

# **SINGAPORE PRESS HOLDINGS LTD**

*Submission to the Personal Data Protection Commission  
Singapore  
on the Public Consultation on Proposed Advisory Guidelines  
on Key Concepts in the Personal Data Protection Act*

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Personal Data Protection Commission Singapore  
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Dear Sirs

**PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES ON KEY CONCEPTS IN THE PERSONAL DATA PROTECTION ACT**

1. In response to the public consultation of the proposed Advisory Guidelines on Key Concepts in the Personal Data Protection Act (the “Proposed Guidelines”) issued by the Personal Data Protection Commission Singapore (“PDPC”) on 5 February 2013, we are pleased to submit our comments.
2. The Proposed Guidelines are certainly useful because they clarify key concepts with illustrations. However, SPH feels that some illustrations precipitate more questions as to what further steps ought to be taken. SPH would also like to seek PDPC’s clarification on issues that are not raised in the Proposed Guidelines.
3. SPH will suggest how certain areas and key concepts can be clarified with
4. illustrations as well as how certain illustrations may require elaboration or further explanation.

**Summary of major points**

5. Paragraph 5.8 should elaborate on what the “certain circumstances” entail in relation to reliance on false personal data.
6. Paragraph 5.12 of the Proposed Guidelines: The example relates to flyers being distributed to addresses with no names and that would not amount to collection or use of personal data. However, SPH is of the view that there may be scenarios that would lead to the identification of the individuals, such as when an occupant of a flat opens the mail box as the flyer distributor is slotting in mails.
7. Paragraph 5.15: SPH suggests that the example recommends commercially feasible solutions as to how an adventure camp company can get consent from the husband of a participant.

8. Paragraph 6.7: The tour agency example is similar to that in paragraph 5.15. Paragraph 5.15's example says the adventure camp company should consider whether consent is required, but paragraph 6.7's example says consent is required unless exceptions apply. It is proposed that the Guidelines clarify the difference between the two examples. Also, the tour agency example confuses rather than clarifies by saying that an organisation would need to "consider" whether the husband's consent would be required. To SPH, this should be a case of deemed consent.
9. Paragraph 6.22: In SPH's opinion, it is not always possible to detail the rights and obligations of an organisation and a data intermediary in respect of personal data. SPH gives the scenario of two organisations pooling and sharing their respective banks of personal data to conduct a joint marketing study. The complexity of such collaboration may make it difficult to detail the rights and obligations for an enlarged pool of personal data, as the two organisations could be joint owners of the larger bank of personal data. SPH therefore would like the Guidelines to at least recognise this and similar possible scenarios.
10. Paragraph 6.23: SPH suggests changing the last sentence such that ABC should be contractually bound to ensure that it would not do anything that will cause XYZ to breach XYZ's obligations under the PDPA.
11. Paragraph 7.2(b): SPH suggests replacing the word "employ" with "use" in the definition of "use". The reason is that "employ" may have a different meaning.
12. Paragraph 11.4 should provide for a situation of deemed consent whereby it is not necessary or practicable to inform the individual of the purposes.
13. Paragraph 11.6: This paragraph should explain how PDPC would view and verify the documented version of an oral consent, in the event of a dispute between an organisation and an individual. An example to illustrate the documentation of oral consent would be useful.
14. Paragraph 11.13: Lucky draw is not tied to a provision of a product or service. It should be clarified that offers and discounts are also not tied to provision of a product or service.
15. Paragraph 11.16: This concerns Section 14(2)(a) of the PDPA. SPH would like to suggest that an organisation inserts "mandatory personal data" and "optional personal data" for individuals to complete, instead of making it a condition that certain personal data be provided before a product/service can be supplied. That way, the organisation can avoid possible breach of Section 14(2)(a). In a commercial context, an organisation would only want to make it a condition if the personal data are not required or

- necessary for the supply of product/service, and would be used for other purposes.
16. Paragraph 11.20: It is not clear in the example on application for medical tests as to when the date of consent is. SPH submits that the example in the Guidelines make it clear that the date of consent should be the date that the patient signs and submits the form for medical tests.
  17. Paragraph 11.22: The credit card example does not clearly illustrate the point because the bank would already have the personal data of the customer. SPH suggests that the Guidelines provides another example to replace this example.
  18. Paragraph 11.27: The Guidelines should clarify the standard of due diligence that is required to check that a third party source can validly give consent for collection, disclosure and use of personal data.
  19. Paragraph 11.39: This concerns the contractual consequences of withdrawal of consent, including earlier termination. SPH seeks clarification as to whether contractual provisions about consequences of withdrawals would be considered as sufficient for the purposes of informing individuals of such consequences.
  20. Paragraph 11.40: SPH believes that it is the duty of the data intermediaries and agents to ensure that they stop using, disclosing or collecting personal data when they get a notification from an organisation that the individual concerned has withdrawn consent.
  21. Paragraph 11.44: SPH would like to seek clarification on whether the White Pages on residential listings is information that is generally available to the public.
  22. Paragraphs 11.48 and 11.49: SPH would like to seek clarity on whether a photojournalist who snaps photographs of individuals at a location or event that is open to the public, would be considered as obtaining “personal data [must be observed] by reasonably expected means.”
  23. Paragraph 13.12: SPH would like the Guidelines to clarify whether the following automated voice message would be considered as having given notification and obtained consent: “*Your conversation may be recorded for purposes of collecting, use and disclosure of your personal data. By pressing “1”, you have consented to our recording.*”
  24. Paragraph 14.2: It needs to be clarified whether an individual who has withdrawn his/her consent would still have the right to request for information on how his/her personal data have been used for the last 12 months.

25. Paragraph 23.3: SPH proposes that the words “reasonably existing uses” be modified to “reasonably existing uses, taking into account the nature of the organisation’s business”. This is to be consistent with what was written in the public consultation for the Proposed Personal Data Protection Bill of 19 March 2012.
26. Paragraph 23.4(a) and (b): This is about Section 19 on existing personal data. The Guidelines should give examples of how to establish whether a purpose falls within the scope of the original purposes.
27. Paragraph 31.3: “iMessage” is taken to be covered by the Do-Not-Call provisions because it is sent through phone numbers. But SPH understands that certain iMessage can be sent through email and thus would not be caught under the provisions.
28. Paragraph 31.4: Location-based broadcasts are excluded from the Do-Not-Call provisions. But it would be good if this paragraph stresses that such broadcasts could still be caught under the general personal data protection provisions, as was mentioned in the Proposed Personal Data Protection Bill of 19 March 2012.
29. Other SPH’s comments: SPH would like to request that the Guidelines explain why news activity is only excepted under the Second Schedule and not under the Third and Fourth Schedules. How should a news organisation manage and run its operations in view of that “anomaly”?

#### **A. IMPORTANT TERMS USED IN THE PDPA**

30. Paragraph 5.8 talks about false personal data. The last sentence says that “... organisations may in certain circumstances be able to rely on personal data ....”. It is submitted that the Guidelines ought to elaborate on what these “certain circumstances” are.
31. Paragraphs 5.12 gives an example of why a business that distributes flyers to a residential address without naming any person would not be considered as collecting and using personal data when doing so. Paragraph 5.13 goes on to say that an individual can also be identified even if one does not know his name because there may be other identifiers. The example in paragraph 5.13 says a person holding an individual’s photograph is holding the personal data of that individual even though the individual’s name is unknown. The example in paragraph 5.12 states that no person is or can be identified as there may be a number of individuals, or none, living at the address. However if there is only one individual living at the address, would this individual be considered as being identified? If for example, whilst the flyer is being distributed to the address, the occupant opens the door or his letter box, would the

occupant then be identified? Drawing from paragraph 5.13's example, the business could be considered as holding the occupant's residential address as personal data, even though the occupant's name is unknown so long as he is sighted to be staying in that address. If the analysis is correct, then the Guidelines should be more specific. For instance, the example can be qualified by stating that there is no personal data involved provided that no one can be identified as staying in that particular address.

32. In paragraph 5.15's example, an organisation gets personal data belonging to a participant and her husband. The example also says that the organisation would need to consider if it is required to obtain the husband's consent. SPH submits that it would be clearer to list out a few instances where the husband's consent is required, how the organisation should obtain that consent from him and provide exceptions to the requirement to obtain consent. It would be administratively cumbersome or even illogical for the organisation to contact the husband based on the personal data obtained from the wife, as it has not received his consent to use his personal data.
33. Paragraph 6.7's example is about a travel agency collecting from a man the personal data of his wife. However, in this case, the example says that the agency can only collect the wife's personal data with her consent unless exceptions apply. The scenario in paragraph 6.7's example is similar to that in paragraph 5.15. However, the example in paragraph 5.15 says that the organisation should consider whether consent is required, whereas paragraph 6.7's example categorically says consent is required unless exceptions apply. Perhaps the Guidelines should reconcile and explain the difference between the two scenarios. Similarly, a few examples of what exceptions would apply will be useful.

It is respectfully submitted that both examples confuse rather than clarify, particularly since paragraph 5.15 says that the organisation would need to consider if they are required to obtain the husband's consent. It is submitted that that there should be deemed consent when a person applies for or subscribes to certain products, services or activities and supplies personal data of his/her own immediate family member(s) in that application or for that subscription. Examples of such and similar day-to-day activities abound. These will include: completing travel forms, insurance forms, air-ticketing, hotel booking, etc. If consent is needed, it may be practically difficult for people to submit online application or subscription forms as they will need to scan their spouse's consent before doing so. This will not only make it difficult and cumbersome for the individual but will considerably slow down productivity in the organisation, which will be unable to process an application or subscription unless it obtains the consent of the immediate family member.

34. The last sentence of paragraph 6.22 suggests that contracts between an organisation and a data intermediary stipulate all of the contracting parties' rights and obligations relating to personal data in question. In a highly complex business environment, it may not be practicable or feasible to comprehensively specify the rights and obligations in relation to the use, collection and disclosure of personal data.

Let us take a hypothetical case of a two organisations making use of each other's pool of personal data in order to do a joint study for marketing purposes. It is assumed in this case that all individuals' consents have been obtained. The collaboration results in another much bigger set of more useful personal data. In such a joint study where personal data are shared, it may be difficult or impractical to segregate who is a data intermediary. Moreover, it is laborious and inefficient to spell out in detail each party's rights and obligations in respect of personal data and especially the enlarged pool of personal data. In an even more complicated situation, it is possible to have more than two joint owners of personal data. The Guidelines may help by clarifying how the PDPA will apply to joint owners. SPH appreciates that paragraph 6.22 cannot possibly cover all situations.

35. On the whole, the example under paragraph 6.23 illustrates clearly another "data intermediary" scenario. SPH, however, has some difficulty understanding the last sentence in the example: "*Hence, it may wish to include additional requirements in its contract to ensure that ABC fulfils XYZ's obligations under the PDPA.*". ABC, being the data intermediary, has to fulfil only certain obligations under the PDPA. This last sentence seems to suggest that XYZ can contractually overcome the statute's stipulations and "compel" ABC to do all that XYZ is statutorily required to do. If that is not the proposed Guidelines' intention or if that is not legally possible, perhaps this last sentence should be amended such that the contract must require ABC to ensure that it would not do anything that will cause XYZ to breach XYZ's obligations under the PDPA.
36. Paragraph 7.2(b) uses the word "employs" to define "use" of personal data. SPH feels that "employs" confuses and does not really help in explaining "use". The meaning of the word "employ" may be very different from "use". SPH believes that it is more easily understood to simply replace the word "employ" with "use". To be consistent with how "collection" and "disclosure" are defined, it is suggested that these underlined words be inserted in the definition of "use": "*Use refers to any act .... an organisation uses personal data that is under its control or in its possession.*"

## B. THE DATA PROTECTION PROVISIONS

37. Paragraph 11.4 says that an individual's consent would not be valid if the organisation fails to tell the individual the purposes for the collection, use or disclosure of the personal data. SPH proposes that this paragraph should provide for a situation of deemed consent whereby it is not necessary or practicable to inform the individual of the purposes. An example would be when a patient volunteers his/her personal data at the clinic.
38. Paragraph 11.6 suggests that oral consent be documented in some way. It may be administratively cumbersome for the organisation to do so. It is also not clear how useful this record will be in times of dispute. This paragraph should go on to explain how PDPC views and verifies the authenticity of such records. Perhaps an example to illustrate how oral consent is to be documented will be useful.
39. The example in paragraph 11.7 says the retailer is more likely to be able to rely on customer's inaction in ticking the opt-out box, if the retailer had explained this to the customer. SPH's view is that it is not always possible or practical for a retailer to explain to the customer. For instance, application forms and luck draw forms with opt-outs may be sent through the post or placed in a corner of the shop unattended. The example should consider this situation and explain what the consequences could be for customer's inaction if no explanation was possible. If the retailer cannot rely on customer's inaction, what else could the retailer have done to establish consent?
40. Paragraph 11.12 attempts to explain the application of Section 14(2)(a) of the PDPA. SPH proposes the following words: "An organisation may collect, use or disclose personal data for purposes beyond those that are reasonable for providing the product or service to the individual if the organisation: (a) does not require individual's consent as a condition for providing a product or service; and (b) obtains individual's consent in accordance with the PDPA.".
41. Paragraph 11.13 says lucky draw, offers and discounts may be provided on condition that individuals give their personal data for specified purposes. The example says lucky draw is not tied to a provision of a product or service. Therefore, Section 14(2)(a) has no application. It is not clear as to whether offers and discounts are also regarded as similarly not tied to a provision of product or service. If that is the case, then it is proposed that paragraph 11.13 makes it clear that Section 14(2)(a) does not apply to offers/promotion, lucky draws and discounts, as these are not provision of products and services.



42. Paragraph 11.16 gives an example of a telecom service provider making it a condition for subscribers to provide certain personal data in order to provide the services to subscribers. SPH would like to seek clarification as to whether this could also be done by having a form that sets out “mandatory personal data” and “optional personal data”. The rationale is this: even if the operator makes it a condition to provide certain data, that condition is still subject to the reasonable person test. By not making it a condition, we can avoid the breach in Section 14(2)(a). Instead of making it expressly a condition, we can just include a section for “mandatory personal data” that subscribers must fill in and possibly another section for “optional personal data”. Although this mandatory section will likewise be subject to the reasonableness test, it averts conflict with Section 14(2)(a).

There are many other businesses that require personal data for provision of services and products. Newspaper and magazines subscriptions would be one such business. While we can set out in the terms and conditions as to how personal data will be used or disclosed, SPH is of the view that there is no need to expressly make providing personal data a condition for supply of products or services. In that light, clinics would not have to make it a condition that patients must provide certain personal data before the doctor can examine them.

43. Paragraph 11.20’s example depicts a situation whereby a patient fills out and submits a form which has explained to her that certain personal data would be conducted during medical tests. A patient would have given deemed consent if she later submits herself to the medical tests. It is unclear when the date of consent is. SPH proposes that the example makes it clear that the date of consent is the date on which the patient submits the form.
44. Paragraph 11.22 gives the example of a customer’s deemed consent given to a facial company to transmit her credit card details to the bank. However, SPH feels that this example does not take into consideration that the bank already has the personal data of the customer. As such, SPH would like to suggest that the Guidelines should use a different example as the current example does not clearly illustrate the point.
45. Paragraph 11.27 requires the collecting organisation to do due diligence to check and ensure that the third party source can validly give consent for collection, disclosure and use of personal data. The standard or extent of due diligence is not clarified. Paragraph 11.28 explains that it is not necessary to get documents that show individual’s consent. If that is not required, then it is logical that paragraph 11.27 should at least give an example of what constitutes due diligence acceptable by the PDPA.
46. Paragraph 11.39’s example relates to withdrawal of consent leading to early termination of service contract. The example begins by saying that a

- telecom operator can stipulate as a condition that personal data must be given in order to provide services. SPH finds it difficult to understand why the example does not suggest that the operator also include a term in its contract that says withdrawal of consent will result in early termination and payment of termination charges. What is also rather confusing is that the example says the operator should inform the individual of the consequences of early termination. Should it not be that the operator must inform the individual of the consequences of withdrawal of consent, when or after the individual has issued withdrawal notice. Also, would contractual provisions on the consequences of withdrawal of consent be deemed as having informed individuals of such consequence? Or does the operator still have to inform subscribers of the consequences of withdrawal of consent, despite the contractual provisions?
47. Paragraph 11.40's example says that an organisation must notify its data intermediaries and agents of a withdrawal of consent. However, SPH's opinion is that it is not practical for an organisation to ensure that the data intermediaries and agents cease to collect, use or disclose the personal data. It is the responsibility of the data intermediaries and agents to ensure cessation of use, disclosure or collection once they get the notification from the organisation.
  48. SPH would like the Guidelines to clarify in paragraph 11.44 as to whether the White Pages setting out residential names and listings will be considered as information that is generally available to the public.
  49. Paragraphs 11.48 and 11.49 give illustrations on the application and meaning of "personal data observed in public". SPH would like to seek clarification as to whether this would be applicable to a situation where a photojournalist takes photographs of individuals at a location or event that is open to the public. SPH submits that it would be reasonably expected for individuals appearing at public locations and events that they may be photographed by journalists and have their photographs published in newspapers or magazines. To require consent from each such individual would be impractical and fetter the news activity and operations. SPH would appreciate if the Guidelines clarifies this scenario.
  50. Paragraph 13.10's example depicts a situation where Jane's consent is invalid because she is not notified of where the data protection policy is on the website. SPH would like the Guidelines to clarify that if an organisation's website provides information on where to get the data protection policy, then Jane's consent will be valid when she accepts the terms and conditions.
  51. Paragraph 13.12 suggests that an organisation notifies an individual that his/her verbal consent is recorded and to then seek his/her consent. This notification would be tedious. SPH would like to seek clarification as to

whether the organisation would be considered to have given this notification and obtained the consent by having an automated voice message to the individual at the start, for example as follows: “Your conversation may be recorded for purposes of collecting, use and disclosure of your personal data. By pressing “1”, you have consented to our recording.”

52. Paragraph 14.2 is about access to personal data. This paragraph does not deal with the situation where an individual has withdrawn his/her consent and that the organisation has destroyed all of the individual’s personal data. It is proposed that paragraph 14.2 clarify whether an individual who has withdrawn his/her consent would still have the right to get information about how his/her personal data have been used for the past one year. SPH submits that this individual should be denied this right. This is because the organisation would have destroyed all personal data and all transactions relating to that personal data.
53. The last sentence of paragraph 23.3 introduces “reasonable existing uses” in respect of Section 19 of the PDPA, which is about use of personal data collected before the appointed day. In the public consultation for the Proposed Personal Data Protection Bill of 19 March 2012 (the “PDPA Consultation”), paragraph 2.139 restricted the continued use of existing personal data to “*reasonable existing use, taking into account the nature of the organisation’s business...*”. For consistency, the Guidelines should qualify reasonable existing uses by adding these words: “*taking into account the nature of the organisation’s business*”.

SPH would like to suggest that the Guidelines should explain why there is such a restriction of reasonable existing use taking into account the nature of the organisation’s business, when Section 19 does not specify the same. Also, the proposed explanation would help organisations understand better the scope of reasonable existing use.

Paragraph 23.4(a) and (b) explain about establishing whether a purpose falls within the scope of original purposes. As a number of organisations in Singapore would fall within the ambit of Section 19, SPH proposes that the Guidelines provide examples for (a) and (b).

## **C. THE DO NOT CALL PROVISIONS**

54. Paragraph 31.3 includes “iMessage” as being caught by the Do Not Call Provisions. This appears to presume that iMessage is sent through a phone number. However, iMessages can be sent via email. The Guidelines should clarify that such iMessages would not be caught by the Do Not Call Provisions.

55. Paragraph 31.4 excludes location-based broadcasts from the Do Not Call Provisions. To avoid misunderstanding, the Guidelines should qualify that even though location-based broadcasts are outside of the Do Not Call Provisions, they are still caught under the general laws of the PDPA. Paragraph 21 of the PDPA Consultation said that “*Providers of LBS would be expected to comply with the PDPA with respect to any personal data (including geo-location data where applicable) under their control or custody.*”. If that position still applies, SPH suggests that the Guidelines reiterate this position in paragraph 31.4.

#### **D. OTHER SPH’S COMMENTS**

56. SPH noticed an “anomaly” for the exceptions under the Second Schedule, Third Schedule and Fourth Schedule. Paragraph 1(h) of the Second Schedule provides that in respect of personal data collected by a news organisation solely for its news activity, collection may be done without consent. However, this exception is not applied across the Third Schedule and the Fourth Schedule. It is an anomaly because personal data are not simply collected; they could also be disclosed and used for news reporting. Debt collection, for instance, is an activity that is an exception across the three Schedules. It is proposed that the Guidelines explain this difference and the application of the Second Schedule to news activity as well as clarify how the absence of “use” and “disclosure” exceptions can affect news activity and the news organisation.

#### **Conclusion**

57. SPH would like to take this opportunity to thank PDPC for the opportunity to participate in the public consultation exercise for the proposed Guidelines. We hope MICA will look into our feedback and the issues raised and address them accordingly.
58. The Proposed Guidelines have indeed shed much light and offered more clarity to the interpretation of the PDPA. There are examples that illustrate well important key concepts with various scenarios.
59. However, SPH feels that some examples may raise further issues and it is felt that such examples could be elaborated to suggest at least possible solutions.
60. SPH has also suggested amendments to the narrative/explanation parts to be either consistent or address inconsistencies.

61. SPH has also raised a query on the “collection” exception for news activity under the Second Schedule. News activity is excepted only under the Second Schedule and not under the Third and Fourth Schedules. SPH would like to request that the Guidelines explain how news organisations should interpret this anomaly, preferably with examples of what can and cannot be done.
62. SPH looks forward to future involvement in the public consultation process.
63. Please contact the undersigned (email: [limmlg@sph.com.sg](mailto:limmlg@sph.com.sg)) if you have any queries or require any clarification.

Yours faithfully

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