

Personal Data Protection Act (PDPA) Updates

May 2014

What is new?

Personal Data Protection Commissioner (PDPC) has issued new regulations for access & correction, cross border transfer and exercise of rights on behalf of deceased individual ("Regulations"), as well as amendments to advisory guidelines for access & correction, transfer and consent given by minors ("Guidelines) on 16 May 2014.

The new Regulations will be enforced on 2nd July 2014.

Implication of Non-compliance

Organisations which fail to comply with PDPA may be fined up to \$1 million and suffer reputation damage.

Key Updates

Access and Correction

- Organisations are required to provide means for individuals to access and correct their personal data, **including those personal data which is in the possession of the data intermediary**. Organisations acting as data intermediaries may, but not obligated to, forward individual's requests to the organisations that control the personal data.
- Organisations are required to accept all **written requests** where sufficient information has been provided to meet the request. The requests should be **responded within 30 days**. In cases when organisations are unable to do so, they need to inform the individual **in writing** on when they will respond. They may also inform the individuals on the reasons why they are unable to do so.

Access

- Organisations are required to **verify the identity** of the individual before responding to the access request.
- Individual is **not required to provide a reason** for making an access request. Organisations may ask for more information to facilitate the processing of request.
- Organisations must provide access to the **complete set of personal data** requested in its possession or control, captured in **structured and unstructured form** (e.g. personal data embedded in emails).
- Organisations may provide the **purposes** and **a standard list of receiving parties** (exact company names) for responding to how personal data may have been used and disclosed for the past year. The purposes and standard list of companies should be **maintained periodically**.
- Organisations are not required to provide access to personal data if

- The request falls under the **exceptions** in PDPA;
- The documents or systems **do not contain** personal data; or
- The personal data is **no longer in the organisations' possession** or control and how such personal data may have been used or disclosed.
- Organisations may inform individual about **self-help options** for access to his/her personal data if available (e.g. online portal).
- Organisations must provide a copy of the personal data in **documentary form** upon request. If they are unable to provide in documentary form, organisations may provide the individual with an opportunity to examine the requested data.
- Organisations may charge a reasonable fee to the individual for access request to recover their **incremental costs of providing access** and must provide the individual a **written estimate of the fee**. Organisations may refuse to provide access until the individual agrees to pay the fee.

Correction

- Organisations **should not impose a charge** for correction of personal data.
- Organisations must send the corrected personal data to **specific organisations** to which they have disclosed to for the past year.
- Organisations should **annotate that the personal data are not corrected** in cases where correction would not be made. As a good practice, organisations may also annotate the reasons why correction should not be made.

Inbound Data Transfer

Organisations in Singapore (not data intermediary of another organisation), who are collecting personal data overseas for use and disclosure for its own purposes, are required **to comply with all Data Protection Provisions** from the time it seeks to collect the personal data or from the time it brings the personal data into Singapore. Data intermediaries (e.g. data hosting company) are **only** subject to the Protection and Retention Limitation Obligations.

Outbound Data Transfer

Transferring organisations are considered to be compliance with the Transfer Limitation Obligations in the following situations:

- a) Individual has given **consent** after reading a **written summary** of the extent to which his/her personal data will be protected in the countries and territories that the personal data will be transferred to;
- b) The transfer is necessary for the **performance of a contract** between the organisation and individual / between the organisation and a third party entered into at the individual's request. E.g. A travel agency transferring the customer's personal data to the overseas hotel for reservation;
- c) The transfer is necessary for a **use or disclosure where individual's consent is not required** under PDPA. E.g. Disclosure to overseas hospital to respond to an emergency that threatens an individual's life and will not be used for other purpose;
- d) The personal **data is in transit** (e.g. personal data from overseas passing through servers within Singapore to another country);

- e) The personal data is **publicly available** in Singapore;
- f) Impose **legally enforceable obligations** on the recipient to provide to the personal data transferred a standard of protection that is comparable under PDPDA such as :-
 - i. Any law;
 - ii. Any **contracts** with oversea recipient that requires the recipients to provide a comparable standard of protection and specifies the countries & territories to which the personal data may be transferred to; or
 - iii. Have **binding corporate rules** with overseas recipient(s) to provide a comparable standard of protection, specify the recipients, countries and territories to which the binding corporate rules apply, and rights and obligations provided by the rules.

Exercise of rights on behalf of deceased individual

- Authorised persons may exercise the following rights in relation to the protection and disclosure of the deceased individual's personal data:
 - **Giving or withdrawing consent** for the purposes of disclosure;
 - Bringing an **action** for relief in civil proceedings in court;
 - Making a **complaint** under PDPA.
- Authorised persons may be an **appointed person** under the deceased individual's will or the deceased individual's **nearest relative** determined under the Act. Renunciation of the grant of any right must be **made in writing**.
- The Regulation does not apply if the authorised person is **legally incapable** of exercising the rights or **refuses to make decision** concerning the exercising of rights.

Consent given by minor

- PDPA does not define the age threshold of minor. The validity of the consent given by minor will depend on **other legislation and the common law**.
- In determining if the validity of the consent, organisations should consider if the minor understands the **nature and consequences of giving consent**.
- PDPC adopts as a rule of thumb that minor who is **at least 13 years old** will have sufficient understanding to give consent for himself / herself. The minor's parents or legal guardians may give consent on behalf of the minor under 13 years old.
- Organisations may consider putting in **precautions** when collecting, using or disclosing minor's personal data. E.g. Making the terms and conditions in language that is readily understandable by minor or with the help of visual aids.
- Organisations need to take **extra steps** to verify the accuracy of the personal data, especially if the inaccuracy may have severe consequences for the minor.

¹ PDPA is applicable to personal data of deceased individual who has been dead for no longer than 10 years.

What do I need to do?

Organisations will need to:

- Develop clear action plan to meet the new compliance requirements;
- Revisit your current personal data protection policy and include the key updates to the policy, process, procedure document; and
- Implement and communicate the changes to staff.

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