

# **Directions on Institutional Revision for Protection and Utilization of Personal Data**

December 20th, 2013

Decision of the Strategic Headquarters for  
the Promotion of an Advanced Information  
and Telecommunications Network Society

## **I Background and Purpose**

The National Life Council and the Special Committee on the protection of personal information of the Consumer Commission have raised and discussed a number of issues with Japan's institutions for the protection of personal information, but have not reached at concrete solutions in some cases. It is therefore necessary to review and improve institutions so as to better adapt to the change of the times in the light of these discussion.

This year marks the tenth year since the enactment of the Act on the Protection of Personal Information, and during this decade there has been considerable progress in information and communications technology that now makes it possible to collect and analyze large quantities of the diverse data ("big data"). These new abilities are expected to contribute to Japanese innovation by creating new businesses and services and by helping to solve many of the issues that the country confronts. Personal data, in particular, has extremely high usage value, and it is being used today in ways that were not envisioned at the time that the Act on the Protection of Personal Information was enacted. There have also been significant changes in the social context of personal information and privacy. The concepts of personal information and privacy are broadly recognized within society and there is greater awareness of privacy among consumers, but there are also cases in which businesses come under social criticism for their treatment of personal information even though they are in compliance with the duties stipulated in the Act on the Protection of Personal Information. There are also opinions that, in many cases, businesses hesitate to make use of personal data because of the ambiguities in the rules for its usage.

As corporate activities become globalized and information and communications technology spreads, it becomes increasingly easier to distribute information across national borders, especially through cloud services. As we develop a business environment capable of collecting data in Japan from around the world, we must also be aware of international efforts to ensure both the use and flow of information and the protection of privacy, and must create institutions that are harmonized with international norms (EU: Proposed "General Data Protection Regulation;" USA: Publication of the "Consumer Privacy Bill of Rights;" OECD: Revisions to the "OECD Privacy Guidelines").

Responding to these changes in circumstances, the "Declaration to Be the World's Most Advanced IT Nation" that was formally adopted in June 2013 positions the use of IT and data is "the key to success in global competition" and sees the strategic use of them as realizing a society that creates new value-added services, creates innovative new industries and services, and encourages the growth of all industries. Taking into account the protection

of personal information and privacy, it is necessary to develop an environment that will make maximum use of the potential of the private sector by utilizing personal data and to contribute to public use by encouraging the creation of new businesses and services and the revitalization of existing industries. It is also required to move forward quickly on the review of institutions and the clarification of rules of utilizing personal data that are not inferior by international standards without imposing the overburdens on business sector.

## II Directions for the Review

Based on this background and purpose, we have articulated below the primary directions for the review on institutions with the goal of protecting personal information and privacy while also eliminating the ambiguities in rules that result in businesses' hesitation to use personal data.

### 1. Review for the use of personal data in the "big data" era

- To promote the use and flow of personal data while taking care to protect personal information and privacy, when personal data is processed so as to reduce the potential for identification of the individual, we will define the legal rules to exempt businesses dealing with such data from requiring the consent of the individual in provision to third parties and to put the duties on businesses handling such data (as both providers and recipients), while taking full account of the impact on the protection of personal information and privacy and respecting the principle of individual consent.
- We will study measures to increase the transparency of personal data handling by clarifying the criteria for exceptional measures for third-party provision, such as joint use and opt out systems, developing procedures to be followed by businesses as they expand purposes of use, and presenting easily understandable privacy policies.

### 2. Review for satisfying expectations of privacy protection at the individual level

- To achieve appropriate privacy protection, we will investigate the scope of the personal data to be protected, the participation of the individual in disclosure and correction (including additions and deletions) of personal information, the treatment of small-scale businesses handling personal information, the introduction of privacy impact assessments, and the standardization of procedures when acquiring personal data.
- To promote the protection and use of personal data while concentrating expert insights, providing for the effective enforcement of laws, and harmonizing our institutions with those of other countries, we will grant power to independent supervisory authority (third-party authority) to take administrative measures, and investigate desirable rules for penalties and for prior consultations on legal interpretations and administration from the viewpoint of promoting the utilization of data while taking privacy into account.

To ensure that protections for personal information and privacy function effectively in conjunction with above responses, we will investigate the creation of a private sector-led framework that makes use of the concept of multi-stakeholder processes\* to evaluate the personal data protection efforts voluntarily made by businesses and ensure that businesses fully comply with laws and regulations, thereby create a

framework for businesses to comply with the rules governing the use of personal data.

\* Multi-stakeholder process: The formulation of rules etc. in an open process with the participation of the central government, businesses, consumers, experts, and other relevant parties.

### **3. Review for globalization**

- The use of personal data in a way that protects privacy is an issue to be addressed at the global level. We will investigate internationally harmonized systems for Japanese businesses to make globally appropriate share and transfer, etc. of personal data in light of the systems in other countries and the current circumstances in the international community, and consider measures that ensure protection of data that are transferred to other countries.
- We will investigate the application of domestic laws to international businesses in light of the circumstances of cross-border information flow.

The review of personal data protection system for utilizing personal data will proceed in the directions outlined above.

## **III Matters to be Addressed**

### **1. Preparing the establishment of a third-party authority (privacy commissioner)**

We will establish a system that an independent third-party authority will present cross-sectoral unified interpretations of laws, provide prior consultations, deal with complaints, perform on-site inspections, and take administrative measures, etc. in a timely and effective manner so as to promote the proper balance between the protection and use of personal data.

We will examine to expand the functions and authorities of the "Specific Personal Information Protection Commission" in the social security and tax number system and adjust the relationships with existing organizations and authorities, etc. in light of the functions of the current competent minister system so as to provide for the effective execution and administration of the system.

### **2. Handling of the personal data processed so as to reduce the potential for identification of the individual, while taking full account of the impact on the protection of personal information and privacy**

To promote the use and flow of personal data while taking care to protect personal information and privacy, when personal data is processed so as to reduce the potential for identification of the individual, we will define the legal rules to exempt businesses dealing with such data from requiring the consent of the individual in provision to third parties and to put the duties on businesses handling such data (as both providers and recipients) , while taking full account of the impact on the protection of personal information and privacy and respecting the principle of individual consent.

### **3. Matters necessary for international harmonization**

*<Harmonization with the systems of other countries>*

We will investigate by means of participating actively in international rulemaking and creating internationally harmonized systems in light of the ones in other countries and the current circumstances in the international community, so as to create environments that enable Japanese companies to run businesses smoothly at the global level. And we will also investigate by means of applying domestic laws to foreign businesses and participation of the third-party authority in international executional activities by foreign privacy commissioners' cooperation.

*<Restrictions on cross-border transfer>*

We will investigate systems to restrict the transfer of information to other countries where levels of personal data protection are inadequate in a manner taking account of balances between ensuring privacy protection and not impeding the global use and flow of personal information.

*<Disclosure and elimination, etc.>*

We will investigate means to ensure that claims made by individuals for the disclosure, correction (including additions and deletions), and stop of the utilization (including eliminations and stop of provision) of his or her personal information are fulfilled with certainty, because opportunities for the individual to be involved in his or her information in an appropriate manner and at appropriate times are necessary to alleviate anxieties and ensure the transparency of operations.

*<Creation of mechanisms for compliance with the rules governing the use of personal data>*

We will investigate the granting and concentrating of power for administrative disposition and other means in a third-party authority, and investigate modalities for penalties from the perspective of encouraging the use of data while taking care to ensure privacy. We will also create mechanisms for compliance with the rules governing the use of personal data.

*<Exemption of businesses handling a small scale of personal information>*

Under the current law, businesses handling a small scale of personal information with no more than 5,000 personal information records in the database are exempted from application of the law. We will investigate the criteria for this exemption because the impact on personal privacy comes not from the volume of data but from its quality. We will also investigate measures to mitigate the burdens on businesses handling small quantities of personal information.

*<Handling of personal information held by administrative agencies, independent administrative agencies, etc., and local governments>*

In light of the different definitions and handling of personal information among administrative agencies, independent administrative agencies, etc., and local governments, we will investigate directions for the handling of personal information held by these entities, prioritizing where necessary. This investigation will take into account international consistency in the functions and powers etc. of a third-party authority and the intent of the Japanese law system on protection of personal information.

#### **4. Matters that should be achieved for the use and flow of information in a way that protects privacy**

*<Articulation of purposes for protecting personal data>*

We will investigate to articulate clearly basic concepts to protect privacy while also promoting its use, taking account of the public benefits of the use of personal data.

*<Articulation of the scope of personal data to be protected>*

The scope of personal data to be protected shall be that which has possibility to substantially identify the individual and shall be determined in consideration of basic concepts of privacy protection.

We will create a new category for "sensitive data" that has extremely high privacy in nature and handle it according to its nature.

We will investigate ways that expert agencies deal with personal data in areas requiring high-level expert insights (including types of information considered to contain large amounts of sensitive data).

*<Procedures for the appropriate use and flow of personal data while protecting privacy>*

Based on the principle of ensuring transparency, we will investigate;

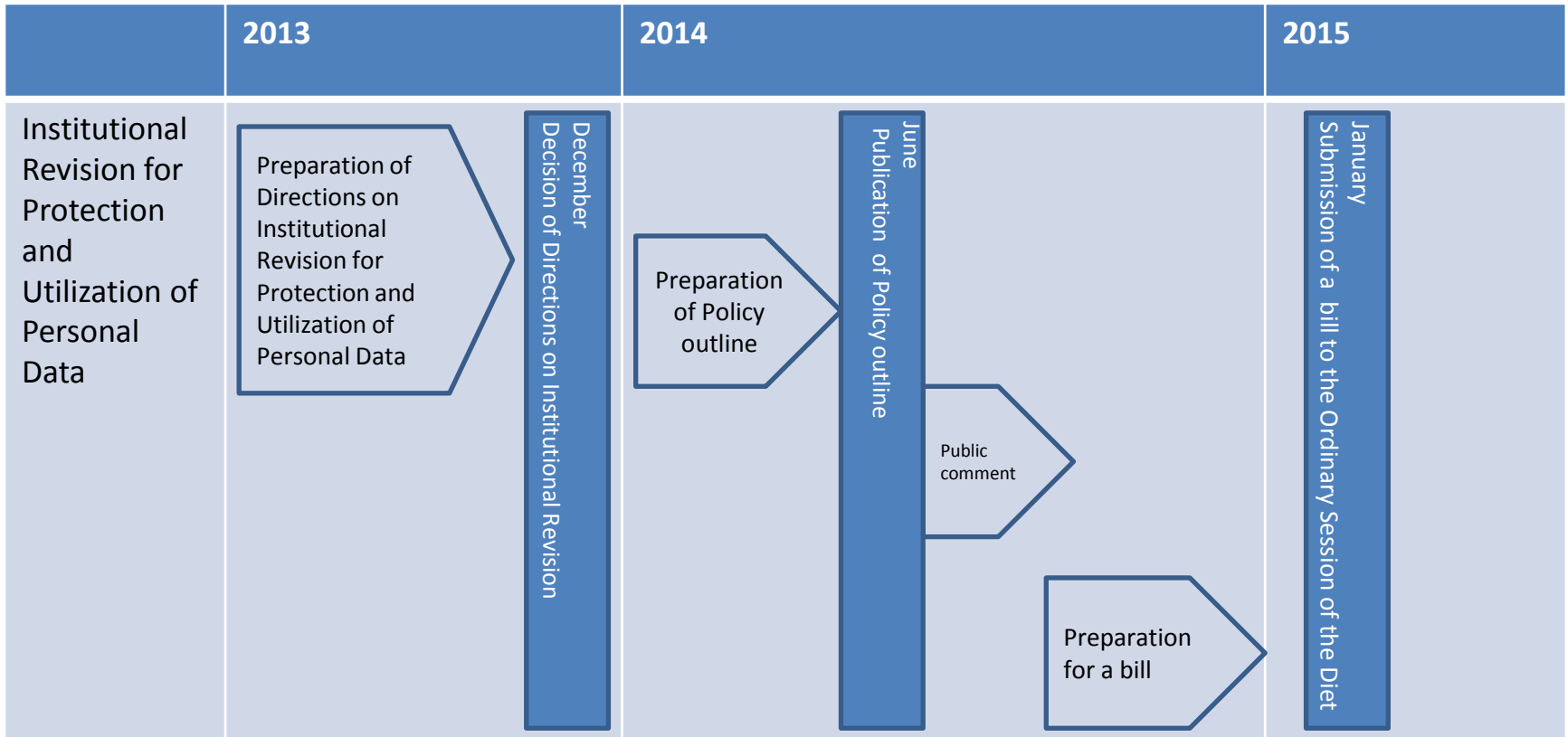
- Procedures to be taken by businesses when they expand purposes of use
- Exceptions to the principle of obtaining individual consent (such as opt outs, joint use, etc.) when businesses provide data to third parties
- Ways to improve the rules governing the acquisition of personal data (standardization of procedures to obtain individual consent, etc.).

Concerning the establishment of a mechanism (Privacy Impact Assessment Scheme) to ensure the appropriate handling of personal information by an "entity handling personal information" for which the risk of leakage of privacy information and the impacts caused by the leakage are to be assessed without imposing excessive burdens on businesses, we will investigate the items, standards, scopes and methods of assessment with reference to the mechanism for assessing the protection of specified personal information through the "Specific Personal Information Protection Commission"

## **IV Future Directions**

We will accelerate investigations of detailed institutional design based on the directions articulated in this document. The results of these investigations will be published as policy outline for the amendment of relevant laws by June 2014, with a goal of submission of a bill to the ordinary session of the Diet in 2015.

# Roadmap on Institutional Revision for Protection and Utilization of Personal Data



Other nations, such as the USA and European countries have been working on amendments of the systems. In order to make the system consistent with those of other nations, some more time might be needed for the preparation. Example: Proposed EU "Data Protection Rules" is expected to be adopted in a plenary session of the European Parliament in April 2014.