

**Summary statement of Privacy Enforcement Authority enforcement practices, policies and activities**

*This form seeks to capture in summary form the enforcement jurisdiction and policies of each Participant in the APEC Cooperation Arrangement for Cross-Border Privacy Enforcement. The information will usually be posted on the relevant Participant's website and, when available, at a central reference point maintained by the Administrator.*

**Privacy Enforcement Authority name:**

Privacy Commissioner for Personal Data (“the Commissioner”)

**Economy:**

Hong Kong, China

**Website address:**

[www.pcpd.org.hk](http://www.pcpd.org.hk)

**Key law(s) enforced by your authority:**

The law enforced by the Commissioner is Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of Hong Kong (“the Ordinance”) (available at <http://www.legislation.gov.hk/eng/home.htm>). The Ordinance is enacted to protect the privacy of individuals in relation to personal data. Data users are required to comply with six data protection principles regulating the collection, accuracy, retention, use, security, transparency of policies and practices as well as access to and correction of personal data. Apart from the six data protection principles, there are specific provisions under the Ordinance regulating the use of personal data in the carrying out of direct marketing activities by data users. Charged with the duty to monitor and supervise compliance with the Ordinance, the Commissioner is empowered to investigate suspected contravention of the requirements of the Ordinance upon receipt of a complaint or on the Commissioner’s own initiative.

**General sectors/jurisdictions regulated by your authority:**

The Commissioner has jurisdiction over data users who are able to control, in or from Hong Kong, the collection, holding, processing or use of personal data as defined in

the Ordinance. The Commissioner regulates both private and public sectors, including the Government of the Hong Kong Special Administrative Region.

### **Approach to investigation / resolution of enforcement matters:**

The Commissioner receives complaints from data subjects about alleged breaches of the Ordinance. The processes below set out generally how a complaint against a data user would be handled by the Commissioner:-

- (1) The Commissioner will contact the relevant parties for the necessary information and facts. In appropriate cases, the Commissioner will encourage the parties to resolve the matters complained through mediation.
- (2) The Commissioner has wide discretion to refuse to carry out or continue an investigation if, for instance, no *prima facie* case is established, or the party complained against has ceased and undertaken not to repeat the act complained of.
- (3) In an investigation, the Commissioner may summon witnesses and obtain information or documents as evidence. The Commissioner is also given the power of entry on premises for the purpose of an investigation.
- (4) If, upon investigation, the Commissioner is satisfied that the Ordinance is being contravened/ has been contravened and it is likely that the contravention will continue or be repeated, the Commissioner may issue an enforcement notice to the relevant data user directing it to take remedial actions.
- (5) The Commissioner may publish a report setting out the result of investigation and recommendations if it is in the public interest to do so.
- (6) If the relevant data user fails to comply with the enforcement notice, the Commissioner may refer the matter to the police for prosecution since the Commissioner does not have prosecution power.

2. Details of the Commissioner's Complaint Handling Policy can be found in [www.pcpd.org.hk/english/enquiries/complaint\\_handling.html](http://www.pcpd.org.hk/english/enquiries/complaint_handling.html).

### **Prioritization policies:**

In prioritizing enforcement matters, the Commissioner does not have a written policy but will usually take into account all relevant factors, such as whether data privacy of the general public is affected, whether the data user is an institution or an individual, whether the data user has been often complained against. Resource constraint is also a

significant factor to be considered.

**Other relevant information:**

Since the Commissioner and every prescribed officer are under a statutory duty to maintain secrecy in respect of all matters that come to their actual knowledge in the performance of their functions, the Commissioner may not be able to provide information under the Cooperation Arrangement when to do so would breach such statutory duty.

On the other hand, the Commissioner may have to provide information obtained under the Cooperation Arrangement to a third party if so ordered by the Court of Hong Kong Special Administrative Region or lawfully required by the relevant authorities.