

**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

The Collection and Use of Personal Data of Members
Under the Mann Card Program run by
The Dairy Farm Company Limited

This report in respect of investigations carried out by the Privacy Commissioner for Personal Data (the “**Commissioner**”) pursuant to section 38(b) of the Personal Data (Privacy) Ordinance, Cap. 486 against The Dairy Farm Company Limited is published in the exercise of the power conferred on the Commissioner by Part VII of the Personal Data (Privacy) Ordinance. Section 48(2) of the Personal Data (Privacy) 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

Background

Following the Octopus incident in October 2010, the Commissioner examined the collection and use of members' personal data under a number of prominent customer loyalty programs, including the "Mann Card Program" (the "**Program**") operated by The Dairy Farm Company Limited ("**Dairy Farm**").

2. Consequently, the Commissioner initiated a formal investigation pursuant to section 38(b) of the Personal Data (Privacy) Ordinance (the "**Ordinance**")¹ against Dairy Farm to ascertain whether Dairy Farm had contravened the relevant requirements under the Ordinance.

Representations from Dairy Farm

3. In the course of investigation of this case, this Office collected the information and evidence below from Dairy Farm.

The Mann Card Program

4. The Program was launched and has been operated by Dairy Farm since 2 July 2010. Under the Program, customers who make a single purchase of \$1,600 or above (or lesser amount advertised during a promotion period) in Mannings retail stores ("**Mannings**") are eligible to apply for membership.

5. Dairy Farm stated that the purposes of the Program were to provide health related information and offers to members, as well as reward the loyalty of customers and retain customers.

6. Under the Program, members were offered the following benefits:-

- (a) rewards points (1 reward point for every \$5 spent) for purchases made at Mannings by presenting the "Mann Card Program rewards card" (the "**Mann Card**");
- (b) special discounts and promotional offers provided from time to time as well as special discount on "Mann Card Day" (currently the 10th

¹ The Personal Data (Privacy) Ordinance was substantially amended on 1 October 2012. However, for the purposes of this investigation, the applicable law at the material time was the version of the Personal Data (Privacy) Ordinance prior to 1 October 2012, which is referred to as the "Ordinance" throughout this report.

day of every month) for purchases at Mannings; and

- (c) discount for purchases at merchants who have joined the Program as Dairy Farm's partners.

7. The rewards points may be redeemed for merchandise sold at Mannings, or other products and services including cooking classes, vaccination plans, health check-up plans, household appliances and premium waivers on insurance package, etc. provided by Dairy Farm's partners. According to Dairy Farm, there was no ceiling for points stored in the Mann Card. However, points accumulated in the account would expire on 30th September of each year.

The Application Form

8. To register as a member of the Program, an applicant was required to complete a "Mann Card Program application form" (the "**Application Form**") and submit it to any Mannings store. The applicant is required to provide in the Application Form the following personal information:-

- (1) Language preference (English or Chinese)
 - (2) Salutation
 - (3) Last name*
 - (4) First name*
 - (5) Chinese name
 - (6) The first 4 digits² of Hong Kong Identity Card ("**HKIC**") number or passport number*
 - (7) Full date of birth
 - (8) Mobile number*
 - (9) Home or business telephone number
 - (10) Email address
 - (11) Home address*
 - (12) Signature*
- (* Mandatory fields)

9. Dairy Farm advised that the purpose(s) of collecting each item of the applicant's personal information were as follows (see Table 1):-

² That is the English letter and the first 3 numbers

Table 1 – Purposes of collection of personal data by Dairy Farm

Item	Descriptions	Purposes
1	Language preference	To provide relevant direct marketing material (including electronic material) as well as redemption letters, in the preferred language of their members.
2	Salutation	To greet members correctly in communication via telephone and to address them correctly in all electronic and written communications.
3	Last name	To identify the members registered for the Program, to maintain their account and participation in the Program, and to greet and address the members correctly in all communications.
4	First name	
5	Chinese name	
6	The first 4 digits of HKIC number or passport number	To be used as the members' default passwords for log-in to the Program website.
7	Full date of birth	To provide birthday promotions to members.
8	Mobile number	To contact members when required, as well as to send promotional material to members via "Short Message Service" ("SMS").
9	Home or business telephone number	To serve as an alternative means to contact members, in the event that Dairy Farm is not able to contact the member via mobile telephone.
10	Email address	To provide members with electronic marketing material.
11	Home address	To serve as a means for communication with members, as well as sending promotional material relating to the Program, vouchers and redemption letters to members.
12	Signature	To confirm that the applicant has read and agreed to the Terms and Conditions (" T&C ") and the Privacy Policy (" Privacy Policy ") of the Program.

10. On the signature page of the Application Form, the applicant may indicate his/her wish not to receive promotional messages in any or all of the channels including mail, e-mail, SMS and telemarketing by ticking the boxes provided.

11. In order to apply for membership of the Program, an applicant must acknowledge that he/she agreed to accept and be bound by the T&C and the Privacy Policy which include, amongst other things, the use of the applicant's personal data. The T&C were available at the website of the Program (www.mannings.com.hk) and the Privacy Policy was provided on a separate sheet attached to the Application Form.

12. Reproduced below are relevant extracts from the T&C and the Privacy Policy :-

T&C

“2.1 These Terms and Conditions form the agreement between you, our Member, and us, The Dairy Farm Company Limited. We will have other merchants to join the Program in the near future (“Our Partners”) offering you more rewards and targeted offers.

2.2(k) “Our Partners” – separate independent commercial entities providing goods or services to Mannings.

3.3 The information you provide us when you register as a Member, will help us and Our Partners to make carefully selected offers that may be of interest and value to you.

4.3 Points are valid till 30th September of each year. Unused Points will expire automatically. For points earned from 1st July, they will be expired on 30th Sept in the following year. The first bonus point cut-off date is 30 September 2011.

7.4 Points or any kind of offers, benefits are personal to an individual Member and cannot be transferred. You should not transfer your Mann Card, your Membership's benefits to any other person.

8.1 In order for you to become a Member of the Program, it is necessary for you to provide us with your personal information

(“Personal Data”). If you are unable or unwilling to provide us with complete and correct Personal Data, we may not be able to provide or continue to provide the services under the Program to you.

8.2 All information is managed in accordance with Mannings’ Privacy Policy which is posted at www.mannings.com.hk. Such policy is deemed incorporated into these terms and conditions.”

Privacy Policy

“A.1 If you provide any personal data to Mannings, you are deemed to have authorized Mannings to collect, retain and use personal information about you for the following purposes:

- a. Processing your application for membership under any Mannings programme;*
- b. Providing you with services under any Mannings programme;*
- c. Marketing of goods and services and sending any advertising and/or promotional material to you;*
- d. Conducting research on new goods and services for you;*
- e. Carrying out matching procedure in accordance with the law;*
- f. Notifying you of special offers or new Products, updates to this site, promotions;*
- g. Performing statistical and analysis of your behaviour and characteristics in order to measure interest in and use of the various areas of the site and providing this information to advertisers together with information as to the number of users that have been exposed to or clicked on their banners;*
- h. Making such disclosures as may be required for any of the above purposes or by law.*

A.2 You further agree that we may disclose and transfer (whether in Hong Kong or abroad) to our partners, any other persons under a duty of confidentiality to us and any of our actual or proposed assignees or transferees of our rights with respect to you to use, disclose, hold,

process, retain or transfer such Personal Data for the purposes of A.1 herein for and on behalf of Mannings.

A.3 Please note that in the event that sufficient personal information is not supplied, or is not satisfactory to Mannings then your application for registration to Mannings may not be accepted.

A.4 Any personal information supplied by you will be retained by Mannings and will be accessible to Mannings' employees and other persons or body corporates engaged by Mannings, for or in relation to any of the purposes stated in A.1 herein."

13. Dairy Farm confirmed that it had never sold and had no plan to sell members' personal data, and added that it would not transfer or disclose members' personal data to other organizations for marketing purpose.

14. As regards clause 2.1 of the T&C (which provided that other merchants may join Dairy Farm's Program in the near future), Dairy Farm explained that while it may use members' personal data for the promotion of goods and services of Dairy Farm's partners, Dairy Farm would not transfer members' personal data to those partners.

15. Dairy Farm also explained that the only circumstance under which members' personal data would be disclosed to "*any person under a duty of confidentiality to [Dairy Farm]*" under clause A.2 of the Privacy Policy was the disclosure of members' personal data to a service provider named DataTrade Limited ("**DataTrade**"), which had been engaged to provide call centre, data entry and database management services as well as forwarding communications to members. For the purpose of this investigation, Dairy Farm provided this Office with an edited copy of the Professional Services Agreement with DataTrade.

16. According to this Professional Services Agreement, Dairy Farm imposed a duty of confidentiality on DataTrade and required DataTrade to comply with the provisions of the Ordinance.

Change in practice during the course of investigation

17. During the course of this investigation, Dairy Farm redesigned the Application Form and revised the T&C as well as the Privacy Policy. These revised documents have become effective since 22 July 2011.

Revised application form

18. The revised application form reduced the amount of personal information collected from the applicant. The following table (Table 2) shows the difference in the personal data required between the Application Form and the revised application form:-

Table 2 – Comparison of personal data collection between the two forms

Items		The Application Form	Revised application form
		✓ = Required X = Not required	✓ = Required X = Not required
(1)	Language preference	✓	✓
(2)	Salutation	✓	✓
(3)	Last name	✓ (Mandatory)	✓ (Mandatory)
(4)	First name	✓ (Mandatory)	✓ (Mandatory)
(5)	Chinese name	✓	✓
(6)	1 st 4-digits of HKIC number or passport number	✓ (Mandatory)	X
(7)	Date of birth		
	(a) Day	✓	✓
	(b) Month	✓	✓
	(c) Year	✓	X
(8)	Mobile number	✓ (Mandatory)	✓ (Mandatory)
(9)	Home or business telephone number	✓	✓
(10)	Email address	✓	✓
(11)	Home address	✓ (Mandatory)	✓ (Mandatory)
(12)	Signature	✓ (Mandatory)	✓ (Mandatory)

19. While it was stated in the Application Form that the partial HKIC or passport number would be used as the default password for log-in to the website of the Program, the revised application form expressly states that the mobile telephone number provided by an applicant would be used as the default password for the first time, and the member is required to change the password once the online account is activated.

Revised Terms & Conditions

20. In the revised Terms & Conditions, Dairy Farm provides more details of the third parties to whom members' personal data may be disclosed. In clause 1(h) of the revised Terms & Conditions, it is stated :-

“Our Partners” means “third party services providers engaged by us to assist with providing you our services (including data entry, managing our customer database, sending your promotional materials, products rewards, vouchers and redemption letters, and customer service)”.

Revised Privacy Policy

21. The revised Privacy Policy sets out, amongst other things, the classes of transferees to whom members' personal data might be disclosed and transferred. Clauses B.1 and B.2 of the revised Privacy Policy provide:-

“B.1 If you provide any personal data to us, you are deemed to have authorised us to collect, retain and use personal information about you for the following purposes :

- (a) processing your application for membership under any of our Programmes and maintaining and managing your membership;*
- (b) verifying your identity;*
- (c) verifying your eligibility to participate in our Programmes;*
- (d) providing you with rewards, vouchers or services under any of our Programmes or lucky draws;*
- (e) providing you with customer service and responding to your queries;*

- (f) *marketing our promotions and services, including notifying you of special offers or new products and sending any advertising and/or promotional material to you relating to our promotions, services or website;*
- (g) *performing research or statistical analysis in order to improve our products and services and for marketing and promotional purposes;*
- (h) *providing you with a log-in ID for our website; and*
- (i) *making such disclosures as may be required for any of the above purposes or as required by law.*

B.2 You further agree that we may disclose and transfer (whether in Hong Kong or abroad) your Personal Data to third party services providers engaged by us to assist with providing you with our services (including data entry, managing our customer database, sending you promotional materials, products rewards, vouchers and redemption letters, and customer service) (“Third Party Service Providers”). These Third Party Service providers are under a duty of confidentiality to us and are only permitted to use your Personal Data in connection with the purposes specified at B.1 above, and not for their own purposes (including direct marketing).”

22. The revised application form, the revised T&C and the revised Privacy Policy have been combined to form one document.

Erasure of personal data

23. As a result of the change in data collection practice, Dairy Farm had completely erased the partial HKIC numbers, passport numbers and the year of birth (both electronic records and hard copies) of all applicants and registered members, which were collected on or before 21 July 2011. The destruction exercise was completed in March 2012. Dairy Farm had engaged a third party service provider to perform the data erasure and provided this Office with the certificates of destruction issued by the service provider.

The Legal Requirements

24. The following provisions of Data Protection Principle (“DPP”)1 and DPP3 in Schedule 1 to the Ordinance, which were in force at the material time, are relevant to this investigation. DPP1 stipulated that:-

- “ (1) *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.*
- (2) *Personal data shall be collected by means which are -*
- (a) lawful; and*
 - (b) fair in the circumstances of the case.*
- (3) *Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that -*
- (a) he is explicitly or implicitly informed, on or before collecting the data, of—*
 - (i) whether it is obligatory or voluntary for him to supply the data; and*
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and*
 - (b) he is explicitly informed—*
 - (i) on or before collecting the data, of—*
 - (A) the purpose (in general or specific terms) for which the data are to be used; and*
 - (B) the classes of persons to whom the data may be*

transferred; and

(ii) *on or before first use of the data for the purpose for which they were collected, of—*

(A) *his rights to request access to and to request the correction of the data; and*

(B) *the name and address of the individual to whom any such request may be made,*

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.”

25. DPP3 provided 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).”*

26. The term “*use*”, in relation to personal data, was defined under section 2(1) of the Ordinance to include “*disclosure*” or “*transfer*” of the data.

27. According to section 2(3) of the Ordinance, “*prescribed consent*” meant “*express consent of the person given voluntarily*” which had not been withdrawn by notice in writing.

28. With regard to the collection of identity card number, paragraphs 2.1 to 2.3 of the “Code of Practice on the Identity Card Number and other Personal Identifiers” (“**PI Code**”) issued by this Office provide that:-

“2.1 Unless authorized by law, no data user may compulsorily require an

individual to furnish his identity card number.

2.2 Without prejudice to the generality of paragraphs 2.1 and 2.3, before a data user seeks to collect from an individual his identity card number, the data user should consider whether there may be any less privacy-intrusive alternatives to the collection of such number, and should wherever practicable give the individual the option to choose any such alternative in lieu of providing his identity card number. Such alternatives may include but are not limited to the following:

- 2.2.1 the identification of the individual by another personal identifier of his choice;*
- 2.2.2 the furnishing of security by the individual to safeguard against potential loss by the data user;*
or
- 2.2.3 the identification of the individual by someone known to the data user.*

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

- 2.3.1 pursuant to a statutory provision which confers on the data user the power or imposes on the data user the obligation to require the furnishing of or to collect the identity card number;*
- 2.3.2 where the use of the identity card number by the data user is necessary:*
 - 2.3.2.1 for any of the purposes mentioned in section 57(1) of the Ordinance (safeguarding security, defence or international relations in respect of Hong Kong);*
 - 2.3.2.2 for any of the purposes mentioned in section 58(1) of the Ordinance (the prevention or detection of*

crime, the apprehension, prosecution or detention of offenders, the assessment or collection of any tax or duty, etc.); or

2.3.2.3 for the exercise of a judicial or quasi-judicial function by the data user;

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;

2.3.3.2 for the prevention of detriment to any person other than the data user;

or

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;

2.3.4.2 as the means for the future identification of the holder of the identity card where such holder is allowed access to premises or use of equipment which the holder is not otherwise entitled to, in circumstances where the monitoring of the activities of the holder after gaining such access or

use is not practicable;

or

2.3.4.3 as a condition for giving the holder of the identity card custody or control of property belonging to another person, not being property of no value or of a value which is trivial in the circumstances.”

The Findings of the Commissioner

Whether the collection of applicants’ personal data was excessive

29. DPP1(1) of the Ordinance stipulated that a data user may not collect personal data unless the data is collected for a lawful purpose directly related to a function or activity of the data user. Moreover, the collection of the data must be necessary for or directly related to that purpose, and the data is adequate but not excessive in relation to that purpose.

30. According to Dairy Farm’s representations, the Program was a customer rewards scheme whereby members benefited from redemption of goods and services as well as marketing offers. The Commissioner considers that the purposes of collection of applicants’ personal data stated in Table 1 above were directly related to the function of Dairy Farm’s Program as stated in paragraph 5 above. The Commissioner’s views on the adequacy and excessiveness of the personal data collected are set out below.

Salutation (Item 2 of Table 1)

31. As regards the collection of salutation, the Commissioner accepts that for good customer service Dairy Farm should have a record of members’ gender in order to address them correctly. As such, the Commissioner is satisfied that the collection of this information for the purpose of provision of the service under the Program is not excessive.

Name of the applicant (Items 3, 4 & 5 of Table 1)

32. Under clause 7.4 of the T&C (see paragraph 12 above), “*points or any kind*

of offers, benefits are personal to an individual member and cannot be transferred". In the circumstances, the Commissioner is satisfied that, in order to provide the benefits or services under the Program to members, it is necessary for Dairy Farm to collect the name of an applicant.

Partial HKIC number or passport number (Item 6 of Table 1)

33. Dairy Farm stated that partial HKIC number or passport number was assigned as the default password for log-in to the Program website. Dairy Farm did not elaborate why it was necessary to use the applicant's partial HKIC number or passport number as the default password for log-in.

34. Paragraphs 2.1 to 2.3 of the PI Code set out the circumstances (see paragraph 28 above) under which collection of HKIC number is generally justified (e.g. *a doctor may require a patient's HKIC number to ensure that his past medical records are correctly attributed to him to enable proper treatment*). However, collection of HKIC number for the purpose of assigning a default password for log-in does not appear to be justified under any of the specified circumstances under the PI Code.

35. In this case, the collection of HKIC or passport number is not necessary for the purposes of the Program. Dairy Farm should have been able to assign any numbers or characters as the default password particular to an individual member for customer authentication. In fact, the new practice adopted by Dairy Farm since 22 July 2011 by assigning the applicant's mobile telephone number as default password clearly demonstrated that less privacy intrusive alternatives were feasible.

Date of birth (Item 7 of Table 1)

36. According to Dairy Farm, the collection of the applicant's full date of birth was for providing members with birthday promotions. The Commissioner however considers that to achieve this purpose, the collection of year of birth would be excessive. A partial date of birth (i.e. day and month of birth) should be sufficient.

37. In this regard, it is noted that the revised application form does not collect the applicant's year of birth and it is optional for an applicant to provide his/her day and month of birth.

Language preference, Contact information and other information (Items 1, 8, 9, 10 & 11 of Table 1)

38. According to Dairy Farm, these items were collected for the provision of promotional material. The Commissioner recognizes that language preference (item 1), mobile number (item 8), home or business telephone number (item 9), email address (item 10) and home address (item 11) were collected by Dairy Farm to effectively communicate with members and to provide marketing material to them. Hence the Commissioner is satisfied that it is necessary for Dairy Farm to collect these items from an applicant.

Signature (Item 12 of Table 1)

39. According to Dairy Farm, the collection of signature was necessary for the purpose of confirming that the applicant has read and agreed to the T&C and Privacy Policy. The T&C set out the rules and regulations on how the Program is operated. The Privacy Policy sets out the members' rights and the use of their personal data collected under the Program. They form the basis of the agreement between every member and Dairy Farm. It is therefore important for the applicants to acknowledge that they abide by the T&C and Privacy Policy by signing the Application Form. The Commissioner is satisfied that the collection of signature serves a legitimate purpose and is not excessive.

40. To sum up, the Commissioner considers that Dairy Farm's collection of the applicants' partial HKIC number / passport number and year of birth was excessive for the purposes of the Program, contrary to DPP1(1).

41. However, the Commissioner is pleased to observe that, as mentioned above (paragraphs 17 – 19), Dairy Farm had taken the initiative to revise the Application Form during the course of this investigation. The Commissioner is satisfied that the kinds of personal data to be collected under the Program in the revised application form (see Table 2 above) are commensurate with the purposes

of collection, and are neither privacy intrusive nor excessive.

Whether the means of collection is lawful and fair in the circumstances of the case

42. DPP1(2) of the Ordinance required data users to collect personal data by means which are lawful and fair in the circumstances of the case. There is no evidence in this investigation that suggests the means of collection of the applicants' personal data under the Program by Dairy Farm is unlawful.

43. According to clause 3.3 of the T&C, the information collected by Dairy Farm will help Dairy Farm and its partners to make carefully selected offers to members. Given that one of the features of the Program is to promote the products and services of Dairy Farm and its partners, it should be within the reasonable expectation of the applicants that, upon becoming a member, promotional information and material relating to the products and services of Dairy Farm and/or its partners offered under the Program would be communicated to them.

44. The Commissioner is satisfied that Dairy Farm had not used any means that was unfair in the circumstances when collecting personal data from applicants of the Program. Hence there was no contravention of DPP1(2).

Whether the duty to inform data subjects was discharged

45. In determining whether Dairy Farm has met the notification requirement under DPP1(3), it is necessary to ascertain whether Dairy Farm had taken all reasonably practicable steps to ensure that an applicant registering for membership under the Program was explicitly informed, on or before the collection of his/her personal data, of the purposes of such collection and the classes of persons to whom the data may be transferred.

46. In the Application Form, the applicant's signature purportedly represents that the applicant "*agree[s] to accept and be [bound] by the Terms and Conditions (T&C) of Mann Card posted on www.mannings.com.hk which may be modified by The Dairy Farm Company Limited from time to time...*".

47. After reviewing the Application Form, T&C and Privacy Policy, the Commissioner has the following observations :-

- (a) The T&C and the Privacy Policy were separate documents to the Application Form. Hence applicants might not be aware of the T&C or the Privacy Policy when they applied for membership in the Program; and
- (b) Under clauses A.2 and A.4 of the Privacy Policy, Dairy Farm may transfer or disclose members' personal data to Dairy Farm's "*partners, any other persons under a duty of confidentiality to [Dairy Farm]...*" and the data might be "*accessible to Mannings' employees and other persons or body corporates engaged by Mannings...*". These clauses were vague and the possible classes of transferee were not specified in the Privacy Policy. As the Privacy Policy did not provide sufficient information to enable members to ascertain the class of possible transferees, members would not have sufficient indication as to the nature or distinctive feature of the class of the possible transferees.

48. Having considered the presentation of the T&C and Privacy Policy, the Commissioner is of the view that Dairy Farm had not taken all practicable steps to ensure that on or before the collection of personal data from its applicants, the applicants were explicitly informed of the classes of persons to whom the data might be transferred. Dairy Farm had thus contravened DPP1(3).

49. Having said that, it is noted that during the investigation, Dairy Farm had on its own initiative revised the Privacy Policy by deleting the vague clauses and specifying "third party services providers" to be the only class of transferees to whom members' personal data may be transferred (see paragraph 21 above). The Commissioner considers that these revised clauses provide sufficient information allowing applicants to ascertain the classes of transferees with ease at the time of application.

Use of personal data

50. Apart from the service provider DataTrade, Dairy Farm confirmed that it had never disclosed or transferred members' personal data under the Program to any third parties for direct marketing purposes or otherwise.

51. On the basis of the facts now known, there is no evidence that indicates that Dairy Farm had used members' personal data under the Program in contravention of the requirement under DPP3.

Conclusion

52. In view of the foregoing, the Commissioner concludes that Dairy Farm had contravened the following requirements under the Ordinance:-

- (1) DPP1(1) for having collected "partial HKIC number or passport number" for the purpose of providing applicants with default passwords for log-in to the Program website;
- (2) DPP1(1) for having collected "year of birth" for the purpose of providing applicants with birthday promotions; and
- (3) DPP1(3) for having failed to take all reasonably practicable steps to ensure that the applicants were explicitly informed of the classes of persons to whom the data may be transferred.

Enforcement Notice

53. Pursuant to section 50(1) of the prevailing Personal Data (Privacy) Ordinance ("PDPO") and in consequence of an investigation, if the Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under the PDPO, he may serve on the data user a notice in writing, directing the data user to remedy and, if appropriate, prevent any recurrence of the contravention.

54. Despite the Commissioner is of the opinion that Dairy Farm had contravened the requirements of DPP1(1) and DPP1(3) under the Ordinance, given the subsequent remedial actions taken by Dairy Farm, in particular, the introduction of the revised application form, which has incorporated in one document the revised T&C and the revised Privacy Policy, and the erasure of the partial HKIC numbers, partial passport numbers and the year of birth of applicants and registered members previously collected, the Commissioner considers that Dairy Farm has taken adequate steps to remedy the contravention. Accordingly, no enforcement notice has been served upon Dairy Farm in the present case.

55. However, the Commissioner has put Dairy Farm on **WARNING** that if it fails to observe the relevant requirements of the PDPO in similar situations in future, he may consider taking enforcement action against Dairy Farm including the serving of an enforcement notice.

Other Comments

56. After the *Octopus* incident in 2010, public awareness of the collection and use of personal data in direct marketing activities was significantly raised. This investigation is one of the four investigations carried out subsequently in relation to customer loyalty programs.

57. The Commissioner is glad to see that Dairy Farm had on its own initiative taken steps to comply with the requirements of the Ordinance during the investigation. This sets a good example of a responsible data user who promptly remedied its non-compliant practice before he had to resort to enforcement action against it. It is the Commissioner's expectation that after the *Octopus* incident, corporations in Hong Kong should have learnt a lesson and paid more attention to data privacy regulations.

58. With the enactment of the Personal Data (Privacy) (Amendment) Ordinance 2012, a tighter regulatory regime will be introduced in 2013 for the collection and use of personal data for direct marketing. The consequences of contravening the new requirements are dire. For example, if a data user fails to inform a data subject in an easily readable and understandable manner of its intention to use his personal data for direct marketing before it engages in the direct

marketing activities, or if a data user fails to specify, in an easily readable and understandable manner, the classes of persons to which the data will be transferred for direct marketing before the data transfer, the data user commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.

59. Hence, the Commissioner would like to seriously remind all organizational data users in Hong Kong to review their privacy policies, personal information collection statements and data protection procedures to ensure compliance with the new provisions of the Amendment Ordinance.