

**Public consultation for the PDP (Amendment) Bill
("the Bill")**

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Summary of major points

Consent to be defined along the lines of GDPR consent definition

1. Consent is the primary basis for the processing of personal data under the PDPA. The Respondent agrees with the proposed amendments to ensure meaningful consent by:
 - a. expanding deemed consent to include deemed consent by contractual necessity and deemed consent by notification;
 - b. Introducing 2 new exceptions to the consent requirement such as the legitimate interests exception and the business improvement exception.

2. PDPC has, in GESS [2019] SGPDP 8, pointed out that:
 - a. the PDPA does not specify any particular manner in which consent is to be given under sections 13 and 14 of the PDPA;
 - b. Under common law, actual consent consists of both express consent and implied consent.
 - c. Implied consent as defined by Black's Law Dictionary (10th edition) refers to consent implied from the individual's conduct or the circumstances in question.
 - d. Actual consent (both express and implied) requires notification under section 14(1), unlike deemed consent.

3. What is consent implied from the data subject's conduct under common law would now be covered either under deemed consent by voluntary conduct or deemed consent by notification. An example of how deemed consent by notification may be applied can be seen in the factual scenario in GESS when the parents were notified about the school's drug testing policy but chose not to withdraw their child from the school.

4. What is consent imputed as a result of circumstances under common law would now be covered under:
 - a. deemed consent as expanded or
 - b. the data subject "vital interests" consent exception such as when a surgeon in removing a gall bladder discovers and removes colon cancer (see example given in Black's Law Dictionary).

5. According to common law, (and GESS) actual consent consists of both express and implied consent.

6. To avoid confusion between implied consent under the common law and consent under the PDPA, or over what actual consent is, the Respondent suggests that consent be defined under the Bill so both individuals and organisations understand the difference between “consent” and “deemed consent” as expanded.
7. MCI/PDPC may wish to define consent along the lines of the GDPR consent definition : “freely given, specific, informed and unambiguous indication of the individual’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the collection, use or disclosure of personal data”.
8. Guidance on how the "work product exception" under paragraph 1 (n) of the Second Schedule of the PDPA should be provided by MCI/PDPC as it is unclear whether it refers to BCI only or information in any other business document.

Statement of interest

The Respondent is a trainer and consultant in data protection.

Comments :

See summary of major points

Conclusion :

See summary of major points