















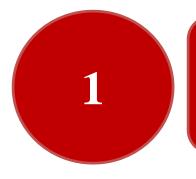




- 1 Introduction to the Concept of Privacy and the PD(P)O
 - 2 Six Data Protection Principles (DPPs)
 - 3 Direct Marketing
 - 4 Offences & Compensation
- 5 Q & A session







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/

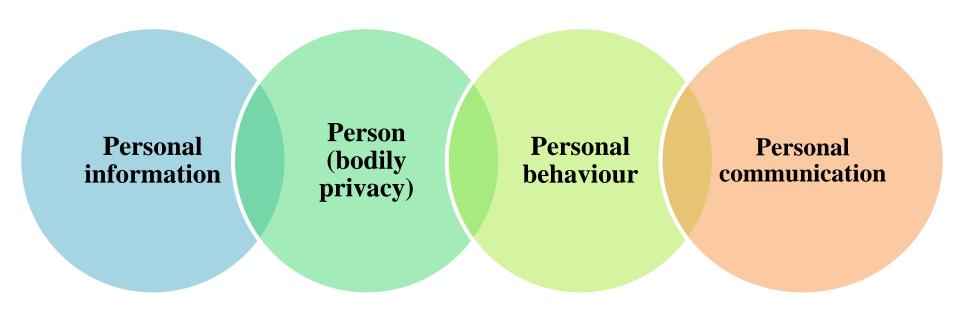
"a fundamental right, essential to autonomy and the protection of human dignity, serving as the foundation upon which many other human rights are built"

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





Privacy covers...







HK: Personal Data (Privacy) Ordinance("PDPO") (came into effect in 1996)

One of the earliest comprehensive data protection laws in Asia







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





Personal Data (Privacy) Ordinance, Cap 486 (came into effect in 1996)

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

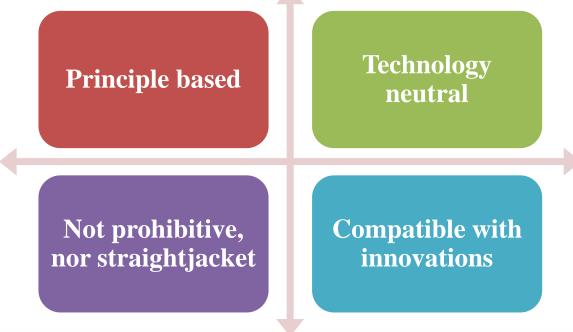
Complemented by other provisions imposing further compliance requirements





Privacy Commissioner for Personal Data, Hong Kong

Characteristics of the PDPO







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 <u>form</u> 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.













2

Six Data Protection Principles (DPPs)





保障資料原則 **Data Protection Principles**

PCPD.org.hk

收集目的及方式 Collection Purpose & Means



其目的應直接與其戰能或活動有關 須以切實可行的方法告知資料當事人收集其個人資料的目

的,以及資料可能會被轉移給哪類人士。 收集的資料是有實際需要的,而不超乎適度。

資料使用者須以合法和公平的方式,收集他人的個人資料, Personal data must be collected in a lawful and fair way, for purpose directly related to a function/activity of the data user. All practicable steps shall be taken to notify the data subjects of

the purpose of data collection, and the classes of persons to whom the data may be transferred.

Data collected should be necessary but not excessive.

準確性儲存及保留 Accuracy & Retention



資料使用者須雞保持有的個人資料準確無誤,資料的保留 Personal data is accurate and is not kept for a period longer than 時間不應胡婆達教原來目的的實際所需

is necessary to fulfill the purpose for which it is used.

使用 Use



個人資料只限用於收集時述明的目的或直接相關的目的。 除非得到資料當事人自顧和明確的同意

Personal data is used for the purpose for which the data is collected or for a directly related purpose, unless voluntary and explicit consent is obtained from the data subject.

保安措施 Security



資料使用者須採取切實可行的步驟,保障個人資料不會未經 授權或意外地被查閱、盧珥、刪除、喪失或使用。

A data user needs to take practical steps to safeguard personal data from unauthorised or accidental access, processing,

透明度 Openness



交代其特有的個人資料類別和用途

A data user must make known to the public its personal data policies and practices, types of personal data it holds and how the data is used.

查閱及更正 Data Access & Correction



资料常事人有權要求查閱其個人資料;若發現有關個人資 料不準確,有權要求更正。

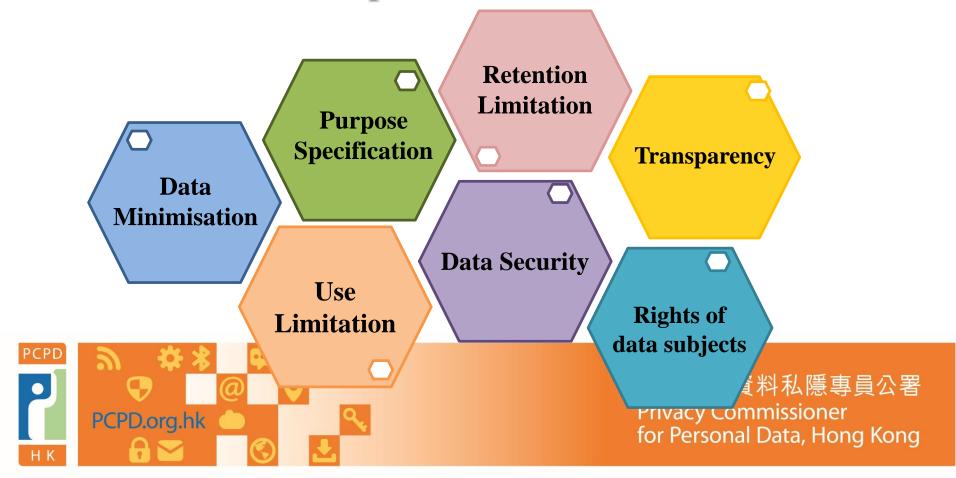
A data subject must be given access to his personal data and to make corrections where the data is inaccurate.

> Office of the Privacy Commissioner for Personal Data, Hong Kong

• 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



"Collection" of Personal Data – Case Sharing

Eastweek Publisher Limited & Another v
Privacy Commissioner for Personal Data (CACV 331/1999)











The Eastweek case



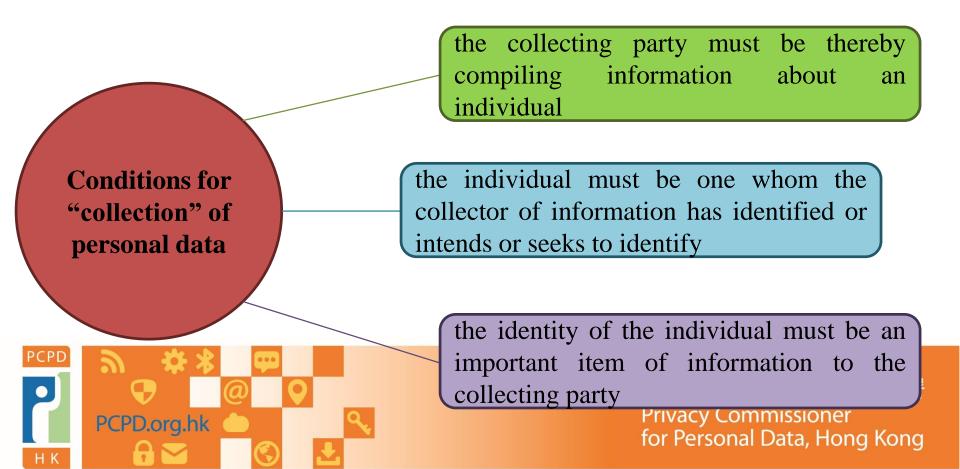
A complaint lodged with the PCPD in 1997 The complainant was photographed by a magazine without her knowledge or consent

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





The Eastweek case



 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

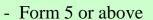
Company Assistant

- 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





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





- 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





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





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

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

- the purposes of data collection; **a**)
- whether it is obligatory or voluntary for the data subject to supply the data; **c**)
- **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.



b)



Example of PICS

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.

Purpose Statement

Obligatory or optional to provide data

Classes of transferees

Access & correction right

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



Advice to Data Subjects

• Read the Personal Information Collection Statement thoroughly before providing personal data for any individuals or organisations





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 <u>a new purpose</u>.
 - *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







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?























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.





https://www.pcpd.org.hk/english/enforcement/data_breach_notification/dbn.html

To: Privacy Commissioner for Personal Data, Hong Kong



Data Breach Notification Form

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 notifications to the data subject(s) (see Note 2) affected by the breach.

Fax number:
, please provide the following information:
, please provide the following information:
, please provide the following information:
):

DETAILS ABOUT THE DAT	TA BREACH (see Note	3):	

Please set out details of any actions / measures taken or will be taken to mitigate and minimize the breach the set of th	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Ves No	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Yes No	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Yes No	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Ves No	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Yes No	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Ves No	
Is there a real risk of harm to any individual? (Please tick one of the following boxes) Ves No	
Please explain below why there is / there is no 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	r sa
well-being or property is at risk as a result of the breach, what has been done or can be done to assist	the
avoiding / mitigating that risk or its consequences	

NOT	IFICATION	TO OTHER BODIE	S / REGULATORS	/ LAW ENFORC	EMENT AGENCIES
Pleas	e provide detai	ls if such notification h	as been given		

Signature:	
Name:	
Title:	
Date:	

隱專員公署 oner Hong Kong



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

- 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, blease refer to the PDPO itself.
- 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)(e) of the PDPO).
- 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)(a) of the PDPO).
- To make a data access request, you must either be the data subject or a "relevant person" as defined in section 2 or 17A of the PDPO (please refer to Part III of this Form).
- 5. You are not 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 he may reasonably require to locate the requested data (see section 20(3)(b) 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).
- 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.
- 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(1)(a) and 28(2) of the PDPO).
- The data user may refuse to comply with your request in the circumstances specified in section 20 of the PDPO.

Important Notice to 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 requestor 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 requestor in writing that you do not hold the data (except that the Hong Kong Police may inform the requestor orally if the request is whether it holds any record of criminal conviction of an individual). A mere notification given to the requestor to collect the requested data or a note sent to the requestor for payment of a fee is insufficient. In complying with the request, you should omit or otherwise not disclose the names or other identifying notification 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 requestor by notice in writing that you are so 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).
- If you have a lawful reason for refusing to comply with the request pursuant to section 20 of the PDPO, you must give the requestor written notification of your refusal and your supporting reasons within the same 40-day period (see section 21(1) of the PDPO).
- 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 3 (currently set at HK\$10,000) (see section 64A(1) of the PDPO).
- 5. You may charge a fee for complying with a data access request, but section 28(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 decision of Administrative Appeal No. 37/2009, a data user is only allowed to charge the requestor for the costs which are "directly related to and necessary for" complying with a data access request.
- You shall refuse to comply with a data access request
 - (a) if you are not supplied with such information as you may reasonably require -
 - in order to satisfy you as to the identity of the requestor,
 - (ii) where the requestor purports to be a relevant person, in order to satisfy you -
 - (A) as to the identity of the individual in relation to whom the requestor purports to be such a person; and
 - (B) that the requestor is such a person in relation to that individual:
 - (b) subject to section 20(2) 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 requestor; or

2

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台准個人具科私隐等貝公署 Privacy Commissioner for Personal Data, Hong Kong

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 optout 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





Regulatory Regime of Direct Marketing

Intends to use personal data or provide personal data to another person for use in direct marketing





Provision of Personal Data

- Provide data subjects with "prescribed information" and response channel through which the data subject may elect to give consent
- Notification should be easily understandable

- Should be given explicitly and voluntarily
- "consent" includes an indication of "no objection"





Regulatory Regime of Direct Marketing

Use of Personal Data in Direct Marketing		Provide Personal Data to another person for Use in Direct Marketing	
1.	The data user intends to use the personal data of the data subject for direct marketing;		to provide the personal data of the data erson for use by that person in direct
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;	-	t so provide the data unless it has received ten consent to the intended provision;
3.	The kinds of personal data to be used;	The provision of the da	ata is for gain (if it is to be so provided);
4.	The classes of marketing subjects in relation to which the data is to be used;	The kinds of personal of	data to be provided;
5.	The response channel	The classes of persons	to which the data is to be provided;
		The classes of marketi to be used; and	ng subjects in relation to which the data is
		The response channel	
	PCPD org bk		`港個人質科私愿專貝公者 'ivacy Commissioner

for Personal Data, Hong Kong

"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

	Maximum Fine (HK\$)	Maximum Imprisonment
Non-Compliance	500,000	3 years
Non-Compliance if the personal data is provided to third party for its use in direct marketing in exchange for gain	1,000,000	5 years





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.





Privacy Commissioner for Personal Data, Hong Kong

4

Offences & Compensation





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





Privacy Commissioner for Personal Data, Hong Kong

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 <u>psychological harm</u> 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).

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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.

Privacy Commissioner for Personal Data, Hong Kong

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

- Booklet: European Union General Data Protection Regulation 2016 (Effective 25 May 2018) (March 2018)
- 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

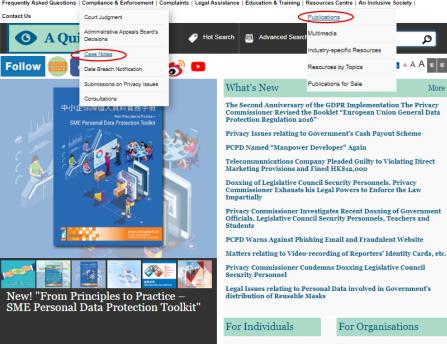






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Frequently Asked Questions | Compliance & Enforcement | Complaints | Legal Assistance | Education & Training | Resources Centre | An Inclusive Society |







Think Privacy! Be Smart Online EU General Data Protection

Using Computers and the Internet

Wisely Be Smart on Social Networks

Your Identity Card Number and Your Privacy

Exercising Your Data Access

Regulation

Mobile App Development

Professional Workshops Online Courses

Introduction to the PD(P)O Seminar

個人資料私隱專員公署 cy Commissioner ersonal Data, Hong Kong

JOIN

Data Protection Officers' Club

(Membership Application)



- 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/mi sc/dpoc/files/AppForm_192 0_NewMembers.pdf





中小企保障私隱運動 Privacy Campaign for SME







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