

PRACTICAL GUIDANCE TO QUERIES BY EDUCATION INSTITUTION

- 1 An Education Institution (the “Institution”) sought clarifications from the Personal Data Protection Commission (the “Commission”) on the “public interest” requirement for the research purpose exception under the Personal Data Protection Act (“PDPA”) in respect of the types of research conducted by the Institution.
- 2 The Institution asked whether research conducted for Government agencies (i.e., Ministries or Statutory Boards) would be considered research that is “clearly in the public interest”. Given that research by Government agencies is funded using public monies and the Government is custodian of these public monies, Government agencies would therefore have a vested interest to protect public interest and accordingly, research conducted using public funding should be classified as “clearly in the public interest”.

“Public interest” requirement in the context of the research purpose exception

- 3 Paragraph 1(i) read with paragraph 2 of the Third Schedule of the PDPA and Paragraph 1(q) read with paragraph 4 of the Fourth Schedule of the PDPA set out the exception to the use and disclosure of personal data (respectively) without consent for a research purpose (the “research exception”). For the purposes of this guidance, the relevant requirement for the exception to apply (paragraph 2(d) of the Third Schedule and paragraph 4(d) of the Fourth Schedule) is reproduced below:

“Linkage of the personal data to other information is not harmful to the individuals identified by the personal data and the benefits to be derived from the linkage are clearly in the public interest.”

- 4 To be clear, the “public interest” requirement for the research exception is in relation to the benefits of the linkage of the personal data to other information.
- 5 On whether (a) “...it [would] then be acceptable to regard research conducted for the government, ministries or statutory boards as research that are ‘...clearly in the public interest’”, and (b) “...research conducted using public funding should be classified as clearly in the public interest”, the Commission would like to clarify the fact that the research is supported or funded by a public agency, in itself, would not necessarily satisfy the “public interest” requirement for the research exception.
- 6 Whether the intended use or disclosure of personal data satisfies the “public interest” requirement for the research exception will depend on the specific facts of the case. In making its own assessment on this issue, organisations may wish to seek the views of the public agency that is supporting or funding the particular research. Organisations would need to be able to demonstrate that the

conditions for relying on the research exception are satisfied in the event of a complaint or dispute.

Other issues relating to the application of the PDPA

- 7 Organisations which are acting on behalf of a public agency in relation to the collection, use or disclosure of personal data are excluded from the application of the Data Protection Provisions when they are so acting. However, such organisations may be subject to obligations under other laws and their contract with the relevant public agency. Such organisations also remain responsible to comply with the Data Protection Provisions in relation to other aspects of their business, for example, in relation to their employees' personal data or personal data of other customers.

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