

ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

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.