



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

**PROPOSED ADVISORY GUIDELINES ON THE APPLICATION OF THE
PERSONAL DATA PROTECTION ACT TO SCENARIOS FACED IN THE
TELECOMMUNICATION SECTOR**

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ADVISORY GUIDELINES FOR THE TELECOMMUNICATION SECTOR

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PART I: INTRODUCTION AND OVERVIEW

1 Introduction

- 1.1 The Personal Data Protection Act 2012 (the “PDPA”) establishes a new general data protection law in Singapore which governs the collection, use and disclosure of individuals’ personal data by organisations. The Personal Data Protection Commission (the “Commission”) is established under the PDPA with the key functions, amongst others, of promoting awareness of data protection in Singapore and administering and enforcing the PDPA.
- 1.2 These advisory guidelines (these “Guidelines”) are issued by the Commission pursuant to section 49(1) of the PDPA to provide guidance on the manner in which the Commission will interpret provisions of the PDPA. Where relevant, reference is made to the provisions of the regulations made under the PDPA (“Regulations”).
- 1.3 These Guidelines are advisory in nature and are not legally binding on the Commission or any other party. They do not modify or supplement in any way the legal effect and interpretation of any laws cited including, but not limited to, the PDPA and any subsidiary legislation (such as regulations and rules) issued under the PDPA. Accordingly, these Guidelines shall not be construed to limit or restrict the Commission’s administration and enforcement of the PDPA. The Commission may amend these Guidelines from time to time. The provisions of the PDPA and any subsidiary legislation issued thereunder will prevail over these Guidelines in the event of any inconsistency. These Guidelines do not constitute legal advice.
- 1.4 Developed in consultation with the Info-communications Development Authority of Singapore (“IDA”), these Guidelines aim to address the unique circumstances faced by the telecommunication sector in complying with the PDPA. In addition to these Guidelines, organisations in the telecommunication sector may wish to refer to other Advisory Guidelines issued by the Commission from time to time on other aspects of the PDPA, including the Advisory Guidelines on Key Concepts in the PDPA (“Key Concepts Guidelines”), which explain in greater detail the obligations which organisations have to comply with under the PDPA, the Advisory Guidelines on the Do Not Call Provisions, which explain in detail the application of the Do Not Call Registry Provisions in Part IX of the PDPA, as well as the Advisory Guidelines on Selected Topics, which explain certain topics in detail.

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- 1.5 It should be noted that the examples in these Guidelines serve to illustrate particular aspects of the Data Protection Provisions and the Do Not Call Provisions, and are not meant to exhaustively address every obligation in the PDPA that would apply in the example.

2 Overview of the PDPA

- 2.1 The PDPA governs the collection, use and disclosure of individuals' personal data by organisations in a manner that recognises both the right of individuals to protect their personal data and the need of organisations to collect, use and disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances. The PDPA contains two main sets of provisions, covering data protection and the Do Not Call Registry, which organisations are required to comply with.
- 2.2 The PDPA's data protection obligations are set out in Parts III to VI of the PDPA (the "Data Protection Provisions"). In brief, the Data Protection Provisions deal with the following matters:
- a) Having reasonable purposes, notifying purposes and obtaining consent for collection, use or disclosure of personal data;
 - b) Allowing individuals to access and correct their personal data;
 - c) Taking care of personal data, which relates to ensuring accuracy, protecting personal data (including protection in the case of transfers) and not retaining personal data if no longer needed; and
 - d) Having policies and practices to comply with the PDPA.
- 2.3 The PDPA provides a number of exceptions to various Data Protection Provisions to address situations where organisations may have a legitimate need, for example, to collect, use or disclose personal data without consent or to refuse to provide an individual with access to his or her personal data.
- 2.4 The PDPA's Do Not Call Registry provisions (the "Do Not Call Provisions") are set out in Part IX of the PDPA. These deal with the establishment of Singapore's national Do Not Call Registry (the "Do Not Call Registry") and the obligations of organisations relating to the sending of certain marketing messages to Singapore telephone numbers. The Do Not Call Registry will initially comprise three separate registers kept and maintained by the Commission under section 39 of the PDPA (the "Do Not Call Registers") which cover telephone calls, text messages and faxes. Users and subscribers will be able to register a Singapore telephone number on one or more Do Not Call Registers depending on what their preferences are in relation to receiving marketing messages through telephone calls, text messages or fax.

- 2.5 Organisations have the following obligations in relation to sending certain marketing messages to Singapore telephone numbers:
- a) Checking the relevant Do Not Call Register(s) to confirm if the Singapore telephone number is listed on the Do Not Call Register(s);
 - b) Providing information on the individual or organisation who sent or authorised the sending of the marketing message; and
 - c) Not concealing or withholding the calling line identity of the sender of the marketing message.
- 2.6 The PDPA provides that organisations need not check the Do Not Call Registers when the user or subscriber of a Singapore telephone number has given clear and unambiguous consent in written or other accessible form to the sending of the marketing message to that number, or when the organisation is sending an exempt message to that user or subscriber¹.
- 2.7 The Data Protection Provisions and the Do Not Call Provisions are intended to operate in conjunction when both sets of provisions come into force. Accordingly, organisations are required to comply with both sets of provisions when collecting and using Singapore telephone numbers that form part of individuals' personal data. Organisations need not comply with the Data Protection Provisions for Singapore telephone numbers that do not form part of an individual's personal data (such as business contact information), but would still be required to comply with the Do Not Call Provisions.
- 2.8 More details on how the Commission will interpret the Data Protection Provisions and the Do Not Call Provisions may be found in the Key Concepts Guidelines and the Advisory Guidelines on the Do Not Call Provisions, which can be found on the Commission's website (www.pdpc.gov.sg).

¹ Please refer to the Personal Data Protection (Exemption from section 43) Order 2013 and the Advisory Guidelines on the Do Not Call Provisions for more information on exempt messages.

PART II: APPLICATION OF THE PDPA TO SCENARIOS FACED IN THE TELECOMMUNICATION SECTOR

3 Personal Data

3.1 Personal data is defined in the PDPA as “data, whether true or not, about an individual who can be identified –

a) from that data; or

b) from that data and other information to which the organisation has or is likely to have access.”

3.2 While some data will always relate to an individual, other data may not, on its own, relate to an individual. Such data would not constitute personal data unless it is associated with, or made to relate to, a particular individual. Generic information that does not relate to a particular individual may also form part of an individual’s personal data when combined with personal data or other information to enable an individual to be identified.

Telephone numbers and International Mobile Equipment Identity (“IMEI”) numbers

3.3 Where an individual is identifiable from the data, such as a combination of the individual’s name, address and telephone number, then such data is personal data. In cases where the individual cannot be identified from that data alone (such as a device identifier in itself), such data may still be personal data if the organisation has access to other information that will allow the individual to be identified when taken together with that data. Please also refer to the section on Anonymisation in the Advisory Guidelines on Selected Topics for more details on the conditions under which personal data may be anonymised and hence no longer considered to be personal data.

3.4 In the telecommunication context, an individual’s mobile telephone number is likely to be personal data as it may uniquely identify, or be uniquely associated with, that individual. A telephone number that is shared by more than one individual (e.g. a landline shared by several residents in a dwelling) may also be considered personal data if, in the particular circumstances, combination with other information results in the identification of an individual. What constitutes personal data is elaborated on in the Key Concepts Guidelines.

- 3.5 Various numbers are used in connection with the operation of a telecommunication network, for example, to identify particular equipment that is connected to the network. In general, such numbers are not used to directly identify an individual and hence would not, on their own, be considered personal data. One such example is the IMEI number. The IMEI number refers to the unique number assigned to mobile devices such as mobile telephones. IMEI numbers are used to identify mobile devices in a network. As with any other network identifier such as an Internet Protocol (“IP”) address, an IMEI number may not be personal data when viewed in isolation, because it simply identifies a networked device. However, as each mobile device typically has a unique IMEI number, an IMEI number has the potential to form part of data that in combination relate to an identifiable individual. For example, where a large number of unique data points are tagged to the same IMEI number such that an individual may be identified (such as through his surfing habits or location profile), then the IMEI number and set of unique data points would be considered personal data of the individual.

4 The Data Protection Provisions

- 4.1 The Data Protection Provisions in Parts III to VI of the PDPA set out the obligations that organisations are required to comply with if they undertake activities relating to the collection, use or disclosure of personal data. Among other things, organisations are required to obtain valid consent from the individual for a limited purpose that has been notified to the individual for the collection, use and disclosure of personal data of the individual, unless exceptions apply. In situations where an individual voluntarily provides his personal data to an organisation for a purpose, and it is reasonable that he would voluntarily provide the data, the individual is deemed to consent to the collection, use or disclosure of the personal data. If an individual gives, or is deemed to have given, consent to the disclosure of personal data about the individual by one organisation to another organisation for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data for that particular purpose by that other organisation.
- 4.2 The following sections outline the application of some of the Data Protection Provisions in the PDPA. They address particular aspects of the PDPA, and are not meant to exhaustively address every obligation in the PDPA that would apply in that scenario. These sections do not illustrate the application of the Do Not Call Provisions, which are addressed later in these Guidelines.

Inbound and outbound roaming

Inbound roaming

- 4.3 In the case of inbound roaming, a Singapore telecommunication operator collects some personal data of a foreign mobile user using its network (“inbound roamer”) in order for the foreign telecommunication operator (the “home operator”) to provide a roaming service to the inbound roamer. For example, the Singapore telecommunication operator might collect the telephone number and device identifier of the inbound roamer and his service usage patterns and transfer such information to the home operator for the home operator to bill the inbound roamer.
- 4.4 To the extent that the Singapore telecommunication operator is processing the information of inbound roamers on behalf of and for the purposes of their respective home operators, local telecommunication operators could be data intermediaries (“DIs”) of the home operators. In this regard, where a Singapore telecommunication operator is acting as a DI pursuant to a contract in writing with a home operator, the Singapore telecommunication operator is only required to comply with the Protection Obligation and Retention Limitation Obligation of the PDPA in relation to its processing of

the personal data of inbound roamers. More details on the treatment and obligations of DIs are available in the Key Concepts Guidelines.

- 4.5 To be clear, the Data Protection Provisions generally apply where the personal data of inbound roamers is collected, used and disclosed. Therefore, where the Singapore telecommunication operator is collecting, using, disclosing or otherwise processing the personal data of inbound roamers for other purposes beyond what is set out in the contract with the home operator, for example to market the Singapore telecommunication operators' own pre-paid card options, they would not be considered DIs of the home operator, and the Data Protection Provisions would apply to such activities unless exceptions apply. One of these exceptions would be an exception to the Consent Obligation where the collection, use or disclosure without the consent of the individual is required or authorised under a written law. In this regard, the Commission understands that the Info-communications Development Authority of Singapore ("IDA") is considering authorising telecommunication licensees to collect and use the personal data of inbound roamers to offer such inbound roamers roaming-related information and services².
- 4.6 Where the Singapore telecommunication operator carries out an activity for a purpose without involving personal data, for example when analysing anonymised data of inbound roamers for business planning purposes, the Data Protection Provisions do not apply to that activity.

Outbound roaming

- 4.7 In the case of outbound roaming, a Singapore telecommunication operator typically has contractual agreements with foreign telecommunication operators to provide telecommunication services to the subscribers of the Singapore telecommunication operator when overseas ("outbound roamers").
- 4.8 The Commission notes that there may be some exchange of data (including personal data) between a Singapore telecommunication operator and foreign telecommunication operators in order for the latter to provide mobile services to outbound roamers who are the Singapore telecommunication operator's subscribers, pursuant to the contractual agreements between the Singapore telecommunication operator and the foreign telecommunication operators. In such situations, the Singapore telecommunication operator will need to

² Please refer to IDA's consultation paper titled "Review of End User Service Information Provisions in the Code of Practice for Competition in the Provision of Telecommunication Services 2012".

comply with the Transfer Limitation Obligation in respect of the transfer of personal data out of Singapore to foreign telecommunication operators.

Provision of subscriber identity for calls or text messages

- 4.9 Currently, when a subscriber who is an individual makes a telephone call or sends a text message, his telephone number (which may be personal data relating to him) would typically be disclosed to the receiving party and both the subscriber and receiving party's telecommunication operators, unless the subscriber had chosen to have his telephone number 'blocked'/ 'unlisted'³.
- 4.10 Given established practice, the Commission is of the view that a subscriber who opts to have an 'unblocked'/ a 'listed' telephone number would typically be aware that the telephone number would be collected, used or disclosed for the purpose of identifying that subscriber to other parties. Where the telephone number is personal data relating to a subscriber, a subscriber with an 'unblocked'/ a 'listed' telephone number initiating a call or sending a message may be deemed to have consented to the collection, use or disclosure of the number for the purpose of identifying himself to the receiving party, since the subscriber would have voluntarily provided the data, and it would be reasonable for the subscriber to have done so.
- 4.11 Conversely, a subscriber who has opted for a 'blocked'/ an 'unlisted' number at the outset would not be considered to have consented to the collection, use or disclosure of the number for that purpose. A subscriber with an 'unblocked'/ a 'listed' telephone number who subsequently applies to 'block'/ 'unlist' that telephone number would be considered to have withdrawn consent for the collection, use or disclosure of that telephone number for the purpose of identifying himself to other parties when making a call or sending a message.

Displaying personal data in itemised bills

- 4.12 Itemised bills for telecommunication services display telephone numbers that a subscriber contacts or is contacted by, and the duration of calls made or received. An itemised bill may reflect the personal data of the subscriber, as well as the personal data of individuals called by the subscriber or individuals who called the subscriber.
- 4.13 The Commission regards the display of personal data (of the subscriber or individuals called by the subscriber or who called the subscriber) in itemised

³ For example, by taking up services offered by the subscriber's telecommunication operator to withhold display of the subscriber's telephone number on a receiving party's telephone.

bills as a reproduction of the record of the subscriber's transactions carried out using the telecommunication operator's service. As such, consent obtained by the subscriber to make a call or send a message to an individual would suffice for the recipient's telephone number to be displayed in the subscriber's itemised bill. Similarly, consent given (or deemed to be given) by an individual who makes a call or sends a message to the subscriber would extend to the display of the caller's telephone number in the subscriber's itemised bill.

Pre-paid mobile services

- 4.14 The Commission understands that the purchase of pre-paid cards for telecommunication services typically does not involve the signing of a written contract and the current practice among many telecommunication licensees is for a pre-paid card to contain a general statement directing individuals to the terms and conditions of the contract that may be made available by telecommunication operators, for example on their websites.
- 4.15 When selling a pre-paid card, the telecommunication operator (or the reseller, on the telecommunication operator's behalf) may collect various types of personal data from the individual, including the individual's name and identification details such as NRIC numbers, passport numbers or work permit numbers. In addition, the telecommunication operator would possess data such as the telephone number tied to that pre-paid card, as well as details of the pre-paid card account including account balance and usage profile.
- 4.16 The Commission further understands that the purposes for the telecommunication operators' collection, use and disclosure of such personal data generally include:
- a) providing the individual with the telecommunication services, which may be voice calls, SMSes, mobile data or international call services;
 - b) complying with requirements under written law, for example regulatory requirements;
 - c) sending various messages to the Singapore telephone number tied to the pre-paid card, some of which may be targeted at specific sets of pre-paid card holders (for example, based on a certain usage characteristic); and
 - d) analysing usage profiles of the pre-paid subscriber base to plan new pre-paid products and services.

- 4.17 In general, the telecommunication operator collecting, using or disclosing the personal data of individuals who buy pre-paid cards will have to comply with all the relevant provisions in the PDPA, including the Data Protection Provisions and the Do Not Call Provisions. Depending on the arrangements between the telecommunication operators and resellers of pre-paid cards, resellers may be considered to be DIs acting pursuant to a contract made or evidenced in writing with the respective telecommunication operator, and will therefore be subject only to the Protection Obligation and Retention Limitation Obligation.
- 4.18 In relation to the Notification Obligation, the Commission notes that the form-factor of the pre-paid card is typically small and may not allow an elaborate statement of the purposes for which the personal data of the individual is being collected, used or disclosed. Some options that telecommunication operators could consider to fulfil the Notification Obligation would be:
- a) adopting the 'layered notice' approach described in the Advisory Guidelines on Key Concepts, by briefly stating the purposes such as marketing other telecommunication services on the pre-paid card while referring the individual to the operator's website for a more detailed statement of purposes and the operators' data protection policy. For example, operators could provide detailed statements of the purposes on their websites and direct subscribers to the websites in their service activation message. In doing so, operators would need to comply with other obligations under the PDPA where applicable, such as those under the Do Not Call Provisions in relation to sending specified messages or obtaining clear and unambiguous consent in written or other evidential form; or
 - b) stating the purposes for collection, use and disclosure of personal data on a separate notice, for example at the reseller's counter.
- 4.19 The telecommunication operator should assess how best it can ensure compliance with the Notification Obligation and Consent Obligation. If the telecommunication operator has adopted an appropriate procedure to notify individuals of the purposes for which their personal data may be collected, used or disclosed, and an individual voluntarily provides the personal data for such purposes, that individual could also be deemed to have consented to the collection, use and disclosure of his personal data for the stated purposes. For the avoidance of doubt, some relevant exemptions may apply to the Consent Obligation, such as where the collection, use or disclosure of personal data is required under written law. More details on the Notification Obligation and Consent Obligation are provided in the Key Concepts Guidelines.

5 The Do Not Call Provisions

- 5.1 Messages which purposes are to offer to supply, advertise or promote goods or services, land or an interest in land, or a business or investment opportunity, or a supplier of such goods, services, land or opportunity are specified messages and the Do Not Call Provisions will apply to such messages. Messages which purposes do not include any of the purposes listed above will not be considered specified messages. In addition, some types of messages are excluded from the definition of a specified message, including “business-to-business” marketing messages. The Eighth Schedule to the PDPA sets out exclusions from the meaning of “specified message”.
- 5.2 The Do Not Call Provisions apply to a specified message addressed to a Singapore telephone number if the sender of the specified message is present in Singapore when the specified message is sent or the recipient of the specified message is present in Singapore when the specified message is accessed.

Specified messages sent by telecommunication operators

- 5.3 The Commission understands that telecommunication operators typically send messages with the following characteristics to Singapore telephone numbers:
- a) Account information, such as that relating to:
 - i. account balance, for example the credit levels pertaining to a pre-paid card, sent at regular periodic intervals;
 - ii. account details, for example on the fact that a pre-paid card has not been active and will be expiring on a certain date, or seeking a change of billing details following the expiry of credit card information previously provided; and
 - iii. reminders for late payments.
 - b) Product or service information, such as that relating to:
 - i. contract expiry and renewal, for example informing the customer that his subscription contract will be expiring;
 - ii. warranty, product recall, safety or security information relating to the individual's subscription; and

- iii. delivery of product upgrades or updates that the subscriber is entitled to receive under his existing subscription, for example an upgrade in broadband speed of the subscriber's existing broadband plan that the subscriber is entitled to receive under his existing subscription.
- c) Marketing information, such as:
- i. promoting a product or service that the individual has not subscribed to. This will include up-selling of products or services, for example promoting a higher speed broadband plan to an existing broadband subscriber, or a mobile package with more free SMSes to a heavy SMS user that has subscribed to a different package. Similarly, cross-selling of products or services, such as the promotion of premium rate services to mobile subscribers or the promotion of home broadband plans to a mobile subscriber will also be included;
 - ii. limited promotions, for example informing certain pre-paid mobile plan subscribers about an IDD rate promotion to certain destinations for a limited period of time; and
 - iii. promoting the products and services of affiliates or partners, such as offering discounts at certain retail shops or food and beverage outlets.
- 5.4 As a general guide, the Commission considers that a message sent to a Singapore telephone number solely to provide account information / product information relating to the ongoing use of the service / product by the individual would not constitute the sending of a specified message. In particular, such messages could fall within paragraph 1(d) or 1(e) of the Eighth Schedule to the PDPA. Examples of such "in-service" messages would include:
- a) Messages to existing subscribers informing them of the expiry of their subscriptions; and
 - b) Messages to subscribers of pre-paid mobile plans informing them of their account balance, sent at regular periodic intervals.
- 5.5 Where there is information contained in the message that is not part of the product or service the individual has subscribed to, and is an offer to supply, promote or advertise another product or service, such messages will likely be considered specified messages. However, where the telecommunication operator is in an ongoing relationship with the subscriber or user of the Singapore telephone number, such as by way of a subscription to a

telecommunication service, it may also consider whether an exemption from Section 43 of the PDPA will apply if it intends to send an offer to supply a service or product that is related to the subject of the ongoing relationship. In this regard, examples of messages from a telecommunication operator to a subscriber that would typically be considered to be related to the subject of the ongoing relationship include:

- a) a message to an existing home fixed-line broadband service subscriber offering to supply a fibre broadband subscription to that subscriber; and
- b) a message to a pre-paid mobile service subscriber informing the subscriber of an IDD rate promotion to certain countries for pre-paid subscribers.

5.6 The Commission considers one-off interactions or transactions in themselves to be insufficient to constitute an ongoing relationship. For example, the fact that an individual previously contacted a telecommunication operator to enquire about a particular product or service, or the fact that the individual left his telephone number with a sales representative of the telecommunication operator, in themselves, would be insufficient to establish an ongoing relationship between the individual and the telecommunication operator.

5.7 Telecommunication operators may refer to the Personal Data Protection (Exemption from section 43) Order (ref. S 817/2013) and the Advisory Guidelines on the Do Not Call Provisions issued by the PDPC for more details.

6 Other rights, obligations and uses

- 6.1 Section 4(6) of the PDPA states that unless otherwise provided in the PDPA, nothing in Parts III to VI of the PDPA shall affect any authority, right, privilege or immunity conferred, or obligation or limitation imposed, by or under the law, including legal privilege, except that the performance of a contractual obligation shall not be an excuse for contravening the PDPA, and the provisions of other written law shall prevail to the extent that any provision of Parts III to VI is inconsistent with the provisions of that other written law.

Example: Caching of data by an Internet Service Provider (“ISP”)

In the course of providing network services, a Network Service Provider, such as an ISP, may cache data in relation to certain websites, which may result in personal data being collected and used without consent. Section 67 of the PDPA amends Section 26 of the Electronic Transactions Act (Cap. 88) to provide that a Network Service Provider shall not be subject to any liability under the PDPA in respect of third-party material in the form of electronic records to which it merely provides access. The provision of access, in relation to third party-material, includes the automatic and temporary storage of the third-party material for the purpose of providing access. The temporary and automatic caching of third party material in the form of electronic records (that contains personal data) by a Network Service Provider thus does not impose additional liability on it, provided that such caching is carried out for the purpose of its service of merely providing access to the third party material.

- 6.2 Section 13(b) of the PDPA provides that an organisation shall not, on or after the appointed day, collect, use or disclose personal data about an individual without the consent of the individual unless the collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under the PDPA or any other written law.

- 6.3 Section 19 of the PDPA provides that notwithstanding the other provisions of Part IV of the PDPA, an organisation may use personal data collected before the appointed day for the purposes for which the personal data was collected, unless consent for such use is withdrawn or the individual has indicated to the organisation that he does not consent to the use of the personal data. Such 'use' could include disclosure that is necessarily part of the organisation's use of such personal data. To be clear, in using or disclosing the personal data, an organisation should still consider what a reasonable person would consider appropriate in the circumstances. It should also be noted that the Do Not Call Provisions will apply to the sending of specified messages to Singapore telephone numbers, even if the Singapore telephone numbers are collected before the appointed day.

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