

Parenting Teenagers and Privacy Issues – Understanding the Amendments of the Personal Data (Privacy) Ordinance

By The Office of the Privacy Commission for Personal Data

When you learned that a teenager is on the verge of committing a misdemeanor or a crime; is it a privacy infringement to inform the teenager's parents or the law enforcement agencies?

The amendments to the Personal Data (Privacy) Ordinance (the "Ordinance"), which came into effect on 1 October 2012, have introduced new provisions addressing this situation. Salient features of the new provisions are given below.

Parents May Give Consent on Behalf of Children

The Ordinance provides that a data user may collect the personal data of a person (data subject) under prescribed conditions¹. It also provides that the use (including disclosure and transfer) of personal data should be consistent with or directly related to the original purpose of the data collection. If a data user wants to change the use, explicit and voluntary consent given by the affected data subjects must be sought².

With a view to safeguard interests of minors, the Government has amended the Ordinance to the effect that a parent or guardian may represent a minor to give the consent required for changing the use of the minor's personal data³ if s/he believes this is in the interest of the minor⁴.

For instance, before the amendments were implemented, when a social worker found a teenager to be on drugs, the social worker had to obtain the teenager's explicit and voluntary consent before passing her/his personal data to a drug treatment agency for counseling and rehabilitation. With the amendment of the

¹ Data Protection Principle 1 in Schedule 1 of the Ordinance

² Data Protection Principle 3 in Schedule 1 of the Ordinance

³ The amendment allows a "relevant person" to give prescribed consent on behalf of a minor, a person incapable of managing his or her own affairs or an individual who is mentally incapacitated. A "relevant person" refers to a parent or a person who has parental responsibility for the minor; a person who has been appointed by a court to manage those affairs; and a person appointed under the Mental Health Ordinance to be the guardian of that individual.

⁴ For details, see the specific provision under Data Protection Principle 3(2) in Schedule 1 of the Ordinance.

Ordinance, the social worker may pass the teenager's personal data to a drug treatment agency as long as the consent of the teenager's parent or guardian has been obtained, and the parent or guardian has reasonable grounds for believing the data transfer is clearly in the interest of the teenager.

Direct Disclosure in the interest of Teenagers

The amended Ordinance also provides more flexibility for the Police Force and the Customs and Excise Department to handle minors' personal data.

These above law enforcement agencies may transfer or disclose a minor's personal data directly to the minor's parents or guardian as long as (1) it is in the interest of the minor, (2) it facilitates the parents or guardian to exercise proper care and guardianship of the minor, and (3) non-disclosure would be likely to prejudice the exercise of proper care and guardianship of the minor by the parents/guardian or his / her interest⁵.

Take the hypothetical scenario of the police, in an inspection of a place of public entertainment, finding a 13-year-old girl with drugs scattered around her. Though the girl was not found to be in possession of drugs, the circumstance suggested that she might be lured by drug dealers. The amended Ordinance allows the police officers to directly communicate with the girl's parents or guardian without the girl's consent so that early and proper intervention and counseling can be provided to the girl. This proactive approach is necessary as non-disclosure might prejudice the exercise of proper care and guardianship of the girl by the parents/guardian or her interest.

Remarks: The examples in this article are purely fictitious and are used to explain the application of the amended Ordinance. In practice, whether the data user has complied with the requirements of the Ordinance depends on the circumstances of individual cases. This article cannot substitute for the provisions of the Ordinance or legal advice.

To learn more about the provisions of the amended Ordinance, please visit the Privacy Commission's website:

⁵ See the specific provision under section 59A of the Ordinance.

Short Video on the Personal Data (Privacy) (Amendment) Ordinance 2012

www.pcpd.org.hk > Publications & Videos > Others

Information Leaflet: An Overview of the Major Provisions of the Personal Data (Privacy) (Amendment) Ordinance 2012

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