

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

(English translation)

(This is an English translation of the Report compiled in Chinese. In the event of any conflict between this English version and the Chinese version, the Chinese version shall prevail.)

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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

**Collection of Vehicle Owners' Personal Data from Register of Vehicles
for Direct Marketing by Imperial Parking (HK) Limited**

This report in respect of an investigation carried out by me pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap. 486 (“**the Ordinance**”) against Imperial Parking (HK) Limited is published in the exercise of the power conferred on me by Part VII of the Ordinance. Section 48(2) of the Ordinance provides that “*the Commissioner 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.”*

ALLAN CHIANG
Privacy Commissioner for Personal Data

The Complaint

The Complainant received a letter from Imperial Parking (HK) Limited (“**Imperial**”) promoting monthly parking privileges. The letter contained his name, address and vehicle license plate number.

2. The Complainant then telephoned Imperial to inquire about the source from which it obtained his personal data. He was informed by Imperial that his personal data had been obtained from the Transport Department. The Complainant was dissatisfied that Imperial had collected his personal data from the Transport Department for direct marketing purposes and thus lodged a complaint with this Office.

Relevant Provisions of the Ordinance

3. Data Protection Principle (“**DPP**”) 1(2) and 3 of Schedule 1 to the Ordinance are relevant to this case.

DPP1(2) stipulates that:

“ *Personal data shall be collected by means which are—*
(a) *lawful; and*
(b) *fair in the circumstances of the case.*”

DPP3 stipulates that:

“ *Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than—*
(a) *the purpose for which the data were to be used at the time of the collection of the data; or*
(b) *a purpose directly related to the purpose referred to in paragraph (a)*”

4. Moreover, Sections 65(1) and 65(3) provide that:

“ (1) *Any act done or practice engaged in by a person in the course of his*

employment shall be treated for the purposes of this Ordinance as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer's knowledge or approval.

...

(3) In proceedings brought under this Ordinance against any person in respect of an act or practice alleged to have been done or engaged in, as the case may be, by an employee of his it shall be a defence for that person to prove that he took such steps as were practicable to prevent the employee from doing that act or engaging in that practice, or from doing or engaging in, in the course of his employment, acts or practices, as the case may be, of that description."

Information Collected during the Investigation

5. In the course of investigation of this case, this Office received written replies and relevant documents from the Complainant, the Transport Department and Imperial. This Office also took a statement from an employee of Imperial, Mr. X. Below are the information and evidence of the case collected by this Office.

Certificate of Particulars of Motor Vehicle

6. According to the Transport Department, the Complainant made the first registration and license application for his motor vehicle ("**the Vehicle**") at the Hong Kong Licensing Office of Transport Department on 7 August 2008. For the said purposes, the Complainant provided his personal data, which included his name and address, in the "Application Form for Registration and Licensing of a Vehicle" of the Transport Department.

7. The Transport Department had stated clearly its purposes of collecting the Complainant's personal data in the "Application Form for Registration and Licensing of a Vehicle". The full version is as follows:

“Purposes of Collection

1. *The personal data provided by means of this form will be used by Transport Department for the following purposes:*

- (a) activities relating to the processing of your application in this form;*
- (b) maintenance of a register of vehicles for public access under regulation 4(2) of the Road Traffic (Registration and Licensing of Vehicles) Regulations; (applicable to vehicle-related applications only)*
- (c) maintenance of a record of particulars of driving licences under regulation 39 of the Road Traffic (Driving Licences) Regulations; (applicable to driving licence-related applications only)*
- (d) activities relating to traffic and transport matters; and*
- (e) facilitating communication between Transport Department and yourself.”*

8. Moreover, the Transport Department confirmed that Mr. X applied for a copy of the Certificate of Particulars of Motor Vehicle (“**the Certificate**”) of the Vehicle on 24 August 2009. Mr. X declared in the application form that he knew that the personal data provided in the Certificate should be used for activities relating to traffic and transport matters and that he applied for the Certificate for purposes relating to traffic and transport matters, specifically, for the purpose of “legal proceedings”.

9. The Transport Department stated that it was stipulated in Section 4(2) of the Road Traffic (Registration and Licensing of Vehicles) Regulations¹ that “*The Commissioner shall, on payment of the fee prescribed in Schedule 2, supply to any person making application for any particulars in the register in respect of a vehicle a certificate stating such particulars.*”

10. According to the Transport Department, since June 2003, the Application Form for a Certificate of Particulars of Motor Vehicle (“**the Application Form**”) has stipulated that “*Applicants should only use personal data of the registered owner provided by the certificate for activities relating to traffic and transport matters*”, and applicants are required to sign on the Application Form to confirm

¹ Chapter 374E, Laws of Hong Kong

his knowledge of such stipulation. In addition, applicants have to specify on the Application Form the traffic and transport related purpose for which the Certificate will be used, for example, legal proceedings, sale and purchase of vehicle, etc.

11. Furthermore, applicants have to make the following declaration in the Application Form: *“I hereby certify that the information given in this form is true and complete. I understand that, if I knowingly make any statement or provide any information in this form which is false in any material particular, I shall be liable under Section 111(3) of Road Traffic Ordinance (Cap. 374) to a fine of \$5,000 and imprisonment for 6 months.”*

The Purpose of Collecting Particulars of Motor Vehicles from Transport Department by Mr. X

12. Imperial confirmed that Mr. X was its employee. On 24 August 2009, under the instruction of his supervisor, Mr. X searched the registration particulars relating to a batch of vehicle license plate numbers, which included the Vehicle, for the purpose of promoting the preferential parking rate for Hong Kin Road Car Park in Sai Kung (“**the Car Park**”).

13. Mr. X did not know the source of this batch of vehicle license plate numbers, but he guessed that the owners of these vehicle license plate numbers might have enquired with Imperial about the preferential parking rate of the Car Park. According to Mr. X, he had made the search in his own capacity because he forgot to bring along with him the company chop and business registration information of Imperial to the Transport Department.

14. Mr. X also stated that apart from promoting Imperial’s parking service, he had on many occasions applied for a certificate of particulars of other motor vehicles on behalf of Imperial, so as to obtain the vehicle owners’ data for recovery of rent in arrears. He therefore chose “legal proceedings” as the purpose for the certificate application every time without much thought.

15. After obtaining the data of vehicle owners (including the Complainant) (“**the Data**”), Mr. X sent letters to the vehicle owners (including the Complainant)

upon his supervisor's instruction to promote the preferential parking rate of the Car Park. Imperial also confirmed that the purpose of obtaining the Data from the Transport Department by Mr. X was to send promotional letters to the vehicle owners (including the Complainant).

16. At all material times, Imperial had not laid down any guidelines to inform its staff of the circumstances under which they could collect particulars of motor vehicle registrations from the Transport Department, nor any guidance on how to fill out the Application Form in relation to the purposes of collection of the Data.

The Commissioner's Findings

Collection of the Data by Imperial

17. Under DPP1(2), Imperial has to collect the Complainant's personal data by means which are lawful and fair in the circumstances of the case.

18. The Transport Department requires applicants for the Certificate to certify in the Application Form that the information provided is true and complete, and to declare that if they knowingly make any statement or provide any information which is false, they may contravene Section 111(3) of the Road Traffic Ordinance².

19. Under Section 111(3) of the Road Traffic Ordinance, any person who makes any statement which is false for the purpose of obtaining the Certificate is liable to a fine of \$5,000 and to imprisonment for 6 months.

20. Imperial originally sent its employee, Mr. X, to the Transport Department to collect the Data for the purpose of promoting preferential parking rate of the Car Park, but Mr. X stated in the Application Form that the purpose was for "legal proceedings". This was obviously inconsistent with the fact.

21. In this regard, I am of the view that Mr. X might have contravened Section 111(3) of the Road Traffic Ordinance. Since he had collected the Data from the

² Chapter 374, Laws of Hong Kong

Transport Department by false statement, the means were not lawful and fair in the circumstances of the case.

The Liability of Imperial as Employer

22. Regarding the liability of Imperial as an employer, I need to consider the requirements under Sections 65(1) and 65(3). As Mr. X collected the Data in the course of performing his duties, I am therefore of the view that the act of Mr. X was done in the course of his employment with Imperial. Under Section 65(1) of the Ordinance, the act of Mr. X had to be treated as done by Imperial and whether or not Mr. X's act was done with Imperial's knowledge or approval, Imperial, as Mr. X's employer, was legally responsible.

23. As a matter of fact, Mr. X searched the particulars of motor vehicle registrations from the Transport Department according to his supervisor's instruction. At the time of the complaint, Imperial had laid down no guidelines to inform its staff of the circumstances under which they could collect particulars of motor vehicle registrations from the Transport Department, nor any guidance on how to fill out the Application Form in relation to the purposes of collection of the Data (e.g. whether the application should be made in the capacity of the company or the individual, what to put down as the purpose of the application, etc).

24. There was no evidence showing that Imperial had taken steps to prevent Mr. X from making a false statement in the Application Form. Hence, Imperial could not rely on the defence under Section 65(3) of the Ordinance. Imperial was thus liable for the act of Mr. X.

25. Based on the foregoing, I am of the opinion that Imperial had contravened DPP1(2) in its collection of the Complainant's personal data from the Transport Department.

Contravention of DPP3 by Imperial for Using the Data for Direct Marketing

26. Although vehicle owners' data in the Register of Vehicles are public records, personal data collected from public registers are not exempted from the

provisions of DPP3. When deciding if Imperial had contravened DPP3, I have to consider the following factors:

- (i) the original purpose of establishing the Register of Vehicles by the Transport Department;
- (ii) whether the Transport Department has explicitly limited the use of the personal data contained in the Certificate; and
- (iii) the reasonable expectation of the Complainant when he provided his personal data to the Transport Department.

Purpose of Establishing the Register of Vehicles

27. The Road Traffic (Registration and Licensing of Vehicles) Regulations (“**the Regulations**”) has not expressly stated the purpose of establishing the Register of Vehicles, but I notice that the Regulations have been enacted under Section 6 of the Road Traffic Ordinance. According to the Long Title of the Road Traffic Ordinance, the Ordinance aims “*to provide for the regulation of road traffic and the use of vehicles and roads (including private roads) and for other purposes connected therewith*”.

28. Given there is no additional provision explaining the purpose of establishing the Register of Vehicles, the Transport Department’s purpose of maintaining the Register of Vehicles under the Regulations should be consistent with the aim of the Road Traffic Ordinance mentioned above. I am of the view that Imperial’s act of using the data of the Register of Vehicles for direct marketing was totally unrelated to the purpose of establishing the Register of Vehicles and the aim of the Road Traffic Ordinance.

Use of the Certificate’s Personal Data

29. Although the Regulations has not stipulated any limitations on the use of personal data in the Register of Vehicles under the Regulations, the Transport Department, when performing its statutory duty, has taken administrative measures by stipulating clearly in the Application Form that vehicle owners’ personal data should be used for activities relating to traffic and transport matters, and requesting applicants to sign on the form to acknowledge their understanding

of such stipulation.

30. In this connection, applicants should clearly understand that though the data in the Register of Vehicles are open for public inspection, the data should only be used for activities relating to traffic and transport matters. In any case, when any person makes the application, he should clearly understand that the disclosure of the data to the public by the Transport Department is not intended for others to make commercial benefits.

The Complainant's Reasonable Expectation of Providing His Personal Data to the Transport Department

31. As regards the Complainant's reasonable expectation of the use of his personal data that he provided to the Transport Department for vehicle registration and vehicle license application, I note that the Application Form for Registration and Licensing of a Vehicle had not specified that the purposes of collecting vehicle owners' personal data (see paragraph 7 above) included the use of the data for commercial promotion.

32. The Transport Department allows the public to access the personal data (including the Complainant's personal data) in the Register of Vehicles for the purposes of traffic and transport matters. There is no doubt that the use of the Complainant's data provided to the Transport Department for direct marketing by a commercial organization fell outside the reasonable expectation of the Complainant.

No Prescribed Consent Obtained from the Complainant

33. Having considered the above circumstances, the use of the Complainant's name and address for commercial promotion purpose was neither within the purpose of use specified by the Transport Department, nor within the reasonable expectation of the Complainant. There is also no evidence showing that Imperial had obtained the Complainant's prescribed consent to use the Data for direct marketing purpose. Hence, I am of the opinion that Imperial had contravened DPP3.

Conclusion

34. In conclusion, I find that:

- (i) Imperial has contravened the requirement under DPP1(2) in relation to its collection of the Complainant's personal data; and
- (ii) With regard to the use of the Complainant's personal data for promotion of preferential parking rate of the Car Park, Imperial has contravened the requirement under DPP3.

Remedial Measures Taken by Imperial

35. Upon the intervention of this Office, Imperial had taken the initiative to destroy the Data (including the Complainant's personal data). Imperial also undertook in writing that it would not collect vehicle owners' data in the Register of Vehicles from the Transport Department for the purposes of introducing/expounding/promoting its services. Moreover, Imperial has issued guidelines to its staff, requiring its staff to search for vehicle registration details from the Transport Department only for the purposes relating to traffic and transport matters, and such searches must be made in the name of Imperial.

Enforcement Notice

36. Pursuant to Section 50 of the Ordinance and my investigation, if it is found that the data user is contravening the requirements under the Ordinance or has contravened the requirements under the Ordinance in circumstances that make it likely that the contraventions will continue or be repeated, I may serve an enforcement notice on the data user directing it to take specific steps to prevent repetition of the contraventions.

37. I am of the opinion that Imperial in this case had contravened the requirements under DPP1(2) and DPP3 in relation to the collection and use of the Complainant's personal data. Having had regard to all the circumstances of the case, in particular Imperial had destroyed the vehicle owners' data collected from the Transport Department, undertaken that it would not search for such data from the Transport Department for the purposes of introducing/expounding/promoting

its services and issued relevant internal guidelines to its staff, I consider that continued or repeated contravention by Imperial is unlikely. Hence I decide not to serve an enforcement notice on Imperial.

Other Comments

38. Vehicle owners are one of the most popular target groups for sending direct marketing messages. Vehicle owners often receive different product and service messages related to motor vehicles, e.g. car insurance, car parking, car care and maintenance services. From the facts of the case, I have reason to believe that many companies engaged in direct marketing activities relating to automobiles may collect vehicle owners' personal data from the Register of Vehicles of the Transport Department for their businesses.

39. As Section 4(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations requires the Commissioner for Transport to maintain a register of vehicles, and Section 4(2) provides that the Commissioner shall, on payment of a prescribed fee, supply to an applicant a certificate of particulars of Motor Vehicle, the Commissioner for Transport has no right to refuse to provide the certificate to an applicant.

40. The Transport Department has taken administrative measures by stating clearly in the Application Form that vehicle owners' personal data should be used for activities relating to traffic and transport matters and specifying that if applicants knowingly make any statement or provide any information which is false, they shall be liable to a fine and imprisonment. However, this cannot effectively prevent data users from obtaining the Certificate of Particulars of Motor Vehicle for other purposes. This case reflects that there are loopholes in the Road Traffic (Registration and Licensing of Vehicles) Regulations in respect of personal data privacy protection.

41. However, I am pleased to note that the Transport Department has taken steps to amend the relevant regulations to plug the loopholes. The Transport and Housing Bureau issued a consultation paper in July 2011 on the proposed amendments to the Regulations, proposing to specify that the purpose of the Register of Vehicles is to allow any member of the public to ascertain the

particulars of a registered vehicle in the manner provided in the Regulations. The Transport Department also proposed that the particulars of registered owners would only be released if the applicant: (i) is the registered owner of that vehicle; (ii) has obtained the written authorization of the vehicle owner; or (iii) declares to the Commissioner for Transport that such information would only be used for certifying the identity of the registered vehicle owner in scenarios specified by the Commissioner, for example, for the purposes of handling insurance claims of traffic accidents and car theft cases, conducting any civil and criminal proceedings involving the vehicle concerned, and safety recalls of the vehicles. I have given my support to the proposals in the consultation paper and expressed my views to the Transport Department [http://www.pcpd.org.hk/english/files/review_ordinance/PCPD_submission_050911.pdf]. I hope that the proposals would be implemented earlier so as to effectively protect the personal data privacy of registered vehicle owners.

42. The use of the personal data kept in public registers is governed by the terms prescribed by the operators of the registers or the relevant ordinance establishing such registers. If data users indiscriminately use personal data retrieved from public registers for direct marketing, they do so at their own peril.

43. Normally, the permitted use of personal data contained in any public register will not include direct marketing purposes. In such circumstances and where the purpose of use of the data is not specified by any ordinance, data users need to consider the following in determining whether the personal data may be used for direct marketing purposes:

- (i) the background leading to the creation of the public register; and
- (ii) the reasonable expectation of the data subject as regards the use of the data by direct marketers.

It is recommended good practice that a data user shall refrain from using the data for direct marketing where the conclusion drawn from the above consideration is against the intended marketing use.

44. Regarding the collection and use of personal data in direct marketing by data users, I have issued the Guidance on the Collection and Use of Personal

Data in Direct Marketing in October 2010. Before conducting direct marketing activities, data users should make reference to the Guidance to ensure compliance with the Ordinance.