



PROPOSAL PAPER

[No. 4/2014]

“ADVISORY GUIDELINE RELATED TO CONSENT REQUIREMENT UNDER THE PERSONAL DATA PROTECTION ACT (PDPA) 2010”

Personal Data Protection Department welcomes the feedback and opinion in writing to the Department in relation to matters raised in this paper. The feedback and opinion shall be submitted before 2nd May 2014 to the address or e-mail as follows -

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The paper seeks to obtain feedback and opinion on the proposal of the Personal Data Protection Department (the Department) to establish an Advisory Guideline Related To Consent Requirement Under The Personal Data Protection Act (PDPA) 2010.

The purpose of this paper is to provide practical guidance to data users with regard to the need to obtain consent in order to satisfy the requirements for processing of personal data as outlined under the relevant provision of the Personal Data Protection Act 2010 or Act 709.

2. Act 709 stipulates that consent of data subject is of the conditions that must be satisfied to enable the personal data be fairly processed for any legitimate purpose. Other situations where the processing of personal data is considered without consent include the followings (excluding sensitive personal data):

- The performance of a contract to which the data subject is a party; or
- In order to take steps at the request of the data subject prior to entering into a contract; or
- In order to comply with a legal obligation (other than that imposed by contract); or
- To prevent injury or other damage to the health of the data subject; or

- To protect the vital interests of the data subject where the seeking of consent of the data subject is likely to result in those interests being damaged; or
- For the administration of justice; or
- For the performance of a function conferred on by or under other laws; or
- For the performance of any other function of a public nature performed in the public interest by a person; or
- For the purpose of legitimate interests pursued by a data user except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

3. Act 709 does not specify the level or form of consent that must be obtained though the relevant Regulations stipulate the requirements that all consent must be capable of being recorded. This would mean that consent may vary not only from case to case but also between implied and explicit insofar as processing of sensitive personal data is concerned. Hence, the key test will be the ability to demonstrate that consent exists or being given by the data subject.

4. In this context, it is important for data users to ensure that a data subject is fully aware of and understands the purposes for which his/her data are being processed. Consent can be understood to have been given when individuals do not object or volunteer their personal data after the purposes of processing are clearly explained. Nevertheless, a clear explanation by trained staff of the data user is necessary to prove that consent has been obtained

from the data subject after him/her being explained the purposes of processing his/her data.

5. Although no age limit is imposed as a condition related to consent, it is however important that the data subject understands the nature and effect of such consent. In the situations where an individual is unlikely to be able to understand the nature or effect of consent due to for example age or physical or mental incapacity, then assistances from a parent, grandparent, uncle, aunty, brother, sister or guardian must be sought to act or give consent on behalf of the data subject concerned. These are the only circumstances in which a third party may give consent on behalf of a data subject. It is also important for data users to ensure that consent for any particular purpose is not supposed to be used for other unrelated purposes.

The paper above represents initial suggestions of the Department. The Department would therefore like to welcome any feedback and opinion on the above proposed matters.