

## **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 conduct<sup>34</sup> 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

---

<sup>34</sup> 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.

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

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.

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

- 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.

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

### **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;<sup>35</sup>

17.1.2 the power to enter premises without a warrant;<sup>36</sup> and

17.1.3 the power to enter premises with a warrant.<sup>37</sup>

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 individuals<sup>38</sup>) 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.<sup>39</sup>

### **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.

---

<sup>35</sup> See paragraph 1 of the Ninth Schedule to the PDPA.

<sup>36</sup> See paragraph 2 of the Ninth Schedule to the PDPA.

<sup>37</sup> See paragraph 3 of the Ninth Schedule to the PDPA.

<sup>38</sup> 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.

<sup>39</sup> See PDPA, section 51 (3)(b) and (c) and (5).

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

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,<sup>40</sup> 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.<sup>41</sup> 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 PDPA<sup>42</sup> 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

---

<sup>40</sup> See paragraph 1(5) of the Ninth Schedule to the PDPA.

<sup>41</sup> See PDPA, section 2(1).

<sup>42</sup> See PDPA, section 52(5).

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

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).<sup>43</sup>

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.<sup>44</sup>

### **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);

---

<sup>43</sup> See PDPA, section 2(1).

<sup>44</sup> Please refer to paragraph 17.3 of these Guidelines concerning offences under the PDPA.

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

- (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;

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

- 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.

## ADVISORY GUIDELINES ON ENFORCEMENT OF THE DATA PROTECTION PROVISIONS

### **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;<sup>45</sup>

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.

---

<sup>45</sup> 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.