

Procedures for obtaining consent from the data subject According to the Personal Data Protection Act B.E. 2562

In order to enforce the Personal Data Protection Act B.E. 2562 (2019) and all the rules, regulations and announcements issued under this Act Especially in relation to obtaining consent from the owner. personal information in accordance with the intent of the law Including to provide clarity that will be a guideline. Let the personal data controller and related persons bring to apply and practice correctly which will be beneficial to effective protection of personal data by virtue of Section 16 (3) of the 2562 (2019), the Personal Data Protection Committee deems it appropriate to lay out the following guidelines for obtaining consent from the data subject:

1. Meaning

for the benefit of following this guideline

“Controlling and supervising agency” means a public or private agency with duties and powers to control, supervise, and inspect operations. “professional council” means a professional council established under

the law on professions or various professional councils having the status of a juristic person which has the duties and powers to supervise the practice of the profession as specified in the law on the profession or the professional council

2. Types and characteristics of requesting consent

The request for consent from the data subject can be divided into 2 types as

follows: **2.1 In case there is a specific law or there is a controlling agency or a specific message of consent**

In the event that there are regulatory agencies, professional councils, associations and industry groups or agencies that have specific laws on obtaining consent or the form or text of requesting consent which is not contrary to or inconsistent with the Personal Data Protection Act B.E. 2562 and that specific law empowers such agencies to determine 2562 (2019) to regulate and supervise agencies, professional councils, associations and industry groups. or agencies that have specific laws can assign data controllers under their control and Supervisory authorities can use such forms or statements, for example, issuing rules on obtaining consent from the Bank of Thailand or the Office of the Securities and Exchange Commission.

2.2 In the case where there is no specific law or there is a regulatory or regulatory agency prescribing the form or text of the request for

consent with specific conditions In the event that there is no Determine the form or text of obtaining mandatory consent. According to other laws or by the supervisory or regulatory agency specifically stipulated that it must be complied with and the Personal Data Protection Committee has not announced require the data controller to obtain consent From the owner of the personal data according to the form and text specified in the announcement, the data controller may use the form or text that has been prepared (Voluntary Standard Form) or can create a form and message requesting consent by yourself. in obtaining consent and form or a statement of consent, should proceed in accordance with the guidelines set by the Personal Data Protection Committee.

3. Criteria for obtaining consent

In that the controller of personal data should be aware that The collection, use or disclosure of personal data may be performed without the consent of the data subject. But must be subject to exceptions. 2562 (2019) as follows: 1) to achieve the objectives related to arrange making historical documents or archives public interest or relating to research studies or statistics

2) To prevent or suppress a danger to life, body or health of an individual;

3) It is necessary for the performance of a contract to which the data subject is a party. or for the purpose of processing the request of the data subject prior to entering into that contract; carrying out missions for the public interest

of the controller of personal data or performing duties in the use of The jurisdiction granted to the controller of personal data

5) It is necessary for the legitimate interests of the data controller. or of other persons or juristic persons who are not the data controller In the case of personal information about race, ethnic origin, political opinion, creed, religion or philosophy. sexual behavior Criminal record, health information, disability, labor union information, genetic information, biological information, or any other information that affects the owner of personal information similarly, as specified by the Personal Data Protection Committee, will be in accordance with the exemptions. Section 26 of the Personal Data Protection Act B.E. 2562

For this reason, personal data subject consent is the final legal base. that the personal data controller can use to collect, use or disclose personal data if not follow Other exceptions under section 24 or section 26, as the case may be, is a lawful request for consent under section 19 of the Personal Data Protection Act B.E. designation or text in Ask for consent that is subject to conditions. other laws specifically The personal data controller should proceed as follows:

3.1 The complete request for consent from the data subject under Section 19 is in accordance with the following criteria:

- (1) timing of consent Consent must be obtained before or during
Collection, use or disclosure of personal information
- (2) in obtaining consent from the data subject Data Controller The purpose and details of the consent request must be informed to the data subject before giving consent.
- (3) a request for consent must specify a specific purpose of consent, not a broad objective in general; Easy to access and understandable. including using
language that is easy to read and not deceiving or misleading cause the owner of the information Personal misunderstanding on purpose
- (5) the request for consent is lawful; Only when the owner of the personal information
Consent is voluntary and freely given (freely given) from the subject of personal data. without fraud, deceit, threat or misunderstanding; Entering into
a contract which includes providing any service to collect, use or disclose Personal Data that is not necessary. is necessary or relevant for for entering into a contract, which includes the provision of the service

Description

in obtaining consent Has the subject of personal data given voluntary and independent consent?
Consider that before or at the time of giving consent Owners of personal data are free to make decisions. without
factor external pressure, coercion, coercion, deceit or misleading to the point that cause the owner of the personal information
Intent to give consent

Example 1

where Company A is the personal data controller providing the application. (Application) via mobile phone In photo editing, Company A has stated the terms of use of such applications that service users or data subject The individual must give consent for Company A to use the personal information identified as The location of the owner of personal data according to GPS coordinates (GPS Location) and Company A can record application usage behavior. such of you of personal information for marketing purposes as well (which is not related or necessary to provide image editing services) in order to use the service. The service user who is the owner of the personal information then presses to give consent. Such consent does not constitute voluntary and independent consent.

Example 2:

A government agency provides maintenance services road maintenance for the general public But the said government agency stated that the general public must provide personal information not related to road maintenance, such as an email address, in order to receive information about road maintenance. Only those who have consented to the collection of such information through the application will be able to use the road maintenance data verification service. Consent will not be able to use such services.

Consent to such government agencies It is not considered voluntary and independent consent, so people can use the service to check the repair information. Road maintenance of that government agency is not required to consent to the collection of personal data not related to road maintenance, such as address. such email

3.2 Consent must not be part of the agreement. Legal contracts or conditions for the purchase of goods, services, or transactions with such consent must be clearly separated from other clauses such as contracts and cannot be used as part of the contract.

Example 3:

The Bank asks its customers to give consent for the collection, use or disclosure of personal data without separating the consent form from the contract. But instead specifying the message in the request Consent is instead part of the contract clause. It is not a legal consent.

3.3 In obtaining consent The purpose of collection must be stated. Use or disclose personal information in a specific way to the owner of the personal information. It is forbidden to specify the purpose of collecting, using or disclosing personal data of various types or subjects or in general. is in a single consent request

Example 4

Company A provides a consent form to a customer for the purpose (1) of transmitting information to third parties for marketing purposes; and (2) collecting data for data analysis. For the business of all types of affiliated companies, obtaining consent in this manner is considered an unspecified consent. specific purpose

3.4 In obtaining consent The data controller must notify the data subject.

personal note the following details before or during the collection, use or disclosure of personal data:

(1) information about the controller of

personal data; (3) details of the types of personal data to be collected; (4) the right

of the data subject to withdraw consent. and details that will

How can it be done?

3.5 Notification of the purpose and details of the collection, use and disclosure of personal data can be done in many ways, such as a written notification. verbal notification Message notifications in the form of SMS, email, MMS or phone calls. or any other electronic means, such as specifying details in a URL or QR code, etc.

3.6 The request for consent must require the owner of the personal data to express his intent clearly (clear affirmative act). act or demonstrate clearly that he has given consent, such as submitting a letter of consent prepared by the data subject himself, signing the consent In the consent form provided by the personal data controller, a click in the checkbox indicating "consent" by the personal data subject himself. Pressing a button on a mobile phone twice in succession to indicate confirmation intent. Or slide the screen (swipe), etc., to indicate the intention of giving consent. of the owner of personal data when it has been clearly notified that the action Doing so represents agreement. or consent to the collection, use or disclosure of personal data

notice

1) In collecting personal data The data controller has a legal duty to notify the purpose and details of personal data collection (privacy notice) under section 23 of the Personal Data Protection Act B.E. 2562 (2019). for personal data that the personal data controller has collected before the date Personal

Data Protection Act B.E. 2562 comes into force The controller of personal data can to collect and continue to use such personal data according to the original purpose in accordance with Section 95, but for the collection Personal data subject to the consent of the data subject The personal data controller must determine methods for revoking consent and disseminating information to the data subject who does not wish the data controller to Personal data collected and used such personal data can easily withdraw consent.

4. Characteristics of consent required by law

Consent must be obtained explicitly, either in writing or through the system.
Electronically, except in the condition that consent cannot be obtained by such means.

Description

A request for consent and express consent means that the data subject The personal data subject has demonstrated an express statement of consent, which may be achieved by requiring the personal data subject to confirm their consent in writing. The personal data controller may require the data subject to sign for clarity without doubt and to keep it as confidential. Future Reference Evidence However, written consent by a signed personal data subject is not the only means of obtaining consent and providing express consent. Consent can be in electronic form by means such as electronically filling in forms, sending e-mails, sending scanned electronic documents from the original or the use of an electronic signature may consider using Methods that can identify the owner of personal information and can show the intention of the owner of personal information and use methods that are reliable appropriate to the purpose or any other method that can verify the identity of the owner of personal information. And can show the intention of the owner of the personal data by that method or in combination with other evidence According to the electronic transaction law which includes giving Consent using password, digital signature, electronic signature in form biometrics (such as iris, fingerprints, face, voice, or any other identity that can be verified Identity as the owner of the data real personal)

In addition, in some cases, verbal or physical consent The phone may be explicit. is sufficient to be regarded as legal consent, for example, in cases where Consent may be obtained in writing or done via electronic system. If details about Obvious consent is obtained.

ask the owner of the personal data to take action act or demonstrate clearly that consent has been given, e.g. by pressing a button or providing verbal confirmation, etc.

5. Withdrawal of Consent

The subject of personal data must be able to withdraw their consent at any time. Consent can be as simple as giving consent. unless there is a restriction limits the right to withdraw consent by Laws or contracts that favor personal data subjects in which the data controller must show A prominent detail of the method, condition or form of withdrawal of consent in a prominent area of the request for consent whether in writing or electronic form.

Description

In the event that the personal data controller requests consent from the subject of the personal data and the owner Personal data expresses intention by providing consent by electronic means such as mouse click, consent, screen slide or key stroke to give consent. Withdrawal of consent is required. same method or same level easily or any other means that the owner of the personal data can
Access is as easy as obtaining consent.

In the event that the consent of the personal data subject is requested via the website or email, and the personal data subject expresses his intention by giving consent in the form of logging in (log in) to the system to give consent or using an electronic signature to fill in consent information or consent by Trusted electronic signatures in the form of biometrics such as face, voice, or form. of connecting computer devices together to obtain consent in the Internet of Things (IoT).

Withdrawing consent must use the same easy revocation method or the same level of consent.

Or is it any other way that the data subject can easily withdraw their consent as well?

The withdrawal of consent must not create a burden, expense or procedure on the data subject. personal rather than consent and does not result in inferior service efficiency

Example 5

Company B provides concert ticket sales services through application (Application) via mobile phone And ask for consent from the owner of personal data to collect, use and disclose personal data by giving consent of the owner of personal data by simply clicking OK or refusing through an application or using a scanned face to confirm or reject. consent

Conditions for withdrawal of consent must be in the same way, or any other method that the owner of the information Individuals can also easily withdraw their consent if Company B specifies that "withdrawal of consent". will use the button to withdraw consent Or scan your face, can't withdraw consent must provide the owner of personal information Call Company B during business hours only to withdraw consent." Conditions for such withdrawal of consent is considered **to be against the law** and cannot be enforced because it creates a burden on the owner of personal information and is not

How to withdraw consent as easily as giving consent

notice

1) The withdrawal of consent will not affect the collection, use or disclosure of information. Personal data that the owner of the personal data has given consent to the right. But it will affect the collection, use or disclosure of Personal Data after the withdrawal of consent. The personal data controller must notify the data subject of the effect of the withdrawal of that consent. 3) Withdrawal of consent It does not affect the collection, use or disclosure of personal information that may be performed without the consent of the owner of the personal information, according to the exceptions provided by section 24 and section 26 of the Personal Data Protection Act B.E. 2562 (2019)

6. Consent and Withdrawal of Consent in the Case of

Minors To give consent to the minors who are the subjects of personal data The personal data controller should be aware that the personal data controller must exercise caution and standards in obtaining consent from A minor who is higher than a person who has reached the age of majority To protect minors from fraud, fraud,

intimidation, misconduct or other unlawful acts. **6.1 Age and nature of consent.**

a) In the event that minors are underage (over 10 years old but underage by law)

The request for consent must be made explicitly and the minor can give consent alone, legal act self-sufficiency and is in accordance with one's status and is necessary for reasonable living. Or it is just to get a certain right or to be released from a certain duty (Section 22-24 of the Civil and Commercial Code), but if that is not the case. User consent is required. Parental powers that have the power to act on behalf of minors as well.

The form and conditions of obtaining consent must be in accordance with these guidelines.

In addition, the text indicating that the consent of a minor, regardless of form, must be in the language or method that minors can do easy to understand and have appropriate age verification measures according to the level of risk, such as confirming the consent of the minor by using the minor's identification number or other means credible that the person is a minor; b) In the event that a minor is under 10 years of age, the Personal Data Controller must seek ^{year}

consent only from the parent authorized ^{year}

to act on behalf of the minor. will ask for consent from minors without The explicit consent of the parent, not by obtaining consent, should be investigated. (verification) appropriate according to the level The risk that the consent grantor is an authorized user Parent who has actual power to act on behalf of the minor and language must be used or how the user Administrative power can make c) Measures to verify the age of minors for the personal data controller to take measures Verify the identity of the minor or appropriate parent or

guardian according to the level of risk. The data

controller must consider the impact of the collection, use or disclosure of minors' personal data.

Example 6

Company C is an online game service provider. For minors and would like to provide online game services for minors, Company C shall obtain the explicit consent as follows: 1) Provide

technical measures or service conditions for minor applicants. Can specify the age as Minors who are able to give their own consent (over 10 years old) or are minors who require the user to give their consent. Company C should specify a condition for the minor to notify the user The parent who has the power

to act on behalf of the minor gives consent and submits such consent of the parent. Company C directly may request the email address or phone number of the parent user. parental authority to confirm consent and record that consent

3) When the personal data controller obtains consent by e-mail or telephone from the user already ruled The personal data controller should record and verify the identity of the user. ruling power and consent details whether it is valid or not through the e-mail or phone number provided by the user Governing authority or other reliable methods

4) In the event that there is a complaint from the owner of the personal data or the office Office of the Personal Data Protection Commission that the consent of a minor and/or users Parent who has the power to act on behalf of minors Company C should have measures to verify and verify the identities of minors and those who exercise parental power without delay.

in doing so Data Controllers can collect Personal Data of Minors and Parents to the extent necessary. necessary and unreasonable For identity verification and validation in making legal contracts only

6.2 Withdrawal of consent of minors The

criteria for withdrawing consent of general persons under Clause 3 shall be applied to the case.

minors or minor users parental authority that has the same power to act on behalf of minors

7. In case the owner of personal data is incompetent or quasi-incompetent

In the event that the data subject is an incompetent or quasi-incompetent person Ask for consent from a guardian who has the authority to act on behalf of an incompetent person. or a powerful guardian act on behalf of a quasi-incompetent person, as the case may be, by applying the criteria for obtaining consent in accordance with the guidelines

This action is applied mutatis mutandis.
