

A STUDY ON DATA PROTECTION LAW IN MALAYSIA

BY

MUHAMMAD HABIBULLAH BIN MOHAMMAD SHAH (2009862906)

MOHD AFIF SHAM BIN SHAMSURI (2009861344)

NURUL AZREE BIN NAWI (2009259456)

NOOR SYAFFINAZ BINTI MOHD AZIZAN (2009856302)

Research is submitted to partial fulfillment of the requirements for the
Bachelor of Legal Studies (Hons)

Mara University of Technology

Faculty of Law

December 2011

Authors/writers confirm that the work submitted is their own and that appropriate credit has been given with reference that has been made to the work of others.

ACKNOWLEDGEMENT

This research project has been carried out by a team which includes Muhammad Habibullah Bin Mohammad Shah, Nurul Azree Bin Nawawi, Mohd Afif Sham Bin Shamsuri and Noor Syaffinaz Binti Azizan. The contribution of this project paper have been mainly focusing on whether the Personal Data Protection Act 2010 has provide sufficient protection towards consumers and users. We hope that our research will provide a better understanding and awareness especially to the relevant authorities and to the general public on the importance of protection personal data in doing online transaction. In addition, it is also hoped that by this research, the government, any authoritative body or any individuals would conduct further research to improve the already existing act relating personal data protection.

Our collective thanks are due to many people who have contributed directly and also indirectly towards this research. In particular, we would like to express our utmost gratitude to Associate Professor Siti Hajar Mohd Yasin, our supervisor for our Honours Project Paper (LAW 533) for her advises, assistance and support throughout this research until its completion. Besides that, we also would like to express our special thanks to Puan Su'aida Binti Dato' Haji Safei and Associate Professor Norha Abu Hanifah for their approval of the title for our research and to Universiti Teknologi Mara (UiTM) Shah Alam for supplying us with the facilities to access the essential information for our research. Last but not least, a special thanks to everyone who has supported and assisted us upon completion of this project paper.

Abstract

This paper was done to critically analyse the current situation in Malaysia with regards to the protection of personal data; particularly the Personal Data Protection Act 2010. Comparison between data protection laws as well as noted data protection instruments around the world was done in order to shed some light in the current global trend in safeguarding the rights of the privacy of their personal data.

This research represents the initial effort to provide a critical analysis of the principle of data protection laws around the world as in comparing the situation in Malaysia. Since the Personal Data Protection Act 2010 was still not put in effect at the time that this paper was carried out, this research would provide a study of the possible effects and also what can be done in order to improve the Act to suit the need of all Malaysian data subjects as a whole.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
Chapter One: Introduction	
1.1 Background of Study	1
1.2 Problem Statement	2
1.3 Objective of Study	3
1.4 Literature Review	4
1.5 Research Methodology	7
1.6 Conceptual Features	8
1.7 Scope and Limitation	9
1.8 Significance of Study	10
Chapter Two: The Need for Data Protection	
2.1 Introduction	12
2.2 What is a Data?	12
2.3 Protection of Data	13
2.4 The Need to Protect Data	14
2.4.1 Deprivation of Human Rights	16
2.4.2 May Affect Employment	17
Chapter Three: Data Protection Instrument Worldwide	
3.1 Introduction	18
3.2 Council of Europe Convention	18

3.3 OECD Guidelines	19
3.3.1 Australian Privacy Law (Personal Information)	21
3.4 EU DATA PROTECTION DIRECTIVE 1995	24
3.4.1 United Kingdom: Data Protection Act 1998	25
3.4.2 Irish Data Protection (Amendment) Act 2003	26
3.5 APEC PRIVACY FRAMEWORK	27
3.5.1 Singapore Data Protection Law	28
3.6 Madrid Resolution 2009	30
Chapter Four: Data Protection Law in Malaysia	
4.1 Introduction	32
4.2 Personal Data Protection Act 2010	32
4.2.1 Personal Data	32
4.2.2 Operation and Applicability of the Act	33
4.2.3 Data Protection Principles	34
4.2.4 Non Application of the Act	39
4.3 Other Data Protection Law	41
4.3.1 Official Secrets Act 1972	41
4.3.2 Printing Presses and Publication Act 1984	42
4.3.3 Defamation Act 1957	43
Chapter Five: Recommendation	
5.1 Introduction	45