

Investigation Report

Published under Section 48(2) of the Personal Data (Privacy) Ordinance
(Cap. 486)

Security Measures Taken by Restaurants to Protect Customers' Information Collected during the Registration Required under the COVID-19 Anti-pandemic Measures

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香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Investigation Report: Security Measures Taken by Restaurants to Protect Customers' Information Collected during the Registration Required under the COVID-19 Anti-pandemic Measures

Section 48(2) of the Personal Data (Privacy) Ordinance, Cap. 486 (the Ordinance) provides:

“the Privacy Commissioner for Personal Data may, after completing an investigation and if he is of the opinion that it is in the public interest to do so, publish a report –

(a) setting out –

(i) the result of the investigation;

(ii) any recommendations arising from the investigation that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the class of data users to which the relevant data user belongs; and

(iii) such other comments arising from the investigation as he thinks fit to make; and

(b) in such manner as he thinks fit”.

This investigation report is hereby published in discharge of the powers under section 48(2) of the Ordinance.

Ada CHUNG Lai-ling

Privacy Commissioner for Personal Data, Hong Kong

28 October 2021

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(Published under Section 48(2) of the Personal Data (Privacy) Ordinance,
Chapter 486, Laws of Hong Kong)

Security Measures Taken by Restaurants to Protect Customers' Information Collected during the Registration Required under the COVID-19 Anti-pandemic Measures

Executive Summary

Background

In response to the COVID-19 pandemic, the Government imposed requirements under the Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation (Cap. 599F) on responsible persons of restaurants to ensure that customers either scan the venue QR code with the “LeaveHomeSafe” mobile app or register their names, contact numbers and dates and times of their visits, before entering the premises, and for restaurants to keep such written or electronic records for 31 days (the “Restaurant Entry Requirement”).

Since the implementation of the Restaurant Entry Requirement on 18 February 2021, the PCPD has received complaints about the failure of restaurants to properly handle the registration data of customers. Having received the complaints, the Privacy Commissioner for Personal Data (the “Privacy Commissioner”) launched investigations into 14 complaints pursuant to the powers conferred on her under section 38(a)(i) of the Personal Data (Privacy) Ordinance (Cap. 486) (the “Ordinance”).

Findings and Contravention

The Privacy Commissioner found that the retention period set by those 14 restaurants for keeping the registration data of customers did not exceed 31 days. In other words, the restaurants kept the data in accordance with data retention period as specified in the Restaurant Entry Requirement, in such a way that the relevant personal data was not kept longer than necessary for the fulfilment of the original purpose. This practice is commendable, as it is in compliance with the requirements of Data Protection Principle (DPP) 2(2) under the Ordinance.

Meanwhile, the Privacy Commissioner also found that 11 restaurants (namely, Triple O's in Pacific Place of Admiralty, Spicy and Sour Noodle at Portland Street of Mongkok, Zaks in D'Deck of Discovery Bay, The Grill Room in the L. Square of Causeway Bay, Corner Kitchen at Tso Kung Square of Tsuen Wan, Bond at Tung Lo Wan Road of Tai Hang, Carnival Seafood Restaurant in Leung King Plaza of Tuen Mun, American Seafood and Grill in Fortune City One of Shatin, TW Yummy at Nathan Road of Yaumatei, Beef Noodle Box at Kam Ping Street of North Point and Ming Kee Cheung Fun at San Hong Street in Sheung Shui) used common registration forms or books, 1 restaurant (TamJai Yunnan Mixian at Kwai Yi Road in Kwai Fong) did not set up any collection box for the forms, 1 restaurant (House of Canton Restaurant in Cityplaza) failed to cover the collection box at all times, and 1 restaurant (Gyuugoku at Tai Tsun Street in Tai Kok Tsui) used uncut sheets of paper as common forms. The above practices had exposed the registered personal data to unauthorized or accidental access or use, and contravened DPP 4(1) of the Ordinance as regards the security of personal data.

Although the 14 restaurants subsequently took remedial actions to prevent recurrence in future, the Privacy Commissioner has decided to issue Enforcement Notices to the restaurants in question to request them to implement appropriate and practicable measures to protect the registration data of customers and specify the steps to be taken by the restaurants for preventing recurrence of the contravention. The measures included providing written policy and guidance to their staff, as well as circulating

the guidance regularly and providing training to raise the awareness of their staff to the protection of personal data privacy.

Reminders and Suggestions

The Privacy Commissioner wishes to make the following reminders and suggestions through this report: -

- (1) Regardless of the scale of business, mode of operation and availability of resources, all restaurants have responsibility to comply with the requirements of the Ordinance in the collection, holding, processing and use of personal data, including:
 - collecting personal data of customers in a lawful and fair manner, to the extent that it is necessary, adequate but not excessive; restaurants should inform data subjects of the purpose(s) of data collection and the classes of persons to whom the data may be transferred (DPP1);
 - destroying the personal data when the purpose(s) for which the data is used has/have been fulfilled (DPP2);
 - except with the express and voluntary consent of the data subject, personal data shall not be used for a new purpose (DPP3); and
 - taking all practicable steps to protect personal data against unauthorized or accidental access, processing, erasure, loss or use (DPP4).
- (2) In addition to incorporating privacy protection in the workflow of data processing, restaurants must also provide appropriate training and guidance for their staff.
- (3) Restaurants must adopt measures to provide clear guidelines for their staff on the process and purpose of customer registration, and ensure the proper conduct of their staff, so as to avoid the collection and processing of personal data from being hampered by human negligence or error. An explanation of the need and purpose of data registration to customers can help minimize

unnecessary misunderstanding.

- (4) In response to anti-epidemic measures, restaurants need to raise the awareness of their staff to personal data privacy protection. By strengthening personal data privacy protection, restaurants would be able to enhance their goodwill, competitive edges, and potential business opportunities.

To protect personal data, members of the public should be mindful of the privacy risks inherent in providing personal data for different restaurants. This is particularly true for citizens who frequently dine at different restaurants, if they choose to register personal information rather than using the “LeaveHomeSafe” mobile app, which effectively means that they may need to provide personal data for different restaurants daily. This, when compared with storing visiting records in the “LeaveHomeSafe” app in their own mobile phones, actually carries greater privacy risks.

I. Background

1. In January 2020, COVID-19 began to spread in the local community. In response to the outbreak and to prevent the spread of the virus, the Government made regulations under the Prevention and Control of Disease Ordinance (Cap. 599),¹ including the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) (the “Regulation”). The Regulation came into effect on 28 March 2020.
2. Maintaining social distance is key to preventing the spread of COVID-19 in Hong Kong. Since the implementation of the Regulation, the Government has enacted a number of limitations on gatherings under the Regulation,² including imposing regulations on the mode and hours of operation of catering premises, to achieve the policy objective of preventing and controlling the epidemic.
3. Prevention and control of the epidemic hinge on the cooperation of the public. In addition to implementing various social distancing measures, the Government has also called on the public to record their visits to public places to facilitate contact tracing by the Centre for Health Protection when a confirmed case is found.
4. In response to the development of the epidemic, the Government has reviewed the social distancing measures under the Regulation from time to time and made adjustments to the requirements and restrictions on restaurants on a timely basis, retaining some measures to maintain social distancing on the one hand while allowing room for the resumption of social activities on the other. While appropriately relaxing certain restrictions on the operation of restaurants, the Government also imposed specific conditions to strike a balance

¹ Section 8 of the Prevention and Control of Disease Ordinance empowers the Chief Executive in Council to make public health emergency regulations for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health.

² Section 6 of the Regulation empowers the Secretary of Food and Health, for preventing, protecting against, delaying or otherwise controlling the incidence or transmission of the specified disease, to issue requirements and directions to restrict the mode of operation and daily opening hours of catering premises.

between disease prevention and control, economic needs and societal acceptance.

5. Under the requirements implemented since 18 February 2021 and effective for the specified period,³ if a restaurant wishes to operate with four persons per table and dine-in service until 10:00 pm, the responsible person of the restaurant must ensure that customers either scan the venue QR code with the “LeaveHomeSafe” mobile app or register their names, contact numbers and the dates and times of their visits before entering the premises. The written or electronic records must be kept for 31 days (the “Restaurant Entry Requirement”).⁴ If a confirmed COVID patient is found to have visited the premises, the registration data and “LeaveHomeSafe” visit records can help the Centre for Health Protection in epidemiological investigations and tracing close contacts to prevent further spread of the virus.
6. On 16 November 2020, the Government launched the “LeaveHomeSafe” mobile app for the public to record the times of their visits to various venues on their mobile phones.⁵ However, following the implementation of the Restaurant Entry Requirement, some members of the public who dine in at restaurants have still chosen to register their personal data instead of using “LeaveHomeSafe”.
7. If a customer chooses not to use “LeaveHomeSafe”, he is required to provide his personal data to the restaurant. The registration methods adopted by restaurants vary. In the past few months, the PCPD has received complaints about the registration of personal data.

³ Section 6 of the Regulation provides that the requirements or restrictions imposed under that section shall take effect within a specified period not exceeding 14 days. For the latest information about the limitation on gatherings that is amended from time to time, please refer to the COVID-19 Thematic Website at <<https://www.coronavirus.gov.hk/chi/reduce-gatherings.html>>.

⁴ The government implemented amendments on 29 April 2021 to relax social distancing measures with a “vaccine bubble” as the basis. There are four operation modes of restaurants, namely, A, B, C and D, according to factors such as the number of persons per table and dine-in service hours. Each category requires certain preventive measures. Types C and D Modes of Operation are introduced under the “vaccine bubble” and allow restaurants adopting specified measures to raise the maximum number of persons per table and extend dine-in service hours. The operation mode originally defined in the Restaurant Entry Requirement is classified as Type B under the “vaccine bubble”. The registration of customers under the Restaurant Entry Requirement continues to apply to restaurants of Type B Mode of Operation.

⁵ Source: “LeaveHomeSafe” website, <<https://www.leavehomesafe.gov.hk/tc/>>.

II. Complaints Received

8. Between the implementation of the Restaurant Entry Requirement on 18 February and 31 August 2021, the PCPD received 20 complaints about the failure of restaurants to properly handle the registration data of customers. Six of these complaints were found to be unsubstantiated after preliminary investigation. The PCPD commenced investigation into the remaining 14 complaints pursuant to section 38(a)(i) of the Ordinance. The 14 restaurants in question are listed in the Annex.
9. These restaurants vary in scale; some operate at a single location, whilst some are restaurant chains. The PCPD's investigations only cover the outlets specified in the received complaints.
10. Allegations made in the complaints against the improper handling of personal data fall into the following three categories:
 - (1) Lack of collection box for the registration forms. Completed registration forms were left out in the open (involving one restaurant);
 - (2) Failure to cover the collection box at all times. Completed collection forms could be easily taken (involving one restaurant); and
 - (3) Use of common forms (involving eight restaurants) or books (involving four restaurants) for the registration of personal data, such that customers could read the personal data previously filled in by other customers during registration.

III. Follow-Up Actions by the PCPD

11. To understand how the restaurants under complaint register their customers, the PCPD visited the outlets as customers to carry out on-site inspections.
12. Upon completion of the on-site inspections and considering its observations and the details of the complaints, the PCPD commenced investigations into the complaints against the 14 restaurants in question and examined their processes of registering the personal data of customers. The PCPD also requested that the restaurants provide details of their registration arrangements and the storage and retention of customer registration data.

IV. Information Obtained

Kinds of personal data collected

13. The 14 restaurants collected three to five personal data items, namely, name, contact number, date of visit, time of visit, time of departure and signature. All of these items except for the time of departure and signature are required by the Restaurant Entry Requirement.

Methods of registration

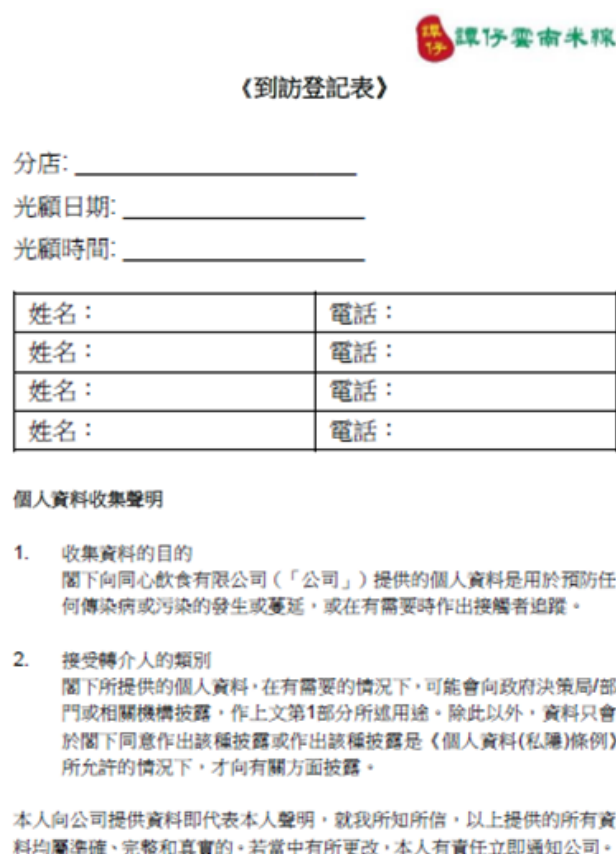
Individual record forms


14. Among the 14 restaurants, two used individual record forms. House of Canton Restaurant located at Shop 506 in Cityplaza (“House of Canton Restaurant”) provided the form prescribed by the Food and Environmental Hygiene Department,⁶ and TamJai Yunnan Mixian located at shop 49-54, G/F, Ho Chuck Centre, 2-11 Kwai Yi Road, Kwai Fong (“TamJai Yunnan Mixian”) provided its own registration

⁶ A sample form can be downloaded from the Food and Environmental Hygiene Department’s website at https://www.fehd.gov.hk/tc_chi/events/covid19/images/vaccineBubble_customer_record_form.pdf.

form (Figure 1). These registration forms were placed at the restaurants' entrances for customers to pick up and fill out.

Figure 1. TamJai Yunnan Mixian registration form




《到訪登記表》

分店: _____
光顧日期: _____
光顧時間: _____

姓名:	電話:
姓名:	電話:
姓名:	電話:
姓名:	電話:

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Notes: The sample form was provided to the PCPD by the head office of TamJai Yunnan Mixian. It can be used by a maximum of four customers coming together.

Form collection box

15. Of the two restaurants that used individual registration forms, TamJai Yunnan Mixian was found to have failed to set up a collection box for the forms, instead arranging for the collection of the completed registration forms by staff. As for House of Canton Restaurant, it was found to have failed to cover its collection box during business hours (Figure 2). House of Canton Restaurant told the PCPD that it had

prepared a lid for the box, but its staff had presumably forgotten to close the lid after clearing the box.

Figure 2. Uncovered form-collection box



Notes: This picture was provided by the complainant to the PCDD on 30 May 2021, indicating that the collection box was located on the reception counter.

Common registration forms or books

16. Among the remaining 12 restaurants, 11 of them provided common registration forms or books for customers to fill in at the counter.
17. The following seven restaurants used common forms:
 - (1) Triple O's, located at shop 009, LG/F, Two Pacific Place, 88 Queensway, Admiralty ("Triple O's")
 - (2) Sour and Spicy Noodle, located at 1/F, 215 Portland Street, Mongkok ("Sour and Spicy Noodle")
 - (3) Zaks, located at shop 4, G/F. & shop3, 1/F., D'Deck, Discovery Bay ("Zaks")

- (4) The Grill Room, located at 5/F, L. Square, Causeway Bay (“The Grill Room”)
- (5) Corner Kitchen, located at G/F, 10 Tso Kung Square, Tsuen Wan (“Corner Kitchen”)
- (6) Bond, located at 2/F, 98 Tung Lo Wan Road, Tai Hang (“Bond”)
- (7) Carnival Seafood Restaurant, located at shop 305-306, 3/F, Leung King Plaza, Tuen Mun (“Carnival Seafood Restaurant”)

18. The following four restaurants used common books:

- (1) American Seafood and Grill, located at shop 71-73 & 82B, G/F, Fortune City One, Shatin (“American Seafood and Grill”)
- (2) TW Yummy, located at G/F, Independent Building, 499 Nathan Road, Yaumatei (“TW Yummy”)
- (3) Beef Noodle Box, located at G/F, 41A Kam Ping Street, North Point (“Beef Noodle Box”)
- (4) Ming Kee Cheung Fun, located at 11 San Hong Street, Sheung Shui (“Ming Kee Cheung Fun”)

19. In a common registration form or book, multiple customers enter their registration data on the same form or page, line by line, until the form or page is full. The form is then replaced with another form or the book turned to another page for subsequent customers (Figures 3 to 11).

Figures 3 to 7. Common registration forms filled out by customers

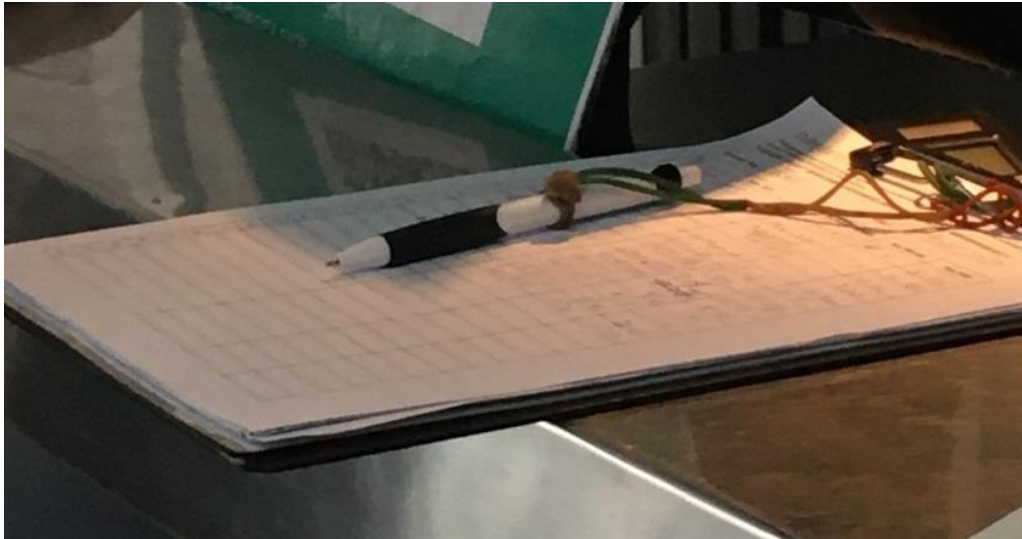


Figure 3: This picture was taken by the PCPD on 9 April 2021 at Zaks. The registration form was placed on the counter.



Figure 4: This picture was taken by the PCPD on 15 April 2021 at Bond. The registration forms were placed near the restaurant entrance.

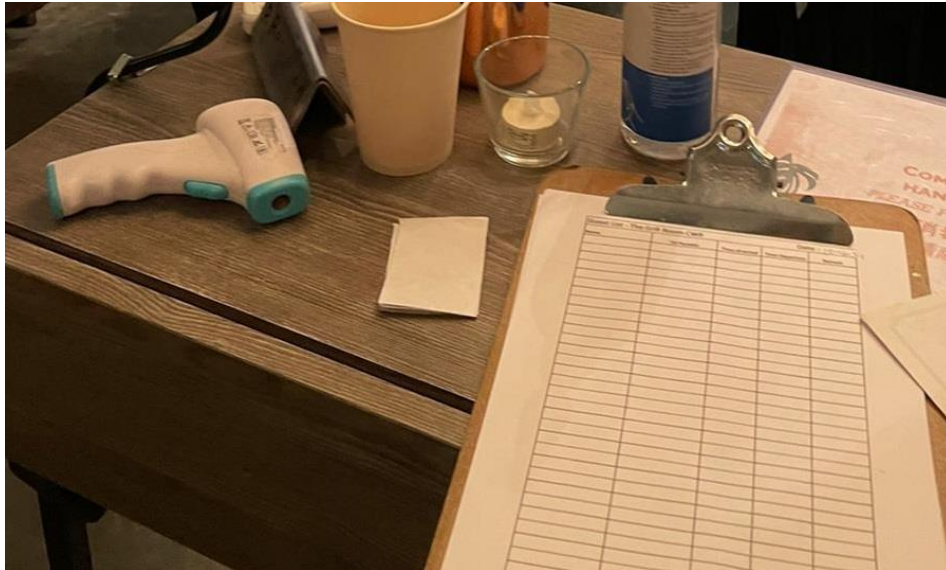


Figure 5: This picture was taken by the PCPD on 15 April 2021 at the Grill Room. The registration forms were placed near the restaurant entrance.



Figure 6: This picture was taken by the PCPD on 28 May 2021 at Corner Kitchen. The registration forms were placed near the restaurant entrance.

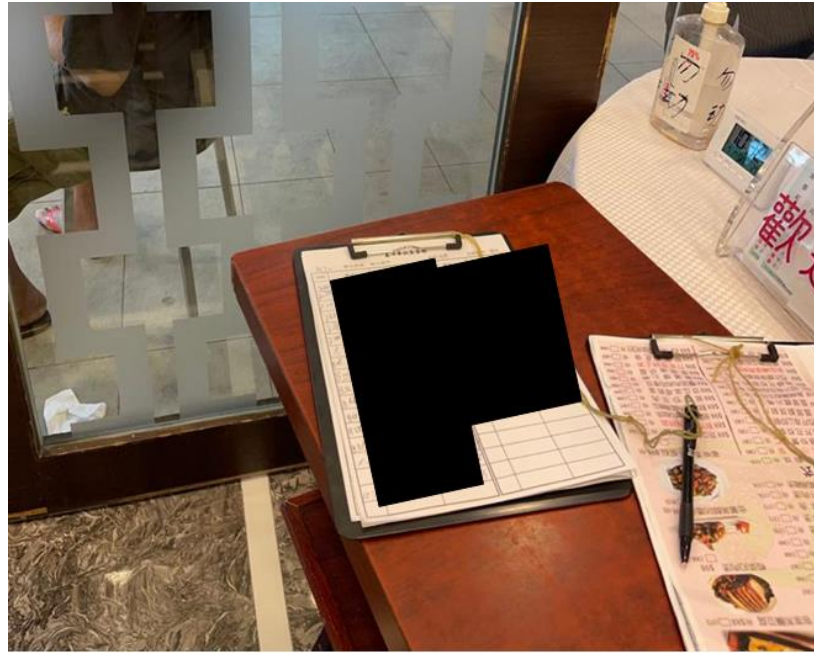


Figure 7: This picture was taken by the PCPD on 17 July 2021 at Carnival Seafood Restaurant. The registration forms were placed near the restaurant entrance.

Figures 8 to 11. Registration books customers filled out

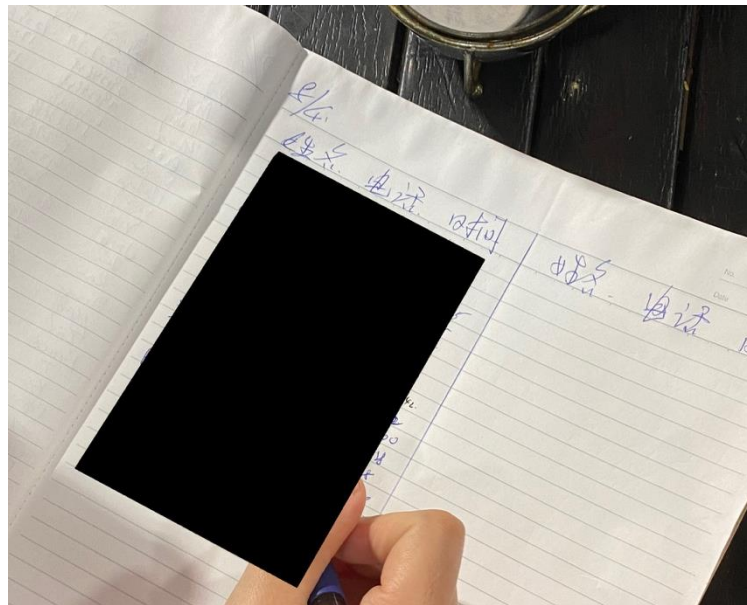


Figure 8: This picture was taken by the PCPD on 8 April 2021 at Beef Noodle Box. The registration book was placed near the restaurant entrance.

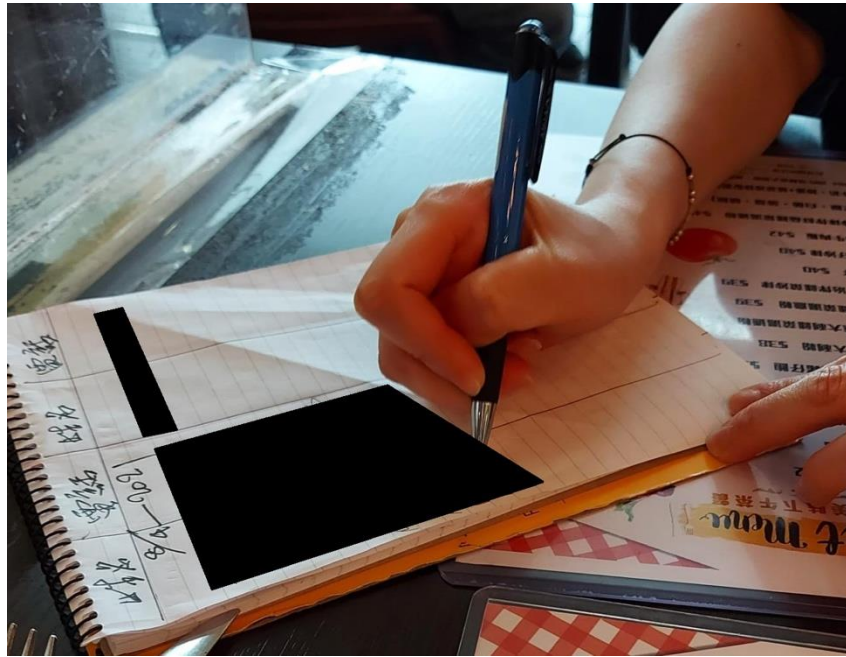


Figure 9: This picture was taken by the PCPD on 8 April 2021 at American Seafood and Grill. The registration book was provided to customers by the staff.

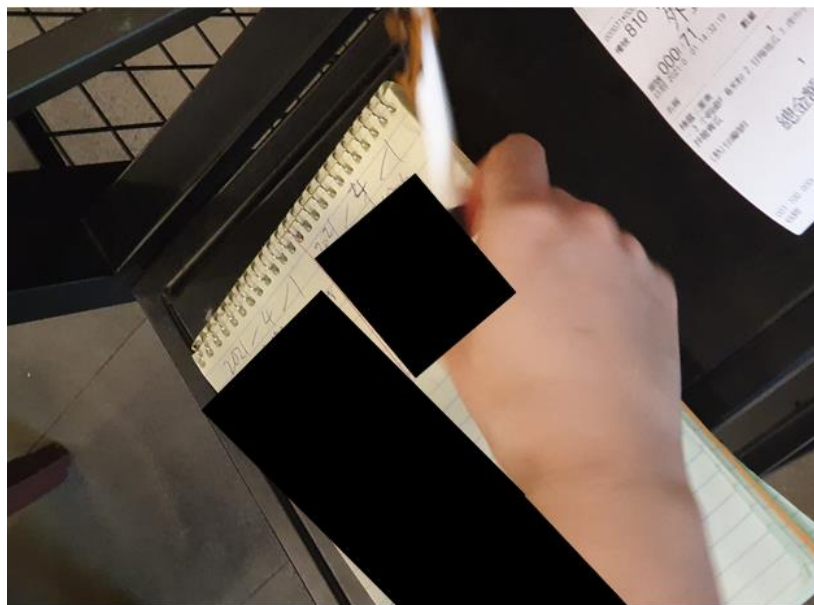


Figure 10: This picture was taken by the PCPD on 1 April 2021 at TW Yummy. The registration book was placed near the restaurant entrance.



Figure 11: This picture was taken by the PCPD on 28 May 2021 at Ming Kee Cheung Fun. The registration book was placed near the restaurant entrance.

Use of Uncut Sheets of A4 Paper for Registration

20. Gyuugoku, located at 38 Tai Tsun Street, Tai Kok Tsui (Gyuugoku), was reported for requesting customers to register their personal data on a piece of A4 paper with multiple boxes printed on it (Figure 12). This is considered to be a type of common registration form.

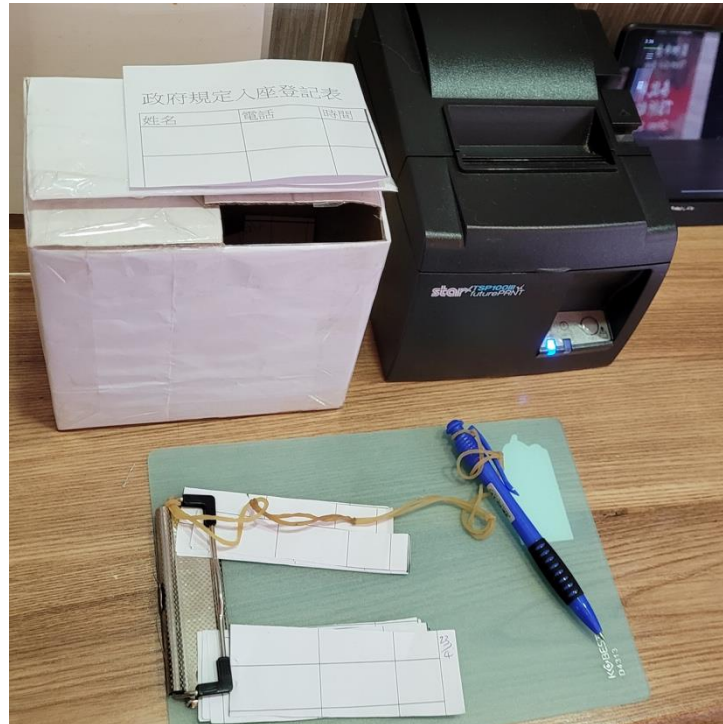
Figure 12. Gyuugoku registration form: A piece of A4 paper with multiple squares

政府規定入座登記表			分店：	日期：	
姓名	電話	時間	姓名	電話	時間
[Redacted]	[Redacted]	[Redacted]			

Notes: This picture was provided by the complainant to the PCPD on 22 April 2021, indicating that he was directed to register his personal information on such a form by Gyuugoku.

21. The head office of Gyuugoku explained to the PCPD that the reported registration process did not reflect its usual practice. According to Gyuugoku, it normally cuts a piece of A4 paper with multiple squares into individual registration slips for customers' use. However, as it had run out of individual registration slips at the material time, its staff then asked customers to fill in information directly on the A4 paper.
22. On 26 April 2021, the PCPD paid a visit to Gyuugoku and noticed the provision of the abovementioned individual registration slips for customers' use, which were made by cutting the A4 paper depicted in Figure 12. There was also a collection box for customers to drop in completed registration slips. However, there were only two rows of blank boxes on each slip, without any indication of what information was required for registration (Figure 13).

Figure 13. Individual registration slips used by Gyuugoku



Notes: This picture was taken by the PCPD on 26 April 2021 at Gyuugoku. Registration slips were placed on a counter.

Storage and retention period of the registration data

23. All of the restaurants under investigation told the PCPD that they assigned dedicated staff to collect and collate the registration data on a daily basis. The collection information was sealed, wrapped and stored in lockers on the premises or delivered to the head office for storage.
24. The collected registration data would be retained for no longer than 31 days. Upon expiry of the retention period, the data would be destroyed by the restaurants on the premises, by its head offices or by contractors specialized in handling confidential documents.

V. Applicable Laws

Data retention period

25. Regarding the retention period of personal data, Data Protection Principle (DPP) 2(2) provides:

“All practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used.”

Data security

26. DPP 4(1), which relates to the security of personal data, provides:

“All practicable steps shall be taken to ensure that any personal data ... held by a data user is protected against unauthorized or accidental access, processing, erasure, loss or use having particular regard to—

- (a) the kind of data and the harm that could result if any of those things should occur;*
- (b) the physical location where the data is stored;*
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data is stored;*
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and*
- (e) any measures taken for ensuring the secure transmission of the data.”*

VI. Conclusion

27. The Privacy Commissioner found that the customer registration data retention period set by the 14 restaurants in question did not exceed 31 days. In other words, the restaurants kept the data in accordance with the data retention period specified in the Restaurant Entry Requirement and in such a way that the relevant personal data was not kept longer than necessary for the fulfillment of the original purpose. This practice is commendable, as it is in compliance with the requirements of Data Protection Principle (DPP) 2(2) under the Ordinance.
28. Furthermore, the Privacy Commissioner also found that 11 of the restaurants (namely, Triple O's, Spicy and Sour Noodle, Zaks, the Grill Room, Corner Kitchen, Bond, Carnival Seafood Restaurant, American Seafood and Grill, TW Yummy, Beef Noodle Box and Ming Kee Cheung Fun) used common registration forms or books, one restaurant (TamJai Yunnan Mixian) did not set up any collection box for its forms, one restaurant (House of Canton Restaurant) failed to cover the collection box at all times and one restaurant (Gyuugoku) used uncut sheets of paper as common forms. The above practices exposed the registered personal data to unauthorized or accidental access or use and contravened DPP 4(1) of the Ordinance as regards the security of personal data.

No contravention of the data retention period requirement

29. To comply with the Restaurant Entry Requirement, restaurants must collect personal data from registering customers and retain the data. Under DPP 2(2), restaurants are required to destroy the collected data when such data has fulfilled the original purpose for which it is to be used.
30. The Restaurant Entry Requirement sets a 31-day retention period for customer registration data. It follows that once a restaurant has retained the registration data for 31 days, the original purpose of collecting and retaining the personal data (i.e., complying with the

Restaurant Entry Requirement) has been fulfilled. In general, there is no need for the restaurant to retain the data beyond that point.

31. According to the information provided by the 14 restaurants and the observations made during on-site inspections, the customer registration data retention period set by the 14 restaurants in question did not exceed 31 days. In other words, the restaurants kept the data in accordance with the data retention period specified in the Restaurant Entry Requirement and in such a way that the relevant personal data was not kept longer than necessary for the fulfillment of the original purpose. This practice is commendable, as it is in compliance with the requirements of Data Protection Principle (DPP) 2(2) under the Ordinance.

Contravention of the data security requirement

32. DPP4(1) provides that restaurants shall take all practicable steps to protect customers' registration data against unauthorized or accidental access, processing, erasure, loss or use.
33. The Privacy Commissioner found data security holes in the registration arrangements of the 14 restaurants under investigation and that the restaurants had thus breached the requirements of DPP4(1).
 - (1) Eleven of the restaurants in question (including Triple O's, Spicy and Sour Noodle, Zaks, the Grill Room, Bond, Corner Kitchen, Carnival Restaurant, American Seafood & Grill, TW Yummy, Beef Noodles and Ming Kee Cheung Fun) used common forms or books, exposing customers' registration data to other customers who registered their personal data on/in the same form/book. This practice is not satisfactory. Even if a paper card is used to cover the registered personal data on the common forms or books, ill-intended access to the information can easily be accomplished by removing the card.
 - (2) One restaurant using an individual registration form (TamJai Yunnan Mixian) did not set up a collection box, introducing the

potential for customers who do not know how to return the completed forms to leave their forms on the registration counter for staff to pick up. In the event that completed forms are left uncollected, the registered personal data thereon is exposed to passers-by.

- (3) A collection box is intended for gathering completed registration forms and ensuring their temporary safe-keeping. It serves the fundamental function of protecting the forms from unrestricted access. One restaurant (House of Canton Restaurant) did not cover the collection box at all times that it was in use, allowing unrestricted access to the forms contained therein. In an environment where many customers come and go in a given period, ill-intended access to or removal of forms from an open box such as this would be easy. The failure to cover the collection box at all times left obvious holes in data security.
- (4) One restaurant (Gyuugoku) made individual registration slips by cutting sheets of A4 paper. This practice provides better protection to personal data as compared to using common registration forms. However, in the event of poor preparation, customers must register on an uncut sheet of paper (paragraph 20 and Figure 12), the effect of which is as unsatisfactory as using common forms. Moreover, as seen in paragraph 22 and Figure 13, the slip provided only empty boxes; it did not specify what customer information was required or the purpose of collecting the information.

VII. Enhancement or Remedial Actions

34. Following the PCPD's investigation, the 14 restaurants under investigation took the following enhancement or remedial actions:

- (1) Triple O's, Spicy and Sour Noodle, Zaks, the Grill Room, Bond, Corner Kitchen, Carnival Seafood Restaurant, American Seafood and Grill, TW Yummy, Beef Noodle Box

and Ming Kee Cheung Fun: Replacing common registration forms or books with individual registration forms (Figures 14 and 15);

- (2) TamJai Yunnan Mixian: Setting up a form-collection box made of opaque materials for customers' use (Figure 16);
- (3) House of Canton Restaurant: Reminding its staff to cover the collection box at all times (Figure 17); and
- (4) Gyuugoku: Replacing the plain registration slip (Figure 13) with a newly designed, individual registration form that provides the required personal data items and related information (Figure 18). Gyuugoku also reminded its staff to prepare sufficient individual registration forms for use in the restaurant.

Figures 14 and 15. Individual registration forms replacing common forms or books

Figure 14 shows two sample registration forms. The top form is titled '如閣下未能使用「安心出行」掃描二維碼 (QR Code) · 按法定要求食肆須記錄客人的個人資料 · 並須保留記錄 31 日 · 請客人自行填寫 · 並放入資料收集箱 · 不便之處 · 敬請原諒 ·' (If you cannot use 'Safe Exit' to scan the QR code, restaurants are required by law to record guests' personal information and retain the records for 31 days. Please fill out the form yourself and put it in the information collection box. Sorry for the inconvenience). The form includes fields for '姓名:' (Name), '聯絡電話:' (Contact Number), '入座日期:' (Seating Date), and '入座時間:' (Seating Time).

Figure 14: These sample forms were provided to the PCPD by the head office of Spicy and Sour Noodle.

Figure 15 shows a sample registration form. The top text reads: '如閣下未能使用安心出行掃描二維碼 (QR code), 按法定要求食肆須登記客人個人資料並保存記錄31日。請客人自行填寫並放入資料, 登記資料將於31日後銷毀。' (If you cannot use Safe Exit to scan the QR code, restaurants are required by law to register guests' personal information and retain the records for 31 days. Please fill out the form yourself and put it in the information collection box. The registered information will be destroyed after 31 days). The form includes fields for '姓名 Name:', '聯絡電話 Number:', '到訪日期 Visit Date:', '到訪時間 Visit Time:', and '客人簽署 Sign:'.

Figure 15: This sample form was provided to the PCPD by the head office of Triple O's.

Figure 16. Collection box made of opaque materials



Notes: This picture was taken by the PCPD on 9 April 2021 at TamJai Yunnan Mixian. The collection box was placed near the restaurant entrance.

Figure 17: Closed collection box



Notes: This picture was provided to the PCPD by the head office of House of Canton Restaurant.

Figure 18. Newly designed form specifying the required personal data items and related information

如客人未能使用「安心出行」手機程式。請填上聯絡方法
並投入收集箱。根據私隱條例本公司不會查閱相關資料。
多謝合作!

✦ 本資料會在衛生防護中心要求下提供予該中心使用

✦ 我們會妥善保存本資料並於31日後銷毀

顧客姓名: _____

聯絡電話: _____

到訪日期及時間: _____

Notes: This sample form was provided to PCPD by the
head office of Gyuugoku.

VIII. Enforcement Notice

35. Pursuant to section 50(1) of the Ordinance and as a consequence of an investigation, if the Privacy Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under the Ordinance, the Privacy Commissioner may serve on the data user an enforcement notice in writing, directing the data user to remedy and prevent any recurrence of the contravention.
36. Although the 14 restaurants in question subsequently took the remedial actions mentioned in paragraph 34 above, the Privacy Commissioner has decided to issue Enforcement Notices to the restaurants to request that they implement appropriate and practicable measures to protect the registration data of customers against unauthorized or accidental access, processing, erasure, loss or use and to specify the steps to be taken by the restaurants to prevent recurrence of the contravention. Such measures include providing written policy and guidance to their staff, giving concrete instructions to staff on how to process the personal data of customers and informing them of certain relevant matters to be aware of, circulating the policy and guidance regularly and providing training to raise the

awareness of staff of the protection of personal data privacy, as well as implementing effective and regular monitoring to ensure the implementation of and strict compliance with the policy and guidelines to prevent recurrence of the contravention.

IX. Other Comments

37. The Privacy Commissioner wishes to remind all restaurants through this report that regardless of the scale of business, mode of operation and availability of resources, all restaurants have a responsibility to comply with the requirements of the Ordinance in the collection, holding, processing and use of personal data, including the following:

- (1) Restaurants should collect customers' personal data in a lawful and fair manner. It is certainly lawful for restaurants to collect personal data as required by the Restaurant Entry Requirement. However, restaurants are required to inform customers of the purpose(s) of the data collection, as asking customers to provide personal data without clearly informing them of the purpose would render the collection unfair. In addition, to comply with the Restaurant Entry Requirement, restaurants should only collect personal data to the extent that it is necessary and adequate but not excessive. Upon or before collecting personal data, restaurants should inform data subjects of the purpose(s) of data collection and the classes of persons to whom the data may be transferred. To avoid misunderstanding, it is recommended that the information be provided in writing, such as on the registration form or in a notice posted in a conspicuous place (DPP1).
- (2) Personal data should be destroyed once it has fulfilled the original purpose(s) for which it is to be collected (DPP2). Specifically, registered personal data should be destroyed as soon as the purpose of complying with the Restaurant Entry Requirement is met.
- (3) Except with the express and voluntary consent of the data

subject, personal data shall not be used for a new purpose, i.e. a purpose other than the purpose for which the data was originally collected or a related purpose (DPP3). For example, restaurants should not use registered personal data in direct marketing.

- (4) Restaurants must take all practicable steps to protect personal data against unauthorized or accidental access, processing, erasure, loss or use (DPP4). For example, restaurants must store and destroy personal data in such a way as to avoid leaking the data. Measures must also be taken to ensure the complete destruction of registration data; it may not be disposed of merely as common trash.
- 38. In addition to incorporating privacy protection in the workflow of data processing, restaurants must also provide appropriate training and guidance for their staff and raise their awareness of personal data privacy protection.
- 39. Staff turnover in restaurants is relatively high, and experience in handling personal data is not required for some positions. Given the effects of the epidemic on businesses, restaurant staff may find it stressful to take on the ad-hoc duties related to the registration of customers' personal data. Restaurants must therefore adopt measures to provide concrete guidelines for their staff on the process and purpose of customer registration, the means to protect personal data and ways to ensure the proper conduct of their staff to avoid adverse effects of human negligence and error on the collection and processing of personal data.
- 40. Restaurants should also understand that customers may have queries about the registration of personal data. Appropriate training and guidance provided by restaurants would familiarize their staff with the registration process and equip them to respond to such queries. Explaining the need and purpose of data registration to customers can help minimize unnecessary misunderstanding.

41. The Privacy Commissioner would like to remind restaurants that regardless of the scale of business, in response to anti-epidemic measures, they must raise their staff's awareness of personal data privacy protection. In the busy business environment of restaurants, unpredictable incidents calling for spontaneous responses from staff are common. Restaurant staff with low awareness of personal data privacy protection may tend to solve immediate problems at the expense of customers' personal data privacy. In contrast, restaurants that actively adopt measures to protect personal data privacy may thereby enhance their goodwill, competitive edge and potential business opportunities.
42. Lastly, the Privacy Commissioner notices that with the increased understanding of personal data privacy, public expectations for privacy protection are on the rise. To protect personal data, members of the public should be mindful of the privacy risks inherent in providing personal data to restaurants. This is particularly true for citizens who frequently dine at multiple restaurants and who choose to register their personal information rather than use the "LeaveHomeSafe" mobile app, as they potentially provide their personal data to multiple restaurants daily. As compared with storing visiting records in the "LeaveHomeSafe" app on their own mobile phones, this practice carries greater privacy risks.

— The End —

The 14 restaurants under complaint and their addresses

1.	Triple O's Shop 009, LG/F, Two Pacific Place, 88 Queensway, Admiralty
2.	Sour and Spicy Noodle 1/F, 215 Portland Street, Mongkok
3.	TamJai Yunnan Mixian Shop 49-54, G/F, Ho Chuck Centre, 2-11 Kwai Yi Road, Kwai Fong
4.	American Seafood & Grill Shop 71-73 & 82B, G/F, Fortune City One, Shatin
5.	TW Yummy G/F, Independent Building, 499 Nathan Road, Yaumatei
6.	Zaks Shop 4, G/F. & Shop 3, 1/F., D'Deck, Discovery Bay
7.	Beef Noodle Box G/F, 41A Kam Ping Street, North Point
8.	The Grill Room 5/F, L. Square, Causeway Bay
9.	Bond 2/F, 98 Tung Lo Wan Road, Tai Hang
10.	Gyuugoku 38 Tai Tsun Street, Tai Kok Tsui
11.	Corner Kitchen G/F., 10 Tso Kung Square, Tsuen Wan
12.	Ming Kee Cheung Fun 11 San Hong Street, Sheung Shui
13.	House of Canton Restaurant 506 Cityplaza, Taikoo Shing
14.	Carnival Seafood Restaurant Shop 305-306, 3/F, Leung King Plaza, Tuen Mun