



**RESPONSE TO FEEDBACK ON THE PUBLIC CONSULTATION ON PROPOSED DATA
PORTABILITY AND DATA INNOVATION PROVISIONS**

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PART I: INTRODUCTION AND BACKGROUND

- 1.1 The Personal Data Protection Commission (the “PDPC”) launched a public consultation on 22 May 2019 on the proposal to introduce provisions on data portability and data innovation under Singapore’s Personal Data Protection Act 2012 (“PDPA”).
- 1.2 In the public consultation, PDPC considered the introduction of a Data Portability Obligation under the PDPA. PDPC also considered the introduction of provisions in the PDPA to clarify that organisations can use personal data (collected in compliance with the Data Protection Provisions of the PDPA) for “business innovation purposes”.
- 1.3 These proposals are part of the PDPC’s review of the PDPA.
- 1.4 The public consultation closed on 17 July 2019 with 44 responses, mostly from organisations (including business associations) from various sectors. Please refer to the PDPC’s website for the full list of respondents and their submissions¹. The PDPC thanks all respondents for the comments submitted to the public consultation.
- 1.5 This note summarises the key matters raised by respondents in this public consultation with respect to the introduction of the proposed provisions on data portability and data innovation. PDPC’s responses and proposed positions, taking into consideration the comments received, are also provided in this note.

¹ Available at <https://www.pdpc.gov.sg/legislation-and-guidelines/public-consultations/responses-received-on-17-july-2019>.

PART II: PROPOSED DATA PORTABILITY OBLIGATION

2 Proposed Data Portability Requirement

- 2.1 In the public consultation, PDPC proposed the introduction of a Data Portability Obligation in the PDPA. Under the proposed obligation, an organisation must, at the request of the individual, provide the individual's data that is in the organisation's possession or under its control, to be transmitted to another organisation in a commonly used machine-readable format.
- 2.2 The proposed Data Portability Obligation would apply to organisations² that are covered by the PDPA's Data Protection Provisions³. In addition, the proposed Data Portability Obligation would not apply to a data intermediary⁴ in relation to data that it is processing on behalf and for the purposes of another organisation.
- 2.3 PDPC also proposed that organisations would only be required to transmit data to receiving organisations that have a presence in Singapore. While organisations will not be required to transmit data to overseas organisations, they may choose to accede to data porting requests to transmit data to overseas organisations on a voluntary basis.

Feedback received

- 2.4 Majority of the respondents did not object to the proposal for the Data Portability Obligation to apply to organisations that are presently covered by the PDPA's Data Protection Provisions. Several respondents were supportive of the proposal not to make it a requirement for organisations to port data to a receiving organisation that does not have a presence in Singapore. Respondents also sought clarification on organisations that have a presence in Singapore, and whether the porting or receiving organisation should determine this.

PDPC's response

- 2.5 PDPC intends to introduce a Data Portability Obligation in the PDPA, which would require organisations to transmit, at the request of the individual, his or her data that is in the organisation's possession or under its control, to another organisation in a

² The PDPA defines an organisation as "any individual, company, association or body of persons, corporate or unincorporated, whether or not formed or recognised under the law of Singapore; or resident, or having an office or a place of business, in Singapore".

³ Section 4(1) of the PDPA.

⁴ The PDPA defines a data intermediary as "an organisation which processes personal data on behalf of another organisation but does not include an employee of that other organisation". A data intermediary does not include an employee.

commonly used machine-readable format. PDPC clarifies that under the proposed obligation, organisations are only required to transmit the data to the receiving organisation, and are not required to provide a copy of the data to the individual. This promotes the objective of data portability, which is to facilitate movement of consumer data from one service provider to another, so that consumers are better empowered to try out or move to new or competing service offerings. This also differentiates the Data Portability Obligation from the current Access Obligation⁵, which is intended to allow individuals to access and verify their personal data in an organisation's possession or under its control, and how their personal data has been used by the organisation. PDPC will be issuing Advisory Guidelines on how individuals may request for a copy of their personal data in commonly used machine-readable format under the Access Obligation.

- 2.6 PDPC intends to retain the proposed scope of application of the Data Portability Obligation to organisations covered by the PDPA's Data Protection Provisions. The Data Portability Obligation will also not apply to data intermediaries in relation to the data they process on behalf and for the purposes of another organisation.
- 2.7 As intimated in the public consultation, organisations that have a presence in Singapore refer to those that are either formed or recognised under the law of Singapore, or having a place of business, in Singapore. In general, the porting organisation will have to make a determination of whether a receiving organisation has a presence in Singapore. Limiting the obligation to port to organisations with a presence in Singapore balances the objective of enabling greater data flows in the Digital Economy with the need to reduce compliance costs for organisations.

3 Covered Data

- 3.1 In the public consultation, PDPC proposed that the Data Portability Obligation would apply to data held in electronic form that is:
- (a) provided by the individual to the organisation ("**user provided data**"); and
 - (b) generated by the individual's activities in using the organisation's product or service ("**user activity data**").
- 3.2 PDPC proposed that such data to be ported should not be limited to the definition of "personal data" under the PDPA. PDPC also proposed for business contact

⁵ Section 21 of the PDPA.

information⁶ to be covered by the Data Portability Obligation, which supports the purpose for individuals providing such data, which is to facilitate business activities.

- 3.3 PDPC also proposed to provide for exceptions to the Data Portability Obligation that are similar to the current exceptions to the Access Obligation. This is to ensure consistency such that where an organisation is not required to provide access to an individual's personal data under the Access Obligation, it would also not be required to transmit the data to another organisation pursuant to the Data Portability Obligation. Recognising the need to ensure that the Data Portability Obligation does not unduly impact organisations' incentive to innovate and their competitive advantage, PDPC proposed providing an exception to the Data Portability Obligation for data which, if disclosed, would reveal confidential commercial information that could harm the competitive position of the organisation. This is similar to the current exception to the Access Obligation under the PDPA. In addition, PDPC proposed a new exception to the Data Portability Obligation for "derived data", which refers to new data element that is created through the processing⁷ of other data by applying business-specific rules.

Feedback received

- 3.4 Several respondents suggested excluding "user provided data" from the scope of the proposed Data Portability Obligation, since individuals can easily provide such data to organisations. On "user activity data", some respondents highlighted the potentially large volume of such data, and that porting such data would incur significant compliance costs.
- 3.5 Many respondents sought further clarification as to the types of data that would be covered under the Data Portability Obligation. Respondents suggested further reducing the scope of the Data Portability Obligation. For example, some respondents suggested limiting it to individuals with whom the porting organisation has an existing and direct business relationship, as well as data that was collected directly from individuals with their consent. Others suggested excluding structured data, historical data of up to one year prior to the date of request, or non-sensitive data. Several respondents requested for greater clarity on the circumstances where an organisation may reject a data porting request. There were suggestions to include the following as grounds for rejection where the porting organisation is unable to

⁶ Business contact information is defined in the PDPA as "an individual's name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his personal purposes".

⁷ Processing is to be defined broadly to include the use of any mathematical, logical, statistical, computational, algorithmic, or analytical methods.

verify the identity of the requesting individual, and where the receiving organisation does not have sound data protection policies and practices.

- 3.6 Several respondents highlighted concerns with the disclosure of third parties' personal data as part of the data ported, without the consent of those third parties. Some respondents also queried how data porting requests made by an individual on behalf of another individual would be handled, such as in cases of joint account holders, supplementary credit card holders, insured parties and executors of estates.
- 3.7 There was general agreement by respondents with the proposal to exclude derived data and data which, if disclosed, would reveal confidential commercial information that could harm the competitive position of the organisation, from data porting. Respondents also sought further clarity and examples on what constitutes such data.

PDPC's response

- 3.8 Taking into consideration the feedback received, PDPC intends to reduce the scope of data covered by the Data Portability Obligation to user provided and user activity data of individuals with whom the porting organisation has a direct and existing relationship. The Data Portability Obligation will apply to personal data held in electronic form by the organisation, but will not apply to personal data that was collected in reliance on an exception to the consent requirement⁸. PDPC also intends to cover business contact information, as there is value for both individuals and receiving organisations for such data to be portable.
- 3.9 PDPC intends for the Data Portability Obligation to apply only to data categories prescribed in suitable regulatory instruments issued by PDPC (see section 6 on Codes of Practice). Having a fixed, standard set of data categories ("**white-listed dataset**") that organisations would be required to port will reduce compliance costs and provide clarity and certainty for organisations to comply with the Data Portability Obligation. PDPC intends to issue such regulatory instruments incrementally in consultation with industry stakeholders, each prescribing different white-listed datasets along with specific requirements for porting of the white-listed dataset.
- 3.10 PDPC intends to retain the proposed exceptions, including the exceptions for confidential commercial information and derived data. As highlighted in the public consultation, the intent of these exceptions is to encourage business innovation and ensure "first movers" which bring to market innovative products/services are not prejudiced by the Data Portability Obligation and subject to unfair competition from "fast followers". PDPC will provide further guidance and examples of such data in the Advisory Guidelines to provide clarity for organisations. On the proposed exception

⁸ It would not apply to personal data that was collected without consent where required or authorised under the PDPA (e.g. an exception to the consent requirement applies) or other law.

for instances where the burden or expense of porting the requested data would be unreasonable to the organisation, PDPC clarifies that this can include situations where it is not technically feasible to port the requested data. In view of the feedback received, PDPC also intends to include an exception for circumstances where the porting organisation is unable to verify the requesting individual's identity.

- 3.11 In relation to third parties' personal data, PDPC intends to allow the porting of third parties' personal data with appropriate safeguards in place, so that the Data Portability Obligation is balanced, reasonable and pragmatic. For instance, data on an individual's transactions may contain personal data of third parties with whom the individual transacted. It would be impractical for the receiving organisation to obtain consent from every third party and onerous for organisations to redact all personal data of third parties who have not provided their consent.
- 3.12 Organisations need not obtain consent from the third party whose personal data is to be ported as a result of an individual's data porting request. However, PDPC intends to include safeguards such that the porting organisation will need to ensure (i) the requested data is under the control of the individual; (ii) the data porting request is for the individual's own personal or domestic purposes⁹; and (iii) the third party's personal data is collected for the purpose of providing the product or service which the individual had given consent (or is deemed to have given consent) for, and not for any other purposes (e.g. direct marketing to the third party).
- 3.13 To address concerns over complications arising from requests made on behalf of another individual, PDPC clarifies that the requesting individual should be the authorised party to the contract for the provision of the product or service (e.g. main account holder, insurance policy owner).

4 Handling Data Portability Requests

- 4.1 In the public consultation, PDPC consulted on the proposed responsibilities of porting organisations in receiving, handling and responding to a data porting request.

Feedback received

- 4.2 Some respondents raised the need for clear limits of liability for porting organisations in discharging their obligations, and sought clarity on the liability for data breaches arising from the porting of data, as well as the accuracy¹⁰ of data ported to another organisation. Some respondents suggested that the porting organisation should not

⁹ Exception 1(m) of the Second Schedule provides that consent is not required to collect personal data that was provided to the organisation by another individual to enable the organisation to provide a service for the personal or domestic purposes of that other individual.

¹⁰ Section 23 of the PDPA.

be required to transmit the data to a receiving organisation, but should provide the data directly to the individual, who may then provide the data to another organisation.

- 4.3 Several respondents highlighted that the proposal to allow individuals to view and remove data to be ported would add to the complexity and costs of compliance (e.g. having to convert the data to a format which the requesting individual can view), especially if the data is voluminous. Furthermore, allowing the requesting individual to remove specific data for porting could compromise data integrity, which could lead to potential legal issues.
- 4.4 On the charging of fees for data porting, several respondents sought clearer guidance, with suggestions for PDPC to provide a baseline or range of fees that organisations may charge the individual or the receiving organisation to port the requested data. Some respondents also proposed that fees should be paid upfront, and for fees to be chargeable even if the data porting request is subsequently withdrawn as some costs would have been incurred in processing the request.
- 4.5 On the proposal for data porting to be done within a reasonable period and a proposed timeframe of up to seven days to be prescribed in Regulations, several respondents felt that the seven-day timeframe was too short, and suggested a timeframe of up to 30 days to align with the Access Obligation.
- 4.6 Most respondents agreed with the proposal to adopt open, easily accessible and affordable formats for data porting. A few respondents requested that PDPC prescribe the formats and standards for the transmission and security of the data, while some respondents agreed with PDPC's approach not to prescribe specific data formats to allow flexibility. Some respondents also highlighted concerns that implementing interoperable systems for data porting would be costly.
- 4.7 On PDPC's proposal to require porting organisations to preserve the requested data upon receiving a data porting request and after rejecting the request, some respondents noted that it would not be feasible to require the preservation of the data for long periods of time.
- 4.8 Several respondents suggested that the receiving organisation should confirm with the requesting individual which fields of the ported data it would retain or delete. However, respondents noted that the receiving organisation would not be able to verify the completeness of the data ported. Some respondents also suggested that there should be an agreed timeline for the porting organisation to address any issues with the ported data (e.g. incomplete or corrupted data).

PDPC's response

- 4.9 Taking into consideration the feedback received, PDPC will not require porting organisations to introduce an additional step for the purpose of allowing individuals to verify the data before it is ported. PDPC will also not require porting organisations to take additional steps to verify the accuracy of data before it is ported, since the disclosure is subject to a new legal obligation (i.e. the Data Portability Obligation). The receiving organisations are already subject to the Accuracy Obligation for the ported data they receive. They will need to have policies and practices to ensure accuracy of the ported data they are likely to use to make decisions that affect the individuals.
- 4.10 On the issue of the porting organisation's responsibility and liability for breaches of ported data, PDPC clarifies that receiving organisations would be treated as having collected personal data that they receive from a data porting request. The Data Protection Provisions will apply to the copy of the personal data that is now in their possession or under their control. They will have to ensure that the personal data that they have received is protected, kept accurate and used for purposes that have been notified, amongst other obligations.
- 4.11 On the charging of fees, PDPC does not intend to prescribe the fees that organisations may charge for data porting, but will provide guidance in Advisory Guidelines. As to the formats for data porting, PDPC clarifies that open data formats, security standards and transmission protocols will be covered in the regulatory instruments (see section 6 on Codes of Practice). PDPC will also take the feedback into consideration and determine the appropriate timeframe for data porting to be prescribed in the regulatory instruments in consultation with relevant industry stakeholders.
- 4.12 On the preservation of requested data, PDPC intends to retain the proposal to require organisations to preserve the requested data upon receiving a data porting request, for a period of minimally 30 calendar days after porting the data or after rejecting the request. An organisation that rejects a data porting request will further need to preserve the requested data until the individual has exhausted his right to apply for a reconsideration request to PDPC and appeal to the Data Protection Appeal Committee. The minimal preservation period allows receiving organisations to resolve any issues with the ported data, as well as for PDPC to review the rejection of the request should the individual submit an application for review. Retention of ported data by the porting organisation after this period will depend on the circumstances. For example, the individual may continue his relationship with the porting organisation or the porting organisation has valid legal or business purposes to justify further retention.

4.13 PDPC also clarifies that organisations should not retain data just in case an individual may request to port his or her data. The Data Portability Obligation should not be relied on as a legal purpose to justify retention under the Retention Limitation Obligation.

4.14 Upon receiving the ported data, the receiving organisation should check that it can access the data ported, and the data fields requested are complete. If it has any issues receiving or accessing the data, it should contact the porting organisation as soon as practicable, and the porting organisation should seek to address any issues with the ported data within a reasonable period.

5 Power to Review

5.1 In the public consultation, PDPC proposed that the PDPA will provide PDPC with powers to review an organisation's (i) refusal to port data; (ii) failure to port data within a reasonable time; and (iii) fees for porting data, pursuant to an individual's data porting request. PDPC also proposed for PDPC to be empowered to direct a porting organisation to suspend transmission of data in certain circumstances where porting of data may not be desirable.

Feedback received

5.2 Most respondents were supportive of the proposed powers to review.

PDPC's response

5.3 PDPC intends to retain the proposal to provide for the power to review organisations' refusal to port data, failure to port data within a reasonable period, and the fees for porting data.

6 Codes of Practice

6.1 In the public consultation, PDPC noted that certain industries and sectors may have more specific requirements and standards for the porting of data requested by individuals. PDPC thus proposed to introduce the power for PDPC to prescribe binding Codes of Practice for data portability that may apply to organisations in specific clusters or sectors. The proposed Codes of Practice were to be issued as subsidiary legislation under the PDPA and would be legally binding.

Feedback received

6.2 Several respondents sought clarification as to the specific sectors which would be bound by the proposed Codes of Practice. Some raised concerns that organisations may be bound by more than one Code of Practice, while others were concerned that

different Codes of Practice would not be aligned, resulting in differing standards of protection when data is ported across sectors. Some respondents sought clarity over the interaction between Codes of Practice and other laws. Respondents also raised concerns that minimum standards may not be in place if the Codes of Practice are only issued after data portability provisions come into force.

PDPC's response

- 6.3 The Data Portability Obligation will come into effect in phases through the issuance of Codes of Practice or similarly suitable regulatory instruments (collectively termed “**Regulatory Instruments**”). The phased approach will allow PDPC to introduce Regulatory Instruments based on industry needs and readiness. This also ensures that there are clear requirements and standards for data porting and provides implementation clarity for organisations which are required to comply with the Data Portability Obligation.
- 6.4 PDPC intends for the Data Portability Obligation to apply only to white-listed datasets covered under the Regulatory Instruments. White-listed datasets will be identified jointly with industry stakeholders and any relevant sectoral regulators. The Regulatory Instruments are not intended to be sector-specific but to apply to any organisations that have the white-listed dataset in their possession or under their control.
- 6.5 PDPC intends for each Regulatory Instrument to cover the following matters, tailored as required to the white-listed dataset:
- (a) The white-listed dataset covered under the Data Portability Obligation. For example, consumer spending history could include data on purchases and payments, and utilities consumption history could include data such as mobile data usage and electricity utilisation. Having a well-defined set of data categories will reduce compliance costs and provide certainty for individuals and organisations on the data to be ported under the Data Portability Obligation.
 - (b) The technical and process details to ensure the correct data is transmitted safely to the right receiving organisation, and in a usable form. These will include the data porting request model (see paragraph 6.5(c) below), porting timeframe, data formats, transmission protocols, authentication protocols and cybersecurity standards, to enable interoperability between organisations porting and receiving the data.
 - (c) Arising from discussions with stakeholders during the consultation period, PDPC anticipates that there may be two data porting request models.

Consumers can either make the data porting request directly to the porting organisations (“**push model**”) or through the receiving organisations (“**pull model**”).¹¹ These models serve different scenarios or business models, and a preferred model may be suggested in each Regulatory Instrument, as determined jointly with the industry and any relevant sectoral regulator when developing the Regulatory Instrument.

- (d) Safeguards for individuals, tailored to the risks associated with the white-listed dataset, may be prescribed. This could include measures to protect consumers (e.g. cooling off periods to provide time for consumers to change their mind and retract a porting request¹²) and measures to reduce risks to the ecosystem (e.g. establishment of a blacklist of organisations that porting organisations may justifiably refuse to port data to). The consumer safeguards will be determined jointly with the industry and any relevant sectoral regulator when developing the Regulatory Instrument.

6.6 PDPC will work with the industry to pilot, test and fine-tune the mechanisms and processes before finalising each Regulatory Instrument. PDPC expects that each Regulatory Instrument will be periodically reviewed and updated to keep abreast of technology advancements and development in industry practices. Additionally, PDPC will work with consumer groups to develop user experience guidelines to make data porting easy, safe and consistent for consumers.

¹¹ An example of the pull model is when an individual wishes to use a new service. The new service provider explains to him the categories of data required, how it will be used and where it can be ported from. The individual proceeds to authorise the new service provider (i.e. receiving organisation) to make the porting request on his behalf. The push model may be appropriate if there is an established industry practice for a standard set of data to be pushed to the receiving organisation.

¹² This is because data, once received and commingled with other data of the individual, is difficult to extract and expunge.

PART III: PROPOSED DATA INNOVATION PROVISIONS

7 Proposed Data Innovation Provisions

7.1 In the public consultation, PDPC proposed to introduce provisions to clarify that organisations may use personal data without having to obtain consent for “business innovation” purposes of (i) operational efficiency and service improvements; (ii) product or service development; or (iii) knowing customers better. Such purposes would be considered business purposes for which retention of the personal data may be necessary.

Feedback received

7.2 Most of the respondents were supportive of the proposals to clarify the use of personal data for “business innovation” purposes, which PDPC now refers to as “business improvement” purposes. Some respondents sought clarity on how the provisions would operate alongside the proposed “legitimate interests” exception.

PDPC’s response

7.3 PDPC intends to retain the proposal to provide for use of personal data without consent for “business improvement” purposes as outlined in the public consultation. PDPC intends to provide for this as an exception to the consent requirement under the PDPA. As proposed in the public consultation, the exception for “business improvement” purposes will only be for use of personal data, and not for collection or disclosure. This is intended to enable organisations to harness the data they hold to improve business efficiency, product and service development to better meet consumers’ needs. PDPC will provide further clarification on the scope of the proposed exception for “business improvement” purposes and how it will operate with the exception for research purpose and the proposed “legitimate interests” exception through Advisory Guidelines.

8 Access and Correction of Derived Personal Data

8.1 In the public consultation, PDPC proposed that organisations need not, upon the individual’s request, provide the individual with derived personal data¹³ or correct derived personal data about the individual that is in the possession or under the control of the organisation¹⁴. However, organisations would still be required to provide the individual with information about the ways in which the derived personal

¹³ Section 21(1)(a) of the PDPA will not apply to derived data.

¹⁴ Section 22 of the PDPA will not apply to derived data.

data has been or may have been used or disclosed by the organisation within a year before the date of the request¹⁵.

Feedback received

- 8.2 Most respondents supported the exclusion of derived personal data from the Access and Correction Obligations. Some respondents also suggested excluding derived personal data from the Accuracy and Retention Limitation Obligations, while other respondents were concerned that the use of inaccurate derived personal data may result in adverse impact on individuals.

PDPC's response

- 8.3 In view of the feedback, PDPC intends to retain its proposal to exclude derived personal data from the requirement¹⁶ under the Access and Correction Obligations to provide the individual with access to or to correct derived personal data at the individual's request. While organisations should be able to use personal data to derive new insights and information about the individual, PDPC notes that such derived personal data can be used in ways that affect the individual. PDPC intends for the Accuracy and Retention Limitation Obligations to continue to apply to derived personal data, as these obligations are necessary to safeguard individuals' interests. Organisations must therefore make reasonable effort to ensure that such data is accurate if it is likely to be used by the organisation to make a decision that affects the individual, or disclosed to another organisation. Organisations should also cease to retain such personal data when it is no longer necessary for any legal or business purposes, as retaining personal data for an indeterminate period increases the risk of a breach of the Data Protection Provisions.

¹⁵ Section 21(1)(b) of the PDPA.

¹⁶ Section 21(1)(a) of the PDPA.

PART IV: CONCLUSION

- 9.1 This is the third public consultation that PDPC has conducted for the review of the PDPA. The PDPC will continue to solicit feedback and views on other key areas of review where needed.
- 9.2 Once again, PDPC thanks all respondents for their comments and submissions to this public consultation.

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