

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

Investigation Report

**Unfair collection of personal data
by the use of
“blind” recruitment advertisements**

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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: unfair collection of personal data
by the use of “blind” recruitment advertisements**

This report in respect of the investigations carried out by the Privacy Commissioner for Personal Data (the “**Commissioner**”) pursuant to section 38(b) of the Personal Data (Privacy) Ordinance, Cap. 486 is published in the exercise of the power conferred on the Commissioner by Part 7 of the Personal Data (Privacy) Ordinance. Section 48(2) of the Personal Data (Privacy) 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

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by the use of “blind” recruitment advertisements**

Subsequent to the investigations conducted by the Commissioner in 2014 of “blind” recruitment advertisements placed in seven major recruitment media (Career Times, JobsDB, JobFinder, Recruit, Classified Post, Jiu Jik, and JobMarket) and 69 Enforcement Notices served on the employers responsible for the advertisements, the Commissioner conducted similar investigations in May 2015 to ascertain if there was an improvement in the situation.

Of the seven recruitment media, Career Times was found to have no “blind” recruitment advertisements. The Commissioner investigated into 59 “blind” recruitment advertisements identified in the remaining six recruitment media and as a result, has served 42 Enforcement Notices so far on the employers who are responsible for placing the advertisements.

“Blind” recruitment advertisements are in breach of the fairness principle for personal data collection, that is, Data Protection Principle 1(2) in Schedule 1 to the Personal Data (Privacy) Ordinance, Cap 486.

What is a “blind” recruitment advertisement and what is its impact on the protection of personal data privacy?

A “blind” recruitment advertisement (“**Blind Ad**”) is one that does not identify either the employer or the recruitment agency acting on its behalf. The act of placing Blind Ads that directly solicit personal data from job applicants constitutes unfair collection of personal data which is not permitted under the Personal Data (Privacy) Ordinance (the “**Ordinance**”).

2. Personal data collected from job applicants is subject to access and correction by the persons concerned. Job applicants would not be able to exercise their data access rights if the identity of the organisation that collected their personal data is not disclosed in the advertisement.

3. Blind Ads could be used as an unscrupulous means to solicit personal data for the purpose of direct marketing or, worse still, fraudulent activities, thus causing nuisance or financial loss to the affected persons. There have been news reports in recent years¹ on identity theft cases in which swindlers collected

¹ Examples of such news report can be seen at:
http://www.singpao.com/XW/gat/201311/t20131121_473392.html (2013)

personal data of job applicants by means of recruitment advertisements and based on the personal data collected, prepared fake documents containing data such as address, employment and income proof to apply for personal loans from financial institutions.

Relevant provisions of the Ordinance

4. Of relevance to the current investigations is Data Protection Principle (“DPP”) 1(2) in Schedule 1 to the Ordinance and paragraph 2.3.3 of the Code of Practice on Human Resource Management (the “Code”).

DPP 1(2) stipulates:

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

Paragraph 2.3.3 of the Code states:

“An employer who directly, or through its agent, advertises a vacancy that solicits the submission of personal data by job applicants should provide a means for the applicants to identify either the employer or its agent.”

5. The Code is issued pursuant to section 12 of the Ordinance for the purpose of providing practical guidance in respect of the requirements under the Ordinance relating to human resource management. Failure to abide by its mandatory provisions will weigh unfavorably against the data user concerned in any case that comes before the Commissioner. Where any data user fails to observe any of the mandatory provisions of the Code, a court, or the Administrative Appeals Board, is entitled to take that fact into account when deciding whether there has been a contravention of the Ordinance.

6. By virtue of section 38(b) of the Ordinance, the Commissioner shall carry out an investigation into a suspected breach of the Ordinance. After completing the investigation, the Commissioner may, in the public interest, publish an investigation report pursuant to section 48(2) of the Ordinance setting out the result of the investigation as well as recommendations and comments arising from the investigation.

http://www.singpao.com/XW/gat/201406/t20140609_512368.html (2014)
http://orientaldaily.on.cc/cnt/news/20150304/00176_070.html (2015)

Result of self-initiated survey in 2014

7. Last year, this Office conducted a compliance survey of recruitment advertisements posted from 15 to 22 of March, 2014 on seven major recruitment media: namely *Career Times*, *JobsDB*, *JobFinder*, *Recruit*, *Classified Post*, *Jiu Jik*, and *JobMarket*.

8. 9,016 advertisements were studied, among which 311 Blind Ads (i.e. 3.45% of total number of advertisements studied) were identified. The Commissioner randomly selected 71 such Blind Ads cases and initiated investigations under section 38(b) of the Ordinance. The Commissioner served Enforcement Notices on the 69 employers concerned for taking remedial actions in respect of the breach of the requirements of DPP 1(2). All the employers had complied with the Enforcement Notices.

9. The Commissioner also obtained a pledge from six of the seven recruitment media concerned to deter Blind Ads². They had heeded the Commissioner's advice to act as gatekeepers to prevent unfair collection of personal data through Blind Ads. The following table summarises what the six media had promised the Commissioner in the aftermath of the exercise in 2014:

	Career Times	JobsDB	Recruit	Classified Post	Jiu Jik	JobMarket
Step up effort in identifying blind advertisers			✓	✓	✓	✓
Screen the advertisements	✓	✓	✓	✓	✓	✓
Return non-compliant advertisements for rectification	✓	✓	✓	✓	✓	✓
Refuse Blind Ads	✓	✓				

The continued investigations in 2015

10. The Commissioner continued with similar investigations this year to determine if the situation has improved.

11. From 3 to 9 of May, 2015, a total of 12,849 advertisements placed in the same seven recruitment media were studied. In the process, we identified only 59 Blind Ads (i.e. 0.46% of the total number of advertisements studied) which warranted our investigation under section 38(b) of the Ordinance.

² One of the seven recruitment media, JobFinder, did not respond to the Commissioner's request for improvement.

12. The following is a table comparing the proportions of Blind Ads in the two years:

		2014				2015			
		Total no. of ads (a)	Total no. of blind ads (b)	Percentage (b)/(a)	Promised to be Gatekeeper	Date of publication	Total no. of ads (a)	Total no. of blind ads (b)	Percentage (b)/(a)
Online Media	Career Times	2,814	25	0.89%	Yes	8 May 2015	3,659	0	0.00%
	JobsDB	4,497	89	1.98%	Yes	8 May 2015	7,663	14	0.18%
Printed Media	JobFinder	360	3	0.83%	No Response	6 May 2015	265	1	0.38%
	Recruit	511	66	12.92%	Yes	8 May 2015	497	4	0.80%
	Classified Post	177	11	6.21%	Yes	9 May 2015	135	3	2.22%
	Jiu Jik	252	31	12.30%	Yes	8 May 2015	240	9	3.75%
	JobMarket	405	86	21.23%	Yes	8 May 2015	390	28	7.18%
	Total	9,016	311	3.45%		Total	12,849	59	0.46%

13. As clearly reflected in the figures above, the situation of Blind Ads has improved, with the proportions of Blind Ads significantly reduced for all seven media. Overall, the proportion has dropped from 3.45% to 0.46%. In particular, in the case of Career Times and JobsDB (the two media which have pledged to refuse Blind Ads), the proportions were as low as 0% and 0.18% respectively.

Investigation findings and conclusions

14. The Commissioner initiated investigations in the said 59 Blind Ads cases which involved 55 employers³. They comprise trading companies, retail companies, manufacturers, a law firm, a certified accountant firm, and companies in a range of other businesses.

15. Up to 6 July 2015, 46 investigations had been completed. The Annex to this report contains the names of the employers who placed / instructed the placing of Blind Ads and copy of the Blind Ads concerned. In response to our enquiries, their explanations on the omission of the company names in the ads are as follows:

³ Four employers were found to have posted two Blind Ads each during the survey. Hence the 59 investigations only concerned 55 employers.

Category	Description	No. of Cases
A	Admission - The employers, while confirming the placing of Blind Ads for recruitment purpose, made no further statement.	27 <i>(3 of them also expressed dissatisfaction on the recruitment platform for not reminding them)</i>
B	Ignorance - The employers admitted the placing of Blind Ads for recruitment purpose and attributed the cause of breach to ignorance / negligence / misunderstanding of the legal requirements.	9
C	Blaming the recruitment media - The employers, apart from admitting the placing of Blind Ads for recruitment purpose, were of the view that the recruitment media should advise/remind them of the impropriety of their advertisements.	5
D	Defence - The employers admitted placing of the Blind Ads but did not agree that their recruitment advertisements were in breach of the legal requirements.	5 <i>(2 of them also expressed dissatisfaction on the recruitment platform for not reminding them)</i>

16. DPP 1(2) of the Ordinance requires that personal data should be collected by means that are fair in the circumstances of the case. In a recruitment situation, this requirement obliges an employer advertising for a job vacancy and soliciting personal data from the job applicants to provide a means for the applicants to identify either the employer or its agent, as prescribed in paragraph 2.3.3 of the Code.

17. All the Blind Ads in question solicited personal data of the job applicants through response channels like an email address, a fax number, a physical address, or an “apply now” button without revealing the identity of the employer or the recruitment agency acting on behalf of the employer. The employers therefore failed to comply with the Code. Without a valid defence, this was tantamount to unfair collection of personal data and was therefore a contravention of DPP 1(2).

18. The reasons advanced by Category B employers (ignorance, negligence and misunderstanding of the legal requirements) are not valid defences, and blaming the recruitment media by Category C employers does not exonerate them from their legal obligations under the Ordinance.

19. Some category D employers argued that the display of an email address containing the company's domain name was sufficient to identify their respective companies. However, the Commissioner considers that, with or without a dedicated domain name, an email address by itself is not considered to be sufficient and direct information to identify the company.

20. Other category D employers argued that there was no intention of the employer to solicit personal data and that the advertisement did not specifically ask for any personal data or resume, even though an email address was provided in the advertisement. Hence the job seekers were at liberty to request an interview without submitting his personal data. Bearing in mind the ordinary job seeker is keen to secure the job advertised, the Commissioner considers that although there was no express solicitation of personal data, the advertisements as presented would more than likely lure ordinary job seekers to provide their full resume, in an attempt to secure the job.

21. In sum, the Commissioner found contravention of DPP 1(2) in all 46 cases.

22. Finally, the Commissioner found no prima facie evidence in the 46 completed investigations that indicated misuse of the personal data.

Enforcement action against employers

23. The Commissioner concluded that 42 employers in all of the 46 completed investigations⁴ had contravened DPP 1(2) of the Ordinance for unfair collection of job applicants' personal data. These employers were served with the Result of Investigation and Enforcement Notice under sections 47 and 50 of the Ordinance respectively, directing them to:

- (a) delete the personal data collected unless it has to be retained for satisfying other legal requirements, or for a continuing recruitment process in which case the job applicant needs to be informed and given the option to demand deletion of his personal data; and
- (b) formulate a policy of placing recruitment advertisement, including the prohibition of "blind" recruitment advertisements for solicitation of job applicants' personal data.

⁴ See footnote 3. Some employers had placed more than one Blind Ads, and for details, please see Annex.

24. The employers are required to comply with the above direction in stages and in any event not later than two months from the date they were served the Enforcement Notice. Contravention of an Enforcement Notice is an offence under section 50A of the Ordinance and an offender is liable on conviction to a fine at \$50,000 and to imprisonment for two years and, in the case of a continuing offence, to a daily penalty of \$1,000. In the event the offender repeats the DPP contravention intentionally, it commits an offence that attracts the same penalty, without being served an enforcement notice

The Commissioner’s comments

Work done by recruitment media

25. The recruitment media have played an instrumental role in reducing the number of Blind Ads and the Commissioner appreciates their good effort in this regard. The impeccable record of Career Times is particularly commendable.

26. Six media have responded to the Commissioner’s appeal and advised that they have taken actions to deter Blind Ads as follows:-

Career Times	Adopted a company policy that they would not accept Blind Ads . They had also provided guidelines to their staff on how Blind Ads should be handled.
JobsDB	<ul style="list-style-type: none"> • Implemented a new system to detect non-complying advertisements and advise the clients to correct the job ad before reposting onto the website; • Released guidelines on handling Blind Ads to staff; • Educated advertisers on the value to show company identity and the proper ways to place Blind Ads without collecting job seekers’ personal data; • Sent eDMs to clients to further educate and remind them on Blind Ad posting; • Sent alert messages to advertisers to remind them on PCPD’s requirements on the content of the advertisement; • Disseminated messages to job seekers to avoid furnishing their personal data to anonymous advertisers.
Recruit	Trained their marketing representatives to remind advertisers of the relevant requirements under the Ordinance, and

	required advertisers to read and acknowledge such reminders. Added a hyperlink on advertisers' online login page to refer them to the relevant requirements under the Ordinance.
Classified Post & Jiu Jik (both managed by SCMP)	Both media have provided training to their staff on relevant requirements under the Ordinance and added a footer to their mail communication with advertisers reminding the latter of such requirements. Content of advertisements would be screened for Blind Ads, which, when noticed, would be returned for rectification.
JobMarket	Would screen advertisements for Blind Ads, which, when noticed, would be returned to the advertisers for rectification. A notice to advertisers and readers on Blind Ads has been published in both the printed and online versions of JobMarket.

Advice to recruitment media

27. Recruitment media are not data users, and hence the Commissioner has no jurisdiction to impose any requirement on them in managing the privacy issue of Blind Ads. However, they are in the best position to act as gatekeepers to prevent unfair collection of personal data through Blind Ads. Indeed, as indicated in paragraph 15 above, many employers (10 out of 42) have an expectation that recruitment media do perform such role. With the experience and knowledge of the Ordinance, recruitment media could screen the advertisements submitted by the advertising employers and provide them with recommendations on rectification if unfair data collection is detected.

28. While appreciating the recruitment media's efforts to deter Blind Ads, the Commissioner also notes that as tabulated in paragraph 26 above, Blind Ads were still found in six of the recruitment media, indicating that there is still room for improvement in their "reminding" and "screening" mechanisms. He calls on the recruitment media to continue to work hand in hand with the advertising employers so that Blind Ads can eventually be eliminated from the market.

Advice to employers

29. Apart from attracting suitable candidates to fill a job vacancy, a recruitment advertisement may also be able to project a company's corporate image in a positive light. However, a Blind Ad in this regard is counter-productive as it demonstrates the company's ignorance of the law and a

disrespect for privacy and data protection. Employers should therefore refrain from placing Blind Ads.

30. The advertising employers are encouraged to read the information leaflet on recruitment advertisements issued by the Commissioner⁵, which provides practical guidance on how to comply with the Ordinance when placing recruitment advertisements. For example, where there is a genuine need for employers to conceal their identities when advertising for job vacancies, such as recruiting a replacement for a current staff, the advice provided in the information leaflet is that the ad should be worded to solicit job applicants' enquiries rather than personal data. The employer may, upon request, provide job applicants with an application form that bears the employer's identity. Alternatively, the employer may use a recruitment agency to receive the personal data from job applicants.

Advice to job applicants

31. Job applicants are advised to beware of anonymous job advertisers. They should be cautious about providing personal data without first ascertaining the identity of the employer in question. They may consider contacting the employer to ascertain its identity before deciding whether to submit the job application with a full resume. Otherwise, they may fall prey to swindlers extracting personal data for non-employment related purposes and suffer from nuisance and other harm.

Other remarks

32. The Commissioner started off with investigations against organisations responsible for placing 59 Blind Ads. Investigation for 46 of such Blind Ads have been completed as indicated in this Report, with 42 Enforcement Notices served on the concerned employers for unfair collection of personal data and contravention of DPP 1(2) of the Ordinance.

33. Investigations in respect of the remaining 13 cases are continuing at the time of publication of this Report. Further report on these outstanding investigations may be promulgated as appropriate after the investigations have been completed.

⁵ "Understanding the Code of Practice on Human Resource Management - Frequently Asked Questions About Recruitment Advertisements (November 2014)" which can be downloaded at https://www.pcpd.org.hk/english/resources_centre/publications/files/faq_recruitment.pdf