

### 檢討建議中的法例

根據私隱條例第8(1)(d)條的規定,私隱專員 如認為建議中的任何法例可能對個人資料私 隱有所影響,則須審核該等法例,並向建議 制定有關法例的人士報告審核結果。香港特 別行政區政府各個政策局已獲通知,盡早在 建議立法初期將可能對個人資料私隱有影響 的事宜知會公署,以便私隱專員執行此職 能。公署除了檢討由上述途徑獲知的建議中 的法例外,公署的法律部亦審閱在政府憲報 刊登的所有條例草案,就當中可能對個人資 料私隱有影響的條文提出意見。

在本年報期內,公署共對九條建議中法例提 出詢問或意見。附錄二載有公署在本年報期 內對建議中的法例的意見的撮要。

### 檢討《個人資料(私隱)條例》

在本年報期內,法律草擬專員已就《個人資料(私隱)修訂條例草案》擬備草擬委託書擬稿。公署、民政事務局及律政司曾就某些特定問題進行進一步商討。在本年報期結束時,有關當局並未就建議的修訂事項確訂立法時段,但公署希望在完成條例草案擬稿時,盡快取得所需的立法時段。修訂條例草案的目的是要處理公署在應用私隱條例的某些條文時所遇到的實際困難,藉以提升有關條文的整體效用。不過,討論中的修訂事項全屬「技術」性質,並無涉及任何基本概念。至於其他可能作出修訂的基本性質事項,則會在日後的適當階段,在對私隱條例作出全面檢討時詳加研究。

### **Review of Proposed Legislation**

By virtue of section 8(1)(d) of the PD(P)O, the Privacy Commissioner is required to examine any proposed legislation that he considers may affect the privacy of individuals in relation to personal data, and to report the results of his examination to the person proposing the legislation. To enable the Privacy Commissioner to carry out this function, all Policy Bureaux of the Hong Kong SAR Government have been asked to ensure that legislative proposals that may affect privacy in relation to personal data are notified to the PCO at an early stage. In addition to reviewing proposed legislation notified to the PCO in this way, the Legal Division of the PCO reviews all Bills published in the Government Gazette for possible personal data privacy implications on which comments may be required.

During the reporting period, the PCO raised enquiries or made comments on 9 pieces of proposed legislation. Summaries of the PCO's comments on the proposed legislation are given in Appendix II.

# Review of the Personal Data (Privacy) Ordinance

During the reporting period, the Law Draftsman prepared a working draft of drafting instructions regarding the Personal Data (Privacy) Amendment Bill. Further discussions took place between the PCO, the Home Affairs Bureau and the Department of Justice on specific issues. At the end of the period under review, no legislative slot had been secured with the Legislative Council, but the intention was to secure the earliest slot possible once the draft Bill is ready. The aim of the Amendment Bill is to address some of the practical difficulties encountered by the PCO in the application of certain provisions of the PD(P)O with a view to enhancing its overall effectiveness. The amendments being discussed, however, are all considered to be of a "technical" nature in that they do not touch upon any fundamental concepts. As for other possible amendments of a fundamental nature, these will be left for further study in an overall review of the PD(P)O to be conducted at a suitable stage in the future.





# 公署對《個人資料(私隱) 條例》釋義摘要

正如二零零一至二零零二年的年報所述,公署正就公署對條例的釋義及條文的適用範圍擬備刊物。這本刊物名為「《個人資料(私隱)條例》——主要條文闡析」。

公署相信藉著出版這本刊物,可與各資料使 用者分享它在處理投訴及查詢個案的過程中 從應用私隱條例的條文中得出的規管理念。 公署在履行規管職務時,已逐步對私隱條例 的相關條文發展本身的見解,並盡量將有關 見解貫徹在所處理的個案中。對資料使用者 或他們的法律顧問來說,該等意見從實際角 度來看顯然有幫助,雖然根據私隱條例的規 定,私隱專員無權對條文作出最終的詮釋。

公署已擬備刊物的草擬本,並希望就條例豁 免條文的適用範圍作出闡釋,令刊物的內容 更為豐富。公署將在二零零三年年底前公開 發售這本刊物。

# Notes on the PCO's Interpretation of the PD(P)O

As mentioned in the 2001-02 annual report the PCO is in the course of preparing a booklet that contains notes on its interpretation and application of the requirements of the PD(P)O. The booklet is titled "An Analysis of the Core Provisions of the Personal Data (Privacy) Ordinance".

The PCO believes it is beneficial to publish this booklet and share with data users its operational stance and regulatory philosophy that have evolved through applying the provisions of the PD(P)O to complaint and enquiry cases brought before it. In discharging its regulatory function, the PCO has developed its own interpretation of the relevant provisions of the PD(P)O, which it seeks to apply consistently to all cases handled by it. Insofar as data users, or their legal advisors are concerned, such views are obviously useful from the practical point of view although the Privacy Commissioner is not empowered under the PD(P)O to give any definitive interpretation to the provisions of the PD(P)O.

A draft of the booklet has been prepared. The PCO wishes to enrich the contents of the booklet to include explanations on the application of the exemption provisions of the PD(P)O. It is planned that the booklet will be published for sale before the end of 2003.

# 向行政上訴委員會提出的 上訴個案的簡述

根據《個人資料(私隱)條例》的規定,如私隱專員決定行使條例第39條的權力,拒絕對投訴進行或繼續進行調查,則投訴人可就私隱專員的決定向行政上訴委員會提出上訴。的資料使用者發出執行通知,則投訴的資料使用者發出執行通知,則該資料此之外,如私隱專員決定根據調查結果向被調查的資料使用者發出執行通知,則該資料使用者亦可就此事向行政上訴委員會提出上訴。

本年報期內共處理了16宗上訴個 案,當中七宗遭駁回、七宗被 剔除、一宗被撤回,而餘下 的一宗,執行通知內的條文 亦作出了改動。部分上訴個 案的簡述載於下文。

# Notes on Appeal Cases lodged with the Administrative Appeals Board

Under the PD(P)O, where the Privacy Commissioner has decided to exercise his power under section 39 to refuse to investigate or to continue to investigate a complaint brought before him, the complainant may appeal to the Administrative Appeals Board ("AAB") against such decision. Furthermore, where the Privacy Commissioner has completed an investigation, his decision not to issue an enforcement notice against the data user complained against may be the subject of an appeal to the AAB by the complainant. Alternatively, if as a result of an investigation, the Privacy Commissioner decides to issue an enforcement notice against the data user investigated, the data user may also appeal to the AAB against the enforcement notice so issued.

There were in total 16 AAB appeal cases disposed of in the reporting period. Out of which, 7 cases were dismissed, 7 cases were struck out, 1 case was withdrawn and for the remaining one, the terms of the enforcement notice issued were varied. Case notes on some of the appeal cases are given below.

# 就執行通知提出上訴(1/03)

Appeal against the issuance of an enforcement notice (1/03)

在此個案中,涉案的大學就私隱專員根據私 隱條例第50條發出的執行通知提出上訴。投 訴人為大學的職員,曾向大學提出兩次查閱 資料要求。在第一次的查閱資料要求中,她 要求查閱大學的人事部及大學另一個部門 持有關於她的個人資料,而第二次查閱要求後大學所持有關於她的所有個人資料,包括自她提出的 一次查閱要求後大學所持有關於她的資料。 大學在回應投訴人的查閱資料要求時,他 提供了550頁文件。她不滿大學所提供的 大學在原發的所有她的個人資料。

公署就投訴進行調查,並且到大學進行實地 視察。私隱專員完成調查後發現大學並無向 投訴人提供若干載有她個人資料的文件的複 本,而根據私隱條例第19(1)條,投訴人應 (續下頁) This was an appeal by a University against an enforcement notice issued by the Privacy Commissioner pursuant to section 50 of the PD(P)O. The complainant was a staff member of the University. She made two data access requests to the University. The first request was for access to her personal data from the Personnel Office and a Department of the University. In the second request, she sought access to all data including data that came to the possession of the University since her first request. In responding to her requests, the University provided 550 pages of documents to the complainant. Not satisfied with what she obtained, the complainant lodged a complaint with the PCO alleging that the University had not provided her with all her personal data as requested in her data access requests.

The PCO carried out an investigation of the complaint and conducted a site investigation at the premises of the University. Having completed the investigation, the Privacy Commissioner found that the University failed to provide

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獲提供該等文件。為糾正有關違例情況,私 隱專員向大學發出包括下述指令的執行 通知:

- (a) 對大學所持有及保管的所有關乎投訴人 的個人資料進行徹底搜尋;及
- (b) 編製並向投訴人提供一份「綜合文件 清單」。

大學向行政上訴委員會提出上訴。行政上訴委員會裁定私隱專員在規定大學進行「徹底搜尋」時,實際上已令資料使用者負上較重於私隱條例第64(8)條所規定盡所有應盡努力的法定責任。至於「綜合文件清單」,行政上訴委員會認為投訴人無權要求取得該份清單,這項規定有違私隱條例第20(3)(b)條。提出查閱資料要求者應指明他/她所需要的資料,而非要求資料使用者擬備一份綜合文件清單,讓他/她從中挑選資料。基於這些理由,行政上訴委員會決定刪除「徹底搜尋」及「綜合文件清單」的規定,並採用一份已修訂的執行通知代替私隱專員所發出的通知。

a copy of certain documents which, being personal data of the complainant, should have been given to the complainant in accordance with section 19(1) of the PD(P)O. To remedy the contravention, the Privacy Commissioner served an enforcement notice on the University directing it, amongst others, to:

- a) conduct a thorough search amongst the complainant's personal data that were in possession and control by the University; and
- b) compile and provide to the complainant a Consolidated Document List.

The University appealed to the AAB. The AAB decided that by imposing the requirement of conducting a "thorough search", the Privacy Commissioner in effect placed a higher burden on the data user than the statutory duty to exercise all due diligence as required under section 64(8) of the PD(P)O. As regards the "Consolidated Document List" the AAB held the view that the complainant had no right to such a list and the imposition of this requirement was contrary to section 20(3)(b) of the PD(P)O. It was for the data requestor to identify the data he or she required and not for the data user to prepare a full or consolidated list for the data requestor to pick and choose. For these reasons, the AAB decided to strike out the requirements of a "thorough search" and a "Consolidated Document List" and adopted an amended enforcement notice to replace the one issued by the Privacy Commissioner.

# 由依從查閱資料要求的投訴所引致的上訴(2/03) Appeal arising from a complaint about compliance with data access request (2/03)

投訴人根據私隱條例第18條向他工作的政府部門提出查閱資料要求。他要求該部門向他提供一份另一名職員就他早前的投訴所作口供的副本,部門在依從他的要求時將口供中的一些資料刪除,理由是該等資料載有第三者的個人資料。投訴人不滿有關資料被刪除,向公署投訴有關政府部門不發放他的個人資料。私隱專員在完成調查後認為有關政府部門並無違反私隱條例第19(1)條的規定,因為刪除的資料並無載有投訴人的個規定,因為刪除的資料並無載有投訴人的個人資料,並根據私隱條例第47條將他的決定通知投訴人。投訴人不同意有關決定並提出上訴。

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The complainant lodged a data access request under section 18 of the PD(P)O to a government department he was working for. He requested a copy of the statement made by another officer in relation to a complaint that he had previously made to the department. In complying with his request, the department deleted certain information from the requested statement on the ground that such information contained third party's personal data. The complainant was dissatisfied with the edited version and made a complaint to the PCO against the department for withholding his personal data. Having completed an investigation, the Privacy Commissioner was of the opinion that the department had not contravened section 19(1) of the PD(P)O as the deleted information did not contain the complainant's personal data and notified the complainant of his decision under section 47 of the PD(P)O. The complainant did not agree with the decision and appealed.

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行政上訴委員會認為上訴不成立。該委員會認同私隱專員的調查結果,認為所刪除的資料事實上並非投訴人的個人資料。有關政府部門不向投訴人發放該等資料,有關行為並無違反私隱條例第19(1)條的規定。故此,行政上訴委員會駁回此上訴個案。

The AAB considered the appeal to be groundless. It accepted the findings of the Privacy Commissioner that the deleted information was not in fact the complainant's personal data at all. By withholding such information from the complainant, the department had not acted in contravention to section 19(1) of the PD(P)O. The AAB therefore dismissed the appeal.

### 由披露個人資料的投訴引致的上訴(3/03)

#### Appeal arising from a complaint about the disclosure of personal data (3/03)

投訴人透過家務助理公司聘用了一名家傭。 安排聘用時,該公司保存了投訴人的檔案, 當中載有他的個人資料,例如他的身份證號 碼及入息證明。其後,當投訴人妻子的朋友 到同一公司聘用家傭時,投訴人指稱該公司 向她的朋友展示投訴人的檔案。投訴人投訴 該公司未經他的事前同意而披露他的個人 資料。

該公司對投訴人的指稱作出反駁,聲稱只是 向他妻子的朋友出示他的家傭的履歷。在跟 進此投訴個案時,公署認為必須向該名朋友 收集證據,因他得悉事件的真相。不過,在 公署多番要求後,投訴人仍拒絕提供該名朋 友的聯絡資料。基於缺乏佐證證據,私隱專 員根據私隱條例第39條通知投訴人不會繼續 調查他的個案。投訴人不滿私隱專員的決 定,於是向行政上訴委員會上訴。

經聆訊後,行政上訴委員會裁定私隱專員引用私隱條例第39(2)(d)條所賦予的權力終止此個案是恰當的,因為在被投訴者對指稱作出抗辯,而又缺乏佐證支持投訴人的指稱的情況下,私隱專員實無法作出一個理性、持平和公正的決定。行政上訴委員會認為上,是主認為上訴人以瑣屑無聊或無理取鬧的對人以致認為不判上訴人付訟費及認為不判上訴委員會條例第22(1)條判上訴人支付訟費及費用予公署。

The complainant employed a domestic helper through the services of a domestic service agency. In arranging for the employment, the agency kept a file that contained the complainant's personal data such as his identity card copy and proof of income. Later, when his wife's friend visited the same agency seeking the services of a domestic helper, it was alleged that the agency showed the file to the friend. The complainant complained that the agency had disclosed his personal data without his prior consent.

The agency refuted the allegation made by the complainant and claimed that it was only showing the biography of the complainant's domestic helper to the friend. In following up the complaint, the PCO considered that it was crucial to obtain evidence from the friend as he would have actual knowledge of the incident. However, despite repeated requests, the complainant refused to supply the PCO with the contact details of the friend. In the absence of corroborative evidence, the Privacy Commissioner notified the complainant under section 39 of the PD(P)O that there was to be no further investigation of the case. Dissatisfied with the Privacy Commissioner's decision, the complainant appealed to the AAB.

After hearing the appeal, the AAB decided that the Privacy Commissioner was proper in exercising his power to conclude the case under section 39(2)(d) of the PD(P)O as it would be impossible for the Privacy Commissioner to arrive at a reasonable, fair and just conclusion when the allegations were contested by the party complained against and there was no corroborative evidence to support the appellant's allegations. The evidence, or the lack of it, to be given by the friend was regarded by the AAB to be crucial and important in this case. The appeal was dismissed. The AAB was satisfied that the appellant had conducted his case in a frivolous or vexatious manner and that it would be unjust and inequitable not to award costs against him. Accordingly, costs were awarded to the PCO pursuant to section 22(1) of the Administrative Appeals Board Ordinance. 40

### 由傳真個人資料的投訴引致的上訴(4/03)

### Appeal arising from a complaint about faxing of personal data (4/03)

投訴人為一宗法律程序的原告人,由律師行代表。在處理投訴人個案的過程中,該律師行曾將載有投訴人個人資料的一封信傳真至他的公司。投訴人不滿此安排,故向公署提出投訴。

經初步查詢後,私隱專員通知投訴人他根據私隱條例第39(2)(d)條決定毋須繼續調查此個案。在得出此決定時,私隱專員已對傳真號碼是由投訴人提供予律師行此一事實加以考慮,以及律師行亦是按照投訴人的指示將文件傳真給投訴人的上司。至於該上司的姓名亦是由投訴人提供給律師行的。私隱專員認為並無證據顯示律師行將信件傳真至投訴人公司的做法有違規定。投訴人不同意並向行政上訴委員會提出上訴。

行政上訴委員會同意私隱專員的看法,認為 有關傳真是在投訴人同意下傳真至他的公司,因而並無出現所指稱的未經許可披露個 人資料的情況,以及亦無證據顯示律師行有 違規定。行政上訴委員會故此駁回上訴。 The complainant was a plaintiff in a legal action and was legally represented by a law firm. In the course of handling the complainant's court case, the law firm faxed a letter containing the complainant's personal data to his office. The complainant was dissatisfied with this arrangement and made a complaint to the PCO.

After a preliminary enquiry, the Privacy Commissioner informed the complainant of his decision under section 39(2)(d) of the PD(P)O that no further investigation was considered necessary. In coming to the decision, the Privacy Commissioner had taken into account the fact that the fax number had been provided to the law firm by the complainant himself. It was also pursuant to the complainant's instruction that the fax had been sent for the attention of the complainant's supervisor whose name was given to the law firm again by the complainant. The Privacy Commissioner opined that there was no evidence to show contravention on the part of the law firm in so faxing the letter to the complainant's office. The complainant disagreed and appealed to the AAB.

The AAB agreed with the Privacy Commissioner that the relevant fax had been sent to the complainant's office with his consent. There was therefore no unauthorized disclosure of personal data as alleged and no evidence of contravention on the part of the law firm. The AAB dismissed the appeal.

### 由披露個人資料的投訴引致的上訴(5/03)

#### Appeal arising from a complaint about the disclosure of personal data (5/03)

投訴人為一宗法庭案件的一方。他寫信給高 等法院負責處理他的個案的訟費聆案官。他 在信中要求聆案官不要繼續處理他的案件。 投訴人其後發現聆案官的書記曾把上述信件 的副本隨附於送交案件另一方的法律代表的 聆訊通知書。該聆訊通知書通知涉案各方有 關投訴人在信中所提申請的聆訊日期及時 間。投訴人向公署提出投訴,指稱該書記在 未經他同意下披露了上述信件。

投訴人所持的意見是上述信件為發給聆案官 的投訴書,讓他自行決定是否解除進一步處 理有關案件的責任,故應加以保密。不過, 法庭的解釋是該信的性質屬一項「司法申 請」。由於案件涉及超過一方當事人,故申 請應在訴訟「各方之間」的法庭聆訊中進行。 案件的另一方應獲告知該項申請及該訴訟 [各方之間]的聆訊日期。故此,代表另一方 的律師獲提供聆訊通知書及該信的副本。

私隱專員接受法庭的解釋,以及認為該書記 並無違反保障資料第3原則的規定。故此, 私隱專員根據私隱條例第39(2)(d)條通知投 訴人不會繼續調查他的投訴。投訴人不滿私 隱專員的決定,故此向行政上訴委員會上 訴,並進一步指出法庭沒有將該信的使用目 的通知他,因而有違私隱條例保障資料第 1(3)原則的規定。

行政上訴委員會在聆訊上訴後維持私隱專員 的決定。行政上訴委員會裁定該信是一項司 法申請。故此,法庭將該信的副本與聆訊通 知書一同送達案件的另一方是一項恰當的司 法行為。此做法是要確保對涉案各方均公平 的聆訊得以進行。在此方面,投訴人的個人 資料是使用於與處理投訴人的要求直接有關 的目的。此外,由於該信是由投訴人自行發 出的,故與保障資料第1(3)原則無關。有鑑 於此,行政上訴委員會駁回上訴。

The complainant was a party to a court case. He wrote a letter to a Master of the High Court who handled the taxation hearing of his case. In the letter, he requested the Master to discharge from further handling his case. The complainant later discovered that the clerk of the Master had attached a copy of the letter to a Notice of Hearing served on the legal representative of the other party to the case. The Notice of Hearing notified all parties to the court case of the date and time of hearing the complainant's application made by the letter. The complainant lodged a complaint with the PCO alleging that the clerk had disclosed the letter without his consent.

The complainant held the view that the letter was a complaint letter issued to the Master for him to decide on his own whether to discharge from further handling the case. This should have been treated in confidence. The court, however, explained that the nature of the letter was a judicial application. As there was more than one party to the proceedings concerned, the application should therefore be made in an inter-parte hearing in the court. The other party of the case should be notified of such application and the date of the inter-parte hearing. As such, a Notice of Hearing and a copy of the letter were sent to the solicitors representing the other party.

The Privacy Commissioner accepted the explanation given by the court and considered that there was no breach of DPP3 by the clerk. Accordingly, the complainant was notified under section 39(2)(d) of the PD(P)O that there was to be no further investigation of the complaint. Dissatisfied with the decision of the Privacy Commissioner, the complainant appealed to the AAB and further alleged that the court had acted contrary to DPP1(3) of the PD(P)O by failing to notify him of the purposes of use of the letter.

After hearing the appeal, the AAB upheld the decision of the Privacy Commissioner. The AAB decided that the letter was a judicial application. Hence, it was an appropriate judicial act by the court to serve a copy of the letter together with the Notice of Hearing on the other party to the court case. This was to ensure a fair hearing procedure to all parties concerned. In this regard, the use of the complainant's personal data was for a purpose directly related to the purpose of handling the complainant's request. Furthermore, there was no issue of DPP1(3) as the letter was issued at the complainant's initiative. Accordingly, the AAB dismissed the appeal.

### 由使用僱傭資料的投訴引致的上訴(6/03)

### Appeal arising from a complaint about the use of employment data (6/03)

投訴人是一名公務員,職位為測量主任,須 負責在戶外進行現場測量調查。由於投訴人 不斷患病,聘用她的部門建議召開醫事委員 會會議,以決定她是否適宜繼續擔任戶外工 作。這是根據公務員事務規例的規定進行 的。在安排召開醫事委員會會議的過程中, 該部門向有關方面披露投訴人的一些個人資 料,包括她的受僱記錄及病假記錄。投訴人 向公署投訴該部門未經她同意使用她的個人 資料。

經調查後,公署發現該部門曾去信徵求投訴人同意召開所建議的醫事委員會會議。不過,投訴人沒有加以理會。私隱專員認為使用投訴人的個人資料召開醫事委員會會議,其使用目的與投訴人的僱傭事宜直接有關,該部門因此並無違反私隱條例的任何規定。投訴人不滿私隱專員的決定,以她絕對有權不容許醫事委員會使用她的醫療記錄處理她的僱傭事宜為理由,向行政上訴委員會上訴。

在聆訊上訴期間,投訴人作出了令人感到驚 奇的聲明,以及提供一封信件的副本,聲言 她同意有關當局使用她的個人資料召開醫事 委員會會議。行政上訴委員會拒絕投訴人上 訴並支持私隱專員的決定。上訴因而被 駁回。 The complainant was a civil servant. She held the position of a surveyor and had the responsibility of working on outdoor survey investigative work. As a result of continuing illness, her employing department proposed to convene a medical board so as to ascertain her fitness for continuing outdoor work. This was done pursuant to Civil Service Regulations. In the course of arranging the medical board, the department disclosed to the relevant authority certain personal data of the complainant, including her employment records and sickness records. The complainant complained to the PCO against the department for using her personal data without her consent.

Upon investigation, it was revealed that the department had written to the complainant seeking her consent to the proposed conduct of the medical board. However, the complainant ignored the request. The Privacy Commissioner was satisfied that the use of the complainant's personal data for the conduct of the medical board was for a purpose directly related to the complainant's employment. There was no contravention of any requirement of the PD(P)O on the part of the department. Not satisfied with the Privacy Commissioner's decision, the complainant appealed to the AAB on the grounds that she had absolute right not to allow the board to use her medical records to deal with her employment matters.

During the hearing of the appeal, the complainant made a surprising statement and provided a copy of a letter in which she agreed that the authority concerned could use her medical records and convene a medical board. The AAB rejected the complainant's grounds for appeal and upheld the decision of the Privacy Commissioner. The appeal was thus dismissed.