

## CONTENTS

The Right of Subject Access

Compliance with Data Access Request

Non-Compliance with Data Access Request

Notification of Non-Compliance with Data Access Request

The Right of Data Correction

Compliance with Data Correction Request

Non-Compliance with Data Correction Request

Notification of Non-Compliance with Data Correction Request

Erasure of Personal Data No Longer Required

Log Book to be Kept by Data User

Collection of Fees by Data User

Service and Language of Certain Notices

Glossary

Home Affairs Branch    March 1996 (First Print)

Office of the Privacy Commissioner for Personal Data    January 1997 (Re-Print)

*[This booklet only provides practical guidance in preparing for compliance with the Ordinance. The information is by no means exhaustive or definitive. Readers are advised to refer to the provisions of the Personal Data (Privacy) Ordinance for a complete and definitive statement of the law.]*

## SECTION 1 The Right of Subject Access

1.1 The Ordinance provides that an individual or a relevant person on behalf of an individual is entitled to make a data access request to : (a) ascertain from the data user whether the data user holds personal data of which he is the data subject; and (b) if the data user holds such data, to be supplied with a copy of such data.[section 18(1) (a) & (b) of the Ordinance.]

## SECTION 2 Compliance with Data Access Request

### **Timing**

2.1 A data user is required to comply with a data access request within 40 days after receiving the request. If he is unable to comply with the request, in whole or in part, within the 40 day reply period, he must within such period inform the data subject in writing that he is unable to do so and give the reasons why this is so. He must also fully comply with the request as soon as reasonably practicable after the expiry of the 40 day reply period.[section 19(1) & (2) of the Ordinance.]

### **Content**

2.2 The copy of personal data to be supplied must be such personal data as is held at the time when the request is made. Any processing (including amending, augmenting, deleting or rearranging) of the data between the time the data access request is received and before the copy is supplied that would have been undertaken irrespective of the receipt of the request is not affected by this requirement. In other words, there is no requirement to stop normal data processing activities because a data access request has been received.[section 19(3) (a) (i) of the Ordinance.]

2.3 For the first year of operation of the Ordinance, a data user is allowed to correct personal data, which may include erasure, between receipt of an access request for that data and supplying a copy to the requesting party. When supplying a copy of personal data that has been corrected under this provision, the data user is required to inform the data subject with a notice that such a correction has been made.[section 19(3) (a) (ii), 19(3) (b) & 19(5) of the Ordinance.]

2.4 A copy of the personal data to be supplied should be intelligible unless it is a true copy of a document that contains the data and is unintelligible on its face. If the personal data contains any codes used by the data user, they should be adequately explained such that they are readily comprehensible by the data subject, whether or not a true copy of a document is supplied.[section 19(3) (c) (i) & (ii) of the Ordinance.]

### **Language**

2.5 If a data user holds the relevant personal data of a data access request in only one

language and the copy to be supplied is a true copy of the document containing such data, the data user is not required to provide a copy of such data in any other language. This applies even if the data subject specifies in the data access request that he/she wishes to receive the data in another language.

2.6 If a data user holds the personal data sought under a data access request in more than one language and the data subject specifies in the data access request that he/she wishes to receive the data in one of these languages, the data user is required to provide a copy of the data in the language specified by the data subject.

2.7 Where the data user intends to supply the personal data other than in the form of a true copy of a document he should provide the data in either English or Chinese. The choice of English or Chinese should be made in accordance with any specific request by the data subject for one or other. In default of such a request, the choice should be made in accordance with the language used in the request, where this is in either Chinese or English. If the data access request is in a language other than Chinese or English, subject access may be refused (paragraph 3.4 below refers).[section 19(3) (c) (iii) of the Ordinance.]

### **Form**

2.8 If a data user holds the personal data sought under a data access request in one or more forms and one of the forms is a form sought by the data subject in the data access request, the data user is required to provide a copy of the data in the form specified by the data subject.

2.9 If a data user holds personal data in only one form and is unable to provide (because it is not practicable for him to do so) a copy of the relevant personal data of a data access request in a form sought by the data subject (for example, he only holds the personal data in paper file form, but the data subject seeks a copy in computerised form), the data user may provide a copy of such data in the form he is able to provide the data. A notice in writing must be attached informing the data subject that this is the only form which the data can be supplied.

2.10 If a data user can provide a copy of the personal data of a data access request in one or more forms but none is the form or forms sought by a data subject, the data user must inform the data subject, by notice in writing, of the various forms in which he can supply the data. The data user must also inform the data subject that he or she may specify within 14 days in which of those forms he or she would like the copy to be supplied. If the data user receives such a reply from the data subject, he is required to supply a copy of the data in the form specified in the reply. If he does not receive any reply within 14 days, he may supply a copy of the data in such form as he thinks fit.[section 19(3) (c) (iv) & (v) and 19(4) of the Ordinance.]

### SECTION 3 Non-Compliance with Data Access Request

#### **Data User Shall Refuse**

3.1 A data user shall refuse to comply with a data access request under any of the circumstances set out in paragraphs below.

3.2 A data user shall refuse to comply with a data access request from a data subject if he is not provided with sufficient information to identify the data subject. In the case of a data access request submitted by a person on behalf of the data subject (a relevant person), he shall refuse the request if he is not provided with sufficient information to identify the data subject, or the person seeking the data, or to be satisfied that the person seeking the data is properly authorised to do so.[section 20(1) (a) of the Ordinance.]

3.3 If the personal data sought under the data access request comprises personal data of another individual, and the data user cannot comply with the request without disclosing the personal data of that other individual, he shall refuse to comply with a data access request. This prohibition does not apply where the data user is satisfied that the other individual has consented to the disclosure of the data to the data subject submitting the request. This prohibition also does not apply to the extent that a data user can comply with a data access request without disclosing the identity of that other individual, for example by the omitting of names or other identifying particulars.[section 20(1) (b) & 20(2) of the Ordinance.]

#### **Data User May Refuse**

3.4 A data user may refuse to comply with a data access request if :

- (a) the request is not in writing in Chinese or English;
- (b) he is not provided with sufficient information to locate the personal data that are being requested;
- (c) the request follows two or more similar requests made by the data subject or a relevant person on his or her behalf and it is unreasonable for the data user to comply;
- (d) another data user controls the use of the personal data concerned in such a way that prohibits the data user receiving the data access request from complying with the request;
- (e) the data access request is not made in a form which has been specified under section 67 of the Ordinance if such a form has been specified; or
- (f) there is an applicable exemption from subject access provided for in Part VIII of the Ordinance.[section 20(3) of the Ordinance.]

### SECTION 4 Notification of Non-Compliance with Data Access Request

4.1 If a data user declines to comply with a data access request for any of the reasons

set out in the above paragraphs, he must inform the data subject concerned by notice in writing with the reasons of the refusal within 40 days of receiving the request. If he refuses to comply with a data access request because another data user controls the use of the personal data concerned in such a way that prohibits him from complying with the request, he is required, in the notice to the data subject, to provide the name and address of the other data user concerned.[section 21(1) of the Ordinance.]

4.2 If a data user refuses to comply with a data access request because of an applicable exemption provided for in section 57 - Security, etc. in respect of Hong Kong, or section 58 - Crimes, etc. of the Ordinance, and the data are also exempt from the requirement to confirm whether or not the data user holds personal data relating to that data subject because the interest protected by that exemption would be likely to be prejudiced by such confirmation, then the data user may in the notice to the data subject adopt wording along the lines of "I have no personal data the existence of which I am required to disclose to you?"[section 21(2) of the ordinance.]

4.3 Refusals to comply with data access requests and the reasons for refusal must be entered into a log book. Further details on the log book to be kept by data users are given in section 10 below.

#### SECTION 5 The Right of Data Correction

5.1 Following the supply by a data user of a copy of personal data in compliance with a data access request, the data subject is entitled to ask for correction of the personal data concerned if he considers that the data are inaccurate. This is done by means of a data correction request to the data user. Such a request may also be made by a properly authorised relevant person.[section 22(1) of the Ordinance.]

5.2 If a data user, following the receipt of a data correction request but before complying or not with the request, discloses to a third party the personal data to which the request relates, then the data user should, if it is practicable to do so, advise the third party concerned that the data are being considered for correction.[section 22(3) of the Ordinance.]

#### SECTION 6 Compliance with Data Correction Request

6.1 If a data user is satisfied that personal data which are subject to a data correction request are inaccurate, he is required to make the necessary correction and supply the data subject with a copy of the corrected personal data within 40 days of receiving the request. If a data user is unable to comply with a data correction request in whole or in part within the 40 day reply period, he must within such period inform the data subject in writing that he is unable to do so and give the reasons why. He must then fully comply with the request as soon as reasonably practicable after the expiry of the 40 day reply period.[section 23(1) (a) &(b) and 23(2) of the Ordinance.]

6.2 If the personal data of a data correction request have been disclosed to a third party during the past 12 months before the day of correction of the data and the data user has no reasons to believe that such a third party has ceased using those data, he should supply such a third party with a copy of the corrected personal data and a written notice of the reasons for the correction. This requirement does not apply where the third party has obtained the data concerned by inspection of a public register without receipt of a certified copy.[section 23(1) (c) & 23(3) of the Ordinance.]

## SECTION 7 Non-Compliance with Data Correction Request

### **Data User Shall Refuse**

7.1 A data user shall refuse to comply with a data correction request from a data subject if he is not provided with sufficient information to identify the data subject. In the case of a data correction request submitted by a person on behalf of the data subject (a relevant person), he shall refuse the request if he is not provided with sufficient information to identify the data subject, or the relevant person, or to be satisfied that the relevant person is properly authorised to seek correction.[section 24(1) of the Ordinance.]

7.2 If an individual, who submits a data correction request following a data access request, is the same individual that submitted the data access request, the data user cannot refuse to comply with such a data correction request for the reason of having insufficient information to identify the data subject, or the relevant person. However, in the case of a relevant person the data user should still ensure that such a person has been properly authorised to make the correction.[section 24(2) of the Ordinance.]

### **Data User May Refuse**

7.3 A data user may refuse to comply with a data correction request if :

- (a) the request is not in writing in Chinese or English;
- (b) he is not satisfied that the personal data are inaccurate;
- (c) he is not provided with sufficient information to ascertain that the personal data are inaccurate;
- (d) he is not satisfied that the correction provided in the request is accurate; or
- (e) any other data user controls the processing of the personal data concerned in such a way that prohibits the data user receiving the data correction request from complying with the request.[section 24(3) of the Ordinance.]

## SECTION 8 Notification of Non-Compliance with Data Correction Request

8.1 If a data user refuses to comply with a data correction request for any of the

reasons set out in the above paragraphs, he must inform the data subject concerned by notice in writing with reasons of the refusal within 40 days of receiving the request. If he refuses to comply with a data correction request because another data user controls the use of the personal data concerned in such a way that prohibits him from complying with the request, the notice of refusal must include the name and address of the other data user concerned.[section 25(1) of the Ordinance.]

8.2 If a data correction request involves the correction of the personal data which is an expression of opinion or an unverifiable fact and the data user is not satisfied that the opinion or unverifiable fact is inaccurate, the data user may refuse to make the correction. In such circumstances, the data user is required to make a note of the data subject's proposed "correction". This should be annexed to the data concerned in such a way that it is drawn to the attention of, or made available for inspection by, any person (including the data user or a third party) who may use such data in future. The data user must also attach a copy of the note to the notice of refusal.[section 25(2) & (3) of the Ordinance.]

8.3 Refusals to comply with a data correction request and the reasons must be entered into the log book referred to in section 10 below.

#### SECTION 9 Erasure of Personal Data no longer required

9.1 A data user is required to erase personal data held by him if such data are no longer required for the purpose for which they have been used unless the erasure is prohibited by law or contrary to the public interest.[section 26 of the Ordinance.]

#### SECTION 10 Log Book to be Kept by Data User

10.1 A data user is required to keep and maintain a log book of any refusals to comply with data access and correction requests. The log book must be kept in Chinese or English. The particulars in the log book must be kept for a minimum period of 4 years.[section 27(1) of the Ordinance.]

10.2 The data user must enter into the log book details of reasons for refusing a data access or correction request in each case.[section 27(2) & (3) of the Ordinance.]

10.3 A data user must allow the Privacy Commissioner or his authorised representative to inspect and copy the log book at any reasonable time and without charge.[section 27(4) of the Ordinance.]

#### SECTION 11 Collection of Fees by Data User

11.1 A data user may charge a data subject or a relevant person making a data access request a fee but this should not be excessive. If a data user provides a copy of personal data in a form other than a form requested by the data subject and the two

forms attract different fees, the lower fee should be levied.[section 28(1), (2), (3) & (4) of the Ordinance.]

11.2 A data user may refuse to comply with a data access request if the individual making such a request has not paid any fee that is applicable to the request.[section 28(5) of the Ordinance.]

11.3 If a data subject or relevant person making a data access request asks for an additional copy of the personal data, the data user may charge a fee to cover the full administrative and other costs in supplying such an additional copy.[section 28(6) of the Ordinance.]

## SECTION 12 Service and Language of Certain Notices

12.1 In handling a data access or correction request, a data user, when serving a notice in writing to a data subject or relevant person, must :

- (a) use the language in which the request is made if it is made in either Chinese or English; or
- (b) use either Chinese or English as he thinks fit if the request is not made in either Chinese or English. [section 29 of the Ordinance.]

## GLOSSARY

"correction" in relation to personal data, means rectification, erasure or completion.

"data" means any representation of information (including an expression of opinion) in any document, and includes a personal identifier.

"data access request" means a request under section 18 of the Ordinance.

"data correction request" means a request under section 22(1) of the Ordinance. [In effect, a request for correction of personal data which is consequent on a data access request in relation to that data.]

"data subject" in relation to personal data, means the individual who is the subject of the data.

"data user" in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.

"inaccurate" in relation to personal data, means the data is incorrect, misleading, incomplete or obsolete.

"personal data" means any data -

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable.

"relevant person" in relation to an individual (howsoever the individual is described), means -

- (a) where the individual is a minor, a person who has parental responsibility for the minor;
- (b) where the individual is incapable of managing his own affairs, a person who has been appointed by a court to manage those affairs;
- (c) in any other case, a person authorised in writing by the individual to make a data access request, a data correction request, or both such requests, on behalf of the individual.[section 2(1) of the Ordinance.]