

Code of Practice on the Identity Card Number and other Personal Identifiers Compliance Guide for Data Users

INTRODUCTION

What does the code of practice cover ?

- The code of practice gives practical guidance to data users* on the application of requirements of the Personal Data (Privacy) Ordinance (“the Ordinance”) to the collection, accuracy, retention, use and security of:
 1. the identity card (“ID card”) number and copies of the ID card; and
 2. other identifiers that uniquely identify individuals, e.g. passport numbers, employee numbers, examination candidate numbers and patient numbers.

What happens if the code is not complied with ?

- Non-compliance with the code is not itself unlawful. However, it will give rise to a presumption against the party concerned in any proceedings involving an alleged breach of the Ordinance. These proceedings could be before the Administrative Appeals Board, a magistrate or a court.
- Non-compliance with the code would also weigh against the party concerned in any case under investigation by the Privacy Commissioner for Personal Data.

When does the code take effect ?

The code was approved on 19 December 1997. Its requirements will take effect in two stages:

- Stage 1. All requirements except the requirement specified in stage 2 below will take effect on 19 June 1998.
- Stage 2. The requirement that data users should not issue to any individual a card, such as a staff card, which has the ID card number printed on it (details in step 5 in the ID card number section below) will take effect on 19 December 1998.

STEP-BY-STEP GUIDE TO COMPLIANCE WITH THE CODE

ID CARD NUMBER

BASIC POSITION: No right to compel an individual to provide an ID card number unless authorised by law

Unless authorized by law, no data user may compel an individual to provide his or her ID card number. A data user may request an individual to provide his or her ID card number under the circumstances where the collection of the ID number is permitted by this code. In such a case, the code does not, and in law could not, prohibit a data user from refusing to deal with an individual who declines to provide his or her ID card number. However, before doing so, the data user should pay particular attention to step 1 below, which requires that consideration be given to offering less privacy-intrusive alternatives to the individual.

Step 1 : Consider alternatives to collecting ID card numbers

A data user that proposes to collect ID card numbers should first consider whether there are any less privacy-intrusive alternatives. If there are, the data user should give the individual the option of choosing such alternatives. Examples of such alternatives are:

- a) to use another personal identifier of the individual's choice e.g. a passport number;
- b) to accept identification of the individual by someone known to the data user, e.g. where a resident at a block of flats known to the security guard identifies a visitor;
- c) to accept some form of security e.g. a monetary deposit.

Step 2 : Check whether your collection of ID card numbers comes under one or other of the circumstances where this is permitted in the code

A data user is permitted to collect an ID card number only under one or other of the following general circumstances:

- Where an Ordinance gives the data user a power to require individuals to provide ID card numbers, e.g. section 5 of the Registration of Persons Ordinance (Cap. 177) gives public officers such a power.
- Where an Ordinance requires the data user to collect the ID card number, e.g. section 17K of the Immigration Ordinance (Cap. 115) requires employers to keep a record of the number of the document, which is usually an ID card, by virtue of which each employee is lawfully employable.
- Where the use of the ID card number is necessary to carry out any of the purposes mentioned in section 57(1) of the Ordinance, which are the safeguarding of security, defence or international relations in respect of Hong Kong.
- Where the use of the ID card number is necessary to carry out any of the purposes mentioned in section 58(1) of the Ordinance, which include the prevention or detection of crime, and the assessment or collection of any tax or duty.
- Where the use of the ID card number is necessary to enable the person to carry out functions related to the operation of a tribunal or court, e.g. to ensure the correct identification of individuals involved in court proceedings.
- To enable the data user to identify the individual concerned or to attribute data to him or her where any of the following is necessary:
 - to advance the interests of the individual, e.g. to ensure that the correct medical record is referred to when treating a patient,
 - to prevent any third party other than the data user from suffering a detriment, e.g. to ensure that someone else is not given the wrong medication because the wrong medical record is referred to,
 - to enable the data user to safeguard against damage or loss that is more than trivial, e.g. drivers involved in a traffic accident may exchange ID card number in order to identify each other when pursuing a claim arising from the accident.

More specifically, a data user is permitted to collect ID card numbers under the following circumstances:

- For inclusion in a document that establishes or is evidence of any legal or equitable right or interest or legal liability that is not trivial, e.g. in documents that establish an individual's right of ownership of a flat.
- As the means of future identification of an individual who is permitted to enter premises where monitoring of the activities of the individual inside the premises is not reasonably practicable, e.g. entry to a commercial building outside office hours.

- As the means of future identification of an individual who is permitted to use equipment where monitoring of the use of the equipment is not reasonably practicable, e.g. the use of a computer that is out of sight of the staff concerned.
- As a condition for allowing the individual to have custody or control of property which is of a value that is more than trivial, e.g. a rental car.

Step 3 : Check whether the way you collect ID card numbers ensures that they are truly the ID card numbers of the individuals providing them

To ensure accuracy, when a data user collects ID card numbers from the individuals who are the holders of the ID cards, it should do so only in one or other of the following ways.

- Directly from the ID card physically produced in person by the individual, e.g. where an individual attends in person at a retail outlet of a utility company to apply for service.
- If the individual provides his or her ID card number without at the same time showing the ID card, for example in a form which is posted to the data user or over the phone, check the number so collected against the physical production of the ID card in person by the individual before using the number for any purpose. For example, a job applicant may provide his or her ID card number in a job application form which is mailed to the employer, but before the employer uses the number, say, to check whether the individual is a previous employee, it should be checked against the physical production of the ID card by the individual.
- If the individual has been given the option either to provide a copy of his or her ID card or to present his or her ID card in person, and has chosen to do the former, the data user is permitted to collect the ID card number from such a copy e.g. where an individual chooses to make a postal application for a driving licence rather than apply for the licence in person.

Step 4 : Check that you use ID card numbers only for one or other of the purposes permitted by the code

Where a data user has collected an ID card number for a purpose allowed under the code, the ID card number should generally be used only for that purpose. In addition, the code allows ID card number to be used for the following further purposes.

- To manage records relating to the individual that are held by the data user e.g. a bank may use the ID card number as a key to link the records relating to a particular customer.
- To manage records relating to the individual that were collected for the same particular purpose but which are held by more than one data user e.g. the ID card number could be used to manage an individual's records under the proposed mandatory provident fund scheme, which will be held by more than one data user.
- To carry out a "matching procedure" that is permitted under the Ordinance.

Note: For guidance on what constitutes a "matching procedure" under the Ordinance and the circumstances under which such procedures are permitted, see the PCO's leaflet "Matching Procedure: Some Common Questions".

- For a purpose that is required or permitted under any other code of practice that has been approved and is in force under the Ordinance.
- For a purpose to which the individual has voluntarily given his or her express consent.
- For a purpose permitted by an applicable exemption in the Ordinance.

Step 5 : Check that you are NOT publicly displaying or disclosing ID card numbers with the names of the ID card holders and that you are NOT issuing cards such as staff cards with ID card numbers printed on them

Unless required or permitted by law, a data user should not:

- a) Publicly display together an individual's name and ID card number, e.g. in a newspaper notice announcing the results of a raffle, or
- b) make an individual's name and ID card number visible together to anyone who does not need to carry out activities related to the permitted uses of the ID card number, e.g. entries in a visitor's log book that include names and ID card numbers should be concealed from subsequent visitors who enter their details.

Furthermore with effect from 19 December 1998, a data user should not issue a card to an individual that has the individual's ID card number printed on it in a legible form, e.g. a staff card with the holder's ID card number printed on it in a form that is capable of being read directly by other individuals.

Note: This prohibition applies whether or not the card is worn as a badge or is only used while the individual is in particular premises, e.g. the offices of the issuing party. The ID card itself and the driving licence are excluded from this prohibition.

Step 6 : Check that you do not keep records of ID card numbers for longer than is necessary to fulfill the purpose for which they were collected

Specifically, the code contains the following requirements.

- a) Where an ID card number is collected for future identification of an individual who has been permitted to enter premises or use equipment, the record should be erased within a reasonable period after the individual has left the premises or ceased to use the equipment.
- b) Where an ID card number is collected as a condition for giving the individual custody or control of property, the record should be erased within a reasonable period after that custody or control has ceased.

Note: A reasonable period in the above contexts would be days rather than weeks.

COPIES OF ID CARDS

BASIC POSITION: No right to compel an individual to provide a copy of an ID card unless authorised by law

Unless authorized by law, no data user may *compel* an individual to provide a copy of his or her ID card. A data user *may request* an individual to provide a copy of his or her ID card under the circumstances where the collection of the copy is permitted by this code. In such a case, the code does not, and in law could not, prohibit a data user from refusing to deal with an individual who declines to provide a copy of his or her ID card. However, before doing so, we advise that the data user should consider whether the purpose of collecting the copy of the identity card can be achieved through some other means that may be more acceptable to the individual, e.g. by collecting a copy of some other identification documents such as the relevant pages of a passport.

Step 1 : Check whether your collection of copies of ID cards comes under one or other of the circumstances where this is permitted in the code

A data user is permitted to collect a copy of an ID card only under one or other of the following circumstances:

- a) To carry out any of the purposes mentioned in section 57(1) of the Ordinance, which are the safeguarding of security, defence or international relations in respect of Hong Kong.
- b) To carry out any of the purposes mentioned in section 58(1) of the Ordinance, which include the prevention or detection of crime, and the assessment or collection of any tax or duty.

- c) Where the collection of the ID card number of the individual is permitted under the code (see Step 2 in the ID card number section above) and the copy of the ID card is further collected for any of the following purposes:
 - i) to provide proof of compliance with any statutory requirement, e.g. an employer may collect a copy of an ID card to prove compliance with the requirement of section 17J of the Immigration Ordinance (Cap.115) to inspect the ID card of an individual before employing him or her;
 - ii) to comply with a requirement to collect the copy which is included in any code, rules, regulations or guidelines applicable to the data user and which requirement has been endorsed in writing by the Privacy Commissioner, e.g. the requirement, which the Privacy Commissioner has endorsed, on banks to collect copies of the ID cards of their customers in the Money Laundering Guidelines issued by the Hong Kong Monetary Authority;
 - iii) to collect or check the ID card number of the individual, but only if the individual has been given the choice of presenting his or her ID card in person instead, e.g. Transport Department is permitted to collect copies of ID cards for this purpose in relation to applications for driving licences made by post, as individuals are given the choice of presenting their ID cards in person;
 - iv) for the issuing of an officially recognised travel document, e.g. the BN(O) passport; or
 - v) to enable the data user to carry out functions related to the operation of a tribunal or a court.
- In addition, the Immigration Department is permitted to collect copies of ID cards in carrying out its functions and activities.

Step 2 : Make sure that your collection of copies of ID cards does NOT come under one or other of the circumstances where this is specifically NOT permitted in the code

A data user is not permitted to collect a copy of an ID card under the following circumstances:

- i) merely to safeguard against a clerical error in recording the name or ID card number of the individual, i.e. the copy should not be collected in order only to enable the person to check the accuracy of the record that has been made of the individual's name or ID number.
- ii) merely in anticipation of a prospective relationship with the individual, e.g. it would not be permissible for an employer to collect a copy of the ID card of an individual only because the employer may wish to offer him or her employment at some stage.

Step 3 : Check whether the way you collect copies of ID cards ensures that they are truly copies of the ID cards that are held by the individuals concerned

- a) When a data user collects a copy of an ID card from the holder in person, the copy should always be checked against the ID card concerned, e.g. where an individual opens a bank account in person and provides a copy of his or her ID card, the bank should check the copy against the individual's ID card.
- b) When a data user collects a copy of an ID card from a third party, the data user should take all reasonably practicable steps to ensure that the third party has checked the copy against the ID card concerned, e.g. a car hire-purchase finance company that receives copies of ID cards of applicants for hire-purchase finance from car vendors dealing directly with the applicants should require the vendors to check such copies against the individuals' ID cards.
- c) A data user who obtains from individuals copies of their ID cards other than directly from the individual in person e.g. the copies are sent to the data user by post, should also undertake the following actions.
 - i) The relevant staff should be given training to enable them to detect irregularities on the face of ID card copies, e.g. the staff should be instructed on the usual content of ID cards so that any omission in a copy would be detected.

- ii) A system should be instituted for ensuring that ID card copies are not accepted unless they have been checked and no irregularity has been found. Note: The system should be included in any relevant manual of office procedure and practice.
- iii) A record should be retained in relation to such copies indicating that they have been collected without being checked against the ID cards concerned, e.g. a note to this effect could be made on the copy itself.

Step 4 : Check that you use copies of ID cards only for one or other of the purposes permitted by the code

A data user should use copies of ID cards only for:

- a) the purposes for which they were collected,
- b) a purpose for which the individual concerned has voluntarily given express consent, or
- c) a purpose for which there is an applicable exemption under the Ordinance.

Step 5 : Check that you are implementing adequate security safeguards for copies of ID cards that you hold or transmit

Specifically, the code requires the following.

- a) A copy of an ID card in paper form should be marked “copy” across the image of the ID card. This requirement does not apply to a copy that is awaiting conversion into some other form, e.g. microfilm or image form, within a reasonable time.
- b) Where a copy of an ID card is subject to the above requirement and is obtained in the presence of the holder it should be marked “copy” in his or her presence, e.g. where an individual opens a bank account in person and either provides a copy of his or her ID card or the bank makes such a copy, the bank should mark it “copy” in the presence of the individual.
- c) A data user that collects copies of ID cards should ensure that such copies are treated as confidential documents, e.g. as with other confidential documents they should be kept in locked cabinets or secure areas when not in use. The copies should be kept under secure conditions with access restricted to individuals who need to carry out permitted uses of the copies.

A data user should not transmit a copy or image of an ID card unless it has taken all reasonably practicable steps to ensure that it is received only by the intended recipient. Such steps could include safeguards such as encryption, confidential mail boxes, access passwords and dedicated fax machines for receiving confidential material. In case of dispatch by mail, a sealed envelope should be used and the image of the ID card should not be visible through any window in the envelope.

OTHER PERSONAL IDENTIFIERS

- a) In general, the requirements of the code in relation to ID card numbers also apply to other personal identifiers, e.g. employee or passport numbers, with the necessary modifications. In other words, other personal identifiers may be collected only under the circumstances and by the means permitted for ID card numbers and are subject to the same requirements as regards retention and use.
- b) The above does not apply to the collection or use of such other personal identifiers for a purpose that is directly related to the functions and activities of the person that assigned the identifier to the individuals concerned. For example, an employee number may be collected and used for purposes directly related to the functions or activities of the employer that assigned it, such as managing employee records and the payment of employee salaries.

- c) Generally speaking, a data user that assigns personal identifiers to individuals should take all reasonably practicable steps to ensure the security of the system under which this is done. Such steps should include security measures to safeguard against the unauthorised assignment of the identifier or production of any document, e.g. the unauthorised production of a staff card with a false employee number printed on it.

This booklet is issued only for general guidance and should not be relied upon when determining whether or not an act or practice complies with the code of practice. For a complete and definitive statement of the requirements of the code, reference should be made to the code of practice itself.

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* A data user is defined in the Personal Data (Privacy) Ordinance as meaning, in relation to personal data, a person who either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data. In practice, a data user could be a company, a government department or other public body or an individual.