

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;

25.3.2 a 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;⁴⁷and

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.