Introduction to the
Personal Data (Privacy) Ordinance
1. Introduction to the Concept of Privacy and the PD(P)O
2. Six Data Protection Principles (DPPs)
3. Direct Marketing
4. Offences & Compensation
5. Q & A session
Introduction to the Concept of Privacy and the PD(P)O
What is privacy?

“the right to be let alone, or freedom from interference or intrusion”

https://iapp.org/about/what-is-privacy/

“a fundamental right, essential to autonomy and the protection of human dignity, serving as the foundation upon which many other human rights are built”

https://www.privacyinternational.org/explainer/56/what-privacy
Privacy covers...

- Personal information
- Person (bodily privacy)
- Personal behaviour
- Personal communication
HK: Personal Data (Privacy) Ordinance ("PDPO")
(came into effect in 1996)

One of the earliest comprehensive data protection laws in Asia

Adopt all OECD Principles except Accountability

PCPD.org.hk
Privacy Commissioner for Personal Data, Hong Kong
# Personal Data (Privacy) Ordinance
*(came into effect in 1996)*

## Expected effect

### Business Perspective
- To facilitate business environment
- To maintain Hong Kong as a financial and trading hub

### Human Rights Perspective
- Protect individuals’ personal data privacy
Established an independent authority, Privacy Commissioner for Personal Data

Covers both public (government) and private sectors

The Data Protection Principles outline how data users should collect, handle and use personal data

Complemented by other provisions imposing further compliance requirements
Characteristics of the PDPO

- Principle based
- Technology neutral
- Not prohibitive, nor straightjacket
- Compatible with innovations
What is “Personal Data”? 

“Personal Data” should satisfy three conditions: 

(1) relating directly or indirectly to a living individual; 

(2) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and 

(3) in a form in which “access to” or “processing of” the data is practicable.
The Ordinance Governs All Data Users

• A “data user” is a person who either alone or jointly or in common with other persons, *controls* the collection, holding, processing or use of the data.
Six Data Protection Principles (DPPs)
The six data protection principles form the base of the Ordinance.

Data users must comply with the six data protection principles in the collection, holding, accuracy, retention period, security, privacy policy and access to and correction of personal data.
Principles of the PDPO

- Data Minimisation
- Purpose Specification
- Use Limitation
- Retention Limitation
- Transparency
- Data Security
- Rights of data subjects
“Collection” of Personal Data – Case Sharing

Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data (CACV 331/1999)
A complaint lodged with the PCPD in 1997

The complainant was photographed by a magazine without her knowledge or consent

The photograph published in the magazine accompanied by unflattering and critical comments on her dressing style
The *Eastweek* case

**Conditions for “collection” of personal data**

- The collecting party must be thereby compiling information about an individual.
- The individual must be one whom the collector of information has identified or intends or seeks to identify.
- The identity of the individual must be an important item of information to the collecting party.
Principle 1 – Purpose and manner of collection

• shall be collected for purposes related to the functions or activities of the data user

• the means of collection must be lawful and fair

• the data collected should be adequate but not excessive
Example of unfair collection – blind advertisement

Company Assistant
- Form 5 or above
- Knowledge of company secretarial duties

Please send resume to PO Box 100

- Submission of personal data by job applicants
- No identity of the employer provided
- No notification of purpose of use of the data
- Job applicants are denied of data access rights

Company Assistant
- Form 5 or above
- Knowledge of company secretarial duties

Interested parties please contact our Human Resource Officer, Miss Angel Chan on 2808-2808

- No submission of personal data by job applicants
- Contact person provided from whom applicants:
  - may seek to identify the employer
  - may seek information about purpose statement

PCPD.org.hk
Privacy Commissioner for Personal Data, Hong Kong
Principle 1 – Purpose and manner of collection

• shall be collected for purposes related to the functions or activities of the data user

• the means of collection must be lawful and fair

• the data collected should be adequate but not excessive
Principle 1 – Purpose and manner of collection

Advice to Data Subjects

• Provide necessary but not excessive personal data to organisations for the prescribed purpose
• For example, when being asked to provide personal data for applying for credit cards, data subjects should consider if the required personal data are necessary
Principle 1 – Purpose and manner of collection

inform the data subject of the following immediately or in advance:

a) the purposes of data collection;

b) the classes of persons to whom the data may be transferred;

c) whether it is obligatory or voluntary for the data subject to supply the data;

d) where it is obligatory for the data subject to supply the data, the consequences for him if he fails to supply the data; and

e) the name or job title and address to which access and correction requests of personal data may be made.
The Alpha Corporation
Personal Information Collection Statement pertaining to Recruitment

The personal data collected in this application form will be used by the Alpha Corporation to assess your suitability to assume the job duties of the position for which you have applied and to determine preliminary remuneration, bonus payment, and benefits package to be discussed with you subject to selection for the position.

Personal data marked with (*) on the application form are regarded as mandatory for selection purposes. Failure to provide these data may influence the processing and outcome of your application.

It is our policy to retain the personal data of unsuccessful applicants for future recruitment purposes for a period of two years. When there are vacancies in our subsidiary or associate companies during that period, we may transfer your application to them for consideration of employment.

Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your application. If you wish to exercise these rights, please complete our "Personal Data Access Form" and forward it to our Data Protection Officer in the Human Resources.
Principle 1 – Purpose and manner of collection

Personal Information Collection Statement (PICS)

• Should ensure that a PICS is effectively communicated to the data subjects. Considerations include the layout and language used in the PICS.

• Should define the purpose of use and class of data transferees with a reasonable degree of certainty.
Principle 1 – Purpose and manner of collection

Advice to Data Subjects

• Read the Personal Information Collection Statement thoroughly before providing personal data for any individuals or organisations
Principle 1 – Purpose and manner of collection

Advice to Data Subjects

• When providing personal data to organisation for commercial promotion to obtain free service or gifts, data subjects should consider whether there are risks if they provide personal data to the organisation concerned

• Data subjects should also consider if the provision of personal data is proportionate to the value of the free service or gifts
Principle 2 – Accuracy and duration of retention

• Data users shall take practicable steps to ensure the accuracy of personal data held by them.

• All practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose.

• If a data user engages a data processor to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.
Principle 3 – Use of personal data

• Personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.
  *New purpose means any purpose other than the purposes for which they were collected or directly related purposes*

• Allow a “relevant person” to give prescribed consent for the data subject under specified conditions
Principle 4 – Security of personal data

• All practicable steps shall be taken to ensure that personal data are protected against unauthorized or accidental access, processing, erasure, loss and use.

• Security in the storage, processing and transmission of data.

• If a data user engages a data processor to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.
Data Breach Handling – Action 1

Collecting Information Immediately

Immediate gathering of essential information for assessing the impact on data subjects including:

- When and where did the breach take place?
- How was the breach detected and by whom?
- What was the cause of the breach?
- What kind and extent of personal data was involved?
- How many data subjects were affected?
Data Breach Handling – Action 2

Contacting the Interested Parties & Adopting Containment Measures

Interested parties may include:

- The law enforcement agencies
- The relevant regulators (e.g., Privacy Commissioner for Personal Data, Hong Kong (the “Commissioner”))
- The Internet companies
- IT experts
Assessing the potential harm caused by a data breach, for examples:

- Threat to personal safety
- Identity theft
- Financial loss
- Humiliation or loss of dignity, damage to reputation or relationship
- Loss of business and employment opportunities
Data Breach Handling – Action 4

Considering the Giving of Notification

When real risk of harm is reasonably foreseeable in a data breach, the data user should consider:

- Notifying the affected data subjects and the relevant parties
- The consequences for failing to give notification
What is a data breach notification?

• A formal notification given by the data user to the data subjects affected and the relevant parties and regulators in a data breach.
• It is not a statutory requirement on data users to inform the PCPD about a data breach incident concerning the personal data held by them, but data users are advised to do so as a recommended practice for proper handling of such incident.
What is a data breach notification?

• If a data user decides to report a data breach to the Commissioner, the data user may complete a Data Breach Notification Form and submit the completed form to us online, by fax, in person or by post.
Data Breach Notification Form

To: Privacy Commissioner for Personal Data, Hong Kong

Notice
Notification of a data breach to the Privacy Commissioner for Personal Data, Hong Kong (the “Commissioner”) by the data user (see Note 1) is not a legal requirement. In deciding whether or not to give this notification to the Commissioner, you should consider the “Guidance on Data Breach Handling and the Giving of Breach Notifications” issued by the Commissioner. In most cases, it is advisable to give notification to the data subject(s) (see Note 2) affected by the breach.

PARTICULARS OF THE PERSON GIVING THIS NOTIFICATION (i.e., the data user)
Name:
Address:
Telephone number: Tax number:
Email address:

Where the person giving this notification is an organization, please provide the following information:
Contact person:
Name (Mr./Ms./Miss):
Relationship with the Reporting Organization (e.g., employee):
Telephone number: Tax number:
Email address:
(*Please date as appropriate)

DETAILS ABOUT THE DATA BREACH (see Note 3):

ACTIONS TAKEN / WILL BE TAKEN TO CONTAIN THE BREACH (see Note 4)
Please set out details of any actions / measures taken or will be taken to mitigate and minimize the breach.

RISK OF HARM (see Note 5)
Is there a real risk of harm to any individual? (Please tick one of the following boxes) □ Yes □ No
Please explain why there is / is not a real risk of such harm.

ASSISTANCE AND ADVICE OFFERED TO INDIVIDUALS
Describe (i) what has been done to inform the individual(s) affected by the breach and (ii) if their safety, well-being or property is at risk as a result of the breach, what has been done or can be done to assist them in avoiding/mitigating that risk or its consequences.

NOTIFICATION TO OTHER BODIES / REGULATORS / LAW ENFORCEMENT AGENCIES
Please provide details if such notification has been given.

Signature:
Name:
Title:
Date:
Principle 5 – Information to be generally available

Data users have to provide

(a) policies and practices in relation to personal data;

(b) the kind of personal data held;

(c) the main purposes for which personal data are used.
Principle 5: Advice to Wi-fi Service Provider

• Privacy Policy Statement of Wi-fi service should not be made in unreasonably small fonts

• Wi-fi service provider should ensure that the Privacy Policy is effectively communicated to Wi-fi users. Considerations include the font size, layout and language used in the Privacy Policy
Principle 6 – Access to personal data

• A data subject shall be entitled to
  (a) request access to his/her personal data;
  (b) request correction of his/her personal data.

• Data user may charge a fee for complying with the data access request
PERSONAL DATA (PRIVACY) ORDINANCE
DATA ACCESS REQUEST FORM

Important Notice to Requestor

1. Please read this Form and the footnotes carefully before completing this Form. Where this Form contains a summary of the relevant requirements under the Personal Data (Privacy) Ordinance ("the PDPO"), the summary is provided for reference purpose only. For a complete and definitive statement of the law, please refer to the PDPO itself.

2. This Form is specified by the Privacy Commissioner for Personal Data ("the Commissioner") under section 67(1) of the PDPO with effect from 1 October 2012. The data user may refuse to comply with your data access request ("your request") if it is not made in this Form (see section 20(3)(o) of the PDPO).

3. Please complete this Form in Chinese or English. The data user may refuse to comply with your request if your request is not made in either language (see section 20(3)(o) of the PDPO).

4. To make a data access request, you must either be the data subject or a "relevant person" as defined in section 1 or 17A of the PDPO (please refer to Part III of this Form).

5. You are entitled to access data which is not personal data or personal data not belonging to you (see section 18(1) of the PDPO). The data user is only required to provide you with a copy of your personal data rather than a copy of the document containing your personal data. In most situations, the data user may elect to provide a copy of the document concerned. If the personal data you request is recorded in an audio form, the data user may provide a transcript of that part of the audio record which contains your personal data.

6. It is important that you specify in this Form clearly and in detail the personal data that you request. The data user may refuse to comply with your request if you have not supplied him with such information as is reasonably necessary to locate the requested data (see section 20(3)(o) of the PDPO). If you supply any false or misleading information in this Form for the purpose of having the data user comply with your request, you may commit an offence (see section 18(5) of the PDPO).

7. Do not send this Form to the Commissioner. The completed Form should be sent directly to the data user to whom you make your request.

8. The data user may require you to provide identity proof such as your Hong Kong Identity Card and may charge a fee for complying with your request (see sections 20(3)(a) and 18(3) of the PDPO).

9. The data user may refuse to comply with your request in the circumstances specified in section 20 of the PDPO.

Important Notice to a Data User

1. You are required by section 19(1) of the PDPO to comply with a data access request within 40 days after receiving the same. To comply with a data access request means: (a) if you hold the requested data, to inform the requester in writing that you hold the data and supply a copy of the data, or (b) if you do not hold the requested data, to inform the requester in writing that you do not hold the data (except that the Hong Kong Police may inform the requester orally if the request is whether it holds any record of criminal conviction of an individual). A sworn notification given to the requester to collect the requested data or a note sent to the requester for payment of a fee is insufficient. In complying with the request, you should omit or otherwise not disclose the names or other identifying particulars of individuals other than the data subject.

2. If you are unable to comply with the data access request within the 40-day period, you must inform the requester by notice in writing that you are unable and the reasons, and comply with the request to the extent, if any, that you are able to within the same 40-day period, and thereafter comply or fully comply, as the case may be, with the request as soon as practicable (see section 19(2) of the PDPO).

3. If you have a lawful reason for refusing to comply with the request pursuant to section 20 of the PDPO, you must give the requester written notification of your refusal and your supporting reasons within the same 40-day period (see section 20(1) of the PDPO).

4. It is an offence not to comply with a data access request in accordance with the requirements under the PDPO. Any data user convicted of such an offence is liable to a fine at level 1 (currently set at HK$10,000) (see section 20(1) of the PDPO).

5. You may charge a fee for complying with a data access request, but section 20(3) of the PDPO provides that "no fee imposed for complying with a data access request shall be excessive." The PDPO does not define the meaning of "excessive" with regard to imposing a data access request fee. According to the principle laid down in the decisions of Administrative Appeal 2, 278/2000, a data user is only allowed to charge the requester for the costs which are "directly related to and necessary for" complying with a data access request.

6. You shall refuse to comply with a data access request –

(a) if you are not supplied with such information as you reasonably require –

(i) in order to satisfy you as to the identity of the requester;

(ii) where the requester purports to be a relevant person, in order to satisfy you –

(A) as to the identity of the individual in relation to whom the requester purports to be such a person; and

(B) that the requester is such a person in relation to that individual;

(iii) subject to section 20(3) of the PDPO, if you cannot comply with the request without disclosing personal data of which any other individual is the data subject unless you are satisfied that the other individual has consented to the disclosure of the data to the requester; or

(b) for any purpose other than the purpose specified in the request.
3 Direct Marketing
Use of Personal Data in Direct Marketing

• Direct Marketing means sending promotional information of goods or services, addressed to specific persons by name by mail, fax, email or phone.

• Under the existing Ordinance, data user must notify a data subject of his opt-out right when using his personal data in direct marketing for the first time.

• Upon receiving an opt-out request, the data user must cease using the data.
Provide data subjects with “prescribed information” and response channel through which the data subject may elect to give consent
Notifcation should be easily understandable

- Should be given explicitly and voluntarily
- “consent” includes an indication of “no objection”
## Regulatory Regime of Direct Marketing

<table>
<thead>
<tr>
<th>Use of Personal Data in Direct Marketing</th>
<th>Provide Personal Data to another person for Use in Direct Marketing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The data user intends to use the personal data of the data subject for direct marketing;</td>
<td>1. The data user intends to provide the personal data of the data subject to another person for use by that person in direct marketing;</td>
</tr>
<tr>
<td>2. The data user may not so use the data unless the data user has received the data subject’s consent to the intended use;</td>
<td>2. The data user may not so provide the data unless it has received the data subject’s <strong>written consent</strong> to the intended provision;</td>
</tr>
<tr>
<td>3. The kinds of personal data to be used;</td>
<td>3. The provision of the data is <strong>for gain</strong> (if it is to be so provided);</td>
</tr>
<tr>
<td>4. The classes of marketing subjects in relation to which the data is to be used;</td>
<td>4. The kinds of personal data to be provided;</td>
</tr>
<tr>
<td>5. The response channel</td>
<td>5. The classes of persons to which the data is to be provided;</td>
</tr>
<tr>
<td>6. The classes of marketing subjects in relation to which the data is to be used; and</td>
<td></td>
</tr>
<tr>
<td>7. The response channel</td>
<td></td>
</tr>
</tbody>
</table>
“Consent” includes an “indication of no objection”

Example of indicating no objection generally:

We intend to use your name, telephone number and address for direct marketing credit card and insurance products/services but we cannot so use your personal data without your consent.

Please sign at the end of this statement to indicate your agreement to such use. Should you find such use of your personal data not acceptable, please indicate your objection before signing by ticking the box below.

☐ The customer named objects to the proposed use of his/her personal data in direct marketing.

Signature of the customer
Name: xxx
Date: yyyy/mm/dd

Return the signed form but did not check the box indicating objection
= consent
## Regulatory Regime of Direct Marketing
### Higher Penalties for Non-Compliance

<table>
<thead>
<tr>
<th>Non-Compliance</th>
<th>Maximum Fine (HK$)</th>
<th>Maximum Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Compliance</td>
<td>500,000</td>
<td>3 years</td>
</tr>
<tr>
<td>Non-Compliance if the personal data is provided to third party for its use in direct marketing in exchange for gain</td>
<td>1,000,000</td>
<td>5 years</td>
</tr>
</tbody>
</table>

[PCPD.org.hk](https://www.PCPD.org.hk) -- Privacy Commissioner for Personal Data, Hong Kong
Guidance to help data user

- "New Guidance on Direct Marketing" (Jan 2013 edition), explaining the requirements under the new regime and providing practical guidance to data users.
- Professional Workshop, to familiarise organisations with the new provisions and compliance measures.
Examples of Criminal Offences under PDPO

Contravention of DPP
- not an offence
- enforcement notice directing the data user to remedy the contravention

Non-compliance with an enforcement notice
- commits an offence
- penalty of a fine at $50,000 and imprisonment for 2 years

Repeated non-compliance with enforcement notice
- penalty of a fine at $100,000 and imprisonment for 2 years
- in case of a continuing offence, a daily fine of $2,000

Same infringement of the second time
- penalty of a fine at $50,000 and imprisonment for 2 years
Criminal offences under PDPO
Section 64 – Disclosing Personal Data Obtained Without Consent from Data User

(1) 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—
(a) to obtain gain in money or other property, whether for the benefit of the person or another person; or
(b) to cause loss in money or other property to the data subject.

(2) A person commits an offence if —
(a) the person discloses any personal data of a data subject which was obtained from a data user without the data user’s consent; and
(b) the disclosure causes psychological harm to the data subject.

Maximum penalty: a fine of $1,000,000 and imprisonment for 5 years
Examples of Breach of Section 64

Disclosure of an individual’s personal data on the Internet for the unlawful purposes of bullying, incitement and intimidation without consent.

Sale by an employee of a company of customers’ personal data without the company’s consent, and for which he received payment from the purchaser.

An ex-employee of a bank called the customers of the bank to promote loan products on behalf of a financial institute (his new employer).

Uploading of a celebrity’s intimate photos to the Internet by staff of a laptop repair company, which he retrieved from the laptop without that celebrity’s consent, and causing psychological harm to the celebrity.
Compensation

Section 66B: Privacy Commissioner can grant assistance to data subject in respect of these legal proceedings.
Factors to be considered in vetting an application

✓ whether there is sufficient evidence to show that there is a contravention of a requirement under the Ordinance by a data user
✓ whether the applicant can provide sufficient evidence to show that he/she has suffered damage by reason of a contravention of a requirement under the Ordinance (the applicant has to provide evidence to support his/her application)
✓ whether the case raises grave privacy concern and data protection implications
✓ whether it is unreasonable to expect the applicant to deal with the case unaided
How to provide proof of damage?

- injury to feelings? (e.g. certificate of attendance, sick leave certificate)
- financial loss? (e.g. receipts for the expenses incurred)
- damage to reputation? (e.g. information posted on the internet)

To prove that the damages suffered were caused by the contravention of the requirement of the Ordinance
Code of Practice

• Identity Card Number and other Personal Identifiers
• Human Resource Management
• Consumer Credit Data
Guidelines and leaflets

- Privacy Management Programme: A Best Practice Guide (Revised in August 2018)
- New Guidance on Direct Marketing
- Monitoring and Personal Data Privacy at Work
- Guidance on Collection and Use of Biometric Data
- Guidance on CCTV Surveillance Practices
- Guidance on Data Breach Handling and the Giving of Breach Notification
Guidelines and leaflets

• Guidance on the Use of Portable Storage Devices
• Guidance for Data User on the Collection and Use of Personal Data through the Internet
• Guidance on Personal Data Erasure and Anonymisation
• Proper Handling of Data Access Request and Charging of Data Access Request Fee by Data Users
Guidelines and leaflets

- Information Leaflet: An Overview of the Major Provisions of the Personal Data (Privacy) (Amendment) Ordinance 2012
- Information Leaflet: Offence for disclosing personal data obtained without consent from the data user
- Information Leaflet: Outsourcing the Processing of Personal Data to Data Processors

PCPD.org.hk
Privacy Commissioner for Personal Data, Hong Kong
What's New

- The Second Anniversary of the GDPR Implementation
- The Privacy Commissioner Revised the booklet “European Union General Data Protection Regulation 2016”
- Privacy issues relating to Government's Cash Payout Scheme
- PCPD Named "Mangower Developer" Again
- Telecommunications Company Pleaded Guilty to Violating Direct Marketing Provisions and Fined HK$20,000
- Doxing of Legislative Council Security Personnel, Privacy Commissioner Examines His Legal Powers to Enforce the Law Impartially
- Privacy Commissioner: Investigates Recent Doxing of Government Officials, Legislative Council Security Personnel, Teachers and Students
- PCPD Warns Against Phishing Email and Fraudulent Website
- Matters relating to Video-recording of Reporters’ Identity Cards, etc.
- Privacy Commissioner Condemns Doxing Legislative Council Security Personnel
- Legal issues relating to Personal Data involved in Government's distribution of Reusable Masks

For Individuals

- Think Privacy Be Smart Online
- Using Computers and the Internet Wisely
- Be Smart on Social Networks
- Your Identity Card Number and Your Privacy
- Exercising Your Data Access Rights

For Organisations

- EU General Data Protection Regulation Negotiation
- Mobile App Development
- Professional Workshops
- Online Courses
- Introduction to the PD(O)O Seminar
By becoming a DPOC member, you will:

- advance your knowledge and practice of data privacy compliance through experience sharing and training;
- enjoy 20% discount on the registration fee for PCPD’s Professional Workshops;
- receive updates on the latest development in data privacy via regular e-newsletter

As a DPOC member, your organisation’s name will be published on DPOC membership list at PCPD’s website, demonstrating your commitment on personal data protection to your existing and potential customers as well as your stakeholders.

Membership fee: HK$350 per year

Enquiries: dpoc@pcpd.org.hk

https://www.pcpd.org.hk/misc/dpoc/files/AppForm_1920_NewMembers.pdf
Privacy Campaign for SME

Dedicated Enquiry Services for SME

2110 1155
sme@pcpd.org.hk

PCPD.org.hk

Privacy Commissioner for Personal Data, Hong Kong
Contact Us

- **Hotline**: 2827 2827
- **Fax**: 2877 7026
- **Website**: www.pcpd.org.hk
- **E-mail**: enquiry@pcpd.org.hk
- **Address**: 1303, 13/F, Sunlight Tower, 248 Queen’s Road East, Wanchai, HK

---

This PowerPoint is licensed under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence. In essence, you are free to share and adapt this PowerPoint, as long as you attribute the work to the Office of the Privacy Commissioner for Personal Data, Hong Kong. For details, please visit creativecommons.org/licenses/by/4.0.