

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

Our Ref. : PCPD(O)25/25/159 Pt.1

Your Ref.: REO CR/14/19/VR-11 (Pt 3)

9 July 2010

*By Fax and By Post*

Electoral Affairs Commission  
10/F., Harbour Centre  
25 Harbour Road  
Wanchai  
Hong Kong

(Attn: Miss Garfield Yau)

Dear Miss Yau,

**Public Consultation:**  
**Proposed Guidelines on Election-related Activities**  
**in respect of Village Representative Elections**

Thank you for your letter of 8 June 2010 inviting my office to comment on Chapter 5 and Appendix E of the Proposed Guidelines.

2. Regarding Chapter 5 of the Proposed Guidelines, I have the following comments:-

- (a) Paragraph 5.18 concerns the respect for electors' privacy in carrying out electioneering activities. Candidates are reminded of Appendix E of the Proposed Guidelines which is the guidance note issued by my office on personal data privacy in respect of electioneering activities. I have no comments on this Appendix as this is a current version of my

office's guidance note.

- (b) I find it important that specific highlights on the requirements to protect personal data privacy be included in the main body of the Proposed Guidelines. Otherwise, they will easily be missed. Inclusion of our guidance note in one of the Appendices may not attract the attention of candidates. It should be noted that electors' personal data privacy is indeed a main concern in electioneering activities.

*Collection of electors' personal data*

- (c) In this respect, I would like to see some specific guidance to be offered to candidates on the collection of personal data. They should be reminded of the requirements that the data collected for the purpose of electioneering activities should be such that are necessary for the purpose and adequate but not excessive<sup>1</sup>. Generally speaking, for the purpose of canvassing for votes, a candidate will only require an elector's name and contact information such as address, telephone or mobile phone number and email address. Any attempt to collect an elector's personal data other than those data may be considered as excessive from my perspective. Moreover, the means of collection should be lawful and fair in the circumstances of the case<sup>2</sup>. Candidates should not collect electors' personal data by deceptive means or misrepresenting the purpose of collection. When collecting electors' personal data directly from the elector concerned, candidates should and their helpers should ensure that the elector is informed of the purpose for which the data are to be used<sup>3</sup>.

*Use of electors' personal data collected*

- (d) My office has in the past received a number of complaints involving the use of personal data concerning electioneering activities. In one case, the complainant was a former member of an association. She was dissatisfied that the association used her personal data in

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<sup>1</sup> See Data Protection Principle 1(1)

<sup>2</sup> See Data Protection Principle 1(2)

<sup>3</sup> See Data Protection Principle 1(3)

canvassing her to vote for a candidate in an election. In another case, the complainant's personal data were originally collected for enrollment of courses organized by a political party but were subsequently used for the purpose of canvassing for votes for candidates associated with the party.

- (e) In light of the above complaints, candidates should be reminded in the Proposed Guidelines that they should not use electors' personal data obtained from sources other than the voter register unless the original purpose of collection of such data is the same as or directly related to electioneering purpose or that the express consent from the elector concerned has been obtained<sup>4</sup>.

*Security of electors' personal data held by candidates*

- (f) Candidates and their election agents should safeguard the security of electors' personal data held by them<sup>5</sup>. My office has dealt with a case involving leakage of electors' personal data. In that case, a candidate asked a supporter to check the functionality of a CD-ROM containing personal data of electors. That supporter examined the CD-ROM by using a computer at his workplace. Although the supporter was only requested to examine the CD-ROM, he had inadvertently printed out the electors' personal data contained in the CD-ROM. The printouts were later found left unattended in the workplace. This case reflected the lack of guidance or instructions from the candidate to his supporter in safeguarding security of electors' personal data. The candidate was found liable for the act done by that supporter who was regarded as an agent of the candidate<sup>6</sup>.
- (g) As a result of this case, my office has advised the Registration and Electoral Office to require all election candidates to adopt the following measures when engaging election agents to handle electors' personal data. I find it helpful that these measures are provided in the Proposed Guidelines for candidates to follow.

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<sup>4</sup> See Data Protection Principle 3

<sup>5</sup> See Data Protection Principle 4

<sup>6</sup> See section 65(2) of the Personal Data (Privacy) Ordinance on the liability of a principal in relation to the acts done by its agent.

- (i) Keep a written record on the provision, retrieval and destruction of electors' personal data provided to the agents;
- (ii) Explicitly inform the agents that the electors' personal data should only be used for purpose specified by the candidate in relation to the election;
- (iii) Inform the agents of their responsibilities in protecting the personal data of electors in writing and ensure that they understand the requirements of Data Protection Principle ("DPP") 4 in Schedule 1 to the Personal Data (Privacy) Ordinance ("the Ordinance");
- (iv) Set out policy/guidelines/procedures regarding (i) to (iii) above, obtain written undertaking and take appropriate measures (e.g. providing training to the agents) in order to ensure that they follow the said policy/guidelines/procedures; and
- (v) Report to Registration and Electoral Office if any suspicious contravention was found.

3. As a privacy regulator, I feel obliged to comment on other parts of the Proposed Guidelines which may also concern personal data privacy. My comments below adopt the same abbreviations in the Proposed Guidelines.

*General comments*

4. In the course of an election, personal data including name, ID Card number and address will be collected from various parties, such as election agents, election expense agents, polling agents and counting agents by virtue of the provisions of the Electoral Procedure (Village Representative Election) Regulation ("EP(VRE) Regulation") (Cap.541L). In various paragraphs of the Proposed Guidelines, e.g. paragraphs 1.25, 2.22, 3.23, etc, some of the personal data so collected will be published for public inspection. It should be noted that personal data that are subject to public inspection might easily be misused if no measure is taken to prescribe the purpose of use of the data at the time when they are made available for inspection. I therefore find it necessary

for the Proposed Guidelines to include guidance on this aspect so that any subsequent misuse of the data will be taken as an infringement of personal data privacy under our current law.

*Paragraph 1.24*

5. According to this paragraph, when the PR for each Village is published, the ERO also publishes an omissions list, containing the names and particulars of persons who were formerly registered as electors. It is noted that the “particulars” to be published is limited by the relevant VRE Ordinance/EAC (ROE)(VRE) Regulation to “the principal residential address” only. On this basis, I propose that the word “particulars” in this paragraph be substituted by “the principal residential address”. This is to ensure that no other personal data will be made available for public inspection other than those permitted by the relevant Regulation.

*Paragraph 1.37*

6. For the same reason as provided in the preceding paragraph, I suggest replacing the words “information of” in the 3<sup>rd</sup> line of this paragraph with “the name, the principal residential address and the candidate number of.”

*Paragraph 2.8*

7. Under this paragraph, a candidate is required to state his occupation in the nomination form. There is no requirement to supply the candidate’s occupation pursuant to section 7 of the EP (VRE) Regulation, except that the RO may require a candidate to furnish such information as the RO considers necessary in order to be satisfied either that the candidate is eligible to be nominated or as to the validity of the nomination. I am concerned about the possible excessive collection of personal data. Unless the collection of candidate’s occupation falls within the exception as provided for in the relevant Regulation, you are advised to remove the occupation from the nomination form and the Proposed Guidelines. Alternatively, you may consider informing the candidate that the provision of his or her occupation in the nomination is optional.

*Paragraph 3.11*

8. I propose to replace the word “details” by “the name, the identity card number and address”. This proposed amendment is made to ensure no excessive personal data of the agent be disclosed other than those required under the relevant Regulation.

*Paragraph 3.17*

9. It is stated that in the appointment form, a candidate is required to state his name, identity document number and address of the election expense agent. There is no requirement to supply the election expense agent’s identity document number under section 24(3) of the EP(VRE) Regulation. The requirement for identity card number only applies to election agent. I am concerned about the possible excessive collection of personal data. Unless the collection of election expense agent’s identity document number is necessary for processing the appointment and that such collection is in compliance with the Code of Practice on the Identity Card Number and other Personal Identifiers<sup>7</sup> (“ID Code”) issued by my office, you are advised to delete the reference to identity document number in this paragraph.

*Chapter 11 - Exit Poll*

10. Generally, it is not necessary for the media or organizations concerned to collect the name or other personal identifier of the electors for the purpose of conducting exit polls. If personal data are involved in the process, it is desirable to include in the Proposed Guidelines the requirements to comply with DPP1, 2(2), 3 and 4 of the Ordinance.

11. According to paragraph 11.6, the RO or PRO will collect the name and address of the person or organization intending to conduct an exit poll and the identity document number and name of person responsible together with his telephone number for contact. You are advised to consider whether the collection of such data including identity document number is necessary for the purpose and that collection of identity document number is in compliance with the ID Code.

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<sup>7</sup> Available at PCPD’s website [http://www.pcpd.org.hk/english/ordinance/code\\_id.html](http://www.pcpd.org.hk/english/ordinance/code_id.html)

*Chapter 12 - Election expense and Donations*

12. According to the Proposed Guidelines, on receiving a donation of more than \$1,000 in value, a candidate must issue to the donor a receipt which specifies the name and address of the donor. Copies of donation receipts have to be attached to the "Return and declaration of election expenses and donations" and submitted to the RO and made available for public inspection. The procedures entail the collection and disclosure of the donor's personal data and I am concerned whether the donors are properly informed. In this connection, I propose to state in the Proposed Guidelines that candidates should inform the donors of the purpose of the collection of his personal data and that such data will be transferred to the RO and made available for public inspection.

*Paragraph 14.10*

13. This paragraph concerns the use of photographs by candidates in election advertisements to show their involvement in past activities. Different ways are suggested to ensure that electors will not be led to believe that the candidate has the support of other persons appearing in the photograph. From a privacy perspective, an image of an identified person will constitute his personal data and its use for a purpose other than the original purpose of collection or a directly related purpose will be an infringement of his personal data privacy. A practical way to overcome this problem is to obtain the express consent from the persons concerned; otherwise, candidates would have to blur the images of those persons appearing in the photograph. I propose to include this way of compliance in the Proposed Guidelines.

*Paragraph 17.8*


14. In this paragraph, a complainant needs to provide his name, identity document number, address, telephone number and other means of communication in his complaint made to EAC. As it entails the collection of personal data, the data collector should be reminded to ensure that only adequate but not excessive personal data are to be collected.

*Appendix I - Application Procedure for the Approval of Float Design*

15. This Appendix is a document concerning the application procedure for approval of float design by the Transport Department. In making an application, an applicant is required to provide to the Transport Department his personal data including name, address, contact telephone number and fax number. I am concerned that there is no Personal Information Collection Statement ("PICS") included<sup>8</sup> in the application procedure. Unless the Transport Department will provide the PICS to the applicants by other means, I strongly advised it to include a PICS in the application procedure.

16. I hope you will find the comments in this letter helpful.

Yours faithfully,



(Roderick B. WOO)

Privacy Commissioner for Personal Data

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<sup>8</sup> See Data Protection Principle 1(3) for the information to be contained in a Personal Information Collection Statement.