

UPHOLDING LEGAL PROTECTION

捍衛法律保障

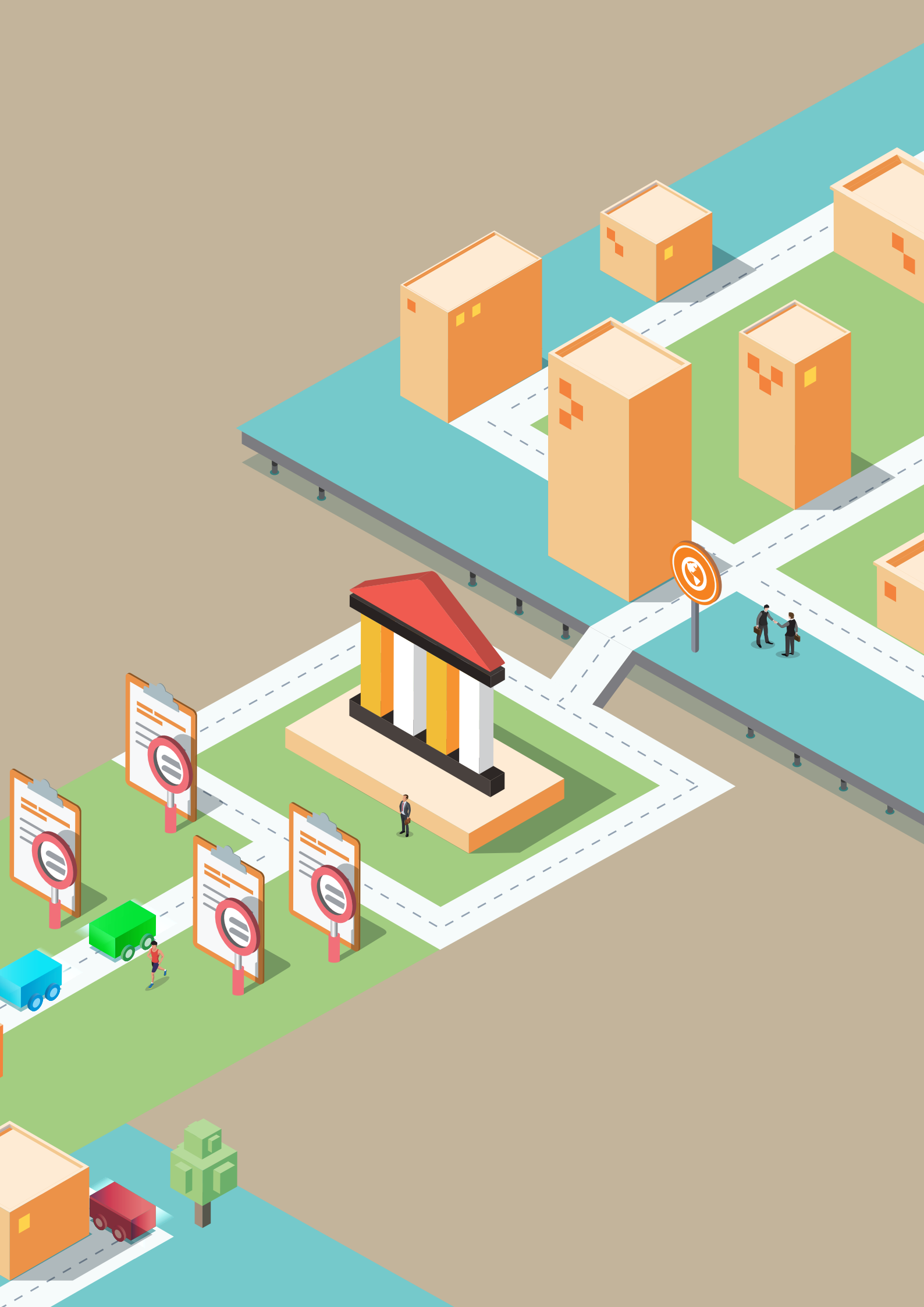
公平公正

公署檢視任何可能影響個人資料私隱的現行及擬議法例和政府政策，並密切留意海外與公署工作相關的資料保障法律發展情況。公署亦提供法律協助計劃，以及跟進有關私隱專員的決定在法庭或行政上訴委員會的聆訊。

FAIRNESS AND EQUITY

The PCPD reviews existing and proposed legislation and government policies that may affect the privacy of individuals with respect to personal data. The PCPD monitors developments in overseas data protection laws that are relevant to its work. The PCPD also operates a Legal Assistance Scheme, and follows through the hearings on Privacy Commissioner's decisions before the courts or the Administrative Appeals Board.





公署就公眾諮詢所提交的意見書

本報告年度私隱專員就以下公眾諮詢提交保障個人資料私隱的意見。

SUBMISSIONS MADE IN RESPECT OF PUBLIC CONSULTATIONS

During the reporting period, the Privacy Commissioner provided advice on personal data privacy protection in response to the following public consultations.

徵詢意見的部門 Consulting Organisation	諮詢文件 Consultation Paper
香港法律改革委員會 The Law Reform Commission of Hong Kong	《雜項性罪行》的諮詢文件 Consultation Paper on Miscellaneous Sexual Offences
保險業監管局 Insurance Authority	就持牌保險中介人 (i)「適當人選」準則；及 (ii) 持續專業培訓要求建議指引的諮詢文件 Consultation Paper on Draft Guidelines on (i) Fit and Proper Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41); and (ii) Continuing Professional Development for Licensed Insurance Intermediaries 《保險（持牌保險經紀公司的財務及其他要求）規則》草擬本的諮詢文件 Public Consultation on Draft Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules





公署對建議中的法例及行政措施所作的評論

本報告年度私隱專員就以下的立法建議和行政措施建議提出意見。

COMMENTS MADE ON PROPOSED LEGISLATION AND ADMINISTRATIVE MEASURES

During the reporting year, the Privacy Commissioner provided comments on the following proposed legislation and administrative measures.

機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
漁農自然護理署 Agriculture, Fisheries and Conservation Department	2014 年獸醫註冊(修訂)條例草案 Veterinary Surgeons Registration (Amendment) Bill 2014
民航意外調查機構 Air Accident Investigation Authority	適用於健康理由而披露個人資料的《個人資料(私隱)條例》豁免條文 Applicable exemption provisions under the Personal Data (Privacy) Ordinance for disclosure of personal data based on health grounds
土木工程拓展署 Civil Engineering and Development Department	評估報告將軍澳 – 藍田隧道收費系統的私隱影響 Privacy Impact Assessment Report for Toll Collection System for Tseung Kwan O – Lam Tin Tunnel
商務及經濟發展局 Commerce and Economic Development Bureau	擬議法定的人對人拒收訊息登記冊 Proposed statutory Persons-to-Persons Do-Not-Call Register
懲教署 Correctional Services Department	兩份私隱影響評估報告 – (1) 於壁屋監獄安裝在囚人士行為影像分析及監察系統；及 (2) 於壁屋懲教所安裝具有面部識別功能的電子系統 Two Privacy Impact Assessment Reports – (1) Installation of Video Analytic Monitoring System for Behaviour of Persons in Custody in Pik Uk Prison; and (2) Installation of Electric Locks Security System with Facial Recognition Features at Pik Uk Correctional Institution 兩份私隱影響評估報告 – 於羅湖懲教所安裝 (1) 在囚人士維生指標監察系統；及 (2) 在囚人士移動及位置監察系統 Two Privacy Impact Assessments Reports – Installation of (1) Health Signs Monitoring System; and (2) Passage Surveillance System in Lo Wu Correctional Institution
香港海關 Customs and Excise Department	應用《個人資料(私隱)條例》對大量現金和不記名可轉讓票據的點票過程進行語音及視像記錄 Application of the Personal Data (Privacy) Ordinance in taking audio and video-recording of the counting process of a large amount of cash and bearer negotiable instruments
衛生署 Department of Health	在政府車輛內安裝行車記錄器和使用視頻記錄 Installation of dash cam inside government vehicles and use of video records
發展局 Development Bureau	以視頻分析科技執行有關交通違法行為準備工作的私隱影響評估報告 Privacy Impact Assessment Report on Preparatory Work for Traffic Offence Enforcement by Video Analytic Technology

機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
教育局 Education Bureau	對特殊教育需要兒童的個人資料轉移選擇的「拒絕」機制 "Opt-out Mechanism" for transfer of personal data of children with special educational needs
選舉管理委員會 Electoral Affairs Commission	選舉指引草擬 Draft Guidelines on Election
電子健康記錄統籌處 Electronic Health Record Office	關於病人平台和數據共享的諮詢研究 Consultancy Study on Patient Portal and Data Sharing Restriction
環境保護署 Environmental Protection Department	安裝閉路電視監控以執行有關海上亂拋垃圾罪行 Installation of CCTV surveillance for enforcement of marine littering offences
食物環境衛生署 Food and Environmental Hygiene Department	在沿海地帶安裝 360 度相機 Installation of 360 degrees cameras in coastal areas 在公共廁所安裝相機計算人流 Installation of people counting camera at public toilets
食物及衛生局 Food and Health Bureau	自願醫保計劃 Voluntary Health Insurance Scheme
民政事務局 Home Affairs Department	由地政專員提供土地持牌人的聯絡資料 Provision of land licensees' contact information by District Lands Officers 2019 年建築物管理(修訂)條例草案 – 法律草擬指示 Building Management (Amendment) Bill 2019 – Drafting Instructions
香港房屋委員會 Hong Kong Housing Authority	要求其他政府部門提供個人資料的免責條款 Exemption clause on requesting other government departments for providing personal information 有關資助出售房屋計劃申請 Application under Subsidised Sales Flats Schemes
入境事務處 Immigration Department	私隱影響評估對新一代智能護照系統的系統分析和設計 Privacy Impact Assessment on the System Analysis and Design of the Next Generation Electronic Passport System 新出入境管制系統第三階段實施的私隱影響評估報告(第二部份) Privacy Impact Assessment (Part 2) on the Phase III Implementation of the new Immigration Control System
勞工處 Labour Department	刊登職業介紹所的不利記錄 Publication of adverse records of employment agencies



機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
強制性公積金計劃管理局 Mandatory Provident Fund Schemes Authority	發放強積金的有關資訊和向個人帳戶電子查詢用戶傳遞訊息的諮詢 Consultation on dissemination of mandatory provident fund information and messages to users of e-enquiry of personal account
政府資訊科技總監辦公室 Office of the Government Chief Information Officer	多功能智慧燈柱試驗計劃 Multi-functional Smart Lampposts Pilot Scheme
差餉物業估價署 Rating and Valuation Department	根據《個人資料(私隱)條例》獲取個人資料 Acquisition of personal data under the Personal Data (Privacy) Ordinance
運輸署 Transport Department	<p>在的士車廂內安裝閉路電視(CCTV)系統的指引 Guidelines for Installation of Closed Circuit Television (CCTV) Systems inside Taxi Compartments</p> <p>大潭道(水壩段)智能交通燈系統的私隱影響評估報告 Smart Traffic Control System for Tai Tam Road (Dam Section) Privacy Impact Assessment Report</p> <p>在專線小巴服務申請新的電子支付系統 Application for new electronic payment system in green minibus service</p> <p>一站式流動應用程式「香港出行易」的諮詢 Consultation on All-in-One Mobile Application "Hong Kong eMobility"</p> <p>在主要幹道上安裝交通探測器 – 設計和施工的私隱影響評估報告 Privacy Impact Assessment Report on Installation of Traffic Detectors on Selected Strategic Routes – Design and Construction</p> <p>研究在車載裝置系統內收費和高階設計的私隱影響評估 Privacy Impact Assessment Report on Study and High-level Design on In-vehicle Units System for Toll Collection</p> <p>研究增強在連道/樂活道視頻行人檢測及試驗自動交通測量系統的私隱影響評估 Privacy Impact Assessment Report – Study on Enhancement Works for the Video Pedestrian Detection System at Link Road/Broadwood Road and Pilot Automatic Traffic Survey System</p>
運輸及房屋局 Transport and Housing Bureau	公共交通費用補貼計劃 Public Transport Fare Subsidy Scheme

向行政上訴委員會提出的上訴

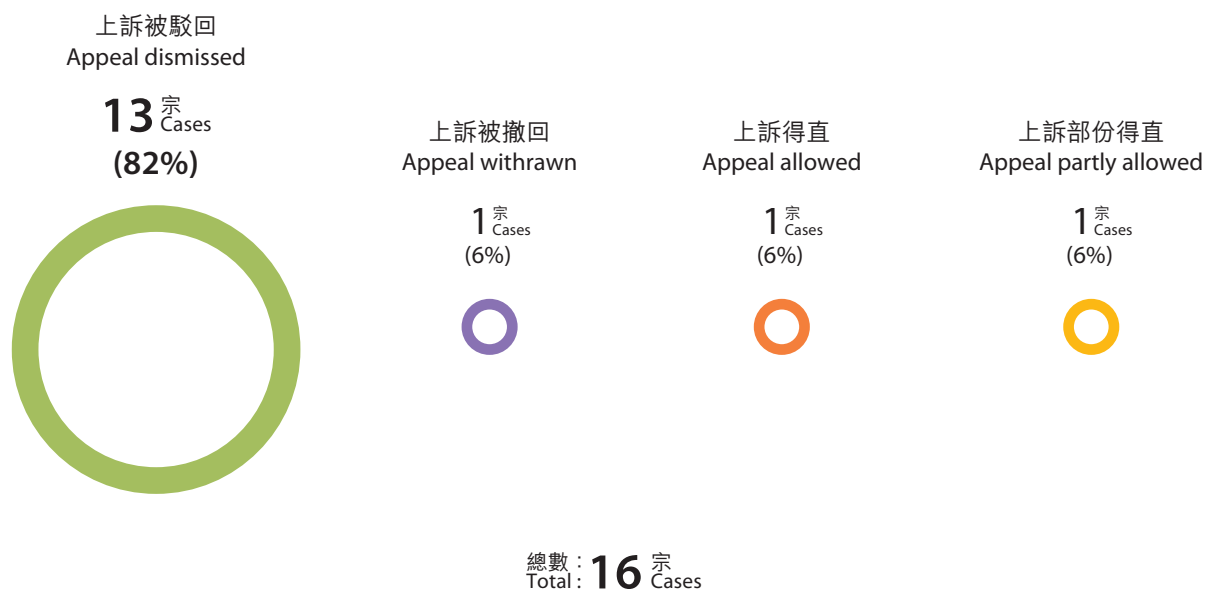
行政上訴委員會是根據《行政上訴委員會條例》(第442章)而設立的法定組織，負責聆訊投訴人或投訴的資料使用者對私隱專員的決定而提出的上訴，並作出裁決。在報告年度內的有關上訴數字及部分選取的個案簡述列於下文。

在報告年度已完結的行政上訴案件的統計資料

本報告年度共接獲16宗上訴個案，共有16宗上訴個案完結。

除兩宗上訴案件之外，其餘14宗已完結的上訴案件最終都被委員會駁回或由上訴人自行撤回。(圖1.1)

圖1.1 – 上訴的結果



APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

The Administrative Appeals Board (AAB), established under the Administrative Appeals Board Ordinance (Cap 442), is the statutory body that hears and determines appeals against the Privacy Commissioner's decisions by a complainant, or by the relevant data user being complained of. The statistics and some notable case notes during the reporting year are found in the ensuing paragraphs.

Statistics of AAB cases concluded in the reporting year

A total of 16 appeal cases were received and a total of 16 appeals were concluded during the reporting year.

Except for two appeal cases, the remaining 14 appeal cases were eventually dismissed by the AAB or withdrawn by the appellants. (Figure 1.1)

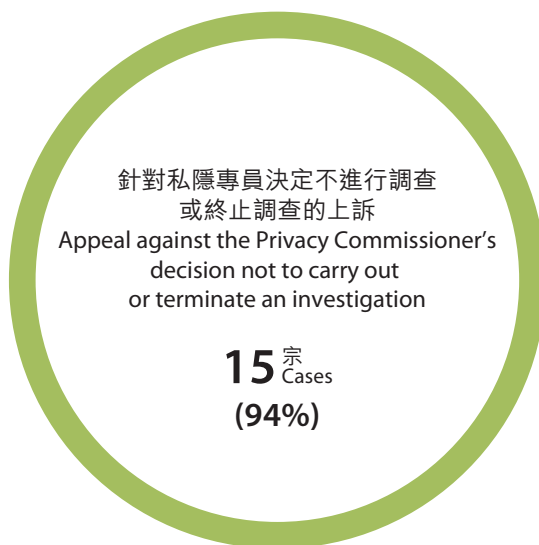
Figure 1.1 – Results of appeal cases

在報告年度新接獲的及仍在處理中的行政上訴案件的統計

在本報告年度新接獲的16宗上訴的個案當中，15宗是上訴私隱專員不進行或終止調查的決定。私隱專員作出該等決定可基於(i)沒有表面證據支持指稱的違反行為；(ii)被投訴者已採取補救行動糾正所指稱的違反行為；(iii)投訴的主要事項與個人資料私隱無關；(iv)投訴被視為無理取鬧；(v)投訴被視為不是真誠地作出；(vi)因應沒有收集個人資料而完全沒有涉及保障資料原則，及/或(vii)投訴人投訴的動機與私隱及資料的保障無關。

一宗是上訴私隱專員在作出調查後不送達執行通知的決定。(圖1.2)

圖1.2 – 上訴所涉的性質



Statistics of AAB cases newly received/under processing in the reporting year

Of the 16 appeal cases received in the reporting year, 15 appealed against the Privacy Commissioner's decision not to carry out or terminate an investigation. The Privacy Commissioner could make these decisions on the grounds that: (i) there was no prima facie evidence to support the alleged contravention; (ii) the party being complained against had taken remedial action to rectify the alleged contraventions; (iii) the primary subject matter of the complaint was considered not to be related to personal data privacy; (iv) the complaints were considered to be vexatious; (v) the complaints were not considered to have been made in good faith; (vi) the DPPs were considered not to be engaged at all, in that there had been no collection of personal data and/or (vii) the ulterior motive of the complaint in question did not concern privacy and data protection.

One appeal was against the Privacy Commissioner's decision not to serve an enforcement notice after investigation. (Figure 1.2)

Figure 1.2 – Nature of the appeals

針對私隱專員調查後決定
不送達執行通知的上訴
Appeal against the Privacy Commissioner's
decision not to serve an enforcement notice
after investigation

1 宗
Cases
(6%)



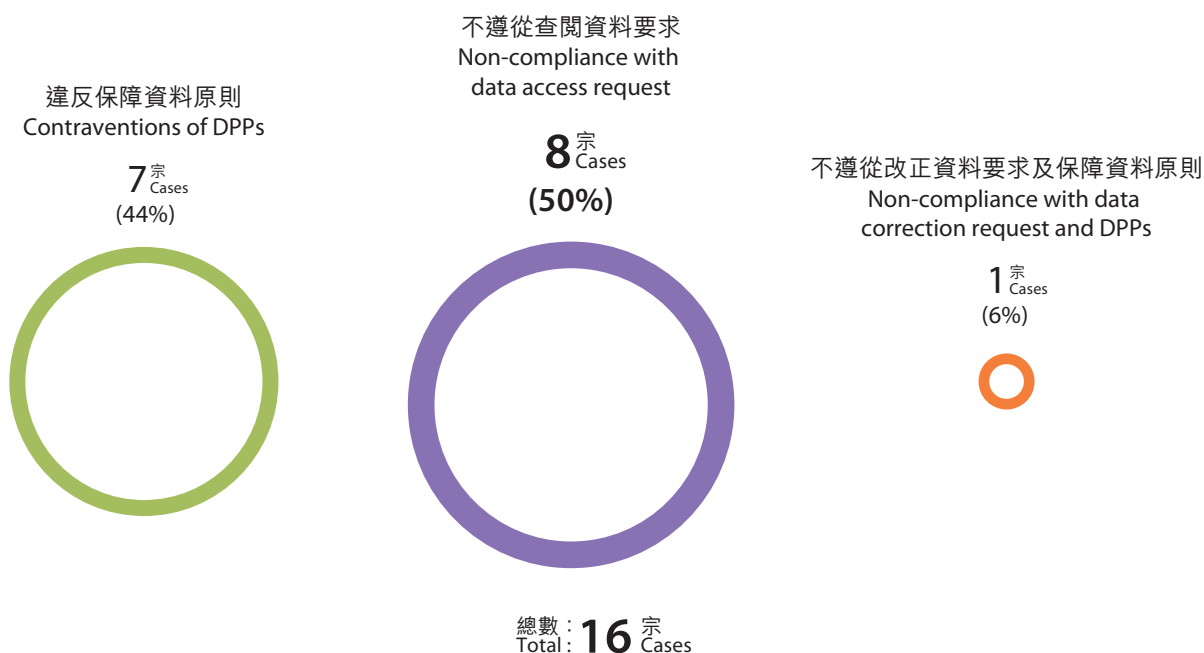
總數：**16** 宗
Total: Cases

而在上述 16 宗新接獲及仍在處理的上訴個案當中，七宗涉及指稱違反《私隱條例》的保障資料原則。八宗涉及指稱不遵從查閱資料要求，而其餘一宗則涉及同時指稱不遵從改正資料要求及保障資料原則。（圖 1.3）

Of these 16 newly received appeal cases which were still under processing, seven cases involved alleged contraventions of the Data Protection Principles of the Ordinance, eight cases involved alleged non-compliance with data access request and the remaining one involved alleged non-compliance with a data correction request and DPPs. (Figure 1.3)

圖 1.3 – 上訴所涉的《私隱條例》的規定

Figure 1.3 – The provisions of the Ordinance involved in the appeals



有關指稱違反保障資料原則的上訴個案中（一宗個案可牽涉多於一項保障資料原則），六宗涉及超乎適度及/或不公平收集個人資料；兩宗涉及個人資料的準確性及保留期間；四宗涉及未經資料當事人同意下使用及/或披露其個人資料；三宗涉及個人資料的保安及一宗涉及資料使用者的私隱政策及實務。

Of those appeal cases involving the alleged contraventions of Data Protection Principles (one appeal might involve more than one Data Protection Principle), six cases involved excessive and/or unfair collection of personal data; two cases involved accuracy and duration of retention of personal data; four cases involved the use and/or disclosure of personal data without the data subject's prior consent; three cases involved security of personal data and one case involved the data user's privacy policies and practices.



以下為報告年度內完結的 16 宗上訴個案中，其中四宗選取的個案簡述。

The following are four notable case notes out of the 16 completed AAB cases during the reporting year.



上訴個案簡述一（行政上訴委員會上訴案件第 27/2017 號）

Appeal Case Note One (AAB Appeal No. 27/2017)

某間教會應某個監管機構的投訴調查，披露投訴人妻子的個人資料予該監管機構 – 第 60B(c) 條豁免是否適用 – 第 60B(c) 條不應只局限於針對有關資料使用者提出的法律程序、法律申索或投訴的情況 – 第 60B(c) 條亦適用於資料使用者採取的任何適當預防行動，以避免情況激化成正式訴訟。

A church disclosed the personal data of the complainant's wife to a regulatory body in response to a complaint investigation by the regulatory body – whether section 60B(c) exemption applies – section 60B(c) should not be restricted to situations where legal proceedings, legal claims or complaints have been commenced or lodged against the relevant data user – section 60B(c) also applies to any appropriate prophylactic actions to be taken by the relevant data user to prevent the situation from ballooning into a formal dispute.

聆訊委員會成員：張金良先生（副主席）
張楚勇博士（委員）
潘詠賢女士（委員）

Coram: Mr Cheung Kam-leung (Deputy Chairman)
Dr. Cheung Chor-yung (Member)
Ms. Poon Wing-yin (Member)

裁決理由書日期：2018 年 12 月 31 日

Date of Decision: 31 December 2018

投訴內容

The Complaint

上訴人及其丈夫是某一間香港教會（「教會」）的會員。由於該對夫婦與教會的其他會員之間有爭拗，該對夫婦只獲准出席教會的部分活動。

The Appellant and her husband were members of a church in Hong Kong ("Church"). Due to disagreement between the couple and other members of the Church, the couple was only allowed to attend limited activities of the Church.

該丈夫其後向平等機會委員會（「平機會」）投訴，指稱教會基於他的醫療狀況而對他施加有關限制。就教會對並無出現該醫療狀況的其他教會會員施加類似的限制，平機會要求教會提供相關個案的詳情。應平機會的要求，教會提述一些上訴人的過往不當行為，以支持教會的行動。

The husband subsequently made a complaint to the Equal Opportunities Commission ("EOC") alleging that the Church imposed such restriction on him due to his medical condition. In response to EOC's request for details of cases in which the Church imposed similar restriction on other church members without such medical condition, the Church mentioned a number of past improper conduct of the Appellant to substantiate the Church's action.

上訴人認為披露的事情與她丈夫向平機會作出的投訴並無關聯。教會亦無需要向平機會透露上訴人的身分，尤其平機會早已建議教會在回覆時將個別人士的名字匿名化。因此，上訴人向私隱專員作出投訴。

The Appellant considered that the matters disclosed were irrelevant to her husband's complaint to EOC. Revealing her identity to EOC was also unnecessary especially when EOC had already suggested that the Church could anonymise an individual's name in its response. Hence, the Appellant made a complaint to the Privacy Commissioner.

私隱專員的決定

私隱專員經調查後認為，教會有需要向平機會披露上訴人的個人資料，以便平機會處理在上訴人丈夫投訴中的一些指控，而有關投訴亦涉及作為受害人的上訴人。

此外，在平機會根據《殘疾歧視條例》進行的調查中，教會披露個人資料以維護其法律權利，因此《個人資料(私隱)條例》(「《私隱條例》」)第60B(c)條下的豁免適用於本個案。

私隱專員認為教會並無違反條例下的規定。私隱專員及後依據《私隱條例》第39(2)(d)條行使酌情權，不繼續處理上訴人的投訴。上訴人不滿私隱專員的決定，故向委員會提出上訴。

上訴

委員會同意私隱專員的看法，在上訴人丈夫作出的投訴中，由丈夫向平機會提交的大部分資料同時涉及他本人及上訴人二人。因此，教會有需要向平機會披露它曾限制上訴人參與教會活動的原因及細節，以反駁有關案件。

委員會亦注意到教會根據《殘疾歧視條例》行使權利，提交資料(包括披露上訴人的個人資料)供平機會考慮，以避免平機會作出任何針對教會的不利決定，及避免上訴人丈夫提出任何針對教會的可能申索。委員會認為教會的有關做法，符合《私隱條例》第60B(c)條所指的「為確立、行使或維護在香港的法律權利」而使用個人資料的豁免。

委員會進一步採納在行政上訴案件第55/2014號中的裁決，認為《私隱條例》第60B(c)條亦適用的情況為資料使用者決定採取的適當預防行動，以嘗試避免情況激化成正式訴訟。

行政上訴委員會的決定

委員會駁回上訴。

上訴人親身應訊

程潔美律師代表答辯人(私隱專員)

The Privacy Commissioner's Decision

Upon completion of the investigation of the complaint, the Privacy Commissioner was of the view that the Church's disclosure of the Appellant's personal data to EOC was necessary in order to deal with some of the allegations contained in her husband's complaint to EOC which also involved the Appellant as a victim.

In addition, the exemption under section 60B(c) of the Ordinance applied to the present case where the Church disclosed personal data in order to defend its rights in an investigation conducted by EOC under the Disability Discrimination Ordinance.

The Privacy Commissioner considered that there was no contravention of the requirements under the Ordinance by the Church. The Privacy Commissioner then exercised his discretion not to investigate the matter further pursuant to section 39(2)(d) of the Ordinance. Dissatisfied with the Privacy Commissioner's decision, the Appellant lodged an appeal to the AAB.

The Appeal

The AAB agreed with the Privacy Commissioner that in the husband's complaint, majority of the information submitted to EOC by the Appellant's husband involved himself and the Appellant. Therefore, it was necessary for the Church to disclose to EOC the reasons and details of the restriction imposed on the Appellant to attend Church activities to rebut the case.

The AAB also considered that the Church exercised its right under the Disability Discrimination Ordinance to submit information (including the disclosure of the Appellant's personal data) for EOC's consideration to prevent any adverse decision made against the Church by EOC or any possible claims against the Church by the Appellant's husband. This completely fell within the exemption of using the personal data for "establishing, exercising or defending legal rights in Hong Kong" under section 60B(c) of the Ordinance.

The AAB further adopted the ruling in AAB Appeal No. 55 of 2014 that section 60B(c) of the Ordinance applies to situation where the relevant data user would like to take appropriate prophylactic actions in a bid to prevent the situation from ballooning into a formal dispute.

The AAB's Decision

The appeal was dismissed.

The Appellant appeared in person

Miss Catherine Ching, Legal Counsel, for the Respondent (Privacy Commissioner)



上訴個案簡述二（行政上訴委員會上訴案件第 33/2017 號）

招股書中披露訴訟細節 – 省去上訴人的名字 – 是否仍屬「個人資料」– 辨識身分並非「合理地切實可行」–《上市規例》本身並非成文法規 – 須一併考慮其他法例 – 第 60B(a) 條豁免

聆訊委員會成員：林定國先生（主席）
林德興先生（委員）
曾慕秋先生（委員）

裁決理由書日期：2018 年 9 月 12 日

投訴內容

上訴人曾於一間醫療中心接受 Y 醫生施行的手術，之後她於香港高等法院提出訴訟，以醫療疏忽為由向 Y 醫生及該醫療中心索償，有關索償的細節（包括上訴人的姓名）被香港傳媒廣泛報導，而 Y 醫生在維基百科的檔案亦可查閱得到上訴人的姓名。

該醫療中心為 A 公司的全資子公司，而 Y 醫生亦是 A 公司的創辦人、主要股東、董事局主席和行政總裁。

A 公司向香港聯合交易所（「聯交所」）遞交主板上市申請的招股書中，雖然沒有披露上訴人的姓名，但卻提及她的醫療事故和上述訴訟，包括傳訊令狀的日期、醫療疏忽的敘述、索償金額和訴訟的進度（「有關資料」）。

上訴人向私隱專員投訴，指稱有關資料屬她的個人資料，而 A 公司在招股書中披露有關資料前沒有取得她的同意。

Appeal Case Note Two (AAB Appeal No. 33/2017)

Disclosure of particulars of a litigation in a prospectus – Redaction of name of the Appellant – Whether still constituted personal data – It was not reasonably practicable to ascertain the identity – Listing rules do not by themselves constitute enactments – Other ordinances must be considered together – Section 60B(a) exemption

Coram: Mr Paul LAM Ting-kwok, SC (Chairman)
Mr LAM Tak-hing (Member)
Mr TSANG Mo-chau (Member)

Date of decision: 12 September 2018

The Complaint

The Appellant had received treatment from Doctor Y in a medical centre. Later, the Appellant commenced legal proceedings in the High Court of Hong Kong against Doctor Y and the medical centre to claim damages for medical negligence. The particulars of the claim (including the name of the Appellant) had been reported widely by the mass media in Hong Kong. The name of the Appellant could also be found in the entry concerning Doctor Y in Wikipedia.

The medical centre was a wholly-owned subsidiary of Company A. Doctor Y was the founder, a principal shareholder, chairman of the board of directors and an executive director of Company A.

In the application proof prospectus of Company A for its intended listing on the Main Board of the Stock Exchange of Hong Kong ("SEHK"), although Company A did not disclose the name of the Appellant, it mentioned the medical incident of the Appellant and the said litigation, including the date of the writ of summons, a description of the medical negligence, the amount of the claim and the stage of the legal proceedings ("Relevant Information").

The Appellant made a complaint with the Privacy Commissioner, alleging that the Relevant Information constituted her personal data and that Company A disclosed the Relevant Information in the prospectus without her prior consent.

私隱專員的決定

私隱專員根據以下的理據，決定不繼續處理上訴人的投訴：－

- (1) 招股書中的有關資料，由於沒有提及上訴人的姓名，從中未能辨識上訴人的身分，故不屬上訴人的個人資料。
- (2) A 公司是根據法律的規定而在招股書中披露有關資料，雖則結合傳媒的報導能辨識上訴人的身分，但因此而阻止 A 公司披露有關資料並不合理，尤其是其他途徑已披露了她的身分。

上訴

有關資料是否屬個人資料

委員會認為由於有關資料並無提及上訴人的姓名，根據《個人資料(私隱)條例》(「《私隱條例》」)第2(1)條「個人資料」的定義，關鍵是從有關資料間接地確定上訴人的身分，這做法是否「合理地切實可行」(“reasonably practicable”)，單單是「切實可行」(“practicable”)或可能(“possible”)是不足夠的。

招股書中提及已備存律師行發出關於上述訴訟的法律意見書，供公眾人士查閱。委員會檢視了該法律意見書，發覺上訴人的姓名已被刪除，要從中確定上訴人的身分是不可能的(“impossible”)，而且A公司已確認並無任何公眾人士曾查閱該法律意見書。

The Privacy Commissioner's Decision

The Privacy Commissioner decided not to pursue the Appellant's complaint further based on the following grounds:-

- (1) The Relevant Information did not constitute personal data of the Appellant because the name of the Appellant was not mentioned in the prospectus and the identity of the Appellant could not be discerned from the Relevant Information alone.
- (2) Company A complied with the requirements of laws to disclose the Relevant Information in the prospectus. Although the identity of the Appellant could be discerned by combining the Relevant Information and the reports in the mass media, it was not reasonable to prevent Company A from disclosing the Relevant Information, especially when the identity of the Appellant had already been disclosed through some other channels.

The Appeal

Whether the Relevant Information constituted personal data

The AAB considered that since the name of the Appellant was not mentioned in the Relevant Information, the critical question, according to the definition of “personal data” in section 2(1) of the Ordinance, was whether it was “reasonably practicable” (not simply “practicable” or “possible”) to ascertain the identity of the Appellant indirectly from the Relevant Information.

The prospectus stated that the letter of legal advice in respect of the said legal proceedings would be available for public inspection. Having examined the letter of legal advice, the ABB found that the name of the Appellant had been redacted in the letter and it was impossible to ascertain the identity of the Appellant from the letter. Further, Company A confirmed that no member of the public had actually inspected the letter.



上訴人堅稱由於有關資料載有傳訊令狀的日期，任何人得悉被告人的名字，大可從法院登記處的日誌查出上訴人的身分。委員會認同以這方法去確定上訴人的身分是可行的，但並非合理地切實可行，因為透過查閱法院登記處的日誌而確定上訴人的身分，需要一定的法律知識、工夫、時間和費用；況且對於潛在的投資者而言，上述訴訟中的原告人是誰根本是無關重要的。

雖然委員會認為以上理據足以撤銷本上訴，但仍就《私隱條例》第60B(a)條的豁免是否適用於本個案發表其意見。

在招股書中披露有關資料是否獲豁免

上訴人指A公司在招股書中使用有關資料，屬於新目的而未得上訴人的同意，故違反了保障資料第3原則。《上市規則》和聯交所的指引雖要求擬上市的公司及其董事若牽涉於重大的訴訟（無論已發生或將要發生的），必須在招股書中披露，有關要求並非「成文法則」（“enactment”），故《私隱條例》第60B(a)條的豁免並不適用。

委員會認為有關要求必須與《證券及期貨（在證券市場上市）規則》第2部第3條一併考慮。第3(a)條規定上市申請必須符合聯交所的規定。此外，根據第3(c)條，A公司必須披露待決訴訟的細節，因為投資者需要這些資料去評估A公司的財務狀況。

The Appellant asserted that since the Relevant Information contained the date of the writ of summons, anyone who knew the names of the defendants could find out the identity of the Appellant from a search of the daily log book kept by the Court Registry. While the AAB agreed that it would be “possible” for the identity of the Appellant to be ascertained by this means, the AAB could not satisfy itself that it was “reasonably practicable” to do so because ascertaining the identity of the Appellant through a search of the daily log book of the Court Registry required certain degree of legal knowledge, efforts, time and expenses. Further, the identity of the plaintiff in the said legal proceedings was immaterial to potential investors.

Although the AAB found that the appeal could be dismissed on the said ground alone, the AAB still gave its views on whether the exemption under section 60B(a) of the Ordinance applied to this case.

Whether disclosure of the Relevant Information in a prospectus was exempted

The Appellant alleged that the use of the Relevant Information in the prospectus by Company A was for a new purpose without the Appellant’s consent and hence contravened Data Protection Principle 3. Although the Listing Rules and guidance of SEHK required a company to be listed and its directors that were involved in a litigation of material importance (no matter the litigation had happened or would happen) to disclose the litigation in a prospectus, the relevant requirements did not constitute “enactments”. Therefore, the exemption under section 60B(a) of the Ordinance did not apply.

The AAB opined that relevant requirements must be considered together with section 3 in Part 2 of the Securities and Futures (Stock Market Listing) Rules. Section 3(a) provides that an application for listing must comply with the requirements imposed by SEHK. Further, under section 3(c), Company A was obliged to provide the particulars of pending legal proceedings because an investor needed this information to make an assessment of the financial position of Company A.

有關要求雖然沒有列明須披露的細節，但委員會認為A公司披露有關資料是必要的，因為：－

- (1) A公司的業務是提供醫療服務，醫療疏忽的索償對其聲譽和前景有潛在的影響；
- (2) 索償的金額對A公司的財政狀況可能有直接的影響；及
- (3) 訴訟何時開始及其進度，正好顯示其不良影響對A公司而言是否迫切。

委員會最終認為假使有關資料屬上訴人的個人資料，《私隱條例》第60B(a)條適用於本個案，即有關資料將獲豁免而不受保障資料第3原則所管限。

行政上訴委員會的決定

委員會駁回上訴。

嚴斯泰及梁思臨大律師獲李陳鄭律師行延聘，代表上訴人

陳淑音律師代表答辯人（私隱專員）

葉賜豪大律師獲何梁律師行延聘，代表受到遭上訴反對的決定所約束的人（A公司）

Although the relevant requirements did not specify what particulars need to be disclosed, the AAB took the view that it was a must for Company A to disclose the Relevant Information because:—

- (1) The business of Company A was to provide medical services. Medical negligence claims would have a potential impact on the reputation and prospects of Company A;
- (2) The amount of claim would have direct potential implications on the financial position of Company A; and
- (3) The time when legal proceedings were commenced, and the stage of the legal proceedings, would indicate how imminent or remote the company might suffer any adverse impact due to the legal proceedings.

The AAB concluded that, assuming that the Relevant Information constituted personal data of the Appellant, section 60B(a) of the Ordinance applied to this case. That is, the disclosure of the Relevant Information was exempted from Data Protection Principle 3.

The AAB's Decision

The appeal was dismissed.

Mr Valentine Yim See Tai and Mr Leung Sze Lum, Legal Counsels instructed by Messrs Lee Chan Cheng Solicitor, for the Appellant

Miss Cindy Chan, Legal Counsel, for the Respondent (Privacy Commissioner)

Mr Authur Yip, Legal Counsel instructed by Messrs Hoosenally & Neo Solicitors & Notaries, for the Person bound by the decision appealed against (Company A)



上訴個案簡述三（行政上訴委員會上訴案件第 1/2018 號）

消防員休班時受傷須向上級匯報傷勢及意外的資料 – 保障資料第1原則 – 修訂後表格只填寫傷勢及何時發生 – 屬必需及與消防處職能有關 – 上級收集附加的資料 – 行使酌情權須有合理理由及不能超乎適度

聆訊委員會 吳敏生先生（副主席）
成員： 伍新華先生，MH.（委員）
蘇耀榮先生（委員）

裁決理由書日期：2019年2月15日

投訴內容

上訴人為消防處的高級隊長。根據《消防條例》，消防處長可制訂《消防處常務訓令》（「《訓令》」）規管屬下消防員有關執行職務的事宜。

《訓令》規定消防員若在休班時受傷，必須向其上級匯報，而消防處亦制訂表格要求須填寫以下資料：–

- (i) 傷勢的性質；
- (ii) 意外的敘述；
- (iii) 發生意外的日期和時間；
- (iv) 發生意外的地點；
- (v) 是/否附上證人供詞；
- (vi) 意外是否涉及刑事成份、警方報案編號（如有的話）；
- (vii) 是否附上醫療證書；
- (viii) 是否附上其他醫療資料。

Appeal Case Note Three (AAB Appeal No. 1/2018)

A service member of the Fire Services Department was required to report details of his or her injuries whilst off-duty – Data Protection Principle 1 – The revised reporting form only required provision of information as to nature of injury and time/date of occurrence – Information collected was necessary for and directly related to the functions of the Fire Services Department – Additional information collected by superiors – Discretion must be exercised with justifiable reasons and data collected must not be excessive

Coram: Mr Alan NG Man-sang (Deputy Chairman)
Mr Lawrence NG San-wa, M.H. (Member)
Mr SO Yiu-wing (Member)

Date of decision: 15 February 2019

The Complaint

The Appellant was a Senior Station Officer of the Fire Services Department ("FSD"). Under Fire Services Ordinance, the Director of Fire Services may make "Fire Services Department General Orders" ("Orders") to provide for matters in relation to performance of duties by service members of FSD.

Pursuant to the Orders, if a service member sustained injuries whilst off-duty, the service member was required to report to his or her superiors. The FSD also devised a reporting form, requiring the provision of the following information:–

- (i) Nature of injury;
- (ii) Description of the accident;
- (iii) Time and date of occurrence;
- (iv) Place of occurrence;
- (v) Witness statement attached: yes/no;
- (vi) Whether or not the accident involves elements of crime, the Police Report Book Number (if any);
- (vii) Medical certificate attached: yes/no;
- (viii) Any other medical information: yes/no.

上訴人認為此匯報規定違反資料保障第1原則，遂向私隱專員作出投訴。

私隱專員的決定

私隱專員經調查後發現，其他紀律部隊並沒有要求其員工匯報休班時受傷的情況。另一方面，根據消防處提供的數字，過往五年只有四宗消防員在休班時醉酒或作出不恰當行為的事件，數字不足以支持消防處收集關於意外方面的資料（即(ii)、(iii)、(iv)、(v)及(vi)項）。惟考慮到消防處的主要職責為滅火救援，故消防處收集關於傷勢的資料（即(i)、(vii)及(viii)項）並不屬於超乎適度。

消防處之後修訂了有關表格，規定消防員若休班時受傷，只須填寫第一部分關於傷勢及何時發生的資料（即(i)、(iii)、(vii)及(viii)項），當上級認為上述資料不足以評估有關消防員執行職務的能力時，才要求消防員提供第二部分的附加資料。

私隱專員認為消防處已採取了補救措施，符合保障資料第1原則關於收集個人資料的規定，故毋須繼續處理上訴人的投訴。

上訴人不滿私隱專員的決定，故向委員會提出上訴。

The Appellant considered that the said reporting requirement contravened Data Protection Principle 1 and made a complaint with the Privacy Commissioner.

The Privacy Commissioner's Decision

Upon completion of investigation of the complaint, the Privacy Commissioner found that other disciplinary forces in Hong Kong did not require their service members to report details of their injuries whilst off duty. On the other hand, according to the figures provided by FSD, only four incidents in the past five years involved drunkenness or disorderly conduct of service members. The figures could not substantiate the collection of accident-related information (i.e. items (ii), (iii), (iv), (v) and (vi)). However, having considered that the main functions of FSD are fire suppression and rescue services, the collection of injury-related information (i.e. items (i), (vii) and (viii)) was not excessive.

Subsequently, the FSD revised the reporting form in that if a service member sustained injuries whilst off duty, the service member was required to complete only Part I of the revised reporting form that concerned nature of injury and the time and date of occurrence (i.e. items (i), (iii), (vii) and (viii)). A supervisor might require the service member to provide additional information in Part II of the revised reporting form only if the superior considered the said information insufficient to assess the suitability of the service member to perform his or her duties.

The Privacy Commissioner considered that FSD had taken remedial action to comply with the requirements for collection of personal data under the Data Protection Principle 1. Hence, the Privacy Commissioner decided not to pursue the Appellant's complaint.

Dissatisfied with the Privacy Commissioner's decision, the Appellant lodged an appeal to the AAB.



上訴

委員會明白到消防員的工作對其體能有極高的要求，他們須在危難時拯救市民的生命，他們的傷勢不獨可能影響被拯救市民的安全，亦可能對其自身及同袍的生命造成威脅，故委員會認為消防處規定消防員作出匯報是必需的，並與消防處的職能直接有關。雖然消防處的上級並非醫療專才，但應較消防員本身更具能力評估是否須提供附加的資料。

此外，委員會認為賦予消防處的上級酌情權收集附加的資料，這做法是合適的。然而，消防處的上級必須有合理的理由相信有需要收集附加的資料，而該資料就收集目的而言，並非超乎適度。

委員會考慮到消防處已採取補救措施修訂其表格，亦明白進一步修改《訓令》須待本上訴有決定才能進行，故認同私隱專員的決定，繼續調查亦不能合理地預期得到更令人滿意的結果。

行政上訴委員會的決定

委員會駁回本上訴。

上訴人親身應訊

陳淑音律師代表答辯人（私隱專員）

遭上訴反對的決定所約束的人（消防處處長）由律政司署理高級政府律師張泳施代表

The Appeal

The AAB acknowledged several facts – the duties of service members put a great demand on their physical fitness; service members were required to save lives of civilians when in danger; and injuries of service members might pose risk not only to the lives of civilians being rescued, but also the own lives of service members as well as the lives of their colleagues. The AAB therefore considered that the reporting requirement imposed by the FSD on the service members to be necessary and directly related to the functions of the FSD. Although the superiors of the FSD were not medical experts, they were better placed than the service members concerned to conduct the assessment as to whether additional information was required.

Further, the AAB considered that it was proper to confer upon a superior of the FSD discretion to seek additional information from service members. However, a superior of the FSD must have reasonable ground to substantiate his or her belief that the collection of additional information was necessary and that the additional information must not be excessive for the collection purpose.

Having considered that the FSD had taken remedial action to revise the reporting form, and having understood that further amendments to the Orders would only be made pending the decision of this appeal, the AAB agreed to the decision of the Privacy Commissioner that any further investigation of the case could not reasonably be expected to bring about a more satisfactory result.

The AAB's Decision

The appeal was dismissed.

The Appellant appeared in person

Miss Cindy Chan, Legal Counsel, for the Respondent (Privacy Commissioner)

Miss Venus Cheung, Senior Government Counsel (Ag.), for the Person bound by the decision appealed against (Director of Fire Services)

上訴個案簡述四（行政上訴委員會上訴案件第 11/2018 號）

出版商獲授權將一宗民事上訴案件的判案書輯錄在法律彙報 – 上訴案件的申請人聲稱出版商在刊登彙報案件過程中與司法機構通訊往來的文件載有申請人的個人資料 – 出版商拒絕申請人提出查閱資料要求 – 申請人認為出版商為商業利益處理其個人資料，所以屬資料使用者 – 《個人資料（私隱）條例》第 2(1) 及 (12) 條及有關保障資料第 2(4) 原則 – 出版商純粹代司法機構持有、處理或使用資料 – 出版商作為資料處理者無法律責任遵從查閱資料要求

聆訊委員會成員：沈士文先生（副主席）
陳文宜女士（委員）
黃朝龍先生（委員）

裁決理由書日期：2019 年 2 月 21 日

投訴內容

上訴人為一宗民事上訴案件的申請人。X 公司（「出版商」）根據與司法機構的合約，獲授權將該案件的判案書輯錄在《香港法律彙報與摘錄》（「《法律彙報》」）。出版商根據合約亦須在《法律彙報》刊登的彙報案件中撰寫「案件摘錄」（headnote）及「主詞彙」（catchwords）。上訴人聲稱出版商在刊登有關彙報案件過程中與司法機構通訊往來的文件載有他的個人資料，提出查閱資料要求，要求出版商提供有關文件。出版商拒絕遵從有關要求。上訴人認為出版商為商業利益代司法機構處理其個人資料，身分屬於資料使用者，遂向私隱專員作出投訴。

Appeal Case Note Four (AAB Appeal No. 11/2018)

A publisher was authorised to publish the judgment of a civil appeal case in law reports – The applicant of the appeal alleged that the correspondence exchanged between the publisher and the Judiciary in the course of publishing the judgment contained personal data of the applicant – The publisher refused a data access request made by the applicant – The applicant considered that the publisher was a data user as the publisher processed his personal data for commercial gain – Sections 2(1) and (12) of the Personal Data (Privacy) Ordinance and Data Protection Principle 2(4) – The publisher held, processed or used the data solely on behalf of the Judiciary – The publisher as a data processor was under no obligation in law to comply with the data access request

Coram: Mr Erik Ignatius SHUM Sze-man (Deputy Chairman)
Ms Grace CHAN Man-yee (Member)
Mr Dennis WONG Chiu-lung (Member)

Date of decision: 21 February 2019

The Complaint

The Appellant was an applicant of a civil appeal case. Under a contract between Company X (“Publisher”) and the Judiciary, the Publisher was authorised to report the judgment of the case in the Hong Kong Law Reports & Digests (“Law Reports”). The Publisher was also required to prepare the headnote and catchwords for the judgments reported in the Law Reports. The Appellant alleged that the correspondence exchanged between the publisher and the Judiciary in the course of publishing the judgment contained his personal data. The Appellant made a data access request (“DAR”) to the Publisher for copies of the correspondence. The Publisher refused the DAR. The Appellant considered that the publisher was a data user as the publisher processed his personal data on behalf of the Judiciary for commercial gain. Hence, the Appellant made a complaint with the Privacy Commissioner.



私隱專員的決定

私隱專員經調查後發現，上訴人在查閱資料要求中提述的通訊，屬附帶於出版商的合約責任。出版商為司法機構的承辦商，代司法機構出版《法律彙報》。出版商不能控制在《法律彙報》中的個人資料的收集、持有、處理或使用。根據《私隱條例》第2(12)條，出版商屬上訴人要求查閱資料的「資料處理者」而並非「資料使用者」。因此，私隱專員認為《私隱條例》不適用於出版商，而出版商無責任遵從上訴人的查閱資料要求。

此外，經審視由出版商提供的相關文件的內容後，私隱專員發現雖然在出版商及司法機構的通訊中曾提述有關判案書的名稱及引稱，但是該等通訊的目的明顯是出版商向司法機構尋求批准，將有關《法律彙報》出版（此乃出版商的其中一項合約責任），而並非編製上訴人的個人資料。

基於上述的情況，私隱專員決定毋須繼續處理上訴人的投訴。

上訴人不滿私隱專員的決定，故向委員會提出上訴。

上訴

委員會就以下原因駁回上訴人的上訴 –

(a) 「資料使用者」與「資料處理者」

- 根據《私隱條例》第2(12)條，如出版商純粹代司法機構（而非為其自身的任何目的）持有、處理或使用資料，則出版商並非為《私隱條例》定義下的資料使用者。
- 在出版《法律彙報》之前，司法機構提供載於判案書的任何上訴人的個人資料，該資料會經理解消化後複製在「案件摘錄」及「主詞彙」。因此，出版商並無編製及收集不在判案書中的任何屬

The Privacy Commissioner's Decision

Upon completion of investigation of the complaint, the Privacy Commissioner found that the communications as referred to in the DAR were incidental to the contractual duty of the Publisher. The Publisher was a contractor of the Judiciary to publish the Law Reports on the Judiciary's behalf. The publisher was unable to control the collection, holding, processing or use of the personal data in the Law Reports. In accordance with section 2(12) of the Ordinance, the Publisher was a "data processor", not a "data user" of the requested data. Therefore, the Privacy Commissioner considered that the Ordinance did not apply to the Publisher, and the Publisher was not obliged to comply with the Appellant's DAR.

Further, having examined the content of the relevant documents provided by the Publisher, the Privacy Commissioner found that although the name and the citation of the Judgment were mentioned in the communications between the Publisher and the Judiciary, the purpose of such communications was obviously to seek approval from the Judiciary by the Publisher in publishing the Law Reports (which was one of the contractual duties of the Publisher), not to compile the Appellant's personal data.

Based on the mentioned circumstances, the Commissioner decided not to pursue the Appellant's complaint.

Dissatisfied with the Commissioner's decision, the Appellant lodged an appeal to the AAB.

The Appeal

The AAB dismissed the Appellant's appeal based on the following grounds –

(a) "Data user" or "data processor"

- Under section 2(12) of the Ordinance, if the Publisher was holding, processing or using the data solely on behalf of the Judiciary (but not for any of its own purposes), the Publisher was not a data user as defined in the Ordinance.
- Before the publication of the Law Reports, any personal data of the Appellant in the judgment was supplied by the Judiciary, and the data would be digested and reproduced in the headnote and catchwords. Hence, the Publisher did not compile or collect any personal data of the Appellant that was not already included in the judgment.

上訴人的個人資料。因此，委員會的結論是出版商並無收集、持有或處理載於有關<<法律彙報>>的任何個人資料。

Therefore, the AAB concluded that the Publisher was not collecting, holding or processing any personal data of the Appellant in the Law Reports.

(b) 出版商為自身目的「使用」資料？

- 就出版商是否為其自身目的使用上訴人個人資料，委員會認為重點應放於司法機構在出版<<法律彙報>>之前，在「案件摘錄」及「主詞彙」的內容及格式上行使「控制權」，而非放於在<<法律彙報>>銷售後所帶來的收益。
- 再者，正由於司法機構的「完全控制權」，上訴人提出查閱資料要求的文件因而產生出來。
- 因為司法機構在「案件摘錄」及「主詞彙」上的「完全控制權」，出版商純粹代司法機構（而非為出版商自身的任何目的）使用「案件摘錄」及「主詞彙」。因此，出版商作為在《私穩條例》第2(12)條下的「資料處理者」，只純粹代司法機構使用個人資料於出版<<法律彙報>>。
- 在司法機構批准「案件摘錄」及「主詞彙」並在根據合約刊登<<法律彙報>>之後，就《條例》而言，出版商的後期工作（如銷售、出售及目標訂購者的控制）毫無關聯。

行政上訴委員會的決定

委員會駁回本上訴。

上訴人親身應訊

吳鑑楓律師代表答辯人（私隱專員）

遭上訴反對的決定所約束的人（X公司）
由 Agatha Zhang 女士代表

(b) The Publisher “used” data for its own purposes?

- On the issue of whether the Publisher “used” any personal data of the Appellant for its own purposes, the AAB considered that emphasis should be placed on the “control” of the Judiciary on the contents and format of the headnote and catchwords before the publication of the Law Reports, not on the subsequent benefits after the sale of the Law Reports.
- In addition, the “complete control” of the Judiciary was exactly the cause for giving rise to the existence of the documents that were requested by the Appellant in the DAR.
- Due to the “complete control” of the Judiciary on the contents and format of the headnote and catchwords, the Publisher used the personal data in the headnote and catchwords solely on behalf of the Judiciary (not for the Publisher’s own purposes). Hence, the Publisher, as a “data processor” under section 2(12) of the Ordinance, solely used the personal data on behalf of the Judiciary for publishing the Law Reports.
- After the Judiciary approved the headnote and catchwords and had the Law Reports published as required under the contract, all subsequent work of the Publisher (such as marketing, sale and control of target subscribers) were totally irrelevant.

The AAB’s decision

The appeal was dismissed.

The Appellant appeared in person

Mr Dennis Ng, Legal Counsel for the Respondent (Privacy Commissioner)

Miss Agatha Zhang, for the Person bound by the decision appealed against (Company X)



法律協助計劃

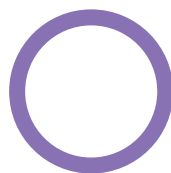
法律協助計劃於2013年4月1日開始。對於因資料使用者違反《私隱條例》規定而蒙受損害，並有意提出法律程序以尋求補償的個人，公署可提供協助。本報告年度內，公署接獲八宗法律協助申請，全部曾在事前向公署作出投訴。

這些申請涉及在下述方面的違規指稱：(i) 收集個人資料；(ii) 個人資料的準確性；(iii) 使用或披露個人資料；(iv) 個人資料的保安；及(v) 查閱及改正資料要求。

違規指控的性質

保障資料第1原則 —
收集個人資料
DPP1 - collection of
personal data

2宗
Cases
(20%)



保障資料第2原則 —
個人資料的準確性
DPP2 - accuracy of
personal data

3宗
Cases
(30%)

保障資料第3原則 —
使用或披露個人資料
DPP3 - use or disclosure of
personal data

2宗
Cases
(20%)



保障資料第4原則 —
個人資料的保安
DPP4 - security of
personal data

1宗
Cases
(10%)



保障資料第6原則 —
查閱及改正資料要求
DPP6 - data access and
correction requests

2宗
Cases
(20%)



註：同一宗個案可牽涉違反多於一項保障資料原則

本報告年度內公署處理了11宗申請（包括上一個報告年度未完成的三宗）。在這些申請中，已完成的申請有六宗，其餘五宗申請在年結時仍在考慮中。

在已完成的六宗審批個案中，一宗由申請人撤回、三宗獲給予法律協助、兩宗被拒。申請被拒的主要因為不涉及法律原則及申請人未能舉出證據證明蒙受損害。

LEGAL ASSISTANCE SCHEME

The Legal Assistance Scheme commenced on 1 April 2013. Under the scheme, the PCPD may provide assistance to a person who has suffered damage by reason of a contravention under the Ordinance and intends to institute proceedings to seek compensation from the data user at fault. In the reporting year, the PCPD received eight legal assistance applications, all of them were preceded by a complaint made with the PCPD.

These applications involved contraventions of the Ordinance in respect of: (i) collection of personal data; (ii) accuracy of personal data; (iii) the use or disclosure of personal data; (iv) security of personal data; and (v) data access and correction request.

Nature of alleged contraventions

N.B.: One case may involve contravention of more than one DPP.

During the reporting year, the PCPD handled 11 applications (including three brought forward from last year). Of these applications, six applications were completed and five applications were still under consideration as at the end of the reporting period.

Of the six cases completed, one was withdrawn by the applicant, three were granted legal assistance and two were refused. The main reasons for refusing applications were the absence of a question of legal principle and the applicants' failure to provide evidence to substantiate any damage suffered.