

# **Investigation Report**

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

## **Improper Retention and Use of Personal Data of Employees/Former Employees by Employers**

### **Executive Summary**

#### **Background**

1. Undoubtedly, whether they are in public or private organisations, employees are essential and valuable assets to their employers. While the nature and scale of business vary across organisations, human resource management is often an indispensable function of many organisations.
2. Human resource management involves handling a vast amount of personal data. To tackle various tasks that involve the handling of personal data, apart from the expertise in human resource management, employers and human resource practitioners also need adequate knowledge on the legal requirements and practices in relation to the protection of personal data privacy.
3. The Office of the Privacy Commissioner for Personal Data (“PCPD”) receives enquiries and complaints about human resource management practices from time to time. During the past five years, the PCPD received over a hundred complaints related to human resource management per annum on average. The complaints were related to different aspects such as the collection, retention, use (including disclosure) and security of personal data and access to them.
4. To raise awareness amongst employers and human resource practitioners of their duties in protecting personal data privacy, the Privacy Commissioner for Personal Data (“Commissioner”) publishes this investigation report on four complaint received by the PCPD concerning human resource management. These four complaints involved the

accuracy, use (including disclosure) and security of personal data. Through this report, the Commissioner wishes to remind employers and human resource practitioners to comply with the relevant requirements under the Personal Data (Privacy) Ordinance (“Ordinance”), Chapter 486, Laws of Hong Kong in their daily practices, and to remind managers in organisations the need to pay attention to the protection of employees’ privacy when handling their personal data.

5. The PCPD has also updated the information leaflet “Human Resource Management: Common Questions”. The updated version of the leaflet is published along with this investigation report on the same day.

### **Investigation Case (1): Staff of Kwong Wah Hospital Under the Hospital Authority Improperly Disclosed Personal Data in an Instant Messaging Application Chat Group**

#### ***Case Background***

6. The complainant was a staff member of Kwong Wah Hospital which is managed by the Hospital Authority (“HA”). On two occasions, the complainant applied for sick leave to his departmental manager directly through an instant messaging application, and mentioned his illness in the messages. Subsequently, the complainant’s direct supervisor forwarded the two messages to a chat group (“the Group”) set up amongst 47 staff belonging to the same department as the complainant.
7. The complainant was dissatisfied that his direct supervisor had forwarded the two messages to the Group, thus unnecessarily disclosing his illness to the members of the Group, and hence lodged a complaint with the PCPD on 13 December 2022.

#### ***Investigation Findings and Contraventions***

##### ***HA Contravened Data Protection Principle (DPP) 3(1)***

8. DPP3(1) and (4) of Schedule 1 to the Ordinance stipulates that personal data shall not, without the prescribed consent of the data subject (that is, express consent voluntarily given by him), be used (including disclosed or transferred) for a new purpose, namely, any purpose other than the purpose for which the data was to be used at the time of collection of the data, or a purpose directly related to that purpose.

9. It is clear that the HA collected the complainant's sick leave data to handle matters relating to the complainant's sick leave application and staff deployment. Under DPP3, unless with the complainant's prescribed consent (that is, express and voluntary consent), HA was only allowed to use the complainant's sick leave data for the above purposes or directly related purposes.
10. Disclosing the complainant's illness to the members of the Group was excessive to the original purpose of use of the data (i.e. handle the complainant's sick leave application and staff deployment). As such, the disclosure of personal data was not for the original purpose or a directly related purpose; it amounted to using the data for a new purpose. Given that the HA did not obtain the complainant's prescribed consent for such use, HA had contravened the requirements of DPP3(1) as regards the use of personal data in the present case.

### ***Enforcement Action***

11. The Commissioner has served an Enforcement Notice on the HA, directing it to take steps from the perspectives of policy, staff training, raising staff's awareness of personal data protection and monitoring to prevent the recurrence of similar contraventions of the Ordinance.

### **Investigation Case (2): Staff of Christian Louboutin Asia Limited Improperly Disclosed Personal Data in Instant Messaging Application Chat Groups**

#### ***Case Background***

12. During the complainant's employment with Christian Louboutin Asia Limited ("the Company"), he submitted a certificate of diagnosis to his supervisor and provided a medical certificate through an instant messaging application. His supervisor sent a photo of the certificate of diagnosis to a work-related chat group set up for around 14 staff and forwarded the medical certificate to another work-related chat group of around 10 staff. The complainant was dissatisfied that his supervisor disclosed the aforesaid information to the staff members in the relevant work-related chat groups and hence lodged a complaint with the PCPD on 6 June 2023.

## ***Investigation Findings and Contraventions***

### ***The Company Contravened DPP3(1)<sup>1</sup>***

13. The complainant provided his supervisor with a certificate of diagnosis to illustrate that he was unfit to perform certain types of work owing to his physical condition, while the medical certificate was submitted in support of his sick leave application. Under DPP3, unless with the complainant's prescribed consent, the Company was only allowed to use the complainant's personal data contained in the two certificates for the purposes of adjusting work arrangements, handling his sick leave application and staff deployment consequent upon the complainant's restrictions / absence from work, or for purposes directly related to the aforesaid purposes.
14. The members of the work-related chat groups did not need to know the complainant's physical condition. The Company's use of the complainant's personal data about his physical condition in this case was inconsistent with the purposes (including directly related purposes) for which the personal data had been collected in the first place, and such use amounted to using the personal data for a new purpose. Without obtaining the prescribed consent (that is, express and voluntary consent) from the complainant, the Company's act was in contravention of the requirement of DPP3(1) as regards the use of personal data.

### ***Enforcement Action***

15. The Commissioner has served an Enforcement Notice on the Company, directing it to formulate relevant policies and incorporate them into staff training, raise their staff's awareness of personal data protection and implement regular monitoring to prevent the recurrence of similar contraventions of the Ordinance.

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<sup>1</sup> See Paragraph 8 above.

## **Investigation Case (3): Star Entertainment (Universe) Limited Continued to Use a Former Employee’s Personal Data as the User of a Corporate Bank Account After He Left Employment**

### ***Case Background***

16. The complainant is a former accounting staff of Star Entertainment (Universe) Limited (“Star Entertainment”). At the time when he worked for Star Entertainment, Star Entertainment registered him as one of the users of corporate online banking of an associated company (“the Account”). This was to enable him to operate the Account through the online banking service. However, after he had left Star Entertainment, the complainant kept receiving SMS alerts from the bank in relation to the Account through his mobile number. The complainant had repeatedly relayed the above situation to Star Entertainment and requested them to stop using his personal data for such purpose, but the requests were not followed up. The complainant hence lodged a complaint with the PCPD on 23 March 2023.

### ***Investigation Findings and Contraventions***

#### ***Star Entertainment Contravened DPP3(1)<sup>2</sup>***

17. As the complainant’s employer, it is obvious that Star Entertainment initially collected personal data from the complainant to handle the employment matters. Star Entertainment should only use the complainant’s personal data (including his personal mobile phone number) for the purpose of handling employment matters, a directly related purpose or a new purpose to which the complainant had consented.
18. Although the complainant had once consented to Star Entertainment’s use of his personal data to register online banking for the Account, after the complainant left this employment and ceased consenting to such use, Star Entertainment continued to use the complainant’s personal data in the registration of online banking for the Account without the prescribed consent (that is, express and voluntary consent) of the complainant. Under the above circumstances, Star Entertainment was in contravention of the requirement of DPP3(1) as regards the use of personal data.

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<sup>2</sup> See Paragraph 8 above.

### ***Enforcement Action***

19. The Commissioner has served an Enforcement Notice on Star Entertainment, directing it to follow up and check whether there were other cases of failure to update the users of corporate online banking accounts after the departure of accounting staff, incorporate into its policy and/or guidelines the instructions for registering accounting staff as corporate online banking account users and take steps to ensure that the policies and/or guidelines are consistently followed and complied with to prevent the recurrence of similar incidents.

### **Investigation Case (4): Ngan Yuet Health and Beauty Limited Used the Old Address of a Former Employee for Filing and Mailing a Tax Return**

#### ***Case Background***

20. In 2022, Ngan Yuet Health and Beauty Limited (“Ngan Yuet”) updated the complainant’s address in its records as per his request during his employment. Nonetheless, after he had left the employment in 2023, he did not receive the “Employer’s Return of Remuneration and Pensions” for the year 2022/2023 (“the Return”). The complainant later found that his old address had been stated in the Return, a copy of which was mailed to that address. Thus, the complainant lodged a complaint with the PCPD on 29 May 2023.

#### ***Investigation Findings and Contraventions***

##### ***Ngan Yuet Contravened DPP2(1)***

21. DPP2(1) of Schedule 1 to the Ordinance stipulates that all reasonably practicable steps shall be taken by a data user to ensure that personal data is accurate having regard to the purpose (including any directly related purpose) for which the personal data is or is to be used.
22. The Return was completed by a secretarial company on behalf of Ngan Yuet. To prepare employees’ information for filing tax return, it was Ngan Yuet’s practice to extract data from the personnel records in advance to compile the tax information file for the relevant year. Although the complainant’s address had been updated in Ngan Yuet’s personnel records, when the relevant tax information file was provided to the secretarial company four months later, the file however still contained

the old address. In addition, the staff directly used the address shown on the Return (that is, the old address) for mailing purposes when sending the copy of the Return.

23. The Commissioner understood that due to practical work arrangements, Ngan Yuet might need to prepare the tax information in advance. However, after the tax information file was compiled, there might be updates to the personnel records anytime. The Commissioner noted that Ngan Yuet had not put in place any policies or procedures requiring the tax information file be checked and updated simultaneously when the personnel records are updated. Besides, owing to their negligence, the two staff members assigned to verify the tax information file did not notice the inaccuracy of the complainant's address. Further, Ngan Yuet also sent the Return to the complainant's old address. Obviously, the staff member who sent the Return had not considered whether the address shown on it was accurate, and nonetheless used that address for posting out of convenience.
24. The Commissioner considered that when Ngan Yuet handled the Return and provided a copy of it to the complainant, Ngan Yuet had not taken all reasonably practicable steps to ensure that the complainant's address was accurate, hence contravening the requirement of DPP2(1) as regards the accuracy of personal data.

*Ngan Yuet Contravened DPP4(1)*

25. DPP4(1) of Schedule 1 to the Ordinance stipulates that all practicable steps shall be taken to ensure that any personal data held by a data user should be protected against unauthorised or accidental access, processing, erasure, loss or use.
26. Regarding Ngan Yuet's sending of the Return to a wrong address, which exposed the Return to the risk of falling into the hands of unknown parties, and thereby leaking the complainant's personal data contained in the Return, including his name, Hong Kong Identity Card number and salary information. In fact, the complainant's personal data would have been safeguarded had the staff used the complainant's address shown in the personnel record for preparing the mail or checked the address against the most recent and accurate personnel record before mailing.

27. In view of the above circumstances, the Commissioner also considered that Ngan Yuet had not taken all practicable steps to protect the complainant's personal data contained in the Return against unauthorised or accidental access, processing, loss or use, in contravention of the requirement of DPP4(1) as regards security of personal data.

### ***Enforcement Action***

28. The Commissioner has served an Enforcement Notice on Ngan Yuet, directing it to formulate policies and work procedures requiring its staff to refer to the last updated address records for handling tax return matters and sending correspondence for staff; request its staff to strictly follow the above policies and procedures; and remind them to exercise due care and diligence when checking data. Moreover, Ngan Yuet shall incorporate the relevant policies into staff training, raise their awareness of personal data protection and implement regular monitoring to prevent the recurrence of similar incidents.

### **Recommendations**

29. The Commissioner encourages employers to regard the protection of employees' personal data privacy as an integral part of data governance of the organisation; embrace a proactive stance in their personal data protection strategies; comply with legal requirements and adopt good practices in their day-to-day work; and protect and respect employees' personal data to create a win-win situation for employers and employees.
30. Through this report, the Commissioner would like to make the following recommendations to employers:
- (i) introduce the "Personal Data Privacy Management Programme" and formulate open and transparent information policies and practices;
  - (ii) appoint a Data Protection Officer to coordinate the implementation of privacy management measures and promote the effective functioning of the privacy management programme;



- (iii) devise a strategy for the training in respect of personal data privacy; and
- (iv) proactively communicate with staff; explore with them personal data privacy issues that are relevant to their work; and seek to understand their concerns and difficulties for the effective formulation of procedures, guidelines and training programmes that fit their daily encounters and cater for their needs.