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Pandemics and the Protection of Privacy and Personal Information: Issues with Regard to the Use and Protection of Information on the Basis of Improving Public Health in the Fight Against Infectious Diseases

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Abstract

In order to make use of the response to the new the coronavirus disease (COVID-19) for pandemic countermeasures due to infectious diseases that may have a serious impact on the lives and health of the people, which may occur in the future, the handling of personal information and the protection of privacy necessary to ensure the effectiveness of countermeasures against infectious diseases will be examined. This paper intends to establish to comprehensively understand the systems for the collection and publication of information related to infectious diseases based on the Infectious Diseases Control Law, and to clarify the structure and issues of the current systems and mechanisms for the collection and management of information on infected persons.

Keywords: Pandemics, COVID-19, Privacy, Personal Information, Data Protection, Public Health

I The Impact of a Pandemic

1 Introduction

Infectious disease countermeasures include 'Class I Infectious Diseases' (Article 6, Paragraph 2 of the Infectious Diseases Control Law) and 'New Infectious Diseases', the latter of which refers to unknown infectious diseases that are serious and may have a severe impact on people's lives and health. In response to both Article 6 (9) of the Act and the Public Health Emergency of International Concerns (PHEIC[i]), a variety of studies that assume the occurrence of a pandemic[ii] have been conducted over the years. However, analysing the response to the coronavirus disease (COVID-19) clearly reveals that the current studies and systems are incapable of adequately managing pandemics. To succeed in the future, we should employ all that we have learned about the issues and experiences of dealing with COVID-19 so that we will be able to adequately manage a pandemic caused by a pathogen equivalent to a Class I infectious disease.

Moreover, as pandemics are not limited to natural and spontaneous disease outbreaks, we need to be prepared for anthropogenic or targeted threats. Viruses and pathogens have the potential to be used as biological weapons[iii], and these could cause Class I infectious diseases. Faced with the

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threat of bioterrorism, it is necessary to consider not only natural phenomena but also 'biohazard countermeasures' due to these human factors.

To ensure the effectiveness of reactions to infectious disease outbreaks, this paper establishes and organises the essential issues in determining countermeasures against a future pandemic that could have a significant impact on human life and health. In particular, likely countermeasures raise issues related to handling personal information and protecting privacy. Therefore, this study will consider the subject of pandemic response measures from the viewpoint of privacy protection and information handling.

2 What Is a Pandemic?

According to the U.S. Centers for Disease Control and Prevention (CDC) Principles of Epidemiology in Public Health Practice,[iv] the epidemic level of infectious diseases is divided into the following three stages: ① endemic, (hyper-endemic if the incidence of infectious diseases is high); ② epidemic, (outbreak if it occurs in a limited area); and ③ pandemic. In addition, conditions in which the degree of occurrence is rare or irregular are defined as sporadic, and the aggregate of cases is defined as a cluster.

Table 1. Epidemic Level of Infectious Diseases[v]

Endemic
Recurring epidemics of infectious diseases in populations within a particular geographic area, or the constant presence of infectious pathogens.
Hyperendemic
Outbreaks of infectious disease at persistent high levels in a particular geographic area or population.
Epidemic
Occurrences of more cases of infectious diseases than would normally be expected in a particular area or population.
Outbreak
Epidemic types of disease occurrences, but it 'occurs in a limited geographical area' or 'is less likely to cause public panic.'
Pandemic
Situation in which an epidemic has spread to multiple countries and continents, usually affecting a large number of people.
Sporadic
Infectious disease occurring in rare and irregular situations.
Cluster
Disease occurring in a collection of cases grouped by time and place, in higher than expected numbers.

Source: Kunio Yano: 'Terms related to 'Epidemic', Kenei IC News No. 71 (November 2017)

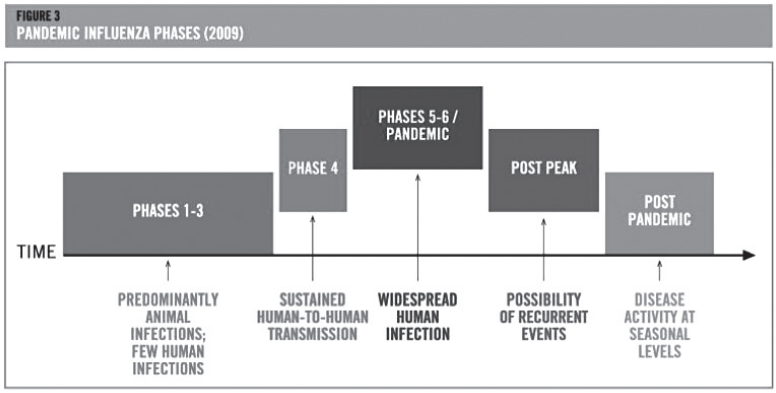
COVID-19 was declared a pandemic on March 11th, 2020, at a meeting of the World Health Organization (WHO)[vi] headed by Tedros Adhanom Ghebreyesus, the Secretary-General. Previously, in June 2009, WHO had declared the outbreak of new influenza A / H1N1 had become a pandemic. In its 'Pandemic Influenza Preparedness and Response'[vii] pamphlet, WHO first provided its definition of the pandemic phase in April 2009.

Table 2. WHO Pandemic Influenza Phases, 2009 Edition

Phase 1: There are no reports of a virus that is circulating in animals causing infection in humans.
Phase 2: Animal influenza viruses, or Influenza A viruses (IAV), circulating among domestic or wild animals, are known to have caused infection in humans and are considered to be a potential pandemic threat.
Phase 3: IAV or human-animal Influenza reassortant virus has caused sporadic cases or small clusters of cases in humans, but these viruses have not caused human-to-human transmission sufficient to sustain an outbreak at the community level.
Phase 4: Human-to-human transmission of an animal virus or human Influenza-animal Influenza reassortant virus, capable of causing a 'community-level outbreak', has been confirmed.
Phase 5: Spread of human-to-human transmission of the virus in at least two countries within one WHO region has occurred.
Phase 6 (Pandemic Phase): In addition to the criteria defined in Phase 5, an outbreak has occurred at the community level in at least one other country in a different WHO region.
Post-Peak Pandemic: Pandemic activity appears to be declining, but it is uncertain whether another epidemic wave will occur, and countries need to prepare for a second wave.
Post-Pandemic: The prevalence of influenza disease returns to the levels normally seen with seasonal influenza.

Notes: Changes to the Government Action Plan for Pandemic Influenza due to the WHO's revision of the pandemic phase of the new strain of influenza, Office for Promotion of New Influenza Countermeasures, Tuberculosis and Infectious Diseases Division, Health Bureau, Ministry of Health, Labour and Welfare).[viii]

Figure 1: WHO classification of the first pandemic stage (2009)



Source: World Health Organization, Pandemic influenza preparedness and response - WHO guidance document (2009), p. 24.

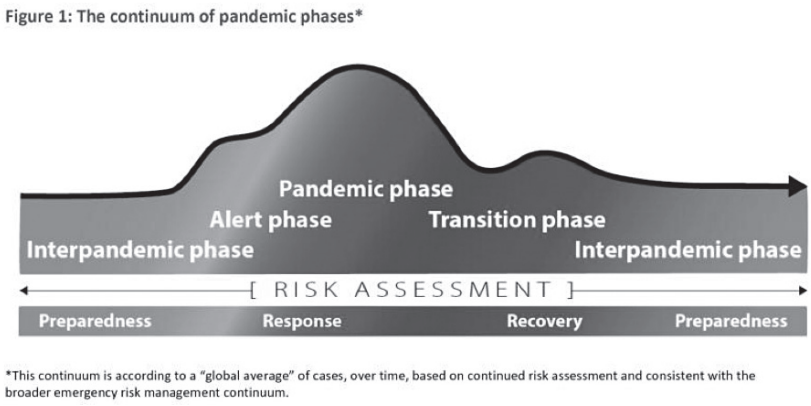
Subsequently, the Pandemic Influenza Risk Management - WHO Interim Guidance, published in 2013, changed the epidemic classification from nine levels in 2009 to four levels.

Table 3. WHO Pandemic Influenza Phases (2013 edition)

Interpandemic Phase: stage between pandemics and pandemics due to pandemic influenza
Alert Phase: stages where new subtypes of influenza have been confirmed to infect people
Pandemic Phase: global spread of new subtypes of influenza
Transition Phase: The stage at which global risks are reduced, and global responses may be gradually reduced, or measures taken by each country may be reduced.

Note: Changes to the Government Action Plan for Pandemic Influenza due to WHO's revision of the pandemic phase of the new strain of influenza (Office for Promotion of New Influenza Countermeasures, Tuberculosis and Infectious Diseases Division, Health Bureau, Ministry of Health, Labour and Welfare).

Figure 2: WHO Classification of Pandemic Stages, (2013)



Source: World Health Organization, Pandemic Influenza Preparedness and Response - WHO Guidance Document - (2009), p. 7.

Subsequently, in May 2017, the latest version of the WHO guidelines[ix] was published. It is still in use as a guideline for countries to understand the average global prevalence of novel influenza viruses. In Japan, WHO has since revised the pandemic phase of the H1N1 influenza pandemic, and the 'Government Action Plan for Pandemic Influenza' was revised.[x]

3 The Challenge to Personal Freedom

A pandemic of a Class I or similar new infectious disease would have a significant impact on the protection of human rights and interests. It would challenge the ideas that have been held to be important and noble for humanity, such as respect for fundamental human rights, democracy, and the development of capitalism. How will we be able to maintain these values in the event of such a pandemic? The impact of a Class I virus pandemic would be so great as to raise doubts as to our ability to take effective measures for protecting our lives and health while respecting these principles. Another cause of concern involves the impact of restrictions on individuals' rights and interests and on their social activities that are necessary to combat infectious diseases caused by the spread of new coronavirus infections in other countries.

In fact, the introduction of surveillance measures to prevent the spread of infection, which comes along with their implicit enforcement of homogeneity, and the restriction of individual rights and social interests, together seem to be the most effective way to fight pandemics. In the face of pandemic threats, the arguments that have been developed in terms of respect for individual human rights and the protection of rights and interests may not be valid.

The most effective measure in the pandemic response[xi] might involve implementation of quarantine measures aimed at thorough viral containment, along with the implementation of restrictions on

behaviour, including freedom of movement. If so, does this mean that a pandemic response would be better served by a political system that is able to restrict human rights without hesitation?

II Pandemics and the Legal System

Public health laws and infectious disease control regulations consist of various laws and regulations in the fields of sanitary law and medical law, but this paper will only review the relevant laws and regulations from the viewpoint of their applicability to 'pandemic control'.

1 The Infectious Diseases Act

The Act on the Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Act No. 114 of 1998) (hereafter referred to as the 'Infectious Diseases Act'), covers all infectious diseases.[xii]

According to Article 6 of the Infectious Diseases Control Law, there are five categories of infectious diseases: 'Class I infectious diseases', 'Class V infectious diseases', and eight 'new influenza and other infectious diseases', 'designated infectious diseases', and 'new infectious diseases'. Of these, viral haemorrhagic fever (Ebola, Crimean-Congo Haemorrhagic Fever, South American Haemorrhagic Fever, Marburg Disease, Lassa Fever), plague, and Smallpox are 'Category 1 infectious diseases'.

When a diagnosis of viral haemorrhagic fever is confirmed, Article 15 of the Infectious Diseases Act stipulates that an 'active epidemiological investigation' should be carried out (epidemiological investigation and control of contacts). In this investigation, consideration should be given to protecting the privacy and human rights of the patient and the patient's contacts, as well as consideration of the safety of the investigators conducting the investigation. From the perspective of public health measures, it is desirable to obtain prior consent from the person concerned, including the patient himself/herself, if information would need to be shared or published between the relevant institutions. In the event of an emergency due to an outbreak of a Class I infectious disease[xiii], emergency measures are to be implemented in accordance with the 'Basic Guidelines for Health Crisis Management of the Ministry of Health, Labour and Welfare' and the 'Guidelines for Implementing Health Crisis Management of Infectious Diseases'.

COVID-19 is defined as a 'Designated Infectious Disease'[xiv] as specified in Article 6, Paragraph 6, Item 8 of the Infectious Diseases Law, in accordance with Article 1 of the 'Cabinet Order on Designation of New Coronavirus Infections as Designated Infectious Diseases' (Cabinet Order No. 11, 28 January 2020), based on the provisions of Article 6, Paragraph 8, Article 7, Paragraph 1, and Article 66 of the Infectious Diseases Law. This infectious disease is classified as a Category 2 infectious disease among the five categories of infectious diseases.

2 Quarantine Law

Under the Quarantine Law (Law No. 201 of 1951), patients with Class I infectious diseases (including pseudo-infectious patients) are classified as having quarantine infectious diseases and are subject to measures such as questioning, examination, isolation, suspension, and disinfection[xv]. Under the Infectious Diseases Control Law, patients are subject to hospitalisation measures and are transferred to designated medical institutions for specific or Class I infectious diseases and treated in hospital rooms

with infection prevention measures. However, the quarantine law does not stipulate isolation (except for livestock).

Between 2014 and 2015, the Ebola haemorrhagic fever (Ebola virus disease) outbreak in West Africa became the largest epidemic in history, posing a significant threat to people of the region and to travellers. In fact, when travelling to Africa in December 2014 to attend the 36th International Conference of Data Protection Privacy Commissioners (ICDPPC) in Mauritius, the author remembers feeling palpable anxiety about the safety of travelling while reports increased about the spread of the disease.[xvi]

In response to that Ebola epidemic, the 'Guide for Administrative Response to Viral Haemorrhagic Fever' (June 2016, Tuberculosis and Infectious Diseases Division, Ministry of Health, Labour and Welfare) (the second edition was published in June 2017) was developed in Japan (hereafter referred to as the 'Guide for Administrative Response'). The guide organises various notifications, administrative communications, and manuals; moreover, it summarises the response policy as a basic technical guideline that contributes to the public health response conducted by prefectures, etc. This guideline was in place at the time when the Ministry of Health, Labour and Welfare (MHLW) issued an alert[xvii] document on a pneumonia of unknown origin (subsequently, SARS-COV-2), which was confirmed to have occurred on 12 December 2019.

Based on the above, the 'Basic Policy on the Publication of Information in the Event of a Category 1 Infectious Disease Outbreak in Japan' has been established.

3 Immunisation Law

By preventing infectious diseases and their spread, vaccination is an important measure to protect people's life and health, and the Vaccination Law (Law No. 68 of 1948) legally specifies the types of infectious diseases for which vaccinations are to be given. Prevention guidelines have been established for 'Specified Infectious Diseases'[xviii] to work alongside standards for the prevention of infectious diseases and medical care for patients with infectious diseases.[xix]

Routine medical examinations are regulated by the Industrial Safety and Health Act, the School Health Act, the Tuberculosis Prevention Act,[xx] and other laws and regulations relating to disease prevention. These laws are all relevant to 'preventing' pandemics, and serve, like vaccinations, as susceptibility measures to prevent infection.

4 Act on Special Measures against Pandemic Influenza, etc.

The purpose of the Act on Special Measures against New Influenza (Act No. 31 of 2012, hereafter referred to as the 'Special Measures Act') is to protect the lives and health of the people and to minimise the harm to people's lives and to the economy in the event of an outbreak of a highly pathogenic new influenza or a similarly dangerous new infectious disease. The Special Measures Act designates the responsibilities of the national government, local governments, designated public bodies, business operators, etc. It denotes the measures to be taken in the event of an outbreak of new strains of influenza, etc., and describes special measures such as emergency measures for new strains of influenza.

The Act on Special Measures against H1N1 Influenza was amended through a bill that was enacted and promulgated on 13 March 2020 and came into effect on 14 March 2020. This partially amended the Act on Special Measures against H1N1 Influenza (Cabinet Act No. 46 of 2020).

The law has been amended to cover new COVID-19 infections so that comprehensive measures

can be taken against the risk of significant impact on people's lives, the economy, and society. To end the epidemic of new coronavirus infections as quickly as possible, it is necessary to adopt thorough measures.

In the amendment of the Special Measures Law, the definition of 'New Strains of Influenza, etc.,' that are subject to the law was amended (related to Article 2) to add new strains of coronavirus infections to the scope of the law, as a provisional measure. As a result, any new coronavirus infections can be regarded as new strains of influenza, etc. Therefore, the Special Measures Law can be applied to such infections, and the action plans for New Strains of Influenza, which had already been established by the national, prefectural, and municipal governments can now be regarded as action plans for these infections as well. In addition, it was decided that the action plans stipulated in the Special Measures Law should also be regarded as action plans for the control of any new coronaviruses. Furthermore, as stipulated in the Special Measures Law, the changes allow for the issuance of a 'Declaration of Emergency' for coronavirus infections. In response to COVID-19, such a declaration of emergency was issued on 7 April 2020, based on Article 32, Paragraph 1 of the Special Measures Law (a declaration that a new type of influenza or other emergency has occurred).

5 Law on Armed Attack Situations

The Act on Measures for the Protection of Citizens in Armed Attack Situations, etc., (Act No. 112 of 2004) has special provisions for the designation of infectious diseases, etc. (Article 121).

Infectious diseases covered by the Act may be designated as such when there is an outbreak or threat of an outbreak of a previously known infectious disease in several conditions: following an armed attack; when there is a risk that a pathogen may enter the country without quarantine; upon the recognition that people's life and health may be seriously affected unless all or part of the provisions of the law are applied *mutatis mutandis*. Under such circumstances, a disease may be labelled a designated infectious disease. In addition, the Act stipulates that it may be deemed necessary to provide vaccinations for disease prevention.

However, the Law on Armed Attack Situations only allows for the designation of an infectious disease as an emergency measure in the event of an outbreak of an infectious disease or invasion of a pathogen following an armed attack, and it does not allow such designation on the basis of laws and regulations regarding infectious diseases. With regard to national emergencies, it is valuable to consider the positive and negative aspects of employing a national emergency power (an emergency clause within the Constitution) to take emergency measures in order to maintain the existence of the state in the event of a crisis that cannot be managed by the peacetime governance system.

6 Act on Punishment of Organised Crimes and Control of Proceeds of Crime

In spite of the fact that pathogens are subject to regulations for strict storage, handling, and transport procedures[xxi], there remains a risk of robbery by terrorist groups.

The Act on the Punishment of Organised Crime and the Control of the Proceeds of Crime (Act No. 136 of 1999) forms the basis on which pathogens can be used in any bio-hazard responses to the use of pathogens by terrorist groups, etc., to cause a pandemic. The Act contains provisions on planning for the commission of serious crimes involving preparatory acts by terrorist groups and other organised crime groups (Article 6-2).

Under Article 67(1), (dissemination of a type of pathogen, etc.), Article 68(1) or (2), (importation of a type of pathogen, etc.), Article 69(1), (possession, etc. of a type of pathogen, etc.), and Article 70 (importation of a type of pathogen, etc.) of the Infectious Diseases Act, terrorist groups and other organised criminal gangs that share common purposes and associative relationships are punishable for the planning and preparation of such crimes.

The thinking behind the legislation envisages that bioterrorism may well be carried out with the aim of inciting social unrest by triggering an economic or financial crisis. The Act on the Promotion of Administrative Reforms to Achieve a Simple and Efficient Government (Act No. 47 of 2006) provides a rationale for dealing with the types of financial crises associated with pandemics (and indeed with other crises). According to Article 4, Paragraph 1, Item 4, the 'Policy and Financial Reforms' of the 'Priority Areas and Basic Policies for Reforms in Each Priority Area, etc'., under Purpose and Basic Policies, (Objective and Basic Policy), the Government shall establish a system to enable new policy financial institutions and other financial institutions to swiftly and smoothly provide the finance necessary to cope with disruptions to financial order at home and abroad or damage caused by major disasters, terrorism, or infectious diseases. Although the provision envisages a financial crisis caused by infectious disease, it is not clear whether the provision would contribute to dealing with biohazards.

III Standards for the Collection and Publication of Infectious Disease-Related Information

1 Surveillance of Infectious Disease Outbreaks

The collection of information related to infectious diseases started in July 1981 as the 'Survey of Outbreaks of Infectious Diseases', covering 18 diseases. In January 1987, 27 diseases were included in the computer-based online system. In September 1998, the Infectious Diseases Act was enacted, and it came into force in April 1999. As a result, a survey on outbreaks of infectious diseases was conducted in accordance with the Implementation of the Survey on the Outbreaks of Infectious Diseases. This in turn was conducted pursuant to the Enforcement of the Law concerning the Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Health and Medical Services Announcement No. 458, 19 March 1999).

Table 4. Procedures for collecting infectious disease-related information for the surveillance of infectious diseases outbreaks.

Obligation of physicians to notify: Article 12 of Infectious Diseases (identification of all cases) Notification from doctors to the Prefectural Governor
Obligation of veterinarians to notify: Article 13(identification of all infectious diseases of animal origin) Notification by veterinarians to Prefectural Governors
Comprehension of the situation and trends of infectious disease outbreaks: Article 14 (fixed-point monitoring) The Prefectural Governor, with the consent of the establishment, designates a specific notifying body, the administrator of which notifies the Prefectural Governor.
Investigation of the status, trends and causes of infectious disease outbreaks: Article 15 (active epidemiological investigation) An investigation serves to clarify the situation, trends, and causes of the infectious disease outbreak.

Structurally, the notification system regarding infectious diseases may be divided into the following categories: (1) total reporting, in which notification of all information on medical institutions and patients is mandatory; and (2) fixed-point reporting, in which notification comes from designated medical institutions. For example, in the case of viral haemorrhagic fevers among the first category of infectious diseases (including pseudo-patients), such as Ebola Haemorrhagic Fever, there is an obligation to report the case immediately to the nearest public health centre (followed by notification to the Prefectural Governor) in order to ascertain the total number of cases. These requirements are based on the 'Response to a Possible Domestic Outbreak of Ebola Haemorrhagic Fever' (Kenkan Hassan 1002 No 1, 2 October 2015).

In accordance with Article 15 of the Infectious Diseases Act, one is required to respond to questions and investigations (i.e., active epidemiological investigations) if one is in possession of information regarding any of the following: patients with infectious diseases, 'pseudo-patients' with asymptomatic pathogens, or evidence of new infectious diseases. One is also required to respond if one is in possession of animals that might transmit infectious diseases to humans.

2 Notification and Measures under the Infectious Diseases Act

In accordance with Article 12.1 of the Infectious Diseases Act, doctors who diagnose a patient with an infectious disease are obliged to notify them[xxii]. Specific notification criteria have been defined for each infectious disease.

In addition, as stipulated in Article 2.1 of the Quarantine Law, procedures are possible when a quarantinable infectious disease is identified: questioning, medical examination and inspection, isolation, suspension, health monitoring, and disinfection of the patient. Those who are not subject to isolation and suspension measures are nevertheless subject to possible health surveillance. Moreover, in accordance with the provisions of Article 18-2 of the Quarantine Law, the Quarantine Officer requests a report or asks questions about the patients' temperatures and other health conditions within a certain period of time.

If a person who has not self-reported at the time of quarantine becomes ill with, for example, a Category 1 infectious disease such as Ebola Haemorrhagic Fever after entering Japan and is found at a medical institution, the response will be based on the 'Basic Response by Medical Institutions in anticipation of a Domestic Outbreak of Ebola Haemorrhagic Fever' (24 October 2014 Kenkan Hatsu No 1024-1).

With these notifications, the personal information is to be obtained by the doctor and included on the notification form[xxiii]. This contains the basic information of the patient or the deceased, such as name, sex, date of birth, age at diagnosis, occupation, address, location, and, in cases involving minors, the name and address of the guardian. The following information is required: symptoms, method of diagnosis, cause, origin, and locus of infection.

3 Health Centre Real-Time Information-Sharing System, (HER-SYS)

The COVID-19 infections were notified under the 'Partial Amendment of the Outline for the Implementation of the Outbreak Trend Survey of Infectious Diseases'[xxiv] (29 May 2020 Kankan issued No 0529-2). Here, the relevant information, such as the contents of outbreak reports, were entered using the 'Health Centre Real-Time Information-Sharing System' (hereafter referred to as 'HER-SYS') instead of the conventional outbreak trend survey system.

HER-SYS is characterised by its ability to electronically input information on patients infected with new coronaviruses and to centrally manage this information. Additionally, it is a system that can be shared among medical institutions, public health centres, prefectures, and other relevant parties. The system is designed to cope with an increase in the number of patients and the diversification of their locations, and it can employ wide-area coordination.

However, at the time of writing, some problems with HER-SYS have been pointed out, such as insufficient analysis of the collected information and problems with its operation and use. For example, the lack of proper collection and analysis of information may prevent the effectiveness of infectious disease control. The information obtained under the Infectious Diseases Act is handled in accordance with the Personal Information Protection Act for Administrative Organs. However, problems have been reported regarding inappropriate collection and analysis of information, and concerns have been raised citing problems with the appropriate handling and protection in the acquisition and management of the retained personal information. In addition, doubts have been raised about the public health centres' appropriate handling and sharing of information, to which the Personal Information Protection Ordinance applies.

4 New Coronavirus Contact-Confirming Application (COCOA)

The new coronavirus contact-confirming application (COCOA: New Coronavirus Contact-Confirming Application) is a so-called contact-tracing application[xxv] that uses the proximity communication function of a smartphone to confirm and notify people regarding the possibility of contact with a person who has tested positive for COVID-19 infection.

With regard to COCOA, the Personal Information Protection Commission has expressed the opinion that, 'although it is considered that there are many cases in which the information obtained by the business operator involved in the application does not constitute personal information as defined in the Personal Information Protection Law, even in such cases it may constitute personal information depending on its relationship with other information held by the business operator concerned'[xxvi].

The 'Positive' Person's Processing Number' and 'Diagnostic Key', obtained by the Ministry of Health, Labour and Welfare (MHLW) are categorised as personal information under the Personal Information Protection Act for Administrative Organs. However, regardless of whether the retained personal information is handled in accordance with the Administrative Organs Personal Information Protection Act, there is no mechanism for supervision by a third-party organisation such as the Personal Information Protection Committee[xxvii].

The 'Privacy and Security Assessment and System Operation Considerations for the 'Contact Confirmation Application and Related System Specifications'[xxviii] (26 May 2020) describes the approach to the application of the Administrative Organs Personal Information Protection Act and the Personal Information Act as well as the policy on privacy considerations. However, the content and direction of the implementation of specific privacy impact assessments and security assessments cannot be confirmed. The second part of this paper, the Privacy Section, which is available in the upcoming J*ournal of Information Law and Technology,* No.9, will discuss the institutional issues, social acceptability, and means of promoting the protection of privacy.

5 Basic Policy on the Publication of Information

The publication of information related to infectious diseases was carried out in accordance with Article 16 of the Infectious Diseases Control Law. The National Institute of Infectious Diseases (NIDID) publishes the Weekly Report on Infectious Disease Outbreaks, and the MHLW publishes on its website information regarding the status of infectious diseases.

In publishing the information, 'attention shall be paid to the protection of personal information' (Infectious Diseases Law, Article 16, Paragraph 2)[xxix]. Based on this provision, the 'Basic Policy for the Time-Being concerning the Publication of Information in the Event of an Outbreak of a Class I Infectious Disease in Japan' (hereafter referred to as the 'Basic Policy') has been established by the Ministry of Health, Labour and Welfare (MHLW), (hereafter referred to as the 'Basic Policy'), was formulated by the Ministry of Health, Labour and Welfare's 'Study Group on Class I Infectious Diseases' (7th meeting)[xxx] on 20 December 2019.

The objectives of the policy are based on the fact that 'in order to prevent the spread of infectious diseases and to minimise the impact of health risks caused by infectious diseases on individuals and society, it is necessary to proactively publish information on the occurrence of infectious diseases'. The policy states also that 'with the publication of such information, attention should be paid to the protection of personal information so as to avoid unfair discrimination and prejudice against infected persons'.

In response to the spread of COVID-19 infections, the MHLW has established the 'Basic Policy on the Publication of Information in the Event of an Outbreak of a Class I Infectious Disease in Japan'[xxxi] (the MHLW, Tuberculosis and Infectious Diseases Division, Health Bureau, dated 27 February 2020). This policy serves as a guideline for the publication of information on infectious diseases other than those designated as Class I under the Infectious Diseases Control Law (Class II infectious diseases, etc.), including COVID-19 infections, with reference to the characteristics and severity of the disease.

In the event of an outbreak of viral haemorrhagic fever among the first category of infectious diseases, prefectural and other officials are required to conduct active epidemiological surveys and report the survey results to the MHLW in accordance with the 'Guidelines for Conducting Active Epidemiological Surveys on Viral Haemorrhagic Fever - for Local Governments' (National Institute of Infectious Diseases, 10 June 2016). These guidelines are based on Article 15 of the Infectious Diseases Control Law in order to collect 'basic information on infectious diseases, as stipulated by the Basic Policy and prevent the spread of secondary infection'.

Table 5. Basic current policy regarding the release of information in the event of an outbreak of a Class I infectious disease in Japan (summary extract)

(1) Basic information on infectious diseases
As different infectious diseases have different characteristics, basic information on the relevant infectious disease, such as the incubation period of the pathogen, the origin of infection, and the main sources of infection, should be provided. By disseminating this information, individuals are able to take appropriate action to prevent the spread of the infectious disease.
(2) Information relating to the history of contact with the source of infection
Information will be provided on the presumed area of infection of the infected person, whether or not this person has had contact with the source of infection. The dissemination of this information will contribute to alerting people travelling to the infected area.

(3) Information on the behavioural history of the infected person
Information, such as the behavioural history of an infected person during the period, must be made public to the extent necessary to prevent the spread of the infectious disease when there is a possibility that the infected person may transmit the infectious disease to others. On the other hand, it is not required to make public information on the behavioural history of any individual during periods when there is no possibility of infecting others with the infectious disease, as this would not contribute to the prevention of the spread of infectious diseases. The behavioural history of infected persons during the period when they are likely to transmit the infectious disease to others should, however, be made public. Nevertheless, in making this information public, consideration should be given to the social impact of publication, and efforts should be made to provide careful explanations to prevent the spread of false information.

The MHLW's Headquarters for the Promotion of Countermeasures to Combat New Coronavirus Infections, 'Publication of Information in the event of an Outbreak of New Coronavirus Infections' (Supplement) [xxxii] (28 July 2020), states that in cases where it is not possible to ascertain who may have come into contact with an infected person, the following information should be provided in order for individuals to be able to take appropriate actions to prevent the spread of infectious diseases: 'the names of places where they come into contact with unspecified numbers of people' and 'the presence or absence of actions or contacts which could infect others' are to be made public.

The supplementary information is as follows:

(1) 'The publication shall not require the consent of the persons concerned, including the publication of the name of the place';
(2) 'Care should be taken to protect personal information to prevent unfair discrimination and prejudice against infected persons';
(3) 'If the cause of the infection is considered to be the failure to take appropriate measures to prevent infection, such as those listed in the guidelines prepared for each industry, the inadequate measures should be made public (and therefore ignored), so that adequate measures can be thoroughly implemented.'

Based on the information above, the 'Basic Policy' is also applied *mutatis mutandis* to the publication of information on new coronavirus infections, which have been designated as infectious diseases. Therefore, it is expected that information on pandemic outbreaks of infectious diseases other than Class I infectious diseases will also be published based on the Basic Policy in the future.

The problem is that the basic policy merely states in the abstract that 'attention must be paid to the protection of personal information'. Although there is a policy on the 'publication of information' necessary to prevent the spread of infection in the event of a pandemic, the specific procedures for the protection of personal information and the protection of privacy can only be addressed in a timely manner. As a result, the MHLW, local governments, and relevant ministries and agencies are forced to make individual decisions on the actual release of information, including the content and scope of the information.

6 The Publication and Non-Publication Information Based on the Basic Policy

'Basic Policy on Disclosure of Information in the Event of an Outbreak of a Class I Infectious Disease in Japan' (Ministry of Health, Labour and Welfare, Health Bureau, Tuberculosis Infectious

Disease Division, 27 February 2020) was issued to indicate the classifications of information that is to be published and that which is not to be published, based on the basic policy is shown. It is presented as the 'Standards for Publication of Outbreaks of Class 1 Infectious Disease Patients'.

The criteria for publication and non-publication of patient information during outbreaks of Class I infectious disease are classified into four categories: (1) basic information on infectious diseases (Basic Policy 2(1)); (2) the Infected Persons Information Act (Basic Policy 1), (3) information related to the history of contact with the source of infection (Basic Policy 2(2)); (4) the situation after consultation and hospitalisation at medical institutions (Basic Policy 1); and (5) information on the behavioural history of infected persons (Basic Policy 2(3)).

IV The Pandemics and the Protection of Personal Data

1 The Procedures for Processing Personal Data

For the purpose of surveillance of infectious disease outbreaks, the Infectious Diseases Act imposes a notification obligation on physicians and veterinarians in the procedures for collecting information related to infectious diseases (Articles 12 to 15 of the Act). In addition, Article 15 of the Act stipulates procedures for collecting information, including personal data, in active epidemiological surveys.

With regard to the provisions on the protection of personal information, the following laws stipulate the provisions focusing on the protection of personal information: Article 16-2 of this law (publication of information); Article 44-2-2 of the law (publication of information on outbreaks of infectious diseases such as new strains of influenza and measures to be taken); and Article 44-6-2 of the law (publication of information on outbreaks of new infectious diseases and measures to be taken). Specifically, particular attention is paid to the delegation of personal information to a protection system. In light of these policies, what must be taken into account in a personal data protection system?

If personal information is handled in the course of preventing the spread of infectious diseases, it must be handled in accordance with the laws and regulations relating to the protection of personal information.

The obligations of business operators handling personal information are set forth in the Act on the Protection of Personal Information (Act No. 57 of 2003) (hereafter referred to as the 'Personal Information Act'). Furthermore, the Act on the Protection of Personal Information Held by Administrative Organs (Act No. 58 of 2003) (hereafter referred to as the 'Act on the Protection of Personal Information Held by Administrative Organs'), applies to administrative entities, and the 'Act on the Protection of Personal Information Held by Incorporated Administrative Agencies, etc.' (Act No. 59 of 2003) (hereafter referred to as the 'Act on the Protection of Personal Information Held by Incorporated Administrative Agencies, etc.'), applies to independent administrative agencies, etc. Local governments are not subject to these laws, nor do these laws and regulations apply to local governments because each local government enacts its own personal information protection ordinance.

In addition, personal information of dispatched workers is protected in accordance with the 'Act for Securing the Proper Operation of Worker Dispatching Undertakings and Protection of Dispatched Workers' (Act No. 88 of 1985) (hereafter referred to as the 'Worker Dispatching Act'). When handling infection-related information of dispatched workers at the client level, the information that can be provided by the dispatching company to the client is limited to information on the dispatched workers'

ability to perform their work, in addition to the matters to be notified to the client based on the Worker Dispatching Act.

Physicians who are legally obligated to provide personal information (notification) related to infectious disease countermeasures under the Infectious Diseases Control Law and the Quarantine Law, etc., share at the same time the legal obligation to maintain confidentiality as stipulated by the Medical Practitioners Law and other medical-related laws and regulations, and they have as well the obligation to preserve documents (e.g. the obligation to preserve medical records).

For information on the handling of personal information in relation to countermeasures against new coronavirus infections, please refer to the following information published by the Personal Information Protection Committee as 'Information related to novel coronavirus infections.

Table 6. Personal Information Protection Committee 'Information related to new coronavirus infections'.

The Personal Information Protection Commission's approach to the use of contact tracing applications as a countermeasure against COVID-19 infections (1 May 2020)
Handling of Personal Information Protection Law when personal information is shared between medical institutions related to COVID-19 infections (April 28, 2020)
Handling of personal numbers in the case of telework, etc., at enterprises, etc., collected as countermeasures against the COVID-19 infection (April 15, 2020)
Handling of personal data for the purpose of preventing the spread of COVID-19 infections (Updated: May 15, 2020)
To visitors to the personal information protection committee: request for responses to the spread of a new coronavirus infection (2 April 2020)
(Reference) Efforts to protect personal data outside Japan in relation to countermeasures against novel coronavirus infections (15 May 2020) ・ The situation in Europe with regard to the development of applications to combat novel coronavirus infections. ・ The data protection authorities in each country have expressed their views on the measures to be taken against new coronavirus infections.

2 Issues of applicable laws and regulations in personal information protection legislation

Doctors who are obliged to report or provide personal information related to infectious diseases based on the Infectious Diseases Law are divided into doctors at national (independent administrative) institutions, public or private hospitals, or general practitioners. For this reason, the laws and regulations that apply to the handling of personal information are different for each of them: for the Independent Administrative Institution National Hospital Organization, the "Independent Act Personal Information Act"; for private hospitals and general practitioners, the "Personal Information Act"; and for public hospitals, the "Personal Information Protection Ordinance" of the municipality in which they are established. Public health centres and municipal health centres[xxxiii] are organisations established by local governments based on the Community Health Law (Law No. 84, 1 July 1994) and are therefore subject to the Personal Information Protection Ordinance.

Furthermore, the content of the obligations relating to the procedures for handling information related to infected persons differs depending on whether the organisation to which the infected person belongs is a business operator handling personal information, an administrative body (national public officer), or a local public body (local public officer).

In accordance with the 'Basic Guidelines for the Promotion of Community Health Measures' (Ministry of Health and Welfare Notification No. 374 of December 1, 1994), based on the provisions of Article 4, Paragraph 1 of the Community Health Act, it is necessary to establish a health crisis management system in the community at ordinary times so that prompt and appropriate crisis management can be carried out for health crises that may occur in the community. However, data protection systems and policies are not the same in the private and public sectors. However, the problem of inconsistencies between private and public sector personal data protection systems may hinder the establishment of a rapid and appropriate crisis management system in response to a pandemic.

In order to address this issue, a review is underway at the time of this study of the personal information protection system, with the goal of determining how to consolidate and integrate the systems for the protection of personal information pertaining to the private sector, administrative agencies, independent administrative agencies, etc. Moreover, it concerns how the administrative processing system should work, and therefore, the application of the public and private sectors in the personal information protection legislation. The issue of legal inconsistency is not discussed. Previous research has developed valuable information on the problems caused by inconsistencies in the application of laws and regulations in the personal information protection system, including the problems caused by the different personal information protection ordinances in local governments (see Takato Natsui and Fumio Shinpo, Personal Information Protection Ordinances and Local Government Responsibilities, Gyosei, 2007).

In addition to 'personal data' and 'retained personal data' (as defined in the Personal Information Law), the terms 'retained personal information' and 'recorded information' (as defined in the Act on the Protection of Personal Information by the Independent Administrative Institution), and other terms will be used in this paper as they are in the Act, regardless of any differences in definitions arising from inconsistencies in the personal information protection system.

3 Applicability to personal information and personal information requiring consideration

As defined by the Personal Information Law, personal information and personal information requiring consideration should be divided into two categories: primary personal information that is handled in the course of infection control measures for infected persons, etc., and secondary personal information that is used for such measures. The former category is referred to as "(1) Infected person-related information" and the latter as "(2) Information related to infection prevention measures" for convenience.

The following conditions are included in regulations governing infected person-related information: a patient with a Class I infectious disease; a patient with a Class II, Class III, or Class IV infectious disease; or an asymptomatic pathogen carrier; a patient with a Class V infectious disease or an infectious disease such as a new type of influenza specified by an Ordinance of the Ministry of Health, Labour and Welfare; or a person suspected of having a new infectious disease as revealed by a doctor's diagnosis. Such information falls under the category of medical history[xxxiv], which places it as personal information requiring consideration specified by Article 2, paragraph 3 of the Personal Information Act and Article 2, paragraph 4 of the Act on Personal Information of Independent Administrative Institutions.

On the other hand, persons in the following conditions are not patients with an infectious disease and therefore do not fall under the category of personal information requiring consideration: people who have been in close contact with a patient with an infectious disease, a patient with a pseudo-infectious disease

of the first category, or a patient with a pseudo-infectious disease of the second category as specified by a Cabinet Order.

Since the personal information relating to infected persons collected under the Infectious Diseases Act is information obtained together with the name of the person concerned, all of the information contained in those documents required in doctors' notifications under the Act is personal information that can be used to identify a specific individual. For example, information regarding an individual's travel routes is required in the notification form for a Class I infectious disease. This includes such information as the flight number or ship name of specific public transportation used. Although it is not personal information in itself, it is nevertheless information that can be easily cross-checked with other information (it is not easily cross-checked in the case of the Independent Administrative Institution Act) to identify a specific individual. This information also constitutes personal information.

Table 7. Examples of 'individuals' whose personal information is collected

① Information related to infected persons
Infected persons themselves (positive persons), close contacts, and other contacts
Pseudo-patients and asymptomatic pathogen carriers (pseudo-patients and asymptomatic pathogen carriers of Class I infectious diseases are treated as infected persons in the same way as patients with Class I infectious diseases (Article 8 of the Infectious Diseases Control Law))
② Information related to infection prevention measures
Individuals whose personal information needs to be obtained for the purpose of infection control measures (e.g., when personal information is required to be registered in order to control access to a building for infection control measures)
Individuals pertaining to GPS location information and other information used for infection control measures

Table 8. Examples of types of personal information collected

Personal information (as shown in Table 7): personal data and retained personal data, retained personal information
Personal information requiring consideration (PCR positive test results)
Information relating to individuals: location information and other information necessary for contact verification
Personal information and personal information required to be obtained from third parties: e.g., in cases where infection information of an employee's family is obtained

4 Procedures for acquisition of personal information requiring consideration

When acquiring personal information to prevent the spread of infectious diseases, or when acquiring personal information requiring consideration, the business operator handling the personal information must obtain the consent of the individual in advance (Article 17(2) of the Personal Information Act).

However, under the Personal Information Law of the Independent Administrative Institution, the following cases may provide the justification when acquiring personal information requiring consideration: (1) when required by law; (2) when necessary for the protection of an individual's life, body, or property; (3) when necessary for the improvement of public health or the promotion of the sound growth of children; (4) in cooperation with public institutions; (5) for public information from

public institutions; and (6) for externally apparent personal information of consideration (Article 17(2) of the Personal Information Act).

Conversely, there are no procedures for the acquisition of personal information requiring consideration. On the other hand, under the Act on Personal Information of Independent Administrative Institutions, there is neither any procedure for acquiring personal information requiring consideration. The only obligation is to enter the information in the personal information file register prepared in accordance with Article 11 of the Act when the recorded information includes personal information that requires consideration.

Table 9. Examples of persons or entities obtaining personal information requiring consideration

Organizations to which the person related to the infected person has connections (business operators handling personal information and their business partners)
Organizations such as government agencies, local government implementing agencies and public health centres, and medical institutions that take measures against infectious diseases;Doctors and other healthcare professionals
Doctors and other healthcare professionals
Information providers (e.g., mobile communications providers) to cooperate in measures to combat infectious diseases
Media organisations and academic research organisations

5 Protection of information of deceased persons (handling of information of deceased persons)

When publishing information on infected persons, 'the same treatment should be applied to cases where infection is discovered after death of a person suspected of infection with an infectious disease', according to the 'Public Announcement of Information on Persons Suspected of Infection with New Coronavirus Infections in the Event that Infection is Discovered after Death' (Public Awareness) (Ministry of Health, Labour and Welfare, Bureau of Health, Tuberculosis and Infectious Diseases Division, March 1, 2020).

The current Personal Information Act and the Act on Personal Information of the Independent Administrative Institution aim to ensure the proper handling and protection of information relating to living individuals. Personal data of deceased persons may be protected in a similar way as information relating to a living individual is protected in relation to the bereaved family. On the other hand, in some cases, the ordinance does not stipulate the requirement of viability. Such regulation is not intended to protect the personal data of the deceased in the same way as those of living individuals, but it does so only by not limiting the scope of personal data to living individuals.

For organisations that are subject to the Personal Information Act and the Act on the Protection of Personal Information by the Independent Administrative Institution, the obligations relating to the handling of personal information do not apply to the personal information of the deceased, except in cases where the personal information of the deceased constitutes information relating to a living individual in relation to the bereaved family. However, if there is no requirement of viability in the local government's personal data protection ordinance, the ordinance applies to the personal data of the deceased. In particular, the ordinance may stipulate the principle of collection by the deceased, which might make it impossible to obtain the deceased's personal data. An example from the past concerns the 'problem of the missing elderly', popularly known as the 'non-existent elderly'. This is an example of a problem that arose

as a result of not being able to obtain the personal information necessary to cancel a resident registration from the bereaved family. Although the individual concerned was deceased according to the principle of personal collection, the information nevertheless existed in public records such as family registers and resident certificates.

While this is a controversial issue in terms of the protection of deceased persons' information, it is also an issue that requires careful consideration of how it should be protected. The reason for this is that it is not possible to extend to the deceased those procedures that are based on living individuals, and such procedures would require the deceased to go through a procedure to obtain their consent. On the other hand, problems have arisen in situations in which the handling of information that should be treated within the confines of personal data protection has been otherwise restricted. This has occurred in cases such as that of non-existent elderly persons, where information had to be handled about an individual who was deceased but who is registered as still living. There are reasons why information of living individuals and information of the deceased cannot be subjected to the same protection procedures, such as the fact that extending the legally protected interest to privacy, which is an exclusive interest, would have a significant impact on existing judicial precedents and procedures under existing legislation.

A previous study by the Ministry of Economy, Trade and Industry found that over 60% of the bodies of deceased people carry infectious diseases, and about 15% carry dangerous infectious diseases.[xxxv] To prevent the outbreak and spread of infectious diseases, which is the purpose of the Infectious Diseases Law, it is necessary to provide information on people who have died of infectious diseases to funeral service providers who handle the bodies in order to inform them of the dangers. A survey conducted by a study group of the Ministry of Economy, Trade and Industry determined that such information sharing is necessary to prevent the outbreak of infectious diseases and to prevent their spread, which is the purpose of the Infectious Diseases Law.

As Article 30 of the Infectious Diseases Act stipulates movement restrictions, etc., for corpses with infectious diseases such as Class I, Class II, Class III, or with new strains of influenza, information on contamination by pathogens of infectious diseases is provided in accordance with the said article. Since there are no restrictions on the handling of corpses with other infectious diseases, the Personal Information Protection Ordinance may be used to determine that information on deceased persons who have died of infectious diseases cannot be provided in relation to the confidentiality obligations of medical personnel under the Medical Practitioners Act.

According to the interpretation of the Personal Information Act, information on deceased persons is not personal information and can therefore be provided. Even in cases where the provision of information, such as information on infectious diseases of the deceased, is assessed as falling under the category of personal data of the bereaved, it is possible to interpret the law so that the information can be provided without the consent of the bereaved, as regarding protection of the life and body of the individual to whom the information is provided (e.g., the person in charge of the funeral service who handles the body). However, this interpretation is not correct because, under the Personal Data Protection Ordinance, information about the deceased must still be treated as personal data.

With regard to the handling of information on persons who have died from COVID-19 infection, their information is handled by the business operator handling the corpse, crematorium workers, and other related parties[xxxvi] in accordance with the guidelines on post-death care.

6 Procedures for the use and provision of personal data and retained personal information

The purposes of using personal data and retaining personal information in infectious disease control include the improvement of public health, infectious disease control, epidemiological research, employment management, and occupational health and safety.

With regard to the provision of personal data to third parties and the provision of retained personal information, it is necessary to distinguish between the literal 'provision' of personal data and the 'publication' (publication to an unspecified number of people) for the purpose of infectious disease control, as their purposes are very different.

Table 10. Examples of scope of use

Internal use within the handling organisation
Sharing within the organisation (including publication within the organisation)
Provision outside the organisation
Use falling under exemptions such as provision to public institutions or in accordance with laws and regulations
Use or provision that does not fall under an exemption
Publication outside the organization handling the data

Table 11. Examples of cases not applicable to provision to third parties

Joint use, business succession, consignment
Group companies for the purpose of infectious disease control (joint use)
The infected person's personal information requiring consideration is provided to the successor company when that company succeeds to the business due to deterioration in management (business succession)
When information management is entrusted to a specialist in infectious disease control to receive advice on infection control measures within the business (entrustment)

In principle, the consent of the individual is required for the provision of personal data and retained personal information[xxxvii]. Furthermore, the Personal Information Act does not allow for the provision of personal information requiring consideration on an opt-out basis.

The Act on the Protection of Personal Information Held by Administrative Organs of Japan does not stipulate any restriction on the provision of personal information in need of consideration, but there is no opt-out procedure in the Act. Thus, under both the Act on the Protection of Personal Information Held by Administrative Organs of Japan and the Act on the Protection of Personal Information Held by Administrative Organs of Japan, personal information in need of consideration cannot be provided without the consent of the individual.

Personal information requiring consideration is provided in accordance with the Personal Information Law to prevent the spread of infection under certain conditions: (1) when it is required by law; (2) when it is necessary for the protection of human life, body, or property; (3) when it is particularly necessary for the improvement of public health or the promotion of the sound growth of children; or (4) when it is necessary for cooperation with public institutions. Article 23(1) of the Personal Information Act (each item of Article 23-1 of the Personal Information Act).

When personal data are provided by a business operator handling personal information for the

purpose of active epidemiological investigations (investigations into the status, trends, and causes of infectious disease outbreaks as defined by Article 15 of the Infectious Diseases Law), the provision of personal data falls under the provision based on laws and regulations.

In the case of administrative organs, independent administrative agencies, etc., both cases where retained personal information is provided for the investigation under Article 15 of the Act and where it is retained for the publication of infectious disease-related information under Article 16 of the Act are in the category in which a person who receives retained personal information in accordance with Article 8(2)(iii) of the Act on the Protection of Personal Information of Administrative Organs and Article 9(2)(iii) of the Act on the Protection of Personal Information of Independent Administrative Agencies. These rules pertain to uses of personal information relevant to the provision as necessary for the performance of the affairs or business prescribed by law.

In cases where the person is unconscious and it is not possible to confirm the circumstances of the infection or the identities of those in contact with the infected person himself/herself, the case falls under the protection of human life and body. The term 'person' here includes not only the infected person but also third parties. In such cases too, personal data can be provided without the consent of the person concerned, since not only is it impossible to obtain his consent, but the opportunity for the contact to be aware of this fact is also lost.

Table 12. Exemptions from the acquisition and use of 'personal information' and 'personal information requiring consideration': provision of 'personal data' and related procedures

① It is required by law
② It is necessary for the protection of a person's life, body, or property
③ It is especially necessary for the improvement of public health or the promotion of the sound growth of children
④ Cooperation is needed with public institutions
⑤ Personal information requiring consideration is made public by a public institution
⑥ There is a case of consignment, business succession, or joint use of the handling of externally apparent personal information requiring consideration or personal information requiring consideration (Article 7 of the Enforcement Order)
⑦ There is a risk of harm to the rights or legitimate interests of the business operator handling the personal information
⑧ The purpose of use is clear
⑨ There is a risk of significant hindrance to the proper execution of the business of the business operator handling personal information
⑩ It would violate other laws and regulations

Table 13. Application of exemption provisions in Table 12

Restriction on purpose of use (Article 16(3)) ①②③④
Restriction on the acquisition of personal information requiring consideration (Article 17(2)) ①②③④⑤⑥
Notification, etc., of the purpose of use (Article 18(4)) ②④
Restriction on provision to third parties (Article 23(1)) ①②③④
Exemptions ⑦ through ⑩ are exempted from the application in procedures pertaining to retained personal data.

7 Problems in the 'Application' of the Law's Exemption Provisions

Among the application exemptions provided by the Personal Information Law, (i) cases based on laws and regulations, and (ii) cases where it is necessary to protect the life, body, or property of a person, the former requires legal amendment if it must be applied beyond the scope of the current law in infectious disease control, and the latter presupposes exceptional emergencies such as the person being unconscious.

On the other hand, with regard to (3) improvement of public health and (4) cooperation with public authorities, the former must be judged between public interest and the protection of the rights and interests of individuals in the fight against infectious diseases, while the latter must 'deal with requests from public authorities as appropriate'. As cooperation with public authorities is only 'cooperation', it is necessary to consider emergency responses in normal times, including amendments to the law, in the event that cooperation must be compelled in the event of non-compliance. In other words, it is possible to consider in advance how cooperation with public authorities should be provided.

As a concrete example, at the request of administrative bodies (the Cabinet Secretariat, the Ministry of Internal Affairs and Communications, the Ministry of Health, Labour and Welfare, and the Ministry of Economy, Trade and Industry)[xxxviii], platform operators, and mobile communication carriers are requested to provide data that will contribute to the prevention of the spread of new coronavirus infections. This is to verify the effectiveness of cluster measures and to enable the effective implementation of measures to prevent the spread of infection. To enable effective implementation of measures to prevent the spread of the new coronavirus infection, platform and mobile network operators are requested to provide data to help prevent the spread of the COVID-19 infection (as of 31 March 2020). Operators deal with this request as appropriate.

Until now, the use of GPS location information has been subject to the 'Guidelines for the Protection of Personal Information in the Telecommunications Business' (Notification No. 152 of the Ministry of Internal Affairs and Communications in 2017, last revised in 2017). This entity stipulates location information (related to Article 35) (Ministry of Internal Affairs and Communications Notification No. 152 of 2017, last revised in 2017, Ministry of Internal Affairs and Communications Notification No. 297).

The 'Study Group on the Handling of Location Information in Emergencies, etc.', of the Ministry of Internal Affairs and Communications, has examined the issue of the provision of location information based on requests from public authorities, and it has established the acquisition of location information at the request of investigative agencies (Article 35, paragraph 4 related[xxxix]), and it also established the acquisition of location information at the request of rescue agencies (Article 35, paragraph 5). Although the relevant guidelines include provisions corresponding to the exemption from the application of the Personal Information Law for the purpose of improving public health, they do not specifically provide requests from public authorities to respond to countermeasures against infectious diseases. Furthermore, they state that 'in consideration of the balance between social usefulness and the protection of the secrecy or privacy of communications,' telecommunications carriers will consider the balance between social usefulness and the protection of communication secrets or privacy. Guidelines state that it is appropriate for telecommunications carriers to take necessary measures to prevent unjustified infringement of users' rights (related to Article 35.3).

The provision of GPS location information has been addressed in the guidelines, and, if detailed collection of personal information is to be implemented for the purpose of combating Class I infectious

diseases, such as provisions implemented in Korea[xl], it should be considered in advance by amending the law or amending the guidelines. However, if such a compulsory system is to be put in place to collect information from the perspective of protecting the public interest rather than individual privacy, a prerequisite must be that it is subject to supervision by a third party, and it is therefore essential that the legal system for handling personal information shift to one that is supervised by the Personal Information Protection Commission. In fact, it is essential to move to a legal system in which the handling of personal information is supervised by the Personal Information Protection Commission.

Based on the above analysis, it is possible to consider in advance the requirements and standards necessary for countermeasures against infectious diseases that seriously affect the life and health of the public with regard to (1) laws and regulations, (2) human life and body, and (4) cooperation with public institutions for which it is difficult to set clear standards, (3) the case based on the improvement of public health. Thus, the issue of the case remains, based on the improvement of public health for the collection of information for effective countermeasures against infectious diseases.

8 Exemption from the obligations of business operators handling personal information

In accordance with Article 76 of the Personal Information Law, the obligations of business operators handling personal information do not apply to institutions and organisations that handle personal information for the purpose of providing it to the press, writing, and academic research[xli].

On the other hand, there is no exemption provision in the Act on Personal Information of Independent Administrative Institutions. This includes cases of research at national universities and private universities, and it means the use of personal information at their respective hospitals, national universities, and hospitals to which the Act applies are subject to the obligations of the Act, even for academic research purposes. This should cause problems when handling retained personal information in research related to infectious diseases.

9 Others

It is necessary to consider the provision of anonymized processed medical information based on the Next-Generation Medical Care Infrastructure Act in cases of using information related to the infected-person and information related to infection-control as pseudonym-processed information, anonymized processed information (de-identified processed information), and statistical information. Moreover, it is necessary to consider the handling of infection-control-related information that is not personal information at the provider but may be personal data at the recipient.

V Use of personal data on the basis of improving public health and its limitations

1 What is the improvement of public health?

While the Personal Information Act provides an exemption for the 'improvement of public health', the Independent Administrative Institution Personal Information Act does not provide an exemption on the basis of the improvement of public health.

As for 'improvement of public health', Article 25 of the Constitution of Japan states that 'Every citizen has the right to a healthy and cultured minimum standard of living. The State shall endeavour to improve and promote social welfare, social security, and public health in all spheres of life'. The law clearly states

that public health should be improved and promoted.

The basic principle of Article 1 of the Infectious Diseases Act is health: 'The purpose of this Act is to prevent the outbreak of infectious diseases and to prevent their spread, and thereby to improve and promote public health by prescribing the necessary measures for the prevention of infectious diseases and the medical treatment of patients with infectious diseases' (Article 9). At the same time, Article 9 of the same law requires the establishment of basic guidelines (basic policy) to comprehensively promote the prevention of infectious diseases, and Article 2(9) of the same law stipulates 'matters concerning the enlightenment and dissemination of knowledge on infectious diseases and respect for the human rights of patients with infectious diseases'.

Various cases have been raised concerning public health and the violation of human rights and legal interests. For example, there have been disease-related cases such as the isolation of leprosy patients in sanatoriums based on the Leprosy Prevention Law, pollution-caused diseases creating health hazards, vaccination disasters that trigger lawsuits, and lawsuits against effects of medicines. In relation to environmental issues, there have been disputes over the violation of legal interests in the living environment and public health caused by the Fukushima Daiichi nuclear power plant accident and environmental pollution caused by industrial waste. In other words, against the background of the relationship between public health and the guarantee of human rights, there is a situation in which the handling of personal information, which may invade the privacy of individuals in matters relating to public health, has to be restrained.

2 Exemption provisions based on the improvement of public health

In the event of a pandemic that may seriously affect public life and health, the question that needs to be considered is to what extent personal information must be used beyond the scope necessary to achieve its specified purpose to prevent the spread of an infectious disease, or to what extent such use is permissible on the basis of 'improvement of public health' when a situation arises that must be dealt with, including 'publication of personal information' (provision of personal data).

The structure of an exemption on the basis of 'improvement of public health' consists of 'reasons why the mandatory provision must be excluded' and 'difficulties in obtaining the consent of the person concerned'. The use or publication of infectious disease-related information for purposes other than those for which it was intended on the basis of 'improvement of public health' may be carried out in cases in which it is impossible to obtain the consent of the individual for reasons that meet those requirements. However, there is no basis under the current law to restrict the 'scope and content of use and publication' in such cases.

When personal information relating to infected persons is obtained in accordance with the Infectious Diseases Control Law, through procedures based on laws and regulations, there is no obligation to obtain the consent of the individual in relation to the acquisition of personal information requiring consideration at the time of acquisition. When such information is provided in accordance with laws and regulations, it can be made public without obtaining the consent of the individual. In other words, in the personal information protection system, the publication of real names that can identify specific individuals does not constitute illegal handling of personal information in light of the procedures for interpreting the law.

The personal data protection system sets out procedures for obtaining the consent of the individual for the acquisition and provision of personal data, but it does not place any restrictions on the content

of the information to be acquired or the information to be provided. Indeed, the obligation to check the records when providing information to a third party also only imposes an obligation to check. In other words, there are no restrictions on the information to be obtained or provided in procedures where it is not required to obtain the consent of the individual. Therefore, in the personal information protection system, there is no restriction on the provision of personal information obtained under the Infectious Diseases Act for the purpose of improving public health, and there is no legal problem in publishing the information as it is obtained.

In light of the fact that Article 3 of the Personal Information Act states that 'personal information should be handled with care and respect for the individual's personality', is it in fact accurate to argue that personal data cannot be provided in a way that would damage the individual's personal interests? As this provision is not an obligation of the business operator to handle personal information but a basic principle of the law, the application of this provision is not obligatory in applying the exemptions provided in the mandatory provisions.

Therefore, in terms of literary interpretation, there are two views. First, one view perceives that the acquisition and provision of personal information can be carried out without any particular restriction on the basis of the improvement of public health and due to the exemption provisions of the Act (unlimited theory). Another perspective argues the acquisition of personal information and the provision (publication) of personal data should not be allowed without restriction on the basis of the improvement of public health from the viewpoint of guaranteeing the right to privacy of individuals (limited theory).

This problem cannot be solved under the current personal data protection system and needs to be considered from the perspective of the protection of privacy, which is a personal interest of individuals. As the right to privacy is constitutionally guaranteed, even if a public authority judges that the publication of personal information is not problematic under the personal information protection system, it may still constitute a disclosure of personal information that violates the right to privacy.

3 Limitations of the interpretation of the exemption for improving public health and the need to develop a basis for decision-making

This divergence in interpretation raises concerns not only about the possibility of situations in which personal data may be provided without restriction on the basis of the improvement of public health, but it also raises concerns about the possibility that the collection and provision of information may be hindered by privacy issues in the event of a serious public health emergency.

In addition, since there is no standard for what kind of information should be restricted, there is a risk that the collection and provision of necessary information will be atrophied, and thus urgent measures to prevent the spread of infection will not be taken. In an emergency situation, there is no time to lose in deciding which interpretation should be adopted.

To avoid such a situation, exemptions on the basis of the improvement of public health should be subject to statutory criteria that can be used to ensure the collection and provision of information in emergency situations.

For example, in judging of the 'severity of the disease', the following situations should be considered: (i) the fatality rate is high, (ii) the number of infected persons and patients is high, and (iii) the severity of the disease is high. Moreover, in terms of the 'prevalence of the infection', the following situations should be considered: (i) the persistence of exposure is recognised, (ii) susceptibility measures to prevent

infection are not fully functional, and (iii) the situation exceeds the limits of the response capacity of medical institutions, etc. By collecting and confirming information that can serve as indicators for various types of decisions, conditions such as the 'Triage Criteria for the Use of Information Related to Infection Control' will be formulated with reference to the Simple Triage and Rapid Treatment (START) legal method used for triage decisions. Criteria will be based on the grounds of improving public health. Thus, the criteria can be useful as a basis for judging the legality of the handling of information (acquisition, use, provision, and publication).

This paper has shown a sample of observations on the issue of infectious disease control and the protection of personal information, but there are issues that need to be considered in view of the limitations of the interpretation of exemption provisions on the basis of the improvement of public health. This includes whether personal information can be used appropriately for effective infectious disease control in the event of a future pandemic that could seriously affect the life and health of the population.

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References

i PHEIC (Public Health Emergencies of International Concern) are situations in which the International Health Regulations (IHR) established by WHO recognise: (1) the international spread of diseases poses a public health risk to other countries; (2) a declaration of a public health emergency that corresponds to a situation requiring urgent co-ordination of international measures. In the past, the declarations were made when the following infectious diseases occurred: Swine Flu A (H1N1), (New Influenza), (April 2009); international spread of wild-type Poliovirus (May 2014); spread of Ebola Haemorrhagic Fever in West Africa (August 2014); and the outbreak of Ebola in the Democratic Republic of Congo (July 2019).

ii Regarding infectious diseases which may cause pandemics, infectious diseases such as 'New Influenza', stipulated in Article 6-7 of the 'Infectious Diseases Control Law and New Infectious Diseases', stipulated in Articles 6-9 of the 'Infectious Diseases Control Law',(limited to those which may spread rapidly in nationwide) are targeted. These are defined as 'New Influenza, etc.' (Article 2, Paragraph 1, Item 1 of the Act on Special Measures concerning New Influenza, etc.): Satoshi Isobe, *Spring of Corona, (Law Review)*, Law Bulletin Vol. 92, No. 5, (Vol. 1150), (2020), p. 3. It has been pointed out that this is also an issue about whether or not this should be considered as 'a seriousness of hygiene threat' based on the scientific basis.

iii In the case of a drone falling on the roof of the Prime Minister's official residence on April 22, 2015, a container in which were found trace amounts of Cesium-134 and Cesium-137. Bio-Terrorist weapons which carry pathogens on drones and ultra-compact autonomous robots are becoming serious problems: Fumio Shimpo, *A Study of Lethal Autonomous Weapons Systems (LAWS) from a Robot-Legal Perspective*, Institute of Electronics, Information and Communication Engineers, Fundamentals Review, (FR), Vol. 13, No. 3, (2020), pp. 217-230.

iv CDC, Principles of Epidemiology in Public Health Practice, Third Edition, '*An Introduction to Applied Epidemiology and Biostatistics*' (2011) is a basic textbook for learning how to investigate public health issues. Basic knowledge about the epidemic level of infectious diseases may be found on page 72. The content of this book is published on the CDC website.
https://www.cdc.gov/csels/dsepd/ss1978/SS1978.pdf

v Kunio Yano, *Terms related to Trends*, Kenei IC News, No. 71, 2017 Nov. defines these terms: endemic, local (predictable); epidemics and hyperendemics, regional, (predictable); advanced epidemics, epidemic (unpredictable); pandemic, sporadic; outbreak, (unpredictable); limited epidemic; cluster (greater than predicted) case population.

vi WHO, Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020.
https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020.

vii World Health Organisation, *Pandemic Influenza Preparedness and Response*, WHO guidance document, (2009). https://www.who.int/influenza/resources/documents/pandemic_guidance_04_2009/en/.

viii World Health Organisation, *Pandemic Influenza Preparedness and Response*, WHO guidance document, (2009), p. 11. The new WHO document was published following the revision of the pandemic phase of a new influenza pandemic. It shows three phases of the pandemic: post-peak, re-spreading, and end of the pandemic, in addition to the six phases referred to above. It also divides the response phase into nine phases. On the other hand, the Ministry of Health, Labour and Welfare (MHLW) has combined the post-peak and re-spreading phases of the pandemic into a single eight-stage, 'Governmental Action Plan for Pandemic Influenza'. This seems to be based on the classification of the figure which shows the epidemic period in chronological order, not on the WHO classification table.

ix WHO, *Pandemic Influenza Risk Management, A WHO Guide to Inform & Harmonize National & International Pandemic Preparedness and Response* (May 2017), p. 12.
https://www.who.int/influenza/preparedness/pandemic/influenza_risk_management_update2017/en/. As there has been no change in the classification of epidemic stages, the material is the same as in the 2009 edition.

x WHO, *Changes to the Governmental Action Plan for Pandemic Influenza due to the Revision of the Pandemic Phase by WHO* (Office for Promotion of New Influenza Countermeasures, Tuberculosis and Infectious Diseases Division, Health Bureau, Ministry of Health, Labour and Welfare).
https://www.mhlw.go.jp/content/10906000/000547045.pdf.
Health Sciences Council, Infectious Diseases Committee, *Changes to the Governmental Action Plan for Pandemic Influenza, Etc.,* following WHO's revision of the pandemic phase of a new strain of influenza.
https://www.mhlw.go.jp/content/10901000/000575992.pdf.
Cabinet Secretariat, *Governmental Action Plan for Pandemic Influenza, Etc*.
https://www.cas.go.jp/jp/seisaku/ful/keikaku.html.

xi Regarding the constitutionality of quarantine, please refer to Obayashi Keigo, *Constitution and Infectious Diseases*, Law Seminar 723, pp. 44-46, (2015).

xii *Ordinance for Enforcement of the Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases* (Ordinance of the Ministry of Health and Welfare No. 99 of 28 December 1998), a ministerial ordinance establishing import prohibition areas, etc., under Article 54, item 1 of the Act on the Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Ordinance of the Ministry of Health, Labour and Welfare and the Ministry of Agriculture, Forestry and Fisheries, No. 2, December 1, 1999). Regulations on the importation of animals likely to transmit infectious diseases, (Ordinance of the Ministry of Agriculture, Forestry and Fisheries No. 83 of 1 December 1999). Regulations concerning Notification, Etc. of Transportation of Notifiable Pathogens, Etc. (National Public Safety Commission Regulation No. 5 of March 9, 2007), have been established.

xiii The grounds for emergency response in the event of a first-class infectious disease are as follows. 'Ministry of Health, Labor and Welfare Health Crisis Management Basic Guidelines', 'Infectious Diseases Health Crisis Management Implementation Guidelines (Partially revised in October 2013, Health Bureau, Ministry of Health, Labor and Welfare)', 'Guidelines for holding expert meetings on the treatment of first-class infectious diseases', 'First-class Guidelines for holding a study group on infectious diseases'.

xiv *New Coronavirus Infections*, (limited to those in which the pathogen is Coronavirus of the genus Betacoronavirus (newly reported to the World Health Organisation by the People's Republic of China in January 2020, as having the capacity to infect humans)).
https://www.mhlw.go.jp/bunya/kenkou/kekkaku-kansenshou11/01-shitei-01.html.
According to the 'Cabinet Order for Designation of New Coronavirus Infectious Disease as a Type of Infectious Disease under Article 34 of the Quarantine Law', (Cabinet Order No. 28, 2020), it is also specified as an infectious disease under the Quarantine Law. Under the Act on Special Measures against Pandemic Influenza, etc. (Act No. 31 of 2012), matters related to the new strains of influenza, etc., which were stipulated in the governmental action plan, prefectural action plans, municipal action plans and operational plans are deemed to be stipulated in the action plans, etc as matters related to the new strains of influenza, etc., including the new strains of Coronavirus infection.

xv The quarantine of foreign military vessels or military aircraft is carried out in accordance with the Special Provisions of the Quarantine Law concerning Foreign Military Vessels, etc. (Law No. 201 of 1952).

xvi For a commentary on the state of the international response to Ebola in the relevant period, see Hirohide Takikawa, *Ebola and Global Justice*, Hōgaku Seminar No. 723, pp. 50-52, (2015).

xvii Ministry of Health, Labour and Welfare, *Outbreak of Pneumonia of Unknown Origin in Wuhan, Hubei Province, People's Republic of China*, (January 06, 2020)
https://www.mhlw.go.jp/stf/newpage_08767.html.

xviii Basic Guidelines for the Comprehensive Promotion of the Prevention of Infectious Diseases, (Ministry of Health, Labour and Welfare Notification No. 115 of April 1, 1999); Guidelines for the Prevention of Specific Infectious Diseases related to Influenza, (Ministry of Health, Labour and Welfare Notification No. 247 of December 21, 1999); Guidelines for the Prevention of Specific Infectious Diseases related to Tuberculosis (Ministry of Health, Labour and Welfare Notification No. 72 of March 30, 2007);

Guidelines for the Prevention of Specific Infectious Diseases related to Acquired Immune Deficiency Syndrome (Ministry of Health, Labour and Welfare Notification No. 21, January 19, 2012); Guidelines for the Prevention of Specific Infectious Diseases related to Sexually Transmitted Diseases (Ministry of Health, Labour and Welfare Notification No. 15, February 2, 2000); Guidelines for the Prevention of Specific Infectious Diseases related to Measles (Ministry of Health, Labour and Welfare Notification No. 442, December 28, 2007), (Ministry of Health, Labour and Welfare Notification No. 264 of July 25, 2003); and Technical Guidelines for Measures Necessary to Prevent Legionnaires' Disease (Ministry of Health, Labour and Welfare Notification No. 264 of July 25, 2003).

xix Standards for medical institutions designated for infectious diseases specified by the Minister of Health, Labour and Welfare based on the provisions of Article 38, paragraph 2 of the Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Ministry of Health and Welfare Notification No. 43, March 19, 1999); Regulations for Medical Care of Designated Medical Institutions for Infectious Diseases (Notification No. 42 of the Ministry of Health and Welfare, March 19, 1999); and Remuneration for Medical Treatment under the Provisions of Article 41, paragraph 2 of the Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Ministry of Health, Labour and Welfare Notification No. 123 of March 30, 2007).

xx Standards for Tuberculosis Care (Ministry of Health, Labour and Welfare Notification No. 16 of 23 January 2009).

xxi It is stipulated that the handling of specified pathogens should be based on the following Standards for Safety Cabinets, etc., specified by the Minister of Health, Labour and Welfare (Notification No. 201 of the Ministry of Health, Labour and Welfare, May 31, 2007), Type 3 Pathogens, etc. and Type 4 Pathogens, etc., specified by the Minister of Health, Labour and Welfare (Notification No. 202 of the Ministry of Health, Labour and Welfare, May 31, 2007), signs specified by the Minister of Health, Labour and Welfare based on the provisions of Article 31-31, Paragraph 2, Item 9, etc., of the Ordinance for Enforcement of the Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Notification No. 202 of the Ministry of Health, Labour and Welfare, May 31, 2007) (Ministry of Health, Labour and Welfare Notification No. 203 of May 31, 2007), signs specified by the Minister of Health, Labour and Welfare pursuant to the provisions of Article 31-31, Paragraph 2, Item 9, etc., of the Ordinance for Enforcement of the Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Ministry of Health, Labour and Welfare Notification No. 209 of June 1, 2007), and standards concerning containers, etc., for transporting specified pathogens, etc.

xxii Ministry of Health, Labour and Welfare, *Request for notification of doctors under the Infectious Diseases Act*
https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/kenkou_iryou/kenkou/kekkaku-kansenshou/kekkaku-kansenshou11/01.html.

xxiii The author checked the notification form in July 2020 to confirm the types of personal data to be obtained and this may have changed since then.

xxiv Ministry of Health, Labour and Welfare, Headquarters for the Promotion of Countermeasures to Combat Novel Coronavirus Infections, *Introduction of the H1N1 Coronavirus Infectious Disease*

Surveillance and Management Support System (HER-SYS) (Information on preparations for introduction/ confirmation of connection environment, organization of NESID information, etc.), May 22, 2020, https://www.mhlw.go.jp/ content/000633013.pdf. *Introduction of the Support System for Grasping and Managing Information on Persons Infected with the New Coronavirus (tentative name) (Outline of the system, guidance on preparations, and recruitment of public health centers for prior use)*, April 30, 2020, https://www.mhlw.go.jp/content/000626714.pdf.

xxv Notes on the use of contact confirmation applications are given in Mitsuo Kishimoto and Ikuko Kudo, *Ten Perspectives on Contact Tracking Technology and ELSI (ver 0.8)*, ELSINOTE, No. 04 (2020), https://elsi.osaka-u.ac.jp/system/wp-content/ uploads/2020/04/200430_ELSI_NOTE_04.pdf, where recommendations are made. Concerns about contact tracing applications and the surveillance society are also presented in Tsuyoshi Tanemura, *Pros and cons of tracking individual behavior to control new coronavirus infections : A memorandum for a dialogue on social implementation of contact tracing applications*, Science and Technology Communication, Vol. 27, PP.41-53 (2020).

xxvi Personal Information Protection Committee, *The Personal Information Protection Committee's Approach to the Use of Contact Tracing Applications as a Countermeasure for New Coronavirus Infections* (May 1, 2020).

xxvii The expert panel on the contact confirmation application is a third-party body, but it is not a third-party body capable of examining and verifying the aspects of the protection of the rights and interests of individuals, including the protection of personal information and privacy. Although the review of the countermeasures against infectious diseases was an emergency system because it required urgent measures and consideration, the view that the system over the review of countermeasures against infectious diseases also considers the decision of the expert panel to be 'overstepping the bounds' as an intervention in policy choices. Additionally, it points out that the problem of the expert panel stems from the inadequacy of infectious disease legislation. Shigeto Yonemura, *Legal Governance of Infectious Disease Control and the Role of Experts*, Horitsu Jiho, Vol. 92, No. 7,Vol. 1152, pp. 3, (2020). The question of whether there is a system in place for crisis management in infectious disease control needs to be fully examined in the future and consideration given to the development of such a system.

xxviii *Privacy and Security Assessment and System Operational Considerations for 'Contact Confirmation Application and Related System Specifications*' , Expert Panel Meeting on Contact Confirmation Application, 26 May 2020, https://cio.go.jp/sites/default/files/ uploads/documents/techteam_20200526_02.pdf.

xxix The provisions relating to the protection of personal information in the Infectious Diseases Act are similar to those in the publication of information on the outbreak of new influenza and other infectious diseases and the measures to be taken (Article 44-2 of the Act) and in the publication of information on the outbreak of new infectious diseases and the measures to be taken (Article 44-6 of the Act).

xxx The agenda of the 7th meeting of the 'Study Group on Class I Infectious Diseases' of the Ministry of Health, Labour and Welfare (MHLW) on 20 December 2019, was (1) revision of the 'Guide for Administrative Response to Viral Haemorrhagic Fever (2nd Edition)' and (2) therapeutic agents for Ebola haemorrhagic fever. As one of the materials to be considered for these agenda items, 'Document

1-3: Basic Policy for the Immediate Release of Information in the Event of a Category 1 Infectious Disease Outbreak in Japan' is being considered as material to be released.

xxxi *Basic Policy on Disclosure of Information in the Event of a Category 1 Infectious Disease Outbreak in Japan*, Ministry of Health, Labour and Welfare, Health Bureau, Tuberculosis and Infectious Diseases Division, February 27, 2020.
https://www.mhlw.go.jp/content/000601059.pdf.

xxxii Ministry of Health, Labour and Welfare, Headquarters for the Promotion of Countermeasures to Combat Novel Coronavirus Infections, 'Publication of Information in the Event of an Outbreak of Novel Coronavirus Infections (Supplement)' (July 28, 2020). https://www.mhlw.go.jp/content/000652973.pdf.

xxxiii Article 5 of the Community Health Act provides that "Health centers shall be established by prefectures, designated cities under Article 252-19, paragraph 1 of the Local Autonomy Act (Act No. 67 of 1947), core cities under Article 252-22, paragraph 1 of the same Act, and other cities or special wards specified by a Cabinet Order. With regard to municipal health centres, Article 18 stipulates that 'municipalities may establish municipal health centres'.

xxxiv Medical history 'means a history of illness, and applies to those parts of the medical history which indicate a particular illness' (e.g., a particular individual has cancer, suffers from schizophrenia, etc.). Guidelines on the Act on the Protection of Personal Information (General Provisions), p. 13.

xxxv Ministry of Economy, Trade and Industry, 'Towards the Creation of a "Life Ending Stage" with Peace of Mind and Confidence: Building a "Life Ending Industry" to Accompany New "Bonds" and Lives' (August 10, 2011), p. 25.

xxxvi Ministry of Health, Labour and Welfare and Ministry of Economy, Trade and Industry: 'Guidelines for the treatment, transport, funeral, cremation, etc. of persons who have died or are suspected to have died from new coronavirus infection' (29 July 2020); All Japan Funeral Service Cooperative Association and All Japan Coronation and Funeral Service Mutual Aid Association: 'Guidelines for the prevention of the spread of new coronavirus infection in the funeral service industry' < />; Ministry of Health, Labour and Welfare: 'Handling of cremation of the body of a patient who has died from a Class I infection (notice of 24 September 2015) Guidelines for the Prevention of the Spread of New Coronavirus Infection' <https://www.zensoren.or.jp /https://www.zengokyo.or.jp/news/1988/>, Ministry of Health, Labour and Welfare: Handling of Cremation of the Bodies of Patients Who Have Died of Class 1 Infectious Diseases (Notification of September 24, 2015) < https://www.mhlw.go.jp/file/06-Seisakujouhou-11130500-Shokuhinanzenbu/0000130189.pdf>. In addition, the Pure Land Sect of Buddhism has summarized how to deal with the death of a person infected with the new coronavirus as a temple priest. Jodo-shu, 'How to deal with people who die after being infected with the new coronavirus' <https://jodo.or.jp/wp/wp-content/uploads/2020/04/20200413_sougi.pdf>.

xxxvii The Personal Information Protection Committee's 'Handling of personal data for the purpose of preventing the spread of new coronavirus infections' <https://www.ppc.go.jp/news/careful_information/covid-19/> provides the following explanation of the business operators handling personal information to which the Personal Information Protection Law applies.

xxxviii 'Provision of statistical data and other information contributing to the prevention of the spread of new coronavirus infections' (request).
https://www.soumu.go.jp/main_content/000679819.pdf.

xxxix This amendment can be regarded as a precedent for future amendments to the Guidelines for the prevention of infectious diseases, as it is a case where the Guidelines were amended in light of the latter necessity in relation to the protection of personal privacy and the necessity of investigation. Before the amendment, Article 26(3) of the Guidelines stipulated a requirement that 'when a user can know that location information is being acquired'. However, this requirement was deleted, and the requirement was replaced by a requirement that 'when a suspect knows that GPS location information is being acquired during a criminal investigation, it will be difficult to conduct an effective investigation'. Therefore, the requirement has been removed, and it is no longer necessary to take measures such as making a sound, by which a person can know the fact that GPS location data is being acquired. However, in order for a telecommunications carrier to acquire and provide GPS location information for criminal investigation, it is necessary to comply with a warrant issued by a judge. In issuing the warrant, the judge will consider the burden on the telecommunications carrier as well as the privacy of the suspect and other users. The judge will examine the necessity and appropriateness of the means, including the period and frequency of verification. The amendments to the Guidelines are based on the idea that as long as the judicial process is conducted properly, there will be no unwarranted infringement of users' privacy.

xl Yoichiro Itakura, 'Cashless Payment and Personal Information Protection - A Study on the Relationship with Active Epidemiological Surveys as a Countermeasure against COVID-19 (Novel Coronavirus Infection)', in *Law and Computers* No.38 (2020), pp. 57-66. The article discusses the issues related to the request for the provision of such information by the public health authorities, including a comparison with the Japanese legal system regarding the use of the purchase history of cashless payment.

xli Among the exemptions from the application of academic research purposes, the exemption from the application of the obligations of business operators handling personal information in relation to medical research is based on the report of Part 7 of the Science Council of Japan, 'On the state of legislation for the protection of personal information from the viewpoint of medical research' (26 March 2001). <http://www.scj.go.jp/ja/info/kohyo/18 youshi/1865.html> states that 'If institutions, organisations and individuals that promote medical research are accredited as "business operators handling personal information" and are obliged to do so, this may have a serious impact on the development of medical research involving human subjects. Therefore, exceptional treatment of medical research is necessary, and appropriate exemptions from the provisions of the Basic Principles and the Obligations of Business Operators Handling Personal Information should be made. The exemptions were established in response to the views expressed in the opinion on the 'Outline of Basic Legislation on Personal Information Protection'. However, the exemption of medical research from the obligation of the entity handling personal information has been criticized as an 'entrapment of the Personal Information Protection Law', which goes against the trend of informed consent based on the consent of the individual that has been promoted in the field of medical research. Shin Utsugi, Shohei Yonemoto and Sumio Kanno (eds.), *Personal Information in the Human Body*, Nihon Hyoronsha (2004).