



保障資料主任聯會

DATA  
PROTECTION  
OFFICERS'  
CLUB

## Lunch Talk Series

# Handling of Data Access Request and Charging of Data Access Request Fee

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# Access to Personal Data

- **Data Protection Principle 6**

*A data subject shall be entitled to—*

- (a) ascertain whether a data user holds personal data of which he is the data subject;*
- (b) request access to personal data—*
  - (i) within a reasonable time;*
  - (ii) at a fee, if any, that is not excessive;*
  - (iii) in a reasonable manner; and*
  - (iv) in a form that is intelligible;*
- (c) be given reasons if a request referred to in paragraph (b) is refused;*
- (d) object to a refusal referred to in paragraph (c)”.*

- **Part V of PDPO – sections 17A, 18, 19, 20, 21, 27, 28 and 29**



# Scope of DAR

- **Personal Data**
- **Copy of Data (資料的複本)**
- **True Copy of a Document  
(一份文件的真實複本)**



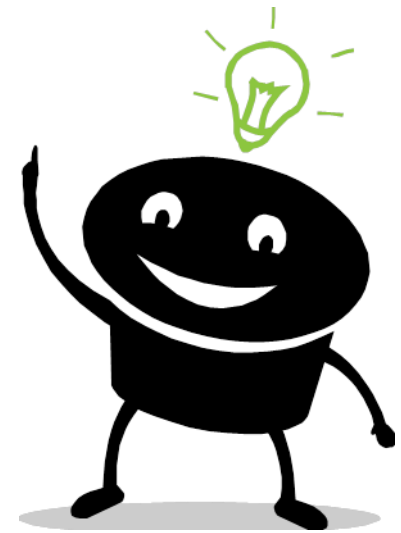
## Scope of DAR

- *Wu Kit Ping v Administrative Appeals Board, [2007] HKLRD 849*
  - *“32. The entitlement is to a copy of the data, it is not an entitlement to see every copy of document which refers to a data subject.”*
  
- **“a true copy of a document which contains the data”**
  - **Section 19(3)(c)**



# Comply or Not?

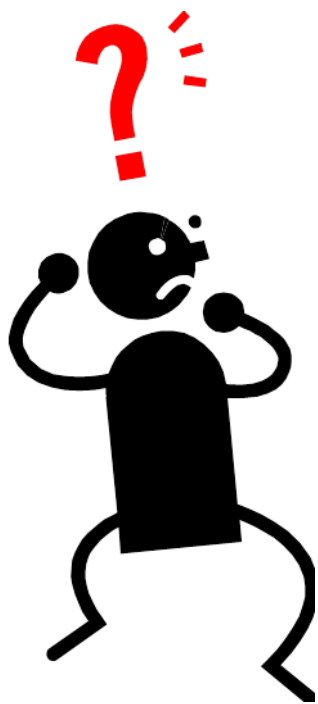
- **Comply with a DAR**  
(依從)
- **Shall refuse to comply with a DAR**  
(須拒絕依從)
- **May refuse to comply with a DAR**  
(可拒絕依從)





## Misconception or Excuse?

- **Unable to comply with a DAR – Section 19(2)**  
(不能依從)
- **“Unable” to locate the requested data?**
- **To seek clarification from the requestor first?**
- **Section 20(3)(b)**





# Accountability

- **An organisation should know what kinds of personal data it holds and where it is held (for example, personal data of employees, personal data of customers, etc.)**





# Common Problems

- **Request not in DAR form (OPS003)**
- **Oral request**
- **Late payment of DAR Fee**
- **Description of the requested data is too generic**
- **Another data user controls the use of the data**
- **No longer hold the requested data**





## No Excessive DAR Fee

- **Meaning of “excessive” not defined**
- **AAB 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 DAR**
  - ~ **Burden of proof is on the data user, unless it may be said that such costs were on their face prima facie non-excessive**
  - ~ **“direct and necessary” is not the same as “reasonable”**



## Flat-rate Fee

- **Not on a commercial basis**
- **Nominal rate**
- **Workflow for complying with a DAR**
- **Estimate and make reference to the minimum labour costs for processing a DAR in general (e.g. the requested data is plain and can be readily retrieved) before resorting to a flat-rate**



# Office of the Privacy Commissioner for Personal Data



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