



## Exercising Your Data Access Rights under the Personal Data (Privacy) Ordinance

The Personal Data (Privacy) Ordinance ("the Ordinance") was brought into force in December 1996 to protect the privacy interests of individuals in relation to their personal data. Under the Ordinance, every individual has the right to request another party, e.g. a government department or a company, to confirm whether it holds his or her personal data; and/or to supply a copy of any such data which it holds. Such requests are called data access requests.

Common examples of individuals making data access requests include patients requesting copies of their medical records, employees requesting copies of their employment-related records, such as performance appraisal reports, and credit applicants requesting copies of their credit reports.

To assist individuals to make data access requests, a Data Access Request Form (Form OPS003) was first issued by the Privacy Commissioner for Personal Data ("the Privacy Commissioner") on 1 December 1999. The form was amended on 1 April 2008 and further revised on 1 September 2010.

The following are some frequently asked questions and answers to assist individuals in making data access requests.

### 1. How should I make a data access request?

You should make the request by using the latest version of the Data Access Request Form (Form OPS003) ("the Form"). By providing the information as required in the Form, you will assist the party concerned to process your data access request as quickly as possible. If you do not use the Form, the party concerned may refuse to comply with your data access request. The completed Form should be sent directly to the data user to whom the data access request is made, and not to the Privacy Commissioner.

### 2. Apart from completing the Form, what other information or documents should I provide?

The party concerned may ask you to provide your identity proof, such as your identity card or other

identification documents, e.g. a staff card, medical card or student card previously issued by the party concerned to you, for verification of your identity.

Moreover, it may require you to provide further information to enable the location of the data you requested. In some cases, you **may be required** to fill in a form specified by the party concerned. However, it is not a mandatory requirement. (If you wish to make a data access request on behalf of another individual, please see Q&A 10 below as well.)



### 3. When completing the Form, what aspects should I pay attention to?

You should complete all parts of the Form and, as far as possible, state specifically and clearly the requested personal data. This will assist the party

concerned in complying with your data access request as quickly as possible, and will help to avoid any subsequent disputes. If the party concerned is not supplied with the information reasonably required to locate the data requested, it may refuse to comply with your data access request pursuant to section 20(3)(b) of the Ordinance. The last four pages of this pamphlet contain a sample of a completed Form for reference.

#### 4. Can I request the party concerned for “all of my personal data”?

Such description of the data requested is too general. You should clearly specify the data requested, e.g. medical reports, appraisal reports, job application forms, etc. and the date of data collection. To facilitate the location of the requested data, you should also include other relevant information (if any), e.g. the particular incident or transaction associated with the data requested and the circumstances under which the data requested were collected. Please note that if the party concerned is not supplied with sufficient information to locate your personal data, it may refuse to comply with your data access request pursuant to section 20(3)(b) of the Ordinance.

#### 5. Can I request the party concerned for a copy of a specified document which contains both my personal data and other information?

Under section 19 of the Ordinance, the party concerned is obligated only to supply you with a copy of your personal data, and not a copy of the document in which the data is contained. The party concerned may edit out from the document information which is not your personal data. Further, if the data requested is recorded in an audio form, the party concerned may provide you with a transcript of that part of the audio record which contains the data requested.

#### 6. Can the party concerned charge me a fee for complying with my data access request?

Yes. The Ordinance allows the imposition of a fee for complying with a data access request but the fee charged shall not be “excessive”. In general, the party concerned may charge for costs directly related to and necessary for the compliance of a data access request. The cost of compliance varies with the scope and complexity of the data access request concerned, and with different data users. Data users may, for administrative convenience, impose a flat fee. Where additional copies of the personal data requested are required, a data user is entitled to recover the actual cost which is not more than the administrative and other costs incurred by the data user in supplying the additional copies. If you believe that the fee charged for compliance with your data access request is excessive, you may raise the matter with the party concerned. If you are not satisfied with the explanation given, you may lodge a complaint with the Office of the Privacy Commissioner for Personal Data.



#### 7. Must my data access request be complied with by the party concerned?

Generally speaking, the party concerned shall comply with your data access request, otherwise it may commit an offence under the Ordinance and is liable on conviction to a fine at level 3. However, there are circumstances specified in the Ordinance under which the party concerned **should** refuse to comply with a data access request. These are:

- (a) in case of the party concerned not being supplied with sufficient information to identify you;
- (b) if the personal data sought under the data access request comprise personal data of another individual and the party concerned cannot comply with the request without disclosing



the personal data of that other individual. On the other hand, if the party concerned is satisfied that the other individual has consented to the disclosure; or it can comply with the request without disclosing the identity of that other individual, for example by omitting the names or other identifying particulars, it should comply with the request; or

- (c) in any other case, if compliance with the request is for the time being prohibited under the Ordinance.

There are also circumstances under which the party concerned **may** refuse to comply with a data access request. These are:

- (a) the request is not made in writing in Chinese or English;
- (b) the party concerned is not provided with sufficient information to locate the data requested;
- (c) the request follows two or more similar requests, and it is unreasonable for the party concerned to comply with the request in the circumstances;
- (d) another party controls the use of the data requested in a way that prohibits the party receiving the request from complying with it;
- (e) the request is not made in the Privacy Commissioner's specified form, i.e. the Form mentioned in Q&A 1 above;
- (f) there is an applicable exemption from the requirement to comply with a data access request provided for in the Ordinance, e.g. if the personal data are held for the purpose of the detection of crime and compliance with the request would be likely to prejudice that purpose (For the complete and definitive statement of this and other exemptions, reference should be made to the Ordinance.); or
- (g) the party concerned has not yet received the fee charged for complying with your data access request.

## 8. How long will it take for my data access request to be processed by the party concerned?

**A** In general, the party concerned is required to comply with your data access request not later than 40 days after receiving it. If the party concerned has valid grounds to refuse to comply with your request, it should also reply to you with reasons within 40 days. If the party concerned is unable to comply with the request within 40 days of its receipt due to certain reasons (e.g. data being stored overseas), it should also inform you of the situation within the same 40-day period and comply with the request as soon as practicable thereafter.

## 9. I do not know whether the party concerned holds the data requested by me. Does the party concerned need to reply to me after receiving my data access request?



**A** Choices are provided in the Form for you to request the party concerned:

- (i) to inform you if it holds the data requested;
- (ii) to supply you with a copy of the data requested; or
- (iii) to comply with both (i) and (ii).

You just need to tick your choice and the party concerned will reply to you accordingly.

## 10. Must I make a data access request by myself or can I authorize another individual to make a data access request on my behalf? Can a person make a data access request on behalf of another person who is under the age of 18 or incapable of managing his/her own affairs?

**A** Apart from making a data access request yourself, you can authorize another person in writing to make a data access request on your behalf. The party concerned may require the authorized person to

produce your identity proof and your authorization. Where an individual is a minor under the age of 18, a person with parental responsibility for such individual can make a data access request on his/her behalf. In addition, where an individual is incapable of managing his/her own affairs, a person appointed by the court to manage his/her affairs can make a data access request on his/her behalf. In the two latter situations, the person who makes the request on behalf of another individual may be required by the party concerned to provide identity proof of the individual whose personal data are sought and proof of his/her relationship with that individual, e.g. copy of relevant birth certificate or court order (as the case may be).

**11. Can I request the party concerned, when complying with my data access request, to provide me with a copy of the requested data in a language of my choice?**

You may indicate in the appropriate space provided in Part VII of the Form your request for a copy of the requested data in English, Chinese or the language in which the data are held. However, if the language in which the data are held is not the language specified in the request, the party concerned may choose to provide a true copy of the document which contains the data without providing a translation of the same.

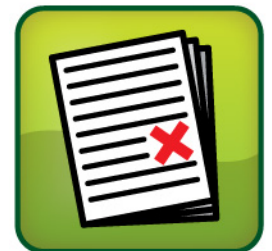
**12. Can I request the party concerned, when complying with my data access request, to provide me with a copy of the requested data in a specified form (e.g. computer disk, microfilm etc.)?**

You may make such a request and space is provided in the Form for you to do this. However, if it is not reasonably practicable for the party concerned to supply the copy in the form specified by you, it may provide the copy in another form. For example, if the personal data requested are on an audiotape and it is not reasonably practicable to make a hard copy transcript at your request, the party concerned may provide a copy of the tape to you.



**13. What can I do if I find that my personal data provided in response to a data access request are inaccurate?**

You can request for correction of the relevant personal data. Such data correction request is provided for under the Ordinance. Similar to data access requests, the party receiving a data correction request shall also respond within 40 days. If your request is complied with, the party should provide you with a copy of the corrected data. If not, the party should inform you why this has not been done.



**14. Is there a prescribed form for making a data correction request?**

No, you can simply make your request in writing and provide all the supporting documentation you may have to show that the data concerned are inaccurate, and specify how the data should be corrected.

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◆ **Disclaimer**

The information provided in this fact sheet is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance (the "Ordinance"). For a complete and definitive statement of the law, direct reference should be made to the Ordinance itself. The Privacy Commissioner for Personal Data (the "Commissioner") makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and power conferred to the Commissioner under the Ordinance.

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# PERSONAL DATA (PRIVACY) ORDINANCE DATA ACCESS REQUEST FORM

# Sample

Data access request made by a data subject

**SAMPLE**

**Part I: Data User**  
**Particulars of the Data User to whom this data access request is made**

Name<sup>1</sup> (full name in block letters): ABC COMPANY  
(for the attention of) Cheung Yat  
Address: 8/E, 1 Hong Kong Street, Hong Kong

**Part II: Data Subject**  
**Particulars of the Data Subject making this data access request**

Name in English (full name in block letters, surname first): CHAN YEE  
Name in Chinese (if any): 陳怡  
Personal identifier, e.g. Hong Kong Identity Card number<sup>2</sup>/ passport number or other identification number previously assigned by the Data User (if any, such as student number, staff number, patient number, account number, membership number or other reference number): Staff No. 12345  
Correspondence address: Flat A, 15/E, Kowloon Road, Kowloon  
Day time contact phone number: 2999 2999  
Email address (if any): \_\_\_\_\_

**[This part must be completed if this request is made by a Requestor other than the Data Subject]**

**Part III: The Requestor**  
**Particulars and capacity of the Requestor<sup>4</sup>**

Name in English (full name in block letters, surname first): \_\_\_\_\_  
Name in Chinese (if any): \_\_\_\_\_  
Correspondence address: \_\_\_\_\_  
Day time contact phone number: \_\_\_\_\_  
Email address (if any): \_\_\_\_\_

This data access request is made in my capacity as a "relevant person" on behalf of the Data Subject as follows:

the Data Subject is a minor and I have parental responsibility over the Data Subject;  
 the Data Subject is incapable of managing his/her own affairs and I have been appointed by a court to manage those affairs or  
 I am authorized in writing by the Data Subject to make this data access request on his/her behalf.

(Please give a tick in the appropriate box)

1 Please fill in the full name of the Data User to whom the data access request is addressed.  
2 If you have previously been informed by the Data User of the name or title of the person to whom such a data access request may be made, please fill in here the name and/or title of such person.  
3 For Data Subject who is Hong Kong Identity Card holder. Please note that the information may assist the Data User to retrieve or locate the Requested Data. The identity card number needs not be provided in this Form if you have reasonable grounds to believe that this will not be necessary for the unique identification of the Data Subject by the Data User in the circumstances.  
4 The Data User may require reasonably sufficient personal information from you to satisfy itself as to your identity before it can comply with this data access request.

**SAMPLE**

In proof of my above capacity, I hereby enclose the following:-  
(Please give a tick in the appropriate box)

- copy of birth certificate
- copy of court order
- written authorization
- others, please specify: \_\_\_\_\_

**Part IV: The Requested Data**

This data access request is made under section 18(1) of the Ordinance for the following personal data of the Data Subject, except those specifically excluded under Part V of this Form:-

Description of the Requested Data<sup>5</sup>:

*Performance Appraisal Report*

Date around which or period within which the Requested Data were collected (if known):

*January 2008 ~ November 2009*

The name of the branch or staff member of the Data User who collected the Requested Data (if known):

*Li Sam - Personnel Manager*

**Part V: Exclusions**

I do not require any personal data<sup>6</sup> which are:

- contained in documents which had previously been provided to the Data User by the Data Subject (e.g. letters to the Data User and/or the Requestor from the Data Subject)
- contained in documents which had previously been provided to the Data Subject by the Data User (e.g. letters to the Data Subject and/or the Requestor from the Data User or documents the Data User had provided to the Data Subject and/or the Requestor pursuant to a previous request)
- in the public domain (e.g. newspaper clippings or entries in public registers concerning the Data Subject)
- set out below (please describe as fully as possible):

(Please tick and complete where appropriate)

- 5. Please specify clearly and in detail the personal data requested (e.g. personal data contained in appraisal reports, medical records, credit reports) including further information, if any, such as the particular incident or transaction in association with it, the circumstances under which the personal data were collected or held, etc. to facilitate the location of the Requested Data. Too general a description of the Requested Data, such as "all of my personal data", may render the request being refused by the Data User pursuant to section 20(3)(b) of the Ordinance where the Data User is not supplied with such information as it may reasonably require to locate the personal data to which the request relates.
- 6. Please tick to exclude, as far as possible, any personal data that you do not wish to include in the scope of the Requested Data. This may help to avoid any unnecessary delay or charge in complying with the data access request.

**SAMPLE**

**Part VI: The Request**

I hereby request you:-

- (a) to inform me whether you hold the Requested Data<sup>7</sup>
- (b) to supply to me a copy of the Requested Data that you hold<sup>8</sup>, subject to the exclusions in Part V above
- both (a) and (b)

(Please give a tick in the appropriate box)

**Part VII: Preferred Manner of Compliance**

I would prefer that you<sup>9</sup>:

- send by registered mail a copy of the Requested Data to me at my correspondence address given in this Form
- send by ordinary mail a copy of the Requested Data to me at my correspondence address given in this Form
- supply to me a copy of the Requested Data in the \*English/Chinese/in the language in which the data are held<sup>10</sup> (\*Please delete where appropriate).
- supply to me a copy of the Requested Data in the form of \_\_\_\_\_ (e.g. computer disk, microfilm, etc.)<sup>11</sup>

(Please tick and complete where appropriate)

**Part VIII: Further Information and Payment**

I understand that before complying with this request, you may require me to provide<sup>12</sup>:

- (a) proof of my identity;
- (b) proof of the Data Subject's identity if I am making this request as a relevant person and further proof of my status as a relevant person;
- (c) such further information as may be reasonably required for you to locate the Requested Data;
- (d) payment of a fee charged under section 28 of the Ordinance<sup>13</sup>.

**Part IX: Use of Personal Data**

Except with the prescribed consent of the individual concerned, the personal data provided in this Form will be used for the purpose of processing this data access request and other directly related purposes only.

*7 September 2010*

Date

*Chan Yee*

Signature of the Requestor

- 7. By ticking this box, the Requestor indicates that he is requesting only for a confirmation of "Yes" or "No" as to whether the Data User holds the Requested Data and is not requesting the Data User to provide a copy of the Requested Data.
- 8. By ticking this box, the Requestor indicates that he is requesting only for a copy of the Requested Data. If the Requestor is uncertain whether or not the Data User holds the Requested Data, it is advisable to tick both boxes (a) and (b) so that the Data User will need to notify the Requestor even if he does not hold the Requested Data.
- 9. However, compliance with the data access request may not be in the preferred manner where this is not reasonably practicable.
- 10. If the language specified is not the language in which the data are held, it will be sufficient to provide a true copy of the document which contains the data.
- 11. If the Data User is unable to supply the form as specified because it is not practicable for the Data User to do so, it will be sufficient to supply the form in which it is practicable for the Data User to supply and accompanied by a written notice to inform the Requestor of the same.
- 12. Failure to provide the information as required by the Data User under this Part may result in the data access request being refused, or not being complied with to the desired extent.
- 13. Sections 28(2) and (3) of the Ordinance provide that a fee may be charged for complying with a data access request made under section 18(1)(a) or (b), which fee shall not be excessive. According to section 28(5) of the Ordinance, compliance with a data access request may be refused unless and until any such fee has been paid.

# PERSONAL DATA (PRIVACY) ORDINANCE DATA ACCESS REQUEST FORM

# Sample

Data access request made by a relevant person  
on behalf of the data subject

**SAMPLE**

## Part I: Data User

Particulars of the Data User to whom this data access request is made

Name<sup>1</sup> (full name in block letters): Healthy Hospital  
(for the attention of: \_\_\_\_\_)  
Address: 1 Keung Kin Road, Hong Kong

## Part II: Data Subject

Particulars of the Data Subject making this data access request

Name in English (full name in block letters, surname first): CHAN SIU MING  
Name in Chinese (if any): 陳小鳴  
Personal identifier, e.g. Hong Kong Identity Card number<sup>2/3</sup>/ passport number or other identification number previously assigned by the Data User (if any, such as student number, staff number, patient number, account number, membership number or other reference number): Patient Number 12345  
Correspondence address: Flat B, 6/F, Kowloon Road, Kowloon

Day time contact phone number: \_\_\_\_\_  
Email address (if any): \_\_\_\_\_

[This part must be completed if this request is made by a Requestor other than the Data Subject]

## Part III: The Requestor

Particulars and capacity of the Requestor<sup>4</sup>

Name in English (full name in block letters, surname first): Lee Yuk-Ling  
Name in Chinese (if any): 李玉玲  
Correspondence address: Flat B, 6/F, Kowloon Road, Kowloon  
Day time contact phone number: 3999 3999  
Email address (if any): \_\_\_\_\_

This data access request is made in my capacity as a "relevant person" on behalf of the Data Subject as follows:

- the Data Subject is a minor and I have parental responsibility over the Data Subject;
- the Data Subject is incapable of managing his/her own affairs and I have been appointed by a court to manage those affairs or
- I am authorized in writing by the Data Subject to make this data access request on his/her behalf.

(Please give a tick in the appropriate box)

- 1 Please fill in the full name of the Data User to whom the data access request is addressed.
- 2 If you have previously been informed by the Data User of the name or title of the person to whom such a data access request may be made, please fill in here the name and/or title of such person.
- 3 For Data Subject who is Hong Kong Identity Card holder. Please note that the information may assist the Data User to retrieve or locate the Requested Data. The identity card number needs not be provided in this Form if you have reasonable grounds to believe that this will not be necessary for the unique identification of the Data Subject by the Data User in the circumstances.
- 4 The Data User may require reasonably sufficient personal information from you to satisfy itself as to your identity before it can comply with this data access request.



**SAMPLE**

In proof of my above capacity, I hereby enclose the following:-  
(Please give a tick in the appropriate box)

- copy of birth certificate
- copy of court order
- written authorization
- others, please specify : \_\_\_\_\_

**Part IV: The Requested Data**

This data access request is made under section 18(1) of the Ordinance for the following personal data of the Data Subject, except those specifically excluded under Part V of this Form:-

Description of the Requested Data:

*Medical Record*

Date around which or period within which the Requested Data were collected (if known):

*January 2010 ~ May 2010*

The name of the branch or staff member of the Data User who collected the Requested Data (if known):

*Dr. Cheung Shing, Head of Department of Paediatrics*

**Part V: Exclusions**

I do not require any personal data<sup>6</sup> which are:

- contained in documents which had previously been provided to the Data User by the Data Subject (e.g. letters to the Data User and/or the Requestor from the Data Subject)
- contained in documents which had previously been provided to the Data Subject by the Data User (e.g. letters to the Data Subject and/or the Requestor from the Data User or documents the Data User had provided to the Data Subject and/or the Requestor pursuant to a previous request)
- in the public domain (e.g. newspaper clippings or entries in public registers concerning the Data Subject)
- set out below (please describe as fully as possible):

(Please tick and complete where appropriate)

- 5. Please specify clearly and in detail the personal data requested (e.g. personal data contained in appraisal reports, medical records, credit reports) including further information, if any, such as the particular incident or transaction in association with it, the circumstances under which the personal data were collected or held, etc. to facilitate the location of the Requested Data. Too general a description of the Requested Data, such as "all of my personal data", may render the request being refused by the Data User pursuant to section 20(3)(b) of the Ordinance where the Data User is not supplied with such information as it may reasonably require to locate the personal data to which the request relates.
- 6. Please tick to exclude, as far as possible, any personal data that you do not wish to include in the scope of the Requested Data. This may help to avoid any unnecessary delay or charge in complying with the data access request.

**Part VI: The Request**

I hereby request you:-

- (a) to inform me whether you hold the Requested Data<sup>7</sup>
- (b) to supply to me a copy of the Requested Data that you hold<sup>8</sup>, subject to the exclusions in Part V above
- both (a) and (b)

(Please give a tick in the appropriate box)

**Part VII: Preferred Manner of Compliance**

I would prefer that you<sup>9</sup>:

- send by registered mail a copy of the Requested Data to me at my correspondence address given in this Form
- send by ordinary mail a copy of the Requested Data to me at my correspondence address given in this Form
- supply to me a copy of the Requested Data in the \*English/Chinese/in the language in which the data are held<sup>10</sup> (\*Please delete where appropriate).
- supply to me a copy of the Requested Data in the form of \_\_\_\_\_ (e.g. computer disk, microfilm, etc.)<sup>11</sup>

(Please tick and complete where appropriate)

**Part VIII: Further Information and Payment**

I understand that before complying with this request, you may require me to provide<sup>12</sup>:

- (a) proof of my identity;
- (b) proof of the Data Subject's identity if I am making this request as a relevant person and further proof of my status as a relevant person;
- (c) such further information as may be reasonably required for you to locate the Requested Data;
- (d) payment of a fee charged under section 28 of the Ordinance<sup>13</sup>.

**Part IX: Use of Personal Data**

Except with the prescribed consent of the individual concerned, the personal data provided in this Form will be used for the purpose of processing this data access request and other directly related purposes only.

*7 September 2010*

Date

*Lee Yuk-Ling*

Signature of the Requestor

- 7. By ticking this box, the Requestor indicates that he is requesting only for a confirmation of "Yes" or "No" as to whether the Data User holds the Requested Data and is not requesting the Data User to provide a copy of the Requested Data.
- 8. By ticking this box, the Requestor indicates that he is requesting only for a copy of the Requested Data. If the Requestor is uncertain whether or not the Data User holds the Requested Data, it is advisable to tick both boxes (a) and (b) so that the Data User will need to notify the Requestor even if he does not hold the Requested Data.
- 9. However, compliance with the data access request may not be in the preferred manner where this is not reasonably practicable.
- 10. If the language specified is not the language in which the data are held, it will be sufficient to provide a true copy of the document which contains the data.
- 11. If the Data User is unable to supply the form as specified because it is not practicable for the Data User to do so, it will be sufficient to supply the form in which it is practicable for the Data User to supply and accompanied by a written notice to inform the Requestor of the same.
- 12. Failure to provide the information as required by the Data User under this Part may result in the data access request being refused, or not being complied with to the desired extent.
- 13. Sections 28(2) and (3) of the Ordinance provide that a fee may be charged for complying with a data access request made under section 18(1)(a) or (b), which fee shall not be excessive. According to section 28(5) of the Ordinance, compliance with a data access request may be refused unless and until any such fee has been paid.