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ChampionTutor Inc.

[2019] SGPDPC 25

Tan Kiat How, Commissioner — Case No DP-1710-B1269

Data protection – Definition of business contact information

Data protection – Openness obligation – Failure to appoint data protection officer

Data protection – Openness obligation – Lack of data protection policies and practices

22 July 2019.

Background

1 On 31 October 2017, the Personal Data Protection Commission (the “**Commission**”) received a complaint from a former tutor (“**Complainant**”) who had registered with ChampionTutor Inc (“**Organisation**”), stating that he found a URL link¹ (“**URL Link**”) to the Organisation’s tutor list (“**Tutor List**”) through a Google search. (the “**Incident**”). The Commission proceeded to investigate the Incident in order to determine whether the Organisation had complied with its obligations under the Personal Data Protection Act 2012 (“**PDPA**”).

¹ https://www.championtutor.com/certs_tutor/1certs1397642794.pdf

Material Facts

2 The Organisation is a home tuition agency in Singapore with more than 10 years' experience matching students and tutors. While the service is free for students, tutors are required to pay a commission to the Organisation for each tuition assignment they accepted.

3 In the course of investigations by the Commission, it was found that the Tutor List contained name, contact number and email address ("**Disclosed Information**") of a total of 4,899 individuals, including the Complainant ("**Affected Individuals**").

4 It also emerged in the course of investigations that the Organisation had not appointed any data protection office ("**DPO**") and had failed to develop and put in place any internal data protection policies.

Findings and Basis for Determination

5 The issues to be determined by the Commissioner in this case are as follows:

- (a) Whether the Disclosed Information is "business contact information" as defined under section 2(1) of the PDPA; and

(b) Whether the Organisation had complied with the obligations to appoint a data protection officer (“**DPO**”) and develop and implement data protection policies and practices under sections 11(3) and 12 respectively of the PDPA.

Whether the Disclosed Information is “business contact information”

6 Under section 2(1) of the PDPA, “business contact information” is defined as “*an individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his **personal purposes***” (emphasis added). Section 4(5) of the PDPA provides that the substantive data protection obligations found in Parts III to VI of the PDPA (the “**Data Protection Provisions**”) shall not apply to business contact information (“**BCI**”).

7 The purpose for which the contact information is provided is key in determining whether it is considered BCI. In this regard, the Affected Individuals provided the Disclosed Information to the Organisation for the purposes of being contacted for tuition assignments.

8 Under section 2(1) of the PDPA, “business” is defined as including “*the activity of any organisation, whether or not carried on for the purposes of gain, or conducted on a regular, repetitive or continuous basis, but does not include an individual acting in his personal or domestic capacity*”. Tutors carry out a business of providing tuition services. In this regard, the tutors registered with the Organisation are freelancers, and are paid directly by the student. For each tuition assignment accepted, tutors are required to pay the Organisation a one-

time commission.² Tutors are also responsible for reporting their earnings as a freelance tutor to the tax authority yearly.³ The Inland Revenue Authority of Singapore’s “Tax Guide for Tuition Industry” provides guidance for tutors providing tuition services and tuition agencies assigning tutors to students with respect to reporting business income for tax purposes.⁴

9 Based on the foregoing, the Commissioner finds that the tuition services offered by the Organisation’s tutors falls within the definition of “business” under section 2(1) of the PDPA. Therefore, the Contact Details provided by the Affected Individuals for the purposes of being contacted for tuition assignments is BCI, and the Data Protection Provisions do not apply.

Whether ChampionTutor complied with its obligations under sections 11 and 12 of the PDPA

10 The Organisation’s admission that it had not appointed a DPO at the material time is a breach of section 11(3) of the PDPA. In this regard, section 11(3) requires organisations to designate one or more individuals (typically referred to as a DPO) to be responsible for ensuring that they comply with the PDPA. The importance of appointing a DPO in ensuring the proper implementation of an organisation’s data protection policies and practices, as well as compliance with the PDPA was emphasized in *Re M Stars Movers & Logistics Specialist Pte Ltd* [2017] SGPDP 15 at [31] to [37].

² See <https://www.championtutor.com/faq.html> which provides that agency commission is calculated at 50% of the first payment cycle (4 weeks)

³ See <https://www.championtutor.com/faq.html>

⁴<https://www.iras.gov.sg/IRASHome/uploadedFiles/IRASHome/Businesses/Starter%20Guide%20for%20Self%20Employed%20Tuition%20Centre%20or%20Agency%20Operators.pdf>

11 Section 12 of the PDPA requires organisation to 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 employees (among other obligations).

12 At the material time, the Organisation had a privacy policy to inform tutors and students on how it collects, use, disclose, manage and safeguard personal information provided by them in the course of accessing and using the Organisation's website.

13 The Organisation did not employ full-time staff but employed part-time home-based tuition coordinators to liaise with tutors and students, process e-invoices and follow up on payment. These part-time coordinators had access to personal data of the tutors and students in the course of their work. However, the Organisation did not have any internal data protection policies which specify the rules and procedures on the collection, use and disclosure of personal data. This omission meant that part-time tuition coordinators were not provided with any form of guidance with the PDPA and amounts to a breach of section 12 of the PDPA. An organisation that relies wholly on part-time staff needs to pay especial attention to ensuring that its policies can be easily accessible and that it has an effective system for promoting awareness and training part-time staff on its data protection policies and practices.

The Commissioner's Directions

14 Given the Commissioner's findings that the Organisation is in breach of sections 11(3) and 12 of the PDPA, the Commissioner is empowered under section 29 of the PDPA to issue the Organisation such directions as it deems fit to ensure compliance with the PDPA. This may include directing the

Organisation to pay a financial penalty of such amount not exceeding S\$1 million.

15 In assessing the breach and determining the directions, if any, to be imposed on the Organisation in this case, the Commissioner took into account as a mitigating factor that the Organisation had cooperated with investigations and was forthcoming in its response.

16 Having considered all the relevant factors of this case, the Commissioner hereby directs the Organisation to do the following:

(a) Pay a financial penalty of S\$5,000.00 within 30 days from the date of the Commissioner's direction, failing which, interest at the rate specified in the Rules of Court⁵ in respect of judgment debts, shall accrue and be payable on the outstanding amount of the financial penalty until the financial penalty is paid in full; and

(b) Within 60 days from the date of the Commissioner's directions, develop and implement an internal data protection policy and appoint a DPO.

**YEONG ZEE KIN
DEPUTY COMMISSIONER
FOR PERSONAL DATA PROTECTION**

⁵ Cap 322, R5, 2014 Rev Ed.

