

Legislative Council Panel on Constitutional Affairs

Report on the Work

of the Office of the Privacy Commissioner for Personal Data in 2020

The Privacy Commissioner for Personal Data (the Privacy Commissioner) will brief Members at the meeting of the Legislative Council Panel on Constitutional Affairs on 18 January 2021 on the activities of her office (the PCPD) in 2020. This paper serves to update Members on the PCPD's work in 2020.

Overview

2. In 2020, the PCPD continued to strive to monitor and supervise compliance with the provisions of the Personal Data (Privacy) Ordinance (the Ordinance), Chapter 486 of the Laws of Hong Kong, in various sectors, though some aspects of its work have been affected by the COVID-19 pandemic.

3. Broadly speaking, the PCPD has given extensive opinions and guidances on a range of privacy issues arising from measures to contain the spread of the new coronavirus or initiatives to support the economy. Apart from updating Guidance Notes to further enhance the protection of personal data privacy in certain specified areas, the PCPD also took proactive actions to address personal data privacy issues arising from the COVID-19 pandemic, including the issue of practical guidances on the protection of personal data

under work-from-home arrangements and for resumption of face-to-face classes in schools.

4. The work of the PCPD in terms of publicity and education has however been affected to a certain extent by the pandemic. Face-to-face seminars had to be cancelled or deferred from time to time in 2020 and talks or seminars were mostly conducted in the form of webinars if they were held. Although the same applies to the convening of international conferences, the PCPD has continued to liaise and collaborate with its counterparts worldwide through participation in virtual meetings.

5. The Panel on Constitutional Affairs discussed the direction of possible amendments to the Ordinance at its meeting held on 20 January 2020. The proposed direction encompasses issues relating to the scope (e.g. definition of personal data and direct regulation on data processors), the process (e.g. vesting criminal investigation powers and prosecution powers with the Privacy Commissioner, including enhanced powers to deal with offences like doxxing), the deterrent effect (e.g. instituting a mandatory data breach notification system, empowering the Privacy Commissioner to impose administrative fines and increasing the maximum level of criminal fines) as well as the rights of data subjects (e.g. requiring organisational data users to expressly promulgate personal data retention policy and maximum retention periods).

6. In 2021, the PCPD will continue to actively collaborate with the Government to work on the amendments to the Ordinance. At the same time, the PCPD will consider taking targeted measures to continue with its role as an enforcer, promoter and educator under the Ordinance.

Enforcement of the Ordinance

Complaints

7. In 2020, the PCPD received 4,862 complaints, which is fewer than that in 2019 (9,182 cases), but the number has outnumbered the total in 2018 (1,890 cases) by 157%.

8. Of these 4,862 complaint cases:-

- i. 41% was made against the private sector (1,989 cases), 9% against the public sector/Government departments (460 cases) and 50% against individuals (2,413 cases); and
- ii. in terms of the allegations arising from the complaints (and one complaint might contain more than one allegation), there were a total of 5,559 allegations of contravention of the Ordinance - 56% of which related to the use of personal data without the consent of data subjects (3,125 allegations), 29% related to the purpose and manner of data collection (1,614 allegations), 8% related to data security (447 allegations) and 2% related to data access/correction requests (110 allegations).

9. Among the complaints lodged against private sector organisations, the property management sector recorded the highest number of complaint (831 cases, among which 671 cases were identical complaints made in a template form as regards a suspected theft of residents' letters by a security guard; others were about property management practices such as the posting of notices containing personal data). The second highest sector is the financial industry (224 cases) and most of the complaints were about the use of personal data for debt collection.

10. The number of complaints against doxxing activities processed in 2020 is 1,198. The cases mainly concerned members of the police and members of the public who were doxxed after they had expressed views to show their support for or opposition against the Government.

11. The PCPD also received 215 complaints in relation to the COVID-19 pandemic. These cases primarily concerned the collection of personal data for distributing and selling masks and toilet rolls, the collection of employees' location data and body temperature measurements by employers, and the collection of health declaration forms by restaurants and hotels.

Direct Marketing

12. In 2020, the PCPD received 144 direct marketing (DM) related complaints and the equivalent number was 163 cases in 2019. The complaints were mainly about the use of personal data by data users for DM without obtaining the data subject's consent and about data users' failure to observe data subjects' opt-out requests. During 2020, eight cases had been referred to the Police for criminal investigations and there was one conviction (please see **Annex A** for details).

Compliance

13. In 2020, the PCPD received 103 data breach notifications, as compared to 139 notifications received in 2019. 64% of the reports were made by private organisations and 36% were made by non-private organisations. The data breach incidents involved hacking, system misconfiguration, unauthorised access of personal data by internal staff, loss of documents or

portable devices, inadvertent disclosure of personal data by fax, email or post, and accidental erasure of personal data, etc.

14. In the reporting period, the PCPD initiated 344 compliance checks and one compliance investigation into practices that were considered to be inconsistent with the requirements of the Ordinance, as compared to 311 compliance checks and five investigations conducted in 2019. The compliance checks conducted against private and non-private organisations were 56% and 44% respectively.

Doxxing

15. In 2020, the PCPD processed a total of 1,198 doxxing cases, among which 162 cases were brought forward from 2019 and 1,036 cases were received in 2020.

16. In fact, the PCPD has received complaints on doxxing cases since June 2019. As of 31 December 2020, the PCPD has written to 18 online platforms for 253 times, urging them to remove a total of 4,827 web links, 3,341 (approximately 70%) of which have been removed. Noting that the operation of most doxxing websites were located overseas, the PCPD has liaised with personal data privacy authorities or domain registration companies in other jurisdictions in those cases to seek their assistance and in the taking of follow-up actions.

17. To combat doxxing, the PCPD has strengthened its collaboration with the Police, other supervisory bodies and trade associations. As a result of our efforts, for example, the Hong Kong SAR Licensed Money Lenders Association Limited has appealed to all its members to tighten up their

customer due diligence and verification procedures to prevent identity thefts. In addition, the Hong Kong Monetary Authority has reminded banks and the financial community to take precaution on the related business risk of unauthorised credit applications perpetrated through use of stolen personal data. The PCPD also learnt that the Department of Health had put up a warning notice on its organ donation website to warn people against the fraudulent use of others' personal data to apply for registration of organ donation.

18. As of 31 December 2020, the PCPD referred 1,461 doxxing cases which involved suspected contravention under section 64 of the Ordinance¹ to the Police for criminal investigation and consideration of prosecution. A total of 17 individuals were reported to have been arrested by the Police on suspicion of contravening section 64 of the Ordinance. On 9 October 2020, a defendant was convicted in the District Court of disclosing personal data obtained without the relevant consent from data user under section 64(2) of the Ordinance², together with other convicted charges. The defendant was subsequently sentenced on 3 November 2020 to imprisonment for 18 months for the offence under the Ordinance. Together with other convictions, the defendant was sentenced to imprisonment for 24 months. This is the first conviction under section 64(2) of the Ordinance.

19. Since June 2019, the PCPD has also referred 57 doxxing cases which involved suspected violations of injunction orders³ to the Department of Justice for follow up. On 17 June 2020, a defendant was found liable in the High Court for civil contempt of court for sharing the personal data of police

¹ Section 64 of the Ordinance provides for offences for disclosing personal data obtained without consent from data users.

² DCCC 164/2020

³ [2019] HKCFI 2773 (HCA 1957 of 2019); [2019] HKCFI 2809 (HCA 2007 of 2019); [2020] HKCFI 2785 (HCA 1847 of 2020)

officers and their family members on a social network platform⁴. The defendant was sentenced to 28 days' imprisonment, suspended for 12 months. This is the first conviction secured since the granting of an injunction order in October 2019 against the doxxing of police officers. On 19 October 2020, another defendant was convicted in the High Court of civil contempt of court for posting the personal data of a police officer on a social media platform⁵. The defendant was also sentenced to 28 days' imprisonment, suspended for one year. In the third case, another defendant was convicted in the High Court on 28 December 2020 of civil contempt of court for posting the personal data of a police officer and his family members on a social media platform⁶. The defendant was sentenced to 21 days' immediate imprisonment. This is the first immediate imprisonment case for breaching the relevant injunction order restraining doxxing. On 29 December 2020, another defendant was convicted in the High Court of civil contempt of court for posting the personal data of a police officer and his family members on a social media platform⁷. The defendant was sentenced to 21 days' imprisonment, suspended for one year. Particulars of the concluded court cases on doxxing are set out in **Annex B**.

Inspection

20. In August 2020, the PCPD released an inspection⁸ report on the employment-related personal data system of a large-scale company in the food and beverage industry. The Privacy Commissioner considered that the findings and recommendations made in the report would serve as a reference

⁴ [2020] HKCFI 1194 (HCMP 249 of 2020)

⁵ [2020] HKCFI 2687 (HCMP 1256 of 2020)

⁶ [2020] HKCFI 3147 (HCMP 744 of 2020)

⁷ [2020] HKCFI 3148 (HCMP 1068 of 2020)

⁸ Pursuant to section 36 of the Ordinance, the Commissioner may carry out an inspection of any personal data system used by a data user for the purpose of making recommendations relating to the promotion of the compliance with the provisions of the Ordinance.

for the food and beverage industry and other employers in the better management of personal data privacy of prospective, current and former employees in ensuring compliance with the requirements under the Ordinance and the Code of Practice on Human Resource Management issued by the PCPD.

Enquiries

21. In 2020, the PCPD received a total of 20,531 enquiries, of which 2,048 cases (10%) were about two incidents relating to the disclosure of personal data of police officers.

22. The nature of enquiries received in the period covered concerns doxxing of police officers and medical practitioners, security of video conferencing tools and collection of employees' travel history and health data amidst the COVID-19 pandemic. Most of the enquiries related to the collection and use of personal data (e.g. Hong Kong Identity Card numbers or copies) (32%), employment (7%) and use of CCTV (4%).

Promotion, Publicity and Public Education

23. In the early stage of the outbreak of the pandemic in 2020, many enterprises and organisations ceased face-to-face meetings, and the PCPD also suspended all public seminars, professional workshops, dedicated seminars and meetings. When the situation slightly improved subsequently, the PCPD gradually resumed relevant initiatives by switching to the online mode. A total of 277 speaking engagements with 27,665 participants were recorded. The PCPD also reinforced its online presence by creating new accounts on social media platforms and revamping its existing platforms to

widely publicise the message of protecting and respecting personal data privacy, including the issuance of 312 social media posts under 70 topics in 2020. We launched advertising campaigns on TV, radio, bus and tram bodies in Hong Kong to spread the messages of privacy protection.

24. To remind data users to strike a reasonable balance between safeguarding public health and personal data privacy during the pandemic, the PCPD issued timely advisories, many of which were in the form of media statements, on employers' collection of health data of employees, children's privacy in online teaching, online personal data security and the taking of temperature measurement at public premises. In particular, when schools started to resume face-to-face classes in late September, the PCPD issued the "Guidance for Schools on the Collection and Use of Personal Data of Teachers, Staff and Students during COVID-19 Pandemic" to facilitate better protection of personal data privacy, in particular that of minors. As teenagers tended to spend more time on online learning and social networking because of the pandemic, the PCPD issued an advisory to urge teenagers to exercise greater vigilance when they go online. In November 2020, the PCPD issued a total of three Guidance Notes to provide practical advice to organisations, employees and users of video conferencing software to enhance data security and the protection of personal data privacy.

25. In June 2020, the PCPD updated the booklet "European Union General Data Protection Regulation 2016" by reviewing the latest implementation situation of the General Data Protection Regulation and giving an account of the related cases to assist local organisations and businesses which have operations or businesses in the European Union. In the same month, the PCPD published the "From Principles to Practice – SME Personal Data

Protection Toolkit” to assist SMEs in complying with the requirements of the Ordinance.

26. In addition, the PCPD also updated a number of Guidance Notes, such as “Guidance on Collection and Use of Biometric Data” and “Proper Handling of Data Access Request and Charging of Data Access Request Fee by Data Users”, etc, in 2020.

27. The PCPD issued 71 media statements and responded to 211 media enquiries in 2020.

Education and Promotion via Websites

28. The PCPD continued to provide more comprehensive information on its website PCPD.org.hk. In 2020, a new webpage titled “Say ‘No’ to Doxxing” was developed. It is dedicated to provide a one-stop portal with information and short videos to help the general public better understand the adverse impact of doxxing acts on individuals and the society and urge members of the public not to breach the law by carrying out relevant acts.

29. Highlights and relevant statistics of the promotion, publicity and public education work of the PCPD are detailed in **Annex C**.

Administrative Appeals Board Cases

30. A total of 23 appeal cases were received in 2020, apart from the three cases against the Privacy Commissioner’s decision to serve an Enforcement Notice, the remaining 20 were made against the Privacy Commissioner’s decisions of terminating or not carrying out an investigation. During the year,

the Administrative Appeals Board handed down decisions on 16 appeal cases concerning personal data privacy, of which 14 cases were dismissed and two cases were remitted to the PCPD for further handling.

Strategic Focus 2021

Privacy Protection Amidst Technological Development

31. The accelerated pace of technological developments brought about by the COVID-19 pandemic and the widespread use of social media has posed unprecedented risks to personal data privacy. The massive collection, holding, processing or use of personal data by electronic means, including through artificial intelligence, still need to comply with the relevant requirements under the Ordinance to ensure the proper protection of personal data. In this regard, the PCPD will continue to provide professional opinions on personal data privacy to the Government and other institutions on the development and application of new technology and seek to collaborate with agencies in different sectors to foster training and develop practical guidance as regards privacy protection.

Enhanced Enforcement

32. In the light of the society's rising awareness and demands for protection of personal data privacy, and the large-scale data breach incidents which took place in recent years both in Hong Kong and worldwide, the PCPD will continue to enhance our collaboration with other law enforcement agencies and take targeted enforcement measures proactively to ensure compliance. These include, for example, the proactive monitoring of personal

data risks online, monitoring of online social media to combat doxxing and any activities which involve the large-scale collection and use of personal data.

33. The PCPD will enhance its collaboration with other law enforcement agencies and trade associations to combat doxxing activities. The PCPD welcomes the Government's proposals to amend the Ordinance to, among other things, introduce a mandatory breach notification system, administrative fines and enhance the PCPD's enforcement powers.

Promotion, Publicity and Education

34. The PCPD will continue with its work in promoting and publicising the respect for and protection of personal data. Thematic promotional activities will be organised and the PCPD will continue to collaborate with education institutions to prepare educational materials, arrange educational talks and seminars for the younger generation. To recognise good performers, the PCPD launched the first Privacy-Friendly Awards in October 2020. The Awards met with very positive response. 130 entries have been received. The list of awardees will be announced in the first quarter of 2021.

Review of the Ordinance

35. Given the rapid development of the global privacy landscape (such as the implementation of the General Data Protection Regulation in the European Union), the risks posed to personal data privacy as a result of technological developments and doxxing activities, as well as the society's increasing awareness and demands of privacy, the PCPD has been actively working with the Government to consider the formulation of concrete

proposals in amending the Ordinance with a view to providing the necessary input to the Government in the legislative amendment exercise.

36. In this regard, the PCPD will make reference to relevant laws in other jurisdictions in order to propose reasonably practicable legislative amendment proposals on areas such as the definition of doxxing offence, penalties, evidential threshold, Privacy Commissioner's statutory criminal investigation and prosecution powers. This will be the priority of our work in the coming year. The PCPD will continue to maintain close communication with the Government in mapping out the concrete legislative proposals and in consulting this Council further.

International and Mainland Connections

37. The landscape of personal data privacy protection is dynamic and constantly evolving, both locally and globally. Digitalisation and globalisation in the data sphere call for enhanced personal data protection regimes and more cross-jurisdictional collaboration among data protection authorities.

38. The PCPD has been actively participating in international and regional forums of data protection authorities with a view to forging a closer work relationship with our counterparts in other jurisdictions. To foster collaboration, we will explore with data protection authorities of other jurisdictions the development of standing mechanisms in the referral and investigation of criminal offences relating to personal data privacy which involve cross-jurisdictional elements. We will strengthen our relationship with them to handle cross-jurisdiction data protection issues and continue to explain newly implemented rules and regulations on data protection of other

jurisdictions which have an impact on the local stakeholders. We aim to achieve this through our network as a member of the Global Privacy Assembly (GPA⁹), the Asia Pacific Privacy Authorities¹⁰ and the Global Privacy Enforcement Network¹¹. In May 2019, the PCPD entered into the signing of a Memorandum of Understanding (MoU) with The Personal Data Protection Commission of Singapore and in July 2020, the PCPD signed an MoU with the Information Commissioner for the United Kingdom to enhance cooperation and collaboration in protecting personal data.

CONCLUSION

39. Members are invited to note the content of this paper.

Office of the Privacy Commissioner for Personal Data, Hong Kong

January 2021

⁹ The GPA, formerly known as the International Conference of Data Protection and Privacy Commissioners, provides an international forum for over 130 data protection authorities from around the globe to discuss and exchange views on privacy issues and the latest international developments.

¹⁰ The Asia Pacific Privacy Authorities is a forum for 19 data protection authorities in the Asia Pacific region.

¹¹ The Global Privacy Enforcement Network is a network of 70 law enforcers worldwide with enforcement powers on personal data and privacy protection.

Annex A

A case relating to direct marketing activity which was referred to the Police for criminal investigation and resulted in conviction in 2020

Date of Conviction	Case Details	Sentence
May 2020	<p>The data subject is a service subscriber of a telecommunication company, and he had opted out the use of his personal data in direct marketing. However, the data subject data later received three direct marketing calls from the telecommunication company.</p> <p>Three charges were laid against the telecommunication company for using the data subject's personal data in direct marketing without his consent, and three charges for failing to comply with the request from the data subject to cease using his personal data in direct marketing.</p>	Fined HK\$12,000 in total (HK\$2,000 in respect of each charge)

Doxxing-related Court Cases in 2020

Date of Conviction	Case Reference and Details	Sentence
17 June 2020	<p>[2020] HKCFI 1194 (HCMP 249 of 2020)</p> <p>A defendant was convicted in the High Court of civil contempt of court for sharing the personal data of a police officer and his family members on a social media platform, violating the injunction order (HCA 1957/2019) granted by the High Court in October 2019.</p> <p>The relevant injunction order restrains, among others, persons from disclosing, without the consent from the relevant data subjects, personal data of police officers and/or their family members, intended or which is likely to intimidate or harass, police officers and/or their family members.</p>	28 days' imprisonment, suspended for one year
9 October 2020	<p>DCCC 164/2020</p> <p>A telecommunications technician who obtained the personal data of a family member of a police officer for doxxing vide his office computer was charged with, among others, an offence under section 64(2) of the Ordinance which involved the disclosure of personal data obtained without the consent from relevant data users, thereby causing psychological harm to the family member of the police officer.</p>	18 months' imprisonment for the offence under section 64(2) of the Ordinance. Together with other convictions, 24 months' imprisonment
19 October 2020	<p>[2020] HKCFI 2687 (HCMP 1256 of 2020)</p> <p>A defendant was convicted in the High Court of civil contempt of court for posting the personal data of a police officer on a social media platform, violating the injunction order (HCA 1957/2019) granted by the High Court in October 2019.</p>	28 days' imprisonment, suspended for one year

28 December 2020	<p>[2020] HKCFI 3147 (HCMP 744 of 2020)</p> <p>A defendant was convicted in the High Court of civil contempt of court for posting the personal data of a police officer and his family members on a social media platform, violating the injunction order (HCA 1957/2019) granted by the High Court in October 2019.</p>	21 days' imprisonment
29 December 2020	<p>[2020] HKCFI 3148 (HCMP 1068 of 2020)</p> <p>A defendant was convicted in the High Court of civil contempt of court for posting the personal data of a police officer and his family members on a social media platform, violating the injunction order (HCA 1957/2019) granted by the High Court in October 2019.</p>	21 days' imprisonment, suspended for one year

Highlights and Figures of Promotion, Publicity and Public Education Work

1. Advisories through Media Statements Relating to COVID-19
 - Guidelines for Employers and Employees
 - Zoom Data Security Incident
 - Guidelines on Children's Privacy during the Pandemic
 - The Use of Information on Social Media for Tracking Potential Carriers of COVID-19
 - Privacy Issues Arising from Mandatory Quarantine Measures
 - Advisory to Premises Operators on Temperature Measurement and Collection of Relevant Personal Data
 - Legal Issues Relating to Personal Data Involved in Government's Distribution of Reusable Masks
 - Privacy Issues Relating to Government's Cash Payout Scheme
 - Security Advisories for Cybersecurity Risks
 - Universal Community Testing Programme
 - Guidance for Schools on the Collection and Use of Personal Data of Teachers, Staff and Students during COVID-19 Pandemic
 - Protecting Personal Data under Work-from-Home Arrangements: Guidance for Organisations
 - Protecting Personal Data under Work-from-Home Arrangements: Guidance for Employees
 - Protecting Personal Data under Work-from-Home Arrangements: Guidance on the Use of Video Conferencing Software

2. Publicity and Education Materials Newly Published or Revised for Organisations and the General Public

- “From Principles to Practice – SME Personal Data Protection Toolkit”
- “An Update on European Union General Data Protection Regulation 2016 (Effective 25 May 2018)” (Revised)
- “Guidance on Election Activities for Candidates, Government Departments, Public Opinion Research, Organisations and Members of the Public and Infographic” (Revised)
- “Guidance on Proper Handling of Data Access Request and Charging of Data Access Request Fee by Data Users” (Revised)
- “Guidance on Collection and Use of Biometric Data” (Revised)
- “Guidance for Schools on the Collection and Use of Personal Data of Teachers, Staff and Students during COVID-19 Pandemic”
- “Protecting Personal Data under Work-from-Home Arrangements: Guidance for Organisations”
- “Protecting Personal Data under Work-from-Home Arrangements: Guidance for Employees”
- “Protecting Personal Data under Work-from-Home Arrangements: Guidance on the Use of Video Conferencing Software”

3. Public Education

- 277 professional workshops, talks, seminars and meetings with stakeholders, with 27,665 participants from over 390 organisations, amounting to 56,134 total training man-hours
- 10 promotion and education programmes, with 344,628 participants
- Privacy Awareness Week with the theme “Protecting Privacy and Respecting Dignity for a Smart Hong Kong”

4. Privacy Protection Initiatives for Property Management Sector and Social Service Organisations
 - Professional Workshops and Seminars on Data Protection in Property Management Practices
 - Webinar for Non-Governmental Organisations: co-organised with The Hong Kong Council of Social Service

5. Social Media
 - 312 social media posts under 70 topics

6. Launch of the first Privacy-Friendly Awards
 - The Awards were open for application from 5 October to 6 November 2020. A total of 130 entries have been received
 - Depending on the number of "Privacy-Friendly Measures" already put in place or completed by an organisation, a Gold, Silver or Bronze "Privacy-Friendly" Certificate may be awarded to the organisation

7. City-wide Advertising Campaigns
 - Bus body advertisement
 - Lunar New Year TV advertisement
 - Lunar New Year radio advertisement
 - Tram advertising campaign