

## Data Protection Quarterly Updates (January – March 2021)

The Personal Data Protection Commission ("PDPC") published nine decisions between January and March 2021 after concluding the following:

- (a) eight investigations relating to the Protection Obligation (as defined below) under the Personal Data Protection Act ("PDPA");
- (b) two investigations relating to the accountability obligation under the PDPA; and
- (c) one investigation relating to the Transfer Limitation Obligation (as defined below) under the PDPA.

The following table summarises the directions imposed for each of the nine decisions:

Name of decision	Obligation(s) breached	Directions imposed
<i>Flying Cape Pte Ltd and ACCA Singapore Pte Ltd</i>	Protection Obligation	Flying Cape – Warning ACCA Singapore – No breach of the PDPA
<i>St. Joseph's Institution International Ltd</i>	Protection Obligation	Warning
<i>Chapel of Christ the Redeemer</i>	Accountability and Protection Obligation	Directions to develop and implement data protection policies and practices
<i>Tripartite Alliance Limited</i>	Protection Obligation	Financial penalty - \$29,000
<i>Jigyasa [2020] SGPDP 9; [2021] SGPDP 1 (Reconsideration Decision)</i>	Accountability and Protection Obligation	Financial penalty - \$30,000 (reduced from \$90,000 after the Reconsideration Decision)
<i>Iapps Pte Ltd [2021] SGPDP 1</i>	Protection Obligation	Financial penalty - \$9,000
<i>BLS International Services Singapore Pte Ltd</i>	Protection Obligation	Financial penalty - \$5,000
<i>The Future of Cooking Pte Ltd</i>	Protection Obligation	Financial penalty - \$9,000
<i>Singapore Technologies Engineering Ltd [2020] SGPDP 21</i>	Transfer Limitation Obligation	No breach of the PDPA

We outline below some decisions of interest relating to the enforcement of the Protection Obligation and Transfer Limitation Obligation.

### *Flying Cape Pte Ltd and ACCA Singapore Pte Ltd (Case No. DP-2011-B7385)*

#### Comments

Under Section 24 of the PDPA, organisations are required to 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 disposal, or similar risks, and the loss of any storage medium or device on which personal data is stored ("**Protection Obligation**").

As highlighted in this decision, in addition to developing appropriate policies and processes to comply with the Protection Obligation, organisations are also required to implement measures to ensure compliance with such policies and processes.

Further, when engaging a data intermediary to process personal data on the organisation's behalf, this decision reiterates the importance of: (a) conducting a thorough assessment of a data intermediary's data protection policies and measures prior to any transfer of personal data to the data intermediary; and (b) imposing appropriate contractual obligations on the data intermediary, to ensure the organisation's own compliance with the PDPA.

#### Facts

ACCA Singapore Pte Ltd ("**ACCA**") engaged Flying Cape Pte Ltd ("**FCPL**") to host, manage and operate a website as a data intermediary.

At an undetermined time between 25 September 2020 and 5 October 2020, the personal data of 191 users of the website, including their names, email addresses and contact numbers, were extracted by an unauthorised party ("**Extracted Data**").

It was believed that the unauthorised party obtained the Extracted Data from an unsecured Excel file that was stored in a publicly accessible location by an FCPL employee when managing the website on ACCA's behalf.

#### Decision

##### *Protection Obligation – FCPL*

Section 53(1) of the PDPA stipulates that an employer (here, FCPL) is liable for the acts of its employees. Hence, the PDPC conducted investigations and assessment on whether FCPL had taken reasonable steps to prevent or detect any errors committed by its employees.

Whilst FCPL's information technology policy requires employees to comply with processes to protect documents containing personal data, the Deputy Commissioner for Personal Data Protection ("**Deputy Commissioner**") found that FCPL did not establish adequate measures to supervise or verify its employees' adherence with internal policies. The PDPC therefore found that FCPL breached its Protection Obligation in respect of the Extracted Data.

The Deputy Commissioner issued a warning to FCPL, taking into account the following factors:

- (a) the number of individuals affected was low;
- (b) the Extracted Data was of low sensitivity;
- (c) FCPL undertook immediate remedial actions to prevent the occurrence of similar incidents; and
- (d) FCPL had voluntarily notified the PDPC of this incident.

#### *Protection Obligation – ACCA*

ACCA, as the data controller and owner of the website, was subject to the same Protection Obligation in respect of the Extracted Data. However, the Deputy Commissioner found that ACCA was not in breach of its obligation given that ACCA had:

- (a) conducted a due diligence assessment of FCPL's data protection policies and practices before engaging FCPL's services; and
- (b) specified data protection requirements in its engagement agreement with FCPL.

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

### **Singapore Technologies Engineering Ltd [2020] SGPDPC 21**

#### **Comments**

Section 26 of the PDPA states that an organisation must not transfer any personal data to a country or territory outside Singapore except where it has fulfilled the prescribed requirements to ensure that organisations provide a standard of protection over personal data so transferred that is comparable to the protection afforded under the PDPA ("**Transfer Limitation Obligation**").

This case illustrates that an organisation may satisfy the Transfer Limitation Obligation for overseas intra-group transfers by transferring personal data under effectively drafted binding corporate rules ("**BCR**") that satisfy the requirements of the PDPA.

#### **Facts**

Singapore Technologies Engineering Limited ("**ST Engineering**") is a Singapore incorporated company with a network of subsidiaries in Asia, Europe, the United States of America ("**USA**") and the Middle East. On 10 June 2020, ST Engineering notified the PDPC that its subsidiary, VT San Antonio Aerospace ("**VTSAA**"), which is located in the USA had suffered a ransomware attack on a limited section of its network.

In the ransomware attack, the personal data of 287 individuals in Singapore ("**Affected Individuals**") were potentially exposed to unauthorised access. These personal data had been transferred from ST Engineering, in Singapore, to VTSAA and other subsidiaries, in the USA.

#### **Decision**

At the outset, it was clarified that the PDPA did not apply to VTSAA as it did not collect, use or disclose the Affected Individuals' personal data in Singapore.

The present investigations conducted by the PDPC are focused on whether ST Engineering complied with the Transfer Limitation Obligation in transferring the personal data of the Affected Individuals to the USA.

To comply with the Transfer Limitation Obligation, an organisation must take appropriate measures in ensuring that the recipient of the transferred personal data is bound by legally enforceable obligations to provide a standard of protection over the personal data that is comparable to the PDPA. Such legally enforceable obligations include contractual obligations or BCR that meet the requirements of the PDPA.

In this context, the PDPC found that ST Engineering had implemented BCR that satisfy the requirements of the PDPA when transferring the Affected Individuals' personal data to VTSAA. Specifically, the PDPC concluded that:

- (a) the BCR were legally binding upon ST Engineering's direct and indirect subsidiaries worldwide in respect of any transfer of personal data, international or otherwise, amongst ST Engineering and its subsidiaries;
- (b) the BCR specified the countries and territories in which personal data may be transferred, which included the USA;
- (c) each company that received transferred personal data was bound by legally enforceable obligations to put in place a standard of protection over the personal data transferred that is minimally comparable to the protection under the PDPA; and
- (d) the rights and obligations under the BCR have been provided for, including the permitted purposes for transfer of personal data, the data protection obligations imposed on the receiving company and the protection and security of personal data.

In light of the above, the PDPC found that ST Engineering complied with the Transfer Limitation Obligation under the PDPA in respect of its transfer of the Affected Individuals' personal data to VTSAA and other subsidiaries located in USA.

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:



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