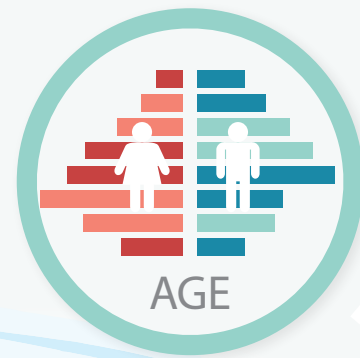


Proper Handling of Customers' Personal Data for the Beauty Industry



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Privacy Commissioner
for Personal Data, Hong Kong

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Unfair Data Collection

If a beauty company seeks to induce consumers to provide their personal data in return for shopping coupons or other benefits, which are not available or cannot reasonably be materialised, such practice may amount to collection of personal data by unfair means.



Personal Data Collection on Trial Membership

Collection of a customer's HKID Card number for registration as a trial member or for the issuance of a trial pass is considered unnecessary.



Personal Data Collection on Non Doctor-Patient Relationship

Where the use of energy-emitting devices is operated by beauty practitioners and not by registered doctors, the relationship between the customer and the practitioner in the operation is not one of doctor-patient and, as such, the beauty company is not entitled to collect the customer's HKID Card number.



Collection of Age-specific Data

If a beauty company wishes to collect a customer's date of birth with a view to offering age-specific products and services, the collection of the customer's age or age range, as opposed to the specific date of birth, should suffice.





Personal Data Collection for Unconnected Services

If a beauty company wishes to collect other personal data from customers for purposes unconnected with the provision of beauty services, e.g., marital status, income, etc., it must clearly inform its customers of the purposes of collecting such data, and that provision of the data is entirely optional.

Personal Data Transfer or Disclosure/ Direct Marketing

Before disclosing or transferring customers' personal data to others, a beauty company must ensure that the purpose of the disclosure or transfer is not for a new purpose. Also, beauty companies that engaged in direct marketing must meet the requirements under Part 6A of the Personal Data (Privacy) Ordinance.



Data Security

Staff should be given adequate training on safe-keeping documents containing customers' personal data.

For details, please refer to the "Guidance on the Proper Handling of Customers' Personal Data for the Beauty Industry".



Guidance on the Proper Handling of Customers' Personal Data for the Beauty Industry

Introduction

A beauty company¹ collects, holds, processes and uses an enormous amount of customer information. In Hong Kong there is a high expectation that the beauty industry will have data privacy policies and practices compliant with the requirements of the Personal Data (Privacy) Ordinance (Chapter 486) (the “**Ordinance**”) in general, and the six Data Protection Principles (“**DPPs**”) in Schedule 1 to the Ordinance in particular. While the Ordinance and the DPPs apply to a beauty company in a similar manner as to other data users, there are some business features and practices in the beauty industry that remain common concerns for consumers.

This Guidance Note examines some of those features and practices by way of a “case study” and sets out good practice to comply with the six DPPs in the “tips box”. Personal data² commonly held by a beauty company includes the name, address, telephone number, email address, Hong Kong Identity Card (“**HKID Card**”) number, nature of treatment, and date and time of treatment received by a customer.

Collection of HKID Card number of a customer

(i) For membership application

Some beauty companies provide their services only to member customers who have pre-paid for the services by purchasing a certain number of sessions or hours of service. These beauty companies often collect numbers or copies of customers' HKID Cards to enter into membership agreements and/or service contracts.

Generally speaking, unless authorised by law, no data user (including a beauty company) may compel an individual to provide a copy of her HKID Card or the HKID Card number. Collection of a copy of a HKID Card is not allowed merely to safeguard against a clerical error in recording a name or HKID number of an individual, or merely in anticipation of a prospective relationship between the data user and the individual. However, a beauty company is permitted to collect the HKID Card number of a customer for insertion in a contract which is intended to establish or evidence the legal rights, interests or liabilities of the beauty company and its customer, provided that such rights, interests or liabilities are not short-term or trivial in the circumstances. For details of the justifications of collection of numbers or copies of HKID Cards, beauty companies should refer to the *Code of Practice on the Identity Card Number and other Personal Identifiers* (the “**PI Code**”)³ issued by the

¹ Its services may cover spa, slimming and trimming, weight control, laser treatment, skincare services, etc.

² “Personal data” is any recorded information (including an expression of opinion) relating to a living individual from which her identity can be directly or indirectly ascertained.

³ Paragraphs 2.1 to 2.3 and 3.1 to 3.4 of the PI Code.
See www.pcpd.org.hk/english/data_privacy_law/code_of_practices/files/picode_en.pdf

Privacy Commissioner for Personal Data, Hong Kong (the “**Commissioner**”).

(ii) For offering free / discounted services on a trial basis

Some beauty companies offer free or discounted services on a trial basis in order to attract new customers who are required to be registered as trial members or for the issuance of trial passes. Very often, a customer is asked to provide her HKID Card number for such registration or issuance of a trial pass. The collection of a customer’s HKID Card number for such purpose is considered unnecessary on the grounds that the possible rights, interests or liabilities arising from such registration and trial pass is short-term and trivial.

Case study:

A beauty company offered a seven-day free trial pass to new customers who had not used its services in the preceding six months. Trial customers could enter any branch of this company to enjoy the trial service within seven days after receipt of the free trial pass. The company required those trial customers to provide their names, HKID Card numbers, mobile numbers, contact numbers and email addresses by completing a trial pass registration form, without specifying the purposes of collection. The company subsequently explained to the Commissioner that it collected those trial customers’ HKID Card numbers for the purposes of verifying their eligibility for the free trial service. The Commissioner took the view that such collection of HKID Card numbers was excessive on the ground that other personal data collected by the beauty company, such as the name and contact details, would suffice for verification purposes.

(iii) For providing treatments involving the use of energy-emitting devices operated by beauty practitioners

When a beauty company offers beauty treatments through the use of energy-emitting devices operated by beauty practitioners and not by registered doctors, the

relationship between the customer and the practitioner in the operation is not one of doctor-patient and, as such, the beauty company is not entitled to collect the customer’s HKID Card number. The application of paragraph 2.3.3.1⁴ of the PI Code is based on the existence of a doctor-patient relationship.

Case study:

A customer of a beauty company was requested to provide, amongst other things, her HKID Card number and to sign on a consent form prior to receiving slimming and whitening treatment conducted by its beauty practitioners (not registered doctors) with a view to serve as a proof that the customer had realised the risk thereof. Nevertheless, the beauty company admitted that the slimming treatment was conducted only by its beauty practitioners, and the whitening treatment was conducted either by its registered doctors or beauty practitioners. The Commissioner took the view that the beauty company could not justify its collection of the customer’s HKID Card number for the provision of the above treatments by relying on paragraph 2.3.3.1 of the PI Code, which allows a registered doctor to collect a patient’s HKID Card number. Eventually, the beauty company ceased its practice of collecting its customers’ HKID Card numbers and deleted HKID Card numbers of those customers who were not treated by registered doctors.

Dishonest / unfair means to extract personal data from customers

If a beauty company seeks to induce consumers to provide their personal data in return for shopping coupons or other benefits, which are not available or cannot reasonably be materialised, such practice may amount to collection of personal data by unfair means⁵. In other words, where the purpose of collecting such personal data is not for provision of those benefits, and irrespective of whether the ultimate use of such data is for direct marketing or otherwise, such means of collection is considered to be unfair.

⁴ A data user may collect a data subject’s HKID Card number for the advancement of the data subject’s interest under paragraph 2.3.3.1 of the PI Code. The existence of doctor-patient relationship is cited as an example which a doctor is permitted to collect a patient’s HKID Card number to ensure that his past medical records are correctly attributed to him to enable better treatment.

⁵ DPP 1(2) requires that personal data shall be collected by means which are lawful and fair in the circumstances of the case.

Collection of date of birth of a customer for providing age-specific services and birthday gifts and discounts

If a beauty company wishes to collect a customer's date of birth with a view to offering age-specific products and services to her, the collection of the customer's age or age range, as opposed to the specific date of birth, should suffice. In respect of providing birthday gifts or discounts, a customer's month of birth, or date and month of birth should suffice, depending on the duration of discounts and nature of the gifts.

Case study:

A beauty company asked for a customer's specific date of birth in order to enjoy free beauty services on a trial basis. The company sought to justify its collection by claiming that it was essential to know the age distribution of customers for designing and providing age-specific services to suit their needs, and that its provision of birthday gifts/ privileges to them could increase loyalty. The Commissioner disallowed the collection of the full date of birth, as a customer's month of birth would be sufficient for the birthday gifts/ privileges. Insofar as age-specific services and products are concerned, the customer's year of birth or even range of age (e.g. aged 40-50) would be sufficient, depending on the nature of the services and products in question. In all the circumstances, the full date of birth was not necessary.

Collection of personal data not connected with the beauty company's services

In general, collection of customers' names, contact numbers and addresses should suffice for provision of beauty services. If a beauty company wishes to collect other personal data from customers for purposes unconnected with the provision of beauty services, e.g., marital status, education levels, income, etc., it must clearly inform its customers of the purposes of collecting such data, and that provision of the data is entirely optional.

Disclosing or transferring customers' personal data to others

Before disclosing or transferring customers' personal data to others, a beauty company must ensure that the purpose of the disclosure or transfer is not for a new purpose (i.e. any purpose other than the same or a directly related to its original collection purposes from its customers). Otherwise, the customers' voluntary and express consent should be obtained⁶.

Case study:

Dissatisfied with a beauty company's services, a customer filed a claim to the Small Claims Tribunal. Subsequently, the parties agreed to settle the dispute and to publish a declaration to clarify previous comments made by the media. However, the beauty company also publicly disclosed the HKID Card number of the customer with the declaration. The Commissioner took the view that the publication of the customer's HKID Card number in the circumstances amounted to a new purpose, and the beauty company had therefore contravened DPP 3.

When a beauty company discontinues its business and wishes to transfer its customers' personal data to another company providing similar services, it may do so only if:

- (i) before the data is collected, the customers have been informed of the purpose for collection and that the other company is within the class of persons to whom the data may be transferred; or
- (ii) the customers have given their express and voluntary consent to the transfer.

⁶ DPP 3

Case study:

A customer joined the membership of a beauty company ("**Company A**") and purchased its services package. Subsequently, the customer received an SMS from Company A, informing her that it had been moved to a new address. However, when the customer went to the new address, she found that it was another beauty company ("**Company B**") operating. A staff member of Company B stated that Company A had been closed and its equipment had been sold to them. The staff member of Company B also showed the customer the original service agreement which she had entered with Company A, her sign-in record at Company A and her membership application form containing her name, address, contact number, etc. The Commissioner found that the transfer of the customer's personal data was a sale of personal data to an unspecified person, when the data was originally collected for beauty service of Company A. The Commissioner therefore ruled that Company A had contravened DPP 3⁷.

Whilst it is not unusual for the beauty industry to engage in direct marketing to promote its services and products, the requirements under the direct marketing provisions in Part 6A of the Ordinance must be met. Failure to comply with the provisions amounts to criminal offences. The details of those requirements are discussed in the Commissioner's *New Guidance on Direct Marketing*⁸, and the following are some handy tips and quick references for the beauty industry:

Direct Marketing Tips:

- When entering into a service contract with a customer, a beauty company which intends to use the customer's personal data in direct marketing should: (i) clearly inform the customer

of its intended use of the personal data in direct marketing, the kinds of personal data to be used, the classes of marketing subjects (i.e. products or services), and offer the customer a channel through which the customer may, without charge by the beauty company, communicate consent or otherwise to the intended use; and (ii) obtain the customer's consent⁹.

- The customer's consent to the use of personal data in direct marketing must be explicit, and silence does not amount to consent.
- A customer may refuse to be engaged in direct marketing and her opt-out request may be made orally or in writing and conveyed to the beauty company via any means of communication, e.g. email, telephone call, by post, or in person, etc.
- A beauty company should maintain an opt-out list of customers who have indicated their wish not to receive further marketing approaches and adopt a systematic approach to comply with the customers' requests for cessation of such use of the personal data. The opt-out list should be updated regularly and distributed frequently to its marketing staff members or agents¹⁰.
- Before providing its customers' personal data to another person for use in direct marketing, a beauty company must: (i) inform the customers in writing of its intention of such provision and take actions to inform the customers of whether the data is to be provided for gain, the kinds of personal data to be provided, the classes of persons to which the data is to be provided, and the classes of marketing subjects (i.e. products or services), and offer the customer a channel through which the customer may, without charge by the beauty company, communicate consent or otherwise to the intended use; and (ii) obtain the customers' written consent¹¹.

⁷ See the investigation report: Transfer of Personal Data of Customers by Beauty Centre without Customers' Consent (www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/R10_13416_e.pdf)

⁸ See www.pcpd.org.hk/english/publications/files/GN_DM_e.pdf

⁹ A data user who fails to take the specified actions before using a customer's personal data in direct marketing commits an offence under section 35C(5) of the Ordinance and is liable on conviction to a fine of HK\$500,000 and to imprisonment for three years.

¹⁰ A data user who fails to comply with the requirement from a customer to cease to use her personal data in direct marketing commits an offence under section 35G(4) of the Ordinance and is liable on conviction to a fine of HK\$500,000 and to imprisonment for three years.

¹¹ A data user who provides its customers' personal data to another person for use in direct marketing without taking the specified actions commits an offence under section 35J(5) of the Ordinance. He is liable on conviction (a) if the data is provided for gain, to a fine of HK\$1,000,000 and to imprisonment for five years; or (b) if the data is not provided for gain, to a fine of HK\$500,000 and to imprisonment for three years.

Security of personal data collected

A data user, including a beauty company, is obliged to take all reasonably practicable steps to protect the personal data held by it, against unauthorised or accidental access, processing, erasure, loss or use¹². Staff should be given adequate training on safe-keeping documents containing a customers' personal data, e.g. the merchant copy of the customer's signed credit card slip, membership application forms and service contracts, etc.

When personal data of a customer is collected and processed in an open area, the beauty company should take extra care to safeguard the personal data from being unnecessarily seen or heard by other customers or visitors.

Proper training and close supervision of staff play an important role in safeguarding customers' data. The following are tips in this regard:

Data Security Tips:

- Customers' data should only be accessed by staff on a "need-to-know" and "need-to-use" bases.
- Staff members are required to sign a confidentiality statement that specifies the company's expectation in safeguarding customers' data, and the sanctions to be imposed in the event of a breach. Such a statement may also be incorporated into a staff manual or code of conduct.
- Staff access to the customers' database should be monitored, e.g. by creating an audit trail of the access, disabling the printing function of customers' records, etc.
- Practices to deal with a breach of the company's policy and procedures concerning customers' personal data should be adopted.
- Proper and regular training to staff on personal data protection should be provided.

Concluding Note

Personal data protection cannot be achieved effectively if it is treated as a mere compliance issue, with little involvement of the top management. In order to meet rising public expectation for privacy protection, a data user, such as a beauty company, must be proactive and preventive, rather than reactive and remedial. Furthermore, a robust privacy and risk management programme, with commitment from the top management, will enhance privacy protection of its customers, thereby winning customers' confidence, recognition and trust. The Commissioner's *Privacy Management Programme: A Best Practice Guide*¹³ outlines the building blocks of Privacy Management Programmes and provides insight and guidance for organisations to develop and improve their own programmes according to their specific circumstances and nature of the industry.

¹² DPP4

¹³ See www.pcpd.org.hk/english/resources_centre/publications/files/PMP_guide_e.pdf



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