



Exercising Your Data Access Rights under the Personal Data (Privacy) Ordinance (Frequently Asked Questions and Answers)

Under the Personal Data (Privacy) Ordinance (the “**Ordinance**”), an individual has the right to request a data user, e.g. a government department or a company, to confirm whether it holds his personal data, and to supply a copy of the data. Such a request is called a data access request.

Common examples of data access requests include requests by employees for copies of their performance appraisal reports, requests by patients for copies of their medical records and requests by consumers for copies of their service application forms.

The following are some frequently asked questions and answers to assist individuals in making data access requests:

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▶ Q1 How should I make a data access request?

To assist individuals to make data access requests, the Privacy Commissioner for Personal Data, Hong Kong (the “**Commissioner**”) has issued a Data Access Request Form (Form OPS003) (the “**DAR Form**”). The last part of this leaflet contains the current version of the DAR Form for reference.

You should make the data access request on the current version of the DAR Form. By providing the information required in the DAR Form, you will assist the data user to process your request promptly. If you do not use the DAR Form, the data user may refuse to comply with your data access request. The completed DAR Form should be sent directly to the data user to whom the data access request is made, not to the Commissioner.

▶ Q2 Apart from completing the DAR Form, what other information or documents should I provide?

The data user may ask you to provide your identity proof, such as your identity card or other identification documents, e.g. a staff card, medical card or student card previously issued to you by the data user. The data user may require you to provide further information to enable it to locate the data you requested. In some cases, you **may be required** to fill out a form specified by the data user (though this is not a mandatory requirement). If you wish to make a data access request on behalf of another individual, please see Q10 below.

▶ Q3 When completing the DAR Form, what should I pay attention to?

You should complete all parts of the DAR Form and, as far as possible, state specifically and clearly the personal data requested. This will assist the data user in complying with your data access request promptly, and will help avoid any misunderstanding and dispute. If the data user is not supplied with the information reasonably required to locate the data requested, it may refuse to comply with your data access request pursuant to section 20(3)(b) of the Ordinance.

▶ Q4 Can I make a request for “all personal data”?

Such description of the data requested may be too general. You should clearly specify the data requested, e.g. medical reports, appraisal reports, job application forms, etc. and the date of data collection. You should also include relevant information (if any) about the particular incident or transaction associated with the data requested and the circumstances under which the data requested was collected. If the data user is not supplied with the information reasonably required to locate the data requested, it may refuse to comply with your data access request pursuant to section 20(3)(b) of the Ordinance.

▶ Q5 Can I make a request for a copy of a specified document which contains my personal data?

Under section 19 of the Ordinance, the data user is obligated only to supply you with a copy of your personal data, not a copy of the document in which the data is contained. The data user may edit out from the document information which is not your personal data. Further, if the data requested is recorded in an audio form, the data user may provide you with a transcript of that part of the audio record which contains the data requested.

▶ Q6 Can the data user charge me a fee for complying with my data access request?

Yes. The Ordinance allows the imposition of a fee for complying with a data access request but the fee charged shall not be “excessive”. In general, the data user may charge for costs “directly related to and necessary for” the compliance with a data access request. The cost of compliance varies with the scope and complexity of the data access request concerned, and with different data users. A data user may, for administrative convenience, impose a flat fee that is less than the “direct and necessary costs”. Where additional copies of the personal data requested are required, a data user is entitled to recover the actual cost which is not more than the administrative and other costs incurred in supplying the additional copies. If you consider that the fee charged for compliance with your data access request is excessive, you may first raise the matter with the data user. If you are not satisfied with the explanation given by the data user, you may lodge a complaint with the Commissioner.

▶ Q7 Must my data access request be complied with by the data user?

Generally speaking, the data user shall comply with your data access request, otherwise it may commit an offence under the Ordinance and is liable on conviction to a fine at level three (currently at HK\$10,000). However, there are circumstances specified in the Ordinance under which the data user **shall** refuse to comply with a data access request. These are:

- (a) in the case where the data user is not supplied with sufficient information to identify you;
- (b) if the personal data sought under the data access request comprises personal data of another individual and the data user cannot comply with the request without disclosing the personal data of that other individual. On the other hand, if the data user is satisfied that the other individual has consented to the disclosure; or it can comply with the request without disclosing the identity of that other individual, for example by omitting the names or other identifying particulars, it should comply with the request; or
- (c) in any other case, if compliance with the request is for the time being prohibited under the Ordinance or any other ordinance.

There are also circumstances under which the data user **may** refuse to comply with a data access request. These are:

- (a) the request is not made in writing in Chinese or English;
- (b) the data user is not provided with sufficient information to locate the data requested;
- (c) the request follows two or more similar requests, and it is unreasonable for the data user to comply with the request in the circumstances;
- (d) another party controls the use of the data requested in a way that prohibits the data user receiving the request from complying with it;
- (e) the request is not made in the DAR Form specified by the Commissioner;
- (f) the data user is entitled under the Ordinance or any other ordinance not to comply with the request;
- (g) there is an applicable exemption from the requirement to comply with a data access request provided for in the Ordinance, e.g. if the personal data is held for the purpose of detection of crime and compliance with the request would likely prejudice that purpose; or
- (h) the data user has not yet received the fee charged for complying with the data access request.

▶ Q8 How long will it take for my data access request to be processed by the data user?

In general, the data user is required to comply with your data access request not later than 40 days after receiving it. If the data user has valid grounds to refuse to comply with your request, it should also reply to you with reasons within 40 days. If the data user is unable to comply with the request within 40 days of its receipt due to certain reasons, it should also inform you of the situation within the same 40-day period and comply with the request as soon as practicable thereafter.

▶ Q9 I do not know whether the data user holds the data requested by me. Does the data user have to reply to me after receiving my data access request?

Choices are provided in Part VI of the DAR Form for you to request the data user:

- (i) to inform you if it holds the data requested;
- (ii) to supply you with a copy of the data requested; or
- (iii) to comply with both (i) and (ii).

You just need to tick your choice and the data user will reply to you accordingly. If the data user does not hold any personal data which is the subject of the request, it must inform you in writing that it does not hold the data.

▶ **Q10 Must I make a data access request myself or can I authorise another individual to make a data access request on my behalf? Can a person make a data access request on behalf of another person who is under the age of 18 or incapable of managing his own affairs?**

Apart from making a data access request yourself, you can authorise another person in writing to make a data access request on your behalf. The data user, upon receipt of your request, may require the authorised person to produce your identity proof and your authorisation.

Where an individual is a minor under the age of 18, a person with parental responsibility for such individual can make a data access request on his behalf. Where an individual is incapable of managing his own affairs, a person appointed by the court to manage his affairs can make a data access request on his behalf. Where an individual is mentally incapacitated, a person appointed to be the guardian of him under the Mental Health Ordinance, Cap 136, can make a data access request on his behalf. The person who makes the request on behalf of another individual may be required by the data user to provide identity proof of the individual whose personal data is sought and proof of his relationship with that individual, e.g. copy of relevant birth certificate or court order (as the case may be).

▶ **Q11 Can I request the data user, when complying with my data access request, to provide me with a copy of the requested data in the language of my choice?**

You may indicate in the appropriate space provided in Part VII of the DAR Form your request for a copy of the requested data in English, Chinese or the language in which the data is held. However, if the language in which the data is held is not the language specified in the request, the data user may choose to provide a true copy of the document which contains the data without providing a translation of the same.

▶ **Q12 Can I request the data user, when complying with my data access request, to provide me with a copy of the requested data in a specified form (e.g. computer disk, microfilm etc.) ?**

You may make such a request and space is provided in Part VII of the DAR Form for you to do this. However, if it is not reasonably practicable for the data user to supply the copy in the form specified by you, it may provide the copy in another form. For example, if the personal data requested is on an audiotape and it is not reasonably practicable to make a transcript at your request, the data user may provide a copy of the tape to you.

▶ **Q13 What can I do if I find that my personal data provided by the data user in response to my data access request is inaccurate?**

You can request for correction of the personal data provided to you in response of a data access request, as provided under the Ordinance. Similar to data access requests, the data user receiving a data correction request shall respond within 40 days. If your data correction request is complied with, the data user should provide you with a copy of the corrected data. If not, it should inform you why this has not been done.

▶ **Q14 Is there a prescribed form for making a data correction request?**

No, you can simply make your data correction request in writing and provide all the supporting documentation you may have to show that the data concerned is inaccurate, and specify how the data should be corrected.

PERSONAL DATA (PRIVACY) ORDINANCE
DATA ACCESS REQUEST FORM

Important Notice to Requestor

1. Please read this Form and the footnotes carefully before completing this Form. Where this Form contains a summary of the relevant requirements under the Personal Data (Privacy) Ordinance (“the PDPO”), the summary is provided for reference purpose only. For a complete and definitive statement of the law, please refer to the PDPO itself.
2. This Form is specified by the Privacy Commissioner for Personal Data (“the Commissioner”) under section 67(1) of the PDPO with effect from 1 October 2012. The data user may refuse to comply with your data access request (“your request”) if it is not made in this Form (see section 20(3)(e) of the PDPO).
3. Please complete this Form in Chinese or English. The data user may refuse to comply with your request if your request is not made in either language (see section 20(3)(a) of the PDPO).
4. To make a data access request, you must either be the data subject or a “relevant person” as defined in section 2 or 17A of the PDPO (please refer to Part III of this Form).
5. You are not entitled to access data which is not personal data or personal data not belonging to you (see section 18(1) of the PDPO). The data user is only required to provide you with a copy of your personal data rather than a copy of the document containing your personal data. In most situations, the data user may elect to provide a copy of the document concerned. If the personal data you request is recorded in an audio form, the data user may provide a transcript of that part of the audio record which contains your personal data.
6. It is important that you specify in this Form clearly and in detail the personal data that you request. The data user may refuse to comply with your request if you have not supplied him with such information as he may reasonably require to locate the requested data (see section 20(3)(b) of the PDPO). If you supply any false or misleading information in this Form for the purpose of having the data user comply with your request, you may commit an offence (see section 18(5) of the PDPO).
7. Do not send this Form to the Commissioner. The completed Form should be sent directly to the data user to whom you make your request.
8. The data user may require you to provide identity proof such as your Hong Kong Identity Card and may charge a fee for complying with your request (see sections 20(1)(a) and 28(2) of the PDPO).
9. The data user may refuse to comply with your request in the circumstances specified in section 20 of the PDPO.

Important Notice to Data User

1. You are required by section 19(1) of the PDPO to comply with a data access request **within 40 days** after receiving the same. To comply with a data access request means: (a) if you hold the requested data, to inform the requestor **in writing** that you hold the data and supply a copy of the data; or (b) if you do not hold the requested data, to inform the requestor **in writing** that you do not hold the data (except that the Hong Kong Police may inform the requestor **orally** if the request is whether it holds any record of criminal conviction of an individual). A mere notification given to the requestor to collect the requested data or a note sent to the requestor for payment of a fee is insufficient. In complying with the request, you should omit or otherwise not disclose the names or other identifying particulars of individuals other than the data subject.
2. If you are unable to comply with the data access request within the 40-day period, you must inform the requestor by notice **in writing** that you are so unable and the reasons, and comply with the request to the extent, if any, that you are able to **within the same 40-day period**, and thereafter comply or fully comply, as the case may be, with the request as soon as practicable (see section 19(2) of the PDPO).
3. If you have a lawful reason for refusing to comply with the request pursuant to section 20 of the PDPO, you must give the requestor **written notification** of your refusal and your supporting reasons **within the same 40-day period** (see section 21(1) of the PDPO).
4. It is an offence not to comply with a data access request in accordance with the requirements under the PDPO. Any data user convicted of such an offence is liable to a fine at level 3 (currently set at HK\$10,000) (see section 64A(1) of the PDPO).
5. You may charge a fee for complying with a data access request, but section 28(3) of the PDPO provides that “no fee imposed for complying with a data access request shall be excessive”. The PDPO does not define the meaning of “excessive” with regard to imposing a data access request fee. According to the principle laid down in the decision of Administrative Appeal No. 37/2009, a data user is only allowed to charge the requestor for the costs which are “directly related to and necessary for” complying with a data access request.
6. You shall refuse to comply with a data access request –
 - (a) if you are not supplied with such information as you may reasonably require –
 - (i) in order to satisfy you as to the identity of the requestor;
 - (ii) where the requestor purports to be a relevant person, in order to satisfy you –
 - (A) as to the identity of the individual in relation to whom the requestor purports to be such a person; and
 - (B) that the requestor is such a person in relation to that individual;
 - (b) subject to section 20(2) of the PDPO, if you cannot comply with the request without disclosing personal data of which any other individual is the data subject unless you are satisfied that the other individual has consented to the disclosure of the data to the requestor; or



- (c) in any other case, if compliance with the request is for the time being prohibited under the PDPO or any other Ordinance.

(see section 20(1) of the PDPO)

Section 20(2) of the PDPO provides that section 20(1)(b) (i.e. paragraph 6(b) above) shall not operate -

- (a) *so that the reference in that subsection to personal data of which any other individual is the data subject includes a reference to information identifying that individual as the source of the personal data to which the data access request concerned relates unless that information names or otherwise explicitly identifies that individual;*
- (b) *so as to excuse you from complying with the data access request concerned to the extent that the request may be complied with without disclosing the identity of the other individual, whether by the omission of names, or other identifying particulars, or otherwise.*

7. You may refuse to comply with a data access request if –

- (a) the request is not in writing in the Chinese or English language;
- (b) you are not supplied with such information as you may reasonably require to locate the personal data to which the request relates;
- (c) the request follows 2 or more similar requests made by-
 - (i) the individual who is the data subject in respect of the personal data to which the request relates;
 - (ii) one or more relevant persons on behalf of that individual; or
 - (iii) any combination of that individual and those relevant persons, and it is unreasonable in all the circumstances for you to comply with the request;
- (d) subject to section 20(4), any other data user controls the use of the data in such a way as to prohibit you from complying (whether in whole or in part) with the request;
- (e) the request is not made by use of this Form (but you are strongly advised to respond to the request if it substantially contains the scope and details of the requested data because reliance of this ground of refusal is merely technical and the requestor may simply lodge another request using this Form);
- (ea) you are entitled under the PDPO or any other Ordinance not to comply with the request; or
- (f) in any other case, compliance with the request may for the time being be refused under the PDPO, whether by virtue of an exemption under Part VIII or otherwise.

(see section 20(3) of the PDPO)

Section 20(4) of the PDPO provides that section 20(3)(d) (i.e. paragraph 7(d) above) shall not operate so as to excuse you from complying with the data access request concerned –

- (a) *in so far as the request relates to section 18(1)(a), to any extent;*
- (b) *in so far as the request relates to section 18(1)(b), to any extent that you can comply with the request without contravening the prohibition concerned.*

Part I: Data User

Particulars of the Data User to whom this data access request is made

Name¹ (full name in block letters): _____

(for the attention of ² _____)

Address: _____

Part II: Data Subject

Particulars of the Data Subject making this data access request

Name in English (full name in block letters, surname first): _____

Name in Chinese (if any): _____

Personal identifier, e.g. Hong Kong Identity Card number³/ passport number or other identification number previously assigned by the Data User (if any, such as student number, staff number, patient number, account number, membership number or other reference number): _____

Correspondence address: _____

Day time contact phone number: _____

Email address (if any): _____

[This part must be completed if this request is made by a Requestor other than the Data Subject]

Part III: The Requestor

Particulars and capacity of the Requestor⁴

Name in English (full name in block letters, surname first): _____

Name in Chinese (if any): _____

Correspondence address: _____

Day time contact phone number: _____

Email address (if any): _____

¹ Please fill in the full name of the Data User to whom the data access request is addressed.

² If you have previously been informed by the Data User of the name and/or job title of the person to whom such a data access request may be made, please fill in here the name and/or job title of such person.

³ For Data Subject who is Hong Kong Identity Card holder. Please note that the information may assist the Data User to retrieve or locate the Requested Data. The identity card number needs not be provided in this Form if you have reasonable grounds to believe that this will not be necessary for the unique identification of the Data Subject by the Data User in the circumstances.

⁴ The Data User may require reasonably sufficient personal information from you to satisfy itself as to your identity before it can comply with this data access request.



This data access request is made in my capacity as a “relevant person” on behalf of the Data Subject as follows:

- the Data Subject is a minor and I have parental responsibility over the Data Subject;
- the Data Subject is incapable of managing his/her own affairs and I have been appointed by a court to manage those affairs;
- the Data Subject is mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136), and :-
 - (i) I have been appointed under section 44A, 59O or 59Q of that Ordinance to be his/her guardian; or
 - (ii) I have been vested the guardianship of the Data Subject or I have to perform the functions of the appointed guardian under section 44B(2A) or (2B) or 59T(1) or (2) of that Ordinance; or
- I am authorized in writing by the Data Subject to make this data access request on his/her behalf.

(Please give a tick in the appropriate box)

In proof of my above capacity, I hereby enclose the following:-

- copy of birth certificate
- copy of court order
- written authorization
- others, please specify : _____

(Please tick and complete where appropriate)

Part IV: The Requested Data

This data access request is made under section 18(1) of the PDPO for the following personal data of the Data Subject, except those specifically excluded under Part V of this Form:-

Description of the Requested Data⁵:

Date around which or period within which the Requested Data was collected (if known):

The name of the branch or staff member of the Data User who collected the Requested Data (if known):

⁵ Please specify clearly and in detail the personal data requested (e.g. personal data contained in appraisal reports, medical records, credit reports) including further information, if any, such as the particular incident or transaction in association with it, the circumstances under which the personal data was collected or held, etc. to facilitate the location of the Requested Data. Too general a description of the Requested Data, such as “all of my personal data”, may render the request being refused by the Data User pursuant to section 20(3)(b) of the PDPO where the Data User is not supplied with such information as it may reasonably require to locate the personal data to which the request relates.

Part V: Exclusions

I do not require any personal data⁶ which is:

- contained in documents which had previously been provided to the Data User by the Data Subject (e.g. letters to the Data User and/or the Requestor from the Data Subject)
- contained in documents which had previously been provided to the Data Subject by the Data User (e.g. letters to the Data Subject and/or the Requestor from the Data User or documents the Data User had provided to the Data Subject and/or the Requestor pursuant to a previous request)
- in the public domain (e.g. newspaper clippings or entries in public registers concerning the Data Subject)
- set out below (please describe as fully as possible):

(Please tick and complete where appropriate)

Part VI: The Request

I hereby request you:-

- (a) to inform me whether you hold the Requested Data⁷
- (b) to supply to me a copy of the Requested Data that you hold⁸, subject to the exclusions in Part V above
- both (a) and (b)

(Please give a tick in the appropriate box)

Part VII: Preferred Manner of Compliance

I would prefer that you⁹:

- send by registered mail a copy of the Requested Data to me at my correspondence address given in this Form
- send by ordinary mail a copy of the Requested Data to me at my correspondence address given in this Form
- supply to me a copy of the Requested Data in the *English/Chinese/in the language in which the data is held¹⁰ (*Please delete where appropriate).
- supply to me a copy of the Requested Data in the form of _____ (e.g. computer disk, microfilm, etc.)¹¹

(Please tick and complete where appropriate)

⁶ Please tick to exclude, as far as possible, any personal data that you do not wish to include in the scope of the Requested Data. This may help to avoid any unnecessary delay or charge in complying with the data access request.

⁷ By ticking this box, the Requestor indicates that he is requesting only for a confirmation of “Yes” or “No” as to whether the Data User holds the Requested Data and is not requesting the Data User to provide a copy of the Requested Data.

⁸ By ticking this box, the Requestor indicates that he is requesting only for a copy of the Requested Data. If the Data User does not hold the Requested Data, the Data User will need to notify the Requestor in writing that it does not hold the data. Please refer to paragraph 1 of “Important Notice to Data User” for exception to written notification.

⁹ However, compliance with the data access request may not be in the preferred manner where it is not reasonably practicable to do so.

¹⁰ If the language specified is not the language in which the data is held, subject to section 20(2)(b), it will be sufficient for the Data User to provide a true copy of the document which contains the data.

¹¹ If the Data User is unable to supply the form as specified because it is not practicable for the Data User to do so, it will be sufficient to supply the data in the form which it is practicable for the Data User to supply and accompanied by a written notice to inform the Requestor of the same.



Part VIII: Further Information and Payment

I understand that before complying with this request, you may require me to provide¹²:

- (a) proof of my identity;
- (b) proof of the Data Subject's identity if I am making this request as a relevant person and further proof of my status as a relevant person;
- (c) such further information as may be reasonably required for you to locate the Requested Data;
- (d) payment of a fee charged under section 28 of the PDPO¹³.

Part IX: Use of Personal Data

Except with the prescribed consent of the individual concerned, the personal data provided in this Form will be used for the purpose of processing this data access request and other directly related purposes only.

Date

Signature of the Requestor

¹² Failure to provide the information as required by the Data User under this Part may result in the data access request being refused, or not being complied with to the desired extent.

¹³ Sections 28(2) and (3) of the PDPO provide that a fee may be charged for complying with a data access request made under section 18(1)(a) or (b), which fee shall not be excessive. According to section 28(5) of the PDPO, compliance with a data access request may be refused unless and until any such fee has been paid.





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