

**Published under Section 48(2) of the  
Personal Data (Privacy) Ordinance (Cap. 486)**

**Investigation Report:**

**Collection of Excessive Personal Data from  
Membership Applicants by  
J.V. Fitness Limited (trading as California Fitness)**

**Report Number: R13 - 12828**

**Date issued: 5 December 2013**



**香港個人資料私隱專員公署  
Office of the Privacy Commissioner  
for Personal Data, Hong Kong**

**Collection of Excessive Personal Data from Membership Applicants by  
J.V. Fitness Limited (trading as California Fitness)**

This report<sup>1</sup> in respect of the investigation carried out by the Privacy Commissioner for Personal Data (the “**Commissioner**”) pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap. 486 (the “**Ordinance**”) against J.V. Fitness Limited (trading as California Fitness) is published in the exercise of the power conferred on the Commissioner by Part VII of the Ordinance. Section 48(2) of the Ordinance provides that *“the Commissioner may, after completing an investigation and if he is of the opinion that it is in the public interest to do so, publish a report –*

(a) *setting out -*

(i) *the result of the investigation;*

(ii) *any recommendations arising from the investigation that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the class of data users to which the relevant data user belongs; and*

(iii) *such other comments arising from the investigation as he thinks fit to make; and*

(b) *in such manner as he thinks fit.”*

**ALLAN CHIANG**

**Privacy Commissioner for Personal Data**

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<sup>1</sup> This Report has been edited (as indicated in paragraph 61) for publication as the party complained against has indicated it will appeal to the Administrative Appeals Board against the enforcement notice under Section 50(7) of the Ordinance.

**Investigation Report: Collection of Excessive Personal Data  
from Membership Applicants by  
J.V. Fitness Limited (trading as California Fitness)**

Two individuals made complaints to the Office of the Privacy Commissioner for Personal Data (“PCPD”) against California Fitness (“CF”) for collecting excessive personal data for the purpose of handling their membership applications/renewals. The Commissioner, after an investigation into the two cases, found that CF had breached Data Collection Principle under the Personal Data (Privacy) Ordinance<sup>2</sup> (the “Ordinance”) by collecting the full date of birth and copy of Hong Kong Identity Card (“HKID Card”) or Home Visit Permit. These data were unnecessary and excessive for the purposes of membership application/renewal and other lawful activities of CF. CF was directed to remedy and prevent any recurrence of the contravention. [CF was holding the HKID Card copies of some 200,000 current and former members.]

**Background**

CF is a fitness centre chain operated by J.V. Fitness Limited in Hong Kong. It offers fitness training and exercise facilities to its members. At present, CF has eight branches.

**The Complaints**

2. At the material time, two complainants (A and B) were an existing member and a prospective member of CF respectively. Their personal data were collected by CF in the process of membership renewal and application respectively.

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<sup>2</sup> Certain parts of the Personal Data (Privacy) Ordinance were substantially amended on 1 October 2012. For the purposes of this investigation, the applicable law at the material time was the provisions of the Personal Data (Privacy) Ordinance as it stood prior to 1 October 2012.

### ***Complainant A***

3. Complainant A first joined CF's membership in 2004. On 29 April 2011, when he applied for membership renewal with CF, he was requested to provide a copy of his HKID Card. Complainant A refused and, upon request by CF staff, provided instead a copy of his Home Visit Permit which also contained his HKID Card Number and Birthday Information (including the year, month and day of birth). Subsequently, he lodged a complaint with the PCPD against CF. The Complainant pointed out that he was not required to provide his Birthday Information and HKID Card Number at the time of membership application. Specifically, he complained against CF that the collection of his Birthday Information and HKID Card Number was excessive and the request for members to provide their HKID Card copies was unnecessary.

### ***Complainant B***

4. In August 2011, CF offered fitness membership packages to staff members of Complainant B's company (the "**Company**") including himself. He provided CF with his HKID Card Number and Birthday Information for pre-registration.

5. A sales staff of CF visited the Company's office to invite the interested staff members (including Complainant B) to sign a membership agreement (the "**Agreement**"), to provide a copy of HKID Card and to settle payment. The sales staff explained to Complainant B that the collection of his HKID Card Copy was for CF's internal record purpose and claimed that he might not receive his salary from CF if it was not collected. Despite having signed the Agreement and made the payment, Complainant B refused to provide his HKID Card Copy and expressed dissatisfaction to CF.

6. Subsequently the sales staff informed Complainant B that CF had considered his application as a "special case" and therefore would waive the requirement of a copy of his HKID Card. He was also informed that his application had been accepted and his CF membership had begun. Complainant B considered that CF's request for a copy of his HKID Card and its collection of his HKID Card Number and Birthday Information for membership application was excessive.

7. Complainant A and Complainant B in respect of their own allegations lodged complaints with the PCPD respectively.

Complainant	Purpose	Request for HKID Card Copy	Collection of HKID Card Number	Collection of Birthday Information
A	Membership renewal	Yes (Refused by the Complainant. A copy of Home Visit Permit was provided as an alternative)	Yes	Yes
B	Membership application	Yes (Refused by the Complainant)	Yes	Yes

8. Upon determining that the prima facie cases exist for the complaints, the Commissioner initiated a formal investigation against CF to ascertain whether its collection of personal data of Complainant A and Complainant B had contravened the relevant requirements under the Ordinance.

### **Relevant Provisions and Requirements in the Ordinance**

#### ***Data Protection Principle on Data Collection***

9. Data Protection Principle 1(1) (“**DPP1(1)**”) in Schedule 1 to the Ordinance is relevant to the investigation:

*“Personal data shall not be collected unless –*

- (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;*
- (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and*
- (c) the data are adequate but not excessive in relation to that purpose.”*

***Code of Practice on Identity Card Number and Other Personal Identifiers***

10. In addition, paragraphs 2.3 and 3.2 of the “*Code of Practice on the Identity Card Number and other Personal Identifiers*” (the “**Code**”) issued by the Privacy Commissioner under section 12 of the Ordinance stipulate that a data user should not collect HKID Card Number/HKID Card Copy except in the circumstances set out therein.

*“2.3 A data user should not collect the identity card number of an individual except in the following situations:*

*.....*

*2.3.3 to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the identity card, where such correct identification or attribution is or will be necessary:*

*.....*

*2.3.3.3 to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances;*

*.....*

*2.3.4 without prejudice to the generality of paragraph 2.3.3, for the following purposes:*

*2.3.4.1. to be inserted in a document executed or to be executed by the holder of the identity card, which document is intended to establish or to evidence any legal or equitable right or interest or any legal liability on the part of any person, other than any right, interest or liability of a transient nature or which is trivial in the circumstances;*

*.....”*

11. In addition, paragraph 3.2 of the Code prescribed that:-

*“3.2 A data user should not collect a copy of an identity card except:*

*3.2.1 where the use of the copy by the data user is necessary:*

*.....*

3.2.1.2 for any of the purposes mentioned in section 58(1) of the Ordinance (the prevention or detection of crime, the apprehension, prosecution or detention of offenders, the assessment or collection of any tax or duty, etc.);”

12. Section 58(1) provides that: –

“(1) Personal data held for the purposes of –

(a) the prevention or detection of crime;

...

(d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;

13. Pursuant to section 13(2) of the Ordinance, a breach of the Code by a data user shall be admitted as evidence for establishing a contravention of the relevant requirement under the Ordinance.

### **Information Collected during the Investigation**

14. In the course of investigations against CF in the two cases, the PCPD received written replies and relevant information/documents from CF. Below is the summary of the information collected in response to the PCPD’s enquiries.

#### ***Complainant A’s Case***

15. CF stated that when Complainant A first joined CF in 2004, he had refused to give his HKID Card Number and copy but provided his passport number for verifying his identity. On 29 April 2011, when Complainant A applied for membership renewal, he again refused to provide his HKID Card Copy. According to CF, Complainant A voluntarily provided CF with a copy of his Home Visit Permit instead. CF submitted that it had collected the Home Visit Permit Copy from Complainant A as an alternative to his HKID Card Copy.

16. CF confirmed that its policy in relation to member enrolment, which took effect from 28 March 2007, required every member (new or existing) to provide a copy of his HKID Card upon signing of the membership agreement (the “**Agreement**”). The policy was not yet effective when Complainant A first applied for membership in 2004. CF thus accepted his passport number as an alternative at

that time. When Complainant A sought to renew his membership in 2011, the collection of the members' HKID Card copies had become a mandatory requirement under CF's policy. The focus of this investigation was therefore on CF's collection of Complainant A's personal data at the time of his membership renewal.

### ***Complainant B's Case***

17. CF confirmed that it had collected Complainant B's Birthday Information and HKID Card Number, and requested for a copy of his HKID Card, in connection with the signing of the Agreement.

### ***Membership Application Procedures***

18. CF's membership application procedures, which also applied to membership renewals, are as follows.

19. According to CF, at the material time, upon indication of intention to join CF, the sales staff would check the prospective member's HKID Card to verify whether he had reached the legal age. Then the sales staff and the prospective member would complete the Agreement which required certain personal information including the latter's HKID Card Number and Birthday Information. CF allowed prospective members to join under names other than their legal names (i.e. the name on HKID Card). Hence the name appearing on the membership card and related records could be different from that appearing on the HKID Card.

20. CF required all applicants to sign the Agreement in person for both new applications and renewals. At the same time, CF staff was required to collect the prospective members' HKID Card copies and numbers. There was no formal written policy in this regard until such requirements were incorporated in CF's Operations Manual on 28 March 2007.

21. A prospective member may choose the types of membership (pre-paid membership/monthly dues membership) that he/she would like to join. For pre-paid membership, the prospective member should pay dues in full for the Agreement period upon application, whereas monthly dues membership only required payment of the first and final months' dues of the Agreement period upon application. The interim dues were required to be paid monthly by auto payment and CF would request credit card/bank account details from the prospective member for this purpose.



22. At the point of sale, the sales staff responsible for the transaction would input the details of the prospective member provided on the Agreement into CF's electronic membership database. The sales staff would also make a copy of the prospective member's HKID Card and send it to CF's head office in Hong Kong (the "**Head Office**") together with the signed Agreement. Staff at the Head Office would make use of the HKID Card Copy to verify the identity of the member and give credit for the sale to the relevant sales staff. Upon the completion of membership application, the Agreement and the HKID Card Copy of the member would be kept in physical files sorted by date of receipt at the Head Office. The sales staff's commission would be awarded on a half-monthly basis.

23. According to CF, as of July 2013, it had a total of 216,965 present and former members and retained HKID Card copies of 204,088 members (i.e. approximately 94% of the total of present and former members) and other identification documents of the vast majority of the other members.

#### ***Purposes of Collection of Full Date of Birth***

24. At the material time, CF required prospective members to provide their Birthday Information for the following purposes. It was a mandatory requirement in membership application.

##### **24.1 Age Verification**

CF considered that collection of Birthday Information was necessary for age verification purpose. If a prospective member was a minor, his parent or guardian was required to co-sign the Agreement.

##### **24.2 Marketing and Offering Special Privileges**

CF asserted that another use of Birthday Information was for sending birthday promotional offers (the "**Birthday Offer**") to members by email according to their days of birth and months of birth. Members could not elect not to receive such promotional offers at the material time.

Under CF's Birthday Offer, members could invite a maximum of four friends to obtain complimentary guest passes for using CF's facilities and services for free for two weeks up to a maximum of six visits per

guest in the members' birthday month<sup>3</sup>. To redeem the guest pass, the members' friends were required to present the print-out of the promotional email message to CF.

CF confirmed that it was not essential for the member to accompany his friends to obtain the guest passes, though the guests were commonly accompanied by the members. Where guests were accompanied by members on the Birthday Offer, CF staff retained the discretion to check the member's Birthday Information on the spot.

#### 24.3 Provision of Age-specific Products and Services

CF also explained that it was essential to know the age distribution of members for designing classes, exercise programmes, floor plan layouts and other health/fitness related products/services to suit members' age-specific needs and capabilities.

### ***Purposes of Collection of HKID Card Numbers***

25. CF claimed that it collects the HKID Card Numbers from members for the following purposes:

#### 25.1 Establishment of a Legal Relationship

CF submitted that once a prospective member signed on the Agreement, he entered into a binding legal contract with CF. The collection of his HKID Card Number was necessary for the purpose of identity verification. CF asserted that such collection was in accordance with paragraph 2.3.4.1 of the Code. A prospective member's HKID Card Number was inserted in the Agreement in order to establish or to evidence the rights and liabilities between CF and him.

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<sup>3</sup> The Birthday Offer is valid for the whole calendar birthday month of the member.

## 25.2 Uses for Legal Action

CF submitted that full legal name and HKID Card Number were required for identifying a particular member for the purpose of enforcement of the contract. For example, CF may carry out debt collection actions or file a lawsuit against a member to recover unpaid membership fee or claim damages for broken equipment or facilities. According to CF, 2,842 civil claims had been made against members in respect of unpaid dues in the total amount of HK\$11,076,554 between February 2005 and July 2008. From 2008 onwards, such claims had been pursued by a debt collection agency instead. Regarding cases involving damage to the equipment or facilities by members (commonly mirrors and in one case, the flooring), CF was unable to provide relevant figures. CF stated that these cases had been settled informally with the members in question.

## 25.3 Identification of Members

As mentioned in paragraph 19 above, CF allows prospective members to sign up under names other than legal names appearing on their HKID Cards. CF submitted that as CF has approximately 220,000 current and former members, this practice made it difficult for CF to determine whether a person applying for membership was a former member and prevent a former member from enjoying “*first time*” member benefits. An example of “*first time*” member benefits offered in the past was a discounted membership rate for new joiners of CF. When a prospective member submitted application, CF sales staff would check his HKID Card Number against CF’s membership database to verify whether he was a genuine new joiner. If he was a past or present member, he would not be entitled to the “*first time*” member benefits again. CF was unable to provide the PCPD with details of the discounted membership rate i.e. the actual rate after discount or the discount amount concerned in dollar terms.

CF further claimed that even if prospective members signed the Agreement with their legal names, HKID Card Numbers were still essential for achieving the purposes mentioned in paragraphs 25.1 and 25.2 above. This was because there was still the possibility of confusion between members with the same legal names. Hence, CF was of the view that it was necessary to maintain records of members' HKID Card Numbers.

### ***Purposes of Collection of HKID Card Copies***

26. CF claimed that it collects the copies of HKID Card from members for the following purposes:

#### **26.1 Establishment of a Legal Relationship and Use for Legal Action**

CF submitted that the collection of members' HKID Card copies also served the purpose of identity verification and this was important for establishing a legal relationship with the members and in taking legal action, as explained in paragraphs 25.1 and 25.2 above.

#### **26.2 Identification of Members**

CF stated that the purpose stated in paragraphs 25.2 to 25.3 would also be served by the collection of members' HKID Card copies. Among the membership records<sup>4</sup> held by CF, the HKID Card copies would be the **only** records containing members' legal names. Hence, even though CF had already collected the members' HKID Card numbers, the collection of HKID Card copies was still necessary.

#### **26.3 Use for Audit Trail**

CF stated that the members' HKID Card copies could facilitate subsequent verification of the members' identity for internal administration or audit purposes. CF explained that HKID Card copies would be used by its auditor in verifying whether such income was genuine revenue. CF further stated that membership contracts alone may be insufficient for audit trail purposes and the ultimate

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<sup>4</sup> Including the Agreement, records in the membership database and HKID Card Copy

decision on the extent of verification necessary rests with the auditor.

#### 26.4 Prevention of “Employee Fraud”

CF took the view that submission of “*fraudulent memberships*” by sales staff amounted to “*fraud*” and asserted that the main reason for the collection of members’ HKID Card copies was to prevent “*fraud*” committed by the employees (the “**Employee Fraud**”). CF provided information about the operation of the sales incentive scheme (the “**Incentive Scheme**”) for staff remuneration and illustrated how the Employee Fraud may be committed. It also explained why the collection of members’ HKID Card copies was the only practicable means to achieve the said purpose.

#### ***The Incentive Scheme***

27. The sales staff and managers of CF<sup>5</sup> were remunerated by basic salary and incentive reward, including commission and bonus. CF stated that the calculation of the staff’s sales incentive was based on their success in achieving “*monthly sales targets for membership sold*” (“**Sales Targets**”) and the “*total value of sales made*” (“**Total Sales**”). Commission and bonus would be paid to the sales staff progressively on milestone basis, i.e. a higher rate of commission and bonus will be paid to the sales staff for reaching a higher milestone of Sales Targets/Total Sales.

28. CF submitted that the milestones of Sales Targets/Total Sales and the commission rate payable to sales staff varied with their ranks. Besides, staff of the manager grade<sup>6</sup> would be paid additional remuneration based on the overall performance of their teams in attaining the pre-determined Sales Targets/Total Sales.

#### ***Reasons for submission of fraudulent memberships by sales staff***

29. CF considered that the features of the Incentive Scheme would incentivise sales staff “*to artificially boost [the] sales figures and reach higher commission percentages and bonus levels*”. In this connection, CF provided the PCPD with

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<sup>5</sup> Including Promoters, Fitness Consultants, Sales Team Leaders, Assistant Sales Managers, Club Sales Managers, District Sales Managers, etc.

<sup>6</sup> Including Club Sales Managers, District Sales Managers and Corporate Account Managers

information<sup>7</sup> relating to the Incentive Scheme of its staff to demonstrate the magnitude of such “incentive” for the Employee Fraud. The extra commission earned for reaching a higher milestone could be double the cost in dollar terms of paying for a bogus membership application.

30. CF stated that if the fraudulent membership was discovered, the extra commission earned as a result of the fraud would be clawed back from the employee’s next pay cheque and the employee might face disciplinary action by CF. However, if the fraud was not detected or discovered, then the employee would be able to keep any additional remuneration earned, causing a loss to CF.

### ***Mechanism to Prevent the Employee Fraud***

31. The payment of commission and bonus to the sales staff was administered by the Head Office. CF claimed that an effective mechanism was required to ensure the membership applications submitted by their sales staff were genuine. Hence CF developed a mechanism (the “**Mechanism**”) whereby sales staff was required to submit the Agreement to the Head Office together with the member’s HKID Card Copy. Then the Head Office staff would verify whether or not the membership application was made by a “*real person*”. As the Head Office staff members were not remunerated under the Incentive Scheme, they could carry out the verification impartially. CF was of the view that the Mechanism was the most effective and practical means to deter and prevent the Employee Fraud.

### ***Availability of Alternatives***

32. CF submitted that there was no alternative (see the table below) as effective as collection of members’ HKID Card copies in preventing and detecting the Employee Fraud.

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<sup>7</sup> The information included monthly basic salary, Sales Targets and respective commission rates, amount of membership fee, amount of commission received of different positions of the sales staff, including District Sales Manager, Club Sales Manager, Assistant Sales Manager, Sales Team Leaders, Fitness Consultant and promoter, etc.

Alternatives	CF explained why it was not feasible
Collection of HKID Card Number	It could not prove that the application was made by a “ <i>real person</i> ” as sales staff could write down any HKID Card Number with no means for verification.
Collection of a copy of driving licence/Home Visit Permit	Not every prospective member had a driving licence. During the investigation, CF agreed with the PCPD that Home Visit Permit copies contained practically the same personal data as HKID Card copies.
Collection of address proof	The prospective member would not usually have on him his address proof when deciding to enrol CF’s membership on the spot. If provision of address proof was a pre-requisite, the prospective member might give up applying. Also, it may be easier to fabricate compared with HKID Card.
Collection of credit card information	The membership may be bought by others as a gift and paid for by credit cards not belonging to the member.
Collection of old membership cards	This would only be applicable in a renewal case. It was also not feasible as the old card would still be in use before the current membership expired.
Reliance on branch staff to verify applications	All levels of branch staff were remunerated under the Incentive Scheme thus were potentially motivated by commission earnings to collaborate to submit fraudulent memberships so as to boost the result of the team.
Reliance on additional independent branch staff to verify applications	CF estimated that the cost of hiring an additional Operations Manager for each branch location would be HK\$250,000 monthly.

### ***Figures in relation to Employee Fraud***

33. CF was asked to provide relevant figures concerning the Employee Fraud (e.g. the scope and the frequency). CF took the view that it was difficult to provide proof that the Mechanism was an effective means to deter such fraud. CF did not consider the small number of confirmed cases of Employee Fraud to be a reflection of a low incidence of fraud. Rather, it shows the effectiveness of the Mechanism in preventing and detecting fraud. CF considered that without the Mechanism, there would be a dramatic increase in such criminal and unlawful activity.

### ***A Real Employee Fraud Case***

34. CF was only able to provide information about one Employee Fraud case, which occurred in January 2013 in which an employee at one of CF's branches was discovered to have submitted a fraudulent 12-month membership application under a made-up name. The application was accompanied by a fabricated HKID Card Copy that had been submitted for a previous membership application by another member in June 2010. The suspect employee changed the name, Birthday Information and HKID Card Number appearing on the original HKID Card Copy and paid the required membership fee deposit. During the verification process, the Head Office staff found the grainy and unclear HKID Card Copy suspicious. He thus decoded the Chinese Character Codes and found that they did not tally with the Chinese name on the HKID Card Copy. When questioned by CF, the suspect employee admitted that he had forged the membership application in order to reach a higher sales milestone for a higher level of commission.

35. CF stated that its collection of HKID Card copies of members fell within the permitted exception under paragraph 3.2.1.2 of the Code as the purpose of collection was for the "*prevention or detection of crime*" and "*prevention, preclusion or remedying of unlawful conduct or seriously improper conduct*". CF was of the view that Employee Fraud is a criminal offence under the Theft Ordinance<sup>8</sup> and if committed in collaboration with other staff it may also constitute the common law offence of conspiracy to defraud.

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<sup>8</sup> Cap.210



### ***Purposes of Collection of Home Visit Permit Copy (in Complainant A's Case)***

36. CF submitted that a copy of the Complainant A's Home Visit Permit was collected as an alternative to his HKID Card Copy because he had refused to provide the latter. Hence, the collection purposes were the same as those of HKID Card copies stated above.

### **The Findings of the Commissioner**

37. The two cases concern the collection of Birthday Information, HKID Card numbers, and copies of HKID Card and Home Visit Permit by CF during the membership and renewal process. The Commissioner examined the collection as alleged by CF for deciding whether it was necessary for or directly related to membership application/renewal and other lawful purposes, and whether the data collected was adequate but not excessive in relation to these purposes.

#### ***Collection of Birthday Information***

##### **For Age Verification Purpose**

38. CF claimed that its collection of prospective members' Birthday Information was necessary to ascertain whether the latter were of legal age before the Agreement was signed. However, according to CF, prospective members submitted their membership applications in person. Hence, CF could have inspected their HKID Cards or other identification documents on the spot to achieve the alleged purpose. The Commissioner therefore considers that the collection of members' Birthday Information for this purpose was unnecessary.

##### **For Marketing and Offering Special Privileges Purposes**

39. CF submitted that Birthday Information was required for marketing and offering special privileges to the members. However, according to the information available, the only privilege that had been offered by CF to its members was the Birthday Offer mentioned in paragraph 24.2. As such offer was given to the members according to their birthday month, clearly month of birth only would suffice for this purpose, and thus CF's collection of members' day of birth and year of birth was excessive.

40. Furthermore, according to CF, it was not essential for the birthday members to accompany their friends to redeem the complimentary guest passes in the Birthday Offer. It appears that the members' friends were simply required to present the print-out of the promotional email at the time of redemption and no verification of the Birthday member's Birthday Information by the CF staff was required. Hence the Commissioner considers that it was not in fact necessary to collect the Birthday Information of the members for this purpose.

#### For the Purpose of Providing Provision of Age-specific Products and Services

41. Age and Birthday Information are very private personal information and should not be collected unless there are strong justifications. CF considered that information about members' age was essential for them to design products and services to suit their needs. However, the Commissioner is of the view that collection of members' age range would have sufficed for this purpose and would have been less privacy intrusive. Hence the collection of year of birth under this circumstance was excessive. In the course of the investigation, CF indicated that it would cease the collection of new members' Birthday Information. For the purpose of age verification, CF's sales staff would examine the new members' HKID Card on the spot at the time of application. CF would collect members' day of birth and month of birth on a voluntary basis for the purpose of marketing and offering privileges. In addition, in order to provide age-specific products and services to members, CF would ask the members to indicate their age ranges<sup>9</sup> on the Agreement, instead of collecting their Birthday Information. CF provided the PCPD with the revised Agreement on which the modifications stated above had been incorporated. However, on the date of publication of this report, the PCPD has not yet received confirmation from CF that the revised Agreement has been put into effect.

#### ***Collection of HKID Card Number***

42. Because of its uniqueness, the HKID Card Number is considered highly sensitive personal data. In addition to compliance with the general requirements of

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<sup>9</sup> The age ranges proposed by CF were "Under 18", "18-24", "25-29", "30-34", "35-39", "40-44", "45-49" and "50+".

DPP1, data users should be aware of the restrictions imposed by paragraph 2.3 of the Code, which states that a data user may only collect the HKID Card Number of an individual in certain situations.

43. The Commissioner has examined a sample provided by CF of the Agreement which required the signatures of the prospective member and the agent of CF. To the Agreement was attached a set of documents, namely “*Terms and Conditions of Membership*”, “*Disclaimer of Liability*” and “*Membership Rules and Guidelines*”. The Agreement sets out details of the membership (e.g. amount due, kind of membership, commitment period, means of payment, renewal options), regulations of use of lockers, rights/liabilities of both parties regarding the membership (e.g. the member has to pay membership fee and CF have to allow the member to enter CF’s premises and use the equipment and facilities; CF could terminate the membership if the member breaches the terms and conditions during the membership period; the member has to indemnify CF against any losses arising from deliberate or negligent action of member or his guest), etc. According to the information provided by CF, examples of types of potential loss were unpaid membership fee and broken equipment or facilities. As far as unpaid membership fee is concerned, CF had lodged 2,842 civil claims between February 2005 and July 2008 for the total amount of HK\$11,076,554.

44. In view of the above, the Commissioner considers that CF intended to establish or to evidence a legal right or interest or liability on the part of the members at the time of signing the Agreement, and the possible right, interest or liability covered by the Agreement was not of a transient nature or trivial in the circumstances. Hence, CF’s collection of members’ HKID Card Number was justified under paragraphs 2.3.3.3 and 2.3.4.1 of the Code.

### ***Collection of HKID Card Copies***

45. Compared to the HKID Card Number, the HKID Card Copy contains not only its unique number but also the name, Birthday Information and the photograph of the holder, and therefore deserves greater protection. It is noted that HKID Card Copy is widely used by organisations and companies (e.g. banks, public utilities) as documentary proof of identity in support of application for various services. The indiscriminate collection and improper handling of the HKID Card copies could duly infringe the privacy of the individuals and create opportunities for fraud such as

forgery and identity theft. Hence, stricter control is imposed on the collection of HKID Card copies under the Code. In this regard, the Commissioner has to consider the reasons submitted by CF in paragraphs 26-36 above to see if the collection of HKID Card copies was justified.

#### Use for Legal Action and Subsequent Identification of the Members

46. CF allowed members to use pseudonyms instead of their legal names on the membership cards and related records. Where CF was obliged to commence legal action against members for recovery of unpaid membership fee or damages for broken equipment or facilities, CF would have to retrieve members' legal names and that was why collection of the HKID Card copies was necessary. The Commissioner is of the view that after having made 2,842 civil claims against members in about 3.5 years, CF should have come to realise that it is more reasonable and practicable to obtain and record the legal names from prospective members on the Agreement at the time of application, rather than to collect and store the members' HKID Card copies in a vast number of physical files for possible retrieval in the event of legal proceedings/debt recovery action against members. Hence, it was held that CF's collection of members' HKID Card copies for this purpose was not necessary.

#### Use for Audit Trail

47. CF explained that the members' HKID Card copies would be used by its auditor for verifying membership income. In this connection, CF was unable to specify any statutory provision to support this claim, but explained that the decision whether to verify members' HKID Card copies ultimately rested with auditors.

48. However, even if the auditor decides that there is a need to verify membership income, it appears that there are less privacy intrusive alternatives that may serve the same purpose, for example, verification of CF's transactions on the bank statements, and obtaining payment confirmation from the banks. The Commissioner does not see that the checking of the member's HKID Card copies was the only way of income verification by the auditors, and therefore considers that CF's submission failed for want of substantiation.

## Prevention of Employee Fraud

49. Paragraph 3.2.1.2 of the Code allows the collection of HKID Card copies where the use of the HKID Card copies by the data user is necessary for the prevention or detection of crime. As regards the two complaint cases under investigation, CF relied on the Code and mentioned that another purpose of collection of the HKID Card Copy is for the “*prevention or detection of crime*” and “*prevention, preclusion or remedying of unlawful or seriously improper conduct, by persons*” (the “**Purposes**”).

50. To see if CF’s collection of members’ HKID Card copies was justified under the Code, the Commissioner has to first consider whether there was a real risk of “*crime*” or “*unlawful or seriously improper conduct*” committed by its staff. Then he decided whether it was necessary for CF to collect the members’ HKID Card copies to achieve the Purposes and whether other less privacy intrusive alternatives were available.

51. As stated in paragraphs 33 and 34 above, CF was invited to provide relevant figures concerning the Employee Fraud but failed to provide any except the details of one case which occurred in January 2013. CF considered the small number of confirmed cases of Employee Fraud to be a reflection of the effectiveness of the Mechanism<sup>10</sup> in preventing fraud. CF was also of the view that, without the Mechanism, there would be a dramatic increase in such criminal and unlawful activity. However, CF’s submission was not supported by evidence/ statistics/ figures, for example, the number of Employee Fraud cases before and after the implementation of the Mechanism. The Commissioner is therefore unable to conclude whether there was a real problem that called for the collection of members’ HKID Card copies and whether such collection was necessary to achieve the Purposes.

52. Data users in general misunderstand that they can indiscriminately rely on the grounds under paragraphs of 3.2 of the Code as their reason for collection. The

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<sup>10</sup> i.e. the sales staff was required to submit the Agreement to the Head Office together with the member’s HKID Card copy, paragraph 31 of this report refers.

general presumption of the Code is not to collect HKID Card copies. Even if there was a real situation that may justify the collection of members' HKID Card copies, if a less privacy intrusive alternative was available, such collection would not be considered necessary and as such would fall outside the situations set out in paragraph 3.2 of the Code.

53. There was no evidence showing that adoption of other less privacy intrusive alternatives (for example, by conducting random check on the potential Employee Fraud cases and giving a call to the members to verify their applications if necessary) had been considered and that these could not satisfactorily solve the Employee Fraud problem. Hence, the Commissioner does not accept CF's submission that there were no other ways to prevent the Employee Fraud apart from adopting the Mechanism. He holds that CF's collection of members' HKID Card copies for the above Purposes was not justified.

54. Individuals join a fitness club for using the gym facilities or taking fitness training courses. As consumers, they would not reasonably expect that their HKID Card copies are required to be collected before they use the service. Based on CF's submission, including information in relation to the business scale, commission structure and sales process, the Incentive Scheme is intended to provide incentives to staff members to boost their sales. In this regard, CF should implement proactive monitoring measures to minimise the risk of Employee Fraud instead of relying simply on passive record-keeping by the collection of HKID Card copies. Collecting members' HKID Card copies may be a convenient and cost-saving means for CF but such means comes at the cost of the personal data privacy of CF's members. It may create a deterrent effect but could not be an "*effective monitoring measure*" as CF claimed. The real case of Employee Fraud in paragraph 34 above serves to indicate that retention of HKID Card copies is not foolproof in preventing Employee Fraud.

#### Prompt Destruction of HKID Card Copies

55. During the investigation, CF confirmed that the Mechanism had been modified by destroying the HKID Card copies collected from prospective members at the time of application or on renewal immediately after verification had been carried out by the Head Office staff. Such practice had commenced in January 2013. However, in view of the reasons stated in the preceding paragraphs, the

Commissioner does not consider such modification justified CF's collection of members' HKID Card copies for the Purposes.

56. In respect of the HKID Card copies collected from its former members, CF stated that the destruction work had begun since January 2013 but only 7% had been completed as of June 2013. As the HKID Card copies of members were the only record of members' full legal names, CF explained that it would take time for its staff to search and record the full legal names of each member before destruction. CF estimated that the destruction would require about 2,500 to 3,000 hours to complete, and that all the HKID Card copies would be destroyed in or about August 2017.

57. Based on CF's own estimate, the destruction of the existing stock of HKID Card copies requires about the full time commitment of a clerk for about a year. Hence its plan to complete the task of destruction in some four years cannot be accepted. CF should allocate extra manpower to expedite the process of destruction.

#### ***Collection of Home Visit Permit Copies***

58. In Complainant A's case, CF submitted that collection of Home Visit Permit copy was a less privacy intrusive alternative to HKID Card Copy during the process. One may say that the HKID Card is an identification document of a Hong Kong citizen while the Home Visit Permit is only a travel document for travelling to the Mainland. However, despite the difference in the use and the issuing authorities of these two documents, both contain sensitive personal data (including name, gender, Birthday Information, and HKID Card Number) based on which an individual is identified. Hence, the Commissioner's views stated in paragraphs 45 to 54 above on the collection of HKID Card copies are also applicable to the collection of the Home Visit Permit copies.

#### **Conclusion**

59. To sum up, the Commissioner is of the view that CF's request for members' HKID Card copies (in both cases) and Home Visit Permit copy (in Complainant A's case) was unnecessary. In addition, CF's collection of the members' (including the Complainants') day of birth and year of birth was excessive. The Commissioner therefore considers that such collections by CF are in contravention

of the requirements of DPP1(1).

60. Regarding the collection of members' HKID Card Numbers, the Commissioner does not find any contravention on the part of CF in the circumstances of these two cases.

### **Enforcement Notice**

61. *[This paragraph has been left blank for publication.]*

62. Contravention of an enforcement notice is an offence under section 50A of the prevailing Ordinance and an offender is liable on conviction to a fine and to imprisonment and, in the case of a continuing offence, to a daily penalty.

### **Other Comments**

63. It is most regrettable to find that CF, with a database of nearly 220,000 customers, has not learnt from the infamous Octopus incident which took place three years ago. It repeated the Octopus mistake of excessive collection of customers' personally identifiable information for member authentication purposes.

64. Organisations engaged in the design or operation of an authentication process should respect privacy and ensure data protection at every stage of the process. This would involve limiting the collection, use, storage, transfer and disclosure of personal data to the purposes deemed necessary for accomplishing authentication. The level of authentication (and, by definition the amount of personal data collected for that authentication process) should be in proportion to the nature and value of the transaction and take into account the sensitivity of the personal data.

65. Similar to the Octopus incident, the CF case highlights a number of recurrent problems in personal data collection. First, corporate data users tend to err on the generous side. They collect personal data without giving serious thought to what real purposes the data collected could serve. Further, they tend to over-emphasise their administrative and operational convenience, at the expense of data subjects' privacy and data protection. When it comes to authentication, they



tend to require the strongest level of authentication regardless of the nature of the transaction. The over-reliance of production of HKID Card Number and HKID Card Copy for identity authentication is a common phenomenon in Hong Kong. It amounts to over-kill and the trend must be reversed.

66. Data users should bear in mind that HKID Card Number is a unique personal identifier which cannot be altered throughout one's life. It should be treated as highly personal and sensitive data, and should be protected against any unwarranted disclosure or misuse. If HKID Card Number or HKID Card Copy falls into the wrong hands, it could create or enhance the risk of identity theft, causing administrative nuisance or financial loss to the affected persons.