

7 PRINCIPLES

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Personal Data Protection Act 2010 (Act 709)

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Personal Data Protection Principles

The PDPA asserts seven Personal Data Protection Principles which have to be complied with when processing personal data, namely:

- i** General Principle;
- ii** Notice and Choice Principle;
- iii** Disclosure Principle;
- iv** Security Principle;
- v** Retention Principle;
- vi** Data Integrity Principle; and
- vii** Access Principle



Non-compliance by a data user of any of the above said principles constitutes an offence under the PDPA and is liable to a fine not exceeding three hundred thousand ringgit (RM300,000.00) or imprisonment for a term not exceeding two years or both.

General Principle

The General Principle prohibits a data user from processing a data subject's personal data without his/her consent unless such processing is necessary:

- i for the performance of a contract to which the data subject is the party;
- ii for taking of steps, at the data subject's request, with a view of entering into a contract;
- iii for compliance with any legal obligation to which the data user is the subject, other than a contractual obligation;
- iv for protecting the vital interests, namely matters relating to life, death or security, of the data subject;
- v for the administration of justice; or
- vi for the exercise of any functions conferred on any person by or under any law.

The PDPA also prohibits the processing of personal data unless:

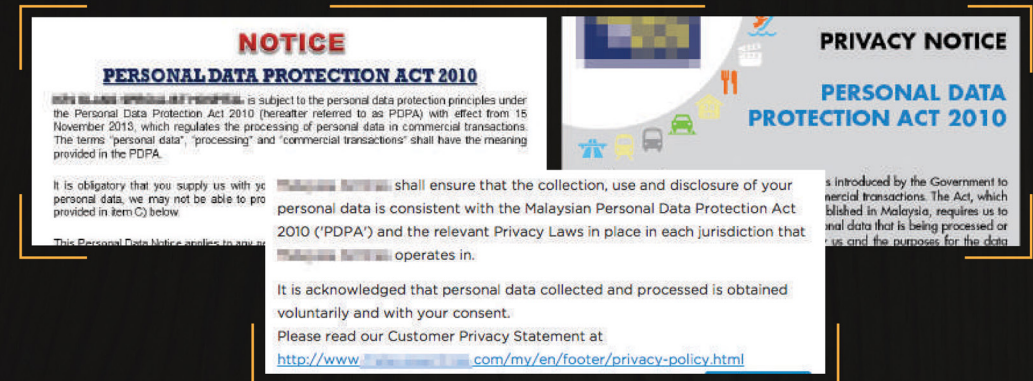
- i. it is for a lawful purpose directly related to the activity of the data user;
- ii. it is necessary for or directly related to the purpose; and
- iii. the data processed is not excessive in relation to that purpose.

For sensitive personal data, that is, data on the physical or mental health or condition of a data subject, his political opinions, his religious beliefs or other similar beliefs of a similar nature, the commission or alleged commission by him of an offence or any other personal data as determined by the Minister; explicit consent has to be obtained from the data subject for processing of such data.

Notice and Choice Principle

The PDPA requires a data user to inform a data subject by written notice, in both the national and English languages, of the following:

- i the personal data of the data subject that is being processed and a description of the data;
- ii the purposes for which the personal data is being collected and further processed;
- iii any information available to the data user as to the source of that personal data;
- iv the data subject's right to request access to and correction of the personal data and contact particulars of the data user in the event of any inquiries or complaints;
- v the class of third parties to whom the data is or may be disclosed;
- vi the choices and means offered to the data subject to limit the processing of the data; and
- vii whether it is obligatory or voluntary for the data subject to supply data, and if obligatory, the consequences of not doing so.



Notice of the above has to be given by the data user "as soon as practicable", that is, when the data user first requests the personal data from the data subject, or when the data user first collects the personal data of the data subject, or before the data user uses it for a purpose other than the original purpose or discloses it to a third party.

GENERAL

ACCESS

**NOTICE AND
CHOICE**

SECURITY

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DISCLOSURE

RETENTION

DATA INTEGRITY

Disclosure Principle

This Principle prohibits the disclosure, without the data subject's consent, of personal data:

- i. for any purpose other than that for which the data was to be disclosed at the time of collection, or a purpose directly related to it; and
- ii. to any party other than a third party of the class notified to the data user.



nonetheless, disclosure of personal data for any other purpose is permitted when:

- i consent has been given by the data subject;
- ii the disclosure is necessary to prevent or detect a crime, or for the purpose of investigations;
- iii the disclosure is required or authorized by or under any law or by the order of a court;
- iv the data user acted under the reasonable belief that he had the right in law to disclose the data to the other person;
- v the data user acted under the reasonable belief that he would have received the consent of the data subject if the data subject had known of the disclosure and the circumstances of such disclosure; or
- vi the disclosure was justified as being in the public interests in circumstances as determined by the Minister.

Security Principle

The PDPA impose obligations on the data user to take steps to protect the personal data during its processing from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction.

Where the data processing is carried out by a data processor on behalf of a data user, the data user must ensure that the data processor provides sufficient guarantees in respect of the technical and organizational security measures governing the processing and takes reasonable steps to ensure compliance with those measure.



Retention Principle

Under this Principle, personal data is not to be retained longer than is necessary for the fulfilment of the purpose for which it was processed. Once the purpose has been fulfilled, it is the duty of data user to take reasonable steps to ensure that the data is destroyed or permanently deleted.

Data Integrity Principle

It is the responsibility of a data user to take reasonable steps to ensure that the personal data is accurate, complete, not misleading and kept-up-to-date, having regard to the purpose (and any directly related purpose) for which it was collected and processed.



Access Principle

The PDPA gives the data subject the right to access his/her own data and to correct the personal data which is inaccurate, incomplete, misleading or outdated. Nevertheless, the PDPA provides grounds on which the data user may refuse to comply with the data access request or data correction request by the data subject.

Certain Principles are qualified by exceptions and exemptions under the PDPA

Key Terms

Personal data:

information which relates indirectly to an individual (known as a data subject) who is identified or identifiable from that information or from that and other information in the possession of a data user. Examples include personal data of customers, vendors, visitors and employees. However, information processed for the purpose of a credit reporting business carried on by a credit reporting agency under the Credit Reporting Agencies Act 2010 is not included under the ambit of the PDPA.

Commercial transactions:

any transaction of a commercial nature, whether contractual or not, and includes any matter relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance.

Data user:

a person who either alone or jointly in common with other persons processes any personal data or has control over or authorizes the processing of any personal data, but does not include a data processor.



The **Personal Data Protection Act 2010 (Act 709)**, enforced by the Commissioner of Personal Data Protection Malaysia; was passed by Parliament on 10 June 2010 and came fully into force on 15 November 2013. Find out more about it.



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