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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

Collection of Personal Data by Credit Provider
for Business Promotion

Case number : **200606168**

This report in respect of an investigation carried out by me pursuant to section 38 of the Personal Data (Privacy) Ordinance, Cap 486 (“the Ordinance”) against a credit provider 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 Case

A citizen received a letter without addressee issued by a credit company in Hong Kong in early January 2006. A form was enclosed in the letter, stating that the receiver could get supermarket gift coupons amounting to HK\$80 if “simple information” was provided on or before a specified date (“the Form”). According to the instructions on the Form, an applicant was required to fill in information on name, sex, HKID card number, correspondence address, email address (optional), telephone number, name of employing company, position category, and age and income groups, and then fax or post the Form to the credit company. Upon verification, the applicant would be offered a supermarket gift coupon of HK\$20. A maximum of four applicants were allowed in each household, but each one could only submit the Form once. The citizen enquired if such activity had contravened any requirement of the Ordinance. Although the citizen had not formally lodged a complaint, the Commissioner initiated an investigation on the credit company under section 38(b) of the Ordinance.

Legal Requirements

2. Data Protection Principle (“DPP”) 1(1) in Schedule 1 to the Ordinance and 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 are relevant to this case. According to section 13(2) of the Ordinance, a failure to observe any provision of the Code shall be taken as evidence of contravention of a requirement of the Ordinance in the proceedings under the Ordinance before a magistrate, a court or the Administrative Appeals Board.

3. In relation to the collection of personal data, 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 ID 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:

2.3.3.1 for the advancement of the interest of the holder,

...

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;

2.3.4 without prejudice to the generality of paragraph 2.3.3, for the following purposes:

2.3.4.1 to be inserted in a document executed or to be executed by the holder of the identity card, which document is intended to establish or to evidence any legal or equitable right or interest or any legal liability on the part of any person, other than any right, interest or liability of a transient nature or which is trivial in the circumstances;

...”

Purposes of Collection of Data by the Credit Company

5. According to the information on the Form, the credit company invited working persons aged 18 or above holding a Hong Kong permanent identity

card to provide their personal data. The Form listed the following purposes of collection of personal data:

“for updating and/or verification of the personal data held by any and all of the affiliates, subsidiaries or agents [of the Group to which the credit company belongs] and/or for promotion purpose (including but not limited to (i) promoting products and/or services of the affiliates, subsidiaries or agents and/or designated business partners [of the Group to which the credit company belongs]; and/or (ii) exchange of non financial data with the affiliates, subsidiaries or agents and/or designated business partners [of the Group to which the credit company belongs]), and for any other purposes notified to the applicants from time to time [by the credit company].”

6. Moreover, the “Terms and Conditions” on the Form stated that:

- “1. The offer mentioned in this letter is only applicable to employees of 18 or above holding a Hong Kong permanent identity card (“eligible persons”).
2. Eligible persons who complete the form on the overleaf (“the form”) and return it to [the credit company] by post or by fax on or before [the specified date] will be offered a [supermarket] cash coupon of HK\$20 (“the gift”). All the data provided by the eligible persons must be complete, accurate and correct. Incomplete forms will be deemed invalid. Photocopies of the form will not be accepted.
3. Each eligible person can only submit the form once. Multiple submissions will not be accepted.
4. A household can submit a maximum of four forms. Each eligible person will only be offered one gift.
5. The gift will be sent to the eligible persons by post during the

period of [specified dates].

6. All the gifts will be provided to the eligible persons by the cash coupon supplier and are bound by the terms and conditions set by the cash coupon supplier from time to time. The use of all the gifts shall be subject to the terms and conditions.
7. [The credit company] will neither be held responsible for the provision or supply of any gift, nor act as the cash coupon supplier or the agent or representative of the cash coupon supplier. [The credit company] will not make any representation or warranty for any gift, or accept any liability incurred by the gift (whether direct or indirect).
8. [The credit company] may, under its sole and absolute discretion, revise the current terms and conditions at any time without giving any advance notice.
9. In case of any dispute over the current terms and conditions, decision [of the credit company] will be final and binding.”

Explanations of the Credit Company

7. The credit company expressed that its business included general credit services, e.g. credit card and personal loan. It considered that the data collected via the Form were directly related to its business activities; they were necessary and not excessive.

8. According to the name, HKID card number, correspondence address, email address and telephone number provided by an applicant in the Form, the credit company could identify if the applicant was its existing customer. If so, the credit company would use the personal data to update and/or verify the data held by it for keeping contact with the applicant, as well as promoting credit services and the latest privileges and product information to him. If the

applicant was not its customer, the credit company would use his personal data for liaison and promotion purposes. The credit company explained that the purpose of collecting information on age, position and income groups was to promote appropriate credit services, privileges and products to applicants of different background. With regard to the collection of the name of employing company, no specific explanation was given.

9. In respect of the collection of ID card number, the credit company believed that such act had satisfied with the situation mentioned in paragraph 2.3.3.1 of the Code. It explained that the collection of ID card number would enable correct identification of the applicants and their personal data or records so that it could update and/or verify the personal data held by it, as well as promote and provide appropriate services, privileges and products for the advancement of the interest of the applicants.

10. Moreover, the credit company explained that the collection of ID card number was to prevent an applicant from redeeming more than one coupon by multiple submissions and making it suffer from economic losses. According to the credit company, about 10% of the applicants were found submitting more than one form in this promotion activity when ID card number was used in the identification of the applicants. Although the value of the gift offered to each eligible applicant was only HK\$20, the total loss incurred by such dishonest act might be unpredictable if there was no correct identification of the applicants. Therefore, the credit company believed that the collection of ID card number for the prevention of loss was in compliance with the requirement in paragraph 2.3.3.3 of the Code.

11. Furthermore, the credit company said that according to the terms and conditions, on the one hand, the eligible applicants had the duty to provide complete, accurate and correct data while enjoying a coupon of HK\$20 and the priority of receiving its latest privileges and product news; on the other hand, the credit company had the right to revise and decide the terms and conditions of the promotion activity while bearing the duty to send out the coupons before the specified date. Once an applicant had completed and signed on the Form, he confirmed and agreed to be bound by the terms and conditions. The credit

company therefore considered that the Form was intended to establish or to evidence the right and liability between the company and the applicant, satisfying with the situation mentioned in paragraph 2.3.4.1 of the Code.

Result of the Investigation

12. The focus of the investigation was to ascertain whether the personal data collected by the credit company in this promotion activity for the related purposes were excessive and DPP1(1) was contravened. In this connection, I have to consider if the credit company had any actual need to collect the personal data for the related purposes, or if there were any other alternatives that could avoid collection of those personal data. Moreover, as the personal data collected included ID card number, I also needed to consider if such act complied with the requirement in paragraph 2.3 of the Code.

No Contravention of DPP1(1) in the Collection of the Name, Correspondence Address, Email Address, Telephone Number, Sex and Information on Age, Position and Income Groups of the Applicants

13. The credit company stated in the Form that the personal data were collected for the purposes of updating/verifying the personal data held by it, and/or carrying out promotion activities.

14. In my opinion, to achieve the purpose of promotion, it is necessary for the credit company to contact the relevant persons. Therefore, the collection of the name and contact information of the applicants is necessary. Regarding the information on sex, age, position and income, etc., I agree that such data are helpful to the promoter in understanding the background of the target customers so that appropriate services or products can be chosen for promotion to increase the chance of success. Moreover, I notice that the credit company has adopted a less privacy intrusive alternative when collecting such background information, i.e. no collection of the actual age and income amount, but only the age and income groups. In the circumstances of the case, I am of the view that the collection of the name, correspondence address, telephone number, sex and information on age, position and income groups of the

applicants for promotion purpose is not excessive, and thus there is no contravention of DPP1(1) of the Ordinance.

Contravention of DPP1(1) in the Collection of the ID Card Number and Name of Employing Company of the Applicants

Collection of ID Card Number

15. Regarding the collection of ID card number of the applicants, given that ID card number is a kind of important and sensitive personal data, data users should carefully consider whether the data are necessary and whether there is any other alternative to substitute for the collection of ID card number.

16. The credit company claimed that the ID card number of the applicants could help it verify whether the applicants were its existing customers and locate their personal data for updating, and such act satisfied with the situation mentioned in paragraph 2.3.3.1 of the Code. To achieve this purpose, I opine that the credit company could request the applicants to state in the Form whether they were its existing customers and to give their account/loan number instead of ID card number. Although some applicants might not be able to provide their account/loan number in the Form right away, the credit company could still contact them for the number according to the contact information provided in the Form. I do not think that the data user should give up other feasible and less privacy intrusive alternatives for the sake of administrative convenience.

17. According to the credit company, verification of the ID card number of the applicants could effectively prevent them from redeeming more than one coupon by multiple submissions, and such act was permitted by paragraph 2.3.3.3 of the Code. I opine that if other data provided in the Form by an applicant were true, even though the credit company did not have the ID card number, it could still check if the applicant had made multiple submissions by verifying other personal data in the Form. With regard to the economic loss, the credit company was not able to provide any exact figures for its actual economic loss. However, paragraph 2.3.3.3 of the Code refers to the damage

or loss which is more than trivial. As the possible loss suffered by the credit company in each application was only HK\$20, I do not think that it satisfied with the situation mentioned in paragraph 2.3.3.3 of the Code.

18. Lastly, the credit company claimed that as the Form was a document which established and evidenced the interest and liability between the company and the applicants in the promotion activity, it could insert the ID card number of the applicants on the Form, and such act was in compliance with the requirement in paragraph 2.3.4.1 of the Code. In my opinion, the credit company should take notice that the right and interest referred to in paragraph 2.3.4.1 do not include any right, interest or liability of a transient nature or which is trivial in the circumstances. In the circumstances of the case, as the actual right, interest or liability mainly involved the supermarket coupon of HK\$20, which was small in value, I do not consider that the credit company could collect the ID card number of the applicants under paragraph 2.3.4.1 of the Code.

19. To summarize, I do not accept the credit company's explanation that the collection of ID card number of the applicants was necessary. On the contrary, I think it can adopt other feasible and less privacy intrusive alternatives to substitute for the collection of ID card number. Therefore, I am of the view that the credit company had contravened the requirement in paragraph 2.3 of the Code. As the credit company was not able to provide any evidence to prove its compliance with the Ordinance by other means, I consider that the collection of ID card number of the applicants for the said purposes by the credit company was excessive, and DPP1(1) was contravened.

Collection of the Name of Employing Company

20. The credit company did not give any specific explanation for the collection of the name of employing company. If its purpose of collection was to update/verify the data of its existing customers, the collection of the name of employing company of its customers might be necessary and not excessive. Even if this is the case, the credit company could state in the Form that only existing customers were required to provide information on

employing company, or it could use the method mentioned in paragraph 16 to identify if an applicant was its existing customer before requesting him to provide the name of employing company. However, the credit company had not done so in this case.

21. If the name of employing company was collected for the purpose of business promotion, the credit company should adopt less privacy intrusive methods, i.e. provision of choices of occupation categories. There is no need to know the name of employing company of the applicants.

22. I opine that the collection of the name of employing company in the circumstances of the case was in contravention with DPP1(1).

Remedies Taken by the Credit Company

23. In the course of our investigation, the credit company had deleted the information on ID card number and name of the employing company collected in the promotion activity, and had ceased the collection of ID card number, other personal identifiers and name of employing company in similar promotion activities.

Comments Arising from the Investigation

24. Hong Kong is an international commercial city led by free market. Apart from advertisement through mass media, many enterprises, for successful promotion of their products to potential customers, tend to contact customers directly. In view of the fact that commercial organizations will collect and use citizens' personal data for the purpose of promotion, I hope this investigation report could call the attention of commercial organizations to the compliance of the Ordinance when they collect personal data for promotion activities, and should not collect personal data for such purpose at will. Regarding sensitive personal data, e.g. ID card number, commercial organizations shall seriously consider whether the collection of the data is necessary and in compliance with the Code.

25. I also hope that this investigation report would alert the public to the careful handling of their personal data. Before disclosing their personal data to others, particularly commercial organizations, they should judge if the data are collected for a lawful purpose directly related to a function or activity of the collecting party, and if the data collected are necessary and not excessive. In case of any query, they should clarify with the collecting party in order to safeguard their personal data. They should not rashly disclose their personal data for the benefits or temptations offered by the collecting party. It should be noted that ignoring the protection of personal data privacy might bring serious consequences.