PERSONAL DATA
PROTECTION COMMISSION
SINGAPORE

CLOSING NOTE FOR PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES FOR THE HEALTHCARE SECTOR

11 SEPT 2014

PART I 3

1 Background and Introduction 3

PART II: OVERVIEW OF KEY ISSUES 4

2 Obtaining consent for 'teaching purposes' 4

Feedback received 4

Considering if and how the Data Protection Provisions apply to teaching purposes within the healthcare context 4

When consent is required 5

Form and manner of obtaining consent, and scope of consent obtained 6

Whether consent for teaching purposes can be required as a condition of providing a healthcare service 7

3 Obtaining consent for research purposes 8

Feedback received 8

4 The Retention Limitation Obligation 8

Feedback received 8

Organisations are best placed to determine business or legal purposes for retention 9

PART III 9

5 Conclusion 9

PART I

1 Background and Introduction

1.1 The Personal Data Protection Commission (the "**Commission**") launched a public consultation on 16 May 2014 on the proposed Advisory Guidelines for the healthcare sector ("healthcare guidelines").

1.2 The healthcare guidelines aim to complement the more general guidelines issued by the Commission by addressing the application of the Personal Data Protection Act 2012 ("**PDPA**") to healthcare issues and scenarios.

1.3 The consultation closed on 6 June 2014 with three responses from organisations. Please refer to the Commission's website for the full list of respondents and their submissions[1]. The Commission thanks all respondents for their comments and participation.

1.4 Most of the responses received sought clarity from the Commission on the existing examples in the healthcare guidelines, or proposed new scenarios for the Commission to illustrate the applicability of the PDPA.

1.5 The Commission has carefully considered all the comments and has endeavoured to address them as fully as possible in the finalised guidelines. Organisations will notice revised examples and more elaboration on areas where respondents have made comments.

1.6 This closing note for the healthcare guidelines ("**closing note**") supplements the finalised guidelines by setting out the Commission's views on some key issues, and should be read in conjunction with the finalised healthcare guidelines.

[1] http://www.pdpc.gov.sg/personal-data-protection-act/public-consultations/responses-received-at-6-june-2014

PART II: OVERVIEW OF KEY ISSUES

2 Obtaining consent for 'teaching purposes'

2.1 Paragraph 2.6 of the proposed guidelines provided an example of how a healthcare organisation might collect, use or disclose personal data for purposes other than for the patient's visit and medical care provided in relation to the visit, such as for formulation of teaching material.

Feedback received

2.2 One respondent sought more clarity as to the type of consent which should be obtained for teaching purposes. The respondent expressed concern that the requirement to obtain 'express' specific consent would create significant operational difficulties for teaching hospitals who run attachment programmes for students.

2.3 The same respondent also sought clarification on the manner and type of teaching purposes for which consent would need to be obtained, and noted that academic medicine, education and qualification of healthcare professionals, and 'on the job' training of medical students would be impacted if consent from individuals cannot be required under the PDPA.[2]

Considering if and how the Data Protection Provisions apply to teaching purposes within the healthcare context

2.4 Before considering the form and manner in which consent may be obtained for teaching purposes, organisations may wish to assess whether the Data Protection Provisions would apply. In making this assessment, organisations should have regard to the following:

a) Whether personal data is being collected, used or disclosed for the teaching purpose. If no personal data is involved, then the Data Protection Provisions do not apply;

b) If the Data Protection Provisions apply, whether consent for such collection, use or disclosure of personal data is required or whether a relevant exception applies such that consent is not required;

[2] Section 14(2)(a) of the PDPA provides that an organisation providing a product or service to an individual must not, as a condition of providing the product or service, require the individual to consent to the collection, use or disclosure of his personal data beyond what is reasonable to provide the product or service.

c) If consent is required, the appropriate form and manner in which consent should be obtained and the scope of that consent; and

d) Whether it is reasonable to require consent for the collection, use or disclosure of the personal data for a teaching purpose as a condition of providing the healthcare product or service in question.

2.5 Organisations should also note that the Data Protection Provisions would not affect any regulatory requirements by or under the law which govern professional training or registration requirements for doctors and other healthcare professionals. For example, under the Medical Registration Act, certain conditions may be imposed by the Singapore Medical Council in respect of the registration of provisionally registered doctors.

2.6 The Commission understands that activities relating to the education and qualification of future doctors might not involve the collection, use or disclosure of patients' personal data. For example, where a trainee doctor records in his log-book or reports only information that does not contain personal data of patients, such as the number of hours he has spent performing a particular medical procedure or other information that does not identify any patient. Similarly, the Commission also notes that not all on the job training activities involve the collection, use and disclosure of patients' personal data. For example, a medical student observing a procedure performed at a distance without any other information which will enable identification about the patient might not be collecting, using or disclosing any personal data.

2.7 If personal data is collected, used or disclosed for teaching purposes, then organisations should consider how the Data Protection Provisions will apply, in particular the considerations set out in paragraphs b), c) and d) listed above.

<u>When consent is required</u>

2.8 Organisations are generally required under the Data Protection Provisions to notify an individual and obtain his consent before collecting, using or disclosing his personal data for any purpose. Deemed consent can apply in limited circumstances where the individual voluntarily provides the personal data to the organisation for a purpose and it is reasonable that he would do so.[3] An example is set out in paragraph 2.3 of the finalised guidelines where deemed consent could apply for the purpose of convening a case conference with other doctors within the same healthcare institution solely for the purpose of discussing treatment options for the patient.

[3] This is set out in section 15(1) of the PDPA.

2.9 The Commission has set out the following in paragraph 2.3 of the proposed guidelines.

> Whether deemed consent would cover purposes beyond the provision of medical care to John
>
> Deemed consent does not cover purposes outside those for which the personal data was provided. If Healthcare Institution ABC intends to use or disclose such personal data beyond the purpose of John's visit and in particular for purposes that are not related to provision of medical care, it is less likely to be covered by deemed consent and in such instances the clinic should notify John of such purposes and obtain his consent.

2.10 Generally speaking, in the context of healthcare, the Commission considers that consent for purposes unrelated to the purpose of a patient's visit is unlikely to be deemed to have been given by the patient. The Commission considers that this is a useful rule of thumb for healthcare institutions to apply, because the individual must voluntarily provide his personal data for a purpose for deemed consent to apply. In most circumstances, an individual is unlikely to have voluntarily provided his personal data for purposes unrelated to his purpose of visit, even if such purposes are established practices within the healthcare sector. The finalised guidelines provide one example in paragraph 2.7 where patient consent would be required to formulate teaching material (e.g. as part of a case study, lecture slides or other types of teaching material used for teaching purposes) if the data cannot be anonymised.

2.11 When in doubt as to whether consent may be deemed to have been given, obtaining consent from the individual would avoid disputes where an individual claims that he did not voluntarily provide personal data for the purpose.

Form and manner of obtaining consent[4], and scope of consent obtained

2.12 The Data Protection Provisions do not specify a specific manner or form in which an organisation is to inform an individual of the purposes for which it is collecting, using or disclosing the individual's personal data and obtain consent for such purposes. An organisation should determine the best way of doing so such that the individual is provided with the required information to understand the purposes for which his personal data is collected, used or disclosed.

2.13 In stating its purposes, an organisation need not specify every activity it will undertake in relation to collecting, using or disclosing personal data for that

[4] Please see Chapters 13 and 14 of the Advisory Guidelines on the Key Concepts in the PDPA for more information.

purpose. For example, consent deemed to have been provided from a patient to receive medical care from Healthcare institution ABC will cover all activities which Healthcare Institution ABC (including employees and volunteers) has to undertake for the purpose of John's visit. The employees and volunteers (which could include doctors or medical students) involved in John's care at Healthcare Institution ABC would not need to obtain separate consent from John to collect, use or disclose his personal data for the purpose of providing medical care to him. The finalised guidelines provide a new example in paragraph 2.4.

Whether consent for teaching purposes can be required as a condition of providing a healthcare service

2.14 An organisation providing a product or service to an individual must not, as a condition of providing the product or service, require the individual to consent to the collection, use or disclosure of his personal data beyond what is reasonable to provide the product or service. Any consent obtained in such circumstances is not valid.[5]

2.15 An organisation may require an individual to consent to the collection, use or disclosure of his personal data as a condition of providing a product or service where it is reasonable in order to provide that product or service. In this connection, the organisation should give due consideration to whether all the personal data requested is reasonably required to providing the product or service.

2.16 In the context of providing healthcare, organisations should consider if requiring consent from an individual to collect, use and disclose his personal data for teaching purposes is reasonable to provide the healthcare product or service to him.

[5] For the avoidance of doubt, organisations may collect, use or disclose personal data for purposes beyond those that are reasonably required for providing the product or service to the individual by obtaining the individual's consent in accordance with the PDPA, so long as organisations do not make it a condition of providing the product or service.

3 Obtaining consent for research purposes

3.1 The proposed advisory guidelines did not directly address the issue of healthcare research.

Feedback received

3.2 One respondent asked for more clarity on the types of consent which should be obtained for research purposes, and when the 'research purpose exception', set out in paragraph 1(i) of the Third Schedule and paragraph 1(q) of the Fourth Schedule to the PDPA, would apply. In particular, the respondent asked for more clarity on when it would be considered to be impracticable for an organisation to seek consent from an individual for the use or disclosure of his personal data for a research purpose.

3.3 Paragraph 2.13 of the finalised guidelines sets out a new example of how the 'research purpose exception' might apply in the healthcare context.

3.4 As the gist of the queries is relevant to research purposes beyond the healthcare sector, the Commission will address them separately from the healthcare guidelines in a future publication.

4 The Retention Limitation Obligation

4.1 Paragraphs 4.3 and 4.4 of the proposed guidelines addressed the issue of the retention of patient files and records, and set out that healthcare institutions should not keep personal data in perpetuity or longer than necessary "just in case" it might be needed for purposes for which they had not obtained consent.

Feedback received

4.2 One respondent said that it would be in the clear interest of the patient for a doctor to have as complete a medical record as possible, even if the patient has not seen the doctor for a significant period of time. Therefore, the respondent argued, it would be a legitimate purpose for a doctor to retain medical records for the contingency (i.e. "just in case") of supporting a future consultation by the doctor himself, or another doctor who would need to reference the records.

Organisations are best placed to determine business or legal purposes for retention

4.3 The Commission considers that organisations are best placed to determine if there is a business or legal purpose for which personal data should be retained in accordance with their own specific business needs. Organisations should also consider if it is necessary to obtain consent from individuals for the uses for which the personal data is being retained. Healthcare institutions should make their own assessment as to how long patient record and files should be retained, taking into account their circumstances.

4.4 The Commission would like to reiterate that healthcare institutions should review the personal data it holds on a regular basis to determine if that personal data is still needed. Healthcare institutions should not keep personal data "just in case", when it is no longer necessary for the purposes for which the personal data was collected or for any legal or business purpose.

4.5 Holding personal data for an indeterminate duration of time increases the risk of a contravention of the Data Protection Provisions, such as the obligation to protect personal data against any unauthorised disclosures.

PART III

5 Conclusion

5.1 The Commission will continually assess the need to issue guidelines in future on other topics to facilitate understanding and compliance of the PDPA obligations.

5.2 There are other resources available to organisations apart from guidelines issued by the Commission. Organisations should visit www.pdpc.gov.sg for more information on the following:

- How to contact the Commission for general queries
- Answers to Frequently Asked Questions
- Training, workshops and learning facilities to help organisations gain further insights into the requirements of the PDPA
- The Commission's informal guidance process

5.3 This closing note should be read in conjunction with the finalised guidelines. Once again, the Commission thanks all respondents for their comments and participation in this public consultation.