

COVER PAGE

**SUBMISSION OF COMMENTS**  
ON  
PUBLIC CONSULTATION BY THE PERSONAL DATA PROTECTION COMMISSION  
DATED 5 FEB 2013

BY  
**CONSUMERS ASSOCIATION OF SINGAPORE**  
**(CASE)**

170 GHIM MOH ROAD #05-01  
ULU PANDAN COMMUNITY BUILDING  
SINGAPORE 279621

CONTACT PERSONS

Mr Thevanathan Pillay, Assistant Director (Legal)  
Tel: 6461 1826 / [pillay@case.org.sg](mailto:pillay@case.org.sg)

Ms Amy Ang, Deputy Head (Legal)  
Tel: 6461 1816 / [amy.ang@case.org.sg](mailto:amy.ang@case.org.sg)

## 1. Summary of Major Points

- 1.1 The Regulations and Advisory Guidelines should give equal recognition to the rights of the consumer under the Personal Data Protection Act 2012 (“PDPA”).
- 1.2 Access and Correction - within 30 days of request, or if not, by the reasonably soonest time; no charge for one request each year and a maximum fee of \$5/- when more than one request is made each year.
- 1.3 Transfer of data outside Singapore - need a provision requiring enforcement action by the local- based organisation against the violating foreign-based organisation.
- 1.4 Individuals acting for others -\_minors should be between the ages of 14 to 18, provided is aware and understands the nature of the right or power and the consequences of exercising; while guardian still has a say over the minor’s action.

## 2. Comments

### 2.1 General Comment on the Regulations and Advisory Guidelines

The Consumers Association of Singapore (CASE), after due consideration from our Consumer Law Review Committee is generally supportive of the overall Regulations and Advisory Guidelines as proposed under the Public Consultation.

(CASE in this discussion would refer interchangeably, “the individual” as used in the PDPA to mean “the consumer” and “the organisation” under the same Act to refer to “business”.)

CASE commends that the Personal Data Protection Commission (PDPC) is exercising its powers timely to make regulations (under Section 65 PDPA) and issuing advisory guidelines (under Section 49 PDPA). We note that the Commission’s stated objective is “to provide organisations with greater clarity on the provisions of the PDPA” (at page 2 paragraph 2 of Guidelines Consultation Cover Note) and also the detailed list of 9 Obligations of the Organisations under the PDPA (at Part III of the Advisory Guidelines on Key Concepts in the PDPA). However, CASE suggests that the Consultation on the Regulations and the Guideline Advisories could give equal consideration from the perspective of the rights of the consumer under the PDPA, rather than just the obligations of the organisations. After all, under Section 3 PDPA, the purpose of the PDPA “recognises both the right of individuals to protect their

personal data” balancing it out against “the need of organisations to collect, use or disclose personal data” by organisations.

Furthermore, a fundamental driving force to the PDPA (at least for the data protection provisions), is that it works on a complaints-based dynamic. In that, its data protection functions are largely dependent on individuals lodging complaints against organisations as provided for under Section 32 PDPA. Under such a kind of “complaints-driven” framework, it is only when the consumer is clear as to his rights under the PDPA that he can sufficiently exercise them – through complaint. Thus, it is necessary to empower the consumer by making clear his rights as a consumer under the PDPA in order for the meaningful and successful operation of the Act.

In essence, the Commission would render itself and the PDPA more effective through elaborating on the rights of the consumer under the PDPA and through education of the consumers.

## 2.2 Access and Correction of Personal Data

On the question as to what are the proposed positions relating to how organisations are to respond to access and correction requests. CASE supports the position that upon a request by an individual to access or correct, the organization is to provide the data within 30 days of the individual’s request, or if it is not reasonably possible, then to provide the requested personal data by the reasonably soonest time, for

which the organisation must inform the individual of when that reasonably soonest time will be within 30 days of the individual's request.

Moreover, CASE takes the view that individuals should not need to have to resort to be asking organisations for access or correction of their personal data. Organisations should in the first place, be deterred from recklessly collecting personal data of individuals without due care and diligence on the accuracy of the data. Therefore, the onus of giving prompt, ready and cheaper right of access and right of correction should be on the organisation. In principle, the administrative cost of such access and correction requests should be borne by the organisation, so CASE proposes that no charging fee should be imposed for one request each year by an individual and a maximum fee of \$5/- when more than one request is made each year. If the organisation wants to charge more than \$5/-, it has then to justify its cost before the Commission.

### 2.3 Transfer of data outside Singapore

On the question as to the requirements for contractual clauses and binding corporate rules to protect personal data transferred out of Singapore, CASE notes that it is difficult to enforce the PDPA and its regulations against third-party foreign-based organizations, which breached them.

CASE thinks that although through Section 26 PDPA, it falls on the local-based organisation's obligation not to transfer any personal data to a foreign-based

organisation unless the foreign-based organisation has a comparable standard of data protection as that of PDPA. Nevertheless, it would seem that in the event of a breach by the foreign-based organisation, the force and enforcement of the law could only lie on the local organisation, while the enforcement action against the foreign-based organisation is silent. Thus, as a matter of regulation, CASE proposes that there should be an explicit provision requiring enforcement action to be carried out by the local-based organisation against the violating foreign-based organisation - compelling the Singapore-based organization to take action against the infringing third-party foreign-based organisation, which had misused or mismanaged the data it received from the Singapore-based organization. In this regard, the contract that the Singapore-based organisation entered into with the foreign-based organisation will be required to include in their contractual terms and conditions such rights to initiate action against the foreign-based organisation to ensure compliance to our rules. Failure to include such terms and conditions will be a breach of the PDPA. What is aimed at through this is to prevent a situation where misuse or abuse of personal data has taken place, yet the actual infringing party gets off scott-free.

#### 2.4 Individuals acting for others under the PDPA

CASE thinks that the group of minors is the most critical, because many of the newer generation, who are digital natives and also are the most active online users and consumers.

Thus, on the consent age of minors, CASE agrees that it should be between the ages of 14 to 18 with the safeguard that the minor is aware and understands the nature of the right or power and the consequences of exercising such. Added to this, the guardian still has a say over the minor's action.

### 3. Conclusion

In conclusion, CASE is supportive of the Public Consultation except to urge the Commission to continue to educate the consumers on their rights under the PDPA and to include the changes as we have proposed.