

**PCPD’s Submission to Consultation on Arrangements for
Issuing Certificate of Particulars of Motor Vehicle**

I Introduction

1. Currently, the Commissioner for Transport is required under section 4(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 374E (“**Regulations**”) to maintain a register of vehicles. Any person, who applies to the Commissioner for Transport with the prescribed form¹ (“**TD318 Form**”) and pays the prescribed fee², shall obtain a Certificate of Particulars of Motor Vehicle (“**Certificate**”) containing not only the particulars of a vehicle such as registration mark and date of first registration, etc, but also the full name, residential address and identity document number of an individual registered owner.
2. Registered owners of motor vehicles are popular targets for the promotion of a variety of products and services ranging from car insurance to other products which may be totally unrelated to motor vehicles, such as real estates and club membership, etc. It is not uncommon for enterprises to make use of the personal data of registered owners contained in the Certificate for marketing purpose.
3. This submission sets out the comments of the Office of the Privacy Commissioner for Personal Data (“**PCPD**”) on the proposals made in the Consultation on Arrangements for Issuing Certificate of Particulars of Motor Vehicle (“**Consultation Document**”).

II Response to proposals

Misuse of personal data in breach of the requirements under the Personal Data (Privacy) Ordinance (“Ordinance”)

4. Data Protection Principle (“**DPP**”) 3 in Schedule 1 of Ordinance states that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for

¹ The form TD318 entitled “Application for a Certificate of Particulars of Motor Vehicle”.

² The prescribed fee currently payable is HK\$45.

which they were to be used at the time of collection or any purpose directly related thereto. According to paragraph 1 of the “Notes about Your Personal Data” in the Application Form TD22 for Registration and Licensing of a Vehicle, the personal data of the applicants will be used by the Transport Department for purposes such as the processing of an application for registration and licensing, maintenance of a public register and activities relating to traffic and transport matters, etc. With this in mind, it would be beyond the reasonable expectation of the registered owners that their personal data contained in the Certificate are to be used for marketing purpose, which can hardly be the same as or directly related to the original purpose of collection of those personal data. Hence, in the absence of the registered owner’s prescribed consent, it may be a contravention of the requirements under DPP3 for an organization to use the personal data so obtained in direct marketing activities.

5. Currently, there is no provision under the Road Traffic Ordinance, Cap. 374 (“**RTO**”) which directly deals with the misuse of personal data contained in the Certificate. Section 111(3) of RTO provides a general offence against knowingly making any statement or providing any information in the application for Certificate which is false in any material particular. However, according to paragraph 2 of the “Notes about Personal Data” in the TD318 Form, it is not obligatory for an applicant to state the purpose of use of the relevant personal data obtained from the public register. Furthermore, the Commissioner for Transport is not vested with any discretion to refuse or reject any application for Certificate with the prescribed fee being duly paid. In the circumstances, it will be difficult to regularize or restrict the use of the personal data so obtained.
6. The PCPD supports that the Regulations should be amended for the Commissioner for Transport to regularize or limit the access to personal data contained in the Certificate to prescribed circumstances. The proposals are conducive to enhancing personal data privacy protection and ensuring the registered owners’ personal data as contained in the public register are properly used.

Purpose of the register

7. The Regulations are made pursuant to section 6(1) of the RTO. In the absence of any specified provision in the Regulations, the purpose for which the said register is maintained should be construed in accordance with the long title of the RTO, namely “*to provide for the regulation of road traffic and the use of vehicles and roads (including private roads) and for other purposes connected therewith*”. Given such generic term, the public and vehicle owner may be uncertain as to the exact purpose for which personal data contained in the public register may be used.
8. The PCPD supports the proposal to specify in the Regulations the purpose of setting up the register of vehicles, which is to allow any member of the public to ascertain the particulars of a registered vehicle in the manner provided in the Regulations. The circumstances under which the registered owner’s personal data maintained in the register may be disclosed to the public will be made explicit.

Conditions under which personal particulars may be released

9. The PCPD generally supports the proposal that personal data of the registered owners will only be released if the applicant can satisfy the following criteria: -
 - (i) the applicant is the registered owner of the relevant vehicle;
 - (ii) the applicant can present a written consent of the registered vehicle owner concerned; or
 - (iii) the applicant declares to the Commissioner for Transport that the registered owners’ personal data would only be used for certifying the identity of the registered vehicle owner in specified scenarios.
10. The Commissioner for Transport will then be vested with the discretion to refuse an application if the aforesaid criteria are not followed and hence the disclosure and subsequent use of vehicle owner’s personal data can be regularized accordingly.

11. To achieve the purpose of regulating road traffic and vehicles, it is crucial for the Administration, in determining the proposed list of scenarios under Annex C, to consider whether the use of vehicle owner's personal data is the same as or directly related to the original purpose of collection of the personal data.
12. It is to be noted that section 58(2) of the Ordinance provides that personal data are exempt from the provisions of DPP3 if they are used for the purposes of prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, dishonesty or malpractice by persons. As the scenarios under Annex C are generally targeting prevention of unlawful or serious improper conduct, it is considered that they appear to be justified and consistent with the provisions under the Ordinance.
13. The PCPD notes that the media sector has indicated that they should be allowed to obtain the particulars of vehicles including personal data of the registered owners for the purpose of conducting news activities. It is to be noted that section 61(2) of the Ordinance provides an exemption from the requirements under DPP 3 for personal data disclosed to any data user who carries out news activities with reasonable grounds to believe that it is in the public interest to publish such data.
14. Under the existing TD318 Form, the applicant may apply for a Certificate for "*sale and purchase of vehicle*". It is noted that "*sale and purchase of vehicle*" does not fall within the list of scenarios in Annex C of the Consultation Document, albeit the applicant may still apply for a Certificate with the registered owner's written consent. The reasons for this apparent omission have not been spelt out. The PCPD can only assume that the implications of the omission have been duly assessed.

Sanction

15. The PCPD supports the proposal to introduce a sanction provision against the misuse of vehicle owner's personal data for purposes other

than that declared. Under the proposal, it will be made obligatory for an applicant to declare the purposes for which the relevant personal data will be used. The introduction of the sanction provision will curb abuse and deter the improper use of vehicle owner's personal data.

16. It is noted that the proposed sanction provision does not apply to the applicants (a) who represent themselves as the registered owners, or (b) who present written consents of the registered owners. There is no valid reason for not requiring the registered owners themselves or those applicants, who claim to have the registered owners' written consent, to declare the truthfulness of such applications. The PCPD invites the Administration to re-consider this exemption when revising the relevant application forms.
17. The PCPD considers the best means to guard against wrongful access to personal data under false declarations is to keep the registered owners informed of the individual applications for a Certificate. This could be done through sending a copy of the TD318 Form to the registered owner after issue of the Certificate and designing the form to alert the applicant of this subsequent notification arrangement.

III Conclusion

18. The PCPD is pleased to note the steps taken by the Administration in formulating proposals to meet the public expectation of affording greater protection to personal data privacy. The PCPD trusts that the new proposals could be implemented in a way that enhances personal data privacy protection without losing sight of the public interest.

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*Office of the Privacy Commissioner for Personal Data
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