

Data Protection Quarterly Updates (October – December 2020)

Between October to December 2020, the Personal Data Protection Commission (“PDPC”) published 17 decisions after concluding the following investigations:

- (a) 16 investigations relating to the Protection Obligation (as defined below) under the Personal Data Protection Act (“PDPA”);
- (b) three investigations relating to the Retention Limitation Obligation under the PDPA;
- (c) three investigations relating to the Accountability Obligation (defined below) under the PDPA; and
- (d) one investigation relating to the Consent Obligation under the PDPA.

A summary of the directions imposed in each of the 17 decisions is set out as follows:

Name of decision	Obligation(s) breached	Directions imposed
<i>Courts (Singapore) Pte Ltd.</i> [2020] SGPDPDC 17	Protection Obligation	Financial penalty - \$9,000
<i>MRI Diagnostics Pte Ltd and Clarity Radiology Pte Ltd</i>	Protection Obligation	MRI Diagnostics – warning Clarity Radiology – directions to appoint a data protection officer and put in place policies and practices
<i>Horizon Fast Ferry</i>	Protection Obligation	Warning
<i>Vimalakirti Buddhist Centre</i>	Protection Obligation	Financial penalty - \$5,000
<i>Tanah Merah Country Club</i>	Protection Obligation	Financial penalty - \$4,000
<i>Chan Brothers Travel Pte Ltd</i>	Protection Obligation	Warning
<i>Interauct! Pte Ltd</i>	Retention Limitation Obligation	Warning
<i>Security Masters Pte. Ltd.</i>	Protection Obligation	Directions to revise training curriculum
<i>Majestic Debt Recovery</i> [2020] SGPDPDC 7	Consent and Accountability Obligations	(a) financial penalty - \$7,500;

		(b) develop and implement policies and practices; and (c) put in place training programme for its employees.
<i>Secur Solutions Group</i> [2020] SGPDP 8	Protection Obligation	Financial penalty - \$120,000
<i>Times Software Pte. Ltd. and Ors</i> [2020] SGPDP 18	Protection and/or Retention Limitation Obligations	Times - financial penalty of \$20,000 Law Firm and TMF – warnings
<i>Worksmartly Pte. Ltd.</i>	Protection and Retention Limitation Obligations	Financial penalty - \$5,000
<i>Novelship Pte. Ltd.</i>	Protection Obligation	Financial penalty - \$4,000
<i>Everlast Projects Pte Ltd & Others</i> [2020] SGPDP 20	Protection and Accountability Obligations	Directions to develop and implement policies
<i>Hello Travel Pte. Ltd.</i>	Protection Obligation	Financial penalty - \$8,000
<i>R.I.S.E Aerospace Pte. Ltd.</i>	Protection Obligation	Warning
<i>Water + Plants Lab Pte. Ltd.</i>	Protection Obligation	Warning

In this quarterly update, we outline below some decisions of interest relating to the enforcement of the Protection Obligation and Accountability Obligation.

Times Software Pte Ltd & Ors [2020] SGPDP 18

Comments

Section 24 of the PDPA provides that an organisation shall protect personal data in its possession or under its control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification or similar risks (“**Protection Obligation**”).

In the context of providing personal data to data intermediaries, contractual arrangements with data intermediaries could fall within the ambit of such “reasonable security arrangements”. This decision highlights some matters to consider when negotiating such contractual arrangements.

In this decision, the PDPC observed that a general obligation imposed on a vendor to comply with applicable laws (with no express reference to compliance with the PDPA) would typically not be sufficient for an organisation to demonstrate compliance with the Protection Obligation, and that detailed contractual provisions should generally be put in place to protect personal data provided to the vendor. The PDPC further highlighted that contractual clauses imposed on vendors need to be appropriately scoped to cover the scope of the processing.

Facts

Times Software Pte Ltd (“**Times**”) is an information technology services vendor. Organisations which had used Times’ services included:

- (a) a law firm (“**Law Firm**”) which directly engaged Times to use Times’ payroll software application; and
- (b) Red Hat Asia Pacific Pte. Ltd. (“**Red Hat**”) and Liberty Specialty Markets Pte. Ltd (“**LIU**”) engaged TMF Singapore H Pte Ltd (“**TMF**”) for certain HR and payroll services, which in turn engaged Times to use Times’ payroll software to provide services to its clients.

The Law Firm, Red Hat and LIU later became aware that the personal data of some of their current and former employees had been exposed online during a window of time when Times was remediating a hard disk failure, and each of these three organisations submitted a data breach notification.

Decision

Protection Obligation – Times, Law Firm and TMF

Having considered that Times was a data intermediary of the Law Firm and TMF (as it processed personal data on behalf of TMF), the Commissioner of PDPC (“**Commissioner**”) held that Times had, among other things, breached the Protection Obligation in two ways:

- (a) Times’ Standard Operating Procedure (“**SOP**”) required an employee carrying out server restorations to enable an authentication function, and the employee’s supervisor was required to check that the function was enabled. The employee and the supervisor did not undertake such measures. As Times’ SOP did not include specific procedures designed to reasonably detect non-compliance, the Commissioner found that the SOP was not sufficient to constitute a “reasonable security arrangement” for the purpose of the Protection Obligation; and
- (b) Times’ password management policies were inadequate and did not meet the reasonable protection standard expected of an organisation which handled a large amount of sensitive personal data.

Accordingly, the Commissioner directed Times to pay a financial penalty of \$20,000.

In relation to the Law Firm, it was not disputed that there was no written contract between the Law Firm and Times regarding the processing of employee data by Times. Instead, the Law Firm sought to rely on a letter issued by Times in July 2014. The letter provided Times’ commitments as to the conduct of its staff, security of physical copies of documents, and data protection during electronic transmission but did not specify any requirements in relation to the electronic storage of employee data. The Commissioner noted

that requirements in relation to electronic storage was “most relevant and paramount” given that the employee data was in electronic form and was stored in Times’ servers, and held that the letter could not reasonably be relied on by the Law Firm as a security arrangement to protect the employee data that was provided to Times. The Commissioner directed that a warning be given to the Law Firm in lieu of a financial penalty.

As for TMF, the Commissioner considered that TMF was Times’ data controller and Red Hat’s and LIU’s data intermediary, and was subject to the Protection Obligation. The Commissioner held that TMF had breached the Protection Obligation as there was no contract with Times with respect to Times’ processing of Red Hat’s and LIU’s employee data. The Commissioner similarly directed that a warning be given to TMF in lieu of a financial penalty.

Protection Obligation – Red Hat and LIU

The Commissioner held that Red Hat and LIU had not breached the Protection Obligation. The Commissioner noted that Red Hat and LIU had entered into separate agreements with TMF by which TMF, among other things, was required to comply with all “applicable laws”. This, however, would typically not suffice to discharge an organisation’s Protection Obligation as detailed contractual clauses ought to be imposed on vendors.

Nonetheless, in relation to both parties, the Commissioner held that such general references had to be read in conjunction with the Master Services Agreement which provided that TMF and its affiliates were to use at least the same degree of care to protect confidential information from unauthorised disclosure. TMF was therefore contractually bound to protect Red Hat’s and LIU’s employee data in accordance with TMF’s own policies. Accordingly, the Commissioner held that Red Hat and LIU had discharged their respective obligations under the Protection Obligation.

A copy of this decision may be accessed [here](#).

Everlast Projects Pte Ltd & Others [2020] SGPDP 20

Comments

Section 12 of the PDPA requires organisations to, *inter alia*, develop and implement policies and practices that are necessary for the organisation to meet its obligations under the PDPA, and to communicate information about such policies and practices to its staff (“**Accountability Obligation**”).

In the context of group companies’ sharing of personal data, written intra-group policies should be put in place for the group companies to comply with the Accountability Obligation. Effectively drafted policies may also assist group organisations in discharging other obligations under the PDPA.

Facts

Everlast Projects Pte. Ltd (“**EPPL**”), Everlast Industries (S) Pte Ltd (“**EIPL**”), and ELG Specialist Pte Ltd (“**ESPL**”) specialise in the supply and installation of architectural metal works, glass and aluminium products. The organisations operated like a group of companies and centralised their payroll processing

such that the human resources department of EPPL took charge of processing the payroll of all three organisations.

EPPL was later subject to a ransomware attack on its server, which contained personal data of the organisations' employees.

Decision

Taking into account the fact that the common corporate service shared by the organisations was payroll services, the Commissioner held that EPPL was: (a) a data controller with respect to its own employees' personal data; and (b) EIPL's and ESPL's data intermediary with respect to each of their respective employees' personal data.

The Commissioner found that the organisations did not have any written data protection policies and relied only on verbal instructions to its employees, and that the organisations therefore breached the Accountability Obligation. Referencing the PDPC's earlier decision in *Re Furnituremart.sg* [2017] SGPDP 7, the Commissioner noted that the presence of written policies would be conducive to the conduct of internal training, which is a necessary component of an internal data protection programme. Such policies and practices would be ineffective if passed on by word of mouth as, without written policies in place, employees would not have a reference for the organisation's policies and practices.

The Commissioner also observed that such group-level written policies are akin to binding corporate rules imposed by an organisation on its overseas recipients of the personal data (in compliance with the Transfer Limitation Obligation under section 26(1) of the PDPA), and that binding group-level written policies, intra-group agreements or binding corporate rules which meet the requirements of the Protection Obligation would also meet the requirements of the Transfer Limitation Obligation.

The Commissioner directed EPPL, EIPL and ESPL to develop and implement intra-group agreements or binding corporate rules that set out a common and binding standard for the processing of personal data when centralising common corporate activities within the group.

A copy of this decision may be accessed [here](#).

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



LAM Chung Nian

Head – Intellectual Property,
Technology & Data

d: +65 6416 8271

e: chungnian.lam@wongpartnership.com

Click [here](#) to view Chung Nian's CV.



Kylie PEH

Partner – Intellectual Property,
Technology & Data

d: +65 6416 8259

e: kylie.peh@wongpartnership.com

Click [here](#) to view Kylie's CV.

 Connect with WongPartnership.

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Corporate Avenue 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous International Legal Practice
Abdullah Al Mulla Building, Mezzanine Suite
02
39 Hameem Street (side street of Al Murroor
Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous International Legal Practice
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw