

**Report Published under Section 48(2) of the
Personal Data (Privacy) Ordinance (Cap. 486)**

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香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Food Company Collecting Participants' Personal Data
in Lucky Draw Activity

This report in respect of an investigation carried out by me pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap 486 (“the Ordinance”) against a food company is published in the exercise of the power conferred on me by Part VII of the Ordinance. Section 48(2) of the Ordinance provides that “*the Commissioner may, after completing an investigation and if he is of the opinion that it is in the public interest to do so, publish a report –*

(a) *setting out -*

(i) *the result of the investigation;*

(ii) *any recommendations arising from the investigation that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the class of data users to which the relevant data user belongs; and*

(iii) *such other comments arising from the investigation as he thinks fit to make; and*

(b) *in such manner as he thinks fit.”*

Roderick B. WOO
Privacy Commissioner for Personal Data

(Note: This is an English translation of the Report compiled in Chinese.)

The Complaint

The Complainant purchased a product of a food company (“the food company”) and called the hotline of the company to register for a lucky draw (“the lucky draw”) in accordance with the instructions on the package box. According to the Complainant, during the telephone conversation for the lucky draw registration, she was requested by the food company to provide information such as name, address, telephone number, date of birth (including the day, month and year) and full identity card number. As the Complainant believed that in general date of birth was not required for lucky draws, she refused to provide this data. Staff of the food company told her that if she refused to provide her date of birth, she could not participate in the lucky draw. Therefore, the Complainant lodged a complaint to this Office. The Commissioner then carried out an investigation in respect of the food company pursuant to section 38(a) of the Ordinance.

Relevant Provisions of the Ordinance

2. Data Protection Principle (“DPP”)1(1) in Schedule 1 to the Ordinance, paragraph 2.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (“the Code”) issued by the Commissioner under section 12 of the Ordinance, and section 65(2) of the Ordinance are relevant to this case. According to section 13(2) of the Ordinance, failure to comply with any provision of the Code shall be taken as evidence of contravention of the relevant requirement of the Ordinance in proceedings before a magistrate, a court or the Administrative Appeals Board.

3. DPP1(1) provides that:

“ Personal data shall not be collected unless—

- (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;*
- (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and*
- (c) the data are adequate but not excessive in relation to that purpose.”*

4. With regard to the collection of identity card number, Paragraph 2.3 of the Code provides that:

“ A data user should not collect the identity card number of an individual except in the following situations:

...

2.3.3 to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the identity card, where such correct identification or attribution is or will be necessary:

...

2.3.3.3 to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances;

...”

5. In addition, section 65(2) of the Ordinance provides that:

“Any act done or practice engaged in by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Ordinance as done or engaged in by that other person as well as by him.”

The Investigation

6. According to the information obtained by this Office during the investigation, the following are the relevant facts of this case.

Background Information of the Lucky Draw

7. The food company had carried out the lucky draw. Customers who bought specified products during the promotion period could call the hotline of the company to register for the lucky draw. Prizes included credit card free spending credit of tens of thousand dollars, travel gift voucher of several thousand dollars, Wii game console and products of the food company worth

several dozen dollars.

8. The food company stated that matters with regard to the lucky draw registration, including answering the registration hotline of the food company, were outsourced to and managed by a contractor (“the contractor”). According to the food company, a set of guidelines (“the guidelines”) was provided to the contractor for handling telephone enquiries about the lucky draw. In support, the food company provided a copy of the guidelines to this Office.

9. The food company stated that over 3,000 participants had registered for the lucky draw. During the registration, participants would be asked if they were club members of the food company (“the members”). If not, they would be invited to join its membership. Over 2,000 of those participants had joined the membership. According to the computer file containing the participants’ data (“the computer file”) provided by the food company, the food company had collected the dates of birth of over 800 people out of the remaining 900 odd participants who were non-members. The computer file also indicated that the food company had collected full or partial identity card numbers of all the participants.

The Complainant’s Case

10. The food company confirmed that the Complainant did call to register for the lucky draw. During the telephone conversation between the staffer of the contractor and the Complainant (“the telephone conversation”), the contractor’s staffer collected the number of the lucky draw ticket held by the Complainant, together with the Complainant’s name, telephone number, address and full identity card number, and requested the Complainant to provide her date of birth, but the Complainant refused. The staffer told the Complainant that unless she provided her date of birth, she could not participate in the lucky draw. In this connection, the food company provided this Office with the recording of the telephone conversation. As the Complainant refused to provide her date of birth, she did not register for the lucky draw at that time, but lodged a complaint to the contractor. The contractor then referred the complaint to the food company, which informed the Complainant on the same day that it would follow up her complaint. According to the food company, when it called the Complainant again, it apologized to the Complainant for the incident and informed her that the

personal data provided in the telephone conversation were sufficient for the lucky draw registration. Therefore, the Complainant agreed to complete the registration without providing her date of birth. Subsequently, at the sincere invitation of the food company, the Complainant joined its membership. Later on, the food company gave a free gift to the Complainant.

Remedial Measures taken by the Food Company

11. The food company stated that it had taken the following remedial measures in response to the complaint:

- (1) it had destroyed the personal data of all the non-member participants;
- (2) in future lucky draw activities, unique lucky draw numbers will be assigned to participants for identification of winners so as to avoid collecting their identity card numbers (or other personal identifiers); and
- (3) only data about age group and birth month (if agreed) will be collected from members. The purpose of collecting their birth months was to send them birthday gifts.

Result of the Investigation

12. Under DPP1(1), personal data of the participants of the lucky draw shall be collected for a lawful purpose related to a function or activity of the food company; the collection of the data is necessary for or directly related to that purpose; and the data are not excessive.

13. According to the food company, in order to ensure that it can contact the winners and verify the identities of the persons who come to collect the prizes, it had to collect the personal data of the lucky draw participants, including name, correspondence address and telephone number. The computer file revealed that the food company had also collected full or partial identity card numbers of all the participants, as well as the dates of birth of some participants.

14. I agree that to ensure contact with and verification of the identity of the winners, it was necessary for the food company to collect the names, correspondence addresses and telephone numbers of the participants. Such collection of data was also directly related to the purpose of the lucky draw and did not contravene the requirement of DPP1(1).

15. For this complaint, I have to decide whether the collection of identity card numbers and dates of birth of the participants (including the Complainant) for the purpose of the lucky draw (not for the membership program) by the food company was necessary for or directly related to the collection purpose and not excessive and thus in compliance with the requirement of DPP1(1). In this connection, I have to consider whether the food company had any actual need to collect those data in order to achieve the relevant purpose. Moreover, as the personal data collected included identity card numbers, I also need to consider if such collection complied with the requirement in paragraph 2.3 of the Code.

Collection of Participants' Identity Card Numbers

16. In its initial written reply, the food company stated that it had to collect the names, full identity card numbers, correspondence addresses and telephone numbers of the participants in the lucky draw to ensure contact with and verification of the identities of the persons who come to collect the prizes. The purposes of collection of the personal data by the food company were to use the personal data for internal record, research, statistics, lucky draw and verification of winners' identities.

17. In its subsequent letter, the food company claimed that in general situation, participants in the lucky draw were only required to provide their names, telephone numbers, birth months and dates, and the first four prefix and digits of their identity card numbers. The food company reiterated that the participants were not compulsorily required to provide full identity card numbers and birth years, and that it would not provide the data to other companies for promotion without prior consent of its customers. Statements were printed on all the advertisements and packaging related to the lucky draw informing the participants that the personal data provided by them would mainly be used for providing information relating to its products, services, discount offers and promotions to the participants, and for contacting them about the news of lucky

draw, etc.

18. The food company further clarified in its subsequent letter that for the registration of participation in the lucky draw, participants were required to provide their full identity card numbers.

19. Though the food company had made inconsistent responses to the question of collecting participants' identity card numbers (whether the whole number or only first four prefix and digits were required for the purpose of the lucky draw), it did not deny that it required collection of participants' full or partial identity card numbers for the registration of participation in the lucky draw.

20. Regarding the collection of identity card numbers (whether in full or in part) of the participants, given that identity card number is a very important and sensitive piece of personal data, data users should carefully consider whether the data are necessary.

21. In this case, the food company initially explained that as it had not provided the participants with unique lucky draw numbers, collection of full identity card numbers of the participants (including the Complainant) was the only way to verify the identities of the participants who claimed to be the winners. However, according to the guidelines and the clarification in the subsequent reply letter of the food company, it was noted that there were in fact two categories of lucky draw tickets: one was that the tickets were placed inside the products all bearing the same lucky draw number, while the other was that the tickets were attached to the package boxes of other products with unique lucky draw numbers.

22. Generally speaking, if participants are issued with unique lucky draw numbers, the organizer can identify the winners by the lucky draw numbers, together with the registered names, correspondence addresses and telephone numbers of the winners, and also by checking the names on the identity cards produced by the winners. In the circumstances, it is not necessary for the organizer to collect full or partial identity card numbers of the participants. I consider that the collection by the food company of full or partial identity card numbers of the participants who held unique lucky draw numbers was excessive,

and hence it has contravened the requirements under DPP1(1). In the Complainant's case, as her lucky draw number was a unique number, the collection of her identity card number for the purpose of the lucky draw by the food company was in contravention of the requirements under DPP1(1).

23. However, as for the participants holding the same lucky draw number, in order to identify the winners and in view of the value of certain prizes (e.g. credit card free spending credit of tens of thousand dollars), it was necessary for the food company to collect the identity card numbers of those participants so as to avoid damage or loss on the part of the food company, which was more than trivial in the circumstances, caused by mistakenly awarding the prizes to non-winners. Such collection was in compliance with paragraph 2.3.3.3 of the Code and does not constitute a contravention of the requirement under DPP1(1).

Collection of Participants' Dates of Birth

24. In its initial reply to the Complainant's case, the food company pointed out that as its members would be given birthday gifts, it collected the dates of birth from its customers for this purpose.

25. However, the food company stated in its subsequent letter that the lucky draw was restricted to participants aged over 18. If participants joined its membership at the same time, they could enjoy additional privileges. Therefore, in order to make sure of participants' actual age and to arrange birthday gifts for members, the food company needed to collect their dates of birth. It also claimed that participants just needed to provide birth month and date to participate in the lucky draw, and did not need to provide birth year.

26. Upon further enquired by this Office, the food company clarified that participants in the lucky draw did not need to be over 18. In case a participant under 18 won the prize of credit card free spending credit, the prize could be transferred to his next of kin who was over 18. This condition was clearly written on the package of the relevant products. Therefore, it was not necessary to collect the participants' dates of birth for the purpose of registration for the lucky draw. The food company referred to the guidelines and that the Complainant had registered for the lucky draw without provision of her date of birth to support its assertion. The food company stated that the staffer of the

contractor had violated the guidelines by requesting for the Complainant's date of birth because the guidelines "had clearly specified that only the participants' names, addresses, telephone numbers and identity card numbers were required to be provided for registration for the lucky draw". Only when participants joined its membership and chose to get a free gift in their birth months that the food company would collect the dates of birth from them. The food company believed that this incident was arising from the unfamiliarity of individual staff member of the contractor with the guidelines at the material time (when the registration for the lucky draw had just started).

27. In respect of the food company's assertion that the guidelines "had specified that only the name, address, telephone number and identity card number were required to register for the lucky draw", I have examined the guidelines and extracted the relevant parts as follows:

"Details of the lucky draw

...

- *...customers need to provide certain specified personal data (name, telephone number, address, date of birth and marital status) to register for the lucky draw."*

"Q10) What kind of personal data should I provide to register for the lucky draw?

A10) You need to provide your name, Hong Kong Identity Card number, telephone number and address for registration purpose..."

28. I found that in the guidelines given by the food company to the hotline staff of the contractor, there were different instructions in respect of whether to collect the participants' dates of birth in the "Details of the lucky draw" and the answer to "Q10" mentioned above. Therefore, I do not agree with the contention of the food company that the guidelines had clearly specified that the collection of participants' dates of birth was not required, as well as its explanation that the incident was in connection with the unfamiliarity of individual staff member of the contractor with the guidelines.

29. Moreover, to my surprise, in the latter part of the same reply letter, the

food company stated that when participants called the hotline, they would be requested to provide some data (including date of birth and identity card number), but date of birth was not “compulsory” data with regard to the lucky draw. The food company gave different responses not only in different reply letters, but also in the same letter, this made me confused. Under the circumstances where even the food company itself could not give a clear account of the incident, how could the hotline staff of the contractor know for certain whether they should collect the participant’s date of birth?

30. At our request, the food company provided us with a copy of the standard dialogue with the participants given to the contractor (“the standard dialogue”). The food company pointed out that according to paragraph 3.4 of the standard dialogue, before the staff of the contractor collected the dates of birth from non-member participants, they would inform such participants that 2-year membership would be granted free of charge, and only when participants accepted the membership invitation that their dates of birth would be collected. The food company specially highlighted to me that in the standard dialogue, the staff of the contractor would first tell the participant, “*We will grant you...2-year free membership to let you enjoy exclusive shopping privileges*” (“the statement”).

31. In my opinion, even though the statement was listed in paragraph 3.4, the way of inviting participants to be members was vague. Moreover, according to the standard dialogue, the staff of the contractor did not need to wait for the participants’ express consent to join the membership before collecting their dates of birth.

32. Furthermore, I notice a question in part 3.2 “Non-members questionnaire and registration” of the standard dialogue as follows:

“*CSR: Apart from this purchase, when was your last purchase (of the products of the food company)?*”

1. *1 month ago*
2. *3 months ago*
3. *6 months ago.....Answers 1-3, please go to PART3.3 Registration of members’ data for the lucky draw*
4. *12 months ago*

5. *Over 12 months*
6. *Never.....Answers 4-6, please go to PART3.4 Registration of non-members' data for the lucky draw*

According to part 3.2, if a non-member participant had purchased the products of the food company within 6 months, the staff would continue the dialogue according to part 3.3, which was applicable to members. Though the statement was not listed in part 3.3, the participants were still requested to provide their dates of birth. In the premises, the standard dialogue provided by the food company was unclear.

33. In view of the different responses made by the food company in their several written replies with regard to whether it was necessary to collect the dates of birth of the participants in the lucky draw, the contents of the guidelines, the vagueness of the standard dialogue, and the fact that the food company had collected the date of birth of over 800 non-member participants, I do not agree with the food company's contention that the case was caused by the violation of its guidelines by the staff of the contractor. In this case, the contractor was the agent of the food company, and the food company was the principal. In this connection, under section 65(2) of the Ordinance, the participants' dates of birth collected by the contractor in the lucky draw shall be treated as collected by the food company.

34. I consider that for contact with and identification of the winners, the food company needed to collect the names, correspondence addresses, telephone numbers and where no unique lucky draw number was assigned as I mentioned in paragraph 23 above, identity card numbers of the participants, but it was unnecessary to collect the participants' dates of birth. In the circumstances, I opine that the collection of the dates of birth of non-members by the food company for the purpose of the lucky draw was in contravention of DPP1(1).

Conclusion

35. In view of the above, I am of the view that the collection by the food company of the full or partial identity card numbers of participants holding

unique lucky draw numbers (including the Complainant) and the dates of birth of non-members was in contravention of DPP1(1).

Enforcement Notice

36. Pursuant to section 50 of the Ordinance, I may serve an enforcement notice on the food company if I am of the opinion that the food company has contravened the requirement of DPP1(1) in circumstances that make it likely that the contravention will continue or be repeated. However, in the course of investigation, I learnt that the food company had destroyed the personal data of all non-members and undertook to assign unique lucky draw numbers to participants for identification of winners in future lucky draw activities so as to avoid collecting their identity card numbers (or other personal identifiers). Moreover, the food company will only collect the data of age group and birth month from its members. As there is no information showing that the food company's contravention will likely continue or be repeated, I have not served an enforcement notice on the food company in respect of the investigation.

Recommendations and Other Comments

37. Many business organizations nowadays promote their products by holding lucky draws and recruiting members to their loyalty clubs. I hope this investigation report will keep them to better understand that when they collect the personal data of the participants in lucky draws, they have to consider carefully the purpose of collection because the data collected should not be excessive in relation to the collection purpose. For sensitive personal data, such as identity card number, it is essential to consider seriously whether there is any actual need for their collection, and whether the collection is in compliance with the Code.

38. Organizations are reminded that when they collect the personal data of their customers, they have to take all practicable steps to ensure that they are clearly informed of the purpose for which the data are to be used. Regarding paragraph 30 above, if the food company intended to collect members' dates of birth in order to send them birthday gifts, it should provide the customers with a "Personal Information Collection Statement" and inform them that it will only collect their dates of birth after they have agreed to become members.

Compensation for Contravention of the Ordinance

39. Lastly, all data users should note that by virtue of section 66 of the Ordinance, a data subject who suffers damage, including injury to feelings by reason of a contravention of a requirement under the Ordinance by a data user is entitled to compensation from that data user.