



Personal Data (Privacy) (Amendment) Ordinance 2021 Implementation Guideline

Doxxing Offences, the Privacy Commissioner's Powers to Conduct Criminal Investigation, Prosecution and Issue Cessation Notice

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I. General

1.1 Introduction

1.1.1 This Implementation Guideline (“**Guideline**”) has been issued by the Privacy Commissioner for Personal Data (“**Commissioner**”) in the exercise of the powers conferred on the Commissioner under Part 2 of the Personal Data (Privacy) Ordinance (Cap. 486) (“**Ordinance**”). Section 8(5) of the Ordinance empowers the Commissioner to prepare and publish guidelines for the guidance of members of the public, indicating the manner in which the Commissioner proposes to perform any of the functions, or exercise any of the powers of the Commissioner, under the Ordinance.

1.2 Purpose of this Guideline

1.2.1 This Guideline was issued by the Commissioner to enable the public to have a better understanding of the Personal Data (Privacy) (Amendment) Ordinance 2021 (“**Amendment Ordinance**”) regarding the scope of new doxxing offences, the powers to conduct criminal investigation, institute prosecution and issue cessation notice under the Amendment Ordinance. This Guideline also facilitates members of the public to duly comply with the relevant provisions and take appropriate actions to comply with the requirements of the Amendment Ordinance.

1.3 Application of this Guideline

1.3.1 The Amendment Ordinance was enacted to amend and create doxxing offences for disclosing personal data without consent of the data subject; to confer on the Commissioner investigative and enforcement powers for those doxxing-related offences and matters, including the powers to require provision of materials and assistance, to enter and search premises, to access and search electronic devices, to stop, search and arrest suspects, to serve cessation notices and to apply for injunctions; to enable the Commissioner to prosecute doxxing-related offences in the Commissioner’s name; and to provide for related matters and minor amendments.

1.3.2 There is a transitional provision under the Amendment Ordinance which provides that the pre-amended Ordinance continues to apply in relation to offences committed before the commencement date of the Amendment Ordinance. In other words, the newly added provisions are only applicable to doxxing acts committed after its commencement date (i.e. 8 October 2021).

1.4 Contents of this Guideline

1.4.1 The substance of this Guideline is contained in Parts II, III, IV and V. They are outlined below:

Part II : Scope of doxxing offences under the new section 64 of the Amendment Ordinance

Part III : Criminal Investigation and Prosecution Powers of the Commissioner

Part IV : Powers of the Commissioner to serve cessation notices and apply for injunctions

Part V : To lodge a complaint to the Commissioner regarding doxxing acts

The statements contained in this Guideline are merely for reference and do not carry any legal effect. The content of this document does not affect the exercise of the powers and functions of the Commissioner conferred under the Amendment Ordinance, and/ or the interpretation of the provisions of the Amendment Ordinance by the Court.

- 1.4.2 If you are in doubt about the Amendment Ordinance or the contents of this Guideline, you should seek independent legal advice.

II. Scope of Doxing Offences under the new section 64 of the Amendment Ordinance

2.1 Introduction

2.1.1 This part of the guidance seeks to introduce the two-tier doxing offences and their respective penalties regime under the new section 64 of the Amendment Ordinance. It also sets out what behaviour constitutes “doxing” under the Amendment Ordinance.

2.1.2 Both the two-tier offences contain the relevant guilty intent (*mens rea*). The two offences are differentiated by whether the doxing act has caused actual “specified harm” to the data subjects or their family members.

2.2 Two-tier Doxing Offences

2.2.1 First tier offence

Pursuant to the new section 64(3A) of the Amendment Ordinance, a person commits an offence if the person:

- (i) discloses any personal data of a data subject without the relevant consent of the data subject; and
- (ii) has an intent to or is being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject.

Any person who commits the first tier offence is liable on summary conviction to a maximum penalty of a fine at level 6 (i.e. HK\$100,000)¹ and to imprisonment for 2 years.

2.2.2 Second tier offence

Pursuant to the new section 64(3C) of the Amendment Ordinance, a person commits an offence if the person:

- (i) discloses any personal data of a data subject without the relevant consent of the data subject;
- (ii) has an intent to or is being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject; and
- (iii) the disclosure causes any specified harm to the data subject or any family member of the data subject.

Any person who commits the second tier offence is liable on conviction on indictment to a maximum penalty of a fine of HK\$1,000,000 and to imprisonment for 5 years

2.2.3 In order to qualify as “personal data” under section 2(1) of the Ordinance, the data must relate directly or indirectly to a living individual and from which it is practicable to ascertain directly or indirectly the identity of the individual. Such data include, for instance, the name, identity card number, phone number, photo and residential address. The data should also be in a form in which access to or processing of the data is practicable. Otherwise, it falls outside the ambit of “personal data”.

¹ Pursuant to Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

- 2.2.4 Section 2(1) of the Ordinance provides that a “data subject”, in relation to personal data, means the individual who is the subject of the data.
- 2.2.5 Pursuant to the new section 2(1) introduced by the Amendment Ordinance, the definition of “family member”, in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity².
- 2.2.6 In the new sections 64(3A) and (3C) of the Amendment Ordinance, one of the thresholds for conviction relate to the disclosure of “any personal data of a data subject without the relevant consent of the data subject”. “Consent” referred to therein means an express consent given by the data subject voluntarily, which has not been withdrawn by serving of a notice in writing.
- 2.2.7 Pursuant to the new section 64(6) of the Amendment Ordinance, “specified harm” consists of four limbs, namely :-
- (a) harassment, molestation, pestering, threat or intimidation to the person;

Example:

A complainant alleged that his and his family members’ personal data were disclosed by netizens extensively; and as a result, he received a considerable amount of nuisance calls and messages. His personal data was also misused for loan application and he received calls from financial institutions. The complainant was subject to immense psychological pressure and harassment.

Example:

There was an emotional dispute between the complainant and the complaine. Subsequently, the complainant discovered that netizens had posted and disclosed the personal data of the complainant and her daughter on an online forum, including their names and ages. Given the immense molestation and psychological pressure caused by the disclosure, the complainant suffered from emotional breakdown.

2 Reference has been made to section 63C of the Ordinance for the definition of “family member”.

- (b) bodily harm or psychological harm to the person;

Explanatory Note:

In determining whether any disclosure has caused harm (including “bodily harm” or “psychological harm”) to the data subject, the Court will generally take into account medical reports which contain a doctor’s assessment of the physical or psychiatric condition of the data subject as proof of the physical or psychological harm suffered by the data subject.

Expert evidence will generally be required to prove “psychological harm”, to prove that harm has been caused to the psychological aspect of the victim.

It is worth to note that in the first conviction case concerning section 64(2) (now repealed) of the Ordinance³, the Court has, in assessing the psychological harm suffered by the victim as a result of the doxxing content published by the accused, taken into account a psychological report produced by the prosecution which was prepared by a clinical psychologist of the Police to prove the “psychological harm” suffered by the victim. From this, it can be seen that “psychological harm” is a relatively high threshold.

Example:

Doxxers disclosed the personal data of the complainant’s children online. They also suggested various methods to bully and boycott the complainant’s children at school, including picking up his children from school with a gunny sack. The complainant suffered from psychological harm as a result.

- (c) harm causing the person reasonably to be concerned for the person’s safety or well-being; or

Example:

Netizens disclosed the wedding date and venue of a complainant on an online forum and called for others to attend the wedding for “celebration”. The complainant was worried that the netizens would be incited to cause disturbance at the wedding.

³ *HKSAR v Chan King Hei* [2020] HKDC 1020

(d) damage to the property of the person.

Example:

The complainant's personal data, including the plate number of the complainant's vehicle and registration information, were uploaded on social media platforms. As a result, his car was maliciously damaged and the complainant had to bear the repair costs.

2.2.8 The above examples of "specified harm" are merely given for reference. The applicability of the relevant provisions in relation to specific cases as well as the interpretation as such rests with the adjudication of the Hong Kong Court.

2.2.9 The Commissioner shall consider the relevant and actual circumstances of a case to determine whether it falls within the scope of "specified harm". The relevant factors may consist of the following:

- the content of the concerned message;
- way of expression;
- context in which the concerned message appeared;
- manner of dissemination of the concerned message;
- extent of circulation of the concerned message;
- veracity of the concerned message; and
- characteristics of the victims and their family members;

2.2.10 Any person who is charged with a doxxing offence contrary to the new section 64 of the Amendment Ordinance may adduce evidence to establish a defence pursuant to section 64(4) of the Ordinance:

- (i) the person reasonably believed that the disclosure was necessary for the purpose of preventing or detecting crime;
- (ii) the disclosure was required or authorized by or under any enactment, by any rule of law or by an order of a court;
- (iii) the person reasonably believed that the consent of the data user was obtained (in relation to the offence under section 64(1) of the Ordinance); or the relevant consent of the data subject was obtained (in relation to the offence under section 64(3A) or (3C) of the Amendment Ordinance); or
- (iv) the person disclosed the personal data solely for the purpose of a lawful "news activity" (or a directly related activity) as defined under section 61(3) of the Ordinance; and had reasonable grounds to believe that the publishing or broadcasting of the personal data was in the public interest.

2.3 Other Doxxing-related Offences

2.3.1 The Amendment Ordinance empowers the Commissioner to conduct criminal investigations and issue cessation notices. A person commits an offence if he/ she obstructs, hinders or resists the Commissioner in the exercise of the relevant powers; or does not comply with a cessation notice. Depending on the severity of the offence in question, the Department of Justice and the Commissioner may institute prosecution of offences, either on indictment or summarily, in accordance with the respective requirements under the Amendment Ordinance (see offences

under the new section 66E(1) or (5), 66I(1) or 66O(1) of the Amendment Ordinance).

2.3.2 Please refer to Parts III and IV of this Guideline for details regarding the Commissioner's powers on criminal investigation, prosecution and issuance of cessation notices.

2.4 Prosecution Deadline for Summary Offences

2.4.1 Pursuant to the new section 64B of the Amendment Ordinance, a prosecution of a summary offence under the Ordinance may only be commenced before the expiration of 2 years after the date on which the offence was committed.

III. The Criminal Investigation and Prosecution Powers of the Commissioner

3.1 Introduction

- 3.1.1 This part of the guidance sets out the criminal investigation and prosecution powers of the Commissioner under the Amendment Ordinance, so that the public may monitor if the powers exercised by the Commissioner, “prescribed officers” and “authorized officers” as defined under the Amendment Ordinance are in accordance with the requirements of the Amendment Ordinance.
- 3.1.2 The Commissioner, prescribed officers and authorized officers shall only exercise the relevant criminal investigation powers under the new Part 9A of the Amendment Ordinance with regard to offences contrary to section 64(1) of the Ordinance; or the new section 64(3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1) of the Amendment Ordinance. The Commissioner is also empowered under the new section 64C of the Amendment Ordinance to institute prosecution in the Commissioner’s own name in relation to summary offences contrary to section 64(1) of the Ordinance; the new section 64(3A), 66E(1) or (5), 66I(1) or 66O(1) of the Amendment Ordinance or its related conspiracy offence that is triable in the Magistrates’ Court.
- 3.1.3 Without prejudice to operational efficiency, the Commissioner, prescribed officers and authorized officers should disclose sufficient information, such as a warrant card, to identify themselves upon request by the public in the course of the exercise of statutory powers.
- 3.1.4 Unless specifically exempted, the Commissioner, prescribed officers and authorized officers shall wear uniform or produce their warrant cards when they exercise the powers to stop, search and arrest persons pursuant to the new section 66H of the Amendment Ordinance.
- 3.1.5 Depending on the actual circumstances and the need of the case, the Commissioner may conduct joint operation with relevant government departments or organizations, including the Hong Kong Police Force.

3.2 Power to Require Material and Assistance by Issuing a Written Notice

- 3.2.1 Pursuant to the new section 66D of the Amendment Ordinance, if the Commissioner reasonably suspects that, in relation to an investigation of a doxxing-related offence, a person has or may have possession or control of any document, information or thing (collectively known as “**material**”) relevant to the investigation, or may be able to assist the Commissioner in relation to the investigation, the Commissioner may issue a written notice to the person, requesting that person to provide the relevant materials and answer relevant questions in order to assist the Commissioner in conducting such an investigation.
- 3.2.2 Regarding the provision of material, the Commissioner may specify in the written notice the material required :
- (i) the type of material, such as mobile phones and computers, etc.;
 - (ii) the time and place at which it is to be provided; and/or
 - (iii) the way and form in which it is to be provided, such as copy of the material; or if the material is stored electronically, the appropriate device to access the relevant material, etc.

- 3.2.3 Regarding the provision of assistance, the Commissioner may, by way of a written notice, require any person to :
- (i) attend before the Commissioner at a specified time and place to answer questions in relation to the investigation;
 - (ii) answer written questions in relation to the investigation;
 - (iii) make a statement in relation to the investigation; or
 - (iv) give all assistance reasonably required for the investigation.
- 3.2.4 A written notice must :
- (i) be in the specified form;
 - (ii) be signed by the Commissioner or a prescribed officer; and
 - (iii) indicate the subject matter and purpose of the relevant investigation.
- 3.2.5 Please refer to **Appendix I** and **Appendix II** for the sample form of the written notices.
- 3.2.6 Pursuant to the new section 66E(1) of the Amendment Ordinance, a person commits an offence if the person fails to comply with a requirement of a written notice :
- (i) on summary conviction – the offender is liable to a fine at level 5 (i.e. HK\$50,000)⁴ and to imprisonment for 6 months; or
 - (ii) on conviction on indictment – the offender is liable to a fine of HK\$200,000 and to imprisonment for 1 year.
- 3.2.7 The new section 66E(5) of the Amendment Ordinance provides that a person commits an offence, if the person, with an intent to defraud, fails to comply with a written notice; or in purported compliance with a written notice, provides any false and misleading material, answer, direction, explanation or particulars, commits an offence :
- (i) on summary conviction – the offender is liable to a fine at level 6 (i.e. HK\$100,000)⁵ and to imprisonment for 6 months; or
 - (ii) on conviction on indictment – the offender is liable to a fine of HK\$1,000,000 and to imprisonment for 2 years.
- 3.2.8 A person is not excused from complying with a requirement of a written notice only on the ground that to do so might tend to incriminate the person.
- 3.2.9 If the answer, directions, explanation, particulars or statement (collectively known as “**required matter**”) might tend to incriminate the person; and the person claims, before giving or making the required matter, that it might so tend, the requirement, question and required matter are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged in respect of the required matter with –
- (i) an offence under the new section 66E(5) of the Amendment Ordinance, i.e. with an intent to defraud, provide false and misleading material, answer, direction, explanation or particulars to the Commissioner; or
 - (ii) offences in relation to “perjury” under Part V of the Crimes Ordinance (Cap. 200).

⁴ Pursuant to Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

⁵ Pursuant to Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

3.3 Apply for a Warrant to Search Premises and Access Electronic Devices from the Court

3.3.1 When the Commissioner or prescribed officer⁶ has reasonable grounds for suspecting :

- (i) a doxxing or its related offence has been, is being or is about to be committed; and
- (ii) there is material or evidence related to an investigation contained in any premises or any electronic device,

the Commissioner or prescribed officer may apply for a warrant from a magistrate pursuant to the new section 66G of the Amendment Ordinance.

3.3.2 Depending on the actual circumstances of each case, the Commissioner or prescribed officer may apply to the magistrate to exercise the respective powers in relation to the premises and electronic devices, as follows :

Premises

- (i) to enter and search the premises and use any force that is reasonable in the circumstances if necessary;
- (ii) to carry out investigation in the premises; and
- (iii) to seize, remove and detain any material reasonably suspected to contain evidence.

Electronic Devices

- (i) to access, seize and detain the electronic device;
- (ii) to decrypt any material stored in the electronic device;
- (iii) to search for any material or evidence relevant to the investigation in the electronic device; and
- (iv) to reproduce the relevant material stored in the electronic device in other forms including, for instance, written forms on paper, copies or extracts, etc.

3.3.3 When the powers under a warrant are exercised by the Commissioner or prescribed officer, all persons situated in the premises or are in possession or control of the relevant electronic devices (depending on the circumstances), must afford all facilities and assistance reasonably required by the Commissioner or prescribed officers without charge such as directing the prescribed officers to the place where the material required is stored.

3.3.4 The Commissioner or prescribed officer shall not enter any premises for a search unless under the authority of a warrant.

3.3.5 When executing a warrant, the prescribed officer on site shall :

- (i) be in uniform or display his/ her warrant card;
- (ii) state the purpose of the search, and explain the authority under which he is acting; and
- (iii) produce the warrant (if the warrant is in his/ her possession).

3.3.6 When an officer executing a warrant considers that a valid claim of legal professional privilege exists, he shall:

⁶ Pursuant to section 9(1) of the Ordinance, a prescribed officer is a person the Commissioner employs (including technical and professional persons); and engages, other than by way of employment, such technical and professional persons, as she thinks fit to assist her in the performance, and the exercise of her powers, under the Ordinance.

- (i) not examine the materials in respect of which legal professional privilege is claimed;
- (ii) seize those materials and seal them in an exhibit envelope or other suitable container; and
- (iii) deposit the sealed materials in the premises, and seek further legal advice on the matter at the earliest opportunity.

3.3.7 Please refer to **Appendix III** for the form of warrant issued by a magistrate.

3.4 Power to Access Electronic Devices Without a Court Warrant

3.4.1 Pursuant to the new section 66G(8) of the Amendment Ordinance, when the Commissioner or prescribed officer :

- (i) reasonably suspects that a doxxing or its related offence has been, is being or is about to be committed;
- (ii) reasonably suspects that any material that is or contains evidence for the relevant investigation is stored in an electronic device; and
- (iii) is satisfied that a delay caused by an application for a warrant is likely to defeat the purpose of accessing the device, or for any reason it is not reasonably practicable to make the application,

the Commissioner or prescribed officer may, without warrant, access the electronic device that is suspected to contain material related to doxxing or its related offence.

3.4.2 Electronic devices may include mobile phones and computers, etc.

3.4.3 Under no circumstances shall the Commissioner or prescribed officer decrypt an electronic device (including any material stored therein) without the authority of a warrant.

3.5 Powers to Stop, Search and Arrest

3.5.1 An authorized officer may, without warrant, exercise the powers to stop, search and arrest any person whom the officer reasonably suspects of having committed a doxxing or its related offence pursuant to the new section 66H of the Amendment Ordinance.

3.5.2 Pursuant to the new section 66H(7) of the Amendment Ordinance, an “authorized officer” means the Commissioner or a person authorized by the Commissioner for the purposes of exercising the powers to stop, search and arrest. The “authorized officer” includes any officer at the rank of Personal Data Assistant or above; or a “police officer” as defined under section 3 of the Police Force Ordinance (Cap. 232).

3.5.3 If any person resists, or attempts to evade, a search or arrest effected pursuant to the relevant provision, the authorized officer may use any force that is reasonable in the circumstances to effect the search or arrest.

3.5.4 After an arrest is made, the authorized officer :

- (i) may require the arrested person to state his name and correspondence address, and to produce proof of identity for inspection;
- (ii) may search for and take possession of any thing (if applicable) that may be found on the

arrested person which the officer reasonably suspects is related to the offence for which the person has been arrested;

- (iii) must take the arrested person to the office of the Commissioner for further inquiries; or a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232), including the handling of the bail procedure; and
- (iv) must determine whether to lay charge within 48 hours and bring the arrested person before a magistrate.

3.5.5 An authorized officer shall not conduct a search on a member of the opposite sex. In the absence of a female authorized officer, an authorized officer shall escort a female arrested person to the office of the Commissioner or a police station for search to be conducted by a female authorized officer or a female police officer.

3.5.6 If a search involves transgender individuals, the authorized officer shall ensure that their dispositions are respected with appropriate treatments.

3.6 Offences in relation to Impeding the Commissioner, Prescribed officer or Authorized Officer in Exercising their Powers under Warrant or Arrest

3.6.1 Pursuant to the new section 66I of the Amendment Ordinance, a person, without lawful excuse, obstructs, hinders or resists any officers or a person assisting the officers in exercising the powers under the new section 66G or 66H of the Amendment Ordinance, commits an offence. The maximum penalty is a fine at level 3 (i.e. HK\$10,000)⁷ and to imprisonment of up to 6 months.

3.7 Prosecution Power

3.7.1 Pursuant to the new section 64C of the Amendment Ordinance, the Commissioner may prosecute in the Commissioner's own name for an offence that is triable summarily before a magistrate, including offences under section 64(1) of the Ordinance or the new section 64(3A), 66E(1) or (5), 66I(1) or 66O(1) of the Amendment Ordinance. The Commissioner will refer all indictable offences under the Amendment Ordinance to the Police for follow-up and the Department of Justice for instituting prosecution.

⁷ Pursuant to Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

IV. Powers of the Commissioner to Serve Cessation Notices and Apply for Injunctions

4.1 Introduction

- 4.1.1 This part of this guidance sets out the circumstances under which the Commissioner may serve cessation notices, the target recipients to be served with a cessation notice, the contents thereof and the appeal mechanism, etc.
- 4.1.2 By serving cessation notices, the Commissioner targets to remove doxxing contents in an expeditious manner so as to minimise the harms caused to the data subjects and their family members. The Commissioner is also empowered to apply for an injunction primarily to prevent future recurrence of doxxing acts.

4.2 Circumstances under which the Commissioner may Serve Cessation Notices and the Consequences of Non-compliance

4.2.1 Pursuant to the new section 66M(1) of the Amendment Ordinance, in relation to a message, whether in written or electronic form, including but not limited to those posted on online platforms, if the Commissioner has reasonable ground to believe that :

- (i) the personal data in question was disclosed without the relevant consent of the data subject;
- (ii) the person disclosing the personal data had an intent to or was being reckless as to the whether any specified harm (see paragraph 2.2.6 of this Guideline for the term “specified harm”) would be, or would likely be, caused to the data subject or any family member of the data subject;
- (iii) when the disclosure was made, the data subject was a Hong Kong resident; or was present in Hong Kong; and
- (iv) a Hong Kong person is able to take a cessation action (whether in Hong Kong) in relation to the message,

the Commissioner may serve a cessation notice on a person who is able to take a cessation action, directing that person to take cessation action.

4.2.2 Depending on the actual circumstances of the case, the Commissioner may serve cessation notices on individuals or entities who are able to take cessation actions, which may include disclosers of doxxing content, operators of electronic platforms⁸, internet service providers or hosting service providers, etc. The Commissioner will seek to remove doxxing contents expeditiously so as to minimise the harms that may be caused to the data subjects and their family members.

4.2.3 Given that the cyberworld has no borders, if the subject message is an electronic message, the Commissioner may serve a cessation notice on a non-Hong Kong service provider, such as the operator of an overseas social media platform, directing it to take cessation action(s) pursuant to the new section 66M(2) of the Amendment Ordinance.

⁸ Including but not limited to websites and online applications.

4.2.4 Pursuant to the new section 66O(1) of the Amendment Ordinance, non-compliance of cessation notice is an offence :

- (i) on a first conviction – the offence is liable to a fine at level 5 (i.e. HK\$50,000)⁹ and to imprisonment for 2 years; and in the case of a continuing offence, to a further fine of HK\$1,000 for every day during which the offence continues;
- (ii) on each subsequent conviction – the offence is liable to a fine at level 6 (i.e. HK\$100,000)¹⁰ and to imprisonment for 2 years; and in the case of a continuing offence, to a further fine of HK\$2,000 for every day during which the offence continues.

4.2.5 It is a defence for a person charged with an offence under the new section 66O(1) of the Amendment Ordinance in respect of a cessation notice to establish, with sufficient evidence, that –

- (i) the person had a reasonable excuse for contravening the cessation notice; or
- (ii) (without limiting to sub-paragraph (i) above), it was not reasonable to expect the person to comply with the cessation notice –
 - having regard to the nature, difficulty or complexity of the cessation action concerned;
 - because the technology necessary for complying with the cessation notice was not reasonably available to the person; or
 - because there was a risk of incurring substantial loss to, or otherwise substantially prejudicing the right of, a third party.

4.2.6 The new section 66P of the Amendment Ordinance is an immunity provision, which provides that a person who complies with a cessation notice served on the person does not incur any civil liability, whether arising in contract, tort, equity or otherwise, to another person only because of that compliance.

4.2.7 The cessation notice must specify the following information or request:

- (i) the grounds for the Commissioner’s belief that the relevant message disclosed falls within the conditions mentioned in paragraphs 4.2.1 or 4.2.3 of this Guideline;

Example:

The Commissioner received a complaint from a victim in Hong Kong, who stated that his name and residential address had been maliciously disclosed on an electronic platform.

- (ii) the doxxing message required to be removed;

Explanatory note:

Depending on the actual circumstances, the Commissioner will endeavour to include links, screenshots or photos of the relevant message in the cessation notice.

⁹ Pursuant to Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

¹⁰ Pursuant to Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

- (iii) the cessation actions required to be taken;

Example:

- Persons who disclose the doxxing content: remove the relevant doxxing posts from the platforms or websites;
- Operators of social media platform or website: direct the removal of doxxing posts from the platform or website; or restrict or cease any person from accessing the relevant message(s).

- (iv) the date on or before which the cessation action must be taken; and

- (v) be accompanied by a copy of the new sections 66M, 66N and 66O of the Amendment Ordinance.

4.2.8 The Amendment Ordinance allows the Commissioner to serve the cessation notice by way of electronic mail transmission, including serving the same on an individual's or a company's last known electronic mail address, or by any similar method of electronic transmission.

4.2.9 To ensure that all persons affected by the cessation notice be informed of the right of appeal (see paragraph 4.3 of this Guideline), the person who complies with a cessation notice may by notice state on the relevant platforms or places that any affected person may lodge an appeal and the timeframe for the appeal. Please refer to **Appendix IV** for the sample notice to be posted after a cessation action is taken.

4.3 Appeal against Cessation Notice

4.3.1 Pursuant to the new section 66N of the Amendment Ordinance, any person who is affected by the cessation notice, including but not limited to persons who disclose the doxxing content and operators of relevant electronic platforms (see paragraphs 4.2.2 and 4.2.3 of this Guideline), may lodge an appeal to the Administrative Appeals Board within 14 days after the date on which a cessation notice is served. For details of the appeal procedures, please refer to the Administrative Appeals Board Ordinance (Cap. 442)¹¹.

4.3.2 Regardless of whether an appeal has been lodged against the cessation notice, any person who receives a cessation notice must comply with its requirements within the timeframe specified therein.

4.3.3 Depending on the circumstances (such as when a decision is handed down by the Administrative Appeals Board), the Commissioner may, where appropriate, cancel a cessation notice by serving a written notice.

4.4 Injunction

4.4.1 When there are or are likely to be large-scale or repeated commission of offences under section 64 in the society, the Commissioner may apply to the Court of First Instance for an injunction to prevent the future recurrence of doxxing incidents targeted at specific persons or groups pursuant to the new section 66Q of the Amendment Ordinance.

¹¹ The Administrative Appeals Board Ordinance is available at <https://www.elegislation.gov.hk/hk/cap442>.

Explanatory note:

Injunctions have to be obtained by filing an application to the Court. Injunctions are generally prohibitive/ preventive in nature, and their purposes are to prevent the future recurrence of doxxing acts.

In addition, the Commissioner may issue a cessation notice under the Amendment Ordinance after a doxxing act has been committed. The purpose of issuing a cessation notice is to remove the relevant message(s) expeditiously, so as to minimise the harms that may be caused to the data subjects and their family members.

V. To lodge a Complaint to the Commissioner regarding Doxing Acts

5.1 Introduction

- 5.1.1 This part of the guidance seeks to provide members of the public on the circumstances where a complaint may be lodged to the Commissioner regarding suspected doxing acts as well as the matters requiring attention.
- 5.1.2 Pursuant to section 37 of the Ordinance, a complaint shall be lodged in writing in either Chinese or English. The complainant may fill in the application form and lodge it together with the relevant evidence¹². Please refer to the complaint form for suspected doxing acts in **Appendix V**.
- 5.1.3 Pursuant to the new section 66S of the Amendment Ordinance, the Commissioner, in the manner and at a time the Commissioner considers appropriate, inform the complainant of the result of that investigation and any other matters arising from the investigation upon conclusion of an investigation initiated from a complaint.

¹² You may refer to the website of our office: https://www.pcpd.org.hk/english/complaints/how_complaint/complaint/complaint.html

Appendix I

Sample Notice to Provide Materials / Assistance under sections 66D(2)(a), (c), (d) and (e) of the Personal Data (Privacy) Ordinance (Cap. 486)

CASE NO:XXXXXXXX

NOTICE TO PROVIDE MATERIALS / ASSISTANCE UNDER SECTIONS 66D(2)(a), (c), (d) and (e) OF THE PERSONAL DATA (PRIVACY) ORDINANCE (CAP. 486)

Date: [Date]
To: [Recipient's name]
[Address and Email Address]

1. The Privacy Commissioner for Personal Data (the Commissioner) is carrying out a specified investigation under the Personal Data (Privacy) Ordinance (the Ordinance) into an offence of disclosing personal data without consent under section 64 of the Ordinance and related offences.

2. Pursuant to sections 66D(1), 66D(2)(a), 66D(2)(c), 66D(2)(d) and 66D(2)(e) of the Ordinance, if the Commissioner reasonably suspects that, in relation to specified investigation, a person –

- (a) has or may have possession or control of any material relevant to that investigation; or
- (b) may otherwise be able to assist the Commissioner in relation to that investigation, the Commissioner may, by written notice given to the person, require the person to:
 - (a) provide the Commissioner with any material in the person's possession or control relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation;
 - (b) answer any written question relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation;
 - (c) make a statement relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation; or
 - (d) give the Commissioner all the assistance that the Commissioner reasonably requires for the specified investigation.

3. The Commissioner is now conducting a specified investigation in relation to the following message (the Subject Message) for the purpose of collecting relevant evidence in relation to an offence of disclosing personal data without consent under section 64 of the Ordinance and related offences:

Links to the Subject Message: []
Platform on which the Subject Message is disclosed: []

Please refer to **Annex A** for the screenshots or photos of the Subject Message.

4. In exercise of the powers under sections [66D(2)(a), 66D(2)(c), 66D(2)(d) and/or 66D(2)(e)], the Commissioner hereby requires you to —

- (a) provide the materials as listed in Annex B to this notice;**
- (b) answer the questions as listed in Annex C to this notice;**
- (c) make a statement relating to the matters as listed in Annex D to this notice; [and/or]**
- (d) give the Commissioner all the assistance as listed in Annex E to this notice.**

5. The above [materials, answers, statement] are to be provided to the Office of the Commissioner at Room 1303, 13th Floor, Dah Sing Financial Centre, 248 Queen's Road East, Wan Chai, Hong Kong, on or before [date]. [The required assistance referred to in paragraph 4(d) above must be given to the Commissioner on or before [date].]

6. A person who fails to comply with the requirements of this notice commits an offence under section 66E(1) of the Ordinance and is liable on summary conviction to a fine at HK\$50,000 and to imprisonment for 6 months, or on conviction on indictment to a fine of HK\$200,000 and to imprisonment for 1 year.

7. Furthermore, under section 66E(5) of the Ordinance a person who, with intent to defraud, fails to comply with the requirements of this notice or in purported compliance with the requirements, provides any material, gives any answer, directions, explanation, particulars or statement that is or are false or misleading in a material particular commits an offence and is liable on summary conviction to a fine at HK\$100,000 and to imprisonment for 6 months, or on conviction on indictment to a fine of HK\$1,000,000 and to imprisonment for 2 years.

8. Please note that if the answer, directions, explanation, particulars or statement ("Required Matter") might tend to incriminate you and you claim, before giving or making the Required Matter, that it might tend to incriminate you, pursuant to section 66F(2) of the Ordinance, the requirements imposed and the questions asked by the Commissioner in this notice as well as the Required Matter are not admissible in evidence against you in criminal proceedings other than those in which you are charged in respect of the Required Matter with an offence under section 66E(5); or an offence under Part V of the Crimes Ordinance (Cap. 200) (e.g. perjury).

9. Should you have any question about this notice, please contact the case officer, [], at [].

Chief Personal Data Officer
for Privacy Commissioner for Personal Data, Hong Kong

[Encl.]

Annex A
Screenshots or photos of the Subject Message

SAMPLE

Annex B

Materials to be provided

The following materials are required to be provided:

- (1) [Materials requested and the way and form in which they are to be provided...];
- (2) [Materials requested and the way and form in which they are to be provided...];
- (3) [...];
- (4) [...]; and
- (5) [...].

SAMPLE

Annex C

Answers to be provided

Answers to the following questions are required to be provided:

- (1) [Question 1...];
- (2) [Question 2...];
- (3) [...];
- (4) [...]; and
- (5) [...].

SAMPLE

Annex D
Statement to be provided

A statement relating to the following matters is required to be made:

- (1) [Matter 1...];
- (2) [Matter 2...];
- (3) [...];
- (4) [...]; and
- (5) [...].

SAMPLE

Annex E

Assistance to be given

The following assistance is required to be given to the Commissioner:

- (1) [Matter 1...];
- (2) [Matter 2...];
- (3) [...];
- (4) [...]; and
- (5) [...].

SAMPLE

Appendix II

Sample Notice to Attend before the Commissioner and to Answer Question under section 66D(2)(b) of the Personal Data (Privacy) Ordinance (Cap. 486)

CASE NO: XXXXXXXXXX

NOTICE TO ATTEND BEFORE THE COMMISSIONER AND TO ANSWER QUESTION UNDER SECTION 66D(2)(b) OF THE PERSONAL DATA (PRIVACY) ORDINANCE (CAP. 486)

Date: [Date]
To: [Recipient's name]
[Address and Email Address]

1. The Privacy Commissioner for Personal Data (the Commissioner) is carrying out a specified investigation under the Personal Data (Privacy) Ordinance (the Ordinance) into an offence for disclosing personal data without consent under section 64 of the Ordinance and related offences.

2. Pursuant to sections 66D(1) and 66D(2)(b) of the Ordinance, if the Commissioner reasonably suspects that, in relation to a specified investigation, a person –

- (a) has or may have possession or control of any material relevant to that investigation; or
- (b) may otherwise be able to assist the Commissioner in relation to that investigation,

the Commissioner may, by written notice given to the person, require the person to attend before the Commissioner at a specified time and place, and answer any question relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation.

3. The Commissioner is now conducting a specified investigation in relation to the following message (the Subject Message) for the purpose of collecting evidence in relation to an offence of disclosing personal data without consent under section 64 of the Ordinance and related offences:

Links to the Subject Message: []

Platform on which the Subject Message is disclosed: []

Please refer to **Annex A** for the screenshots or photos of the Subject Message.

4. In exercise of the powers under section 66D(2)(b), the Commissioner hereby requires you to attend before the Commissioner at the Commissioner's office at Room 1303, 13th Floor, Dah Sing Financial Centre, 248 Queen's Road East, Wan Chai, Hong Kong at [e.g. 9:30 a.m.] on [date] to answer questions relating to matters that the Commissioner reasonably believes to be relevant to the said specified investigation.

5. A person who fails to comply with the requirements of this notice commits an offence under section 66E(1) of the Ordinance and is liable on summary conviction to a fine at HK\$50,000 and to imprisonment for 6 months, or on conviction on indictment to a fine of HK\$200,000 and to imprisonment for 1 year.

6. Furthermore, under section 66E(5) of the Ordinance a person who, with intent to defraud, fails to comply with the requirements of this notice or in purported compliance with the requirements, provides any

material, gives any answer, directions, explanation, particulars or statement that is or are false or misleading in a material particular commits an offence and is liable on summary conviction to a fine at HK\$100,000 and to imprisonment for 6 months, or on conviction on indictment to a fine of HK\$1,000,000 and to imprisonment for 2 years.

7. Please note that if the answer, directions, explanation, particulars or statement (“Required Matter”) might tend to incriminate you and you claim, before giving or making the Required Matter, that it might tend to incriminate you, pursuant to section 66F(2) of the Ordinance, the question to be asked by the Commissioner pursuant to this notice as well as the Required Matter are not admissible in evidence against you in criminal proceedings other than those in which you are charged in respect of the Required Matter with an offence under section 66E(5); or an offence under Part V of the Crimes Ordinance (Cap. 200) (e.g. perjury).

8. Should you have any question about this notice, please contact the case officer, at [].

Chief Personal Data Officer
for Privacy Commissioner for Personal Data, Hong Kong

[Encl.]

SAMPLE

Annex A
Screenshots or photos of the Subject Message

SAMPLE

Appendix III

Form of Warrant to be Issued under section 66G of the Personal Data (Privacy) Ordinance (Cap. 486)

To the Privacy Commissioner for Personal Data/..... , a prescribed officer*

Having been satisfied by information on oath/by affirmation* that there are reasonable grounds for suspecting that an offence under section 64(1), (3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1) of the Personal Data (Privacy) Ordinance (Cap. 486) has been, is being or is about to be committed, and that there is material that is or contains evidence for the purposes of a specified investigation as defined by section 66C of that Ordinance in the premises at
[address of the premises]/stored in an electronic device described as follows:
..... [description of the electronic device]*:

YOU ARE HEREBY AUTHORIZED, together with any person (whether or not a police officer) who may be necessary to assist you, to exercise the powers referred to in section 66G(2)/66G(3)* of that Ordinance in relation to the premises/electronic device*, provided that those powers are exercised before the expiry of 14 days after the date on which this warrant is issued.

Dated this day of

SAMPLE

Appendix IV

Sample Notice to be Posted After a Cessation Action is Taken

To Customers/ Users:

The relevant message/ platform has been removed in compliance with a cessation notice served by the Privacy Commissioner for Personal Data, Hong Kong on (date) pursuant to section 66M of the Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of Hong Kong (the Ordinance).

Under section 66N(1) of the Ordinance, any person who is affected by the cessation notice may appeal to the Administrative Appeals Board of Hong Kong against the notice within 14 days after the date on which the cessation notice is served.

For details of the provisions of the Ordinance, please refer to <https://www.elegislation.gov.hk/hk/cap486>

Appendix V

Complaint Form for Suspected Doxxing Offence under section 64 of the Personal Data (Privacy) Ordinance (Cap. 486)



Suspected “doxxing” offence under section 64 of the Personal Data (Privacy) Ordinance - Complaint Form

Case No. :									
For official use									

The requirements under section 64 of the Personal Data (Privacy) Ordinance

Under section 64 of the Personal Data (Privacy) Ordinance (Cap.486) (the “Ordinance”):-

- (i) A person commits an offence if the person discloses any personal data of a data subject which was obtained from a data user without the data user’s consent, with an intent to obtain gain in money or other property, whether for the benefit of the person or another person; or to cause loss in money or other property to the data subject.
- (ii) A person commits an offence if the person (discloser) discloses any personal data of a data subject without the relevant consent of the data subject with an intent to cause any specified harm to the data subject or any family member of the data subject, or being reckless as to whether any specified harm would be (or would likely be), caused to the data subject or any family member of the data subject.
- (iii) A person commits an offence if the person (discloser) discloses any personal data of a data subject without the relevant consent of the data subject with an intent to cause any specified harm to the data subject or any family member of the data subject, or being reckless as to whether any specified harm would be (or would likely be), caused to the data subject or any family member of the data subject; and the disclosure causes any specified harm to the data subject or any family member of the data subject.

Any data subject who wishes to lodge a complaint regarding a suspected offence under section 64 of the Ordinance must complete this complaint form.

Please read the “**Information Notes**” attached to this form carefully before completing the form.

All information requested in this form is **compulsory**, unless stated otherwise.

Warning:

- a) If you fail to provide the compulsory information, your complaint may not be processed by the office of the Privacy Commissioner for Personal Data (the “PCPD”).
- b) A person commits an offence under section 66E(5) of the Ordinance if the person, with intent to defraud, gives any material, answer, directions, explanation, particulars or statement that is or are false or misleading in a material particular in purported compliance with the requirements contained in the Commissioner’s written notice issued under section 66D. The person will be liable on conviction to a fine of \$1,000,000 and to imprisonment for 2 years.

Are you making a complaint about your own personal data? (see notes 2 and 3) Yes No

(If “No”, you are generally **not entitled to make this complaint**, unless you are a “relevant person” (see note 5), or you are authorised by the complainant to do so. If you are the relevant person, or you are authorised by the complainant, please provide your information in Part II “Relevant person” below, in addition to the complainant’s information in Part I.)

Do you consent the PCPD to disclose your identity as a complainant in the course of handling your complaint?

Yes No (If “No”, the PCPD is **unable to further process your case and/or to prosecute the offender.**)

Do you consent to be a witness and take statement if the PCPD conducts criminal prosecution regarding your case or refer the case to the Hong Kong Police Force for criminal investigation? Yes No

(If “No”, the PCPD is **unable to prosecute the offender, or refer the case to the Hong Kong Police Force for criminal investigation and prosecution.**)

I. Data Subject (i.e. the person whose personal information is being disclosed)

Name (*Mr/Ms/Miss): _____

(**Must** be as the same recorded on the identification document, e.g. Hong Kong Identity Card, passport.) (see notes 13 and 14)

Identification Documents (Type & No.): _____

(For verifying your identity, please produce the original of your identification document if you lodge your complaint to the PCPD in person, or attach a copy of the identification document if you send in this form other than in person.) (see notes 13 and 14)

Address: _____

Telephone: _____ Email (see note 12): _____

II. Relevant person (if appropriate) (see note 5)

Name (*Mr/Ms/Miss): _____

(As recorded on the identification document, e.g. Hong Kong Identity Card, passport.)

Identification Documents (Type & No.) (Optional): _____

Capacity: _____ (Please attach supporting documents for verification.)

Address: _____

Telephone: _____ Email (see note 12): _____

(*Please delete as appropriate)

III. Party complained against (i.e. the person/organisation disclosed the data subject's personal data) (if known) (see notes 8 and 9)

Name of the individual/organisation: _____

Online user name (if applicable): _____ Address: _____

Telephone: _____ Email: _____

Contact person (if applicable): _____

Relationship between the party complained against and the data subject: _____

IV. Details of the disclosure of personal data (see note 8)

Personal data involved (see note 2): _____

Describe the matter being complained: (Please use separate sheet if the space provided is not sufficient.)

If the case involves disclosure via internet, please state the relevant platforms (e.g. Facebook/Instagram):

The link of the post concerned: _____

Date and time of the post: _____ Screenshot of the post: Attached

(please use separate sheet if there is another link, and please provide relevant screenshot.)

To the best of your knowledge, whether the party complained against had obtained the consent from the data subject / the source of the data before disclosing the same? Yes No Do not know

V. The harm suffered by the data subject or/and the family member (see note 4)

Please specify what kind of "specified harm" the data subject or/and the family members had suffered because of the disclosure as stated in Part IV above (see notes 8 and 10):

(please provide relevant documents (if any) to support the harm suffered you had stated above, e.g. psychological report.)

**Before you submit this form, please check whether the following documents are provided:-
(please tick the appropriate box)**

Authorisation by the complainant Yes No N/A
 Evidence in support of the complaint Yes No

(You should produce sufficient information and evidence in support of your complaint e.g. the links and the screenshots of the relevant posts, telephone records/ voice messages/ text messages, witnesses, documentary proof in relation to the “specified harm” you had suffered. Otherwise, the PCPD may not be able to pursue your complaint.)

VI. Declaration

Data Accuracy

I hereby declare that, unless otherwise stated, the information given in Parts I to V above are true to the best of my knowledge and belief.

Personal Information Collection Statement

All personal data submitted will only be used for purposes which are directly related to this complaint. The personal data submitted may be transferred to parties who will be contacted by us during the handling of this case including your legal representative (if any), the party being complained against (including its legal representative, if any), or other parties concerned. The information provided may also be disclosed to agencies who are authorised to receive information relating to law enforcement, prosecution or review of the Commissioner’s decisions.

You have the right to request access to and correction of your personal data held by us. Request for access or correction should be made in writing to the Data Protection Officer at the address shown in note 7. Please note that we shall or may refuse to comply with a data access request in the circumstances specified in section 20 of the Ordinance, for example, where the requested data relates to information obtained in the course of handling a complaint by us the disclosure of which would constitute a contravention of the requirements under the secrecy provision of section 66R of the Ordinance.

Sign by complainant: _____

Date: _____

Information Notes

1) How can the Privacy Commissioner for Personal Data help you?

The Privacy Commissioner for Personal Data (the “Commissioner”) is charged with the statutory duty to receive and, if appropriate, investigate any complaint from the public relating to suspected breaches of the requirements under section 64 of the Ordinance, and to conduct investigation and /or prosecution against the party complained against.

2) What is “personal data”?

“Personal data” means the information which:-

- a) relates to a living person;
- b) can be used to identify that person, and
- c) exists in a form in which access or processing is practicable.

Examples of personal data protected by the Ordinance include names, phone numbers, addresses, identity card numbers, photos, medical records and employment records. On the other hand, in the decision of Administrative Appeal No. 49/2005, the Administrative Appeals Board decided that “false facts and fabricated evidence were not personal data”.

3) Who can lodge a complaint by using this complaint form?

This complaint form was designed for complaints in relation to suspected offences under section 64 of the Ordinance. An individual, or a relevant person on behalf of an individual (see note 5), may make a complaint to the Commissioner in relation to the suspected offence under section 64 of the Ordinance by using this complaint form. As for any act or practice that may be a contravention of a requirement under the Ordinance (other than section 64), the individual can use another designated form (OPS001) to make a complaint to the Commissioner. If the complainant authorises another party to handle the complaint, a written authorisation should be provided.

4) Who is a “data subject” and “family member”?

Under section 2(1) of the Ordinance, “data subject”, in relation to personal data, means the individual who is the subject of the data. “Family member” in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity.

5) Who is a relevant person?

A relevant person may make a complaint on behalf of an individual, if:-

- a) that individual is a minor and the relevant person is his parent or legal guardian;
- b) that individual cannot manage his own affairs and the relevant person has been appointed by a court to manage those affairs;
- c) that individual is mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136) and:-
 - (i) the relevant person has been appointed under section 44A, 59O or 59Q of the Mental Health Ordinance to be his guardian; or
 - (ii) the relevant person is the Director of Social Welfare or any other person in whom the guardianship of that individual has been vested or who has to perform the functions of the appointed guardian under section 44B(2A) or (2B) or 59T(1) or (2) of the Mental Health Ordinance.

6) How is a complaint relating to suspected offences under section 64 of the Ordinance made?

A complaint should be made in writing in the Chinese or English language. The complainant may use this complaint form (OPS004) to provide full particulars of the complaint. If assistance is required, the complainant may visit or telephone the PCPD. All complaints will be treated in the **strictest confidence**, and handled in accordance with the Ordinance and the “Complaint Handling Policy”, which is available at: www.pcpd.org.hk/english/complaints/policy/complaint_policy.html.

7) How to contact the PCPD?

Address: Room 1303, 13/F, Dah Sing Financial Centre, 248 Queen's Road East, Wanchai, Hong Kong.
Office hours: Monday - Friday 8:45 a.m.- 5:40 p.m., Saturday, Sunday and Public Holidays: closed.
Hotline: (Enquiry in relation to suspected offences under section 64 of the Ordinance) 3423 6666
(General enquiry) 2827 2827
Email: (General enquiry) communications@pcpd.org.hk (General complaint) complaints@pcpd.org.hk
Fax: 2877 7026 Website: www.pcpd.org.hk

8) What information must be provided to the Commissioner for making a complaint?

In order to enable the Commissioner to process the complaint, the complainant must provide information as requested in this complaint form. Complainant must provide details of the personal data concerned and the act or practice that is complained of, e.g. how, when, by whom and by what means had the complainant’s personal data disclosed. If the case involves electronic communication means, please provide details as much as possible, e.g. name and link of the website/platform, the link and screenshot of the relevant post, relevant telephone records/ voice messages/ text messages, witnesses, documentary proof in relation to the “specified harm” you had suffered in support of your allegation. Mere speculation is insufficient to substantiate a complaint.

The complainant must also state by whom the act was done or the practice was engaged in, i.e. the party complained against, and provide the details as prescribed in this form. Please note that it is essential to specify and provide adequate information for identifying and locating the party complained against. Otherwise, the Commissioner may not be able to process the complaint. Mere provision of the means to trace the identity of the party complained against, e.g. a website or telephone number without other information to identify the person is generally not considered as sufficient.

9) What happens after a complaint in relation to suspected offences under section 64 of the Ordinance is lodged with the Commissioner?

Upon receiving all necessary information from the complainant, the PCPD will consider whether the complaint relates to offences under section 64 of the Ordinance.

Briefly stated, offences under section 64 contain the following criminal elements:-

- (a) The person being complained against discloses personal data obtained from a data user without the data user's consent, with an intent to obtain gain in money or other property, or to cause loss to the data subject (offence under s.64(1));
- (b) The person being complained against discloses personal data of a data subject without the data subject's relevant consent, with the intent of (or being reckless as to the likelihood of) causing "specified harm" (see note 10 for the meaning of "specified harm") to the data subject or his/her family member (offence under s.64(3A)); or
- (c) Besides those elements referred to in (b), "specified harm" is actually caused to the data subject or his/her family member because of such disclosure (offence under s.64(3C)).

The PCPD will examine all the information provided by the complainant and will, where necessary, make inquiries with related persons or organizations for assessing whether there is sufficient evidence warranting a "specified investigation" as defined under section 66C of the Ordinance. If the Commissioner decides at this stage not to institute a "specified investigation", the case will be handled according to our general complaint handling procedure, and the complainant will be notified of the result of the case in accordance with section 39(3) of the Ordinance in writing.

A "specified investigation" will cover all relevant aspects of the case for the purpose of determining whether there is sufficient evidence to institute a prosecution.

The Commissioner's powers in respect of section 64 offences include (a) issuing "cessation notices" to persons (including organisations) directing them to cease disclosing personal data by, for instance, removing the offending message; and (b) issuing notices to persons (including organisations) requiring them to assist the investigation by providing materials, answering questions, or giving other assistance. Failure to comply with the directions or requests stated in the notices of the Commissioner constitutes criminal offence.

On the basis of the investigation results, the Commissioner will decide whether there is sufficient evidence and whether it is in the public interest to prosecute the case. Having completed an investigation, the Commissioner will inform the complainant of the result of that investigation under section 66S of the Ordinance.

10) What is "specified harm"?

Pursuant to section 64(6) of the Ordinance, "specified harm" contains four categories, including harassment, molestation, pestering, threat or intimidation to the relevant person; bodily harm or psychological harm to that person; harm causing that person reasonably to be concerned for that person's safety or well-being; or damage to the property of the person.

11) What is the prosecution deadline regarding an offence under section 64 of the Ordinance?

A prosecution for a summary offence under the Ordinance may only be commenced before the end of 2 years after the date on which the offence is committed.

12) How will the PCPD use your email address?

Upon providing your email address to the PCPD, you consent that we will send correspondences to you by email. The correspondences from the PCPD may include inquiry for further information in support of your complaint, progress update and our decision in respect of the complaint. Hence you are reminded to check the email frequently. We will encrypt sensitive information before sending it out by email. You are also reminded to do encryption when sending sensitive information to the PCPD by email.

13) Why is it important to provide the complainant's proof of identity?

Processing or investigating of a complaint is a serious and important matter. Therefore, it is important for the complainant to provide reliable source of identification document to the PCPD for the purpose of verification of his identity. Furthermore, as stated in note 9 above, the PCPD will ascertain whether a complaint relates to the complainant's own personal data. The failure to provide identification document may hinder the follow-up actions by the PCPD, or even render the complaint not pursuable. It must be noted that the Commissioner is entitled not to investigate an "anonymous" complaint under section 39(2) of the Ordinance.

14) What form of proof of identity is required?

A Government-issued identification document (e.g. Hong Kong Identity Card or passport), which has undergone reliable verification process, is an authoritative document for identification. In this regard, the complainant may attend the PCPD to produce the original of his identification document for verification; if the complainant sends in the complaint form other than in person, he should send a copy of the identification document to the PCPD.



PCPD website



Download
this publication



Enquiry Hotline : (852) 2827 2827

Fax : (852) 2877 7026

Address : Room 1303,13/F, Dah Sing Financial Centre, 248 Queen's Road East, Wanchai, Hong Kong

Email : communications@pcpd.org.hk

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