

26 April 2012

Ministry of Information, Communications and the Arts

140 Hill Street
#02-02 MICA Building
Singapore 179369

Dear Sir / Madam

**PUBLIC CONSULTATION ON THE PROPOSED PERSONAL DATA PROTECTION BILL
PROPOSED PERSONAL DATA PROTECTION BILL – 19 MARCH 2012**

Following are some comments / queries from the Singapore Retailers Association, representing some 200 retailers in Singapore who account for approximately 75% of total retail turnover (excluding motor vehicle sales).

Section 22 of the PDPA

Please clarify if all possible uses of the data should be communicated to the individual before the data is collected so that his / her express consent can be given? If among a list of purposes, the individual consents to some and not to others, how should he be asked to indicate which he consent to and which he does not? For example, if a customer leaves his personal data for the purposes because it is needed for a delivery service, can the organisation collecting the data use the data for future promotional or publicity activities? Any reasonable customer would realise that by giving his personal data for the delivery service, his data will sit with the organisation's database and the organisation would be able to use it in future even without the organisation listing the possible uses that the data could be put to.

Section 27 of the PDPA

“If an organisation uses an individual's personal data to make a decision that directly affects the individual the organisation shall retain that personal data for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.”

We would like to seek clarification, with clear examples, to enable all organisations to understand the statement “to make a decision that directly affects the individual” better. For example, would an individual’s personal data on a lucky draw coupon be deemed to come under this category?

We are also of the opinion that retention of personal data for 1 year would increase the cost of compliance for organisations. If the purpose of such mandatory period of retention is to provide individuals with the opportunity to access the personal data, a retention period of 3 – 6 months should be more than sufficient. With the above example, would organisations have to retain lucky draw coupons (which could come up to hundreds of thousands or even millions) or application forms for loyalty programmes or contest forms for a period of 1 year, or only until such time as the purpose for the collection of the data is completed, eg. After the lucky draw is done and the prizes awarded?

Section 23 of the PDPA and Paragraph 2.92 of the Consultation Papers

“Upon the request of an individual the organisation shall, as soon as reasonably possible, provide the individual with his or her personal data in the custody or under the control of the organisation and information about the ways in which the personal data has been or may have been used by the organisation.”

It is not always feasible to provide individuals with access to their personal data. For example, lucky draw coupons which contain individuals’ data are not processed. They are merely accumulated for the draw, then disposed of after a reasonable period of time. In addition lucky draw boxes are often locked, so it is not reasonable to expect these boxes to be unlocked, to have someone plough through thousands or even millions of lucky draw coupons just to find the one that the individual is looking for.

We strongly recommend that personal data contained on hard copy forms / documents which are not processed should be excluded from the rule of Access and Correction under the PDPA, otherwise we run the risk of incurring many expensive and unproductive manhours.

Sixth Schedule Clause (j) and Seventh Schedule Clause (f)

“Medical records held by a healthcare institution licensed under the Private Hospitals and Medical Clinics Act shall be exempted from the rules of Access and Correction under the PDPA.”

We recommend that medical records kept by pharmacists should also be excepted from compliance with PDPA.

Paragraph 2.35 of the Consultation Papers

“PDPA will apply to organisations that are legal entities, notwithstanding whether the organisations belong to a larger group or affiliation. MICA does not intend to provide exclusions from all or part of the PDPA for the sharing of data among related organisations. MICA considers that requiring consent in these instances would be reasonable.”

Consider the following scenario:

Company A is a Pte Ltd company registered and incorporated in Singapore. Company A has 3 other businesses. They are registered in Singapore as separate Business entities with Company A being the sole proprietor of each of these businesses. When one of the business entities employs an employee, can that said business entity share the employee's information with Company A and other businesses registered under Company A, without the need to obtain express consent from the said employee, if the employment contract provides for secondment to any department or business at the determination of the Company? If the sharing of such information is not possible, it would hamper employment efforts especially in industries where turnover is high and especially in Singapore where the labour pool is limited.

In addition, many organisations these days have employed a "shared service" structure (ie a group Human Resource department and a group Information Technology department) to serve all business entities including the head company and all subsidiaries in the effort to drive cost efficiency and to enhance knowledge and information sharing. Such HR personnel would therefore be dealing with the data of employees from multiple businesses.

Once again, in the name of productivity, and efficiency, we strongly recommend that such cases should be exempted from the rule of consent under the PDPA as it is unlikely to harm the interest of the employees. On the contrary, it would provide the employees with more options without them having to repeatedly provide their personal data to multiple users.

Paragraph 2.47 of the Consultation Papers

"In the case of referrals by existing customers of an organisation MICA notes that existing customers would generally not be required under the PDPA to seek the consent of their friends or family members to disclose their personal data to the organisation since they would generally be considered to be acting in a personal or domestic capacity. However, the organisation collecting the personal data would need to ensure that consent had been given by the individuals referred by existing customers, prior to or at the point of collection. Given that the organisation would not be able to approach the referred individuals directly, the organisation may ask the referrer to confirm that consent had been given by the referred individuals."

Individuals attending job interviews are requested to fill in details of their family members (eg. Name, age, NRIC, address and occupation). Would the organisation need to ensure that the potential employee has gotten consent from his / her family members to provide their personal data? Would the collection of such personal data of family members be deemed "excessive"?

We recommend that these should be exempted as the information is necessary and used by employers to assess the suitability of the candidate for the position and the company.

Further, many organisations conduct reference checks with other organisations (other than those listed by the candidate) on the potential employee. Would this be allowed under the PDPA without seeking express consent from the individual? It should be noted that the references specifically given by the candidates are almost assured of giving positive referrals and hence may not be totally un-biased.

Paragraph 2.68 of the Consultation Papers and Third to Fifth Schedules

Organisations are allowed to collect use and disclose Personal Data of an individual if “the personal data is available to the public from a prescribed source”.

We request that MICA includes an annex to the PDPA to list the entire selection of prescribed sources so that there is no ambiguity.

We seek clarification as to whether or not personal data such as that posted by individuals on a social media forum fall under the category of “prescribed source” if the said individual set his or her account to “public” thus enabling everyone to view details of his or her profile. Can an organisation therefore collect, use and disclose personal data without seeking the said individual’s consent if the personal data is collected in such a manner? What about data which is included on notices that individuals post in public areas advertising his or her tuition, room rental, house cleaning, (etc) services?

Paragraph 2.90 of the Consultation Papers

Please clarify if the organisation in Singapore that transferred personal data of individuals to an organisation located overseas should also be responsible for the compliance of the PDPA by the organisation located overseas? We are of the opinion that the organisation transferring personal data overseas should not be responsible for the overseas organisation’s compliance with the PDPA so long as the country the overseas organisation is in has its own personal data protection law and / or was informed of the PDPA by the organisation transferring the personal data.

In addition, please clarify if the organisation located overseas which received the personal data from another organisation in Singapore is required to comply with the full extent of the PDPA?

Also, would the organisation transferring the personal data overseas be required to inform the individual of such a transfer and seek the individual’s express consent?

Paragraph 2.97 of the Consultation Papers

“...it is proposed that organisations be allowed to charge a reasonable fee on a cost recovery basis.”

We suggest that MICA should set up a fee guideline for organisations when they are charging individuals for granting them access to the personal data. This would help prevent disputes between individuals and organisations and would assist in managing all parties’ expectations. While it is understood that MICA would like to keep the fees charged flexible and to be determined in different circumstances, we strongly feel that a general guideline (which may not be compulsory) on the fees to be charged would help ease the situation of potential disputes.

Annex C Paragraph 4 – Use of NRIC and NRIC Numbers

“It is noted that NRICs may enable an individual to be immediately recognisable across a wide variety of situations in Singapore. As such, the collection, there may be instances where collection, use or disclosure of NRICs or NRIC numbers may be unnecessary or excessive for the stated purposes. For example, it may not be necessary for a retailer to require an individual’s NRIC number as a condition for participation in a loyalty programme.”

It is exactly because the NRIC is unique to individuals that it is required to differentiate one individual from another, especially when more than one person may have the same name as another. Retailers need to be able to differentiate one individual from another for security purposes, especially when the loyalty programme allows an individual to claim vouchers / rebates against each purchase. If retailers are not allowed to collect NRIC numbers for such purposes, it may well result in the retailers having to collect even more personal data than is necessary in order to differentiate one individual from another. We request that MICA clarifies this point.

Take another scenario:

Many retailers work jointly with banks on promotions. Banks would usually send a redemption form to the customer, who will then fill in his/her personal particulars (which includes NRIC numbers). The customer then takes the completed redemption form to the retailer to exchange for vouchers / rebates. The retailer will then be required by the bank to collect the said completed redemption forms and send them back to the bank. In this instance would the retailer be exempted from the PDPA in relation to collection use and disclosure, access and accuracy? If retailers are expected to comply with all rules of PDPA in this scenario, this would result in onerous responsibility being placed on retailers. This is unfair as the retailer is merely the effective conduit in the collection of those personal data for the banks.

Paragraph D of Annex C

“Organisations should generally avoid taking photographs that would identify individuals, or should seek consent from individuals for their image to be included in a photograph.”

Please clarify if the organisation is required to seek the express consent of each and every individual when taking photographs at events organised / participated by the organisation? Would it suffice if there is a sign at the entrance of the event that informs the individual that photographs may be taken during the event?

Even if the photographs are not used for commercial purposes (ie. Sold), they could very well be used for publicity purposes such as in annual reports, posters, commercials, etc. Would such usage be deemed “domestic or personal use”?

As such events often involve the participation / attendance of hundreds of people, it is not feasible to obtain express consent from each and every attendee, nor is it possible to comprehensively list the usages that the photos may be put to.

Paragraph E of Annex C

Websites usually notifies its users of its use of “cookies” by way of a “pop-up” function. In the event that individuals disable their “pop-up” function, would it still be deemed that the individual has consented to the collection of personal data by “cookies” on the website? In this case, the administrator of the website has in fact notified the user of the “cookies” but the user’s choice of not receiving the notification is unknown to the administrator. Please clarify.

An organisation may engage a LBS provider from time to time. In the event of non-compliance with the PDPA by the LBS provider, would the client organisation be held liable as well? Please clarify.

We would appreciate MICA’s consideration of our recommendations and clarity of the questions that we have raised.

Thank you

Lau Chuen Wei (Miss)
Executive Director