

# **GUIDANCE NOTE ON APPLICATION OF THE PERSONAL DATA PROTECTION ACT 2012 TO ISSUES AND CIRCUMSTANCES RAISED BY A CREDIT BUREAU**

## **1. INTRODUCTION**

- 1.1 This document responds to a request from a credit bureau for informal guidance in relation to its handling of personal data in a particular situation, and highlights measures that the Applicant (and other organisations in a similar position) may take to better ensure compliance with its obligations under the Personal Data Protection Act 2012 (Act 26 of 2012) (hereinafter referred to as the “**PDPA**”).
- 1.2 The purpose of this document is to provide clarity on the application of the PDPA only. This document does not serve as an opinion of the Personal Data Protection Commission (hereinafter referred to as “**PDPC**”) or legal advice on whether the Applicant is in compliance with the Act. The Applicant and any other organisations referring to this document should seek appropriate advice, which may include professional legal advice, to ensure that they are in compliance with the PDPA.
- 1.3 The PDPC has issued several Advisory Guidelines. The Applicant may wish to refer to these Advisory Guidelines, published on the PDPC website at [www.pdpc.gov.sg](http://www.pdpc.gov.sg), for more information on the PDPA.
- 1.4 The contents of this document may be published by the PDPC, either in full or partially, with the identity of the Applicant and any information marked as confidential by the Applicant redacted. The PDPC will notify the Applicant in advance if the contents of this document are to be published.

## **2. SUMMARY OF REQUEST AND VIEWS**

- 2.1 The Applicant has sought the views of the PDPC on whether the credit bureau exceptions in the PDPA apply to its current operations.
- 2.2 Further, the Applicant has requested for the PDPC’s views on whether it can continue to provide the following products and services:
  - (a) Collection services – where a part of the services includes blacklisting the debtors in the Applicant’s credit reports;
  - (b) Skip tracing reports – where a report discloses the contact number and addresses that the Applicant has in its database against an NRIC; and
  - (c) Individual asset searches – in which a report shows properties owned against an individual as per the Applicant’s database.

## **3. SUMMARY OF INFORMATION PROVIDED**

- 3.1 Based on the information that the Applicant has provided, the PDPC understands the following:
  - 3.1.1. The Applicant provides commercial and individual credit reports to the Applicant's members (the “**Members**”), to assist its Members in risk

assessment and credit decision-making. Members may apply for credit reports for credit evaluation or employment purposes. The Applicant also creates credit ratings for individuals based on their past history payment trends, and litigation or bankruptcy data. These credit reports are made available on an online platform that is wholly owned by the Applicant.

3.1.2. The personal data contained in the credit reports that the Applicant creates include:

- (a) Name;
- (b) Date of birth;
- (c) NRIC;
- (d) Nationality;
- (e) Income;
- (f) Spouse;
- (g) Address
- (h) Contact number;
- (i) Payment details;
- (j) Loan history;
- (k) Default data;
- (l) Litigation data; and
- (m) Bankruptcy data.

3.1.3. The Applicant obtains some publicly available information from the Government Agencies and other sources. This publicly available information includes information relating to litigation, bankruptcy and business interest.

3.1.4. The Applicant's Members are required to obtain the requisite consent from individuals for the collection of their personal data before a search is conducted through the online platform.

3.1.5. Some of the Applicant's Members contribute their consumer clients' payment data to the Applicant on a monthly basis. This payment data is then shared in the form of a credit report with other Members (who make payments to the Applicant). Consent is required from the Members' consumer clients before this payment data is contributed to the Applicant.

3.1.6. Members have to enter certain compulsory and non-compulsory data in order to generate a search from the Applicant. These fields are shared amongst the Members and they include:

## **List of Compulsory and Non-Compulsory Data**

### **Compulsory Data**

- (a) Name;
- (b) NRIC;
- (c) Date of birth;
- (d) Address; and
- (e) Contact number

### **Non-Compulsory Data**

- (a) Income;
- (b) Employment;
- (c) Spouse; and
- (d) Nationality

3.1.7. The Applicant collates personal data about business interests, litigation and bankruptcy information from various publicly available sources. Some of the other personal data that the Applicant collects is contributed by Members. Consent is required from the Members' clients before this information is contributed.

3.1.8. The Applicant collects personal data for the purposes of preventing fraud and for credit evaluation. All personal data received from Members are strictly only to be used for such purposes.

3.1.9. The Applicant provides its reports to any Member who wishes to conduct due diligence checks on an individual. Access to consumer payment data in the online platform is restricted to Members who have contributed payment data.

## **4. THE PERSONAL DATA PROTECTION PRINCIPLES**

4.1 Organisations, such as the Applicant, are required to comply with the Data Protection Provisions in Parts III to VI of the PDPA when it comes into force in 2014. When considering what they should do to comply with the Data Protection Provisions, organisations should note that they are responsible for personal data in their possession or under their control.

4.2 Once the Data Protection Provisions in the PDPA come into force on 2 July 2014, organisations will be required to comply with nine main obligations (each of which may have related obligations or sub-obligations) if they undertake activities relating to the collection, use or disclosure of personal data. Further details on these nine obligations can be obtained from the Advisory Guidelines.

## The Credit Bureau Exceptions

4.3 The PDPA provides that:

(a)	<p><i>“credit bureau” means an organisation which —</i></p> <p><i>(a) provides credit reports for gain or profit; or</i></p> <p><i>(b) provides credit reports on a routine, non-profit basis as an ancillary part of a business carried on for gain or profit;</i></p>	Section 2
(b)	<p><i>“credit report” means a communication, whether in written, oral or other form, provided to an organisation to assess the creditworthiness of an individual in relation to a transaction between the organisation and the individual;</i></p>	Section 2
(c)	<p><i>1. An organisation may collect personal data about an individual without the consent of the individual or from a source other than the individual in any of the following circumstances:</i></p> <p>...</p> <p><i>(c) the personal data is publicly available;</i></p> <p>...</p> <p><i>(k) the personal data is collected by a credit bureau from a member of the credit bureau to create a credit report, or by a member of the credit bureau from a credit report provided by the credit bureau to that member in relation to a transaction between the member and the individual;</i></p>	Paragraph 1(c) and (k) of the Second Schedule
(d)	<p><i>1. An organisation may use personal data about an individual without the consent of the individual in any of the following circumstances:</i></p> <p>...</p> <p><i>(j) the data was collected by the organisation in accordance with section 17(1), and is used by the organisation for purposes consistent with the purpose of that collection.</i></p>	Paragraph 1(j) of the Third Schedule

(e)	<p><i>1. An organisation may disclose personal data about an individual without the consent of the individual in any of the following circumstances:</i></p> <p>...</p> <p><i>the personal data is disclosed by a member of a credit bureau to the credit bureau for the purpose of preparing credit reports, or in a credit report provided by a credit bureau to a member of the credit bureau in relation to a transaction between the member and the individual;</i></p>	<p>Paragraph 1(k) of the Fourth Schedule</p>
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4.4 The Applicant’s description of the services that it provides through the online platform (as summarised in paragraph 3.1.1) appears to coincide with the services provided by a credit bureau, as defined under the Personal Data Protection Act (see para 4.3(a) and (b) above). It is likely that the Applicant would fall within the definition of “credit bureau” in the PDPA in respect of its provision of such services through the online platform.

4.5 If the Applicant is considered to be a credit bureau under the PDPA, then the Applicant may be able to apply the exceptions for credit bureaus shown in para 4.3 (c)–(e) if, among other things, the Applicant is collecting, using or disclosing information to or from a Member.

**The Applicant’s Products and Services**

4.6 The Applicant has informed the PDPC that it provides the following products and services:

- (a) Collection services;
- (b) Skip tracing reports; and
- (c) Individual asset searches.

4.7 Under the PDPA, the Applicant is generally not prohibited from offering the products or services listed in para 4.6. However, the Applicant will have to comply with the relevant data protection provisions in the PDPA in relation to the personal data that is being collected, used or disclosed in order to offer these products or services, unless exceptions apply.

4.8 For example, the Applicant is required to comply with the Consent Obligation in sections 13-17 of the PDPA (reproduced in the Annex) unless an exception in the Second Schedule of the PDPA applies. Specifically, the Applicant should consider whether the exception in paragraph 1(k) of the Second Schedule (reproduced at para 4.3(c) above) applies. Based on the information provided by the Applicant, the PDPC understands that the Applicant’s Members have been obtaining consent from their consumer clients before collecting and disclosing their consumer clients’ personal data to the Applicant. However, the scope of such consent and whether such consent is sufficient to cover the purposes required for the Applicant to deliver the services listed in para 4.6 (a)–(c) is unclear to the PDPC.

- 4.9 The PDPC also notes that certain types of personal data provided to the Applicant (such as information relating to litigation, bankruptcy and business interests is available for purchase from ACRA and Crimson Logic) may be publicly available. The Applicant should consider whether the exception in paragraph 1(c) of the Second Schedule (reproduced at para 4.3(c) above) applies in relation to the collection of such personal data.
- 4.10 The Applicant may also wish to note that an organisation may use personal data collected before 2 July 2014 for the purposes for which the personal data was collected, unless consent for such use is withdrawn, or the individual indicates that he does not consent to the use of the personal data.

## **5. OTHER COMMENTS**

- 5.1 Although the PDPA provides some exceptions for the collection, use and disclosure of personal data for credit bureau-related activities (as set out at para 4.3 above), the PDPC would highlight that organisations like the Applicant will still have to adopt the necessary measures to comply with the other obligations under the PDPA, which would include among others:
- (a) Ensuring that there are reasonable security arrangements to protect personal data in its possession or under its control;
  - (b) Ensuring that the personal data collected is reasonably accurate;
  - (c) Providing access to personal data in its possession or under its control and information about the ways in which the personal data was used or disclosed in the past year to individuals to whom the personal data relate;
  - (d) Setting clear timelines for the retention of personal data and ceasing to retain documents containing personal data that is no longer required for business or legal purposes; and
  - (e) Ensuring that any personal data transferred out of Singapore is done in a manner that provides a standard of protection to personal data so transferred comparable to the protection under the PDPA.
- 5.2 Today, organisations such as the Applicant collect, use and disclose much personal data about individuals, which may include their subscribers and employees. These individuals trust such organisations to collect their personal data for specific purposes, use or disclose their personal data as it is intended for, and keep their personal data safe. By practising good personal data management, organisations like the Applicant can increase business efficiency and effectiveness, boost customer confidence and enhance their public image. The PDPC hopes that this guidance note will highlight the requirements of the PDPA and help the Applicant, and other similar organisations, review their current personal data protection processes and adopt good personal data management practices.

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**PERSONAL DATA PROTECTION ACT**

**PART IV**

**COLLECTION, USE AND DISCLOSURE OF  
PERSONAL DATA**

**Division 1 — Consent**

**Consent required**

**13.** An organisation shall not, on or after the appointed day, collect, use or disclose personal data about an individual unless —

- (a) the individual gives, or is deemed to have given, his consent under this Act to the collection, use or disclosure, as the case may be; or
- (b) the collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under this Act or any other written law.

**Provision of consent**

**14.** —(1) An individual has not given consent under this Act for the collection, use or disclosure of personal data about the individual by an organisation for a purpose unless —

- (a) the individual has been provided with the information required under section 20; and
- (b) the individual provided his consent for that purpose in accordance with this Act.

(2) An organisation shall not —

- (a) as a condition of providing a product or service, require an individual to consent to the collection, use or disclosure of personal data about the individual beyond what is reasonable to provide the product or service to that individual; or
- (b) obtain or attempt to obtain consent for collecting, using or disclosing personal data by providing false or misleading information with respect to the collection, use or disclosure of the personal data, or using deceptive or misleading practices.

(3) Any consent given in any of the circumstances in subsection (2) is not validly given for the purposes of this Act.

(4) In this Act, references to consent given, or deemed to have been given, by an individual for the collection, use or disclosure of personal data about the individual shall include consent given, or deemed to have been given, by any person validly acting on behalf of that individual for the collection, use or disclosure of such personal data.



### **Deemed consent**

**15.** —(1) An individual is deemed to consent to the collection, use or disclosure of personal data about the individual by an organisation for a purpose if —

- (a) the individual, without actually giving consent referred to in section 14, voluntarily provides the personal data to the organisation for that purpose; and
- (b) it is reasonable that the individual would voluntarily provide the data.

(2) If an individual gives, or is deemed to have given, consent to the disclosure of personal data about the individual by one organisation to another organisation for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data for that particular purpose by that other organisation.

### **Withdrawal of consent**

**16.** —(1) On giving reasonable notice to the organisation, an individual may at any time withdraw any consent given, or deemed to have been given under this Act, in respect of the collection, use or disclosure by that organisation of personal data about the individual for any purpose.

(2) On receipt of the notice referred to in subsection (1), the organisation concerned shall inform the individual of the likely consequences of withdrawing his consent.

(3) An organisation shall not prohibit an individual from withdrawing his consent to the collection, use or disclosure of personal data about the individual, but this section shall not affect any legal consequences arising from such withdrawal.

(4) Subject to section 25, if an individual withdraws consent to the collection, use or disclosure of personal data about the individual by an organisation for any purpose, the organisation shall cease (and cause its data intermediaries and agents to cease) collecting, using or disclosing the personal data, as the case may be, unless such collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under this Act or other written law.

### **Collection, use and disclosure without consent**

**17.** —(1) An organisation may collect personal data about an individual, without consent or from a source other than the individual, only in the circumstances and subject to any condition in the Second Schedule.

(2) An organisation may use personal data about an individual, without the consent of the individual, only in the circumstances and subject to any condition in the Third Schedule.

(3) An organisation may disclose personal data about an individual, without the consent of the individual, only in the circumstances and subject to any condition in the Fourth Schedule.