

# The right to privacy: more data protection due

Many people are unaware of the fact that a majority of life's everyday transactions involve some collection of personal data. Every time you apply for a job, purchase goods with a credit card, surf the Internet, or just stroll through a department store, your data is being collected. Sometimes, this is with your consent, but most of the time it is without.

The least-harmful consequence of personal data misuse comes in the form of junk e-mail, more commonly known as spam. It is annoying, but rarely harmful, provided the recipient is not easily fooled. Yet this nuisance can and does lead to more harmful events.

Take the case of Mr A, who has a large overdue balance on his credit card. Mr A's credit-card company sends collection notices to his home, but he fails to repay the debt. So, in an effort to collect, the financial institution sends a letter to Mr A's employer seeking his help. Clearly, Mr A's reputation is at risk, as his employer now knows that he is in debt. How is it possible to protect Mr A's personal data from such release?

In another example, Mr B receives many letters and telephone calls from people who possess his personal data although he has never personally authorised the release of this information. These calls are bothersome and frequently disrupt him while he is working. Can Mr B's personal data be protected in such situations?

The two forms of intrusive behaviour cited above may not cause immediate alarm to the vast majority of people. However, a society with widely available personal data isn't something that many desire either. So, is there a law that protects these types of situations from occurring?

**Current Privacy Law:** Thailand does have a temporary constitutional provision that protects the right to privacy and guarantees basic rights in accordance with democratic rule and international obligations. Beyond the Constitution, there is no specific law offering direct protection for privacy rights. Yet, there are other laws which allow an aggrieved person to file a claim against someone who injures his or her reputation.

In some cases, criminal sanctions may be imposed. For example, Section 323 of the Penal Code imposes criminal penalties when people in professions of trust (i.e. medical practitioners, lawyers, auditors, etc) use your personal information in a way that causes injury to your reputation. Section 326 imposes similar penalties for damage to reputation under Thailand's criminal defamation statute.

As regards civil action, Section 420 of the Civil and Commercial Code provides relief for "wrongful acts", where in releasing private information of another,

a person "willfully or negligently" injures another. However, pursuing claims under the current legal framework may require significant investment of time, money and resources, all for uncertain financial recovery. Consequently, it is likely that Mr A will let the matter pass without bringing those responsible to court.

**The Draft Privacy Law:** To rectify these inadequacies, lawmakers have proposed the Personal Data Protection Act (PDPA). Previously under consideration by the Information and Communication Technology ministry, it is expected that the PDPA will soon be re-evaluated for further legislative consideration. One of the purposes of the PDPA is to close the privacy-law loophole by offering specific statutory provisions protecting the right to privacy. The PDPA will regulate the collection, retention, and flow of personal data.

"Personal data" under the PDPA means "any fact relating to a person, from which that person can be identified directly or indirectly." Also, the PDPA provides that the holder/controller of a personal data record is forbidden from using or disclosing the personal data to third parties without consent.

The PDPA thus obligates all data collectors to obtain consent from the data owner before releasing their personal data. The PDPA should effectively reduce the likelihood of Mr A's situation occurring, since it prohibits data collectors from exposing data to third parties, regardless of whether that data damages the data owner's reputation. That is, it deems the action of distributing data to third parties without consent illegal, while the current law limits illegality to situations in which data has already been distributed and has then damaged the data owner's reputation.

Another interesting feature of the PDPA is the establishment of the Personal Data Protection Board. The PDPA empowers the Board to deal with complaints made by injured persons and gives it the authority to decide on disputes between parties and to prosecute the offenders as it deems appropriate. Thus, the Board is an essential element to the effectiveness of the PDPA, providing the public with better access to lay complaints against those who violate its provisions.

As technology evolves, the laws of Thailand must adapt to counter its undesirable consequences. The PDPA strives to do just that.

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