

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

**PROPOSED ADVISORY GUIDELINES ON KEY CONCEPTS AND
SELECTED TOPICS IN THE PERSONAL DATA PROTECTION ACT**

**SUBMISSION OF COMMENTS BY
MEDIACORP PTE. LTD.**

DATE OF SUBMISSION: 19 MARCH 2013

A. SUMMARY OF MAJOR POINTS

A short summary of the major points of our submission are set out below (references in brackets are to the corresponding paragraphs in the Consultation Papers).

1. Further clarification as to what would constitute “appropriate due diligence” in the context of verifying whether a third party source can validly give consent to disclose personal data (*Key Concepts - paragraph 11.27*).
2. Filming in places which are “open to the public” – can it come within the definition of “publicly available personal data” such that it is exempted from the consent obligation (*Key Concepts - paragraphs 11.47 – 11.51*).
3. Obtaining consent of minors over the Internet – would it be sufficient for an organisation to require users to confirm that they are either (1) above 18, or (2) below 18 but has obtained parental consent (*Key Concepts - paragraph 13.10*).
4. Whether it is necessary to notify an employee that performance assessments are being collected for purposes of managing employment relationship (*Selected Topics – paragraph 5.22*)

B. OUR COMMENTS

1. Further clarification as to what would constitute “appropriate due diligence” in the context of verifying whether a third party source can validly give consent to disclose personal data (*Key Concepts - paragraph 11.27*)
 - 1.1 We would like to seek further clarification as to what would constitute “appropriate due diligence” in the context of verifying whether a third party source can validly give consent to disclose personal data.
 - 1.2 We envisage that the most practical means would be to obtain a confirmation from the third party source that it has obtained the necessary consent to validly give consent on behalf of a third party to disclose personal data.
 - 1.3 In order to ensure certainty in our business operations, especially in the area of customer referrals, we would be grateful if the PDPC can include a clarification in the Advisory Guidelines in relation to the above.
2. Filming in places which are “open to the public” – can it come within the definition of “publicly available personal data” such that it is exempted from the consent obligation (*Key Concepts - paragraphs 11.47 – 11.51*)
 - 2.1 In MediaCorp’s previous submissions to MICA on the proposed PDPA prior to it being passed into law, we had requested for clearer exceptions or guidelines on the collection of personal data in the course of filming as it has an extremely significant impact on the operations of filming and media companies like MediaCorp.
 - 2.2 In the proposed Advisory Guidelines, we note that there are some clarifications on the operation of the exception to the obligation to obtain consent for the collection, use and disclosure of “publicly available data”. Specifically, an example was given in paragraph 11.48 on photographs taken of a customer at a store, wherein it was suggested that if the store had put up notices on the presence of a photographer,

that would be sufficient for the purposes of falling within the definition of “publicly available personal data”.

- 2.3 This raised some concerns for us as it could mean that for the purposes of our on-location filming in public places, we would be required to put up notices in the area. While it may be possible to put up notices in the context of a store where there is only one or two entrance points, it would not be practical for more open spaces such as shopping centres, public roads, sidewalks, parks, void decks etc.
- 2.4 In order to ensure certainty in our filming operations, we would therefore like to propose that a clarification be included in the Advisory Guidelines that filming in public places falls within the definition of “publicly available personal data” to avoid ambiguity.
3. Obtaining consent of minors over the Internet – would it be sufficient for an organisation to require users to confirm that they are either (1) above 18, or (2) below 18 but has obtained parental consent (*Key Concepts - paragraph 13.10*)
- 3.1 We note that in paragraph 13.10, an example was given as to how terms and conditions can be accepted by a user over the Internet by clicking on an “Accept” button.
- 3.2 We note also that based on the Proposed Regulations (paragraphs 9.2-9.4), persons below the age of 18 are not able to give valid consent for the collection, use and disclosure of their personal data, and as such, a parent or legal guardian would need to give consent on their behalf.
- 3.3 In view of the above, we would like to seek PDPC’s confirmation that, for the purposes of obtaining consent from persons below the age of 18 over the Internet, it would be sufficient to obtain their confirmation that they are either (1) above 18, or (2) below 18 but has obtained parental consent, at the point of acceptance of the online terms and conditions.
4. Whether it is necessary to notify employees that performance assessments are being collected for purposes of managing employment relationship (*Selected Topics – paragraph 5.22*)
- 4.1 Paragraph 5.22 of the Proposed Advisory Guidelines for Selected Topics states that the collection of performance assessments for the purposes of managing the employment relationship is required to be notified to the employee.
- 4.2 However, we are of the view that this is not feasible in the context of an employer’s management of the employment relationship. Performance assessments may be collected for different reasons, such as for the purpose of determining whether an employment relationship should be terminated or whether a promotion is due. However, in such instances, it is not feasible for the employer to notify an employee that such assessments are taking place as these are usually confidential discussions. Before any firm decision has been made, employers would not want their employees to be unduly alarmed or affected by the prospect of performance assessments being carried out.
- 4.3 We would therefore propose to include a clarification that no specific notification is required for the collection of performance assessments. But it can be included as part of a general notification to employees on the collection of their personal data

through the employment contracts, employee handbooks or notices in the company intranet (as per paragraph 5.20).

C. CONCLUSION

1. We hope the PDPC will be able to provide further clarification on the matters set out above, in particular the issue relating to filming in public places. The impact on MediaCorp's operations cannot be over-emphasised and we hope the PDPC will be able to issue clearer guidelines on this matter, not just for MediaCorp, but also for the benefit of many other filming and media companies in Singapore.
2. We would be happy to answer any queries which the PDPC may have on the above. Please do not hesitate to contact:

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3. Thank you for your attention.
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