

COVID-19: Client Update Special Issue 02

COLLECTION OF PERSONAL DATA FOR COVID-19 CONTACT TRACING

27 March 2020

The Personal Data Protection Commission of Singapore has issued an advisory on 13 February 2020 (the "Advisory") pertaining to the collection of personal data for the purposes of COVID-19 contact tracing. The Advisory can be accessed online at <https://www.pdpc.gov.sg/Advisory-on-CUD-for-COVID-19>.

WHAT THE ADVISORY SAYS

To paraphrase, the Advisory states that:

1. To facilitate contact tracing and other response measures, an organisation can collect, use and disclose visitors' relevant personal data without first obtaining their consent. This is because doing so is necessary for responding to an emergency that threatens the life, health or safety of the individual or another individual.¹
2. Such "relevant personal data" would include visitors' NRIC, FIN or passport numbers, which are needed to identify visitors in a COVID-19 case.
3. When collecting relevant personal data, an organisation must comply with the requirements of the Personal Data Protection Act ("PDPA").
4. An organisation may make use of a notice provided by the PDPC to inform visitors that relevant personal data will be collected during the outbreak of COVID-19 for contact tracing purposes.²

¹ See section 17 of the PDPA read with 1(b) of the Second, Third and Fourth Schedules on the collection, use and disclosure of data without consent respectively.

² Under section 20(1) of the PDPA, an organisation wishing to collect personal data from an individual must give notice of the purpose for which it is collecting such personal data. The Notice for Collection of Personal Data for Contact Tracing can be found at <https://www.pdpc.gov.sg/Resources/For-Organisations>.

5. If a member of the public receives a telephone call from a person claiming to be a Ministry of Health ("MOH") contact tracing officer, he should check with the MOH hotline if he has doubts about the caller's identity.

STEP BY STEP

So, how do we implement the Advisory? To put simply:

1. Put up a clear notification that you / your organisation is collecting personal data for the purpose of contact tracing. You should display it prominently.
2. When in doubt, use the notice referred to in the Advisory. It is clear enough and complies with the PDPA.
3. Ensure that you have appointed at least one individual for ensuring that your organisation complies with the PDPA,³ and to answer any questions by visitors about the collection, use or disclosure of their personal data.⁴
4. Have a single book / database that is used to collect the personal data. It is best to use digital forms which the visitors can access from their own devices, when carrying out the data collection, to minimise touching of common stationery.
5. The personal data to be collected must be necessary for responding to an emergency that threatens the life, health or safety of the visitor or another individual, and can include:
 - a. A visitor's NRIC, FIN or passport number;
 - b. A visitor's phone number;
 - c. Whether a visitor:
 - i. Is currently serving a Quarantine Order or Stay-Home Notice or Leave of Absence; or

³ Section 11(3) PDPA.

⁴ Section 20(1)(c) PDPA.

- ii. Has been in contact with a confirmed or suspected COVID-19 case in the last 14 days;
 - iii. Entered Singapore from overseas in the last 14 days;⁵ or
 - iv. Has been in close or frequent contact with a person who has entered Singapore from overseas in the last 14 days.
6. If you are using a book, please ensure that the book / pens used are sanitised regularly. Any portable electronic devices such as iPads that are provided to visitors to enter their personal data into the database should also be sanitised regularly. This is to avoid spreading the virus.
7. You should refer to official websites for a list of disinfecting products, such as, e.g., the National Environment Agency's list of interim household products and active ingredients for disinfection at <https://www.nea.gov.sg/our-services/public-cleanliness/environmental-cleaning-guidelines/guidelines/interim-list-of-household-products-and-active-ingredients-for-disinfection-of-covid-19>.
8. You should implement temperature screening measures as well at the same time when collecting the relevant personal data. Please bear in mind the measures concerning social distancing, such as, e.g., <https://www.moh.gov.sg/news-highlights/details/stricter-safe-distancing-measures-to-prevent-further-spread-of-covid-19-cases>, and in particular, the stricter safe distancing measures in relation to seating and queues, <https://www.moh.gov.sg/news-highlights/details/promulgation-of-regulations-under-infectious-diseases-act>.
9. Once it is no longer necessary to retain the relevant personal data for the purposes of responding to an emergency that threatens the life, health or safety of the individual or another individual, you should implement steps to destroy the book / database.⁶ Bearing in mind that the incubation period for COVID-19 is typically 14 days, you

⁵ With effect from 11.59pm on Monday, 23 March 2020, any persons allowed into Singapore will be issued a 14-day Stay-Home Notice. All short-term visitors will no longer be allowed to enter or transit through Singapore. See <https://www.straitstimes.com/singapore/health/coronavirus-all-short-term-visitors-barred-from-entering-and-transiting-in>.

⁶ See section 25 of the PDPA.

should probably destroy a visitor's relevant personal data only after 21 days following the date when the data was collected.

10. Do note that you should capture all the above as part of an internal policy so that you can demonstrate that you have an internal policy in place should the Personal Data Protection Commission conduct an investigation.⁷

TRACE TOGETHER

The Government has introduced a mobile app called TraceTogether to facilitate contact tracing.

Companies, especially large organisations, should consider having a policy on whether employees are required to have downloaded and activated TraceTogether whenever they are at work.

CAN I TURN SOMEONE AWAY IF HE REFUSES TO DISCLOSE HIS PERSONAL DATA?

Generally, a private organisation has the right to impose conditions on visitors wishing to enter its premises,⁸ and the PDPA does not prevent you from denying entry to visitors if they refuse to disclose their relevant personal data requested for contact-tracing purposes.⁹

⁷ See section 12(a) PDPA, which requires organisations to develop and implement policies and practices that are necessary for the organisation to meet its PDPA obligations.

⁸ This is because a visitor entering the organisation's premises is a bare licensee: the organisation has gratuitously allowed him to be on the premises. Tan Sook Yee's *Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at [19.5] states that under a bare licence, "[t]he licensee has a mere privilege to be on the land of the licensor. There is merely a gratuitous permission given to the stranger to be on the land – there is no contract."

⁹ Because consent is not required to collect, use and disclose personal data under the exception for responding to an emergency that threatens the life, health or safety of individuals (see Footnote 1). Otherwise, there may be circumstances where denying entry to visitors may fall foul of section 14(2)(a) PDPA, which states that an organisation shall not as a condition of providing a product or service, require an individual to consent to the collection, use or disclosure of personal data beyond what is reasonable to provide the product or service. Such a question is necessarily fact and context specific: *German European School Singapore* [2019] SGPDP 8.

CAN I TURN SOMEONE AWAY IF HE REFUSES TO ALLOW HIS TEMPERATURE TO BE TAKEN, OR IF HE HAS A HIGH TEMPERATURE?

If your private organisation requires visitors to have their temperature taken before they are allowed to enter its premises, you can turn away a visitor who refuses to allow his temperature to be taken. A notice on your company website on this policy would be sensible.

Similarly, you are generally permitted to turn away a visitor if he has a high temperature,¹⁰ on the basis that such a visitor does not fulfil the conditions which your organisation has imposed on visitors who wish to enter your premises.

CYBER-SECURITY

As rightly highlighted by the Personal Data Protection Commission, during this extra-ordinary period, it is important for everyone to be vigilant against scammers. In this regard, for those who are working remotely, it is also important to bear in mind that cyber-security should be at the front of your mind. We will be doing a brief update soon concerning some of the practical issues to look out for when working remotely during this period.

¹⁰ A high temperature could be defined as a temperature of at least 38 degrees Celsius. MOE guidelines state that if a student has a temperature of at least 38 degrees Celsius, his parents will be contacted to inform them to take him to see a doctor. See the MOE FAQs for COVID-19 Infection in Singapore (updated on 22 Mar 2020, 13:30) at <https://www.moe.gov.sg/faqs-covid-19-infection>.

However, we highlight that the Ministry of Health has indicated on 25 March 2020 that the Singapore-Malaysia Joint Working Group has adopted 37.5 degrees Celsius as the temperature cut-off for febrile travellers: [https://www.moh.gov.sg/docs/librariesprovider5/2019-ncov/press-release-second-meeting-of-joint-workgroup-\(25-mar\)_mohebfd5055d46742e08e4b730381ec2c73.pdf](https://www.moh.gov.sg/docs/librariesprovider5/2019-ncov/press-release-second-meeting-of-joint-workgroup-(25-mar)_mohebfd5055d46742e08e4b730381ec2c73.pdf).

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