

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

Investigation Report:

**Excessive Online collection of private tutors'
personal data by tutorial service agency
websites**

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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: excessive online collection of private tutors’
personal data by tutorial service agency websites**

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

**Investigation Report: excessive online collection of private tutors’
personal data by tutorial service agency websites**

In respect of the collection of private tutors’ Hong Kong Identity Card numbers by six tutorial service agency websites, namely, Hong Kong Tutor Association, Tutor-Tone, Hong Kong Tutorial Consultancy, looking4tutor.com, go2tutor.com and Hong Kong University Students’ Education Network, and the collection of contact persons’ information of private tutors by Hong Kong Tutor Association, Tutor-Tone, Hong Kong Tutorial Consultancy, looking4tutor.com and go2tutor.com, the Commissioner has found that the data collected was excessive, thus contravening the requirements under Data Protection Principle 1(1) in Schedule 1 to the Personal Data (Privacy) Ordinance, Cap 486 (the “Ordinance”). The Commissioner has served separate Enforcement Notices on the five companies/ proprietors running those websites, directing them to take remedial actions and prevent recurrence of the contravention.

Background

Earlier this Office received a complaint in which the complainant had made a tutor registration at the website of the Hong Kong Tutor Association: www.hkta.edu.hk (“**HKTA**”) operated by Hong Kong Tutor Association Limited. The complainant was required to supply numerous items of personal data including his Hong Kong Identity Card (“**HKID Card**”) number and the information of his contact person, otherwise he would not be able to complete the registration process or use the service of HKTA.

2. After an investigation into this complaint, the Commissioner opined that there was contravention of the requirements under Data Protection Principle (“**DPP**”) 1(1) in Schedule 1 to the Ordinance by HKTA for collecting private tutors’ HKID Card numbers and their contact persons’ information (including the names, telephone numbers and relationships with the tutors, hereinafter the “**Information**”).

3. During the investigation, this Office also randomly reviewed five other tutorial service agency websites, to understand the scope of personal data collection from tutors. These five websites are Tutor-Tone:

www.tutor-tone.com operated by Tutor-Tone Company Limited; Hong Kong Tutorial Consultancy: www.ectutor.com and looking4tutor.com: www.looking4tutor.com (collectively, the “Consultancies”) operated by KOO Chung-wa; go2tutor.com: www.go2tutor.com (“go2tutor”) operated by CHAN Chi-chung, CHAN Man-wai and LEUNG Sze-chun; and Hong Kong University Students’ Education Network (“HKUSEN”): www.hkututor.com operated by PUN Chau-fung and SIN Chit-mui.

4. This Office found that all these five websites collected HKID Card numbers from private tutors, among which, four of them¹ collected the Information from private tutors. It appears that such collection of personal data from private tutors is a common malpractice of the tutorial service agency industry. In view of this, the Commissioner decided to initiate investigations against Tutor-Tone, the Consultancies, go2tutor and HKUSEN in respect of their collection of private tutors’ HKID Card numbers and the Information, so as to supervise these tutorial service agencies’ compliance with the Ordinance in running their business.

5. Based on the information this Office obtained during the investigations, it is revealed that tutorial service agency websites typically collect the personal data of tens of thousands of private tutors and their contact persons through their websites. The Commissioner considers that it is in the public interest to publish a report of the formal investigations, so as to alert other tutorial service agencies to comply with the relevant requirements under the Ordinance when running their business, as well as to remind the general public to safeguard their personal data privacy when providing their personal data to tutorial service agency websites.

Relevant provisions of the Ordinance

Data Protection Principle in relation to collection of personal data

6. Of relevance to the current investigations is DPP1(1) in Schedule 1 to the Ordinance. DPP1(1) stipulates:-

“Personal data shall not be collected unless-

(a) the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;

¹ Including Tutor-Tone, the Consultancies and go2tutor.

- (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and*
- (c) the data is adequate but not excessive in relation to that purpose.”*

Code of Practice on the Identity Card Number and other Personal Identifiers

7. Pursuant to paragraph 2.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (the “**Code**”) issued by the Commissioner by virtue of section 12 of the Ordinance, except in the situations prescribed in the Code, a data user should not collect the identity card number of an individual.

“2.3 A data user should not collect the identity card number of an individual except in the following situations:

...

2.3.2 where the use of the identity card number by the data user is necessary:

...

2.3.2.2 for any of the purposes mentioned in section 58(1) of the Ordinance (the prevention or detection of crime, the apprehension, prosecution or detention of offenders, the assessment or collection of any tax duty, etc.);

...

2.3.3 to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the identity card, where such correct identification or attribution is or will be necessary:

2.3.3.1 for the advancement of the interest of the holder;

...

2.3.3.2 for the prevention of detriment to any person other than the data user;

...

or

2.3.3.3 to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances;

...

2.3.4 without prejudice to the generality of paragraph 2.3.3, for the following purposes:

2.3.4.1 to be inserted in a document executed or to be executed by the holder of the identity card, which document is intended to establish or to evidence any legal or equitable right or interest or any legal liability on the part of any person, other than any right, interest or liability of a transient nature or which is trivial in the circumstances;

...”

8. Pursuant to section 13(2) of the Ordinance, a breach of the Code by a data user shall be admitted as evidence for establishing a contravention of the relevant requirement under the Ordinance.

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

Information collected during the Investigation

10. HKTA, Tutor-Tone, the Consultancies, go2tutor and HKUSEN (the “Websites”) are internet platforms providing matching services for private tutors and prospective students. These internet platforms provide parents/students the opportunity to seek out private tutors for academic assistance, and allow private tutors to seek out their students. Upon successful matching of home tuition assignments, the Websites will charge the parents or private tutors administrative fees as the source of their income. The administrative fees are generally equal to the first two weeks’ tuition fees².

² Regarding the fees, the Websites give different names in different places, including “*administrative fees*”, “*referral fees*”, “*service fees*”, etc. To avoid confusion, it would be referred to as “*administrative fees*” hereinafter.

11. Before a private tutor fills out the online registration form at the websites, he is required to confirm he has read and agrees to the terms and conditions for tutors by clicking the “I agree” button. Such terms and conditions include clauses which appear to be related to the parents and students (e.g. the clause “*they will not verify..... the identity of each and every tutor*”). On the other hand, the Websites have not posted any banner or anything pertaining to the terms and conditions for parents and students. Some of them stated that they would discuss such terms verbally with parents and students over the phone. Others stated they would list such terms in the confirmation letter/email which they sent to parents and students. Parents and students hence may only be able to realise the complete picture of their rights and liability if they have exhaustively browsed through the whole website, or have accidentally entered into the webpage containing the terms and conditions for tutors and read them.

12. It is mandatory for private tutors to submit their HKID Card numbers when creating an account on the Websites. HKTA, Tutor-Tone, the Consultancies and go2tutor also require mandatory submission of the Information. The mandatory fields of the Websites are marked with an asterisk or highlighted with a different colour. The mandatory fields must be filled out or the private tutors cannot proceed with the online registration. On the web page for private tutors to fill in the Information, the following words appear “*Declaration: [The private tutor] has obtained the consent of the below contact person to provide to [the Websites] for emergency contacts*”.

13. Besides HKTA, the other five Websites provided to this Office the respective number of tutors registered with them as follows, 1,487, 5170, 15,000, 70,000 and 100,000. Regarding HKTA, according to the information released on its website, they also have more than 75,000³ registered tutors.

14. Below is a summary of the purposes of collection of private tutors’ HKID Card numbers claimed by the Websites:-

- (i) Verification of private tutor’s identity/prevention of fraudulent use of identity: The Websites claim that one of the purposes of collecting private tutors’ HKID Card numbers is to reasonably protect the parents’ interests. By collecting private tutors’ HKID

³ According to the information on the website of HKTA as at 9 October 2014.

Card numbers, parents will be able to verify the identity of the private tutor on the first visit and avoid any fraudulent use of identity by an unrelated or unknown third party. The Websites also state that no private tutor shall knowingly give false information, otherwise it would be unfair to other private tutors seeking similar job opportunities;

- (ii) Prevention of unlawful conduct: Examples provided by the Websites include (a) to protect the personal safety and property of parents, (b) to assist the police in investigating any criminal complaints made by parents against private tutors, and (c) the submission made by private tutors during online registration may contain explicit violence, sexual references, or coarse/privacy intrusive/ discriminatory language, which may violate the Laws of Hong Kong or adversely affect individuals or organisations.

Furthermore, there have been incidents where private tutors collected the tuition fees for the entire month but only attended the first lesson and subsequently failed to attend any further lessons, thus causing loss to parents. The Websites found it difficult to pursue a claim for loss or damage against the private tutors without their HKID Card numbers;

- (iii) Prevention of submission of false academic credentials;
- (iv) Prevention of/claim for arrears of administrative fees: The Websites are of the view that the collection of the private tutors' HKID Card numbers has a deterrent effect. The Websites may use the private tutors' HKID Card numbers for legal action in case of arrears of administration fees;
- (v) Protection of the parties' contractual relationship: The Websites submit that once the private tutors indicate that they have read and agreed to the terms and conditions for tutors, they would enter into a legally binding contract with the Websites. The Websites would then charge private tutors the administrative fees according to these agreed terms. Also, the collection of the private tutors' HKID Card numbers is necessary for the purpose of identity verification, as there is a possibility of different private tutors having the same

name, a situation not uncommon in Hong Kong; and

- (vi) Optional provision of HKID Card numbers by private tutors: The Websites are of the view that the private tutors have a free choice whether to register with them or not. The Websites consider their provision of HKID Card numbers is optional not mandatory.

15. Below is a summary of the purposes of collection of the Information claimed by the Websites:-

- (i) If a private tutor does not keep his appointment and cannot be reached, the Websites will call his contact person to check on what happened;
- (ii) To “*ensure the personal safety of tutors*”, the Websites need to identify a contact person to render assistance to the private tutors in case of accidents or emergency situations;
- (iii) As some private tutors may be under 18 years of age, the Websites may explain the terms and conditions for private tutors to their adult contact persons so as to alleviate the concerns of their family members; and
- (iv) The Websites may not be able to inform the private tutors of last minute cancellation of appointments by parents/students if the private tutors are already on their way. Hence the Websites will have to contact the private tutors through their contact persons so as not to waste the private tutors’ time.

Investigation findings and conclusions

16. The Websites must comply with DPP1(1) in their collection of private tutors’ HKID Card numbers and the Information. Moreover, insofar as collection of private tutors’ HKID Card numbers is concerned these Websites must also comply with the requirements under the Code.

Whether collection of tutors’ HKID Card numbers is excessive

17. After carefully examining the explanations by the Websites as summarised

in paragraph 14 above, the Commissioner came to the following conclusions:-

Verification of private tutors' identity/Prevention of fraudulent use of identity

18. The Commissioner notes that for the majority of the Websites, the means of verifying private tutors' identities consist merely of verbally checking private tutors' data on the phone. The Websites seldom interview private tutors in person to verify their identification documents against the data provided by them through online registration. The Commissioner is of the view that if the Websites only check with private tutors their data on the phone, it amounts to merely requiring the private tutors to repeat the information once again, which would not serve the purpose of verification at all. Therefore, the collection of private tutors' HKID Card numbers in these circumstances does not in fact help to achieve the alleged purpose.

19. If the Websites are of the view that they have the duty of verifying private tutors' identity for the protection of the parents' interest, in lieu of collection of HKID Card numbers, the Websites should adopt some other effective yet less-privacy-intrusive means. For instance, the Websites may use the Chinese and English names, telephone numbers and correspondence addresses provided by the private tutors through their online registrations to request to meet them in person, and at the meeting, the Websites can request the private tutor to produce his HKID Card to confirm he is the card-holder. This should be a practical and effective means of verification compared to the practice currently adopted by the Websites.

20. The Websites may also issue appointment letters to the private tutors, and request them to produce such appointment letters to parents for authentication during the first class of tutorial, as an alternative to collection of the private tutors' HKID Card numbers. The Websites will only need to remind parents to request private tutors to produce their identification documents for inspection at the first tutorial class, in order to check the names on the identification documents against the names appearing on the appointment letters. Parents may also check the photo on the HKID Card to confirm that the person who shows up is the card-holder and the private tutor registered with the website concerned.

21. Summing up, the Commissioner considers it is not necessary for the Websites to collect the private tutors' HKID Card numbers in advance as they could adopt other "adequate but not excessive" means, as stated in paragraphs 19 and 20 above, to verify the private tutors' identity. As a result, the

Commissioner does not agree that the conditions “*for the advancement of the interest of the holder*” or “*for the prevention of detriment to any person other than the data user*” (herein referring to the parents/ students concerned) in paragraph 2.3.3.1 or 2.3.3.2 of the Code can be called in aid in support of collection of HKID Card numbers from private tutors.

Prevention of unlawful conduct

22. The Websites have not provided any statistics on the incidence of unlawful conduct committed by the private tutors in the past. The Commissioner is of the view that given the Websites will use the contact details provided by the private tutors through online registration to inform them of the successful matching, if the Websites also adopted the suggestions of this Office in paragraphs 19 & 20 above, the accuracy of the private tutors’ contact details could be ascertained. Thereafter, if a private tutor commits any unlawful conduct during the tutorial class which requires investigation by the Police, the Websites can provide the verified contact information of the private tutor to the Police for tracing the private tutor.

23. Furthermore, it is not reasonable for the Websites to compulsorily collect the HKID Card numbers from all private tutors for addressing possible unlawful conduct the chances of which is yet uncertain or could not be ascertained. Therefore, the Commissioner considers the Websites could not rely on paragraph 2.3.2.2 of the Code for the prevention or detection of crime to collect private tutors’ HKID Card numbers.

24. Regarding the explanations by one of the Websites that the private tutors may breach the Laws of Hong Kong or adversely affect individuals/ organisations for submitting to the website information which contains explicit violence, sexual references, or coarse/privacy intrusive/ discriminatory language, this Office has inquired about the website’s operations and learnt that it can prevent this from happening. The data entered by the private tutors would not instantly appear on the website for public viewing. On the contrary, the website would first save, read and check the information before posting it onto the website. In other words, the website is in a position to check the information provided by private tutors beforehand, and erase or refrain from posting any information which contains explicit violence, sexual references, or coarse/privacy intrusive/ discriminatory language. This measure is adequate in preventing private tutors from inflicting any adverse impact on the website by submitting undesirable information to the website. Thus, the Commissioner

does not consider it necessary for the website to collect private tutors' HKID Card number for reason of this risk.

Prevention of submission of false academic credentials

25. Based on the information provided by the Websites, they would not examine the academic credentials submitted from each and every registered private tutor due to resource constraint. Even if checking is conducted, it was carried out over the phone most of the time. As stated in paragraph 18 above, such "checking" by the Websites amounts to merely requiring the private tutors to repeat the information once again, and has no effect at all for the purpose of preventing misrepresentation of academic credentials, and in that context the collection of private tutors' HKID Card numbers does not in any way serve a useful purpose. It is unreasonable for the Websites to collect all private tutors' HKID Card numbers as early as at the registration stage.

Claim for/prevention of arrears of administrative fees

26. If the overdue administrative fees due to the Websites by private tutors will cause damage or loss on the part of the Websites which is "*more than trivial*", paragraph 2.3.3.3 of the Code which allows a data user to collect the HKID Card number of an individual to safeguard itself against damage or loss which is more than trivial may be applicable in the circumstances.

27. At present, claims amounting to HK\$50,000 or below are commonly handled by the Small Claims Tribunal. A claimant is required to fill out "*Form 1*" and "*Form 2*", in which the full names and addresses of the claimant and the defendant, the amount of the claim in Hong Kong dollars, the reason for the claim, and the breakdown and calculation of the claim are required, but not the HKID Card number of the defendant.

28. In light of this, this Office has assessed the administrative fees chargeable by the Websites based on the tariff rates and the first 100⁴ pending cases published on the Websites. Based on this calculation, the average fee per pending case chargeable by the Websites does not exceed HK\$1,023. Given this fee level, it is practicable for the Websites to file claims against the private tutors concerned with the Small Claims Tribunal, without the need to know and use the HKID Card number of those private tutors.

⁴ Except for the Tutor-Tone case in which Tutor-Tone provided this Office with information of several real cases.

29. It should be noted that the damage or loss on the part of the data user envisaged in paragraph 2.3.3.3 of the Code must be directly attributable to the data subject (such as the overdue administrative fees due from the tutors concerned); other ancillary expenses (such as legal fees or service charges incurred by the Websites for engaging lawyers or debt collection agents) should be excluded. In the circumstances, the Commissioner considers the potential loss to the Websites arising from the administrative fees due from the private tutors is not “*more than trivial*” and hence paragraph 2.3.3.3 of the Code does not apply.

Protection of the parties’ contractual relationship

30. The Commissioner must point out that the applicability of paragraph 2.3.4.1 of the Code depends on two conditions: (i) the HKID Card number needs “*to be inserted in a document executed or to be executed by the holder of the identity card, which document is intended to establish or to evidence any legal or equitable right or interest or any legal liability on the part of any person*”; and (ii) such right or interest not being “*any right, interest or liability of a transient nature or which is trivial in the circumstances*”. Taking into account that private tutors must honour and comply with the service terms and conditions of the Websites after being registered as their private tutors, the Commissioner agrees with the assertion that the Websites have contractual relationships with the private tutors, hence the aforesaid condition (i) is met. However, the Commissioner still has to consider condition (ii), that is, whether the potential administrative fee chargeable by the Websites to the tutors is trivial or not.

31. According to paragraph 28 above, the average fee per case chargeable by the Websites does not exceed HK\$1,023. Given this fee level, the Commissioner considers the interest involved is trivial and hence paragraph 2.3.4.1 of the Code does not apply.

The argument that “*it is voluntary for private tutors to provide their HKID Card numbers*”

32. The Websites alleged that it is voluntary for the private tutors to provide their HKID Card numbers on the premise that private tutors can give up using the services if they do not wish to provide their HKID Card numbers. The Commissioner disagrees with this interpretation. The Commissioner considers that a “*voluntary*” act has to be made by a person without restraint or undue influence. In fact, if private tutors refuse to provide their HKID Card numbers,

they can neither register as private tutors nor use the services of the Websites. On this premise, as the private tutors have no real choice, it cannot be said that it is voluntary for them to provide their HKID Card numbers.

Whether collection of the Information of private tutors is excessive

33. Regarding whether collection of the Information is excessive, the Commissioner has considered the explanations provided by the Websites in paragraph 15 above.

34. In the Commissioner's view, as the Websites have already collected the private tutors' addresses and mobile phone numbers, they are already in a position to contact or remind the private tutors in time if the latter forget to attend the tutorial classes. If the Websites cannot reach the private tutors under these circumstances, the blame should fall on the private tutors not the Websites. Therefore, it is not necessary for the Websites to collect the personal data of individuals unrelated to the provision of tutorial services.

35. Moreover, the Commissioner opines that if the purpose of the Websites is to offer assistance to private tutors (for example, to inform their contact persons in case of the latter's accidents, or to inform them if parents have re-scheduled the tutorial classes), they should allow private tutors to choose whether to provide the Information based on their own needs, but not compulsorily collect the Information from them. In this regard, it is noted that the Websites have made it clear in their terms and conditions that there is no employer-employee relationship between the Websites and the private tutors. This shows the Websites have no intention of shouldering such responsibility that an employer would generally owe to its employees.

36. One website asserted that one of the purposes of collecting the Information from the private tutors was to enable them to explain to the adult contact persons of minor private tutors matters related to the tutorial service. However, even if the website considers it necessary to "*explain to the adult contact persons*", it should only collect the contact persons' data from minor private tutors, not compulsorily from all private tutors. In addition, it has come to the Commissioner's attention that the website does not require the private tutors' contact persons to be adults. According to the tutor registration forms on the website, the available options under the field "*relationship between contact*

person and member” include “*elder brother*”, “*elder sister*”, “*family member*”, “*friend*” and “*others*”. In effect, the website is unable to ascertain whether the contact persons provided by private tutors are adults. Therefore, the Commissioner considers the explanation provided by the website as regards the purpose of collecting the Information of private tutors is ill-founded. The website should leave it to the private tutors themselves to decide whether or not to provide the Information based on their own needs.

37. Incidentally, the Commissioner notes that in the registration form of the Websites where private tutors fill in the Information, the words “*Declaration: [The private tutor] has obtained the consent of the below contact person to provide to [the Websites] for emergency contacts*” appear. This “consent” is not obtained directly from the contact persons. Based on the reasoning of the Commissioner as stated in paragraph 32 above, given there was no real choice, it cannot be said that it is voluntary for the private tutors and the contact persons to “consent” to the provision of the Information.

38. In sum, the Commissioner considers it excessive for the Websites to compulsorily require private tutors to provide the Information.

Enforcement actions against the Websites

39. The Commissioner accordingly concludes that the collection of the private tutors’ HKID Card number and their Information by HKTA, Tutor-Tone, the Consultancies and go2tutor, as well as the collection of private tutors’ HKID Card numbers by HKUSEN, were excessive, thereby contravening DPP1(1) of the Ordinance. The Commissioner has served the Result of Investigation and Enforcement Notice (“EN”) on the companies/ proprietors who carry on the businesses of the Websites by virtue of sections 47 and 50 of the Ordinance respectively, directing them to:-

- (i) Stop collecting HKID Card numbers from the private tutors;
- (ii) Delete all records of the private tutors’ HKID Card numbers which have been collected (inclusive of both hard and soft copies);
- (iii) (In respect of those companies/ proprietors who have also collected the Information) stop mandatory collection of the Information from the private tutors;

- (iv) (In respect of those companies/ proprietors who have also collected the Information) delete the records of the Information (inclusive of both hard and soft copies) which have been collected, unless reaffirmation in writing from the tutors are obtained to the effect that their consent to the provision of the Information was given voluntarily to serve their own interest;
- (v) Within 14 days from the date of receipt of the EN, comply with the directions in paragraphs (i) to (iv) above;
- (vi) Within 21 days from the date of receipt of the EN, confirm to the Commissioner in writing of their compliance of paragraphs (i) to (iv) above within 14 days from the date of receipt of the EN, and provide evidence in support such compliance;

40. Contravention of an EN is an offence under section 50A of the Ordinance and the offender is liable on conviction to a fine of \$50,000 and 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 further served a prior EN.

Implications for all stakeholders

41. All data users are obliged to observe the fundamental data protection principles of collecting personal data for a purpose directly related to its function or activity, the data collected being adequate but not excessive in relation to that purpose. In view that the tutorial service agency industry collects personal data of tens of thousands of data subjects, the Commissioner hopes the publication of this report which involves five formal investigations can help to:

- correct the common malpractices prevalent in the tutorial service agency industry and promote compliance with the Ordinance;
- urge other tutorial service agencies which are currently adopting the same or similar data collection practice to study this report and take proactive and appropriate follow-up actions as required;
- remind the public to protect their personal data privacy when providing their personal data to tutorial service agencies; and
- remind organisations to stop collecting unnecessary personal data and erase

those that have been excessively collected.

Other Comments

42. In the course of the investigation, the Commissioner notes the online registration forms for the Websites are very similar in design and content. It is very probable that these tutorial service agencies have simply copied the forms used by their competitors accessible on the Internet. When asked, these tutorial service agencies submitted that this is “standard practice” in the industry.

43. The Commissioner opines that “standard industry practice” does not necessarily mean compliance and should not be used as an excuse not to assess their legal obligations as data users. To ensure compliance with the Ordinance and assure their customers of personal data protection, tutorial service agencies should adopt the “adequate but not excessive” principle. To avoid collecting unnecessary personal data from the private tutors, they should carefully consider their operational need before deciding which personal data items are to be obtained on their online registration forms.

44. Some tutorial service agencies defended that private tutors unwilling to provide their personal data could choose not to use their service. The Commissioner’s response to such reasoning has been explained in paragraph 32 above. The Commissioner must add that if such defence is tenable, all data users would be allowed to collect any personal data at will (in particular if the data user has a dominant or even monopolistic market position, and limited alternatives are available to data subjects). This is clearly contrary to the legislative intent of preventing excessive collection of personal data under the Ordinance.

45. In the course of investigation, the Commissioner has considered whether the Websites come within the meaning of employment agencies as defined under the Employment Ordinance so that they could rely on the Employment Ordinance to collect private tutors’ HKID Card numbers. In their terms and conditions with tutors, the Websites explicitly deny that they are employment agencies. The Labour Department’s “List of licensed employment agencies under the Employment Ordinance (Cap.57, Hong Kong Laws) as at 30 June 2014” has been examined and it is noted that HKTA, Tutor-Tone, the Consultancies, go2tutor and HKUSEN are not registered licensee of the Labour Department according to the Employment Ordinance. Therefore, the requirement under the

Employment Ordinance that an employment agency should collect job seekers' HKID Card numbers is not applicable to the tutorial service agencies.

46. The Commissioner also notes that, due to resource constraint, the business operation mode of tutorial service agencies does not allow them to interview all private tutors registered for their services. Hence the identity verification still has to be performed by parents/students. Therefore, it is disingenuous for the tutorial service agencies to argue that the collection of private tutors' HKID Card numbers is for identity verification. The tutorial service agencies should inform the parents/students that it is not feasible for them to verify the identity of all private tutors and remind the parents/students that they should take the initiative to check the private tutors' identity.

47. Furthermore, the Commissioner notes that the tutorial service agencies have only devised terms and conditions for the private tutors to govern the legal responsibilities between the tutorial service agencies and the private tutors. For most of the tutorial service agencies, the service terms and conditions for parents/students are not clearly defined. Instead they are ambiguously included in the service terms and conditions for private tutors, which make it difficult for parents/students to understand their rights and obligations. The Commissioner is of the view that the tutorial service agencies should enhance the level of transparency of their communication. They should provide clear and sufficient information to parents/students to avoid any misunderstanding or disputes that the tutorial service agencies will, as employment agencies do, verify private tutors' identity before any referrals are made. Furthermore, the tutorial service agencies should remind parents to verify the identity of the private tutors when they turn up for the first lesson, and to consider checking the certificates of their academic credentials.

48. With advances in information and communication technologies, hacking activities are becoming more frequent. While many data leakage incidents take place in multinational enterprises which have injected considerable resources into strengthening data security, it is not difficult to imagine a higher chance of data leakage in the case of tutor service agencies which are small and medium-sized business with limited resources. Data users should bear in mind that HKID Card Number is a unique personal identifier which cannot be altered throughout one's life. It should be treated as highly personal and sensitive data, and should be well protected. If HKID Card number falls into the wrong hands, it could create or enhance the risk of identity theft, causing administrative nuisance or

financial loss to the affected persons. In this regard, the Commissioner considers that if we tackle the root of the problem by only collecting personal data which is necessary, the damage that may be caused to the data subjects concerned in the event of data leakage can be mitigated.