

**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

**Debt Collection Agency authorized by a Finance Company**  
**Disclosed Personal Data of Debtor's Family Members**  
**During Debt Recovery**

This report in respect of an investigation carried out by me on my own initiative pursuant to section 38(b) of the Personal Data (Privacy) Ordinance, Cap 486 (“the Ordinance”) against a finance 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.)*

## **Case Background**

A debtor (“Mr. D”) borrowed money from a finance company (“the finance company”). As Mr. D did not repay the loan on time, the finance company authorized a debt collection agency (“the debt collection agency”) to recover the debt. The finance company provided the debt collection agency with a copy of Mr. D’s loan application form, which contained Mr. D’s personal data and information of Mr. D’s father, mother, elder brother and grandfather (“the family members”) such as name, age, relationship with Mr. D, address and telephone number.

2. One day, Mr. D’s father found that a final notice of default in payment, issued by the debt collection agency demanding Mr. D to contact Mr. C as soon as possible and specified a telephone number (“the telephone number”), was posted at the corridor outside his premises. Mr. D’s identity card copy and the names and address of Mr. D’s parents were shown on the notice. Later on, Mr. D’s father found again that about 12 copies of final notice of default in payment, also issued by the debt collection agency demanding Mr. D to contact Mr. C as soon as possible and specified the telephone number, were posted outside his premises. Apart from Mr. D’s name and his identity card copy, such notice also showed the names and address of Mr. D’s parents, as well as the names of Mr. D’s elder brother and grandfather.

3. This Office carried out an investigation against the debt collection agency in relation to the incident. The debt collection agency confirmed that Mr. C, the contact person as specified in the above two final notices of default in payment issued by it, was its ex-employee and the telephone number belonged to the debt collection agency. The debt collection agency also admitted that it had appointed Mr. C to recover the debt from Mr. D. As the debt collection agency could not successfully recover the debt within three months, the aforesaid copy of the loan application form was returned to the finance company.

4. The Commissioner decided to carry out an investigation against the finance company in relation to the disclosure of the personal data of the family members in the course of debt recovery by the debt collection agency in accordance with section 38(b) of the Ordinance.

## **Relevant Provisions of the Ordinance**

5. The following provisions of the Ordinance are relevant to this investigation:-

- (a) **Section 4** of the Ordinance provides that: “*A data user shall not do an act, or engage in a practice, that contravenes a data protection principle unless the act or practice, as the case may be, is required or permitted under this Ordinance.*”
- (b) **Data Protection Principle (“DPP”) 3** provides that: “*Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than—*
  - (a) *the purpose for which the data were to be used at the time of the collection of the data; or*
  - (b) *a purpose directly related to the purpose referred to in paragraph (a).*”

6. According to **section 2** of the Ordinance, “*use*”, in relation to personal data, includes “*disclose*” or “*transfer*” the data; and “*prescribed consent*” means express consent given voluntarily.

7. According to **section 2** of the Ordinance, “*data user*” means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.

8. 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.*”

## **Debt Recovery by the Debt Collection Agency authorized by the Finance Company**

9. During the investigation, the Commissioner obtained written replies and relevant information from the finance company. Moreover, the

person-in-charge and the manager of the finance company were summoned by the Commissioner and statements were taken from them. The Commissioner obtained the following information related to the case.

***The Course and Grounds of Collecting and Disclosing the Personal Data of the Family Members***

10. The finance company confirmed that Mr. D had borrowed money from it. It also indicated that the information (including the information of the referee and the family members) provided by Mr. D when making the loan application was provided by him voluntarily.

11. The finance company provided this Office with Mr. D's "Application for Personal Loan" and "Loan Agreement" signed by him when making the loan application. Apart from containing Mr. D's personal data, the above documents also showed that Mr. D had provided information of the family members, such as the name, age, relationship with him, address and telephone number in the column of "Family Member" in the "Application for Personal Loan".

12. The finance company mentioned that the purpose of collecting Mr. D's personal data was for handling matters relating to his loan application, including recovery of debt when he had not settled any outstanding payment. Regarding the purpose of collecting the personal data of the family members, the finance company informed that the collection was for "record" only.

13. The finance company had authorized the debt collection agency to recover the debt from Mr. D on its behalf. The finance company provided the Commissioner with a copy of the "Authorization Agreement" signed between it and the debt collection agency. Such agreement was made for authorizing the debt collection agency to demand debtors to repay their debts. The finance company indicated that it would not sign an agreement with the debt collection agency for each authorized case. Though the finance company could not supply the information on the details and arrangements which it discussed with the debt collection agency at that time regarding debt recovery from Mr. D, the finance company confirmed that it had authorized the debt collection agency to collect the outstanding debt from Mr. D, and had provided the debt collection agency with Mr. D's "Application for Personal Loan" for such purpose.

14. The finance company claimed that when Mr. D filled in the “Application for Personal Loan”, it had informed him that the information of his referee or family members collected by it might be transferred to debt collection agents for reference purpose and he had agreed to this. Moreover, the finance company claimed that due to the above reason, usually it did not inform debtors and their family members or obtain their prescribed consent before transferring their personal data to debt collection agents (including the debt collection agency).

15. However, according to the “Application for Personal Loan”, Mr. D clearly indicated that his family members had no knowledge of the loan. Therefore, the Commissioner asked the finance company how it believed that Mr. D’s family members had agreed to the disclosure or transfer of their personal data to the debt collection agency. The finance company replied that it was because all the information was provided by Mr. D voluntarily. Furthermore, according to item 12 of the “Loan Agreement”, *“the creditor has the right to recover the loan, interest and add-on interest or other expenses through legal means by authorized lawyers or through debt collection agents...the borrower understands that his personal data may be provided to the lawyer or debt collection agent concerned for such purpose...the borrower agrees to this arrangement.”* Therefore, the finance company considered that Mr. D should have clearly known the relevant terms.

### ***Relationship between the Finance Company and the Debt Collection Agency***

16. The finance company said that when a debtor failed to repay the loan within the repayment period specified in the loan agreement, it would first phone the debtor for repayment. This practice was also engaged in Mr. D’s case.

17. When the finance company authorized the debt collection agency to recover debts from the debtors, it did not instruct the debt collection agency how to collect the debts. When the finance company authorized debt collection agents to recover debts on its behalf, usually it did not provide them with any guidelines. The finance company neither participated in the operation of the debt collection agents (including the debt collection agency), nor gave them any opinions.

18. The finance company said that it did not know how the debt collection agency handled the personal data collected from the finance company. In this connection, this Office asked the finance company why it, being the principal, did not know and care about the way the debt collection agency handled the personal data collected from it, and whether it had considered that it might get involved if the debt collection agency handled the personal data improperly. The reply of the finance company was: “According to the terms of the Authorization Agreement, the debt collection agency should handle cases by lawful means; otherwise it shall be wholly liable.”

### **Result of the Investigation**

#### ***Whether the Finance Company was the Data User in this Case***

19. Before deciding whether the finance company should be held liable for the act of the debt collection agency under section 65(2) of the Ordinance, first I have to ascertain if the finance company was the data user in this case. According to the information obtained during the investigation, the finance company collected the personal data of Mr. D’s family members when it processed Mr. D’s loan application. The finance company provided the debt collection agency with the “Application for Personal Loan” containing the personal data of the family members because it authorized the debt collection agency to recover the debt. In the course of performing the authorized duty, the debt collection agency had issued and posted those two notices which contain the personal data of the family members. Moreover, by virtue of clause 4.1 of the “Authorization Agreement”, the finance company restricted the debt collection agency to maintain secrecy of the information provided by the finance company. Therefore, in this case, the finance company had a certain extent of control over the collection, possession, handling or use of the personal data of the family members. I consider that the finance company was the data user in this case. As a data user, the finance company has to comply with section 4 of the Ordinance and shall not do any act or engage in any practice contrary to DPP3.

#### ***Act of the Debt Collection Agency contravened DPP3***

20. Information revealed that the finance company originally collected the personal data of the family members for “record” purpose. However, the

finance company subsequently passed those data to the debt collection agency on the ground of debt recovery. Therefore, the purpose of the debt collection agency in collecting or obtaining the personal data of the family members from the finance company was to handle the recovering of the debt from Mr. D on behalf of the finance company.

21. Evidence showed that the two final notices of default in payment in this case were issued and posted by the debt collection agency via its ex-employee, Mr. C. Apparently, the purpose was to perform the authorized duty of recovering the debt from Mr. D. With regard to that purpose, I consider that the debt collection agency could contact Mr. D direct or his family members when Mr. D did not repay the loan, and should not publicly display, post or disclose the personal data of the family members. Furthermore, it was improper for the debt collection agency to publicly post the final notices containing the personal data of the family members whereby people entering the building could have access to their personal data.

22. Based on the above reasons, I am of the view that the debt collection agency's use of the personal data, by publicly posting the personal data of the family members as a result of which the same were disclosed to third parties, was not consistent with or directly related to the original collection purpose. The act of publicly displaying the personal data of the family members without their consent contravened the requirements of DPP3.

### ***Was the Finance Company Liable for the Act of the Debt Collection Agency?***

23. According to section 65(2) of the Ordinance, a principal is liable for any act done by his agent. In considering whether the finance company was liable for the debt collection agency's contravention of the requirements of the Ordinance, I need to consider whether the debt collection agency in this case was the agent of the finance company, and whether the above act of the debt collection agency was authorized by the finance company (whether express or implied).

24. As the finance company did sign the "Authorization Agreement" with the debt collection agency authorizing the debt collection agency to recover debts from debtors, and the debt collection agency was authorized by the finance



company under the “Authorization Agreement” to recover debts from debtors, it was apparent that there was a principal and agent relationship between the finance company and the debt collection agency. The debt collection agency in this case was the agent of the finance company, while the finance company was its principal.

25. The finance company denied having expressly authorized the debt collection agency to do the act in question, and there was no information showing that the finance company had expressly made such an authorization. The remaining question was whether the finance company had impliedly authorized the debt collection agency to do so and be liable for the acts committed by the latter.

26. Regarding whether a creditor should be held liable for the acts of the debt collection agent authorized by him, the Court of Appeal considered a similar situation in the case of *Wong Wai Hing & others v Hui Wei Lee* (CACV136/2000). The creditor in that case authorized a debt collection agent to recover a debt and instructed the agent that only lawful means could be used. However, the debt collection agent had assaulted and intimidated the debtor. The Court of Appeal pointed out in the case that:

(Paragraph 86)

*“...it would have been perfectly open to the judge to conclude that the references in the agreement to*

*(a) [the debt collection agent’s] obligation to collect the debt by lawful means, and*

*(b) [the creditor] not being responsible if unlawful means were used, were there simply to enable [the creditor] to assert, if need be, that she had only wanted the debt to be recovered by lawful means. In other words, the judge could legitimately have concluded that [the creditor] had realised that these references in the agreement were not to be taken at face value, and that the reality was [the debt collection agent] was to have a free hand to use such means as would prove the likeliest to result in the recovery of the debt in the long run.”*

(Paragraph 88)

“...[the creditor] *should have been held liable for the torts of Kwong and Chan on the basis that they were acting within the scope of [the debt collection agent’s] authority when they committed the torts. [The creditor’s] instructions to Kwong that only lawful means were to be used, and [the debt collection agent’s] undertaking that those instructions would be complied with, did not amount to a limitation on [the debt collection agent’s] authority to act on [the creditor’s] behalf in the recovery of the debt; they amounted only to a promise by [the debt collection agent] as to how [the creditor’s] instructions would be carried out.*”

27. The Court of Appeal decided that the creditor (the principal) should be held liable for the acts of assault and intimidation that the debt collection agent (the agent) had done to the debtor. In that case, the acts committed by the debt collection agent for recovering the debt from the debtor included using foul language, threatening to search the debtor out at his home, threatening to send 15 young men to the debtor’s office to cause a disturbance, spraying words to demand the debtor to repay the loan in red paint in the lift lobby of the debtor’s office building, making menacing telephone calls, and threatening to resort to violence (including threatening to disfigure and chop the debtor). The Court of Appeal decided that except for the spraying of red paint, which was a threat of violence, the creditor (the principal) had to be held liable for the rest of the threatening acts.

28. Clause 4.1 of the “Authorization Agreement” signed between the finance company and the debt collection agency provides that the debt collection agency has a duty to maintain secrecy of the personal data provided by the finance company and is only allowed to disclose necessary data to people who need to be informed. I consider this only sets out the duty between the agent and the principal. I note however that clause 4.2 of the “Authorization Agreement” provides that “*if [the debt collection agency] contravened the Personal Data (Privacy) Ordinance and caused [the finance company] to suffer losses, [the debt collection agency] shall be liable. If [the finance company] contravened the Personal Data (Privacy) Ordinance and caused [the debt collection agency] to suffer losses, [the finance company] shall be liable.*” and clause 2.1 provides that “*the agent guarantees to abide by the law, regulation, ordinance and professional ethics when providing services*”. These only set out the rights and obligations between the parties. They do not operate at law to exempt the legal

liability of the finance company (as the principal) regarding acts committed by its agent (including section 65(2) of the Ordinance).

29. Having regard to the decision of the Court of Appeal in the above case, I consider that the “Authorization Agreement” (including clauses 2.1, 4.1 and 4.2) did not restrict the disclosure of the personal data of the family members to third parties by the debt collection agency when performing its duty of recovering the debt from Mr. D as authorized by the finance company. The debt collection agency had the authority to decide how to use the personal data of the family members, including the disclosure of the personal data and the extent of disclosure. In replying to this Office’s enquiry and questions, the finance company would not give any opinion or set any limitation in respect of the actual performance of the duties of the debt collection agency. The finance company had not set any guidelines or limitations in respect of the handling or use of the personal data of the family members by the debt collection agency (including whether personal data of Mr. D’s family members should be publicly posted at the premises of Mr. D or his family members or public areas).

30. Although the finance company said that it would not participate in the actual operation of debt recovery of the debt collection agency, I believe that the finance company would not exclude the possibility that the debt collection agency would exert pressure on Mr. D’s family members in the course of the debt recovery process. It was reasonably foreseeable that one of the ways to exert pressure on Mr. D’s family members was the act done by the debt collection agency in this case, i.e. publicly displaying/posting/disclosing the personal data of his family members.

31. In view of all the foregoing, it is my opinion that the finance company had impliedly authorized the debt collection agency to publicly display/post/disclose the personal data of the family members. In this connection, according to section 65(2) of the Ordinance, the contravening acts of the debt collection agency shall be treated for the purpose of the Ordinance as done by the finance company. Therefore, I form the view that the finance company had also contravened the requirements of DPP3.

## **Enforcement Notice**

32. Pursuant to section 50 of the Ordinance, I may serve an enforcement notice on the finance company if I am of the opinion that the finance company has contravened the requirements of DPP3 of the Ordinance in circumstances that make it likely that the contravention will continue or be repeated.

33. As the finance company may continue to authorize debt collection agents (including the debt collection agency) to recover debts from debtors, and there is no information before me which shows that the finance company will take any measures to stop its agents from publicly displaying/posting/disclosing the personal data of the family members of debtors, I consider that it is likely that the contravention of DPP3 on the part of the finance company will continue or be repeated.

34. Accordingly, pursuant to section 50 of the Ordinance and in consequence of the investigation, I have decided to and did serve an enforcement notice on the finance company directing it to instruct the debt collection agency and other authorized debt collection agents in writing to stop publicly displaying/posting/disclosing the personal data (including name and address) of family members of debtors.

## **Compliance with the Enforcement Notice by the Finance Company**

35. Upon receipt of the enforcement notice, the finance company confirmed to me that it had complied with the direction of the enforcement notice by instructing the debt collection agency and other authorized debt collection agents in writing to stop publicly displaying/posting/disclosing the personal data (including name and address) of debtors' family members (including the family members).

## **Recommendations and Other Comments**

36. In the wake of the global economic tsunami, many people in Hong Kong may borrow money from financial institutions to ease their financial difficulties. Financial institutions are advised that when they authorize debt collection agents to recover debts from debtors, they need to take measures to prevent those agents

from contravening the requirements of the Ordinance in the course of debt recovery, in particular disclosing the personal data of debtors' family members to third party by means of public display or mail to neighbours, etc. If a financial institution just relies on some general exemption clauses included in a simple authorization agreement signed with those agents and does not put in place practical guidelines or limitations in respect of the handling or use of personal data by those agents, the financial institution may still be held liable for the contravention acts committed by those agents.

37. In this case I have directed my attention to the unlawful act of publicly displaying the personal data of debtor's family members. Financial institutions and debt collection agents are reminded that likewise the public display of the personal data of debtors is generally not allowed under the Ordinance.

38. In debt recovery cases I have handled in the past, debtors or their family members/friends were often disturbed unlawfully by debt collection agents. In this connection, I would like to advise the public that such unlawful behaviours do not fall within the jurisdiction of the Ordinance or this Office. Anyone who believes himself to be the victim of such unlawful behaviours should make a report to the police.