

## **PART II: ALTERNATIVE DISPUTE RESOLUTION**

### **3. Commission's powers relating to alternative dispute resolution<sup>5</sup>**

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.<sup>6</sup>

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).<sup>7</sup>

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.<sup>8</sup>

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> See PDPA, section 50(3).

<sup>8</sup> 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 complaint<sup>9</sup>, 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.

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<sup>9</sup> 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 conduct<sup>10</sup> 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

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<sup>10</sup> 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 website<sup>11</sup>.

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.

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