

ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS



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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.