



Making an Opt-out Request from Direct Marketing Activities under the Personal Data (Privacy) Ordinance

It is common for members of the public to receive unsolicited telephone calls, mail, email, etc. from direct marketers promoting various products and services.

Section 34(1) of the Personal Data (Privacy) Ordinance (the Ordinance) requires an organization to cease to use an individual's personal data for direct marketing purposes upon the individual's request. Failure to observe the request is an offence under section 64(10) of the Ordinance and the organization is liable on conviction to a fine up to \$10,000.

The purpose of this leaflet is to explain the direct marketers' obligations when using your personal data, and your right to be removed from their calling list. In particular, it provides a guide to show you how to make an opt-out request under the Ordinance in order to effectively stop the direct marketer from continuing to use your personal data for direct marketing purposes.

Q1 What is "direct marketing"?

A

Under the Ordinance, "direct marketing" means:

- (a) the offering of goods, facilities or services;
- (b) the advertising of the availability of goods, facilities or services; or
- (c) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes.

by means of —

- (i) information or goods sent to any person by mail, facsimile transmission, electronic mail, or other similar means of communication, where the information or goods are addressed to a specific person or specific persons by name; or
- (ii) telephone calls made to specific person.



Common examples of direct marketing include:

- (1) an offer of a free beauty treatment by a beauty salon;
- (2) a solicitation of application for a new credit card or loan service by a bank;
- (3) an offer of a service upgrade to existing customers by a telecommunications company; or
- (4) an advertisement of a residential unit for sale by a property agency.

Mere greetings from organizations without promoting any goods or services, or the mere notification of the expiry of existing services without offering new services does not constitute “direct marketing” under the Ordinance.

Q2

What are the means of communication in direct marketing?

A

Direct marketing, as defined in the Ordinance, is conducted by mail, fax, email, or other similar means of communication, and is addressed to *a specific person or specific persons by name*, or by telephone calls made to *specific persons*.

Written correspondence sent to “the owner”, “the occupant” or “to whom it may concern”, without naming the individual does not constitute direct marketing under the Ordinance. For telemarketing calls, if the caller makes telephone calls based on telephone numbers generated randomly without knowing the identity of the recipient, the calls are generally not considered direct marketing under the Ordinance. Also, face-to-face offers, advertising or solicitations do not fall within the definition of direct marketing under the Ordinance.



Q3

Under what circumstances can I make an opt-out request?

A

You may request an organization to stop using your personal data for telemarketing at the time the caller makes the call to you or at any time thereafter. If the direct marketing is conducted by mail or email, you may direct your request to the contact provided in the marketing materials. The organization should not charge you any fee for complying with such a request.



Q4

How can I make an opt-out request under the Ordinance?

A

Telemarketing. Upon receiving a telemarketing call from a data user, after ascertaining the identity of the caller and the content of the marketing call, make a verbal opt-out request immediately over the phone by saying: *“I do not wish to receive further marketing calls from your company”* (or words to that effect).

Written materials. For direct marketing materials received via other means, write to the sender stating the time of receipt of the materials and the personal data used by the sender in the direct marketing activity, and explaining that you do not wish to receive any further direct marketing materials from the sender.

The Ordinance does not stipulate the means by which the opt-out request can be made. You can make it orally or in writing. We recommend making a written opt-out request to avoid any miscommunication or misunderstanding. Therefore, when opting out of telemarketing calls, for example, you should preferably follow up your verbal opt-out request with a written request, which would serve as a cogent proof of your opt-out request made under the Ordinance. You are strongly advised to retain a copy of your written opt-out request.



Q5

What should I do if I receive direct marketing calls after making an opt-out request?

A

If you continue to receive direct marketing calls after making an opt-out request, you can lodge a complaint with the Office of the Privacy Commissioner for Personal Data (PCPD). To make an effective complaint, you need to collect the relevant evidence by recording details of the marketing call(s) including:

- (a) *the date and time of receipt of the call;*
- (b) *the name of the caller and incoming telephone number;*
- (c) *the name of the organization which the caller represents;*
- (d) *the services, facilities or goods offered by the caller; and*
- (e) *your personal data (i.e. name/surname and telephone number) used by the caller.*

It is crucial to listen carefully to the caller who makes the direct marketing call. If you hang up without waiting for the offer of goods or services by the caller, the call in question will not be considered a “direct marketing” call.



It is the responsibility of the direct marketer to maintain a list of all customers who have made opt-out requests. To ensure no further use of the customers' personal data for direct marketing after they have opted out of such activities, the direct marketer is required to update its opt-out list regularly. In this regard, the PCPD makes the following recommendations to direct marketers:

- (a) Where the list is distributed via the company computer network, this should be done by individual marketing staff members, who must add new opt-outs to the list as and when they are received.
- (b) If the list is distributed other than by computer network, marketing staff members should be notified of the updates at a frequency of no less than once per week.



Please, therefore, make allowance for the time lag between sending the opt-out request and the actual cessation of direct marketing contacts.

**Office of the Privacy Commissioner for Personal Data,
Hong Kong**

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