

**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

Glorious Destiny Investments Limited and Brilliant United Investments Limited
Publicly Disclosed Litigation and Bankruptcy Information Collected from
the Public Domain to Their Customers via Smartphone Application “Do No Evil”

This report in respect of the investigation carried out by the Privacy Commissioner for Personal Data (the “**Commissioner**”) pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap. 486 (the “**Ordinance**”) against Glorious Destiny Investments Limited and Brilliant United Investments Limited is published in the exercise of the power conferred on the Commissioner 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

Background

Glorious Destiny Investments Limited and Brilliant United Investments Limited Publicly Disclosed Litigation Information Collected from the Public Domain to Their Users via Smartphone Application “Do No Evil”

Since June 2012, several persons had complained and made enquiries¹ to this Office that smartphone users could search their litigation², bankruptcy and company directors’ data via a smartphone application known as “Do No Evil” (“the App”)³ (Fig. 1).

(Fig. 1)



2. The four complainants in this case are currently or were previously defendants/debtors in criminal, civil and/or bankruptcy proceedings. Bankruptcy orders were made against three of the complainants by the court and the bankruptcy order of one of them was discharged in 2007.

3. According to the webpage⁴ for the App, Brilliant United Investments Limited (“BUI”) is responsible for the development, promotion, management and business operation of the App. On the webpage of the App, BUI claimed to

¹ In 2012, a total of 12 complainants had lodged complaints with this Office, eight of whom later agreed that this Office need not pursue their cases because either they were unwilling to disclose their identities or they learnt that this Office was taking follow-up actions on similar cases. Moreover, about 60 people made enquiries to this Office about this matter and expressed their concerns.

² Litigation information included both information relating to criminal prosecutions and civil cases.

³ This App can be used on Android and iPhone Operating Systems.

⁴ www.donoevil.hk (accessed on 22 July 2013).

hold a database of over 2 million Hong Kong Court litigation records from which subscribers could conduct litigation search. BUI advertised that subscribers of the App could conduct due diligence review on the target persons before:-

- employing private tutors and domestic helpers;
- signing tenancy agreements with their prospective tenants;
- offering of a job to potential employees; and
- entering into contracts with their business partners.

4. In November 2012, this Office initiated a formal investigation under Section 38(a) of the Ordinance⁵ against BUI. Initial enquiry revealed that BUI was only established on 27 July 2011 and it was impossible for it to have obtained 2 million litigation records over such a short period of time. This Office considered that BUI was likely to have obtained the records from third parties or its business partners. After investigation, it was revealed that the litigation records were collected by Glorious Destiny Investments Limited (“GDI”) which provided the same to BUI. Hence, this Office initiated separate formal investigation against GDI.

5. The Commissioner consolidated the investigation for the abovementioned two cases to examine whether the practice of disclosing the complainants’ personal data via the App had contravened the relevant requirements under the Ordinance.

Relevant Provisions of the Ordinance

6. Section 2 and Data Protection Principle (“DPP”) 3 (the version in force at the material time) of Schedule 1 to the Ordinance are of direct relevance to this case.

7. According to section 2(1) of the Ordinance, a “*data user*” means “*a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data*”.

⁵ The Personal Data (Privacy) Ordinance was substantially amended on 1 October 2012. However, for the purposes of this investigation, the applicable law at the material time was the version of the Personal Data (Privacy) Ordinance prior to 1 October 2012.

8. 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).”

Information Collected during the Investigation

9. In the course of investigation of this case, apart from collecting evidence from the complainants, this Office received written replies from GDI and BUI. This Office also summoned the officers-in-charge of BUI and GDI for interviews and conducted site inspection at GDI’s Office and its strong room where the litigation records obtained from the public domain (e.g. the daily cause lists obtained from the Judiciary) are stored. Moreover, this Office made enquiries with and consulted the Judiciary and the Official Receiver’s Office (“**ORO**”). Set out below is the relevant information obtained in this case.

Background of BUI

10. BUI is a Hong Kong limited company established in 2011. Its director is a limited company established in the British Virgin Islands. BUI’s main business is the operation of the App.

Background of GDI

11. GDI is a limited company registered in the British Virgin Islands. In 2008 GDI was registered in Hong Kong as an overseas company. Its main business is to collate publicly available litigation, bankruptcy and company directors’ data for compiling a database for access by its customers including professionals in the legal and accounting industries to perform due diligence/background reviews on target persons.

Business Relationship between GDI and BUI

12. GDI had planned to expand its business to include all smartphone users in Hong Kong. Between 2010 and 2011, GDI liaised with a number of smartphone application developers to develop a portal which allows users to gain access to its database through the use of smartphones to conduct due diligence/background reviews. At last, GDI approached BUI. GDI had no previous business dealings with BUI.

13. After a series of discussions, GDI entered into a profit-sharing partnership agreement (“**Agreement**”) with BUI. According to the Agreement, BUI was responsible for developing the App and would bear the development costs involved, whereas GDI would provide and update litigation, bankruptcy and company directors’ records for access by users of the App. GDI owns the intellectual property right of the litigation record database. BUI is not allowed to collect, copy, transfer, retain and/or modify the litigation, bankruptcy and company directors’ records owned by GDI.

14. At the end of February 2012, BUI launched the App for free download by smartphone users. As at May 2013, the App had recorded more than 40,000 downloads and over 200,000 access requests.

The Data User in this Case

15. Before commencing the investigation, this Office had to clarify who was the relevant data user in this case. Under section 2 of the Ordinance, a “data user” means “a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data”. As mentioned in paragraphs 12 and 13 above, BUI was responsible for the development and administration of the App. This Office found no evidence that BUI had participated in the collection, holding, processing or use of the litigation, bankruptcy and company directors’ information in the database. On the other hand, as the litigation, bankruptcy and company directors’ information was collected, held, processed or used (including disclosed) by GDI, the Commissioner considered that GDI was the “data user” in this case within the definition thereof under the Ordinance, whereas BUI was no more than a smartphone application developer and administrator, and not a “data user” under the Ordinance.

Operation Mode of the App

16. Upon downloading the App, each user will be given 10 free credit points to experience the functions of the App. When the 10 free credit points are used up, users can purchase further credit points by credit cards at the cost of one Hong Kong dollar for each credit point.

17. The selling point of the App is its name search function. A user can make a search request for accessing the litigation and bankruptcy records relating to a target individual by conducting a search on his smartphone using that individual's name as search criterion. The App will then transmit the search request message to GDI's server. After confirming that the request message is sent from a subscriber of the App, GDI will transfer the following litigation and bankruptcy information from its server to the user's smartphone via the App.

| Case Nature | Personal Data Disclosed |
|------------------|---|
| Criminal Cases | Name of Defendant, Court Type, Action Number, Charge and Hearing Date (Fig. 2) |
| Civil Cases | Name of Plaintiff and Defendant (if the defendant is a limited company, Name of Defendant Company, Name of Company Director and First Four Alpha-numeric Characters of his Hong Kong Identity Card (“ HKID ”) card number are included), Address of Plaintiff/ Defendant and Director of Defendant Company, Court Type, Action Number, Case Nature, and Hearing Date (Figs. 3 & 4) |
| Bankruptcy Cases | Names of Bankrupt, Court Type, Action Number, First Four Alpha-numeric Characters of HKID card number, Address, Filing Date, Order Date and Discharge Date (if applicable) (Figs. 5 & 6) |

(Fig. 2)

(Fig. 3)

(Fig. 4)



(Fig. 5)

(Fig. 6)



(Remarks: Personal data of the complainant was masked in Figs. 1-6)

18. This Office noted that if the English name of the target person is entered, e.g. CHAN TAI MAN, the litigation data relating to persons with this English name, and transliterated Chinese names in different Chinese characters with similar pronunciation and also names with characters in a different order, e.g. CHAN MAN TAI will be shown. Users could hardly tell the target person from the others.

Ways of Collecting Litigation and Bankruptcy Information from the Public Domain

19. Members of the public can access in person information relating to criminal litigation, civil litigation, bankruptcy and company registration at the Judiciary, the ORO and the Company Registry respectively. Most of the information can also be accessed on the websites of the above departments.

Information of Criminal Litigation Cases

20. According to the Judiciary, in general, members of the public can obtain the below-mentioned criminal litigation case information from case judgments and the Daily Cause Lists.

20.1 Judgments: According to the Judiciary, under the principle of open justice, judgments (or Reasons for Sentence/Reasons for Verdict) are uploaded to its website for public inspection. However, judgments (or Reasons for Sentence/Reasons for Verdict) only contain the names of parties, action numbers, court types, the names of trial judges, the lawyers instructed, charges, dates and content of judgments, etc., but the HKID card numbers of defendants are not included.

20.2 Daily Cause Lists: Members of the public can obtain court hearing information from the Daily Cause Lists uploaded to the Judiciary's website or posted outside the courts, including court numbers, the names of trial judges, dates, time, the names of defendants, charges, etc., but the HKID card numbers of defendants are not included. According to the Judiciary, the Daily Cause Lists provide the above hearing information to members of the public to facilitate witnesses, defendants and/or related parties to attend the correct court. The first page of the Daily Cause List states that no person accessing a Daily Cause List shall use any personal data contained therein for any purpose not related to the purposes set out above. After the relevant hearing date, such lists

serve no other purpose. Hard copies posted at the courts will be removed one day after the trial is over, while electronic records will be deleted three days after the trial is over.

Information of Civil Litigation Cases

21. According to the Judiciary, under the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H), any person shall, upon payment of a prescribed fee, be entitled to inspect writs of summons, judgments and the Cause Book at the court registry. Members of the public can also obtain court hearing information from the Judiciary's website or the Daily Cause Lists posted outside the courts. If they wish to access or obtain other case information, an application will have to be made to the courts, which will then decide in accordance with the circumstances of the cases.

- 21.1 Writs of Summons: Writs of Summons contain information including the names of parties, addresses, action numbers, court types, lawyers instructed, statements of claim, etc., but HKID card numbers of litigants are not included.
- 21.2 Judgments: Judgments contain names of parties, action numbers, court types, the name of trial judges, representing lawyers, hearing dates, dates and content of judgments, etc., but the HKID card numbers of litigants are not included. Under the principle of open justice, the Judiciary also uploads judgments to its website for public inspection.
- 21.3 Cause Books: Registries of the High Court and District Courts maintain a Cause Book and the information therein was extracted from writs of summons and documents of originating process, including the names of parties, addresses, action numbers, filing dates, lawyers instructed, nature of claim or amount claimed, etc., but the HKID card numbers of litigants are not included.

- 21.4 Daily Cause Lists: Daily Cause Lists contain court numbers, dates, time, names of defendants, case nature, lawyers instructed, etc., but HKID card numbers of defendants are not included. As mentioned in paragraph 20.2 above, the first page of the Daily Cause List states its purpose and use.

Information of Bankruptcy Cases

22. Under section 8 of the Bankruptcy Rules (Cap. 6A), only certain persons, e.g. trustees, debtors, and any creditors can access, without permission from the court, the detailed case records relating to bankruptcy cases, which include petitions in bankruptcy cases and bankruptcy orders. Members of the public can only inspect the Cause Book of bankruptcy petitions at the Registry of the High Court. The Cause Book only contains basic information including the names of debtors and creditors, addresses, filing dates, action numbers, lawyers instructed, etc., but the HKID card numbers of the bankrupts are not included.

23. According to the ORO, members of the public can apply for inspection of bankruptcy records under Item 16 of Table A of the Schedule to the Bankruptcy (Fees and Percentages) Order (Cap. 6C) and Section 122W of the Bankruptcy Rules (Cap. 6A). Members of the public need only provide the name and HKID card number (if any) of the target person for the search by filling out a search application form⁶. Upon payment of the search fee⁷, if the information provided by the applicant matches the records in its database, the ORO will provide the applicant with a search report, which contains the case number, case name, hearing date, name of debtor, date of bankruptcy order, discharge date, etc., but the HKID card numbers and addresses will not be shown. Under section 78 of the Bankruptcy Regulation, the Official Receiver shall publish bankruptcy orders in the Gazette and in such local newspaper or newspapers as he may think fit. The bankruptcy orders contain the action number, name and the partial HKID card number of debtor and date of bankruptcy order, but the debtor's address will not be shown.

⁶ ORO73

⁷ HK\$85

Information of the Companies Registry

24. The Companies Registry is responsible for providing services to incorporated local companies with or without limited liability. According to the Companies Ordinance (Cap. 32), the Companies Registry should provide the public with services and facilities to inspect and obtain information held by the department on the various statutory registers. In this regard, any person, upon payment of a prescribed fee to the Companies Registry, is entitled to obtain copies of annual returns containing names and addresses of company directors and shareholders, and HKID card numbers of company directors.

25. According to the Terms and Conditions of the Companies Registry Search Services, users of the services shall not sell the data in any form or make copies of the documentation from which products may be derived for resale without the prior written consent of the Registrar.

26. Moreover, according to 1A of section 305 of the Companies Ordinance, the main purpose of the Companies Registry in making the companies registration information available for public inspection is to enable members of the public to authenticate, when dealing with a company, the identity of the person holding out as the director or other officers of a company.

27. To sum up paragraphs 20 to 26 above, members of the public can obtain the following information from different public registers and sources:

| | |
|-------------------|--|
| Daily Cause Lists | Hearing time, action numbers, names of courts, court numbers, names of trial judges, names of defendants, charges (criminal proceedings)/nature (civil proceedings) and hearing stages |
| Judgments | Action numbers, names of defendants, charges, description, content and dates of judgments |
| Cause Books | Action numbers, plaintiffs and/or creditors, names and addresses of debtors and/or defendants, names of lawyers instructed for creditors and statements of claim |
| Writs of Summons | Names of parties, addresses, action numbers, court types, lawyers instructed and statements of claim |

| | |
|--------------------------|--|
| Gazette | Names of debtors, case numbers, partial HKID card numbers of debtors, dates of declaration of bankruptcy and discharge |
| Annual Return of Company | Names and addresses of company directors and shareholders of a limited company (be it a public listed company or not), and full HKID card numbers of directors |

Collection and Collation of Litigation and Bankruptcy Information from the Public Domain by GDI

28. GDI collects and collates litigation and bankruptcy information from the public registers and sources as set out in para. 27 (see Annex).

29. The above public registers and sources contain information of defendants and/or debtors and/or company directors. Each of these registers holds information that serves a unique reference and research purpose. For example, if a person was involved in bankruptcy as well as criminal and civil proceedings, his bankruptcy and litigation information would be separately held in different public registers and sources. GDI stated that if members of the public wished to obtain all litigation and bankruptcy records of a target person, they had to search different public registers and sources or hire professionals (e.g. a solicitors' firm) to conduct searches on his behalf. This is not only expensive, but also time and labour consuming. In view of this, GDI aimed to provide a user-friendly platform at low fees so that the public could enjoy the same services that GDI provided to its business clients, i.e. viewing the personal and litigation information of a target person in one go.

30. According to GDI, it first collected the Daily Cause Lists from courts at all levels and then collated the information therein with the information obtained from the Cause Book, Gazette and Companies Registry. In this manner, a comprehensive database of litigation records of individuals was built. Using a name search function, the subscribers of the App could view the personal information and litigation records collected from different sources of a target person in one go. This process is illustrated by the following examples involved in this case.

31. One of the complainants was adjudicated bankrupt years ago, and later he was a defendant in a criminal case. By using the App, a user can view the criminal litigation case and bankruptcy information and partial HKID card number of the complainant in one go (see Fig. 7, 8 & 9 and Table 1). Otherwise, members of the public can only access all the above information by searching different public registers and sources.

(Fig. 7)

(Fig. 8)

(Fig. 9)



(Remarks: the personal data of the complainant was masked in Figs. 7-9)

Table 1

| Data source \ Type of Data | Daily Cause List | Cause Book | Gazette |
|----------------------------|------------------|------------|---------|
| Action Number | √ | √ | √ |
| Name of Defendant/Debtor | √ | √ | √ |
| Court Type | √ | | √ |
| Court Number | √ | | |
| Hearing Date & Time | √ | | |
| Charge/Case Nature | √ | √ | |

| | | | |
|--|--|---|---|
| Statement of Claim/Content | | √ | |
| Address of Defendant/Debtor | | √ | |
| Partial HKID Card Number of Defendant/Debtor | | | √ |
| Date of Bankruptcy Order | | | √ |

32. In another example, the complainant was a director of a limited company which was a defendant in a civil litigation case in 2009. The complainant was adjudicated bankrupt in his own personal capacity in 2012. There was no connection between the civil litigation case involving the limited company and the complainant's bankruptcy. However, by using the App, subscribers could view that while the complainant was a director of limited company, the company was a defendant in a civil litigation case and that he was adjudicated bankrupt in his own personal capacity. They could also view his partial HKID card number. Unless by using the App, members of the public are not able to access all of the above information in one go. In respect of the civil litigation case involving the limited company, the Daily Cause List only made available the information including the name of the limited company, the civil litigation case number, court type, case nature, hearing date and place, whereas the Cause Book only contains, apart from the name of the limited company, the address and case nature. The Annual Return maintained by the Companies Registry shows not only the name and address of the limited company, but also the name of the director (the complainant) of the limited company, address and full HKID card number of the complainant. Regarding the complainant's bankruptcy case, the Cause Book contains the case number, name and address of the complainant. The Gazette published the name, bankruptcy case number, the date the bankruptcy order was made and the partial HKID card number of the complainant. The App assembled the information relating to the complainant's bankruptcy case with the information of the civil litigation case of the limited company of which the complainant was a director. The App also gathered the information of the complainant that he submitted to the Companies Registry as a director of the company (i.e. his name, HKID card number and address) together with his name, partial HKID card number, bankruptcy case number that were published in the Gazette and his address which was recorded in the Cause

Book. In this manner, subscribers of the App can view the information of the complainant in different capacities in one go. (see Figs. 10, 11, 12 & 13 and Table 2)

(Fig. 10)

(Fig.11)

(Fig.12)



(Fig. 13)



Remarks: the personal data of the complainant was masked in Figs.10-13

Table 2

| Data source Type of Data | Daily Cause List | Cause Book | Gazette | Company Annual Return |
|---|---------------------|------------|---------|--------------------------|
| Action Number | √ | √ | √ | |
| Name of Debtor | √ | √ | √ | |
| Name of Director & Shareholder | | | | √ |
| Name of Defendant Company | √ | √ | | √ |
| Court Type | √ | | √ | |
| Court Number | √ | | | |
| Hearing Date & Time | √ | | | |
| Charge/Case Nature | √ | √ | | |
| Statement of Claim/Content | | √ | | |
| Address of Debtor | | √ | | |
| Address of Defendant Company | | √ | | √ |
| Partial HKID Card Number of Debtor | | | √ | |
| Date of Bankruptcy Order | | | √ | |
| Address of Director & Shareholder | | | | √ |
| HKID Card Number of Director | | | | √ |

33. In addition, in view of the fact that judgments of criminal cases were not completely open for public inspection and not all civil cases had written judgments for public inspection, GDI had offered a service of “Redress Files”. Under this service, data subjects who had not been convicted or whose claims against them had not been successful could provide GDI with evidence in writing to support that they were in fact “innocent”. If the data subject is able to prove his case, GDI would add a remark at the relevant records to reflect the position.

The Commissioner’s Findings

The Collection of Personal Data from Public Registers and Public Domain by GDI

34. Under DPP1(2), a data user shall collect a data subject’s personal data by means which are lawful and fair. In the present case, GDI collected the personal data in relation to the complainants from public registers and the public data sources such as Daily Cause List, Cause Book, the Gazette, Companies Register, etc. The Commissioner considers such collection of the data was by means which were legal or fair, hence GDI had not contravened DPP1(2) in the collection of the complainants’ litigation information.

35. GDI emphasised that the purpose of developing the App is to provide a simple, reliable and low-cost channel to the general public to access the publicly available litigation information. Although the information is publicly available, there is no exemption for the use of this information from the application of DPP3 under the Ordinance, unless the exemptions stipulated under Part VIII of the Ordinance apply. In other words, GDI has to comply with the requirements under the Ordinance, DPP3 in particular, when it uses and discloses the personal data obtained from the public domain.

36. Though the App to some extent provides a user friendly means to members of the public to access litigation and bankruptcy information, it raises a myriad of privacy concerns. Before determining whether GDI has contravened DPP3, the Commissioner will first outline these privacy implications resulting from the App.

Involving Sensitive Personal Data

37. The App provides users with a platform to access criminal and civil litigation, bankruptcy records which comprise the names of bankrupts, litigants and company directors; their addresses, partial HKID card numbers, amount and reasons of claims, charges, and decrees.

Re-arrangement of Personal Data Collated From the Public Domain

38. The App has a name search function that enables users to search personal data of litigants and bankrupts anytime and anywhere via a smartphone. With this function, users can easily access the personal data of a target person held at different public registers and sources. Please refer to Annex for the data collated by GDI.

39. As stated in paragraphs 31 and 32 above, the two complainants' litigation and bankruptcy data is scattered among the Gazettes, the ORO registers, Cause Books of different courts. Members of the public have to spend a lot of time and effort if they wish to retrieve all the above mentioned information of the complainants from the Judiciary, Gazettes and the ORO or the relevant websites. However, any user of the App can access the above data simply by conducting a name search of the complainants via the App. If a user only intends to search the complainant's bankruptcy data, he may additionally learn that the complainant has been prosecuted for a criminal offence if he uses the App for the search instead of going to the ORO. This is obviously an intrusion to the privacy of the complainant. Aggregation of personal information scattered in the public domain and use of the aggregated data could be much more intrusive and damaging to an individual.

Data Subjects Are Kept in the Dark as to the Access of Their Personal Data

40. As mentioned in paragraph 37 above, the App enables users to access sensitive data but the data subjects have no knowledge that their sensitive personal data have been accessed by others via the App. Currently, employers hiring employees for taking care of children and mentally incapacitated person are only allowed to check whether a job applicant has a sexual conviction record

via the Sexual Conviction Record Check Scheme⁸. Under the Scheme, an employer is required to first obtain the job applicant's consent and an application for checking has to be submitted by the job applicant to the Police before the employer may conduct the check. However, by using the App, anyone may access the litigation data of another person without notifying the latter. Sensitive data of the data subject is disclosed without his knowledge and consent. This is unfair to the data subject.

Loss of Control over Further Use of the Data

41. Most of the data accessible via the App are obtainable from the Judiciary, the ORO and the Companies Registry. The disclosure or publication of litigation, bankruptcy records of individuals and company directors' information by the Judiciary, the ORO and the Companies Registry is made pursuant to the relevant statutory requirements. Such information was disclosed in a manner consistent with the purposes of data disclosure. Further, the use of personal data in the Daily Cause Lists and bankruptcy data from the ORO register is regulated by the Judiciary and the ORO respectively. Public access to the data is to a certain extent restricted to specific purposes, thus affording protection to the personal data of the data subjects from misuse.

42. On the contrary, the name search function and user-friendliness of the App allow its subscribers to access information of any particular individual indiscriminately. Though the terms and conditions of the App state that users who use the data obtained via the App shall not violate any local, national or international laws, in practice GDI does not have any means to monitor and control the use of the personal data obtained via the App by its users and other third parties. For instance, employers may check whether a job applicant has been convicted of any criminal offence before employment; business people may check whether their business partners and customers have ever been involved in monetary disputes. Worse still, out of ill-intention or simple curiosity, an individual may indiscriminately access others' data without their knowledge. Data subjects' opportunities for employment, education, making friends and

⁸ HKSAR Government accepted the recommendations made by the Law Reform Commission to set up and implement the "Sexual Conviction Record Check Scheme" on 1 December 2011.

credit application may be jeopardised if their sensitive data is disclosed and misused, and they may even experience unforeseen harm. Huge financial and time outlay may be required to remedy the harm.

The data accessible by the App is not accurate, up-to-date or comprehensive

43. Furthermore, GDI failed to ensure that the data accessible via the App is accurate, valid or comprehensive. The selling point of the App is the ease of carrying out searches by using individual's name as search index. As mentioned in paragraph 18 above, this Office had carried out a search by using a hypothetical English name "Chan Tai-man" as index. In response the App listed 59 results relating to "Chan Tai-man", "Chan Man-tai" and persons with similar names. There were 9 results attributing to "Chan Tai-man", amongst which there were 4 "Chan Tai-man" involved in bankruptcy cases and thus their partial HKID card numbers were shown (as mentioned in paragraph 23 above) and their identities could then be ascertained. Nonetheless, if the subscriber does not have the HKID card number of the target person, the subscriber in no way could ascertain which of these 9 records relates to his target person. On the other hand, even if the subscriber knows the HKID card number of his target person "Chan Tai-man" and is better able to relate these 9 records to his target person, the subscriber can at most be able to ascribe to his target person the bankruptcy records (based on the records' partial HKID card number) and the civil litigation records involving the company of which the target person is a director (based on the HKID card number of the director in the companies register). The subscriber is still unable to ascribe other criminal and civil litigation records shown by the App to the target person.

44. The worst case scenario is where the target person is not involved in any civil, criminal or bankruptcy case, but the App shows different records involving other "Chan Tai-man". The subscriber may in such circumstances mistake that part or all of the search results are related to his search target, despite there is actually no litigation data for the target "Chan Tai-man".

45. On the other hand, as not all the judgments of criminal and civil cases are documented for public access or inspection, the final outcome of the proceedings could not always be found from the App. The App only showed that the target

person had been a defendant in a litigation. Such partial information may already affect adversely others' impressions of the data subject. It is unfair to the person who was acquitted on the charge or whose claim against him had been dismissed.

46. In this circumstance, by allowing its subscribers access to the litigation and bankruptcy information of others without giving notice to the data subjects (thus depriving their right of exoneration) and without ensuring the accuracy, validity and comprehensiveness of the data, the App is extremely unfair to the data subjects. Even if the data subjects know of the App and that their records have been searched, it is unfair for GDI to shift such responsibility to the data subjects through the service of "Redress File".

Jeopardising Offenders' Chance of Rehabilitation

47. Despite the fact that criminal records kept by the Police or the court will not be destroyed, section 2 of the Rehabilitation of Offenders Ordinance (Cap 297) provides that an offender who is not sentenced to imprisonment exceeding 3 months or to a fine exceeding HK\$10,000 will be treated as not having been convicted for the offence, if a period of 3 years has elapsed without that individual being again convicted in Hong Kong of an offence. As such, notwithstanding that an offender may have failed to disclose his conviction, that shall not constitute a lawful or proper ground for dismissing or excluding him from any office, profession, occupation or employment.

48. However, employers or other individuals may easily access via the App the offender's spent conviction record. It may affect the employers' and others' perception of the data subject, possibly creating a labeling effect on him and jeopardising his chance of rehabilitation. This definitely defeats the legislative intent of the Rehabilitation of Offenders Ordinance.

49. Moreover, while banks and financial institutions can obtain customers' credit data (including bankruptcy records) through a credit reference agency, the credit reference agency cannot retain the bankruptcy records permanently. Under Section 30A of the Bankruptcy Ordinance, when a bankrupt is discharged from bankruptcy after a period of 4 to 8 years, he shall be considered as able to control his own financial matters. On this basis, according to the "Code of Practice on Consumer Credit Data" the credit reference agency can only retain public records or relevant records of declaration or discharge of bankruptcy up to

8 years after declaration of bankruptcy. In other words, after 8 years have lapsed since the declaration of bankruptcy, banks and financial institutions are unable to retrieve any bankruptcy records from the credit reference agency. This will give a chance of rehabilitation to the bankrupts after 8 years so that their credit applications will not be affected by the past bankruptcy records.

50. However, by using the App, banks and financial institutions can still easily search the bankruptcy records which have been deleted from the records held by the credit reference agency. Such records would have adversely and indefinitely affected persons who had been adjudicated bankrupt before. Their credit application may be jeopardised and this is unfair to them.

Whether GDI Has Contravened DPP3

51. The crux of this investigation is whether the disclosure of the litigation, bankruptcy and company directors' data of the complainants by GDI through the App has contravened DPP3. The Commissioner is of the view that personal data collected from the public domain is not open to unrestricted use. Notwithstanding an individual agrees to the disclosure of his personal data at a specific time and for a specific purpose, it does not mean that he loses or relinquishes his right to data privacy and that the public can use or re-use the data indiscriminately. Personal data, be it made publicly available or not, is subject to protection under the Ordinance. DPP3 provides that personal data should not be used for any purpose other than the original purpose for which the data was to be used at the time of collection or a directly related purpose, unless the prescribed consent of the data subject is obtained.

52. In the present case, the original purpose or directly related purpose refers to the original purpose of making the complainants' data publicly available by the Judiciary, the Companies Registry and the ORO, instead of the purpose of collection of such data by GDI from the public domain. A public register is usually established for a stated purpose which is either explicit or can be implied from the enabling legislation. The purpose of use of the personal data therein is stated in the relevant legislation, either explicitly or implicitly. In both cases, data users should only use the data for the stated purposes, or in accordance with the purpose of the public register, or a directly related purpose.

53. In this regard, the Commissioner should first consider the stated purpose of use of the data. If there is no such purpose, he may consider the underlying legal principles, statutory requirements and the reasonable expectation of the data subjects on the further use of their publicly disclosed data.

Purposes of Making Criminal Litigation Information Public

Stated Purposes

54. GDI collects criminal litigation data indiscriminately from the Daily Cause Lists on a daily basis. The first page of the Daily Cause List clearly states that the information therein is to facilitate witnesses, defendants and/or related persons to attend the designated court at the scheduled time. Apart from this purpose of use, the data therein cannot be used for any other purpose. Clearly, the provision of information on the schedule of court hearings and related matters to members of the public is a practice to ensure open justice. The Judiciary confirmed that hard copies posted up at the courts would be removed on the following day after the trial was over, while electronic records would be removed three days after the trial was over.

55. GDI claims that its disclosure of criminal litigation data is consistent with the purpose for which the Daily Cause Lists are published, i.e., to supply information to members of the public on court hearing and related matters. However, the time and court number for members of the public to find out when and where the hearing will take place are missing in the data disclosed through the App. Furthermore, the Judiciary's purpose of publishing the Daily Cause List surely does not include nor does expect other data users to massively collect and retain the information contained therein for commercial exploitation, such as for customers to conduct due diligence review/ background check on a specific person.

56. As such, the Commissioner does not accept GDI's contention that the disclosure of criminal litigation information through the App is consistent with the purpose for which the Daily Cause List is published.

Reasonable Expectation of the Data Subjects

57. Daily Cause Lists are published daily according to the hearings at different courts, while the App allows the search of the personal data of litigants by name. Disclosure of the personal data of litigants in such manner exceeds the reasonable expectation of litigants on the use of their personal data by the court.

58. Furthermore, the Judiciary only retains the information on the Daily Cause Lists for at most three days. Litigants will not expect others to collate and retain their criminal litigation information in the Daily Cause Lists for commercial purpose. They also do not expect that such data could be freely searched via a smartphone at any time and any place. Litigants may only expect that their criminal litigation information would be used for purposes related to the criminal litigation in question, but not kept and used by unrelated parties for unrelated purposes, e.g. for background check by employers as mentioned in paragraph 3 above. Lastly, litigants will not expect that disclosure of their personal data by the Judiciary would expose them to the privacy risks mentioned in paragraphs 39 to 50 above.

Purposes of Making Civil Litigation Information Public

Legal Requirements and Legal Principles

59. GDI collected civil litigation information from the Cause Books, writs of summons and judgments (if any). Courts make those documents available to members of the public based on relevant ordinances as stated in paragraph 21 above.

60. Although the Judiciary and the relevant ordinances do not explicitly state the purposes for which these documents are publicly available, these must be related to the spirit of the courts to ensure that court hearings are administered in an open and fair manner. In line with this principle of open justice, members of the public could only use the proceeding numbers or court document filing dates as search criteria to retrieve the civil litigation information. There are no direct means for members of the public to access litigation information of a specific person, as they cannot use defendants' name or HKID card number as search

index to search court documents. Hence, GDI's practice of disclosing civil litigation information was not consistent with the purposes for which such information was published by the Judiciary and neither was it a directly related purpose.

61. The Judiciary's purpose of publishing the Daily Cause List surely does not include nor does expect other data users to massively collect and retain the information contained therein for commercial exploitation, such as for customers to conduct due diligence review/ background check on a specific person.

Reasonable Expectation of the Data Subjects

62. The Judiciary maintains the Cause Books, writs of summons and judgments in a way that allows members of the public to use case number and case filing dates to conduct searches for this information. Allowing the subscribers of the App to conduct a name search of the above information exceeds the reasonable expectation of litigants on the use of their personal data by the court as mentioned in paragraphs 57 and 58 above.

Purposes of Making Bankruptcy Information Public

Stated Purposes

63. Currently, members of the public may find out the bankruptcy order relating to a specific person and the order date from the register of the ORO and the bankruptcy notice published by the ORO in the Gazette. Although the Bankruptcy Rules do not state the purpose of publishing bankruptcy orders in the Gazette, it is clear from its content, i.e. "*NOTICE is hereby given that Bankruptcy Orders against the abovenamed debtors were made on [date]. All debts due to the estates should be paid to the trustee.*", that the main purpose is to inform the public that the named person was bankrupt and all related debts should be paid to the trustee to settle the debts of the bankrupt.

64. On the other hand, the ORO states in its register, “*This register is maintained by the Official Receiver for the purposes of the bankruptcy case and the related individual voluntary arrangement mentioned in the register. Searches of the register should confine their subsequent usage of the data in the register to such purposes.*” In other words, the information on the ORO’s register is made publicly available for handling of the bankruptcy cases published on the register. Given that the bankruptcy notice is also issued by the ORO, its purpose of use should be consistent with the purpose of use of the information on the ORO register.

65. On the face of it, GDI’s practice of letting users/lenders confirm whether a person was a bankrupt via the App so as to avoid granting loans to that person was consistent with the ORO’s purpose of disclosing the bankrupt’s data. However, the ORO has clearly stated that the use of bankruptcy records is restricted to the relevant bankruptcy case. The App has not stated or restricted the use of bankruptcy data obtained via the App to the relevant bankruptcy case. The App has gone beyond the restriction by letting any person (whether related to the bankruptcy case or not) freely search other people’s bankruptcy records. The App also stressed that it could provide data (including bankruptcy information) for background reviews of business partners. Such practice was thus not consistent with the purpose of disclosing the bankrupts’ data by the ORO.

66. Moreover, the amount of information disclosed by the App exceeded that of the ORO’s register and the bankruptcy notices at the Gazette. The information included both partial HKID card numbers and addresses of the bankrupts. According to GDI, its bankruptcy data was collated from information from bankruptcy notices (which showed partial HKID card numbers of debtors), extracts of Cause Books kept by the High Court, writs of summons and other documents of originating process (which showed the addresses of debtors).

67. Paragraph 60 above have already addressed the purpose of the Judiciary in making civil litigation information publicly available. Similarly, the disclosure of data from extracts of the Cause Books, writs of summons and other documents of originating process by the App was inconsistent with the purpose of the Judiciary in disclosing the information to the public.

68. In any event, ORO's purpose in disclosing the bankruptcy information does not include allowing other data users to massively collect and retain the information contained therein for commercial exploitation, such as for customers to conduct due diligence review/ background check on a specific person.

Reasonable Expectation of the Data Subjects

69. As pointed out in paragraphs 57 and 58 above, the use of the App exceeded the reasonable expectation of litigants on the use of their personal data by the ORO.

Purposes of Making Annual Returns of Company Directors Public

Stated Purposes

70. GDI collected the personal data of company directors, including their names, addresses and full HKID card numbers from the companies' annual returns held by the Companies Registry. As mentioned in paragraph 26 above, the main purpose for which the Companies Registry makes available the companies registration information for public inspection is to enable members of the public to authenticate, when dealing with a company, the identity of the person holding out as the director or other officers of a company. The Terms and Conditions of the Search Services of the Companies Registry state that users of the services should undertake not to sell the data and documentation provided by the services in any form or make copies of the documentation from which products may be derived for resale without the prior written consent of the Registrar.

71. In one of the examples in this case (paragraph 32 above), in 2008 the complainant was the director of a company which was a defendant in a civil litigation case in 2009. Despite the complainant was the company director, he was not the defendant of the civil litigation case. The complainant was later adjudicated bankrupt in 2012 and hence he could no longer act as the director of the company. As he was not even a shareholder of the company, he ceased to have any business relationship with the company. In any event, unless with the prescribed consent of the Company Registrar, the data obtained from the Company Registry Search Services shall be used by members of the public, when dealing with a company, to authenticate the identity of the person holding out as the director or other officers of a company. GDI has not stated in the App such purpose of use of the data or restricted the data obtained via the App to such use. Instead it allows any person to freely search the data in GDI's database (whether he conducts the search for the above purpose or not). Worse still, the App collated the personal data of the complainant concerning his former directorship with the company, the civil litigation information of the company and his bankruptcy data for commercial exploitation, namely, allowing its subscribers to conduct due diligence/background reviews against the complainant. This is not consistent with the original purpose for which the Companies Registry makes the companies registration data available for public inspection and neither is it a directly related purpose. It is also not consistent with the Terms and Conditions of the Companies Registry Search Services.

Reasonable Expectation of the Data Subjects

72. The annual returns are maintained by the Companies Registry under the Companies Ordinance to enable members of the public to access personal data of directors for the purposes mentioned in paragraphs 26 and 70 above. As mentioned in paragraphs 57 and 58, the use of the App exceeds the reasonable expectation of the data subjects on the use of their personal data by the Companies Registry.

Conclusion

73. In view of the foregoing, the Commissioner is of the view that the disclosure of the litigation, bankruptcy and company directors' data of the complainants by GDI through the App has exceeded their reasonable expectation as regards how such information in the public domain would be used. It is not consistent with or directly related to the purposes of collecting the complainants' litigation, bankruptcy and company directors' information by the Judiciary, the ORO and the Company Registry; and making them publicly available. Hence GDI has contravened DPP3.

Enforcement Notice

74. In view of the likely damage and distress caused to the Complainants by the contraventions of GDI, and the fact that users could still access the two million litigation, bankruptcy and company directors' records kept by GDI via the App, the Commissioner served on 31 July 2013 an enforcement notice on GDI pursuant to Section 50(1) of the prevailing Ordinance⁹ ("the current Ordinance"), directing GDI to cease disclosing the litigation, bankruptcy and company directors' data held by it to the users of the App. On 7 August 2013, GDI confirmed compliance with the enforcement notice with effect from the same day.

Recommendations and Other Comments

75. This case underlines a myth commonly held by people, namely, personal data collected in the public domain, not from the data subjects direct, is open to unrestricted use. This is incorrect.

76. Personal data, be it publicly available or not, is subject to protection under the current Ordinance, in particular, DPP3. In brief, personal data should only be used for the purposes for which they were collected or a directly related purpose, unless with the prescribed consent of the data subject.

⁹ The prevailing Personal Data (Privacy) Ordinance is the version after 1 October 2012.

77. If the data in the public domain is not subject to regulation under the current Ordinance, the consequences will be dire. First, data users may get around the law by deliberately publicising the data so as to make the “data available in the public domain”. Further, it would legitimise the improper use of personal data leaked on the Internet from data breaches. Importantly, data of an individual collected from one public source could be combined with data of the same individual obtained from other public sources to profile the individual and generate new uses of the data. This is facilitated by rapid advances in information and communication technologies which enable the processing of data, such as combining, re-arranging and matching of publicly available information across a range of databases, to be done at phenomenal ease and efficiency.

78. The Commissioner acknowledges that profiling and re-use of the personal data in the public domain could generate economic efficiency and societal benefits. At the same time, the Commissioner wishes to emphasize that such activities invariably expose individuals to particularly high risks of discrimination and attacks on their privacy rights and freedoms. Some examples of these risks include:-

- (a) Use of bankruptcy and litigation records of individuals to check their integrity, credit-worthiness and employability without their knowledge and without any guarantee on the data’s accuracy and validity (the privacy concerns as presented in the investigation case);
- (b) Compilation of sensitive data such as individuals’ identification numbers, residential addresses and signatures from the companies register, vehicles register and land register by ill-intentioned people, thus exposing the individuals to the risks of financial loss, identity theft, personal safety (stalking and surveillance); and
- (c) Use of contact, lifestyle and behavior data of individuals to make unwanted sale approaches.

79. Against this background, the protection afforded by DPP3 is of paramount importance. In invoking DPP3, we need to ascertain the original purpose of collection of the personal data in the public domain and ascertain if the re-use of such data is for the same purpose or a directly related purpose. We have to explore the specific context in which the data was collected and the reasonable

expectations of the data subjects as to the data's further use based on that context. The test here is whether a reasonable person in the data subject's situation would find the re-use of the data unexpected, inappropriate or otherwise objectionable, taking into account the sensitivity of the data and the context of the data collection. Each case will have to be determined on its own merits, taking into account all relevant factors.

80. Separately, the Commissioner notes that the right of individuals to privacy is not absolute. It must be balanced against other rights and public interests, such as freedom of information. In this regard, Part VIII of the current Ordinance specifically provides for certain exemptions from the application of DPP3 and they apply equally to personal data in the public domain.

81. The exemptions cover a wide range of situations. In particular, section 58 caters for personal data used for the prevention or detection of crime or for the prevention, preclusion or remedying of unlawful or serious improper conduct or dishonesty or malpractice by persons. This may be relevant for data users engaged in law enforcement and professional due diligence. Also, section 61 provides for the exemption from DPP3 for news activity where the publishing or broadcasting of the personal data is in the public interest.

82. To provide guidance to data users to comply with the requirements under the current Ordinance in the use of personal data available in the public domain, the Commissioner publishes *Guidance on Use of Personal Data obtained from the Public Domain* concurrently with the publication of this investigation report.

Annex

| | Action No. | Names of Defendants / Debtors | Names of Directors/ Shareholders | Court Types | Court No. | Hearing Dates & Time | Offences (Criminal Proceeding)/ Nature (Civil Proceeding) | Statements of Claim/ Content | Addresses of Defendants / Debtors | Partial HKID No. of Defendant / Debtors | Order Dates | Discharge Dates | Addresses of Directors & Shareholders | HKID No. of Directors |
|------------------|------------|-------------------------------|----------------------------------|-------------|-----------|----------------------|---|------------------------------|-----------------------------------|---|-------------|-----------------|---------------------------------------|-----------------------|
| Daily Cause List | √ | √ | x | √ | √ | √ | √ | x | x | x | x | x | x | x |
| Cause Book | √ | √ | x | x | x | x | √ | x | √ | x | x | x | x | x |
| Judgment | √ | √ | x | √ | x | √ | √ | x | x | x | x | x | x | x |
| Writ | √ | √ | x | √ | x | x | x | √ | √ | x | x | x | x | x |
| Gazette | √ | √ | x | √ | x | x | x | x | x | √ | √ | √ | x | x |
| Annual Return | x | x | √ | x | x | x | x | x | x | x | x | x | √ | √ |