



Matching Procedure: Some Common Questions

►► Q1: What is a matching procedure?

A: The Personal Data (Privacy) Ordinance (“the Ordinance”) has a definition of “matching procedure”. The definition can be divided into four criteria for determining whether a particular process of comparing personal data is a “matching procedure”. All four criteria must be met before such a process qualifies as a “matching procedure”. The four criteria are :

- (a) there is a comparison of **two sets of personal data, each of which is collected for different purposes**, e.g. one set of personal data was collected for purposes A and B, and a second set collected for purposes X and Y;
- (b) each comparison involves the personal data of **10 or more data subjects**;
- (c) the comparison is **not carried out by manual means** but by a computer programme designed and applied for performing the comparison process; and
- (d) the end result of the comparison may be used, whether immediately or at any subsequent time, for the purpose of **taking adverse action** against any of the data subjects concerned.

►► Q2: What is meant by adverse action?

A: Adverse action is defined in the Ordinance as any action that may adversely affect an individual's rights, benefits, privileges, obligations or interests (including legitimate expectations).

►► Q3: Why is consent needed?

A: Section 30 of the Ordinance stipulates that a matching procedure may not be carried out unless one of the following conditions has been met:

- (a) all the individuals who are the subjects of the data to be matched have voluntarily given express consent to the matching procedure being carried out;
- (b) the Privacy Commissioner for Personal Data (“the Commissioner”) has given consent under section 32 of the Ordinance for the matching procedure to be carried out;
- (c) the matching procedure belongs to a class of matching procedures which the Commissioner has specified by notice in the Government Gazette as a class of such procedures that may be carried out; or
- (d) the matching procedure is required or permitted by a provision of any Ordinance in Schedule 4 to the Ordinance.

The Commissioner has not specified any class of matching procedures as a class of such procedures that may be carried out under condition (c); neither have any provisions of an Ordinance requiring or permitting a matching procedure been specified in Schedule 4 to the Ordinance under condition (d). Accordingly, if someone wishes to carry out a matching procedure in compliance with section 30, they must meet either condition (a) or (b). That is to say, they must either obtain the express and voluntary consent of the individuals who are the subjects of the data to be matched or seek the consent of the Commissioner to carry out the matching procedure concerned.

Consent of the Commissioner shall be sought using a Matching Procedure Request Form (OPS002), which can be obtained from the Office of the Privacy Commissioner for Personal Data at 12/F, Sunlight Tower, 248 Queen's Road East, Wanchai, Hong Kong or downloaded from www.pcpd.org.hk/english/publications/files/ops002.pdf.

►► Q4: Are there any restrictions on a comparison of personal data which is not a "matching procedure"?

A: Such a comparison process is not subject to the special requirements under the Ordinance relating to matching procedures. However, it is subject to the other general provisions of the Ordinance. For example, data protection principle 3 in Schedule 1 to the Ordinance provides that personal data shall not be used for a new purpose unless the express and voluntary consent of the data subjects has been obtained. According to the Ordinance, a “new purpose” refers to any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a directly related purpose.

►► Q5: Can I seek consent to carry out a series of matching procedures?

A: Yes, so long as there is no significant difference between the individual matching procedures with respect to the “Details of Matching Procedure” in Part B and “Information in Support of the Request” in Part C of the relevant Matching Procedure Request Form.

►► Q6: What if the two sets of personal data are collected and used by the same organisation?

A: This is not relevant so long as the four criteria detailed above for a matching procedure are met. In other words, a comparison process that meets all four criteria for a matching procedure is a matching procedure whether one or more organisations are involved in collecting or holding the personal data concerned.

►► Q7: Please give an example of a comparison process that is a "matching procedure".

A: Example of a Matching Procedure

Data user A is responsible for making payments to several thousand individuals who meet certain eligibility criteria. Data user A collects and uses the personal data of individuals applying for such payments for the purpose of determining whether they are eligible for the payments and arranging that the money be paid to those who are.

One of the eligibility criteria is that the applicant should not own property. To check whether the applicant meet this criterion, data user A compares the personal data collected with that contained in a register of property owners maintained by data user B. The register contains personal data collected by data user B for purposes related to land and property ownership matters. The comparison of the first set of personal data held by data user A with the set of personal data held by data user B will confirm whether or not the applicant concerned owns property.

As the number of applicants involved is large, data user A uses a computer programme to compare the personal data it holds with the personal data held by data user B to ascertain "hits" of individuals matched in both databases to indicate that they own property. Any applicant identified as owning property by this automated comparison will have his or her application for payment declined or, in the case of a recipient currently receiving payment, payment will be discontinued.

The above is a matching procedure because all four criteria of a matching procedure are met.

►► Q8: Please give examples of comparison processes that are not "matching procedures".

A: Examples of Comparison Procedures Falling Outside the Definition of Matching Procedure

Case A - Manual Checking of Computer Records

Data user C has collected personal data for recruitment purposes. Data user D maintains a register of personal data that has been collected for purposes related to ascertaining the residence status of individuals. Data user C provides the personal data, including the names and identity card numbers, of 20 selected candidates to data user D to check whether the candidates are Hong Kong residents before offering employment to those candidates.

Upon receipt of the personal data from data user C, data user D enters the name and identity card number of each individual as search criteria against its computer database to retrieve any record of personal data that relates to that individual. If any such record exists, data user D checks through the personal data in the record to determine whether or not the individual is a Hong Kong resident. The outcome of the check is then sent to data user C. Having received the reply, data user C decides whether or not to offer employment to each candidate.

The above is **not** a matching procedure because the comparison process itself is carried out by manual, **not** automated means. Computer equipment is only used to retrieve the data concerned.

Case B - Updating of Personal Data

Data user E is the agent for a brand of air-conditioner. It collects personal data from hundreds of customers, in order to provide maintenance service for the air-conditioners they have purchased. When data user E receives notice of changes in the personal particulars of its customers, it updates its database. The processing of these changes may involve more than ten individuals at any one time.

The above is **not** a matching procedure because it does not involve the comparison of two sets of personal data collected for different purposes nor is there any adverse action involved. It is simply an updating exercise, in which the updated personal data is being used for the same purpose as it was originally collected.



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© Office of the Privacy Commissioner for Personal Data, Hong Kong
First published in February 1997
October 2015 (First Revision)