



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

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

16 MAY 2014

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Part I

1 Background and Introduction

- 1.1 The Personal Data Protection Commission (the “**Commission**”) launched a public consultation on 23 January 2014 on the proposed Advisory Guidelines on the application of the PDPA to scenarios faced in the telecommunication sector (“**telecommunication guidelines**”).
- 1.2 The telecommunication guidelines aim to complement more general guidelines issued by the Commission by addressing issues and scenarios specific to the telecommunication sector.
- 1.3 The consultation closed on 13 February 2014 with six responses from consumers and organisations representing various sectors, including the telecommunication, legal and academic sectors. 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 focussed on asking the Commission to elaborate on or adjust the existing illustrations in the telecommunication guidelines, or 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 these 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 telecommunication 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 telecommunication guidelines.

¹ <http://www.pdpc.gov.sg/personal-data-protection-act/public-consultations/responses-received-on-13-february-2014>

Part II: Overview of Issues – Telecommunication Guidelines

2 Definition of personal data and provision of subscriber identity for calls or text messages

2.1 The Commission had set out the view in the proposed telecommunication guidelines 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.

Feedback received

2.2 One respondent contended that a subscriber’s telephone number (or subscriber identity-related information in general) should not be considered personal data in the first place. The respondent further noted that since telecommunication operators would not be collecting, using or disclosing personal data, the Data Protection Provisions would not apply to the provision of subscriber identity for making calls or sending messages, as well as other scenarios in the telecommunication guidelines such as roaming.

2.3 The same respondent also suggested that, should the Commission not be inclined to change its interpretation of such data as personal data, the Commission should clarify that in relation to the provision of subscriber identity, the deemed consent given by the individual would also apply to:

- a) the telecommunication network operator that receives the call or message; and
- b) interconnecting operators that use that data to provide services to their own subscribers (e.g. caller ID services to recipients of a call or message).

Telephone numbers and subscriber-related identifiers may be personal data

- 2.4 The Commission notes that whether something is personal data depends on the facts of the case. As noted in the proposed telecommunication guidelines, an individual's mobile telephone number is likely to be personal data, although it may not always be the case that it constitutes personal data in itself. Similarly, certain identifiers such as International Mobile Equipment Identity ("IMEI") numbers may be personal data in combination with other information, even if an individual cannot always be identified from that data in itself. The telecommunication guidelines are accordingly intended to set out the Commission's views when such information constitutes personal data.

Consent may be deemed for provision of subscriber identity, but alternatives to deemed consent may exist

- 2.5 In relation to the scope of deemed consent for provision of subscriber identity, the Commission notes that, under section 15(2) of the PDPA, if an individual is deemed to have given consent for disclosure of his personal data to an organisation for a purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data by that organisation for that particular purpose. Thus, where an individual subscriber is deemed to have given consent for a particular purpose (e.g. identifying the subscriber to the recipient of a call made by him), consent may be deemed to have been given to a telecommunication operator if its collection, use or disclosure is for the same purpose.
- 2.6 While consent may be deemed to have been given to the telecommunication operators that would enable the subscriber identity to be sent, the Commission also clarifies that there may be alternatives to relying on deemed consent. For example, in relation to connecting a call, telecommunication operators may potentially be considered data intermediaries ("Dis") processing personal data pursuant to a contract evidenced or made in writing, and not be subject to the Consent Obligation in the first place. In addition, consent may also have actually been given², negating the need for it to be deemed. Finally, consent may not be required if the purpose for collection, use or disclosure of the personal data falls within an exception, such as when it is required or authorised under written law.
- 2.7 The Commission has made the clarifications above in the finalised telecommunication guidelines.

² For example, if a subscriber had given consent at the point of signing up.

3 Obtaining clear and unambiguous consent in evidential form from prepaid mobile subscribers

Feedback received

- 3.1 Two respondents noted that there may be practical difficulties in obtaining clear and unambiguous consent in evidential form from subscribers to prepaid mobile services, and suggested that the Commission permit mobile operators to send messages to obtain such consent from these subscribers.

Options available to mobile operators

- 3.2 The Commission is aware that mobile operators may face challenges in obtaining clear and unambiguous consent in evidential form from prepaid mobile subscribers due to factors such as the lack of direct interaction with these subscribers. However, the Commission also recognises that mobile operators may have various options to overcome this problem, such as entering into arrangements with resellers to obtain consent on the mobile operators' behalf. The Commission has amended the telecommunication guidelines to illustrate this.

4 Application of Data Protection Provisions to bill inserts or advertisements

Feedback received

- 4.1 One respondent suggested that the Commission clarify its position regarding the application of the Data Protection Provisions to advertisements included as inserts in bills and promotional messages printed on bills themselves. The same respondent proposed that such messages should not constitute a use of personal data as they are generally not targeted at any specific individuals.

Inclusion of advertisements may constitute a use of personal data

- 4.2 Generally, the Commission considers that an organisation that packages advertisements for specific products or services together with bills that are addressed to an identifiable individual (whether as an insert, or as a message printed on the bills themselves), to have used personal data for advertising purposes, even if the advertisements themselves are not addressed to the individual. Correspondingly, the Data Protection Provisions will apply to such use. Among other things, when an individual withdraws consent under the PDPA for such purposes, the organisation would need to allow and facilitate such withdrawal. The Commission has set out this treatment in a new scenario in the finalised telecommunication guidelines.

5 Other issues

Consent for updated personal data

- 5.1 One respondent sought clarity on the treatment in relation to consent for collection, use and disclosure of personal data in the event that an individual customer changes his personal data (such as a change in NRIC or address).
- 5.2 The Commission clarifies that consent should be obtained in relation to the purpose(s) for collection, use or disclosure of personal data. Generally, where organisations have already obtained consent for the collection, use or disclosure of personal data for a particular purpose, the Commission does not expect organisations to obtain separate consent in respect of each specific item of personal data, or each instance that personal data is collected, used or disclosed for that purpose.

Information which may become personal data

- 5.3 One respondent suggested that the Commission provide more specific guidance on when information may become personal data in the telecommunication context. Another suggested that the Commission clarify the extent of due diligence organisations are expected to perform to comply with the PDPA, especially in relation to publicly available information that may result in an individual being identified.
- 5.4 While the Commission understands organisations' desire for clarity, the probability of a set of information being personal data is highly context-specific. It would thus be challenging to provide a meaningful standard for when information would become personal data, or the expected amount of due diligence to be done by organisations. The Commission would however encourage organisations to refer to guidance on re-identification risks in the chapter on anonymisation in the Advisory Guidelines on the PDPA for Selected Topics for more information on applicable considerations.

Whether resellers of mobile pre-paid cards are DIs

- 5.5 One respondent noted that mobile pre-paid cards are provided by a wide range of resellers, and suggested that the Commission clarify when resellers of mobile pre-paid cards are DIs.
- 5.6 The Commission is cognisant that there are a variety of resellers of mobile pre-paid cards. A particular reseller would be a DI subject to only the Protection Obligation and Retention Limitation Obligation if the arrangements between the reseller and the telecommunication operator result in the reseller processing personal data on behalf of and for the purposes of the

telecommunication operator, pursuant to a contract made or evidenced in writing.

Express requirement or authorisation under other laws

- 5.7 One respondent proposed that the Commission clarify in the telecommunication guidelines that express statements in regulatory codes to which telecommunication operators are subject would supersede PDPA requirements in relation to “consent, use and disclosure of personal data”.
- 5.8 The Commission agrees that such clarity would be beneficial and has set out in the finalised telecommunication guidelines that organisations may collect, use or disclose personal data if required or authorised under written law. In the case of telecommunication operators, this would include regulatory frameworks issued pursuant to the Telecommunications Act that set out certain purposes for which telecommunication operators may collect, use or disclose End User Service Information, some of which qualify as personal data, without consent.

Personal data to be provided pursuant to access/correction requests

- 5.9 Some respondents requested guidance on the personal data to be provided pursuant to an access request, or personal data that could be corrected pursuant to a correction request. One respondent commented that this would help telecommunication operators avoid retaining unnecessary information on grounds that a customer may ask to sight this information. There were also suggestions to prescribe the set of personal data to be provided in response to an access or correction request; and limit the personal data that customers may access and/or correct.
- 5.10 To be clear, the Access and Correction Obligation applies to personal data that is within the control or possession of the organisation. Providing a standard list of personal data in response to an access request may thus not comply with the Access and Correction Obligation. The Commission also clarifies that organisations need not retain personal data solely for the purpose of fulfilling access or correction requests. Organisations may wish to refer to the guidance on the Access and Correction Obligation to better understand how to comply with the Access and Correction Obligation.

Disclosure of names of organisations to which personal data has been disclosed

- 5.11 One respondent suggested that the Commission clarify that the Access and Correction Obligation does not require an organisation to disclose (pursuant to an access request) the names of the specific organisations to whom the personal data has been disclosed to, as doing so may result in a breach of

confidentiality clauses in telecommunication operators' contractual agreements. Instead, the respondent proposed that it would suffice for telecommunication operators to reveal categories of organisations to individuals making an access request.

- 5.12 The Commission notes that section 4(6)(a) of the PDPA provides that the performance of a contractual obligation shall not be an excuse for contravening the PDPA. Among other things, the Access and Correction Obligation requires that organisations inform individuals of the ways in which their personal data has been, or may have been, disclosed. To this end, in responding to a request for the organisations to whom personal data has been disclosed, an organisation may, in many cases, provide a standard list of third parties to whom the personal data of the individual making the request may have been disclosed, as an alternative to providing the specific set of third parties to whom the individual's personal data has been disclosed. An organisation should individually identify each possible third party, instead of simply providing general categories of organisations, so as to enable the individual to directly approach the third party organisation to which his personal data has been disclosed. Depending on the particular case, there may also be applicable exceptions to the Access and Correction Obligation. In particular, the PDPA provides that an organisation is not required to provide information in respect of personal data which, if disclosed, would reveal confidential commercial information that could, in the opinion of a reasonable person, harm the competitive position of the organisation. The Commission's guidance on the Access and Correction Obligation provides more clarity on these issues.

Application of Transfer Limitation Obligation to outbound roaming

- 5.13 Several respondents highlighted challenges that mobile operators may face in complying with the Transfer Limitation Obligation with respect to outbound roaming, such as:
- a) The high number of roaming agreements that each operator has; and
 - b) The typical practice of basing roaming agreements on GSMA standard forms.
- 5.14 Some respondents further proposed that mobile operators be exempt from the Transfer Limitation Obligation in relation to outbound roaming.
- 5.15 The Commission notes that the comments were based on the plain reading of the Transfer Limitation Obligation in the PDPA. The Commission has since published guidance on the Transfer Limitation Obligation which is based on the Personal Data Protection Regulations 2014 ("**Data Protection**

Regulations³). Among other things, the Data Protection Regulations set out in detail the permitted transfers of personal data that an organisation may carry out, which includes transfers necessary for the performance of a contract between the individual and the organisation. The Commission trusts that this addresses the concerns raised by respondents with regard to the application of the Transfer Limitation Obligation to outbound roaming.

Exception for telecommunication service providers in section 36(2)

- 5.16 One respondent asked the Commission to clarify that telecommunication operators who are required by their customers to send messages based on criteria selected by the customer, such as customers within a particular location or vicinity, will fall within the ambit of section 36(2) of the PDPA³.
- 5.17 The Commission had previously set out its view on the applicability of section 36(2) to an organisation in the Guidance Note on Telecommunications Service Providers who Merely Provide a Service that Enables a Specified Message to be Sent⁴ (“Guidance Note”). The Guidance Note set out (among other things) that the organisation can be considered a telecommunications service provider who merely provides a service that enables a specified message to be sent, based on information provided by the organisation⁵. Organisations are encouraged to refer to the Guidance Note for more details.

³ Section 36(2) provides that, for the purposes of Part IX of the PDPA, a telecommunications service provider who merely provides a service that enables a specified message to be sent shall, unless the contrary is proved, be presumed not to have sent the message and not to have authorised the message to be sent.

⁴ [http://www.pdpc.gov.sg/docs/default-source/informal-guidance/gn-on-telecommunications-service-providers-who-merely-provide-a-service-that-enables-a-specified-message-to-be-sent-\(2\).pdf?sfvrsn=0](http://www.pdpc.gov.sg/docs/default-source/informal-guidance/gn-on-telecommunications-service-providers-who-merely-provide-a-service-that-enables-a-specified-message-to-be-sent-(2).pdf?sfvrsn=0)

⁵ The organisation provided information such as:

- a) The organisation delivers Short Message Service (“**SMS**”) messages on behalf of its customers to the end users of those customers;
- b) The organisation maintains but does not generate nor have ownership of, nor control over, the lists of recipients of the messages. These lists are obtained from the organisation’s customers; who compile, upload and have control of these lists. The organisation has no input into the substantive message content. The organisation does not decide when messages should be sent to customers’ end-users and does not initiate or authorise the sending of the message. The organisation’s only role is to run the platform and maintain its availability to the customers;
- c) The organisation has represented to PDPC that these services fall within the scope of its Services-Based Operator (“**SBO**”) licences, issued under the Telecommunications Act (Cap 323); and
- d) The organisation does not perform any marketing through SMS messages on its own account and simply transmits messages on behalf of its customers.

Application of Exemption Order and Data Protection Provisions

- 5.18 One respondent sought clarification on whether the Exemption Order would continue to apply when the Data Protection Provisions in Parts III to VI of the PDPA come into force from 2 July 2014.
- 5.19 The Commission clarifies that the Data Protection Provisions and the Do Not Call Provisions will operate in conjunction when both are in force. The Exemption Order (which relates to the Do Not Call Provisions) will also continue to apply from 2 July 2014.

Requests for more examples

- 5.20 Some respondents requested that the Commission provide more examples, including examples of messages that would not be considered specified messages.
- 5.21 The Commission agrees that generally, having examples would facilitate organisations' understanding of the PDPA. The Commission has added supplementary examples to illustrate novel issues that arose from this consultation, and re-organised the finalised telecommunication guidelines to give more prominence to the examples given. However, the Commission has not provided more examples of messages that would not be specified messages as there are already several examples that may be applicable to the telecommunication context within the Advisory Guidelines on Key Concepts in the PDPA and the Advisory Guidelines on the Do Not Call Provisions.

Part III

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
 - Briefing sessions and workshops conducted by the Commission 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.