



SWINBURNE
UNIVERSITY OF
TECHNOLOGY
SARAWAK CAMPUS

Policy

Name: **Personal Data Protection**

Approved by: Board of Directors

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SECTION 1 - INTRODUCTION

PURPOSE

This is to establish a policy that must be observed in relation to the collection, use, storage, security and disclosure of personal data, including sensitive personal data by, or for Swinburne University of Technology Sarawak Campus so that the university complies with the [Personal Data Protection Act 2010](#) ('PDPA' or 'the Act'), enforced on 15 November 2013.

SCOPE

This policy applies to all staff and students of Swinburne University of Technology Sarawak Campus ("Swinburne Sarawak") as well as the public, in a commercial transaction with Swinburne Sarawak.

DEFINITIONS

Word/Term	Definition
Commercial Transactions	Any transaction of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance, but does not include a credit reporting business carried out by a credit reporting agency under the Credit Reporting Agencies Act 2010.
Consent	Consent from a data subject in relation to the processing of personal data in any form that such consent can be recorded and maintained properly by the data user.
Data Processor	Any person, other than a staff member of the data user, who processes the personal data solely on behalf of the data user, and does not process the personal data for any of his/ her own purposes.
Data Subject	An individual who is the subject of the personal data. For example, but not limited to Swinburne Sarawak students, staff, and suppliers.
Data User	A person who either alone or jointly or in common with other persons processes any personal data or has control over or authorises the processing of any personal data, but does not include a data processor.
Direct Marketing	The communication by whatever means of any advertising or marketing material which is directed to particular individuals.
Disclose/ Disclosure	An act by which such personal data is made available by a data user.
Head of Management Unit	The position with management responsibility for a management unit.
Management Unit	A unit/ faculty (this excludes sub-units or sub-sections or specific portfolios within a unit/ faculty).
Minister	The Minister for the Malaysian Ministry of Communication and Multimedia, charged with the responsibility for the protection of personal data.
Personal Data	Any information in respect of commercial transactions, which: a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose; b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data user, including any sensitive personal data and expression of opinion about the data subject; but does not include any information that is processed for the purpose of a credit reporting business carried on by a credit reporting

	agency under the Credit Reporting Agencies Act 2010. For example, name, address, date of birth, telephone number, photographs, videos, etc.
Processing	Collecting, recording, holding or storing the personal data or carrying out any operation or set of operations on the personal data, including: <ul style="list-style-type: none"> a) the organisation, adaptation or alteration of personal data; b) the retrieval, consultation or use of personal data; c) the disclosure of personal data by transmission, transfer, dissemination or otherwise making available; or d) the alignment, combination, correction, erasure or destruction of personal data.
Relevant Person	A person who has parental responsibility for the data subject; or a person authorised in writing by the data subject to act on behalf of the data subject; or a person authorised in writing by the data subject to make a data access request or/and data correction request on behalf of the data subject.
Requestor	The data subject or the relevant person on behalf of the data subject, who has made the request in relation to a data access request or data correction request.
Retention & Disposal Schedule for Records of Swinburne Sarawak	A document which lists the retention period of records containing personal data of individuals and university corporate records. The retention and disposal of records apply to both physical and digital formats.
Sensitive Personal Data	Any personal data consisting of information as to the physical or mental health or condition of a data subject, his/her political opinions, his/her religious beliefs or other beliefs of a similar nature, the commission or alleged commission by him/her of any offence or any other personal data as the Minister may determine by order published in the Malaysian Federal Government Gazette.
Third Party	In relation to personal data, means any person other than: <ul style="list-style-type: none"> a) a data subject; b) a relevant person in relation to a data subject; c) a data user; d) a data processor; or e) a person authorised in writing by the data user to process the personal data under the direct control of the data user.
Written	For the purpose of this document, 'written' may either be physical (i.e. letter) or electronic (i.e. e-mail).

LEGISLATIVE CONTEXT

Name	Location
Personal Data Protection Act 2010	http://www.pdp.gov.my/images/LAWS_OF_MALAYSIA_PDPA.pdf <i>The Act that regulates the processing of personal data in commercial transactions in Malaysia and to provide on matters connected therewith and incidental thereto.</i>
Personal Data Protection Regulations 2013 P.U.(A) 335/ 2013	http://www.federalgazette.agc.gov.my/outputp/pua_20131114_P.U.%20(A)%20335%20-%20PERSONAL_DATA_PROTECTION_REGULATIONS_2013.pdf <i>This document provides further clarifications on the seven (7) principles of the PDPA.</i>
Personal Data Protection (Class of Data Users) Regulations 2013 P.U.(A) 336/ 2013	http://www.federalgazette.agc.gov.my/outputp/pua_20131114_P.U.%20(A)%20336-%20PERINTAH%20PERLINDUNGAN%20DATA%20PERIBADI%20(GOLONGAN%20PENGGUNA%20DATA)%202013.pdf <i>This document provides further clarifications on the various classes of data users who must register under the PDPA.</i>
Personal Data Protection (Registration of Data User) Regulations 2013 P.U.(A) 337/ 2013	http://www.federalgazette.agc.gov.my/outputp/pua_20131114_P.U.%20(A)%20337%20-%20peraturan-peraturan%20perlindungan%20data%20peribadi%20(pendaftaran%20pengguna%20data)%202013.pdf <i>This document provides further clarifications on the Registration of Data User under the PDPA.</i>
Personal Data Protection (Fees) Regulations 2013 P.U.(A) 338/ 2013	http://www.federalgazette.agc.gov.my/outputp/pua_20131114_P.U.%20(A)%20338-PERATURAN-PERATURAN%20PERLINDUNGAN%20DATA%20PERIBADI%20(FI)%202013.pdf <i>This document provides further clarifications on the fees payable for data access request under PDPA and the fees payable to the Commissioner for several cases.</i>
Personal Data Protection Standard 2015	http://www.pdp.gov.my/index.php/en/akta-709/standard This document provides further clarifications on the Security, Retention and Data Integrity Standards.

SECTION 2 - POLICY

PRINCIPLES

Section 2 of the PDPA states that the Act applies to:

- (a) any person who processes; and
- (b) any person who has control over or authorises the processing of, any personal data in respect of commercial transactions,
 - (i) if the person is established in Malaysia and the personal data is processed, whether or not in the context of that establishment, by that person or any other person employed or engaged by that establishment; or
 - (ii) if the person is not established in Malaysia, but uses equipment in Malaysia for processing the personal data otherwise than for the purposes of transit through Malaysia.

Section 3 of the PDPA further states that the Act **shall** not apply to:

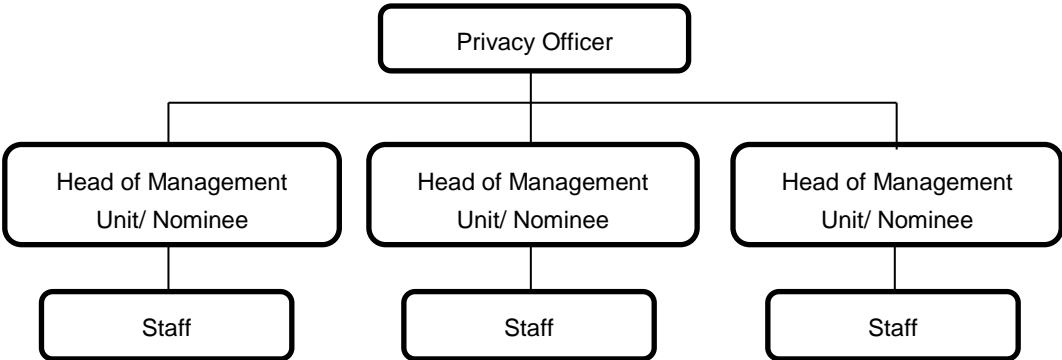
- (a) the Federal Government and State Governments, or
- (b) any personal data processed outside Malaysia unless that personal data is intended to be further processed in Malaysia.

This Personal Data Protection Policy sets out the responsibilities of all staff and students of Swinburne Sarawak as well as the public, in a commercial transaction with Swinburne Sarawak, in relation to personal data and sensitive personal data. The aim is to ensure all personal or sensitive personal data processed by Swinburne Sarawak complies with the following Personal Data Protection Principles set forth in the PDPA:

- (a) General Principle;
- (b) Notice and Choice Principle;
- (c) Disclosure Principle;
- (d) Security Principle;
- (e) Retention Principle;
- (f) Data Integrity Principle; and
- (g) Access Principle.

In this policy, the word **'shall'** or **'must'** is used when it is mandatory to implement the requirement. The word **'should'** is used in statements of best practice, which are strongly recommended for implementation but are not mandatory.

The following Personal Data Protection Governance Structure of Swinburne Sarawak facilitates university-wide implementation of this policy.



POLICY

1.	Personal Data Protection Principles
1.1	General Principle (<i>Section 6, PDPA</i>)
	<p>1.1.1 Swinburne Sarawak shall obtain the data subject's consent before the processing of any personal data unless it is necessary:</p> <ul style="list-style-type: none"> (a) for the performance of a contract to which the data subject is a party (including but not limited to contract for the provision of services and for employment purposes); (b) for the taking of steps upon the request of the data subject with a view to entering into a contract, including but not limited to employment contracts; (c) for compliance with any legal obligation to which Swinburne Sarawak is the subject, other than an obligation imposed by a contract; (d) in order to protect the vital interests of the data subject; (e) for the administration of justice; and (f) for the exercise of any functions conferred on any person or by or under any law.
	<p>1.1.2 Swinburne Sarawak shall only process personal data whereby:</p> <ul style="list-style-type: none"> (a) the personal data is processed for a lawful purpose directly related to the operational functions of Swinburne Sarawak; (b) the processing of the personal data is necessary for or directly related to that purpose; and (c) the personal data is adequate but not excessive in relation to that purpose.
	<p>1.1.3 Subject to the conditions in Section 1.1.2 being met, Swinburne Sarawak shall only process sensitive personal data about a data subject in the following situations:</p> <ul style="list-style-type: none"> (a) Explicit consent has been received. (b) The processing is necessary: <ul style="list-style-type: none"> (i) for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on Swinburne Sarawak in connection with employment; (ii) in order to protect the vital interests of the data subject or another person, in a case where: <ul style="list-style-type: none"> • consent cannot be given by or on behalf of the data subject; or • Swinburne Sarawak cannot reasonably be expected to obtain the consent of the data subject. (iii) in order to protect the vital interests of another person, in a case where consent by, or on behalf of the data subject has been unreasonably withheld; (iv) for medical purposes and is undertaken by: <ul style="list-style-type: none"> • a healthcare professional; • a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional; (v) for the purpose of, or in connection with, any legal proceedings; (vi) for the purpose of obtaining legal advice; (vii) for the purposes of establishing, exercising or defending legal rights; (viii) for the administration of justice; (ix) for the exercise of any functions conferred on any person by or under any written law; or (x) any other purposes as the Minister charged with the responsibility for the protection of personal data thinks fit. (c) The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
	<p>1.1.4 Where the data subject provides the personal data of other individuals (e.g. emergency contacts) who are not in a direct commercial transaction with Swinburne Sarawak, it is the</p>

	responsibility of the data subject to obtain consent from the said individuals.
	1.1.5 Prior to entering a commercial transaction, Swinburne Sarawak shall obtain consent from the parent, guardian or person who has parental responsibility for the data subject, if the data subject is under the age of eighteen years.
1.2	Notice and Choice Principle (<i>Section 7, PDPA</i>)
	1.2.1 Swinburne Sarawak shall publish a written Privacy Collection Notice that includes the following: <ul style="list-style-type: none"> (a) A statement informing the data subject that his/ her personal data is being processed by or on behalf of Swinburne Sarawak; (b) A clear description of the personal data being collected and/ or processed; (c) A clear description of the purpose(s) for which the personal data is being processed/ and collected; (d) The source of the personal data; (e) A statement informing the data subject on his/ her rights to request access to and to request correction of the personal data; (f) The method of contacting Swinburne Sarawak for any inquiries or complaints in relation to the personal data; (g) The class of third parties to whom Swinburne Sarawak discloses or may disclose the personal data; (h) The choices and means Swinburne Sarawak offers the data subject for limiting the processing of personal data, including personal data relating to other persons who may be identified from that personal data; (i) Whether it is voluntary or obligatory for the data subject to provide the required personal data; and (j) Where it is obligatory for the data subject to supply the personal data, the consequences for the data subject if he/ she fails to supply the personal data.
	1.2.2 The Privacy Collection Notice shall be given to the data subject as soon as practicable: <ul style="list-style-type: none"> (a) When Swinburne Sarawak first asks the data subject to provide his/ her personal data; (b) When Swinburne Sarawak first collects the data subject's personal data; or (c) In any other case, before Swinburne Sarawak uses the personal data for a purpose other than the purpose for which the personal data was collected or discloses the personal data to a third party.
	1.2.3 Swinburne Sarawak's Privacy Collection Notice shall be made available in the national and English languages.
	1.2.4 The data subject shall be provided with a clear and readily accessible means to exercise his/ her choice, where necessary.
1.3	Disclosure Principle (<i>Section 8, PDPA</i>)
	1.3.1 Swinburne Sarawak shall notify the data subject before disclosing personal data to a third party by specifying a list of third parties to whom Swinburne Sarawak may disclose the personal data in the Privacy Collection Notice.
	1.3.2 Swinburne Sarawak shall obtain consent from the data subject and inform the Privacy Officer: <ul style="list-style-type: none"> (a) before disclosing personal data for any purpose other than the purpose for which the personal data was to be disclosed at the time of its collection or any other purposes related to that purpose that are not listed in the Privacy Collection Notice; or (b) before disclosing personal data to third parties that are not listed in the Privacy Collection

	Notice.
	<p>1.3.3 Personal data shall only be disclosed to a third party, whereby:</p> <ul style="list-style-type: none"> (a) data subjects have been provided with a notification on the disclosure of their personal data; or (b) it is necessary for legal purposes such as to prevent or detect a crime or to comply with requirements by the order of a court; or (c) there are reasonable grounds that disclosure is required to prevent or lessen serious imminent threat to life or health; or (d) the Minister determined that the disclosure was justified as being in the public interest; or (e) Swinburne Sarawak complies with all provisions under Section 1.1: General Principle in this policy.
	<p>1.3.4 The following are exemptions from the PDPA provisions, as stated in Section 45 of the Act:</p> <ul style="list-style-type: none"> (a) Personal data processed for the prevention or detection of crime or for the purpose of investigations; (b) Personal data processed for the apprehension or prosecution of offenders; or (c) Personal data processed for the assessment or collection of any tax or duty or any other imposition of a similar nature; (d) Personal data processed in relation to information of the physical or mental health of a data subject shall be exempted from the Access Principle and other related provisions of this Act of which the application of the provisions to the data subject would be likely to cause serious harm to the physical or mental health of the data subject or any other individual; (e) Personal data processed for preparing statistics or carrying out research; (f) Personal data that is necessary for the purpose of or in connection with any order or judgement of a court; (g) Personal data processed for the purpose of discharging regulatory functions; (h) Personal data processed only for journalistic, literary or artistic purposes, provided that: <ul style="list-style-type: none"> (i) the processing is undertaken with a view to the publication by any person of the journalistic, literary or artistic material; (ii) Swinburne Sarawak reasonably believes that, taking into account the special importance of public interest in freedom of expression, the publication would be in the public interest; and (iii) Swinburne Sarawak reasonably believes that in all the circumstances, compliance with the provision in respect of which the exemption is claimed is incompatible with the journalistic, literary or artistic purposes.
	<p>1.3.5 In the case of direct marketing, Swinburne Sarawak or its data processor shall provide the data subject with a simple way to opt out or opt in at any time from all forms of communication. The data subject is required to notify Swinburne Sarawak or its data processor in writing.</p>
1.4	Security Principle (Section 9, PDPA)
	<p>1.4.1 Swinburne Sarawak shall ensure that personal data is protected by reasonable security safeguards against loss, unauthorised access, misuse, modification and disclosure, through compliance with this policy and the People, Culture and Integrity Policy.</p>
	<p>1.4.2 If a data processor (e.g. suppliers) processes personal data on behalf of the university, Swinburne Sarawak shall ensure that the data processor:</p> <ul style="list-style-type: none"> (a) provides sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out; and (b) takes reasonable steps to ensure compliance with those measures.

1.5	Retention Principle (Section 10, PDPA)
1.5.1	Swinburne Sarawak shall not keep personal data processed longer than is necessary for the fulfilment of the particular purpose the personal data is collected for.
1.5.2	Swinburne Sarawak shall take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed.
1.5.3	Swinburne Sarawak shall ensure that all personal data is retained as per the retention period stated in the Retention & Disposal Schedule for Records of Swinburne Sarawak, relevant legislation, or at request of the University management.
1.5.4	In the event the personal data is required to be retained longer than necessary for the purpose for which it was collected for, the management unit must have justification for doing so.
1.6	Data Integrity Principle (Section 11, PDPA)
1.6.1	Swinburne Sarawak shall provide a mechanism to allow a data subject to update and correct his/ her personal data in writing to ensure that the personal data processed or held by Swinburne Sarawak is accurate, complete, not misleading or up-to-date. This includes personal data processed by Swinburne Sarawak but held by a third party.
1.6.2	Swinburne Sarawak shall take reasonable steps to ensure that the source of any personal data is valid and the accuracy of any personal data obtained is maintained in accordance with this policy, and the People, Culture and Integrity Policy.
1.7	Access Principle (Section 12, PDPA)
1.7.1	<p>Swinburne Sarawak shall allow its data subject to request for access to his/ her personal data and request for corrections if the personal data is inaccurate, incomplete, misleading or not up-to-date unless:</p> <ul style="list-style-type: none"> (a) Swinburne Sarawak reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety; or (b) giving access would have an unreasonable impact on the privacy of other individuals; or (c) the request for access is frivolous or vexatious; or (d) the information relates to existing or anticipated legal proceedings between Swinburne Sarawak and the individual, and would not be accessible by the process of discovery in those proceedings; or (e) giving access would reveal the intentions of Swinburne Sarawak in relation to negotiations with the individual in such a way as to prejudice those negotiations; or (f) giving access would be unlawful; or (g) denying access is required or authorised by or under an Malaysian law or a court/ tribunal order; or (h) Swinburne Sarawak has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to Swinburne Sarawak's functions or activities has been, is being or may be engaged in AND giving access would be likely to prejudice the taking of appropriate action in relation to the matter; or (i) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or (j) giving access would reveal evaluative information generated within Swinburne Sarawak in connection with a commercially sensitive decision-making process.

	<p>1.7.2 Swinburne Sarawak shall comply with a data access request within twenty-one (21) working days from the date of receipt of the data access request.</p> <p>If the request cannot be complied with within twenty-one (21) working days, Swinburne Sarawak shall inform the requestor by notice in writing with the reasons why the request cannot be fulfilled within twenty-one (21) working days. In this case, Swinburne Sarawak has fourteen (14) additional working days to fulfil the access request in whole.</p>
	<p>1.7.3 Swinburne Sarawak shall ensure all information related to access of data is clearly reflected in the Privacy Collection Notice, including:</p> <ul style="list-style-type: none"> (a) Any fees for data access request set in accordance with the Personal Data Protection (Fees) Regulations 2013; (b) The methods of obtaining access (e.g. phone, email, etc.); (c) Timeliness of access to be granted upon request (e.g. 21 working days via mail); and (d) Clear instructions on how the data subject may request and obtain access to his/ her personal data.
	<p>1.7.4 Swinburne Sarawak reserves the right to validate all data access and/ or data update requests by confirming the identity of the data subject through formal identification documentation, such as driver's license, passport and/ or identification card.</p>

SECTION 3 - SUPPORTING DOCUMENTATION

FORMS AND RECORDS MANAGEMENT

Form	Retention Time	Retention Location
None		

RELATED MATERIAL

Name	Location	Document Type
Employee Records Policy	Staff/ Policies and Regulations Directory/ Management Unit Manuals/ Human Resources Manual/ Employee Records Policy & Procedures	Policy
Management of University Records	Staff/ Policies and Regulations Directory/ University Governance/ Management of University Records Policy & Procedures	Policy
People, Culture and Integrity Policy	http://www.swinburne.edu.au/policies/hr/index.html	Policy
Employee's Privacy Collection Notice	Intranet	Notice
Privacy Collection Notice (Students, suppliers, the public)	http://www.swinburne.edu.my/privacy/	Notice
Proposal Paper [No. 1/2014]	http://www.pdp.gov.my/images/pdf_folder/COMBINED%20PDF%20Direct%20Marketing%20Guideline-BM-3.pdf "Guide in Dealing with Direct Marketing Under Personal Data Protection Act (PDPA) 2010" <i>This document provides guidelines on dealing with advertising or marketing material that is directed to a particular individual under PDPA law.</i>	Proposal Paper
Proposal Paper [No. 2/2014]	http://www.pdp.gov.my/images/pdf_folder/COMPLIANCEkertasrundingan-combined.pdf "Guideline on Compliance of Personal Data Protection Act (PDPA) 2010" <i>This document provides guidelines that can be used by organisations to comply with the Act.</i>	
Proposal Paper [No. 3/2014]	http://www.pdp.gov.my/images/pdf_folder/EMPLOYER-EMPLOYEE.pdf "Guide on the Management of Employee Data Under Personal Data Protection Act (PDPA) 2010" <i>This document provides guidance on dealing with personal data of an employee by following the seven Principles of PDPA.</i>	
Proposal Paper	http://www.pdp.gov.my/images/pdf_folder	

Name	Location	Document Type
[No. 4/2014]	/kertas_rundingan_awam /BIL 4 KEPE RLUAN PERSETUJUAN-ENG.pdf “Advisory Guidelines Related to Consent Requirement under the Personal Data Protection Act (PDPA) 2010” <i>This document provides practical guidance for data users in obtaining consent in order to satisfy the requirements for processing personal data under PDPA.</i>	
Proposal Paper [No. 5/2014]	http://www.pdp.gov.my/images/pdf_folder/kertas_rundingan_awam /CCTV_ENG-09062014.pdf “Guide on the Management of CCTV Under Personal Data Protection Act (PDPA) 2010” <i>This document provides guidelines for organisations in managing the CCTV under PDPA.</i>	

SECTION 4 - GOVERNANCE

RESPONSIBILITY

Policy Owner	Privacy Officer
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VERSION CONTROL AND CHANGE HISTORY

Version Number	Approval Date	Approved by	Amendment
5	16 December 2018	DVC/ CEO	Minor amendment to definition of data subject.
4	27 August 2018	Board of Directors	Migration to new policy framework and revision of information included to support the PDPA principles.
3	11 April 2017	Board of Directors	Changes made to address audit findings by the Department of Personal Data Protection.
2	1 September 2015	Board of Directors	Inclusion of current processes in place to support the University's compliance with the PDPA 2010.
1	22 January 2015	Board of Directors	New policy and procedure

POLICIES & REGULATIONS DIRECTORY REQUIREMENTS

CATEGORY
Personal Data Protection

KEYWORDS
PDPA, Privacy, Personal Data