



COVER PAGE

On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include over 850 member companies engaged in employment and tenant background screening across the **globe**, we submit our comments on the PDPC Public consultation for approaches to managing personal data in the digital economy.

We are a non-profit organization we have been **dedicated to providing the public with safe places to live and work since 2003**. NAPBS members range from Fortune 100 companies to small, local businesses, non-profit organisations serving vulnerable populations such as children and the elderly and conduct millions of background screens each year.

The collection use and disclosure of personal data is the core of our members' businesses. NAPBS members share a commitment to establishing and promoting a high level of ethics and performance standards for the background screening industry.

The industry employs thousands of people and invests countless funds dedicated to ensuring that employers, landlords, and volunteer groups have a full picture of those that enter workplaces, reside in their communities, and provide care for vulnerable populations. **Professional background screeners exist to provide the public with safe places to live and work.**

NAPBS' mission statement is simple: "Advance excellence in the screening profession." This mission is the premise for all that we do; education, webinars, conferences, individual certification programs and our member accreditation program.

NAPBS member companies are regulated in several countries, and are governed by many country's data protection regulations. The current chair of the NAPBS APAC chapter is resident in Singapore and works closely with companies in the financial sector ensuring they fulfil their regulatory and compliance requirements including those of the Monetary Authority of Singapore.

Our members are committed to ensuring that employers have the information that they need to ensure the safety of their employees, their assets, and the consuming public.

We are appreciative of the opportunity to provide our opinion on the proposed enhancements to the Singapore PDPA. We acknowledge and respect the commitment and the ongoing work of the PDPC to ensure the PDPA retains relevancy and thus effectiveness in our community and see the contents of this consultation paper as a positive step in this direction.

We believe the proposed framework namely notification and breach notification is a definite enhancement and will have a positive effect on the safety of both individual's personal data and the safety of society as a whole, promoting an enhanced equilibrium and equanimity in the collection use and disclosure of personal data.

We believe it is in the best interest of our society as a whole to move forward in support of the proposed enhancements which are aligned and congruent with our Smart Nation Initiative.

NAPBS and its members welcome the opportunity to further discuss our comments and any questions you may have as you review this situation. We appreciate your consideration and look forward to the opportunity of working with the Singapore PDPC.

COMMENTS

Question 1: Should the PDPA provide for Notification of Purpose as a basis for collecting, using and disclosing personal data without consent?

YES. Conceptually we are in full support of this.

We note the limitations of consent as a means of individual choice and control in many areas. Sometimes an imbalance of power exists whereby if consent is obtained the benefits of the collection use and disclosure are lost to both the individual and society as a whole. Additionally the growing prevalence of lengthy “cover all” consents written in terms often ill understood by the subject is increasingly undermining the whole premise of protection for the individual.

The increased power of technology to aggregate infinite data at ultra-rapid speeds and to be used and disclosed for the good of society as a whole may be hampered by an insistence on the collection of consent.

The evolution of technology has also led to the increased power of ONE individual to threaten the safety of large numbers of people, indeed societies as a whole thus more so than ever the rights and safety needs of society as a whole need to be considered against the rights and needs of an individual.

Allowing for the introduction of the mechanism of Notification of Purpose as another basis for the collection, use and disclosure of personal information is both prudent and relevant to our world today and provides for a solution to the potential deleterious impact of insisting on consent for the collection use and disclosure of personal data.

Question 2: Should the proposed Notification of Purpose approach be subject to conditions? If so, what are your views on the proposed conditions (i.e., impractical to obtain consent and not expected to have any adverse impact on the individual)?

YES. Absence conditions the desired recalibration of the balance between individual autonomy will NOT be met.

We see the notification of purpose approach conditional on the impracticality of obtaining consent as pragmatic and highly relevant in today's society. Additionally in some cases notification of purpose may be simply a better solution than consent.

Looking at the condition of NOT having an adverse impact on the individual we foresee this may be problematic unless clear guidelines are issued as to what is classified as having an adverse impact on the individual, a guideline on the balancing of an adverse decision for the subject against the benefit of making the decision by the user of the data collected and used.

We note this potential dilemma is covered where there is a legitimate business purpose and/or where collection, use or disclosure is not authorised under the PDPA or other written laws. And further note the PDPC intention to develop and issue guidelines to facilitate organisations on assessing the risk of impact and /or harm to individuals. The guidelines provided by the PDPC are critical in helping organisations meet the requirements of data protection.

We recommend to complement these conditions a degree of prescription be applied to the concept of "appropriate notification". Our concern here is around the potential for notifications to become, as many consents are today, exceedingly lengthy and difficult to understand thus leading to "notification fatigue".

Additionally the placement of the notifications in media which may be inaccessible to individuals is a real potential absent any prescription. This may work against both the legitimate safety of individuals (particularly the more vulnerable members of our society) and indeed the safety of society as a whole.

We note the PDPC reference to the new European Union (EU) General Data Protection Principles (GDPR) and the potential impact the GDPR may have, should Singapore at some point need and/or desire to be declared as "adequate" by the European Union for the purposes of data transfer.

Question 3: Should the PDPA provide for Legal or Business Purpose as a basis for collecting, using and disclosing personal data without consent and notification?

YES. The increased power of technology to aggregate infinite data at ultra-rapid speeds and to be used and disclosed for the good of society as a whole may be hampered by an insistence on the collection of consent.

The evolution of technology has also led to the increased power of ONE individual to threaten the safety of large numbers of people, indeed societies as a whole thus more so than ever the rights and safety needs of society as a whole need to be considered against the rights and needs of an individual.

Question 4: Should the proposed Legal or Business Purpose approach be subject to conditions? If so, what are your views on the proposed conditions (i.e., not desirable or appropriate to obtain consent and benefits to the public clearly outweigh any adverse impact or risks to the individual)?

YES. Absence conditions the desired recalibration of the balance between individual autonomy and the responsibility of business will NOT be met.

We are committed to ensuring safety in our communities and see the conditions attached to the proposed **Legal or Business Purpose as appropriate.**

We recommend to complement these conditions a degree of prescription be applied to the concept of “desirable” and “appropriate”. Our concern here is around the potential for abuse from unscrupulous or unaware members of society.

NAPBS, with the collection of industry expertise, welcomes the opportunity to contribute to the development of guidelines to facilitate organisations on assessing the risk of impact and /or harm to individuals.

Question 5: What are your views on the proposed criteria for data breach notification to affected individuals and to PDPC? Specifically, what are your views on the proposed number of affected individuals (i.e., 500 or more) for a data breach to be considered of a significant scale to be notified to PDPC

We fully support the concept of data breach notification as a means of building a culture of accountability in organisations who collect, use and disclose information. The potential reputational damage to an organisation having to report breaches is a powerful impetus to treat the safety of data as paramount.

We also support the concept of privacy by design, this being the starting block of personal data protection and of accountability for the protection of personal data. The concept of privacy by design is increasingly critical in our digital world.

Additionally mandating notification of a breach to an individual where there is a risk of harm or impact enables individuals to mitigate that potential harm and indeed review and assess how they themselves as individuals handle and care for their own personal data.

We welcome clarity around the concept of “impact” to ensure ease of compliance and indeed to safeguard against the rise of notification fatigue which would prove deleterious to the real value a notification regime can deliver to individuals and society as a whole.

Specifically, around the benchmark of 500 for a data breach to be considered of a significant scale to be notified to PDPC we have concerns that this number may be too low and seek advice on how the number was arrived at. In the context of our digital world 500 i.e. approximately .009% of the Singapore population, seems to be a rather low number.

We recognise the need for a benchmark but are also keenly aware of the danger of the volume of notifications impacting on the ability of the PDPC to effect meaningful remediation.

We fully support the significant scale of breach criteria applying to breaches even if the breach notification does not pose any risk or harm to the affected individuals as a means of pro-actively identifying a lack of rigour and security standards within organisations. We hope the PDPC will use such information to continue to publish guidance that is meaningful to data subjects and to organisations handling personal information.

Question 6: What are your views on the proposed concurrent application of PDPA's data breach notification requirements with that of other laws and sectoral regulations?

We concur with this approach as an effective way to ensure organisations can expediently notify and then move to the crucial task of assessing and containing the breach and then mitigating the negative impact. The proposal is both practical and pragmatic.

As mentioned in the paper this ensures the minimisation of costs and effort associated with notification while enabling the notification to all required parties. We appreciate the PDPA's understanding of the importance of focusing on breach remediation during those critical early hours of a breach.

Question 7: What are your views on the proposed exceptions and exemptions from the data breach notification requirements?

We believe that breach notification requirements promote accountability and responsibility as a whole and as such believe the below should NOT be exempted from the **data breach notification requirements**

- Employees acting in the course of his or her employment with the organisation. Employers have a duty of care to provide effective process controls and training programmes covering personal data and employees should be held accountable for adherence to these.
- Public agencies and/or organisations in the course of acting on behalf of a public agency. Again public agencies have a duty of care to protect personal data they are entrusted with and the notification requirement serves as a powerful fillip to ensure due care and control standards are established and enforced

We support the exceptions to the requirement to notify affected individuals as listed in 6.10

Question 8: What are your views on the proposed time frames for data breach notifications to affected individuals and to PDPC?

We believe the 72 hour benchmark for notification to the PDPC to be both pragmatic and practical and clearly demonstrates the insight the PDPC has into the criticality of enabling the concerned business to focus on the critical task of assessing and thus managing the data breach.

We seek clarity on the time frame to be applied to a data intermediary as the 72 hour period is stated as applicable to the organisation.

Additionally the stipulation of “as soon as practicable” for the notification to individuals is deemed insightful in that it allows the organisation the time to clearly assess the breach and thus avoid unnecessary angst to the subject

CONCLUSION

As aforementioned, NAPBS, with the collection of industry expertise, welcomes the opportunity to contribute to the development of guidelines to facilitate organisations on assessing the risk of impact and /or harm to individuals.

On behalf of NAPBS and as the current chair of the NAPBS APAC Chapter and a permanent resident of Singapore I welcome the opportunity to engage with the Commissioner and team on this important update.

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