

Data Integrity in the Digital Age – Do You Have a Duty of Care?

In today's digital economy, the significance of managing personal data with precision and integrity cannot be overstated. The repercussions of erroneous data disclosure can extend far beyond mere administrative oversights, potentially risking serious harm to data subjects' livelihoods. For instance, inaccuracies in data shared by credit reporting agencies with financial institutions could dramatically alter a data subject's financial trajectory.

The recent Malaysian High Court case of *Suriati v CTOS Data Systems Sdn Bhd [2024] MLJU 437* ("CTOS Case") serves as a pivotal moment in the discourse surrounding data management practices, especially for credit reporting agencies governed by the Credit Reporting Agencies Act 2010 ("CRA") such as CTOS Data Systems Sdn Bhd ("CTOS"), a key player among Malaysia's credit reporting agencies. The CTOS Case may also have potential implications for other data users (for example, technology providers) who utilise disclosure of personal data as part of their business activities under the Personal Data Protection Act 2010 ("PDPA").

Data Integrity and Access: Legal Obligations

Credit reporting agencies are defined under the CRA as entities registered to carry out the business of credit reporting and are entrusted with the significant responsibility of processing credit information in order to provide credit reports in accordance with the CRA. The CRA explicitly outlines obligations for these agencies to ensure that the information they collect, process, and disseminate is accurate, up to date, and not misleading. Failure to comply with this obligation may render the offender liable to a fine of up to RM500,000 and/or imprisonment of up to 2 years.

The CRA also mandates that the data held by credit reporting agencies must be accessible for correction by the individuals concerned, and that the agencies bear a duty to correct said data upon receiving a data correction request (insofar as the request relates to data that is inaccurate, not up to date, incomplete or misleading). Failure to abide by said access and/or correction obligations may render the offender liable for a fine of up to RM200,000 and/or imprisonment of up to 2 years for each offence.

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The PDPA also contains analogous principles and provisions applicable to data users generally. These include the Integrity Principle and the Access Principle, which place obligations on data users to ensure that personal data processed by them is accurate, complete, and not misleading, alongside granting individuals the right to correct erroneous data held by the data users. However, credit reporting agencies are excluded from the ambit of the PDPA as the CRA places specific data-centric obligations on these agencies within the context of credit reporting.

Failure to adhere to Integrity Principle and/or the Access Principle under the PDPA may render data users liable for a fine of up to RM300,000 and/or imprisonment of up to 2 years for each offence.

This parallel between the CRA and PDPA emphasizes a shared foundational goal, namely, to uphold the sanctity of data integrity across various sectors.

The CTOS Case: A Turning Point

The decision in the CTOS Case brings to light significant data accuracy and integrity issues that have broad implications for technology providers who are reliant on data disclosure as part of their businesses.

The CTOS Case highlighted the consequences of negligence in maintaining data accuracy. The plaintiff suffered significant losses due to inaccuracies in her credit rating, attributed to CTOS's failure to update her credit information despite having been informed by the plaintiff that the data held by CTOS was inaccurate and required correction. This led to a legal examination of whether CTOS owed a duty of care to ensure the provision of accurate credit information and whether it breached this duty.

The Court's judgment established that CTOS owed a duty of care to ensure the information it provided about individuals was correct and reliable. This ruling not only highlighted the direct impact of inaccuracies on individuals' lives but also set a precedent for the broader interpretation of duty of care in data management practices.

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The judgment pointed out that CTOS, like other credit reporting agencies, has a fundamental role in collecting, recording, and disseminating information to its subscribers, including financial institutions. However, the protection offered to such agencies through disclaimers and consent requirements does not necessarily absolve them of the responsibility to ensure the accuracy and relevance of the information they disseminate, as acknowledged by the Courts in *Tan Ah Hong v CTOS Data System Sdn Bhd [2016] MLJU 504*.

The expectation is clear: credit reporting agencies must take reasonable steps to ensure the information they provide is accurate and updated.

Beyond Credit Reporting: The PDPA and Duty of Care

The principles of data integrity and accuracy are not exclusive to the CRA. The PDPA, which governs the use and processing of personal data by non-credit reporting entities in the context of commercial transactions, embodies similar provisions. Given the analogous obligations under both Acts and in view of the judgment in the CTOS Case, there is a potential implication that a duty of care regarding the integrity and accuracy of data could extend to personal data and data users under the PDPA.

This perspective intimates that organisations could potentially face negligence claims if they fail to maintain accuracy and integrity of personal data, particularly in situations where the personal data is disclosed to third parties and such data influences third-party decisions affecting the data subjects.

At the time of writing, Malaysian Courts have yet to rule on whether a common law duty of care exists specifically regarding personal data accuracy and integrity under the PDPA, although this could soon arise in future given the prominence of personal data protection issues across the globe.

Data Correction Requests

Whether under the ambit of the CRA or the PDPA, data users will need to prioritize responsiveness to feedback regarding the accuracy of the information they handle, particularly where data correction

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requests are submitted by data subjects. Addressing inaccuracies promptly not only aligns with legislative data correction obligations but could also potentially mitigate the risk of exposure to statutory liability. Entities under the ambit of the legislative frameworks above may wish to consider establishing robust mechanisms for feedback and correction to align with said obligations.

In an era where personal and financial information is extensively used 'as is', it is imperative for individuals to actively participate in the data correction process, particularly as technology providers and other data users may be unaware of any changes to the integrity of the data they possess. To this end, data users may also wish to consider encouraging involvement by data subjects in safeguarding the integrity of their own data. This can be done by requesting data subjects to notify the data users regarding any changes to their data regularly, providing avenues for data subjects to easily do so (such as via the submission of online data correction/update forms), and issuing automated reminders to data subjects to check and update their data, amongst others. These can also be addressed in a data user's privacy/personal data protection notice/policy to elucidate the rights and responsibilities of data subjects where the integrity of their data is concerned.

Conclusion

The CTOS Case marks a significant moment in the evolution of legal standards pertaining to data integrity and accuracy and serves as a stark reminder of the responsibilities that come with handling personal and financial data. This decision underscores the legal responsibilities that come with handling personal data, particularly for technology firms that leverage automated processes for data collection and disclosure.

To mitigate the risk of liability, it is imperative for these entities to implement rigorous data verification and updating protocols, ensure transparency with data subjects about how their data is used and corrected, and foster a culture of compliance that goes beyond the minimum legal requirements by cultivating the involvement of data subjects in the mechanisms employed to preserve data integrity. By proactively engaging in these practices, technology providers may be able to avoid the pitfalls of negligence as well as fortify trust with users and stakeholders, securing their position in the increasingly data-driven market.

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