

## Proper Handling of Data Correction Request by Data Users

### Introduction

Under the Personal Data (Privacy) Ordinance, Cap. 486 (“the Ordinance”), a data subject may make a data correction request (“DCR”) to a data user after the data user has complied with his/her data access request (“DAR”)<sup>1</sup>.

Responsible organizational data users creating, maintaining, using or disseminating records of identifiable personal data must assure the reliability of the data for their intended use. Indeed, failure to handle a DCR in accordance with the requirements under the Ordinance without reasonable excuse may constitute an offence and render the offender liable on conviction to a fine.

This guidance note provides general guidance to data users on the proper handling of DCRs to ensure accuracy of personal data. It should be read in conjunction with the guidance note on “Proper Handling of Data Access Request and Charging of Data Access Request Fee by Data Users” issued by the Privacy Commissioner for Personal Data (the “Commissioner”)<sup>2</sup>.

### What constitutes a DCR?

A DCR refers to a written request in the Chinese or English language made by an individual, or a “relevant person”<sup>3</sup> on behalf of an individual, for correction of the individual’s personal data, a copy of which

has already been supplied by the data user to him/her in compliance with an earlier DAR.

Examples of DCRs include requests by consumers for correction of their credit data recorded in their credit reports<sup>4</sup> and requests by employees for correction of employment-related data held by their employers.

### Scope of DCR

A requestor is not entitled under the Ordinance to make a DCR to a data user without having first made a DAR to obtain a copy of his/her personal data and checked the accuracy of such data. If a DAR has been refused by a data user lawfully, the requestor is not entitled to make a DCR.

Nevertheless, an individual may sometimes directly ask a data user to correct/update his/her personal data held by the data user without going through DAR procedures, in particular when there have been previous dealings between the parties. For instance, a mobile service customer may inform the mobile service operator of his new correspondence address and provide an address proof.

In the circumstances, although the data user is not required to handle the request in accordance with the stringent procedural requirements relating to compliance with a DCR, the Ordinance still requires the data user to take all practicable steps to ensure

<sup>1</sup> Section 22 of and Data Protection Principle 6(e) in Schedule 1 to the Ordinance

<sup>2</sup> The guidance note can be downloaded from [http://www.pcpd.org.hk/english/publications/files/DAR\\_e.pdf](http://www.pcpd.org.hk/english/publications/files/DAR_e.pdf)

<sup>3</sup> As defined in section 2 or section 17A of the Ordinance

<sup>4</sup> Specifically, a credit reference agency shall comply with the relevant provisions of the Code of Practice on Consumer Credit Data issued by the Commissioner in handling DCRs in relation to consumer credit data.

that the personal data it holds is accurate having regard to the purpose for which it is to be used<sup>5</sup>. Hence, it is always the data user's obligation to take all practicable steps to correct any inaccurate personal data no matter whether a DCR has been received.

It follows that an organizational data user should put in place appropriate systems to update regularly the personal data held by it. On the other hand, where adverse actions may be taken against the data subject in reliance of his/her personal data (for instance, an employee's record of attendance), the data subject (i.e. the employee) should be given a chance to respond and, if necessary, challenge the accuracy of the data (i.e. the attendance record) so used.

Where the issues behind a DCR can be more appropriately dealt with in other forums and a complaint is lodged, the Commissioner may not investigate into such a complaint. For example, an employee who disputes the grounds of termination upon which his employment is terminated should seek redress through the Labour Tribunal or other legal channels, instead of making a DCR regarding the employer's allegations of unsatisfactory performance against him in his letter of termination<sup>6</sup>.

### ***Form of DCR***

There is no prescribed form for a DCR except that it cannot be made verbally<sup>7</sup>.

In this regard, after complying with a DAR, a data user should assess whether any subsequent correspondence from the requestor would constitute a DCR. If a

requestor replies to the data user alleging any inaccuracy in the copy of his/her personal data and/or requesting correction of such data, the correspondence would generally constitute a DCR even if the requestor does not make reference to any provisions under the Ordinance in relation to DCR.

### **What should a data user do upon receiving a DCR?**

#### ***Check the identity of the requestor***

A data user should ascertain the identity of the requestor. Since a DCR ought to be preceded by a DAR, the data user may make reference to the identity proof provided by the requestor for his DAR.

However, if the requestor is a "relevant person" in relation to a data subject only because the requestor has been authorized in writing by the data subject to make a DAR, the requestor is not entitled to make a DCR based merely on that authorization<sup>8</sup>. The data user should ask the requestor to furnish a fresh written authorization signed by the data subject for the DCR.

If a data user is not supplied with the reasonably required information to ascertain the identity of the data subject or establish the relationship between the requestor and the data subject, the data user should refuse to comply with the DCR<sup>9</sup>.

#### ***Assess whether the personal data to which a DCR relates is inaccurate***

When a data user receives a DCR, it may accede to the request or refuse to do so.

Before complying with or refusing to comply with a DCR, a data user is advised not to disclose to a third party the personal data to which the DCR relates. In case the data user has reason to do so, it should take

<sup>5</sup> Data Protection Principle 2(1) in Schedule 1 to the Ordinance

<sup>6</sup> In Administrative Appeal No. 22/2000, it was held that if an employee disputes the grounds upon which his employment is terminated, he should seek redress, not through the Office of the Privacy Commissioner for Personal Data, but through other legal channels, such as taking his case to the Labour Tribunal.

<sup>7</sup> The issue has been decided in Administrative Appeal No. 12/2008.

<sup>8</sup> Section 22(1A) of the Ordinance

<sup>9</sup> Section 24(1) of the Ordinance

all practicable steps to advise the third party concerned that the data is being considered for correction<sup>10</sup>.

A data user should consider the fundamental question of whether the personal data in question is inaccurate<sup>11</sup>. If the data user discovers that the data is inaccurate (for instance, where the data on the data subject's identity card and that of the data user's record is completely incompatible), the data user should comply with the DCR.

If the data in question held by the data user was provided by a third party instead of collected from the data subject directly, the data user may consult the third party for the accuracy of such data.

Sometimes there could be dispute among the parties in relation to the accuracy of an "expression of opinion"<sup>12</sup> about the data subject. In this regard, the data user should note the distinction between factual and evaluative statements. For instance, statements made by an appraising officer in a performance appraisal report about the performance of the appraisee may consist of mostly expression of opinion and partly fact. While comments on the appraisee's competencies are generally expression of opinion, statements on which duties have been performed by the appraisee during the appraisal period are likely questions of fact.

Where a DCR complaint is lodged and the data concerned is "opinion", the Commissioner may not investigate into the complaint as it is unlikely or impracticable that the matter involved can be verified by him competently. Where the data concerned in the dispute is "fact" (for example, the data subject is in debt, that is, liabilities exceeding assets), the Commissioner will

consider whether the data user has reasonable justifications not to accept the DCR on inaccurate data. He may also evaluate the conflicting testimonies in relation to the factual accuracy of the data and make a finding on the dispute. However, where a DCR is clearly and blatantly shown to be unmeritorious on the face of contemporaneous documents, the Commissioner may not investigate into the data user's refusal to accede to the DCR<sup>13</sup>.

### **If the data user considers that the data is inaccurate and complies with the DCR**

Except where there are valid grounds for refusal under section 24 of the Ordinance, a data user is required to make the necessary correction<sup>14</sup> and supply a copy of the corrected data to the requestor within 40 calendar (not working) days after receiving a DCR<sup>15</sup>.

A data user is not entitled to impose a fee for complying with a DCR<sup>16</sup>.

### ***If the inaccurate data has been disclosed to a third party***

If the inaccurate data has been disclosed to a third party during the past 12 months before the day of correction of the data in compliance with a DCR, the data user should ascertain whether the third party has ceased using those data. If the data user has no reason to believe that the third party has ceased using the data for the purpose it was disclosed, the data user should take all practicable steps to supply such third party with a copy of the corrected personal data and a written notice of the reasons for the correction<sup>17</sup>, unless the disclosure consists of the third party's inspection of a register or other like document which is available for

<sup>10</sup> Section 22(3) of the Ordinance

<sup>11</sup> "Inaccurate", in relation to personal data, is defined under section 2(1) of the Ordinance to mean "*incorrect, misleading, incomplete or obsolete*".

<sup>12</sup> Pursuant to section 25(3) of the Ordinance, "*expression of opinion*" includes an assertion of fact which (a) is unverifiable; or (b) in all the circumstances of the case, is not practicable to verify.

<sup>13</sup> See Administrative Appeal No. 12/2011

<sup>14</sup> "Correction", in relation to personal data, is defined under section 2(1) of the Ordinance to mean "*rectification, erasure or completion*".

<sup>15</sup> Section 23(1) of the Ordinance

<sup>16</sup> Section 28(1) of the Ordinance

<sup>17</sup> Section 23(1)(c) of the Ordinance

public inspection (except where the third party has been supplied a copy certified correct by the data user)<sup>18</sup>.

According to the decision of Administrative Appeal No. 2/2011, whether the third party is still “using” the inaccurate data should be given a reasonably wide construction. To justify “using”, the third party does not have to retrieve the inaccurate data to look at it and specifically rely on it. It suffices if the inaccurate data may still have an effect or influence on that third party’s decision-making or other action which impacts on the data subject.

### ***If a data user is unable to comply with the DCR within 40 days***

If a data user is unable to comply with a DCR within 40 days (e.g. the data to be corrected is voluminous), the data user should give the requestor written notification of the situation with reason(s) within the 40-day period, and comply with the DCR to the extent, if any, that the data user is able to comply with the DCR<sup>19</sup>. The data user is required to comply with the DCR as soon as practicable thereafter<sup>20</sup>.

### ***If the data user refuses to comply with the DCR***

A data user may refuse to comply with a DCR if it is not satisfied that the personal data to which the DCR relates is inaccurate<sup>21</sup>. Similarly, a data user may refuse a DCR if it is not provided with sufficient information to ascertain that the data is inaccurate<sup>22</sup>, or it is not satisfied that the correction provided in the DCR is accurate<sup>23</sup>.

### ***Steps to be taken when refusing to comply with a DCR***

A data user is obliged to give written notice and reasons for refusal to the requestor within 40 days from receiving the DCR<sup>24</sup>.

Where there is another data user that controls the processing of the data in such a way as to prohibit the data user from complying with the DCR, the data user should also in its notification of refusal to comply with the DCR to the requestor, inform the requestor of the name and address of the other data user concerned<sup>25</sup>.

Where the personal data to which a DCR relates is an expression of opinion and the data user is not satisfied that the opinion is inaccurate, the data user should make a note of the matters in respect of which the opinion is considered by the requestor to be inaccurate, and in such a way that such data cannot be used by a person (including the data user and a third party) without the note being drawn to the attention of, and being available for inspection by, that person<sup>26</sup>. The data user should also attach a copy of the note to the notice of refusal which relates to that request<sup>27</sup>.

A data user is required to keep a log entry containing the particulars of the reasons for the refusal of DCR for 4 years<sup>28</sup>.

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<sup>18</sup> Section 23(3) of the Ordinance

<sup>19</sup> Section 23(2)(a) of the Ordinance

<sup>20</sup> Section 23(2)(b) of the Ordinance

<sup>21</sup> Section 24(3)(b) of the Ordinance

<sup>22</sup> Section 24(3)(c) of the Ordinance

<sup>23</sup> Section 24(3)(d) of the Ordinance

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<sup>24</sup> Section 25(1)(a) of the Ordinance

<sup>25</sup> Sections 24(3)(e) and 25(1)(b) of the Ordinance

<sup>26</sup> Section 25(2) of the Ordinance

<sup>27</sup> Section 25(2)(ii) of the Ordinance

<sup>28</sup> Section 27 of the Ordinance

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