

October 6, 2014

# Reform of Act on the Protection on Personal Information in JAPAN



**Mitsuhiro KATO**

Patent Attorney, Attorney at Law  
Patent and Law Firm JuJu

## TOPICS

1. Data Protection in JAPAN
  - Evaluation based on LAWASIA Privacy Principle
  
2. Reform of Act on the Protection on Personal Information
  - Purpose
  - Personal Information to be protected
  - SUICA Incident - Background of the Reform of APPI
  - Point Card (Reward Card) Issue - T-Card
  - Positional Information Issue - Mobile Spatial Statistics by NTT docomo
  
3. OPINION

## DATA PROTECTION in JAPAN(1)

LAWASIA Privacy Principle	Rating	Comment
<p><b>1</b> In dealing with government or business, individuals should not be required to identify themselves unless this is necessary for the purpose of the transaction in question.</p>	C	No article of APPI
<p><b>2</b> Without limiting principle 1, personal information should not be collected unless it is necessary to enable the data collector to discharge its lawful functions and unless the collection is by lawful means.</p>	C	No article of APPI
<p><b>3</b> Personal information of a sensitive nature, such as information regarding a person's health, ethnicity or political affiliation, should not be collected unless it is relevant to the service being provided by the data collector and in any event only with the consent of the individual.</p>	C	No article of APPI Being discussed in the reform of APPI

APPI : Act on the Protection on Personal Information

## DATA PROTECTION in JAPAN(2)

LAWASIA Privacy Principle	Rating	Comment
<b>4</b> When collecting personal information, the data collector must inform the individual as to the primary purpose of collection.	A	Article 18 of APPI, but some exceptions
<b>5</b> Data collectors should publish, or otherwise make available, a privacy policy which explains how it will handle personal information and what rights individuals have in relation to accessing and, if appropriate, correcting that information.	B	Accessing and correcting information are stated in Articles 25 and 26 of APPI, but no article for publishing a privacy policy
<b>6</b> Data collectors must only use information for the primary purpose of collection or for a related purpose which the individual could reasonably expect in the circumstances.	A	Article 16 of APPI, with some exceptions

## DATA PROTECTION in JAPAN(3)

LAWASIA Privacy Principle	Rating	Comment
<p><b>7</b> Data collectors must not transfer personal information to another person without the consent of the data subject if to do so is inconsistent with the primary purpose of collection or a related secondary purpose unless the transfer is required or permitted by law or is necessary for law enforcement.</p>	B	Article 23 of APPI covers, but relatively easily transferred in opt-out cases (Article 23 paragraph 2)
<p><b>8</b> Personal information held by a data collector may only be used for direct marketing where this is consistent with the primary or related purpose of collection, or where the individual has otherwise expressly or implicitly consented.</p>	A	Article 23 of APPI
<p><b>9</b> Data collectors must take reasonable steps to ensure that personal information for which it is responsible remains accurate and up to date.</p>	A	Article 19 of APPI

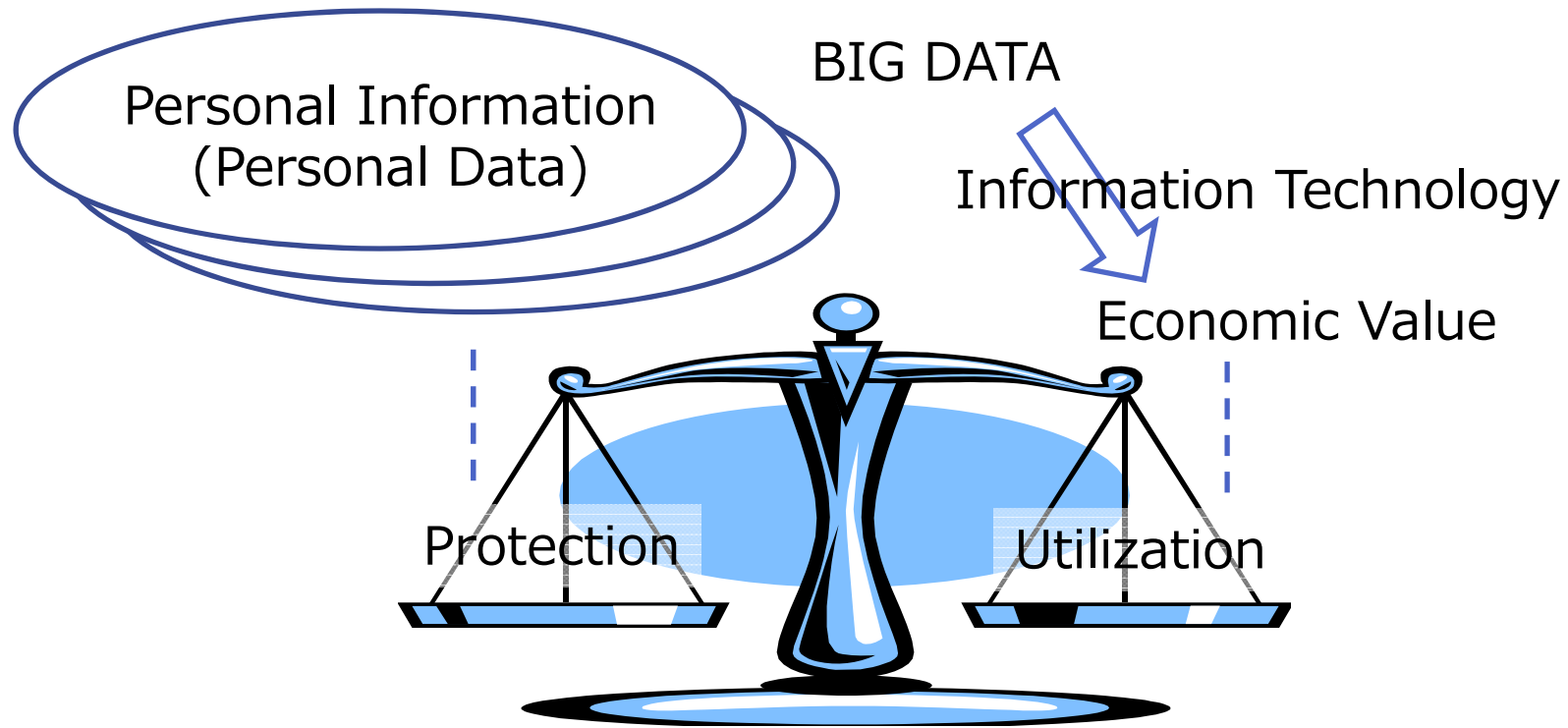
APPI : Act on the Protection on Personal Information

## DATA PROTECTION in JAPAN(4)

LAWASIA Privacy Principle	Rating	Comment
<p><b>10</b> Data collectors must take reasonable steps to ensure that personal information under its control remains free from unauthorised access or modification.</p>	A	Articles 20 – 22 of APPI
<p><b>11</b> Individuals are entitled to have access to, and to correct any inaccuracies in, information about them which is held by a data collector, subject to exceptions in the case of the protection of confidentiality, trade secrets and information relevant to law enforcement security.</p>	A	Articles 25 and 26 of APPI
<p><b>12</b> A data collector must not transfer personal information to another jurisdiction unless that other jurisdiction has comparable data protection laws or, alternatively, the recipient agrees to be contractually bound by privacy obligations consistent with these principles.</p>	C	No article of APPI

APPI : Act on the Protection on Personal Information

## Reform of Act on the Protection on Personal Information - PURPOSE-



### <<Points of the Reform>>

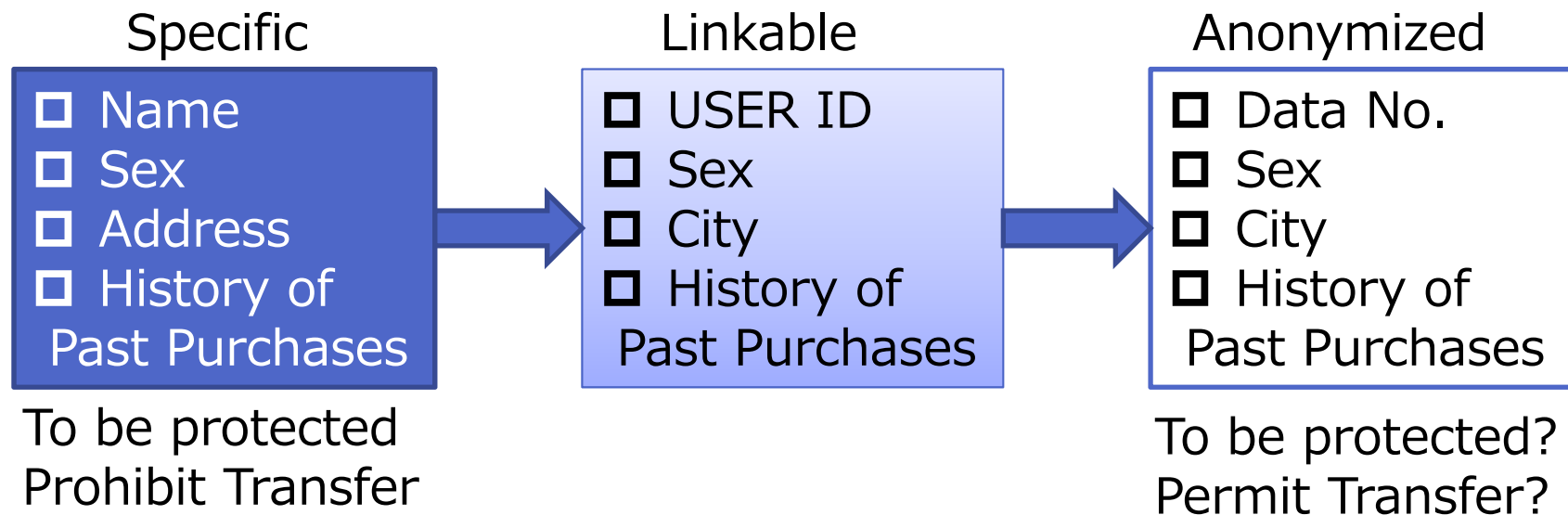
1. Clarify the personal information to be protected
2. Prohibit handling sensitive information
3. Improve Personal Information Handling Policy

## Reform of Act on the Protection on Personal Information - Personal Information to be protected -

Current Definition of Personal Information (Article 2 of APPI)

- ✓ Information about a living individual
- ✓ Information which can ***identify the specific individual***

### ◆ Anonymized Personal Information



### ◆ Biological Information – finger print, facial recognition etc.



## SUICA Incident - Background of the Reform of APPI

What is SUICA?

- ✓ Electric train pass / ticket
- ✓ East JAPAN Railway Company
- ✓ Recording all travel history



from Website of JR East

Travel History Data (Image)

User ID:MM001			
Date	Time	From/To	Station
Oct.03	08:10	from	Tokyo
Oct.03	08:15	to	Ueno
Oct.04	15:10	from	Shinjuku
Oct.04	15:40	to	Shinagawa
:	:	:	:

East JAPAN

Railway Company

- Collects travel histories of passengers and anonymizes the data
- June 2013 : sold the data to Hitachi Ltd. for marketing analysis with no announcement
- July 2013 : halted the sale because of strong criticism

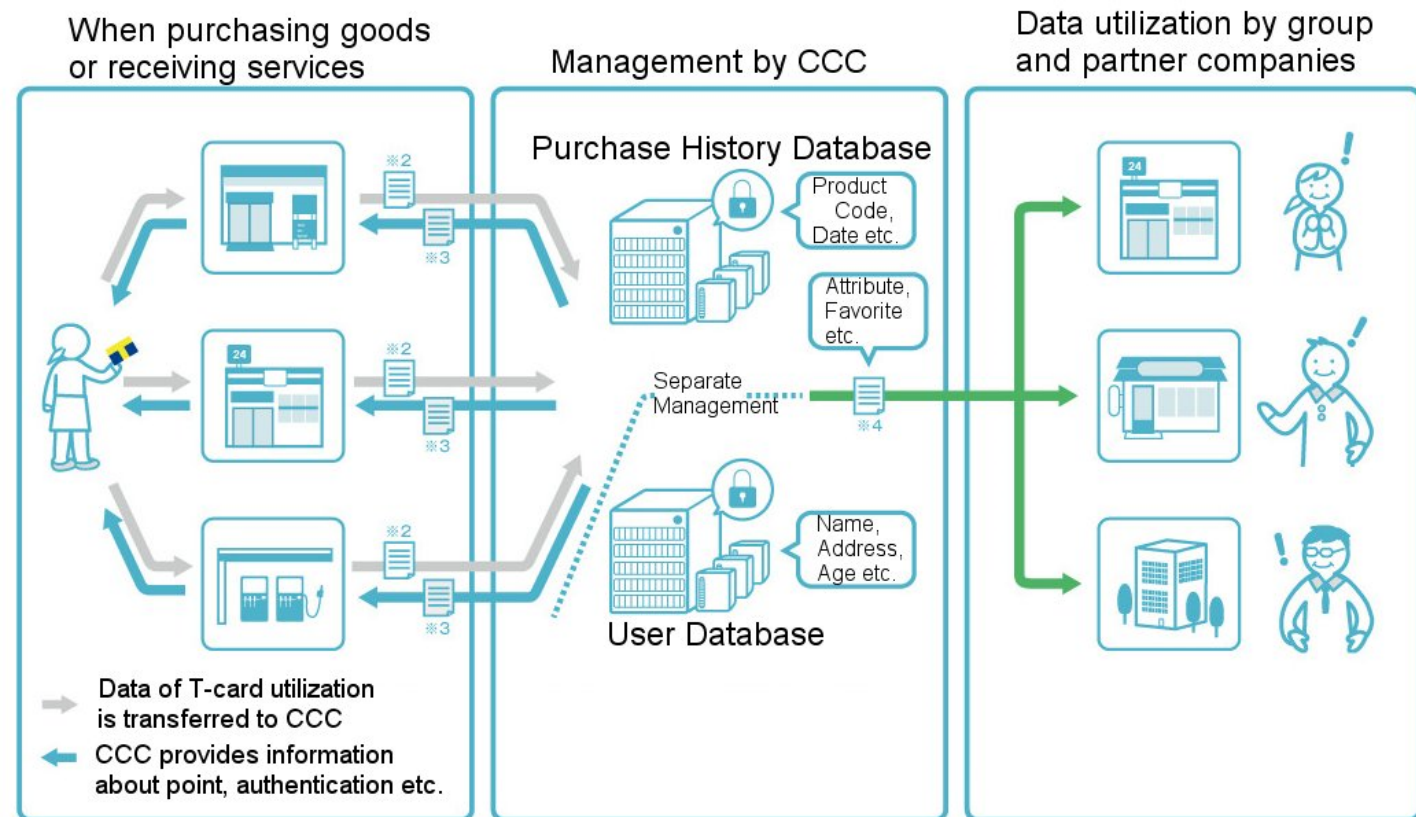
## Point Card (Reward Card) Issue - T-Card

- Collect purchase history data
- Anonymize and transfer the data to other companies
- Opt-out system



What is T-Card?

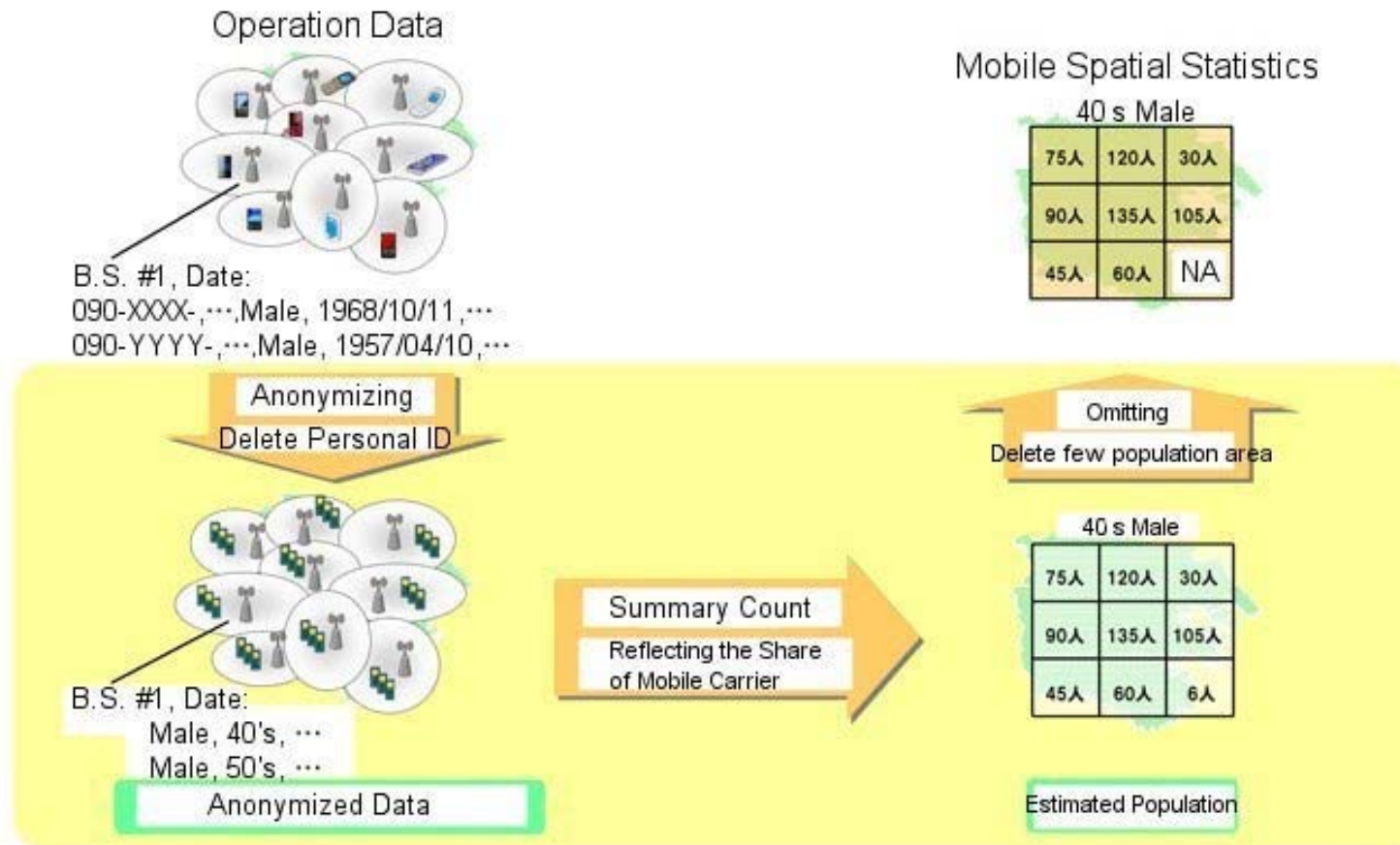
- ✓ Members Card
- ✓ Reward Card
- ✓ CCC (Culture Convenience Club Co., Ltd.)



<http://www.ccc.co.jp/customer/index.html>

# Positional Information Issue - Mobile Spatial Statistics by NTT docomo

- Start of the service in October, 2013
- Continuously estimating population every hour
- Opt-out system



from Website of NTT docomo

## OPINION

1. LAWASIA Privacy Principles are partially satisfied in Japan.
2. In the reform of Act on the Protection on Personal Information, the balance between protecting privacy and economic effect should be considered.
3. As to anonymizing personal information, “what level and how” should be clearly defined.