



PERSONAL DATA
PROTECTION COMMISSION
S I N G A P O R E

**CLOSING NOTE FOR PUBLIC CONSULTATION ON PROPOSED ADVISORY
GUIDELINES FOR THE SOCIAL SERVICE SECTOR**

11 SEPTEMBER 2014

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PART I

1 Background and Introduction

- 1.1 The Commission launched a public consultation on 16 May 2014 on the Proposed Advisory Guidelines on the application of the Personal Data Protection Act 2012 (“**PDPA**”) to scenarios faced in the social service sector (“**social service guidelines**”).
- 1.2 The social service guidelines aim to complement the more general guidelines issued by the Commission by addressing issues and scenarios specific to the social service sector.
- 1.3 The consultation closed on 6 June 2014, 12 noon with seven responses from voluntary welfare organisations (“**VWOs**”). Please refer to the Commission’s website for the full list of respondents and their submissions¹. The Commission thanks all respondents for their comments and participation.
- 1.4 Most of the responses received focused on asking the Commission to elaborate on or adjust the existing illustrations in the social service guidelines, and on raising 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 new and revised examples and further elaboration on areas where respondents have made comments.
- 1.6 This closing note for the social service guidelines (“**closing note**”) seeks to:
 - a) summarise the key issues in this consultation, and
 - b) address common issues or queries which were raised by several respondents.
- 1.7 This closing note should be read in conjunction with the finalised social service guidelines.

¹ <https://www.pdpc.gov.sg/personal-data-protection-act/public-consultations/responses-received-at-6-june-2014>

PART II: OVERVIEW OF ISSUES – SOCIAL SERVICE GUIDELINES

2 An individual making an access request for his personal data that was disclosed by another individual

Feedback received

2.1 One respondent sought clarification on whether an individual could request access to his/her personal data that was disclosed to the organisation by another individual for the purposes of evaluating the other individual's suitability for a debt management plan. The respondent cited an example where a client disclosed the personal data of his relatives and friends, and explained that the collection of the personal data of the client's relatives and friends might be essential in evaluating the client's financial circumstances, and ability to sustain a repayment plan. In some cases, consent might not have been obtained for the disclosure of the first individual's personal data to the organisation.

Access obligation applies regardless of whether consent had been given for collection, use or disclosure

2.2 The PDPA sets out an obligation on organisations to provide access to an individual's personal data upon the individual's request. Organisations will have to comply with this obligation (unless there is an applicable exception under the PDPA²) whether or not consent had been obtained for the collection, use or disclosure of the personal data from the individual to whom the personal data relates.

2.3 It should, however, be noted that certain prohibitions to granting access (as provided for in section 21(3) of the PDPA) may be relevant to the scenario described by the respondent. For example, section 21(3) provides that an organisation shall not accede to an access request if it may reveal the personal data about another individual; or if it may reveal the identity of an individual who has provided personal data of another individual, and the individual providing the personal data does not consent to the disclosure of his identity. In such cases, while the prohibitions apply, an organisation shall still provide the individual with his/her personal data and other information that he/she has requested access to, if the organisation is able to do so without providing the personal data or information under section 21(3).

2.4 The Commission will provide a new scenario in the finalised guidelines to discuss the issue of access to personal data.

² Please see section 21(3), section 21(4) and section 21(2) read together with Fifth Schedule to the PDPA.

3 Application of the Data Protection Provisions to mailers such as fund-raising inserts with utility bills

Feedback received

- 3.1 One respondent enquired on the application of the Data Protection Provisions to fund-raising inserts attached to utility bills. The respondent highlighted an existing practice where, for a fee, a utility company would include a charity's donation slip with the monthly utility bills which were sent by the utility company to its customers. The respondent added that charities that chose to engage such services, typically, would not have any access to the names and addresses of the individuals listed on the utility bill. In addition, the utility company would have a process for withdrawal of consent – via an “opt-out” approach – which allowed customers to notify the utility company if they did not wish to receive such mailer inserts together with their utility bills.
- 3.2 The same respondent asked if engaging a list management company to send out direct mailers with the intention of acquiring new donors would violate the PDPA. The respondent sought clarity on whether the treatment would differ depending on whether a charity had access to the list management company's database of names and addresses, and shared its assumption that the names and addresses in this scenario had been collected by the list management company from the public domain.

Inclusion of fund-raising inserts to utility bills by utility company may constitute use of personal data

- 3.3 The Commission considers the inclusion of fund-raising inserts from charities that are packaged by utility companies with their utility bills addressed to an identifiable individual (e.g. whether as an insert, or printed on the bills themselves) to be a use of personal data by the utility companies, even if the inserts themselves are not separately addressed to an individual. Accordingly, the utility companies will have to comply with the PDPA in respect of such use.
- 3.4 For the avoidance of doubt, if the utility company collected the personal data before the appointed day (i.e. 2 July 2014) for this purpose, it may continue to use such personal data for this purpose unless consent is withdrawn under the PDPA, or the individual had otherwise indicated that he/she does not consent to the use of the personal data. Correspondingly, when an individual withdraws consent under the PDPA for such purposes, the organisation will need to allow and facilitate such withdrawal.

- 3.5 If the sending of such mailers involves the use of personal data, e.g., addressing and sending the mailers to the homes of identified individuals, the organisation that intends to conduct such activities should determine the obligations that would be applicable to it under the PDPA, and carry out its activities in compliance with those obligations.
- 3.6 As for the charity organisation, the Commission will consider the specific facts of the case when assessing if the charity organisation is required to comply with the PDPA in relation to the use of personal data. For example, the Commission will consider the actual arrangement between the charity organisation and the utility company to rely on the latter's database containing personal data. This would help determine whether the charity organisation has control over the personal data, or whether the charity organisation has appointed the utility company to act as its data intermediary, for the purposes of assessing whether the charity organisation is subject to the Data Protection Provisions.
- 3.7 The Commission has included an example in the finalised guidelines to address this issue.

Sending out direct mailers without the use of personal data does not violate the PDPA

- 3.8 The Commission notes that the PDPA would not apply to the sending out of mailers for promotional purposes that do not involve the use of any personal data. The Commission will include an example in the finalised guidelines to illustrate this issue.

The Consent Obligation does not apply to personal data that is publicly available

- 3.9 Generally, organisations have to comply with the Consent Obligation³ by notifying the individual of the purpose for the collection, use or disclosure of his personal data and obtaining his consent for the collection, use or disclosure of his personal data. However, the PDPA has provided for exceptions for the collection, use and disclosure of personal data that is already in the public domain. Notwithstanding these exceptions, the Commission would advise organisations to exercise reasonableness when using personal data that is publicly available.

³ Please refer to the Advisory Guidelines on Key Concepts in the PDPA for more information relating to the Consent Obligation.

Organisations should exercise due diligence when engaging third parties as data intermediaries (DIs)

- 3.10 If an organisation engages a third party as a data intermediary of the organisation, the organisation will have the same obligation under the PDPA in respect of personal data processed on its behalf and for its purposes by a data intermediary as if the personal data were processed by the organisation itself. Please refer to the Key Concepts Guidelines for more information, on when an organisation is considered a data intermediary, as well as the obligations applicable to data intermediaries and the organisations that engage data intermediaries, under the PDPA.
- 3.11 The Commission would generally advise organisations engaging third parties as their data intermediaries to send direct mailers, to exercise due diligence in ensuring that consent has been obtained for such purposes where required (e.g. by obtaining verification from the third party).

4 Consent for collection of personal data from third parties

Feedback received

- 4.1 One respondent sought clarification on obtaining consent for the collection, use or disclosure of personal data of an individual that was provided by third parties. For example, where a VWO assesses an individual's suitability for a debt management plan, the individual may disclose the personal data of his relatives and friends, without their consent, to facilitate the VWO's evaluation. In some cases, the VWO may also disclose these personal data to the individual's creditors for credit evaluation purposes.

Organisations should exercise due diligence when obtaining personal data from third party sources without the consent of the individual

- 4.2 The Commission advises organisations obtaining personal data from third party sources to exercise due diligence to check and ensure that the third party source can validly give consent for the collection, use and disclosure of personal data on behalf of the individual, or has obtained such consent from the individual, unless an exception to the Consent Obligation applies. For example, in the case of a VWO providing services for the personal purposes of an individual, the VWO may consider whether exceptions such as paragraph 1(m)⁴ of the Second Schedule to the PDPA are applicable. The Commission will include an example in the finalised guidelines to clarify this issue.

⁴ Paragraph 1(m) of the Second Schedule to the PDPA provides that an organisation may collect personal data about an individual without the consent of the individual or from a source other than the individual when the personal data was provided to the organisation by another individual to enable the organisation to provide a service for the personal or domestic purposes of that other individual. As with other exceptions in the Second Schedule, an organisation may use or disclose personal data collected under paragraph 1(m) of the Second Schedule for purposes consistent with the purpose of collection, under paragraph 1(j) of the Third Schedule and paragraph 1(s) of the Fourth Schedule to the PDPA respectively.

5 Other issues

Validity of consent for publicity purposes

- 5.1 One respondent requested clarification on whether a client, when seeking assistance from a VWO and is asked to also consent to the VWO's or sponsoring organisation's use of his photographs for publicity purposes, would have given valid consent for the latter set of purposes.
- 5.2 Generally, in relation to notification and obtaining consent under the PDPA, the provision of services by a VWO is likely to be a distinct purpose from that of publicity for the VWO or sponsoring organisation. The PDPA does not prescribe the manner in which consent is to be obtained by an organisation under the Data Protection Provisions. An organisation may decide on the most suitable way to obtain consent in accordance with the PDPA, based on the purposes. However, organisations should note that the PDPA provides for certain circumstances under which consent will not be valid, namely:
- a) Where an organisation providing a product or service to an individual requires the individual to consent to the collection, use or disclosure of his personal data beyond what is reasonable to provide the product or service, as a condition of providing the product or service; and
 - b) Where an organisation obtains or attempts to obtain consent by providing false or misleading information or using deceptive or misleading practices.

Refusal for VWO to disclose or withdrawal of consent for VWO to use personal data housed in public agency's database

- 5.3 One respondent asked for more clarity on the actions that VWOs could take should a client request:
- a) To withdraw consent for the VWO to use his/her personal data housed within the electronic Case Management System ("eCMS") hosted by NCSS; and
 - b) To withdraw his/her personal data from eCMS.

5.4 The Commission understands that the eCMS is a system developed by NCSS to help VWOs manage the data of their service users/clients. Generally, a VWO is not required under the PDPA to separately obtain consent to store the personal data of a client on the eCMS, if such activities are undertaken for the purpose that the client has consented to. Where disclosure to eCMS is for a purpose that is reasonable for the provision of the VWO's services to the client, the VWO would be able to require consent from its client for such a purpose.

5.5 Where a client withdraws consent to a purpose that involves the use of eCMS, among other things, a VWO should not prohibit him/her from withdrawing consent, and should inform him/her of the consequences of doing so. In this regard, VWOs may wish to refer to Chapter 12 of the Key Concepts Guidelines when considering and determining their policies to enable and facilitate withdrawal of consent.

Relying on deemed consent before collecting and forwarding banking account forms of clients to banks

5.6 One respondent enquired if it may rely on deemed consent from individual clients before collecting and forwarding completed banking account opening forms containing their personal data to a creditor bank upon its request, where there is no formal agreement determining or detailing the relationship between the VWO and the bank.

5.7 Generally, the Data Protection Provisions will apply to the collection, use and disclosure of personal data and organisations would, accordingly, have to obtain consent from the individual unless exceptions apply. To rely on deemed consent, the client must voluntarily provide his personal data for a purpose, and it is reasonable for the individual to do so. Although organisations may rely on deemed consent instead of obtaining actual consent, the Commission encourages organisations to continuously review their business processes to determine the situations where they should obtain actual consent instead of seeking to rely on deemed consent, especially in situations where it is unclear whether consent may be deemed.

Retaining personal data to re-engage former donors, or for renewal of membership

5.8 Two respondents commented on compliance with the Retention Obligation. One respondent asked if retaining the personal data of former donors who had not actively donated over the past years would be in contravention of the PDPA, while another supported the view that organisations would be best placed to decide on retention of the personal data of its members, even for memberships which have expired.

- 5.9 The PDPA does not prescribe the actual period for which organisations may retain personal data. Organisations may retain personal data so long as they have a business or legal purpose to do so. The Commission encourages organisations to review the personal data that they hold on a regular basis to determine if that personal data is still required. Organisations may wish to refer to the Key Concepts Guidelines relating to the Retention Limitation Obligation on some of the considerations for organisations when deciding on the retention period.

Business-to-business calls (“B2B”) are not subject to the DNC Provisions

- 5.10 One respondent asked if calls that were intended to set up appointments with representatives from other organisations to explore opportunities for giving, such as corporate donations would be subject to the DNC Provisions.
- 5.11 A message sent solely to solicit donations without any marketing elements would not be considered a specified message. The Commission has also explained in previously-issued guidelines that B2B marketing messages will generally not be subject to the DNC Provisions. Organisations may wish to refer to the Key Concepts Guidelines and the DNC Guidelines for more information.

PART III: CONCLUSION

6 Conclusion

- 6.1 The Commission will continually assess the need to issue guidelines in future on other topics to facilitate understanding and compliance of the PDPA obligations.
- 6.2 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
- 6.3 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.