

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

(English translation)

(This is an English translation of the Report compiled in Chinese. In the event of any conflict between this English version and the Chinese version, the Chinese version shall prevail.)

Report Number: R11-2853

Date issued: 20 June 2011



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

**Transfer of Customers' Personal Data by Wing Hang Bank, Limited to a
Third Party Insurance Company for Direct Marketing**

This report in respect of an investigation carried out by this Office pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap. 486 (“**the Ordinance**”) against Wing Hang Bank, Limited 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.”*

ALLAN CHIANG
Privacy Commissioner for Personal Data

The Complaint

The Complainant was a savings account customer of Wing Hang Bank, Limited (“**the Bank**”). He received a call from an insurance company (“**the Insurance Company**”) promoting insurance products. As the caller could not clearly tell the Complainant’s name, address, identity card number and mobile phone number, the Complainant asked the caller for the source of his personal data. The Complainant was told that the Insurance Company had obtained his personal data from the Bank.

2. The Complainant stated that he had never authorized or agreed the Bank to transfer or release his personal data to any person or company for marketing purpose, so he lodged a complaint with this Office on 28 November 2008.

Relevant Provisions of the Ordinance

3. Data Protection Principle (“**DPP**”) 3 of Schedule 1 to the Ordinance is directly relevant to this case.

“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).”*

4. Under section 2 of the Ordinance, the term “*use*”, in relation to personal data, includes “*disclose*” or “*transfer*” the data.

Information Collected during the Investigation

5. In the course of investigation of this case, this Office received written replies and relevant documents from the Complainant, the Bank and the Insurance Company respectively. Below is a summary of the information collected by this Office.

The Insurance Company admitted having made direct marketing calls to the Complainant

6. The Insurance Company confirmed to this Office that a member of its telemarketing staff (“**the Staff Member**”) had called the Complainant twice for promoting insurance products. In the course of telemarketing, the Staff Member verified the Complainant’s identity by using the Complainant’s gender, date of birth, identity card number and bank account information.

The business relationship between the Bank and the Insurance Company

7. The Bank confirmed that the Insurance Company was the Bank’s business partner, not an associated company of the Bank’s group. The Bank, the insurance consultant of the Bank’s group and the Insurance Company had entered into a program agreement (“**the Program Agreement**”) to promote an insurance product of the Insurance Company (“**the Promotion**”). Under the Program Agreement, the Bank would select suitable credit card customers and transfer their personal data to the Insurance Company for the Promotion.

8. Under the Program Agreement, upon selection of target customers, the Bank would transfer the personal data of the relevant credit card customers, including name, the first 4 digits of identity card number, address, contact telephone number and the first 12 digits of credit card account number, to the Insurance Company, which would then conduct telemarketing targeted at the selected customers. Apart from credit card customers, the Bank later extended the scope of the Promotion to include mortgage loan customers and savings account customers. Being a savings account customer of the Bank, the Complainant was thus included as a target customer.

9. The Bank saved the personal data of selected mortgage loan customers and savings account customers (including the Complainant) in a disk. The data, comprising the customers’ name, the first 4 digits of identity card number, address, contact telephone number, gender, date of birth, marital status and account code (which represents the type of account) (collectively called “**the Personal Data**”) were passed to the Insurance Company via the insurance consultant of the Bank’s group.

10. For the Promotion, the Bank stated that it was necessary to disclose the

Personal Data to the Insurance Company and gave the following reasons for disclosure of the types of data concerned:

	<u>Data</u>	<u>Reasons for disclosure</u>
(1)	Address	For the Insurance Company to mail promotional leaflets to the target customers for reference before telemarketing.
(2)	Date of birth	For the Insurance Company to calculate the premium rates of the target customers beforehand.
(3)	First 4 digits of identity card number	For the Insurance Company to verify the identity of the target customers during telemarketing.
(4)	Marital status	For the Insurance Company to know the family status of the target customers so that it could market other suitable insurance plans for the spouses and/or children of the target customers (if necessary).
(5)	Type of account	For market analysis.

Collection of the Complainant's personal data by the Bank

11. The Bank stated that when the Complainant applied for its banking service, the Complainant had completed a "Personal Account Opening Form" (**the Form**) and provided the Bank with his personal data such as his name, date of birth, identity card number, address, contact telephone number and marital status.

12. According to the Bank, it was stated in the Form that the Bank could disclose customers' personal data to third parties for marketing purpose. The relevant part in the Form was as follows:

“RELATIONSHIP WITH DIRECTOR OF THE BANK

Are you a relative of any of the Bank’s directors?

No

Yes (Please state director’s name _____ Relationship _____)

I/We confirm the above information is true and correct and authorise Wing Hang Bank, Limited...to communicate and to exchange such information with whatever sources your Bank may consider appropriate for the purpose of verifying the same.

I/We acknowledge and agree that all personal data relating to me/us (“the Data”) may be used and disclosed by [Wing Hang Bank] for such purposes and to such persons in accordance with [Wing Hang Bank’s] policies on use and disclosure of personal data as set out in statements, circulars, notices or terms and conditions made available by [Wing Hang Bank] to customers from time to time, I/We also agree that [Wing Hang Bank] may transfer the data outside the Hong Kong Special Administrative Region, conduct matching procedures (as defined in the Personal data (Privacy) Ordinance) using the Data and such other personal data and information relating to me/us, disclose the Data to any non-group company of [Wing Hang Bank] for marketing purposes and provide banker’s or credit references in respect of me/us (if any).”

13. Moreover, when the Complainant applied for the Bank’s personal banking service, the Bank had provided him with a Notice to Customers and Other Individuals relating to the Personal Data (Privacy) Ordinance (“**the Notice**”). Paragraphs (e)(viii) and (f)(vii) of the Notice stated that “...[Wing Hang] Bank and its various subsidiaries in Hong Kong (... ‘**Company**’) can, for the purpose of “marketing services or products of (Wing Hang and Wing Hang’s subsidiaries) or any [Wing Hang Bank] Group Company or selected companies”, disclose customers’ personal data to “any [Wing Hang Bank] Group Company or selected company for the purposes of informing data subjects

of services which the Company believes will be of interest to data subjects”.

14. Based on the above, the Bank believed that it had informed the Complainant that his personal data might be transferred to the Insurance Company for marketing purpose, and thus the Bank did not need to obtain the Complainant’s prescribed consent before disclosing his personal data to the Insurance Company for the Promotion.

Remedial actions taken by the Bank

15. Upon being informed of the complaint, the Bank followed up the case with the Insurance Company. The Insurance Company subsequently confirmed that it had deleted the Complainant’s personal data completely after receipt of the complaint. The Promotion was over and the Insurance Company had deleted all the personal data of the Bank’s customers who had refused to accept its insurance products.

16. In response to this investigation, the Bank wrote to this Office in October 2009 stating that it would amend the Bank’s policy to ensure compliance with the Ordinance when using customers’ personal data, and would amend the relevant account opening documents to enhance the customers’ awareness of the Bank’s customer data privacy policy. The Bank anticipated that the relevant amendments would be completed by December 2009.

Findings of the Privacy Commissioner

17. In this case, this Office first needed to consider whether the Bank’s disclosure of the Personal Data to the Insurance Company for the Promotion (“**the Purpose of Use**”) was consistent with the purpose for which the Complainant’s personal data were to be used at the time of collection of the same (“**the Collection Purpose**”) or directly related to the Collection Purpose. In this regard, this Office considered that the crucial factor was whether the Bank had informed the Complainant of the purpose of collection of his personal data when the Complainant applied for the savings account. If yes, this Office had to further consider the nature of the purpose, the reasonable expectation of the Complainant on the use of his personal data by the Bank, and applicable codes of practice, regulations or guidelines issued by relevant regulatory bodies.

Whether the Purpose of Use was consistent with or directly related to the Collection Purpose

18. DPP1(3)(b)(i) requires that when a data user collects personal data from a data subject, all practicable steps shall be taken to ensure that he is explicitly informed, on or before collecting the data, of the purpose for which the data are to be used; and the classes of persons to whom the data may be transferred.

19. Paragraph (e) of the Notice stipulated that: *“The purposes for which data relating to a data subject may be used will vary depending on the nature of the data subject’s relationship with the Company. Broadly, they may comprise any or all the following purposes...”* (emphasis added). The purposes for which the data might be used included the one mentioned in paragraph (e)(viii): *“marketing services or products of the Company or any Bank Group Company or selected companies”*. The Bank quoted the above provisions to support its act of disclosing the Complainant’s personal data to the Insurance Company for the Promotion.

20. It should be noted that paragraph (e) of the Notice only informed the Complainant that the use of his personal data might be changed in accordance with the relationship between him and the Bank, and generally, his personal data might be used for all or any of the purposes listed therein. It seemed that the Bank tried to include all the possible (but not yet confirmed) purposes of use of customers’ personal data in the provision. Obviously, the provision in paragraph (e) of the Notice had not complied with DPP1(3)(b)(i) in that the Complainant was not explicitly informed of the purpose for which his personal data were to be used. In this regard, this Office considered that the Purpose of Use was not consistent with the Collection Purpose.

21. Although the Purpose of Use was not consistent with the Collection Purpose, this Office had still to consider whether the Purpose of Use was directly related to the Collection Purpose. In this connection, the reasonable expectation of the Complainant on the use of his personal data by the Bank was a crucial factor. When the Complainant gave his personal data to the Bank, his purpose was to apply for banking service. In considering the provision in paragraph (e) of the Notice, this Office was of the opinion that the Complainant would not expect that the Bank would disclose his personal data to the Insurance Company for marketing purpose. In fact, the Complainant’s act of lodging a complaint with

this Office showed that the disclosure was not within his reasonable expectation. Hence the Purpose of Use was not directly related to the Collection Purpose.

Whether the Disclosure was with the Complainant's prescribed consent

22. Since the Purpose of Use, as concluded above, was not consistent with or directly related to the Collection Purpose, it has to be supported by the Complainant's prescribed consent under DPP3.

23. In a similar vein, there are provisions in the Code of Banking Practice ("**the Code**") issued by the Hong Kong Association of Banks and DTC Association regulating the use of customers' personal data for marketing purpose by financial institutions. Under section 8.4(b) of the Code, a financial institution should not, without the prescribed consent of their customers, disclose for marketing purpose customers' names and addresses to companies which are not related companies within the same group to which the financial institution belongs.

24. According to section 8.4(b) of the Code, as the Insurance Company was not a related company of the Bank, the Bank should not disclose the Complainant's personal data to the Insurance company unless it had obtained the Complainant's prescribed consent before the disclosure. The Bank stated that according to the provisions in the Form and the Notice, the Complainant had given prescribed consent. The provision in the Form was as follows: "*...I/We ... agree all personal data relating to me/us (the "Data") ... may be disclosed by [Wing Hang Bank] ... to any non-group company of [Wing Hang Bank] for marketing purposes ...*". In this connection, this Office has to consider whether by signing the Form containing the above provision, the Complainant could be regarded as having provided his "prescribed consent" to the Purpose of Use to the Bank.

25. With regard to prescribed consent, section 2(3) of the Ordinance stipulates that: *Where under this Ordinance an act may be done with the prescribed consent of a person (and howsoever the person is described), such consent means the express consent of the person given voluntarily; does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given.* Hence, as prescribed consent has to be given expressly, raising no objection to the change of use of personal data does

not constitute prescribed consent. Furthermore, prescribed consent has to be given voluntarily. The person giving the consent has to be clearly informed of what his consent is about.

26. This Office noted that there was only one place for account holder's signature on the Form for opening personal account and it was placed inside the column of "Relationship with Director of the Bank". The Bank had not given customers a separate choice on whether they agreed to the transfer of their personal data to a non-group insurance company for promotion of its insurance products. As a result, when customers signed the Form, they had to, at the same time, agree "*the Data... may be disclosed by [Wing Hang Bank] to any non-group company of [Wing Hang Bank] for marketing purposes...*". This Office considered that the consent obtained from the Complainant under such circumstances could not be regarded as prescribed consent of the Complainant to the Bank's disclosure of his personal data to the Insurance Company for marketing the products/services of the Insurance Company.

27. In view of the above circumstances and the requirements under the Ordinance and the Code, this Office was of the opinion that the Bank had not obtained the Complainant's prescribed consent to the disclosure of the Personal Data to the Insurance Company for marketing purpose.

Conclusion

28. Taking into account the relevant information and circumstances of the case, this Office concluded that the Bank had contravened DPP3 in relation to the disclosure of the Complainant's Personal Data to the Insurance Company for the Promotion.

Enforcement Notice

29. Pursuant to section 50 of the Ordinance, the Commissioner may serve an enforcement notice on the Bank if he is of the opinion that the Bank has contravened DPP3 in circumstances that make it likely that the contravention will continue or be repeated.

30. As the Bank might still co-operate with the Insurance Company or other non-group companies to conduct cross-marketing activities in future, and this Office had not received the revised policy and account opening documents mentioned in paragraph 16 above by the end of December 2009, this Office opined that the Bank's contravention of DPP3 would likely continue or be repeated.

31. On 15 January 2010, this Office served an enforcement notice on the Bank pursuant to section 50 of the Ordinance directing it to (i) cease disclosing customers' personal data to companies not within the Bank's group for marketing of their products/services unless prescribed consent has been obtained from customers; (ii) devise appropriate policy, practice and/or procedure for cross-marketing activities and ensure that the staff concerned know such policy, practice and/or procedure.

Appeal

32. Upon receipt of the enforcement notice, the Bank lodged an appeal with the Administrative Appeals Board ("AAB"). While waiting for the appeal hearing, the Bank informed AAB on 21 December 2010 that it had decided to abandon the appeal. The Bank then confirmed to this Office in January 2011 that it had already ceased all its cross-marketing activities with non-bank group companies since March 2009.

Compliance with the Enforcement Notice by the Bank

33. Subsequently, on 23 February 2011, the Bank confirmed to this Office in writing that it had fully complied with the directions of the enforcement notice including that it had ceased carrying out marketing activities with non-associated companies; it would not transfer customers' personal data to any third party unless prior consent has been obtained from customers; it had revised its relevant policies and the Personal Information Collection Statement, and informed all the units of the Bank to secure compliance.

Recommendations and Other Comments

34. In the course of investigation, this Office was concerned about whether it was necessary for the Bank to disclose all items of Personal Data to the Insurance Company for marketing purpose even in the situation where the Bank had obtained customers' prescribed consent to the disclosure of their personal data to the Insurance Company for marketing the Insurance Company's products.

35. Apart from contact information, the Bank disclosed the Complainant's date of birth, partial identity card number and marital status to the Insurance Company, but eventually the Complainant had not accepted the insurance products introduced to him by the Insurance Company. This Office took the view that for the purpose of marketing insurance products, disclosing the name and contact information (i.e. telephone number and address) of the Complainant to the Insurance Company for communication purpose would suffice. The Insurance Company might collect other personal data directly from the customers when they had agreed to subscribe to its products. In light of the above, this Office opined that even if the Bank was allowed to transfer the Complainant's personal data to the Insurance Company for direct marketing purpose, the disclosure of the Complainant's partial identity card number, date of birth, type of account and marital status to the Insurance Company by the Bank was excessive.

36. In general, the banking industry holds large amount of customers' data. For the purpose of increasing business opportunities and providing different services to customers, banks will carry out cross-marketing activities with other business partners from time to time. However, this Office considers that personal data protection should not be compromised for the sake of pursuing the banks' interests. In this regard, by this investigation report and the publication of the Guidance Note, "Guidance on the Collection and Use of Personal Data in Direct Marketing" in October 2010, this Office urges the banking industry and other business organizations to adopt best practices of allowing customers to choose if they agree to the transfer of their personal data to specified classes of third parties for marketing purpose before collection of their personal data. This can enhance the protection of personal data privacy and minimize the disputes between data users and customers over transfer of personal data.