



## Personal Data Privacy: *Guidance on Property Management Practices*

### Introduction

This guidance note serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance (the "**Ordinance**") in relation to property management practices or activities that may involve the collection and/or use of personal data of individuals.

In the course of property management, *personal data* (such as names, addresses, identity card numbers and other information) of flat owners, residents and other individuals (*data subjects*) are often collected and used by property management bodies like owners' corporations, owners' committees, mutual aid committees or property management agents (*data users*). These activities are subject to the requirements of the Ordinance, where the following data protection principles ("**DPPs**") are of particular relevance.

**DPP1(1)** forbids the collection of unnecessary or excessive personal data.

**DPP1(2)** regulates the means by which personal data are collected. Those means must be lawful and fair in the circumstances of the case.

**DPP1(3)** generally requires a data user, on or before collecting personal data directly from a data subject, to notify the data subject of certain matters, including:

- (i) whether it is obligatory or voluntary for him to supply the data and, where obligatory, the consequences for him if he fails to supply the data;
- (ii) the purpose for which the data are to be used;
- (iii) the classes of persons (if any) to whom the data may be transferred; and
- (iv) (before first use of the data) his rights to

request access to and correction of the data, and the person to whom such request may be made.

Such notification is usually called a personal information collection statement ("**PICS**").

**DPP3** requires that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data or a directly related purpose. In this context, "use" includes disclosure or transfer of the data.

In addition, paragraphs 2.2 and 2.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (the "**PI Code**") issued by the Privacy Commissioner for Personal Data (the "**Commissioner**") set out the situations under which an identity card number may be collected. Any breach of those provisions shall be admitted as evidence for establishing a contravention of the relevant requirement under DPP1 in proceedings under the Ordinance before a magistrate, a court or the Administrative Appeals Board<sup>1</sup>.

It should also be noted that under section 65(2) of the Ordinance, any act done or practice engaged in by an agent shall be treated as done or engaged in by his principal as well as by him. Accordingly, an owners' corporation may be held liable for the acts done or practices engaged in by its property manager in the course of managing the buildings on its behalf.

The following notes are meant to assist property management bodies in better understanding the application of the Ordinance to specific situations commonly encountered by them, with a view to promoting compliance with the relevant

<sup>1</sup> Section 13 of the Ordinance

requirements of the DPPs or the PI Code, as well as the adoption of good practices in the handling of personal data. Please however note that nothing herein shall prejudice or affect the exercise of any powers or functions of the Commissioner in dealing with similar situations that may come before him.

### **Application of building entry pass or smart card**

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It is becoming more and more common for property management bodies of private housing estates to install automated or electronic door access card systems at the entrances of their buildings. When introducing such a system, the property manager usually requires flat owners or tenants to submit in the access card application forms information about the authorized users of the cards. In collecting personal data about the applicant, the name as well as flat number and contact telephone number will generally suffice for the property manager to identify the applicant in question against the records kept by it and to process the application. Since other users named in the application form who are allowed access to the building are only those authorized by the applicant, the collection of their names is generally regarded as sufficient for the purpose of issuance of the cards since in case of doubt, verification of the identities of such users can always be done with the applicant. The collection of their identity card numbers is hardly justifiable.

Some property managers may believe that collection of the identity card numbers of the card users is necessary for subsequent uses for the purpose of prevention or detection of crime should these cards be misused. The Commissioner is however of the view that when the property staff finds the identity of the person using a door access card to gain entry into the building suspicious, the property staff may ask the person's name for checking against the system's database and if necessary request for production of the person's identity card to verify his name. In situations where it becomes necessary to trace the authorized user whose access card was misused by criminals or wrongdoers causing loss of or damage to properties or persons inside the building, it is always possible for him to be identified or traced through the flat owner or tenant who

allowed the issuance of the access card to the user in question.

While identity card number is an important item of personal data, the Commissioner considers it unnecessary or excessive to collect identity card numbers of all residents in the estate because of the installation of a door access card system or for the purpose of covering any speculative risk of loss without proper justification.

The door access card application form should contain a PICS informing data subjects of the matters required under DPP1(3), including, in particular, the purpose of collection of the data and the possible transferees of those data.

### **Recording of names and identity card numbers of visitors**

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For security reasons, property manager needs to monitor the entry and exit of visitors who are not entitled to enter the building without permission. If monitoring of the activities of the visitor inside the building is not feasible, it may be necessary to record the visitor's identity information for future identification. In this situation, the recording of identity card numbers of visitors by security staff in a log book located at the entrance of the building is allowed under paragraph 2.3.4.2 of the PI Code. However, pursuant to paragraph 2.2 of the PI Code, the security staff should wherever practicable give the visitor the option to choose any less privacy-intrusive alternatives in lieu of providing his identity card number. Examples of such alternatives may include accepting staff card or work permit proof from employees of public bodies or related organizations or public utilities, delivery men or workers who wish to gain entry to specific part of the building for execution of their job duties, or identification by the resident being visited. If the security staff is doubtful about the purpose of visit and as an additional security measure, he may seek to verify with the issuing body of the staff card or work permit produced, or alternatively to obtain confirmation from the relevant flat owner and/or occupier. The adoption of these less privacy-intrusive alternatives may be equally effective for the security purpose of warding off trespassers.

The security staff should take appropriate measures to ensure that the entries in the log book are concealed from subsequent visitors. Clear notice should be given to the visitors of the alternatives to the provision of identity card numbers, and of the matters required under DPP1(3), including, in particular, the purpose of collecting their names and identification document numbers, and the possible transferees of those data.

Property management bodies must ensure that the personal data of visitors collected are only used for the purpose consistent with or directly related to the original purpose of collection, unless otherwise permitted by law. It is recommended that in normal circumstances, entries in the visitor log book be retained for a period of not more than one month. However, there may exist valid grounds justifying a longer retention period, e.g. where the records are required for evidentiary purposes or to assist a police investigation of detected or reported unlawful activities.

### **Recording of personal data of car park users**

Some property management bodies may wish to collect personal data such as names and identity card numbers of drivers using their car parks which are open to the public. Some of them may believe that this could deter, or help in any investigation of, car theft from their car park. However, the Commissioner advises against such collection of personal data from the drivers, which is privacy-intrusive and may result in contravention of DPP1(1) of the Ordinance.

To tackle the car theft problem, the Hong Kong Police Force has recommended a series of measures to strengthen car park security, including the employment of adequate and qualified or experienced staff, routine patrols, better lighting systems, the use of CCTVs monitoring, the introduction of vehicle entry/exit control procedures, and displaying and distributing to car park users crime prevention tips for car protection, etc.

One practical measure is to adopt a "double permit" system whereby the vehicle registration number is marked on an "exit pass" given to the driver when

he drives into the car park, so that security staff at the exit may then collect and check the same when the vehicle leaves the car park. An alternative is to install electronic devices designed to capture the image of the number plate when the vehicle enters the car park and have it checked against the registration number of the vehicle leaving the car park to ensure that the same car park ticket is used for the same vehicle.

In a recent decision of the Administrative Appeals Board<sup>2</sup>, the Board upheld the finding of the Commissioner that the property manager of a car park had contravened the requirements of paragraph 2.3 of the PI Code and DPP1(1) of the Ordinance for unnecessarily collecting identity card numbers of drivers using the car park.

### **Proxy form for owners' meeting**

Proxy forms are generally used in owners' meetings for flat owners to appoint representatives to attend and vote in the meetings where affairs relating to the management of the buildings are discussed. Unless otherwise prescribed by law<sup>3</sup>, generally speaking, a proxy form need not contain the identity card number of the individual owner or that of the person being appointed as proxy.

In the event of a dispute about whether a person presenting himself to be a proxy is indeed the appointed person entitled to attend and vote at the meeting, the convenor of the meeting may take practicable steps to verify the identity of the appointee, e.g. by checking the name on his identity card or contacting the owner.

If the convenor has concern over unauthorized proxy votes, he may consider using proxy forms with serial numbers authenticated by, for example, the seal of the issuing body, and have them delivered to the letter boxes of individual owners.

On or before the collection of personal data from the owner, reasonably practicable steps should be taken to inform the owner of the matters required under DPP1(3), including, in particular, the collection purpose of the data and the parties to whom the data may be disclosed, e.g. other owners

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<sup>2</sup> *Administrative Appeal No.41 of 2004.*

<sup>3</sup> *In the Building Management (Amendment) Bill 2005, a standard format of proxy instrument is proposed, which does not require the provision of identity card number of the owner nor that of the proxy.*

of the building. It is recommended that a PICS be included in, or attached to, the proxy form. The appointing owner should also be reminded to obtain the consent of the proxy for using his personal data in the proxy form, and to inform the proxy of the purpose for, and the manner in which, his data may be used.

### **Minutes of meeting or notices to residents relating to building management affairs**

During the course of building management, property managers or other management bodies would from time to time, during meetings or otherwise, obtain information relating directly or indirectly to owners, residents or other individuals. Such information may be recorded in minutes of meetings or notices to residents that are usually posted on notice boards at the entrances of buildings. The public display of personal data contained in the posted documents may raise issues under DPP3 which restricts the purpose of disclosing the data to their original collection purpose or a directly related purpose.

Although the Building Management Ordinance requires the display of certified minutes of meetings of the owners' corporation and its management committee in a prominent place in the building, one should be mindful that the contents of the minutes (or other documents being posted) may carry personal data the public display of them may be objectionable to the individuals concerned. This will give rise to misunderstanding or conflicts between the individual and the party posting the document, or between owners. As a matter of good property management and prudent personal data practice, the identifying information of the individual which are not necessary for the purpose of posting the document should be blocked out or omitted from the document wherever practicable.

In view of the privacy-intrusive nature of openly displaying or widely circulating information about an individual, the Commissioner strongly advises property management bodies to carefully consider and assess the appropriateness and extent of publishing data relating to an individual, in particular when sensitive personal data are involved, unless the individual's express consent has been obtained

prior to publication<sup>4</sup>. The property manager should ensure that an identity card number and the name of the holder are not displayed together publicly.

### **Handling of complaints from owners or other individuals**

Property managers may from time to time receive complaints from owners or other individuals about matters concerning the buildings or acts of the occupiers. Personal data of the complainant may be collected by the manager for handling the complaint. Upon receipt of the complaint, and as a matter of good practice, the manager should first inform the complainant that the data are to be used for handling matters relating to the complaint, and make known to the complainant the persons to whom the data may be disclosed. Any subsequent use or disclosure of the data should be confined to the handling of the complaint, or directly related matters, in order not to fall foul of DPP3.

There may be occasions where complainants do not wish to have their identities disclosed to other parties. If non-disclosure of the complainant's identity does not affect the handling of the complaint, the property manager should always consider complying with the complainant's wish. If non-disclosure makes it impracticable for the property manager to take follow-up actions and to deal with the matters complained of, the manager should explain this to the complainant so as to gain his understanding of the situation.

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<sup>4</sup> In *Administrative Appeal No. 47 of 2004*, although the *Administrative Appeals Board* ruled that in the circumstances of the case there was no contravention of DPP3 by the management company in displaying to other owners of the building a complaint letter containing the complainant's mobile telephone number; the Board was of the view that it would be good practice if the telephone number was deleted prior to displaying the document in question.