.4.2 In general, where the Commission invites the applicant to submit a reply, the Commission will give the applicant a reasonable time frame, taking into account the issues raised in the respondent's response, to submit the reply. In most cases, the time frame may be within 14 days for submission of the reply. The applicant may apply to the Commission in writing for an extension of the time frame for submission of the reply, subject to the Commission's approval of such request for extension of time.

8.4.3 Where the applicant wishes to submit a reply, the applicant shall submit his written reply in accordance with the Enforcement Regulations²⁸. Amongst other requirements, each reply must be made in writing, signed by the applicant or his authorised representative and contain all relevant information and documents that the applicant wishes to refer to or rely upon in his reply.

Seeking further information or clarifications from the applicant or respondent

8.5 The Commission may, at any stage of the review, seek further information, clarifications or documents from either the applicant or the respondent. The Commission may also exercise the powers described in section 10 of these Guidelines to obtain additional information and documents for the purposes of the review from the applicant or the respondent.

8.6 Upon receiving the respondent's response, any reply submitted by the applicant (where applicable) within the time frame specified by the Commission (including any extension thereof granted by the Commission), and any additional information obtained during the review, the Commission shall make its decision on the matters and issues raised in the application.

8.7 After making its decision or direction under section 28(2) of the PDPA upon a review application, the Commission will give notice of the decision or direction to the applicant and the respondent. Section 0 of these Guidelines describes the decisions and directions that a Commission may make upon the completion of a review. The Commission may also publish the decision or a summary of the decision as described in Part VI of these Guidelines.

²⁸ See the Enforcement Regulations, regulation 7(2).

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9. Summary dismissal of review application

9.1 The Commission may, at any time, dismiss a review application in the circumstances set out in Regulation 5 of the Enforcement Regulations:

9.1.1 the Commission considers that the application does not disclose any *prima facie* case for a review under section 28(1) (a), (b), or (c) of the PDPA based on the information disclosed in the application;²⁹

9.1.2 the Commission has issued a direction to the applicant under section 27(2) of the PDPA and the applicant has not complied with the direction;

9.1.3 the applicant and the organisation have mutually agreed to settle the matter;

9.1.4 the applicant has commenced legal proceedings against the organisation in respect of a contravention or alleged contravention of the PDPA by the organisation, which is the subject of the application;

9.1.5 the review application is not made in accordance with regulation 4(1) or is materially incomplete;

9.1.6 the applicant has, without reasonable excuse, failed to comply with the Enforcement Regulations; or

9.1.7 the Commission is of the opinion that —

(a) the application is frivolous or vexatious or is not made in good faith; or

(b) any other circumstances warrant dismissing the application.

9.2 Without limitation to the foregoing, the Commission may dismiss an application for a review that is made within the following time frames:

9.2.1 30 days of the date on which the access request or correction request was made by the individual to the organisation; or

9.2.2 the time frame specified by the organisation to the applicant as the soonest possible time it can provide access or make the correction (if any),

unless the circumstance are such that it would be reasonable for the organisation to have provided the personal data or made the correction within a shorter time frame.

²⁹ This may include (without limitation) situations where an applicant has not yet made an access request or a correction request to the organisation or where the application does not otherwise disclose a matter that the Commission may review under section 28(1) of the PDPA.

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10. Commission's powers when conducting a review application

10.1 The Commission may exercise the following powers under the Enforcement Regulations when conducting a review:

10.1.1 the power to require production of documents and information; and

10.1.2 the power to require an applicant or a respondent to furnish a statutory declaration.³⁰

10.2 The following paragraphs describe these powers in brief:

10.2.1 Power to require production of documents and information

The Commission may, at any time by notice in writing, require the applicant to produce any document or information to support the facts or particulars contained in the applicant's application for a review or reply to the respondent's response. The Commission's notice will specify the document or information, or the category of documents or information, which the applicant or respondent is required to provide and the time within which the document or information is to be provided to the Commission.

The Commission may similarly require the respondent to produce any document or information to support the facts or particulars contained in the respondent's response to the applicant's application.

10.2.2 Power to require an applicant or a respondent to furnish a statutory declaration

The Commission may, at any time by notice in writing, require the applicant to provide, within such time as may be specified in the notice, a statutory declaration to support the facts or particulars in the applicant's application for a review or reply.

The Commission may similarly require the respondent to provide a statutory declaration to support the facts or particulars in the respondent's response.

³⁰ See Enforcement Regulations, regulations 4(3), 6(3) and 7(3).

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11. Suspension of a review

11.1 The Commission may suspend a review at any stage of the review in the circumstances set out in regulation 9 of the Enforcement Regulations. These circumstances are:

11.1.1 the Commission commences an investigation under section 50(1) of the PDPA into the conduct of the respondent that is the subject of the applicant's application for a review; or

11.1.2 the Commission is of the opinion that any other circumstances warrant suspending the review.

12. Withdrawal of review application

12.1 An applicant may withdraw his application for a review at any time before the Commission gives notice of its decision or direction³¹, by way of notice in writing to the Commission. In such an event, the Commission will terminate the review.

13. Commission's decisions and directions following a review

13.1 Section 28(2) of the PDPA provides that the Commission may, upon the completion of a review:

13.1.1 confirm the respondent's refusal to provide access to the personal data, or direct the respondent to provide access to the personal data, within such time as the Commission may specify;

13.1.2 confirm the respondent's refusal to correct the personal data, or direct the respondent to correct the personal data, in such manner and within such time as the Commission may specify; or

13.1.3 confirm, reduce or disallow a fee, or direct the respondent to make a refund to the applicant.

13.2 Where the Commission makes a direction against the respondent under section 28(2) of the PDPA and the respondent fails to comply with the direction, the Commission may issue a further direction against the respondent under section 29(1) or (2) of the PDPA. This may include (without limitation) a direction to comply with the Commission's direction under section 28(2) of the PDPA.

13.3 The Commission is empowered under section 30 of the PDPA to enforce its directions by registering them in the District Court. Please refer to section 24 of these Guidelines for more information on the enforcement of the Commission's directions.

³¹ See the Enforcement Regulations, regulation 8.

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Examples

- (A) An organisation did not provide access to personal data requested by an individual more than 30 days after receiving the request, and did not inform the individual within 30 days of the time³² by which it will be able to respond to the request.

The individual submits a review application on the grounds that the organisation has failed to provide access to the personal data requested. The individual explained in the application that the organisation has failed to respond to his request within 30 days, and also did not inform him of the time frame by which it will be able to respond within 30 days. His application also stated the remedy he is seeking, which in this case is for the organisation to provide him the personal data requested.

Upon completion of a review, the Commission finds that the organisations should provide the personal data requested and directs the organisation to provide access.

- (B) An individual submits a request to an organisation to access his personal data in its possession, and pays a fee for this request. The individual compares the fees required by a number of other organisations within the same industry to fulfil similar access requests and finds out that he has been charged a fee that is more than ten-times higher.

The individual makes an application to the Commission to review the fee paid. He states in his application that the outcome he seeks is for the Commission to direct the organisation to refund part of the fee paid.

Upon completion of a review, the Commission finds that the fee charged was not reasonable as it included costs incurred for capital purchases, and directs the organisation to refund part of the fee.

14. Commencing an investigation related to a review

- 14.1 The Commission may, in certain situations, commence an investigation in relation to an organisation's compliance with section 21 or 22 of the PDPA prior to or during a review. These situations may include (without limitation):

³² Organisations are reminded of the requirement to respond to an access request as soon as reasonably possible under section 21(1) and to make a correction as soon as practicable under section 22(2).

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14.1.1 where the organisation does not comply with the Enforcement Regulations during the review including, in particular, the Commission's notices thereunder;³³ and

14.1.2 where the Commission receives multiple applications for a review against the organisation, or applications for a review and information from other sources, and the information obtained by the Commission through the applications or other sources indicates that the organisation may not be in compliance with the Access and Correction Obligation.

In most cases, the Commission will suspend any ongoing review if it commences an investigation into the conduct of an organisation that is the subject of the review.

14.2 In general, the Commission will not commence an investigation into an organisation's compliance with section 21 or 22 of the PDPA after completion of a review unless there appears to the Commission to be a significant non-compliance with section 21 or 22 of the PDPA or there are other exceptional circumstances. Please refer to section 15 of these Guidelines (including, in particular, paragraph 15.6) for more information on when the Commission may commence an investigation.

³³ See paragraph 10.2.

PART IV: INVESTIGATIONS

15. Circumstances under which the Commission may commence an investigation

- 15.1 Section 50 of the PDPA sets out the Commission's powers of investigation in respect of contraventions of the PDPA. In general, the Commission may commence an investigation either upon receiving a complaint from an individual against an organisation or of its own motion.
- 15.2 Where the Commission receives a complaint or other information that indicates that an organisation has, or may have, contravened the PDPA, the Commission will first consider whether the matter may be more appropriately resolved in the manner set out in Part II of these Guidelines, that is, by resolving the underlying dispute between the complainant and the organisation. If so, the Commission may adopt the measures described in Part II before deciding whether to commence an investigation. In addition, where a complaint relates to a matter that may be reviewed by the Commission under section 28(1) of the PDPA (i.e. a refusal to provide access to or correct personal data; fees required in relation to access or correction requests; or a failure to provide access or correction within a reasonable time), the Commission will generally conduct a review instead of an investigation. In such circumstances, the Commission may proceed on the complainant's complaint as if it was an application for a review or it may require the complainant to submit an application for a review.
- 15.3 The Commission may commence an investigation into the conduct of an organisation if the Commission considers that an investigation is warranted, based on the information it has obtained (whether through a complaint or from any other source). In deciding whether to commence an investigation, the Commission will generally consider whether any of the following factors indicate that an investigation should be conducted:
- (a) whether the organisation may have failed to comply, whether intentionally, negligently or for any other reason or cause, with all or a significant part of its obligations under the PDPA;
 - (b) whether the organisation's conduct³⁴ indicates a systemic failure by the organisation to comply with the PDPA or to establish and maintain the necessary policies and procedures to ensure its compliance;
 - (c) the number of individuals who are, or may be, affected by the organisation's conduct;
 - (d) the impact of the organisation's conduct on the complainant or any individual who may be affected including, for example, whether the complainant or affected individual(s) may have suffered a loss, injury or

³⁴ In this paragraph, references to the organisation's conduct generally refer to the conduct that is the subject of the information obtained by the Commission.

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other damage as a result of the organisation's contravention of the PDPA or whether they may have been exposed to a significant risk that they may suffer such a loss, injury or damage;

- (e) whether the organisation had previously contravened the PDPA or may have failed to implement the necessary corrective measures to prevent the recurrence of a previous contravention;
- (f) where the complainant had previously approached the organisation to seek a resolution of the issues in the complainant but failed to reach a resolution;
- (g) where the Commission has sought to facilitate dispute resolution between the complainant and the organisation, whether the complainant and the organisation agreed to participate in the dispute resolution process, their conduct during the dispute resolution process and the outcome of the dispute resolution process;
- (h) where a review has been commenced by the Commission, whether the organisation has complied with its obligations under the Enforcement Regulations in relation to a review, the organisation's conduct during the review and the outcome of the review;
- (i) the public interest; and
- (j) any other factor that, in the Commission's view, indicates that an investigation should or should not be commenced.

15.4 In addition, section 50(3) of the PDPA lists some situations in which the Commission may refuse to conduct an investigation. These include (amongst others) situations where:

- (a) the Commission has issued a direction under section 27(2) of the PDPA to a complainant to further assist in the investigation and the complainant has not complied with the direction;
- (b) the complainant and the organisation have mutually agreed to settle the matter;
- (c) the complainant has commenced legal proceedings against the organisation in respect of the contravention or alleged contravention of the PDPA by the organisation; or
- (d) the Commission is of the opinion that:
 - (i) the complaint is frivolous or vexatious or is not made in good faith; or
 - (ii) any other circumstances warrant refusing to conduct an investigation.

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- 15.5 For the avoidance of doubt, the Commission may commence an investigation notwithstanding that the complainant and the organisation have resolved the issues in the complaint or that the complaint is withdrawn by the complainant if there are other factors that indicate, in the Commission's view, that an investigation should be conducted. These may include (without limitation) the factors noted in paragraph 15.3 (a) to (j) above.
- 15.6 Where the Commission has conducted a review under section 28 of the PDPA and made a decision or issued a direction under section 28(2) of the PDPA, the Commission will generally not commence an investigation in relation to the organisation's compliance with section 21 or 22 of the PDPA unless there appears to the Commission to be a significant non-compliance with section 21 or 22 of the PDPA or there are exceptional circumstances which, in the Commission's view, indicate that an investigation should be commenced. For this purpose, a significant non-compliance with section 21 or 22 of the PDPA may include the following:
- (a) systemic failure on the part of the organisation including (without limitation) where an organisation does not have any processes in place to comply with section 21 or 22 of the PDPA; or
 - (b) intentional non-compliance with section 21 or 22 of the PDPA or a decision or direction under section 28(2) of the PDPA, for example, where an organisation has sought, through its processes, to deny individuals' requests for reasons that are not permitted under the PDPA.
- 15.7 The Commission may, in certain circumstances, commence an investigation of its own motion. This may include (without limitation) situations where the Commission receives information concerning the conduct of an organisation. In such situations, the Commission may, if it considers it appropriate, proceed with an investigation of its own motion based on the information received.

16. Making a complaint to the Commission

- 16.1 A complaint concerning a contravention or possible contravention of the PDPA may be made to the Commission by providing the relevant information and, where applicable, copies of documents supporting his complainant. A complainant may also use the form provided on the Commission's website to assist him in lodging the complaint.
- 16.2 As a complaint may result in formal action being taken by the Commission against an organisation that has infringed the PDPA, complainants should note that they may be required to give a formal statement and appear before the Commission in relation to the statement or other matters within their knowledge.

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17. Commission's powers of investigation

17.1 The Commission's powers of investigation are set out in the Ninth Schedule to the PDPA. In brief, these include:

17.1.1 the power to require production of documents and information;³⁵

17.1.2 the power to enter premises without a warrant;³⁶ and

17.1.3 the power to enter premises with a warrant.³⁷

These powers are further described in the following sections of these Guidelines.

17.2 In general, the Commission may use its powers of investigation to obtain from any organisation (including organisations that are not the subject of the Commission's investigation) any information that the Commission considers relates to any matter relevant to an investigation. The Commission's powers of investigation may also be exercised by an inspector appointed by the Commission.

17.3 All organisations (including relevant individuals³⁸) are required to comply with any notice or other requirement imposed by the Commission pursuant to its powers of investigations (described further in the following paragraphs). In this regard, any individual who obstructs or impedes the Commission in the exercise of its powers, or who knowingly or recklessly makes a false statement to the Commission, or who knowingly attempts to mislead the Commission, shall be guilty of an offence under the PDPA and is liable, upon conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both. Organisations that are found to have committed such an offence are liable to a fine not exceeding \$100,000.³⁹

18. Power to require production of documents and information

18.1 Under paragraph 1 of the Ninth Schedule to the PDPA, the Commission may, by notice in writing to any organisation, require the organisation to produce any document or information which the Commission considers relates to any matter relevant to an investigation.

³⁵ See paragraph 1 of the Ninth Schedule to the PDPA.

³⁶ See paragraph 2 of the Ninth Schedule to the PDPA.

³⁷ See paragraph 3 of the Ninth Schedule to the PDPA.

³⁸ Please refer to sections 18, 19 and 20 of these Guidelines for situations where individuals are required to comply with the PDPA in respect of an investigation by the Commission.

³⁹ See PDPA, section 51 (3)(b) and (c) and (5).

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18.2 A notice issued by the Commission under paragraph 1 of the Ninth Schedule shall:

18.2.1 specify the document or information, or the category of documents or information,⁴⁰ which the organisation is required to produce; and

18.2.2 indicate the purpose for which the specified document or specified information is required by the Commission.

18.3 Such a notice may also:

18.3.1 specify the time and place at which any document or information is to be produced or provided to the Commission;

18.3.2 specify the manner and form in which any document or information is to be produced or provided;

18.3.3 require the organisation, or any past or present officer or employee of the organisation, to provide an explanation of the document; and

18.3.4 if the document is not produced, require the organisation or any past or present officer or employee of the organisation to state, to the best of his knowledge and belief, where it is.

18.4 Under paragraph 1(4) of the Ninth Schedule, the Commission is empowered to take copies of or extracts from any document that is produced pursuant to its notice.

18.5 The Commission may issue a notice under paragraph 1 of the Ninth Schedule to any person or entity falling within the definition of the term “organisation” in the PDPA. This includes any individual (including, without limitation, sole proprietors and partners of a partnership), company, association or body of persons, corporate or unincorporated.⁴¹ As noted above, this may also include present or past officers or employees of an organisation. In this regard, the term “officer” is defined in the PDPA⁴² as:

18.5.1 in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; and

18.5.2 in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position

⁴⁰ See paragraph 1(5) of the Ninth Schedule to the PDPA.

⁴¹ See PDPA, section 2(1).

⁴² See PDPA, section 52(5).

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analogous to that of president, secretary or member of such a committee and includes any person purporting to act in any such capacity.

Further, the term “employee” is defined in the PDPA as including a volunteer (and “employment” includes working under an unpaid volunteer relationship).⁴³

18.6 All individuals, companies, associations or other bodies of persons to whom such a notice is issued are required to comply with the notice.⁴⁴

19. Power to enter premises without a warrant

19.1 Under paragraph 2 of the Ninth Schedule to the PDPA, the Commission is empowered to enter premises without a warrant in connection with an investigation. Depending on the circumstances, entry may be effected with or without giving the occupier of the premises prior notice of the intended entry.

19.2 An inspector appointed by the Commission (and any other persons he may require to assist him) may, in connection with any investigation, enter any premises after giving the occupier of the premises a written notice which:

19.2.1 gives at least 2 working days’ notice of the intended entry; and

19.2.2 indicates the subject matter and purpose of the investigation.

19.3 If the inspector has taken all such steps as are reasonably practicable to give such written notice but has not been able to do so, he (or any person assisting him) may enter the premises if he has reasonable grounds for suspecting that the premises are, or have been, occupied by an organisation which is being investigated in relation to a contravention of the PDPA. In such cases, the inspector must produce:

19.3.1 evidence of his appointment; and

19.3.2 a document containing the subject matter and purpose of the investigation.

19.4 Upon such entry, the inspector (or any person assisting him) may:

19.4.1 take with him any equipment which appears to him to be necessary;

19.4.2 in relation to any document which he considers relates to any matter relevant to the investigation:

(a) require any person on the premises to produce the document and provide an explanation of it (if produced);

⁴³ See PDPA, section 2(1).

⁴⁴ Please refer to paragraph 17.3 of these Guidelines concerning offences under the PDPA.

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- (b) require any person to state, to the best of his knowledge and belief, where the document may be found;
- (c) take copies of, or extracts from, any document which is produced;
- (d) take any step which appears to be necessary for the purpose of preserving or preventing interference with the document; and
- (e) require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a visible and legible form, which can be taken away.

20. Power to enter premises with a warrant

Conditions for issuance of warrant

- 20.1 Under paragraph 3 of the Ninth Schedule to the PDPA, the Commission is empowered to enter and search premises without prior notice, upon production of a warrant.
- 20.2 Paragraph 3 of the Ninth Schedule to the PDPA identifies three circumstances in which a court may issue a warrant to authorise an inspector appointed by the Commission (and any other persons assisting him) to enter and search the premises specified in the warrant. The court must be satisfied that there are reasonable grounds for suspecting that there are, on any premises, documents:
- 20.2.1 which have not been produced, although the Commission has required production, either by written notice (paragraph 1 of the Ninth Schedule) or in the course of an inspection without a warrant (paragraph 2 of the Ninth Schedule);
 - 20.2.2 which would be concealed, removed, tampered with or destroyed if required to be produced by written notice (paragraph 1 of the Ninth Schedule); or
 - 20.2.3 which an inspector (or any person assisting him) could have required to be produced in the course of an inspection without a warrant (paragraph 2 of the Ninth Schedule), but was unable to effect entry into the premises.

Scope of the power

- 20.3 The warrant will authorise an inspector (and any other persons he may require to assist him) to do all or any of the following:
- 20.3.1 enter the premises using such force as is reasonably necessary;

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- 20.3.2 search any person on those premises if there are reasonable grounds for believing that that person has in his possession any document, equipment or article which has a bearing on the investigation;
- 20.3.3 search the premises and take copies of, or extracts from, any document appearing to be of the kind in respect of which the warrant was granted (as described in paragraph 20.2 above);
- 20.3.4 take possession of any document appearing to be of the kind in respect of which the warrant was granted if such action appears to be necessary for preserving the document or preventing interference with it, or if it is not reasonably practicable to take copies of the document on the premises. Upon request for a copy of the document by the person from whom possession of such document was taken, the inspector may provide such copy. Documents taken may be retained for a period of not more than 3 months;
- 20.3.5 take any other steps which appear necessary in order to preserve the documents or prevent interference with them including requiring equipment and storage facilities to be sealed if necessary;
- 20.3.6 require any person to provide an explanation of any document appearing to be of the kind in respect of which the warrant was granted or to state to the best of his knowledge and belief where such document may be found;
- 20.3.7 require any information, which is stored in any electronic form and is accessible from the premises, and which the investigator considers relates to any matter relevant to the investigation, to be produced in a visible and legible form which can be taken away; and
- 20.3.8 remove from the premises for examination any equipment or article which relates to any matter relevant to the investigation. Where appropriate, the inspector may, instead of removing from the premises such equipment or articles, allow them to be retained on the premises subject to conditions.
- 20.4 In addition, where a warrant is granted to enter premises pursuant to a reasonable suspicion that, if prior written notice under paragraph 1 of the Ninth Schedule were given, documents would be concealed, removed, tampered with or destroyed (i.e. in the circumstances described in paragraph 20.2.2 above), then, if the court is satisfied that it is reasonable to suspect that there are also other documents on the premises which relate to the investigation, the warrant will authorise the actions mentioned in paragraph 20.3 above to be taken in relation to such other documents.
- 20.5 The inspector entering the premises (and any other persons he may require to assist him) may take with him any equipment, which appears to him to be necessary.

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21. Suspension or conclusion of an investigation

21.1 Section 50(3) of the PDPA lists various situations in which the Commission may suspend or discontinue an investigation. These include situations where:

21.1.1 the Commission has issued a direction under section 27(2) of the PDPA to a complainant to further assist in the investigation and the complainant has not complied with the direction;

21.1.2 the complainant and the organisation have mutually agreed to settle the matter;⁴⁵

21.1.3 the complainant has commenced legal proceedings against the organisation in respect of any contravention or alleged contravention of the PDPA by the organisation;

21.1.4 the Commission is of the opinion that the matter may be more appropriately investigated by another regulatory authority and has referred the matter to that authority; or

21.1.5 the Commission is of the opinion that:

(a) a complaint is frivolous or vexatious or is not made in good faith; or

(b) any other circumstances warrant suspending or discontinuing the investigation.

21.2 Where the Commission proceeds with an investigation, the Commission will consider the information and evidence it has obtained and determine if an organisation has contravened the PDPA. The Commission's powers where it finds an organisation has contravened the PDPA are set out in the next Part of these Guidelines.

22. Public communications

22.1 Organisations that intend to issue any media releases or public disclosure of matters related to the alleged breach are advised to consider whether the content would hinder the ongoing investigations and to also provide the Commission with a copy of the materials before their release.

⁴⁵ For the avoidance of doubt, the Commission may continue with its investigation notwithstanding that the complainant and the organisation have resolved the issues in the complaint or that the complaint is withdrawn by the complainant.

PART V: DIRECTIONS TO SECURE COMPLIANCE

23. Power to issue directions to secure compliance

23.1 The Commission's power to issue directions to secure an organisation's compliance with the Data Protection Provisions is set out in section 29 of the PDPA. In particular:

23.1.1 Section 29(1) of the PDPA provides that the Commission may, if it is satisfied that an organisation is not complying with any of the Data Protection Provisions, give the organisation such directions as the Commission thinks fit in the circumstances to ensure the organisation's compliance with that provision.

23.1.2 Section 29(2) of the PDPA further provides that the Commission may (without prejudice to section 29(1) of the PDPA) give an organisation that is not complying with any of the Data Protection Provisions any or all of the following directions:

- (a) to stop collecting, using or disclosing personal data in contravention of the PDPA;
- (b) to destroy personal data collected in contravention of the PDPA;
- (c) to comply with any direction of the Commission under section 28(2) of the PDPA; or
- (d) to pay a financial penalty of such amount not exceeding \$1 million as the Commission thinks fit.

23.2 In general, the directions that the Commission may give under section 29 of the PDPA are likely to fall within the following types:

23.2.1 directions to remedy the organisation's contravention, that is, by requiring the organisation to take corrective action, for example, by requiring the infringing organisation to cease its use of personal data collected in contravention of the PDPA;

23.2.2 directions to prevent or reduce the possibility of harm (or further harm) to individuals who are (or may be) affected by the organisation's contravention;

23.2.3 directions to rectify an organisation's processes, for example, by requiring the infringing organisation to take certain measures so that it will be brought into compliance with the Data Protection Provisions; and

23.2.4 directions to impose a financial penalty.

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23.3 In the event an organisation does not comply with a direction under section 29 of the PDPA, the Commission is empowered under section 30 of the PDPA to enforce the direction by registering it in the District Court. Please refer to section 27 of these Guidelines for more information on the enforcement of the Commission's directions.

24. Directions to pay financial penalties

24.1 In considering whether to direct an organisation to pay a financial penalty, the Commission will take into account certain factors, such as the seriousness and impact of the organisation's breach and the immediacy and effectiveness of corrective actions that the organisation took to address the breach. The Commission may also consider if the organisation had acted deliberately, wilfully or if the organisation had known or ought to have known of the risk of a serious contravention and failed to take reasonable steps to prevent it.

24.2 The Commission will determine each case on its own merits and circumstances. However, the Commission will also adopt an objective approach to assessing the seriousness of a breach of the Data Protection Provisions, by considering how a reasonable organisation should behave in a particular situation.

25. How financial penalties are determined

25.1 In this section, the Commission sets out a non-exhaustive list of some aggravating and mitigating factors that the Commission may consider when it calculates a financial penalty.

Aggravating factors

25.2 Some of the factors that the Commission may consider to be aggravating factors include, but are not limited to:

25.2.1 the organisation failed to actively take reasonable steps to resolve the matter with the individual in an effective and prompt manner;

25.2.2 intentional, repeated and/or ongoing breaches of the Data Protection Provisions by an organisation. This would include situations where the organisation knew, or ought reasonably to have known, of the risk of a breach, or breach of the Data Protection Provisions but continued with its operations without taking measures to minimise the risk or remedy the breach;

25.2.3 obstructing the Commission during the course of investigations (such as making efforts to withhold or conceal information requested by the Commission);

25.2.4 failing to comply with a previous warning or direction from the Commission; and

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25.2.5 the organisation is in the business of handling large volume of sensitive personal data, the disclosure of which may cause exceptional damage, injury or hardship to a person (such as medical or financial data), but failed to put in place adequate safeguards proportional to the harm that might be caused by disclosure of that personal data.

Mitigating factors

25.3 Some of the factors that the Commission may consider to be mitigating factors include, but are not limited to:

25.3.1 the organisation has actively and promptly resolved the matter with the individual;

25.3.2 the organisation has taken reasonable steps to prevent or reduce the harm of a breach (such as putting in place strong passwords to prevent unauthorised access);

25.3.3 the organisation has engaged the individual in a meaningful manner and has voluntarily offered a remedy to the individual, and that individual has accepted the remedy;

25.3.4 the organisation took immediate steps to notify affected individuals of the breach and reduce the damage caused by a breach (such as informing individuals of steps they can take to mitigate risk); and

25.3.5 the organisation voluntarily notified the Commission of the personal data breach as soon as it learned of the breach, and co-operated with the Commission in its investigations.

PART VI: COMMON ISSUES RELATING TO THE COMMISSION'S DECISIONS AND DIRECTIONS

26. Commission's power to publish decisions and directions

26.1 Regulations 17, 18 and 19 of the Enforcement Regulations provides that the Commission may, where it has made a decision or issued a direction under section 28(2) or 29(1) or (2) or 31(4)(b) of the PDPA, publish:

26.1.1 the decision or direction (collectively, the "Decision"); or

26.1.2 a summary of the Decision (a "Summary").

26.2 The Commission's Decisions will typically set out the following:

26.2.1 the Commission's findings and the relevant evidence obtained by the Commission on which the findings are based;

26.2.2 the reasons for the Commission's decision, based on the application of the relevant legal principles to the facts of the case; and

26.2.3 where the Commission finds an organisation in contravention of any of the Data Protection Provisions, the direction or other action taken by the Commission.

26.3 Prior to publication of a Decision or a Summary, the Commission will give notice of the Decision to the respondent and complainant (if any). In addition, the Commission will not publish a Decision or a Summary until the time for making an appeal or applying to the Commission to reconsider its decision has lapsed.

26.4 In considering whether to publish a Decision or a Summary (at the appropriate time as described in the previous paragraph), the Commission will adopt the following approach:

26.4.1 The Commission will generally publish a Decision relating to an organisation that is found to have contravened the Data Protection Provisions. Amongst other reasons, this is for reasons of transparency, and so that other organisations may take note of the manner in which the Commission has applied the PDPA in specific cases and take preventive measures to avoid similar occurrences.

26.4.2 The Commission will generally not publish a Decision under section 28(2) of the PDPA as such Decisions do not always amount to a finding that an organisation has contravened the Data Protection Provisions. Nevertheless, the Commission may publish such a Decision or a Summary thereof if it includes matters which, in the Commission's view, would be of general interest to the public or which would provide guidance to individuals and organisations in relation to their respective rights and obligations under the PDPA.

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- 26.4.3 Depending on the particular fact situation, the Commission may publish the name of the organisation involved in the breach, after removing confidential information from the report.
- 26.5 Where a Decision contains personal data or information that is treated as confidential under the PDPA,⁴⁶ the Commission will either redact such data and information from the published Decision or publish a Summary that excludes such data and information.
- 26.6 A Decision or Summary may be published on the Commission's website or in such other manner as the Commission may direct.
- 26.7 For the avoidance of doubt, non-publication of a Decision or Summary by the Commission does not affect the legal validity or effect of a Decision.
- 27. Enforcement of the Commission's directions**
- 27.1 Section 30 of the PDPA provides that the Commission may register a direction under section 28(2) or 29 of the PDPA in the District Court. A registered direction has the same force and effect for the purposes of enforcement as if it is an order obtained in the District Court. Legal proceedings may thus be taken on the registered direction to enforce the direction.

⁴⁶ See PDPA, section 59.

PART VII: RECONSIDERATION

28. Reconsideration of a decision or direction

28.1 Section 31(1) of the PDPA provides that an organisation or individual aggrieved by a decision or direction (as the case may be) of the Commission under section 27(2), 28(2) or 29(1) or (2) of the PDPA may apply to the Commission for the Commission to reconsider its decision or direction. An application for reconsideration shall be made within 28 days from the issuance of the decision or direction.

28.2 Section 31(2) of the PDPA further provides that unless the Commission decides otherwise, the making of an application for reconsideration does not suspend the effect of the decision or direction to be reconsidered (the “contested decision”), except in the case of a direction to pay a financial penalty.

28.3 Section 31(3) of the PDPA provides that an application for reconsideration must set out the grounds on which the applicant is requesting the reconsideration. Part III of the Enforcement Regulations sets out further details on the manner of making an application for reconsideration. The Enforcement Regulations elaborates on this by providing that an application for reconsideration must include the following:

28.3.1 the applicant’s grounds for making the application, identifying, in particular:

- (a) the extent (if any) to which the applicant contends that the contested decision was based on an error of fact or was wrong in law; and
- (b) the extent (if any) to which the applicant is requesting that the Commission reconsider its exercise of discretion in making the contested decision;

25.3.2a presentation of the arguments of fact or law supporting each ground of the application;

25.3.3 the relief or directions (if any) sought by the applicant;⁴⁷ and

25.3.4 copies of documents specified therein.⁴⁸

⁴⁷ For example, where the applicant is an organisation, the applicant may wish to ask that the Commission amend its direction in a particular manner. Where the applicant is an individual, the applicant may be asking for a particular outcome, such as a direction under section 28(2) of the PDPA for an organisation to provide access to his personal data.

⁴⁸ See Enforcement Regulations, regulation 11.

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- 28.4 An application for reconsideration must be accompanied by a copy of the contested decision and the fee as prescribed in the Enforcement Regulations.⁴⁹ Where the application for reconsideration relates to a decision or direction under section 28(2) of the PDPA, the prescribed fee is \$25. For all other applications for reconsideration, the prescribed fee is \$250.
- 28.5 Any applicant who wishes to request that the contested decision be stayed pending the Commission's decision upon reconsideration may make his request in his application for reconsideration or at any stage of the reconsideration process by making a written request to the Commission.
- 28.6 Organisations and individuals that are aggrieved by a decision or direction of the Commission may, instead of making an application for reconsideration, appeal against the decision or direction to the Data Protection Appeal Panel.

29. Reconsideration procedure

- 29.1 The procedures that the Commission will adopt in a reconsideration under section 31(1) of the PDPA are mainly set out in Part III of the Enforcement Regulations.
- 29.2 Where the Commission receives a reconsideration application that has been submitted in accordance with section 31 of the PDPA and regulation 11 of the Enforcement Regulations, the Commission will serve on the respondent a copy of the reconsideration application and any accompanying documents or information that have been provided by the applicant.
- 29.3 The Commission will also serve on the respondent a notice requiring that a written response setting out any explanation or reply that the respondent may wish to offer on the matters or issues raised in the application, be submitted within a period specified by the Commission.
- 29.4 In general, the Commission will give the respondent a reasonable time frame, taking into account the issues raised in the application for reconsideration, to submit the response. Typically, the time frame would be within 14 days for submission of the response. The respondent may apply to the Commission in writing for an extension of the time frame for submission of the response, subject to the Commission's approval of such request for extension of time.
- 29.5 If the respondent fails to submit a response within the time frame specified by the Commission (including any extension thereof granted by the Commission upon the application of the other party), the Commission shall proceed to make its decision based on the information and documents obtained by the Commission. Section 27 of these Guidelines describes the decisions and directions that the Commission may make upon reconsidering a decision or direction.

⁴⁹ See Enforcement Regulations, First Schedule.

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29.6 Where the respondent submits a response, the Commission may, where it considers it appropriate:

- (a) serve a copy of the response and any accompanying statutory declaration or document or information on the applicant;⁵⁰ and
- (b) invite the applicant to submit to the Commission, within a period specified by the Commission, a written reply to the other party's response as the applicant may wish to give.

In general, where the Commission invites the applicant to submit a reply, the Commission will give the applicant a fair and reasonable time frame to do so, taking into account the issues raised in the respondent's response. Typically, the time frame would be within 14 days for submission of the reply. The applicant may apply to the Commission in writing for an extension of the time frame for submission of the reply, subject to the Commission's approval of such request for extension of time.

29.6.1 Upon the expiry of the time frame specified by the Commission for the submission of the reply (including any extension thereof granted by the Commission upon the application of the other party), the Commission shall proceed to make its decision based on the information and documents obtained by the Commission. Paragraph 27 describes the decisions and directions that the Commission may make upon reconsidering a decision or direction.

29.6.2 After making its decision, the Commission shall give notice of the decision to the applicant and the other party. The Commission may also publish the decision or a summary of the decision as described in Part VI of these Guidelines.

29.7 The applicant may withdraw an application for reconsideration with the permission of the Commission at any time before the Commission has given a notice of its decision under section 31(4)(b) of the PDPA. Where an applicant wishes to withdraw its application, it shall apply to the Commission in writing and provide the reasons for its decision to withdraw the application. The Commission will generally permit the applicant to withdraw his application unless the Commission considers that there is sufficient reason, based on the information and documents provided to the Commission prior to the applicant's request to withdraw his application, for the Commission to reconsider the contested decision. Where the Commission permits an applicant to withdraw his application, the Commission shall not proceed any further in reconsidering the contested decision.

⁵⁰ See paragraph 10.2.2 of these Guidelines concerning statutory declarations.

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30. Commission's decisions and directions upon reconsideration

- 30.1 Section 31(4)(b) of the PDPA provides that the Commission may, after reconsidering the contested decision, affirm, revoke or vary the contested decision as the Commission thinks fit.
- 30.2 There shall be no further application for reconsideration of a decision made under section 31(4) of the PDPA. However, an organisation or individual who is aggrieved by such a decision may appeal to the Data Protection Appeal Panel under section 34 of the PDPA.

PART VIII: APPEALS AND RIGHTS OF PRIVATE ACTION

31. Appeal against decision or direction

- 31.1 Section 34(1) of the PDPA provides that an organisation or individual aggrieved by a decision or direction (as the case may be) of the Commission under section 27(2), 28(2), 29(1) or (2) or 31(4)(b) of the PDPA may appeal to the Chairman of the Data Protection Appeal Panel against that decision or direction. An appeal shall be made within 28 days of the issuance of the decision or direction that is the subject of the appeal (the “appealed decision”).
- 31.2 Section 34(2) of the PDPA provides that where an application for reconsideration has been made under section 31 of the PDPA, every appeal in respect of the same decision or direction shall be deemed to be withdrawn. In such a situation, an appellant whose appeal is deemed to be withdrawn may make an application for reconsideration to the Commission, and the Commission shall consider such applications concurrently with other applications for reconsideration in respect of the same matter. Alternatively, the appellant may await the outcome of the Commission’s reconsideration of its decision or direction, and consider whether to make an appeal against the Commission’s decision upon reconsideration (under section 31(4)(b) of the PDPA).
- 31.3 Section 34(3) of the PDPA further provides that unless the Data Protection Appeal Committee hearing an appeal decides otherwise, the making of an appeal does not suspend the effect of the appealed decision, except in the case of a direction to pay a financial penalty.

32. Data Protection Appeal Committee’s decisions and directions

- 32.1 Section 34(4) of the PDPA provides that the Data Protection Appeal Committee hearing an appeal may, after hearing the appeal:
- 32.1.1 remit the matter to the Commission;
 - 32.1.2 impose or revoke, or vary the amount of, a financial penalty;
 - 32.1.3 give such other direction or take such other step as the Commission could itself have given or taken; or
 - 32.1.4 make any other direction or decision that the Commission could itself have made.
- 32.2 Any direction or decision of a Data Protection Appeal Committee under section 34(4) of the PDPA has the same effect, and may be enforced in the same manner, as a direction or decision of the Commission, except that there shall be no application for further reconsideration under section 31 of the PDPA and no further appeal under section 34 of the PDPA from any direction or decision of the Data Protection Appeal Committee. Please refer to the next section concerning appeals to the High Court and Court of Appeal.

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33. Appeals to High Court and Court of Appeal

33.1 Section 35(1) of the PDPA provides that an appeal against, or with respect to, a decision or direction of a Data Protection Appeal Committee may be made to the High Court:

33.1.1 on a point of law; or

33.1.2 as to the amount of a financial penalty.

33.2 An appeal under section 35(1) of the PDPA may be made by⁵¹:

33.2.1 an organisation aggrieved by the decision or direction of the Data Protection Appeal Committee;

33.2.2 where the decision relates to a complaint, the complainant; or

33.2.3 the Commission.

33.3 Under section 35(3) of the PDPA, the High Court shall hear and determine any such appeal and may:

33.3.1 confirm, modify or reverse the decision or direction of the Data Protection Appeal Committee; and

33.3.2 make such further or other order, including (without limitation) orders as to costs, as the Court may think fit.

33.4 A decision of the High Court under section 35(3) of the PDPA may be appealed to the Court of Appeal in accordance with the Rules of Court.

34. Rights of private action

34.1 Section 32(1) of the PDPA provides that any person who suffers loss or damage directly as a result of a contravention of any provision in Parts IV, V or VI of the PDPA by an organisation may commence civil proceedings in the courts against the organisation. Under section 32(3) of the PDPA, a court hearing an action under section 32(1) of the PDPA may grant any or all of the following:

34.1.1 an injunction or a declaration;

34.1.2 damages;

34.1.3 such other relief as the court thinks fit.

⁵¹ See PDPA, section 35(2).

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- 34.2 Where the Commission has made a decision under the PDPA in respect of a contravention of any provision in Parts IV, V or VI of the PDPA, no action may be brought under section 32(1) of the PDPA in respect of that contravention until the decision has become final as a result of there being no further right of appeal.⁵²
- 34.3 As the Commission is not empowered to award damages or other relief noted above to a complainant, persons who suffer loss or damage as a result of a contravention of the PDPA may commence civil proceedings directly. In general, such persons may wish to obtain legal advice in relation to their claim and possible civil proceedings.
- 34.4 Under the Rules of Court, where party (referred to as the plaintiff) commences civil proceedings for relief under section 32(1) of the PDPA, he is required to serve a copy of the writ or originating summons to the Commission not later than 7 days after service of the writ or originating summons on the defendant.⁵³ In addition, any person who is granted a judgment or order by a court pursuant to section 32 of the PDPA is required to transmit a copy of the judgment or order to the Commission within 3 days after the date of the judgment or order.⁵⁴

END OF DOCUMENT

⁵² See PDPA, section 32(2).

⁵³ See Rules of Court, Order 105, Rule 12.

⁵⁴ See Rules of Court, Order 105, Rule 12.