

**PUBLIC CONSULTATION ISSUED BY THE PERSONAL DATA PROTECTION
COMMISSION**

**PROPOSED REGULATIONS ON PERSONAL DATA PROTECTION IN
SINGAPORE**

**SUBMISSION BY THE STARHUB GROUP TO THE
PERSONAL DATA PROTECTION COMMISSION**

1 APRIL 2013

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1. EXECUTIVE SUMMARY

StarHub welcomes the opportunity to provide feedback on the proposed regulations on personal data protection (“Proposed Regulations”) by the Personal Data Protection Commission (“PDPC”) and supports the need for legislation to keep pace with developments in the industry and market conditions.

The Proposed Regulations for the consumer data protection regime plays an important role in establishing safeguards to protect consumers’ personal data and in promoting greater consumer trust in the private sector.

The key areas of StarHub’s response to the Proposed Regulations are as follows:

- (i) The charging of fees for access requests by an organisation to the individual should be on a “reasonable” basis as opposed to a minimal fee basis. This is in line with the concept of reasonableness that is the tenet of the PDPA.
- (ii) Requests to the organisation for access or correction should only be made in accordance with the organisation’s standard form and procedures, for the reasons of certainty and efficiency.
- (iii) The enforcement of rights and powers under the PDPA should only be undertaken by individuals 18 years of age and above, to be consistent with the position in the Civil Law Act.
- (iv) The enforcement of rights and powers in the PDPA relating to the personal data of the deceased should only be exercised by the personal representative(s) of the deceased individual, to be consistent with the way the laws deals with personal property and other rights of the deceased.

StarHub is pleased to provide its comments on the Proposed Regulations in the following section.

2. COMMENTS

	SUMMARY OF PDPC'S POSITION IN THE PROPOSED REGULATIONS ON PERSONAL DATA PROTECTION IN SINGAPORE	COMMENTS
	<p><u>Question in relation to the administration of requests for access to and correction of personal data</u> Question: Do you have any views / comments on the proposed manner in which an individual may make an access or correction request or the proposed positions relating to how organizations are to respond to such requests.</p>	
1.	<p>Section 5.1 of Proposed Regulations</p> <p>In this section, the PDPC recommends that an organization shall only be entitled to charge an individual who makes an access request a minimal fee to recover incremental costs spent by the organization in responding to the access request.</p> <p>Such incremental costs will not include costs that are normally incurred in capital purchases incurred in order to provide access to the requested personal data.</p>	<p>Organisations, in particular larger organizations with more personal data, would be required to make changes to their customer relationship systems in order to comply with requests for access.</p> <p>While we agree that an individual should be charged costs on the basis of the time and effort required to respond to the request, we also suggest that individuals should be charged on the basis of “reasonable costs” as opposed to a “minimal fee”.</p> <p>The principle of “reasonable costs” will take into account the time and effort required to retrieve the amount of information as requested by the individual on a reasonable basis. This is also congruous with the entire tenet of the PDPA which rests on the concept of reasonableness. This concept of “reasonableness” should be consistent for both obligations and rights under the PDPA. It should also be noted that individuals would have recourse to the PDPC should an organization charge unreasonably for an access request.</p> <p>Accordingly, organizations should be given the ability to charge each individual requesting an access to his or her personal data a <u>reasonable fee</u> for each request made.</p>
2.	<p>Section 6.2 of the Proposed Regulations.</p> <p>In this section, the PDPC recognizes that while organizations may offer standard forms and procedures for individuals to submit access and/or correction requests, organizations should also accept requests that are made in writing or by any other manner, even if they do not comply with the standard forms made available by an organization.</p>	<p>We submit that the use of standard written forms should be used in lieu of other requests that may be made in writing by the individual. Standard written forms would be more certain and straightforward for all parties i.e. the organization that is to comply with the request and the individual. It will also allow such processes to be more efficient and effective.</p> <p>As this can be easily addressed by using the organisation’s standard forms and procedures, we suggest that all requests for access or correction should be made on the standard forms and procedures prescribed by the organization.</p>

		<p>While the use of standard forms should be the norm, we are nevertheless open to the concept of reasonableness being overlaid in respect of non-standard requests that an organization may receive from individuals. This would mean that an organisation could accept non-standard requests in reasonable circumstances. This would be consistent with the tenet of reasonableness that runs through the PDPA.</p>
<p><u>Questions in relation to individuals who may act for others under the PDPA</u> Question 1: Do you have any views / comments on the areas for which individuals may act for other individuals under the PDPA that should be prescribed? Question 2: Do you have any views / comments on the extent to which minors should be able to exercise rights and powers conferred on them under the PDPA? Question 3: In particular, do you have any views on the minimum age below which individuals should not exercise their own rights and powers under the PDPA?</p>		
3.	<p>Section 9.2 to 9.5 of the Proposed Regulations.</p> <p>In the above sections of the Proposed Regulations, the PDPC has proposed that individuals should be able to enforce rights and powers under the PDPA, if the individual is:</p> <ul style="list-style-type: none"> (a) 18 years or older; or (b) is less than 18 years of age but above 14 years of age and understands the nature of the right or power and the consequences of exercising the right or power. 	<p>We are in agreement that individuals should be able to enforce rights and powers under the PDPA should they be 18 years of age and above. This is consistent with the position taken in the Civil Law Act.</p> <p>We have concerns, however, should individuals less than 18 years of age but above 14 years of age be able also to enforce rights and powers under the PDPA. Allowing individuals between 14 and 18 years of age to be able to enforce rights and powers under the PDPA requires the subjective investigation into whether that individual understands the right or power and consequences of exercising the right or power. This may result in uncertainties and inconsistencies.</p> <p>We are of the view that this makes the execution and enforcement of the rights and powers unwieldy and may lead to inconsistent results in application.</p> <p>To avoid the above, we suggest that an objective benchmark be used for allowing enforcement of rights and powers of the PDPA, by allowing only individuals of 18 years old and above to do so. In the case of individuals below 18 years of age, as per general law, they can enforce such rights through their legal guardians or parents.</p>

		<p>The above suggestion would result in greater certainty in implementation and consistency in application. It would also remove the need for subjective assessment and judgment that may not be fair or consistent, and also reduce potential disputes and unhappiness that may arise as a result.</p>
<p><u>Questions in relation to individuals who may act for others under the PDPA</u> Question 4: Do you have any views or comments on the proposed priority list in relation to individuals that may act for deceased individuals? Question 5: In particular, do you have any views on the appropriate priority list and/or whether priority should be given equally to all relatives (or to relatives within certain categories such as spouse and children, parents and siblings, etc) for the purposes of the PDPA?</p>		
<p>4.</p>	<p>Sections 9.6 to 9.12 of the Proposed Regulations</p> <p>In the Proposed Regulations, the PDPC has suggested that in respect of personal data of deceased individuals that are protected under the PDPA, it is proposed that rights and powers in the PDPA relating to such personal data may be exercised by:</p> <ul style="list-style-type: none"> (a) The personal representative of the deceased individual ; and (b) If there is no such personal representative, the nearest relative of the deceased individual, as specified in the order of priority set out in Section 9.6. 	<p>We agree that the rights and powers in the PDPA relating to the personal data of a deceased should be rightfully exercised by the personal representative(s) of the deceased individual.</p> <p>We are concerned, however, about allowing the nearest relative as specified in the order of priority to also exercise rights and powers in the PDPA on behalf of the deceased.</p> <p>This puts on the organization the onerous requirement to ascertain who is the right person who can enforce the rights and powers in the PDPA on behalf of the deceased. This situation may become challenging where there are disputes amongst the relatives of the deceased. This would also require the organization to (i) arbitrate in the event where there is a dispute as to who should be acting on behalf of the deceased; and (ii) determine whether a nearest relative has agreed to act on behalf of the deceased in relation to the personal data of the deceased.</p> <p>To avoid any such incidents occurring, the preferred approach is for the organization to only be obliged to deal with the deceased’s executor(s) or personal administrator(s). This is consistent with the way the law deals with personal property and other rights of the deceased. The PDPA and its regulations should not prescribe more onerous rules, which are potentially difficult to implement and administer.</p>

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3. CONCLUSION

StarHub welcomes the opportunity to provide feedback on Proposed Regulations by the PDPC and supports the need for legislation to keep pace with developments in the industry and market conditions.

The key areas of StarHub's response to the Proposed Regulations are as follows:

- (i) The charging of fees for access requests by an organisation to the individual should be on a "reasonable" basis as opposed to a minimal fee basis. This is in line with the concept of reasonableness that is the tenet of the PDPA.
- (ii) Requests to the organisation for access or correction should only be made in accordance with the organisation's standard form and procedures, for the reasons of certainty and efficiency.
- (iii) The enforcement of rights and powers under the PDPA should only be undertaken by individuals 18 years of age and above, to be consistent with the position in the Civil Law Act.
- (iv) The enforcement of rights and powers in the PDPA relating to the personal data of the deceased should only be exercised by the personal representative(s) of the deceased individual, to be consistent with the way the laws deals with personal property and other rights of the deceased.

StarHub is grateful for the opportunity to comment on this matter.

StarHub Ltd
1 April 2013