October 24, 2011

Dear Sir/Madame,

Subject: **Public Consultation of the Proposed Consumer Data Protection Regime for Singapore**

RIM is the designer and manufacturer of the BlackBerry mobile communications platform. The BlackBerry solution incorporates smart phones, tablets, software and wireless services, and is available from more than 625 operators and other distribution partners in more than 175 countries. The BlackBerry solution provides mobile users with convenient and robust access to email, messaging and voice services, as well as a wide range of mobile applications. RIM is committed to protecting the privacy of customers' personal information and the BlackBerry platform is designed with a view towards protecting that privacy.

As the creator and provider of the world's most secure messaging platforms, RIM understands the importance of data protection (DP) and we applaud Singapore's efforts to enact a principle based approach to DP.

As you are aware, Research In Motion Limited ("RIM") is a Canadian headquartered company operating globally which has benefited from Canada's private sector privacy legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA is a principle-based DP law that was first enacted in January 2001 for federal undertakings within industries such as banking and telecommunications, and then more broadly in January 2004 for industry generally. RIM believes that a principle-based technology neutral DP regime, which you have proposed, will be of great benefit to Singapore. In large part due to PIPEDA, Canada has been recognized as a leader in global commerce and transborder data flows of personal data. Also, PIPEDA has been recognized by the European Union as providing adequate protection and is therefore granted special provision for transborder data flows from the EU to Canada.

Singapore has clearly recognized that a principled based approach to DP legislation will also benefit Singapore's success and competitiveness as a trusted hub for global data management and processing services.

We have outlined our responses to the questions raised in the Consultation document in the following pages.

RIM has a long history in providing secure and privacy enhanced mobile communications and we are encouraged by the development of new data protection legislation in many countries like Singapore. We believe that the technology-neutral and principle-based approach to data protection outlined in the Consultation document would make the Singapore DP regime a model for other forward-looking jurisdictions. While DP legislation must establish rules around personal data practices that recognize the individual's right to privacy and respect for their personal data, it must at the same time recognize and balance the need for organizations to collect, use or disclose that information for a reasonable business purpose. This focus on balance is important; and principle-based data protection legislation will allow technology driven companies to thrive. Like PIPEDA, a principle-based approach to DP legislation has been

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used successfully to assess emerging technologies such as social networking, geo-location applications and street-level imaging technology used for mapping cities. RIM believes that PIPEDA has helped define how we incorporate consumer trust in the design of our products. Consumers are comfortable with new technologies if they are confident their personal data is adequately protected via the features and tools built into the products and services they use.

We would like to thank you for the opportunity to provide these comments as part of this very important consultation. We look forward to continuing this discussion and welcome an opportunity to meet with you further. I would be pleased to introduce you to RIM's new privacy officer, Suzanne Morin, Assistant General Counsel, Privacy, who has extensive privacy and data breach experience.

Should you have further questions on these issues, please feel free to contact me at jsaunderson@rim.com.

Sincerely,

Jason Saunderson

Director, Government Relations

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RIM Comments in response to the
Public Consultation issued by the Ministry of Information, Communication and the Arts:
Proposed Consumer Data Protection Regime for Singapore
24 October 2011

Questions in relation to objectives and principles of proposed DP framework:

1. ***Do you have any views / comments on the impact of the proposed DP law on specific sectors? Do you have any suggestions on measures to mitigate this or any other anticipated impact?***

As a Canadian-based company, RIM has been subject to broad framework private sector privacy legislation for many years and supports the introduction of a baseline standard approach for a DP framework applicable to the entire private sector in Singapore. We recognize that the proposed DP law will have a greater impact on certain types of organizations than others. Certain categories of organizations, including large multinationals, may have already implemented appropriate consent mechanisms and would therefore have already met many of requirements under other data protection laws, or under the Singapore Model Data Protection Code. As a result, many organizations may already comply with many aspects of the new Singapore DP framework. However, other organizations such as small retail outlets and not-for-profit organizations may be required to modify their DP practices. Despite this uneven impact on different organizations, we believe that broad framework private sector privacy legislation, applicable to all personal information in the private sector, is preferable to a sector-by-sector approach. This will allow the DPC to enact a minimum standard of care for all personal information in the private sector. It will also provide the necessary flexibility for the private sector to tailor the application of the DP framework to their business and industry.

2. ***With reference to paragraph 3.8, do you have any views / comments on the concurrent application of the DP law with existing sectoral regulations?***

While in certain sectors there may be an ongoing public policy need to have sector-specific rules, such instances should be kept to a minimum so as to limit consumer confusion as to expected standards and to avoid unnecessary duplication of regulation for the private sector which can lead to increased costs and at times inconsistent approaches as between regulators. A well crafted DP framework should be able to meet the DP needs of just about every part of the private sector. For those sectors where additional guidance may be required given the sensitivity of personal data involved, the Data Protection Commission (DPC) can issue guidelines developed in conjunction with the affected sector and civil society as appropriate. For those instances where separate sector-specific rules continue to be deemed necessary, the DPC should work closely with such regulators to ensure a consistent approach is followed.

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Questions in relation to the definition of "personal data":

3. Do you have any views / comments on the proposed definition of personal data outlined at paragraphs 3.9 to 3.11?

RIM agrees with the proposed open-ended definition of personal data as outlined. Given the ever changing technological landscape, it would be unwise to provide a list of specific pieces of information that constitute personal data. Furthermore, RIM does not believe that a separate definition of sensitive data is required as what is sensitive will depend on the circumstances. Should the need arise to address particular types of sensitive data the DPC could develop guidelines in collaboration with industry and civil society groups.

One concept MICA may want to consider addressing in its DP framework is the notion of "anonymous" data that either is not personal data to begin with or once data is altered in a particular way loses its status as personal data. We have seen an ever expanding notion of personal data internationally leaving very little room for the use of data in an anonymous or aggregate fashion to develop or improve products and services delivered to consumers, and in particular in the online context. There are many methods that can be used to allow data to be used in an anonymized or aggregated fashion, e.g. through the use of separate databases, internal controls, encryption, separate unique identifiers, etc.

4. With reference to paragraphs 3.15 to 3.16, do you have any views / comments as to whether the proposed DP law should cover the personal data of the deceased? If it should, do you have any views / comments on the proposed approach to the protection of personal data of the deceased?

RIM supports the Canadian approach in PIPEDA and does not believe that it is necessary to limit an organization's obligations to only the safeguarding of personal data and the conditions under which personal data of deceased may be disclosed. While those are indeed the key obligations when it comes to personal data of deceased individuals, other obligations regarding collection and use are equally important and should not be discarded, e.g. organizations must not use personal data of deceased individuals for a new or inconsistent purpose than the purpose/s for which it was originally collected.

Questions in relation to the organizations and activities covered by the DP law:

5. Do you have any views / comments on the proposed organizations covered by the DP law?

RIM believes that it is important to protect the privacy of all individuals in Singapore such that no private sector organizations should be excluded (other than common exclusions such as for journalistic or personal and domestic purposes). The proposed broad baseline DP framework should allow sufficient flexibility for organizations of all sizes to take the necessary and appropriate steps consistent with the size and type of business to comply with the DP obligations. Furthermore, it is expected that the new DPC would undertake necessary awareness and education initiatives as well as the development of simple compliance tools for SMEs.

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6. ***With reference to paragraphs 3.20 to 3.22, do you have any views / comments as to whether the DP law should extend to organizations located outside Singapore, so long as they engage in personal data collection or processing activities in Singapore? Do you have any suggestions as to how the DP law could be implemented if it should apply to such organizations?***

MICA has correctly identified the difference and challenges between the applicability of a law to organizations which may not have a physical presence in Singapore and the ability to enforce that very same law.

Leaving the question of enforcement aside, RIM would generally support the application of the DP framework to organizations located outside of Singapore should they engage in the collection, use, disclosure or processing of personal data of individuals located in Singapore. Such an approach would be similar to other jurisdictions. We believe that the practical implementation of this concept in the Canadian context could serve as a useful model for Singapore.

In Canada, under the "accountability principle", organizations subject to PIPEDA are responsible for personal data that is in their possession, or under their control, which would extend to personal data that is collected, used, disclosed or processed in other jurisdictions either by the organization itself or by a third party on the organization's behalf. However, when faced with the important question about the extraterritorial effect of Canadian laws such as PIPEDA; Canadian courts turn to what is known as the "real and substantial connection" test. For your consideration, we would like to highlight a case in Canada where it was determined that the federal Privacy Commissioner did indeed have jurisdiction to investigate a complaint under PIPEDA where a foreign entity has a real and substantial connection to Canada even though the company was headquartered outside of Canada.[1] In that case, the connection was established due to the fact that the foreign entity offered services within Canada and had a website that actively targeted Canadians. A similar determination was made recently regarding an international airline[2].

From a practical perspective, many global organizations already generally comply with other countries' DP laws. In addition, cooperation amongst DP authorities is already happening on a global basis, such that these questions are quickly becoming moot in practice.

Questions in relation to the general exclusions for the DP law:

7. ***Do you have any views / comments on the proposed general exclusions from the DP law?***
8. ***With reference to paragraph 3.26, do you have any views / comments as to whether there should be exclusions for artistic and literary purposes under the DP Act? How should these exclusions be defined if exclusions for artistic and literary purposes should be provided for?***
9. ***Are there any other exclusions that should be catered for under the DP Act?***

[1] *Lawson v. Accusearch Inc.* at http://www.canlii.org/en/ca/fct/doc/2007/2007fc125/2007fc125.html.

[2] *PIPEDA Report of Findings #2011-002* at http://www.priv.gc.ca/cf-dc/2011/2011_002_0415_e.cfm.

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As mentioned above, RIM does support common exclusions. For example, in Canada, section 4(2) of PIPEDA uses the following language:

> (2) This Part does not apply to
>
> …
>
> (*b*) any individual in respect of personal information that the individual collects, uses or discloses for personal or domestic purposes and does not collect, use or disclose for any other purpose; or
>
> (*c*) any organization in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

Questions in relation to the general rules for the DP law:

10. Do you have any views / comments on the proposed general rules under the DP law?

RIM is of the view that the proposed general rules are reflective of modern day DP legislation and would generally provide for the appropriate balance between the need to protect individuals' personal data against an organization's need to obtain and process such data for legitimate and reasonable purposes.

However, RIM would like to address one specific point raised in the Consultation document. At paragraphs 3.28 and 3.29, MICA addresses the important question of the difference between "data controllers" and "data processors". When considering the different roles of a data controller and data processor, in order to ensure that the accountability principle can be applied in a clear and consistent manner for all organizations, data controllers must be considered to be in "control" of the personal data, whether they are also in possession of it or not, whereas data processors should be considered to be in "possession" of personal data. In this way, the data controller remains ultimately responsible for personal data it has transferred to a data processor.

11. With reference to paragraph 3.35, do you have any views / comments as to whether individuals should be deemed to have given consent for organizations to collect, use or disclose their personal data if they are notified and given reasonable time to opt out but do not?

RIM supports the proposed approach to consent that recognizes that consent can be either "explicit" or "implied", and that allows for the appropriate form of consent to be determined by the circumstances. RIM would caution, however, about the use of a third type of consent - "deemed" consent - as it can confuse matters. Deemed consent, if recognized at all, should be reserved for those special circumstances where public policy favours taking a position that an individual is considered to have given their consent for specific purposes even though they may not have done so because the circumstances require it for a proper functioning of a particular relationship, e.g. in the employment context. The Consultation document raises the question of the employment context in paragraph 3.44.

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Questions in relation to the proposed rules on collection, use and disclosure of personal data:

12. Do you have any views / comments on the proposed rules on collection, use and disclosure of personal data?

RIM is in general agreement with the proposed rules on the collection, use and disclosure of personal data. MICA may wish to consider adding the concept that organizations should not collect personal data indiscriminately.

13. Do you have any views / comments on the proposed exceptions to the rules on collection, use and disclosure? Should an exception be provided for organizations to collect, use and disclose an individual's personal data for the purposes of identifying him or her as a member, or for circulation within the organization? Are there any other exceptions that should be provided?

MICA has clearly outlined and explained the need for certain exceptions to the collection, use or disclosure of personal data – exceptions that are important to ensure a proper balance and for public policy reasons. As noted, many of the exceptions should apply to each of collection, use and disclosure to allow the exception to function as intended. However, MICA may want to consider limiting the number of exceptions included if common sense could prevail, e.g., in the context of an organization's members or employees, one might simply rely on implied consent as an appropriate form of consent in such cases and the DPC could provide guidance as required.

Furthermore, at paragraph 3.53, MICA mentions disclosures to police officers without consent. RIM would simply caution that this exception not be too broad as it can have the effect of creating confusion as between organizations and police officers as to when organizations should require a warrant or court order before disclosure and when they can do so without one.

14. Do you agree with the proposed approach to the transfer of personal data outside Singapore outlined at paragraphs 3.60 to 3.61?

RIM is in agreement with the proposed principle-based approach to the transfer of personal data outside of Singapore. As mentioned above, the accountability principle outlines the responsibility organizations have for personal data in their possession or control. In order to further strengthen this principle based approach, MICA may wish to introduce a requirement that organizations use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.

Questions in relation to the proposed rules on accuracy, protection and retention of personal data:

15. Do you have any views / comments on the proposed requirements for the accuracy, protection and retention of personal data outlined at paragraphs 3.62 to 3.67?

While RIM is in general agreement with the approach for the accuracy, protection and retention of personal data, we wish to raise two specific matters.

Regarding accuracy, RIM would suggest that the DP framework should provide that personal data should be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used. Such an approach avoids routine updating unless necessary. In RIM's view, it is important not to

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lose sight of the fact that in many cases individuals are in the best position to update their own personal data, e.g. when an individual changes living address.

16. With reference to paragraph 3.67, do you have any views / comments as to whether organizations should be required to specify the retention period when collecting personal data?

Different organizations have different business needs for retaining personal data, and those needs change over time for a multitude of reasons – sometimes the retention periods increase and sometimes they decrease. Also, most organizations have different retention periods for different types of information. In fact, many organizations may even consider how long they keep certain information proprietary. RIM believes that organizations should be required to only keep personal data as long as necessary for the purposes for which the personal data was collected and to meet their business needs. However, having to specify up front to individuals retention periods related to each piece of personal data would be unduly burdensome for organizations and would add a significant level of complexity to the DP framework. Organizations use different methods to explain their practices to individuals and when appropriate detailed information is at times made available, e.g. through the use of "Frequently Asked Questions". Such an approach is more in line with a baseline approach to DP.

Questions in relation to the proposed rules on access to and correction of personal data:

17. Do you have any views / comments on the proposed rules on access to and correction of personal data?

RIM is in general agreement with the proposed approach regarding rules on access to and correction of personal data. This approach has generally worked well in Canada and allows consumers fair and reasonable access to their data should it be required. Reliance on a complaints process has also worked well in Canada.

Questions in relation to the penalty and enforcement regime:

18. Do you have any views / comments on the proposed enforcement powers of the DPC or the proposed appeals mechanism?

19. Do you have any views / comments on the proposed penalties for contravention of the DP law outlined at paragraphs 4.4 to 4.5? Do you have any views / comments on the criteria for breaches that would warrant financial penalties?

RIM is generally opposed to the ever increasing calls for new order making powers and the ability for DP authorities to levy significant fines or penalties. In the face of such significant powers and exposure to significant fines or penalties, organizations are often deterred from being open and transparent with DP authorities. Experience has shown that DP authorities do not necessarily make use of the full extent of the powers they do have. For example, in Canada, the federal Privacy Commissioner under PIPEDA does not have order making powers nor the ability to impose fines or penalties; however, she currently has the following range of powers:

- the ability to take a matter to the Federal Court of Canada to force an organization to change practices and seek the awarding of damages including for humiliation;
- the ability to initiate an investigation on its own motion;

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- the ability to conduct an audit of an organization's practices when there are reasonable grounds to believe the organization is not in compliance with its obligations; and
- the power to publicly name an organization that is not in compliance when it is in the public interest to do so.

In the first 10 years of PIPEDA, the Privacy Commissioner has rarely initiated proceedings in the Federal Court, has only conducted a couple of audits and has rarely publicly named organizations. At the same time, however, the Office of the Privacy Commissioner has been successful in significantly changing the DP practices of large companies – domestic and global alike.

RIM supports the Canadian government's recent proposal to introduce a breach notification and reporting scheme under PIPEDA that would require notification to individuals when there is a real risk of significant harm to the individual – an obligation that RIM believes already exists as part of the PIPEDA safeguarding principle.[3] The scheme would also require organizations to report "material" breaches to the Office of the Privacy Commissioner of Canada – a process that many Canadian organizations have voluntarily followed for many years now. RIM recommends that any reporting to the DPC include the adoption of practical guidelines regarding the materiality of the personal data breach. Factors relevant in determining the materiality of a data breach include the sensitivity of the personal information, the number of individuals whose personal information was breached and the cause of the breach which may indicate a systemic problem within an organization.

Questions in relation to transitional arrangements:

20. Do you have any suggestions on specific guidelines that the DPC should provide to help organizations achieve compliance with the DP law?

RIM generally supports the issuance of guidelines that are developed in collaboration with industry and civil society as appropriate to provide additional guidance for organizations. A general guide for business that outlines the main obligations with checklists or templates as appropriate would go a long way during the transition period. We bring to your attention some of the current activity taking place with regards to the EU Data Protection Directive where there is significant movement towards DP authorities issuing guidance rather than detailed rules which impose significant administrative and compliance burdens on organizations and DP authorities alike.

Questions in relation to transitional arrangements:

21. With reference to paragraphs 4.11 to 4.14, do you have any views / comments as to whether a one to two year "sunrise" period would be appropriate?

RIM is in general agreement with the proposed sunrise period. While a minimum of one year should be provided, two years may be more appropriate especially if significant enforcement and penalties are included in the DP framework. In Canada, PIPEDA was first enacted in January 2001 after almost a one year transition period for federal undertakings within industries such as banking and

[3] Parliament of Canada, *Bill C-12: An Act to amend the Personal Information Protection and Electronic Documents Act*, First reading on September 29, 2011 (see: http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5134895).

telecommunications, and then three years later it was enacted more broadly in January 2004 for industry generally.

22. With reference to paragraphs 4.15 to 4.19, do you have any views / comments on the proposed treatment of existing personal data?

RIM is in general agreement with the proposed approach for the treatment of existing personal data as it achieves an appropriate balance. It is likely that many multinational organizations have already implemented appropriate consent mechanisms and would therefore have already met many of requirements under other data protection laws that would be similar to the new Singapore DP framework. Additionally, the Singapore Model Data Protection Code for the private sector was introduced in 2002 and has likely been adopted by many responsible companies in Singapore who would therefore meet already many of the proposed requirements under Singapore's new DP framework.

23. Are there certain organizations that may require different transitional arrangements?

RIM is not aware of certain organizations that may require different transitional arrangements.

24. Do you have any views / comments as to whether a National Do-Not-Call registry should be set up in Singapore?

While RIM does not have a position per se regarding the establishment of a National Do-Not-call registry in Singapore, we would simply caution MICA to:

- ensure that legitimate business is not unnecessarily impacted by the additional compliance burden;
- assess the extent to which a new DP framework could in fact alleviate some of the growing concerns, especially in conjunction with efforts to promote compliance with the existing voluntary Code of Ethics;
- ensure any necessary exceptions are provided for;
- determine whether calls, faxes and SMS messages should all be treated the same way; and
- adequately gauge consumer expectations of such a registry.

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