

PUBLIC CONSULTATION FOR PROPOSED AMENDMENTS TO THE SINGAPORE PERSONAL DATA PROTECTION ACT

21 August 2017

Introduction

1. The Personal Data Protection Commission (“**PDPC**”) has issued a public consultation paper to seek comments on its proposed amendments to the Personal Data Protection Act (“**PDPA**”). These proposed amendments may be broadly characterized in two ways: first, changes in approach towards the collection, use and disclosure of personal data; and second, a mandatory obligation to notify individuals and/or the PDPC in the event of a data breach.
2. On 27 July 2017, Dr Yaacob Ibrahim, the Minister for Communications and Information, announced the PDPC’s plan to change organisations’ mindsets on data protection from compliance to accountability, and laid out a three-stage process to achieve this. Dr Yaacob also shared steps that the PDPC is taking to support data sharing between organisations for innovation, and to facilitate cross-border flows of data.
3. In this update, we summarise the PDPC’s proposed amendments and the developments laid out by Dr Yaacob.

Proposed Amendment 1: Changes in Approach towards the Collection, Use or Disclosure of Personal Data

4. Currently, organisations must obtain individuals’ consent in order to collect, use or disclose their personal data except in certain situations which are explicitly provided for in the PDPA (the “**Consent Obligation**”). Organisations must also notify an individual of the purposes for which they intend to collect, use or disclose his personal data before actually collecting, using or disclosing the personal data (the “**Notification Obligation**”). The PDPC’s proposed amendments seek to address shortcomings in the current approach towards these obligations.
5. The PDPC recognizes that the ways in which data are collected, used and disclosed have evolved such that obtaining consent may no longer be practical in some instances. Indeed, a strict adherence to the Consent Obligation might impede innovations which could benefit the public. Therefore, the PDPC proposes to dispense with the obligation if:
 - (i) it is impractical for an organisation to obtain consent; and
 - (ii) the collection, use or disclosure of personal data is not expected to have any adverse impact on the individuals.

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6. The PDPC also recognizes that the current situations which allow for the collection, use or disclosure of personal data without consent might be inadequate in addressing the full range of situations where such collection, use or disclosure might be necessary or beneficial to the public. Therefore, the PDPC proposes to dispense with the Consent Obligation and the Notification obligation if the following conditions are met:
- (i) it is not desirable or appropriate to obtain consent from the individual for the purpose; and
 - (ii) the benefits to the public (or a section thereof) clearly outweigh any adverse impact or risks to the individual.

Proposed Amendment 2: Mandatory Data Breach Notification

7. Presently, it is not mandatory for organisations to notify the PDPC (or the affected individuals) if a data breach occurs. They are merely encouraged to voluntarily notify the PDPC as soon as possible of any data breach that might cause public concern or where there is a risk of harm to a group of affected individuals. This voluntary approach has resulted in inconsistent notification practices across organisations. Further, where organisations decide against notifying affected individuals of a data breach, affected individuals would not have had the opportunity to protect themselves and may be left vulnerable to injury caused by the data breach.
8. The PDPC has therefore proposed instituting a mandatory data breach notification model, where organisations must notify the PDPC and/or affected individuals in the following situations:
- (i) Where a data breach poses any risk of impact or harm to affected individuals, the organisation must notify both the PDPC and the affected individuals; and
 - (ii) Where a data breach is significant in scale, and involves **500 or more** affected individuals, the organisation must notify the PDPC of the breach, regardless of whether the breach poses any risk of impact or harm to affected individuals.
9. Further, where an organisation's data intermediary experiences a data breach, the data intermediary must immediately inform the organisation (for whom it holds personal data) of the breach, regardless of the risk of harm or scale of impact of the data breach. The organization will then have the responsibility of (a) assessing whether the data breach meets the criteria for notification; and (b) notifying the PDPC and/or affected individuals, as required.
10. The PDPC also proposes that an organisation is required to notify the PDPC of a data breach as soon as practicable, and no later than 72 hours from the time that it is aware of the data breach. The organisation would also have to notify affected individuals of the breach as soon as practicable, but without an absolute time cap.
11. The PDPC has also stated that it will issue further advisory guidelines to provide guidance to organisations when the mandatory data breach notification requirements are introduced.

The PDPC's Three-Stage Process

12. The PDPC seeks to change the mindsets of organisations on personal data protection from compliance to accountability by way of the following three-stage process:

- (1) Introducing an online assessment tool and guides later this year to help organisations to create their own Data Protection Management Programmes and conduct Data Protection Impact Assessments;
- (2) launching a Data Protection Trustmark certification scheme by the end of 2018, which will provide accreditation for organisations who meet the requisite personal data protection standards; and
- (3) reviewing the PDPA by way of a series of public consultations on proposed amendments to the PDPA

Other Developments in Singapore Personal Data Protection Law

13. Dr Yaacob also announced that the PDPC is prepared to work with companies which adopt accountability practices to create regulatory sandboxes. These sandboxes aim to allow the PDPC to understand how their proposed changes might work in practice before they are formalized. Companies who enter the sandbox can benefit by getting a headstart on their competitors by being able to understand the changes in the regulatory landscape before the changes are implemented.
14. The PDPC will also be publishing a Guide to Data Sharing to provide guidance to organisations on how they can share data for their (and the public's) benefit while continuing to comply with the PDPA.
15. Finally, Dr Yaacob announced that Singapore has submitted its Notice of Intent to participate in the APEC Cross-Border Privacy Rules System and the APEC Privacy Recognition for Processors System. The Trustmark standards will be aligned with these in order to ensure that data standards across participating economies are harmonies. This allows for a smoother flow of data across borders and, in turn, lower costs for businesses.

Conclusion

16. The PDPC's proposed amendments to the PDPA and its upcoming plans demonstrate the Singapore government's recognition of the increasing importance of personal data protection in the digital economy, and its commitment to finding the optimal balance between corporate interests, technological advancements and individual rights. The steps taken to encourage good personal data protection practices and to ensure that Singapore data protection law stays abreast with international developments are also doubtless positive in ensuring Singapore's continued competitiveness in international business.
17. The PDPC welcomes comments on its proposed amendments to the PDPA. All comments should be submitted to the PDPC by **21 September 2017**.
18. Please let us know if you have any questions relating to this update, or require any advice on complying with personal data protection law in Singapore.

LAW UPDATE



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