

**PCPD’s Submission in response to Public Consultation
on the Proposed Guidelines on Election-related Activities
in respect of the Legislative Council Election**

This submission is made by the Office of the Privacy Commissioner for Personal Data (“PCPD”) in response to the public consultation carried out by the Electoral Affairs Commission (“EAC”) from March to April 2012 on the Proposed Guidelines on Election-related Activities in respect of the Legislative Council Election (“**Proposed Guidelines**”). The comments below made by the PCPD are solely from the perspective of protection of personal data privacy.

2. The PCPD had made submissions to the EAC on previous public consultations on various proposed guidelines on election-related activities. In this submission, where appropriate, the PCPD will make reference to some of our previous comments made.

3. This submission adopts the abbreviations used in the Proposed Guidelines.

Design of the nomination form

4. The PCPD understands that a subscriber to a particular candidate will need to sign on the nomination form and to provide his name (in Chinese and English) and identity card number. The PCPD notes that according to the current design of the form, all subscribers have to provide such personal particulars and to attest their signatures in one single form. Such design has caused privacy concerns as the personal particulars of a subscriber can be viewed by other subscribers who sign the form consecutively. The PCPD has received previous complaint in this regard.

5. The Ordinance imposes a duty on data users to safeguard the security of personal data. Particularly, Data Protection Principle 4 requires a data user to take all practicable steps to protect personal data against unauthorized or accidental access or other use having regard to the kind of data and the harm that could result if any of those things should occur. The PCPD considers that unless otherwise justified, the nomination form should be designed in a manner which is more privacy-assuring. Use of a separate nomination form for each subscriber should equally serve the purpose of nomination.

Paragraph 4.18 – occupation

6. Under this paragraph, a candidate is required to state his occupation in the nomination form. It is noted that under sections 10 and 11 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, a candidate is specifically required to supply his name, identity card number and principal residential address. Although occupation is not specifically listed under the sections, the Returning Officer (“RO”) is empowered to require a candidate to furnish such other information as the Officer considers appropriate in order to be satisfied either that the candidate is eligible to be nominated or as to the validity of the nomination.

7. From previous communication with the EAC, the PCPD notes that the collection of the occupation of a candidate in the nomination form for Village Representative Election is to ascertain whether a person is disqualified for nomination as a candidate because pursuant to section 23 of the Village Representation Election Ordinance individuals holding certain prescribed positions are disqualified for nomination as a candidate.

8. Similarly, under section 39 of the Legislative Council Ordinance (“LEO”), a person is disqualified from being nominated as a candidate of the Legislative Council election if he is a judicial officer, a prescribed public officer, an officer of the Legislative Council member or a member of staff of the Legislative Council Commission, or a representative or salaried functionary of a government of a place outside Hong Kong. If the collection of the candidate’s occupation in the nomination form is to ascertain whether a person is disqualified for nomination as a candidate, the PCPD considers that the same purpose may be achieved by seeking the candidate’s confirmation as to whether he falls within any of the said categories, rather than collection of the occupation of each and every candidate.

Paragraph 7.12

9. Under this paragraph, the RO will give each validly nominated candidate or list of candidates or his/its election agent “*a notice containing the particulars of all the election agents (such as names and addresses) appointed by all candidates for the constituency concerned*” and the RO must also “*display outside his office a notice of the particulars of the election agents*”.

10. It appears that the “particulars” to be stated in the notice are not exhaustive given that the words “such as” have been used. It is noted that

under section 23(8) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, the RO may collect the identity card numbers of the election agents, apart from their names and residential addresses. In this connection, the PCPD reminds the RO that only necessary but not excessive personal data should be disclosed in the notice. If the RO is minded to state the identity card number of the election agent in the notice, the RO should make sure that such use of the identity card number is in compliance with the Code of Practice on the Identity Card Number and other Personal Identifiers issued by PCPD¹. As regards public display, paragraphs 2.7 and 2.7.1 of the Code prohibits a data user to display an identity card number and the name of the holder together publicly unless otherwise required or permitted by law.

Chapter 9

11. Part III of Chapter 9 reminds candidates to respect privacy of electors in the conduct of electioneering activities. To facilitate better understanding of the privacy concerns of the electors, the PCPD suggests that specific cases received by the PCPD may be provided under this Part for illustration purpose. In this connection, summary of certain complaint cases are provided below for EAC's consideration:-

Case 1

This complaint relates to the collection and use of personal data. A complainant provided his name and telephone number to a Legislative Council member seeking his assistance in relation to disability allowance. Subsequently, the Legislative Council member used the complainant's personal data without his consent for election publicity purposes. The Legislative Council member claimed that at the time when the complainant's personal data was collected, the complainant had been verbally informed that his personal data would be used for communication purposes.

In response to the complaint, the Legislative Council members agreed to provide a written personal information collection statement to individuals stating explicitly that the personal data collected would be used for electioneering purpose.

¹ http://www.pcpd.org.hk/english/ordinance/code_id.html

Case 2

This complaint relates to use of personal data. A complainant sought assistance from a political party in relation to the management of the building in which he resides and for this purpose supplied his personal data. Subsequently, the political party used the complainant's personal data in canvassing him to vote for a candidate in an election.

The PCPD relayed the complainant's concern to the political party. The party should obtain an express and voluntary consent from the complainant before using his personal data for electioneering purpose.

Case 3

This complaint relates to the security of personal data. A District Council member sent an email to a list of recipients canvassing vote for a candidate for the District Council election without hiding the names and email addresses of the recipients (by, for example, use of "bcc"). The complainant, being one of the recipients of that email, complained that his name and email address were disclosed to all other recipients of that email.

The PCPD relayed the complainant's concern to the District Council member, with the advice that he should safeguard the security of the personal data of the electors when transmitting messages via electronic means.

Paragraph 15.7 – Exit Poll

12. From previous communication with the EAC, the PCPD understands that organizations which apply for conducting exit poll in Village Representative Election will have to undertake not to collect and maintain any personal data relating to the identity of the electors. In this connection, the PCPD suggests stating explicitly this requirement in this paragraph.

Chapter 16 - Election Donation

13. Paragraph 16.19 states that 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 the donation receipts have to be attached to the "return and declaration of election expenses and election

donations” in a specified form and submitted to the RO (paragraph 16.23) and made available for public inspection (paragraph 16.55). PCPD considers that the donors should be properly informed that their personal data will be subject to public access.

14. From previous communication with EAC with regard to Village Representative Election, the PCPD understands that a form is required to be completed and signed by the donor to confirm that he/she understands the disposal of donations and the arrangement for public inspection. In this respect, the PCPD suggests stating clearly this requirement in the Proposed Guidelines.

Office of the Privacy Commissioner for Personal Data
26 April 2012