

Data Breach Incident Investigation Report

(published under Section 48(2) of
the Personal Data (Privacy) Ordinance, Chapter 486, Laws of Hong Kong)

Registration and Electoral Office

Loss of a Marked Final Register of Electors

Report Number : R19 - 5120

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Registration and Electoral Office

Data Breach Incident

Loss of a Marked Final Register of Electors

Section 48(2) of the Personal Data (Privacy) Ordinance, Chapter 486, Laws of Hong Kong (**Ordinance**) provides that “*the [Privacy] Commissioner [for Personal Data, Hong Kong] 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.”*

This investigation report is hereby published in the discharge of the powers and duties under section 48(2) of the Ordinance.

Stephen Kai-yi WONG

Privacy Commissioner for Personal Data, Hong Kong

29 August 2019

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Registration and Electoral Office

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Executive Summary

Background and Compliance Investigation

Upon the receipt of a data breach notification (**DBN**) lodged by the Registration and Electoral Office (**REO**) on 9 April 2019 in relation to the loss of a marked final register of electors (**Marked FR**) used in the 2016 Legislative Council General Election (**2016 Election**), the Privacy Commissioner for Personal Data, Hong Kong (**Commissioner**) carried out an investigation on 11 April 2019 (**Compliance Investigation**). (paras. 1-7)

The facts of the data breach incident (**Incident**) were obtained and elicited from the DBN, documents produced by the REO and its replies to inquiries raised during the course of the compliance check and the Compliance Investigation, and the internal investigation report of the REO in relation to the Incident. Reference was also made to the information publicly released by the REO and the Constitutional and Mainland Affairs Bureau. (paras. 8-58)

The Marked FR was a marked copy of the final register of electors, which contained the personal data of 8,136 registered electors assigned to the SKH Tsing Yi Estate Ho Chak Wan Primary School polling station in Kwai Tsing District (**Polling Station**) in the 2016 Election, including name, gender, address, Hong Kong Identity card number, whether an individual elector had collected ballot papers at the Polling Station and the

number of ballot papers that he might be issued with. The REO confirmed that the Marked FR was no longer required after the close of the poll. (paras. 14-16)

The REO's logistical arrangements for and the re-locations of the Marked FR were examined. (paras. 21-37)

The Independent Commission Against Corruption (**ICAC**) requested the Marked FR for inspection in relation to the alleged criminal offences under the Elections (Corrupt and Illegal Conduct) Ordinance, Chapter 554, Laws of Hong Kong on 3 October 2016 and 18 April 2017, which was not located after repeated searches. (paras. 38-44)

The REO's security management and the relevant remedial measures taken were also examined. (paras. 45-58)

The legal issues involved focused on data security and data retention, and the relevant provisions are respectively set out in Data Protection Principles (**DPP**) 4 and 2 of Schedule 1 to the Personal Data (Privacy) Ordinance, Chapter 486, Laws of Hong Kong (**Ordinance**). (paras. 59-71)

Views, Findings and Contravention

Data Retention

The Commissioner accepts that when the REO failed to provide the ICAC for inspection with the Marked FR on 3 October 2016, which was within the statutory six-month period under section 88 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Chapter 541D, Laws of Hong Kong, it would be necessary for the REO to retain the personal data as contained in the Marked FR. The Marked FR having not been located despite repeated searches thereafter, the REO was not in a position to control the retention or destruction of the personal data contained in the Marked FR. The Commissioner finds that there was **no**

contravention of the data retention principle under DPP 2(2) of Schedule 1 to the Ordinance. (paras. 75-76)

Data Breach Notification to the Commissioner or the Data Subjects

There being no statutory requirement under the Ordinance for a data breach notification, whether to the Commissioner or the data subjects and whether within a particular period of time or otherwise, the Commissioner finds that there is **no contravention** of the Ordinance in this connection. (para. 77)

The Commissioner notes that the REO had been able to locate most of the missing marked final registers of electors and other electoral documents during the period from October 2016 till November 2017 since the ICAC's intervention, and this was the REO's reason for not giving notification of the loss of the Marked FR until April 2019 as it believed that the Marked FR would eventually be located. (para. 78)

Considering the unique and sensitive nature of the personal data involved, the sequence of events relating to the Incident and the reasons for not formally notifying the Commissioner and other authorities, as well as the affected electors of the data breach until 9 April 2019, the Commissioner finds that whilst there is **no contravention** of the Ordinance, the REO could have given data breach notification to him and the affected electors earlier especially where the relevant improvement measures had been put in place at the 2018 Legislative Council By-election and the Legislative Council Kowloon West Geographical Constituency By-election respectively held in March and November 2018. (para. 79)

Data Security

The Commissioner considers that the security steps required to be taken must be proportionate to the degree of sensitivity of the data and the harm that will result from such loss. He is also mindful that all reasonably practicable steps are not intended to

be the perfect or watertight risk-proof ways of handling data subjects' personal data. (paras. 80-83)

Since the personal data contained in the Marked FR included the unique information about an elector's identity card number and his election or polling status as a registered voter, not limited to the activities that he might or might not have engaged in at the relevant polling station, the Commissioner considers that it is not inconceivable that the loss of the kind of data in question may cause more than monetary or psychological harm to the data subjects concerned. (para. 84)

The Commissioner finds that the Marked FR was admittedly not placed in the designated red plastic bag as required after use in the 2016 Election. (para. 85)

The Commissioner finds that multiple transfers and storage venues for large number of documents, of which the Marked FR was one, would by necessary implications increase the risk and harm of losing the documents. The Commissioner also finds that the REO emptied 100 suitcases of documents without proper logging for relocation from the temporary Cornwall House Store in Quarry Bay to the limited size of Koon Wah Mirror Factory The Third Industrial Building Store in Kwai Chung created additional risks. (paras. 86-87)

The Commissioner finds that there were no specific guidelines or standing procedures for managing the security measures of the Marked FR, in particular its inventory and movements were not properly and adequately documented except the filing of the delivery notes, there were no dossier reviews and the retrieval systems were not put in place in the storerooms. (paras. 88-89)

The Commissioner notes that at the Polling Station, officers from different government departments were pooled to carry out different jobs and duties but finds that the relevant staff training regarding the secure handling of personal data was conducted once only at the Polling Station prior to the 2016 Election. (paras. 90-95)

The Commissioner takes the view that the “reasonably practicable steps” as defined and explained under section 2(1) of the Ordinance and DPP 4(1) of Schedule 1 to the Ordinance refer not only to formulating such steps but also effectively taking such steps on the part of the data user or controller for the security of personal data held. (para. 96)

In light of the facts found and all the relevant circumstances of the data breach in this case, the Commissioner concludes that the REO **contravened DPP 4(1)** of Schedule 1 to the Ordinance by not taking all reasonably practicable steps to ensure that the personal data of the registered electors contained in the Marked FR was protected against its loss or not being located after repeated searches over a period of time of 30 months in that it: - (para. 97)

- failed to have in place clear and adequate policies and handling practices, procedures and systems to protect personal data of this unique and sensitive nature;
- failed to assess and evaluate the security risks and the potential impacts of the risks on the personal data handled in relation to the multiple physical locations where the data was held and the corresponding multiple movements;
- failed to maintain proper records of inventory and retrieval systems by both internal and external staff handling the data;
- failed to consider formulating and implementing separate and specific security measures for the unique and sensitive data in the Marked FR especially where it would not be required after the poll;
- failed to assess the risk of inadvertent human error;
- failed to communicate with all relevant persons and conduct adequate training on the secure handling of the data; and
- failed to have in place a data breach response plan.

Enforcement Action

The Commissioner exercises his power pursuant to section 50(1) of the Ordinance to serve an Enforcement Notice on the REO directing the REO to remedy and prevent any recurrence of the contravention:- (paras. 98-99)

- (1) Separate the handling and storage of the marked final register of electors from other electoral documents including separate packing and centralising storage of all marked final registers of electors in designated and adequate storage locations;
- (2) Set up procedures governing properly and effectively the logistical management as stated in (1) above;
- (3) Set up procedures in respect of proper recording of movements of electoral documents, retrieval systems and dossier reviews;
- (4) Set up personal data audit directives to address, in particular, the issue of loss of personal data and the associated searching process;
- (5) Set up and implement effective and sufficient measures and training to ensure the REO, polling station and other related staff's compliance with the above procedures and directives; and
- (6) Provide documentary proof within three months from the date of the Enforcement Notice showing the completion of items (2) – (5) above.

I. Background

1. On 4 April 2019, the local media reported that the Registration and Electoral Office (**REO**) had lost a marked final register of electors (**Marked FR**) used in the 2016 Legislative Council General Election (**2016 Election**). On the same day, the REO informed the Privacy Commissioner for Personal Data, Hong Kong (**Commissioner**) in writing of a potential data breach incident that the Marked FR could not be located in the course of the search for the marked final registers of electors requested by the Independent Commission Against Corruption (**ICAC**) for facilitating its investigation into suspected offences under the Elections (Corrupt and Illegal Conduct) Ordinance, Chapter 554, Laws of Hong Kong.
2. On 5 April 2019, the REO issued a press release¹ stating that it had not located the Marked FR and was conducting a thorough search for it. The Marked FR contained the name, sex, address, Hong Kong Identity (**HKID**) card number, number of ballot papers entitled by about 8,000 individual electors assigned to a polling station in Kwai Tsing District² (**Polling Station**). According to the press release, if an elector had cast his/her vote in the 2016 Election, a line across his/her name and HKID card number would be placed.
3. On 9 April 2019, the REO submitted a data breach notification (**DBN**) to the Commissioner confirming that the Marked FR had been lost (**Incident**). According to the DBN, the REO stated that “*a law enforcement agency [sic] in October 2016 requested the inspection of [the Marked FR], amongst others, containing 8,136 electors assigned to a polling station in Kwai Tsing District to facilitate their investigation into suspected offence. In the course of the searching of the [Marked FR] requested, [it] could not be located. In view of this, REO has searched its stores and offices to locate the [Marked FR]. After a thorough search, it was confirmed on 9 April 2019 that the [Marked FR] has been lost. The circumstances leading to the loss of the [Marked FR] is one of*

¹ <https://www.info.gov.hk/gia/general/201904/05/P2019040500768p.htm>

² The REO later revealed that the Polling Station was located at the SKH Tsing Yi Estate Ho Chak Wan Primary School.

the subjects of a detailed investigation to be carried out [by the REO] into this case.”

4. The Commissioner immediately initiated a compliance check (**Compliance Check**) under sections 8(1)(a) and (c) of the Personal Data (Privacy) Ordinance, Chapter 486, Laws of Hong Kong (**Ordinance**)³ to follow up the Incident. The REO issued another press release⁴ confirming the Incident on the same day.
5. Considering and assessing all the information available, the Commissioner had reasonable grounds to believe that there might be contravention of the requirements under the Ordinance and commenced a compliance investigation (**Compliance Investigation**) against the REO, pursuant to section 38(b)⁵ of the Ordinance on 11 April 2019.

The Legislative Council meeting

6. As requested by a number of legislative councilors, the Incident was discussed at the meeting of the panel on Constitutional Affairs of the Legislative Council on 15 April 2019 (**Panel Meeting**).
7. For the purpose of the Panel Meeting, the Constitutional and Mainland Affairs Bureau (**CMAB**) submitted a paper⁶ giving an account of the Incident, which is extracted and reproduced below:

³ Section 8(1)(a) of the Ordinance provides that “*the Commissioner shall monitor and supervise compliance with the provisions of this Ordinance*” and section 8(1)(c) provides that “*the Commissioner shall promote awareness and understanding of, and compliance with, the provisions of this Ordinance, in particular the data protection principles*”.

⁴ <https://www.info.gov.hk/gia/general/201904/09/P2019040900553.htm>

⁵ Section 38(b) of the Ordinance provides that “*Where the Commissioner has reasonable grounds to believe that an act or practice - (i) has been done or engaged in, or is being done or engaged in, as the case may be, by a data user; (ii) relates to personal data; and (iii) may be a contravention of a requirement under this Ordinance, then... the Commissioner may carry out an investigation in relation to the relevant data user to ascertain whether the act or practice referred to in that paragraph is a contravention of a requirement under this Ordinance*”.

⁶ <https://www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1220-1-e.pdf>

“ ...

Based on information currently available, law enforcement agency requested the REO to make available the majority of Registers of Electors for inspection by phases after the completion of the [2016 Election]. Among others, law enforcement agency requested in October 2016 to inspect the [Marked FR] of the [Polling Station]. Given that a large number of polling stations as well as related materials and documents are involved in the general election, the REO took some time for the search, but had been unable to find the [Marked FR] in the process.

After the Chief Electoral Officer of the REO came to know about the possible loss of the [Marked FR] in early April, he immediately ordered relevant personnel to further conduct a thorough search and inspect about 13 000 ballot boxes and 3 400 suitcases that were provided to the Presiding Officers for transporting materials, and filed the case to the Office of the Privacy Commissioner for Personal Data in the evening of 4 April. Apart from trying its utmost to locate the [Marked FR], the REO had gone through numerous records on the handling of electoral materials, and contacted the persons-in-charge at that time to enquire about the incidents. However, the REO has been unable to ascertain under what circumstances the [Marked FR] was lost at this stage. The REO issued a press statement on 5 April to inform members of the public that it had been conducting a comprehensive search for the [Marked FR]. In the morning of 9 April, the REO issued another press statement confirming that the [Marked FR] could not be found...”

II. Facts and Circumstances relevant to the Incident

The Compliance Investigation

8. The Commissioner's findings and grounds of decision were based on the details provided in the DBN, documents produced by the REO and its replies to inquiries raised during the course of the Compliance Check and Compliance Investigation (the last one dated 7 August 2019), and the internal investigation report of the REO⁷ (**REO's Report**) in relation to the Incident. Reference was also made to the information publicly released by the REO and CMAB (e.g. in press releases and the Panel Meeting).

Major Functions and resources of the REO

9. The REO provides the Electoral Affairs Commission (**EAC**) with administrative support for the effective discharge of its statutory functions under the Electoral Affairs Commission Ordinance, Chapter 541, Laws of Hong Kong. The REO executes the decisions of the EAC on the delineation of geographical constituency and District Council constituency boundaries, the registration of electors and the conduct of elections.
10. The REO currently has a permanent establishment of 186 posts and has engaged 75 full-time non-civil service contract (**NCSC**) staff. During the 2016 Election, the REO had 249 staff (of which 140 of them were on its permanent establishment and 109 were occupying time-limited posts) and 934 full-time NCSC staff.
11. For the purposes of carrying out election-related activities, the REO collects, holds, processes and uses the personal data of electors.

⁷ Provided to the Commissioner on 14 June 2019.

The 2016 Election

12. The 2016 Election was held on 4 September 2016. The REO set up a total of 571 ordinary polling stations territory-wide on the polling day for electors to cast their votes.
13. The Polling Station was assigned as a polling-cum-counting station⁸ in the 2016 Election. The table below shows the background information of the Polling Station:-

District	Kwai Tsing District, New Territories West
Name of the Polling Station and Station Code	SKH Tsing Yi Estate Ho Chak Wan Primary School (S2001)
Number of electors assigned to the Polling Station	Geographical Constituencies: New Territories West: 8,136 Traditional Functional Constituencies: Information Technology: 68

The Marked FR

14. The Marked FR was a marked copy of the final register of electors, which contained the personal data of 8,136 registered electors assigned to the Polling Station. In the 2016 Election, an elector was required to present the identity document to a polling staff before a ballot paper would be issued to him/her. When the elector's particulars completely matched the entry in the final register of electors, the polling staff would softly call out the name of the elector as stated in the register, issue him/her with a ballot paper and then would cross out the name and HKID card number of the relevant entry with a red ball-point pen and a ruler. Another polling staff would double check

⁸ A polling station which would be converted into a counting station after the polling hours for the counting of the ballot papers.

whether the correct entry was crossed out. The register would then become a marked final register of electors after the close of poll. The REO stated that there was only one marked final register of electors in the Polling Station (i.e. the Marked FR) and each and every other polling station. The Marked FR was printed with continuous-form paper with holes, measuring at 38.5cm (length) x 28cm (width) x 8cm (height).

15. The types of personal data contained in the Marked FR included name, gender, address, HKID card number, whether an individual elector collected ballot papers at the Polling Station, and the number of ballot papers to be issued with.
16. The REO admitted that the Marked FR was not required during the counting process (i.e. after the close of the poll in the 2016 Election).

Relevant requirements of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Chapter 541D, Laws of Hong Kong (EAC Regulation)

17. Section 63 of the EAC Regulation stipulates the steps to be taken at the close of the poll for a polling station which is also a counting station —

“ ...

(2) After complying with subsection (1), the Presiding Officer must, in the presence of the persons, if any, who are present within the polling station, take the following steps —

...

(e) make up into separate sealed packets —

- (i) ballot papers which have not been issued;*
- (ii) the unused ballot papers;*
- (iii) the spoilt ballot papers; and*
- (iv) the marked copies of the final register...”*

18. Section 86(1) of the EAC Regulation requires the ballot papers, accounts, packets, etc. to be sent to Chief Electoral Officer (CEO) —

“As soon as practicable after the Returning Officer prepares the notice of the result of the election, that Officer or the Presiding Officer, as may be appropriate, must send to the Chief Electoral Officer —

- (a) the ballot paper accounts, verification of the ballot paper accounts and the re-verification of the ballot paper accounts;*
- (b) the statement referred to in section 81(6);*
- (c) the sealed packets made up under section 85(1);*
- (d) a copy of the notice of the result of the election;*
- (e) all nomination forms;*
- (f) notices of withdrawal of candidature (if any);*
- (g) notices of appointment of election agents, polling agents and counting agents and copies of authorizations of election expense agents; and*
- (h) any other document relating to the election specified by the Commission.”*

19. In accordance with section 88⁹ of the EAC Regulation, the CEO must retain in his custody the electoral documents as set out in section 86¹⁰ for at least six months from the date of the election to which they relate before destruction, unless directed by an order of court in proceedings relating to an election petition or criminal proceedings.
20. The REO pointed out that it regarded the marked final register of electors as an important document in elections and had retained the register in accordance with the requirements stipulated in section 88 of the EAC Regulation.

Logistical arrangements for electoral documents of the 2016 Election

21. An operational manual entitled “*2016 Legislative Council General Election – Operational Manual for OPS*”¹¹ (**Operational Manual**), which consists of

⁹ “The Chief Electoral Officer must retain in that Officer’s custody the documents set under section 86 for at least 6 months from the data of the election to which they relate. That Officer must thereafter, unless directed by an order of court in proceedings relating to an election petition or criminal proceedings, destroy them.”

¹⁰ See para. 18.

¹¹ “OPS” stands for Ordinary Polling Station.

nearly 500 pages, sets out the procedures for managing the polling and counting stations at the operational level and highlights some major points as reminders. The Operational Manual included detailed procedures for the packing of the electoral documents after the declaration of the result of the election, and the disposal of electoral documents for ordinary polling stations of the 2016 Election.

22. The Operational Manual required the marked final register of electors and other electoral documents to be sealed in separate packets. The sealed packets were to be further sealed in red plastic bag(s) to which a sealing certificate¹² was required to be attached and placed in locked ballot box(es) or suitcase(s).
23. The Operational Manual also provided that the Presiding Officer¹³ (**PRO**) should deliver the locked ballot box(es)/suitcase(s) with a “*Delivery Note to Designated Collection Centre (for Geographical Constituency)*” (**Delivery Note**) to the respective Designated Collection Centre¹⁴ (**DCC**) for temporary storage under police escort. The responsible officer (**Responsible Officer**) of the Home Affairs Department (**HAD**) at the respective DCC was required to acknowledge receipt¹⁵ of the sealed packets and electoral documents in accordance with the Delivery Note.
24. If the process of counting of votes is to be relocated to reserve counting stations, the PRO must seal all the relevant counting documents in packets in accordance with a checklist of items provided by the REO and deliver all the electoral items and any other relevant counting materials from the polling station to the designated reserve counting station under police escort.
25. The REO would usually transport the electoral documents from DCCs to its warehouses for storage within two days after election. The REO designated a

¹² “*Final Checklist for Presiding Officer at the Close of the Count (for Geographical Constituency “GC”) – [P(10)(GC)]*”

¹³ The officer-in-charge of the polling and counting station on all polling and counting procedures.

¹⁴ DCC was administrated by HAD for collection of electoral documents of individual polling stations.

¹⁵ This included checking the information on the Delivery Note (without opening the sealed envelopes/red plastic bags), put a tick in the remarks column to confirm receipt of the items concerned and record irregularities, if any.

storeroom in Cornwall House Store¹⁶ (**CH Store**) to store specified electoral documents including various electoral forms, ballot papers, counterfoils of issued ballot papers and marked final registers of electors contained in ballot boxes/suitcases/non-woven bags. The CH Store was a temporary store used by the REO in the 2016 Election.

Sequence of Events leading to the Incident

26. According to the REO, the sequence of events leading to the Incident is summarised as follows:-

<i>Date</i>	<i>Event</i>
4 September 2016	The 2016 Election was held. Upon the close of poll at 10:30pm, the Polling Station, together with all other ordinary polling stations, was converted into a counting station for counting geographical constituency votes.
5 September 2016	In the morning, the Polling Station, together with the electoral documents, was relocated to the reserve counting station under police escort at Tsing Yi Estate Community Hall (Reserve Station). (1st transfer) After the declaration of the counting results, the electoral documents were delivered to the DCC at Cheung Fat Estate Community Centre (Cheung Fat DCC) for temporary storage under police escort. (2nd transfer)
5 – 6 September 2016	The REO staff collected and transported the electoral documents from Cheung Fat DCC to CH Store. (3rd transfer)

¹⁶ Cornwall House in Quarry Bay.

3 October 2016	The ICAC requested the inspection of six marked final registers of electors, including the Marked FR (i.e. the ICAC's first request for the Marked FR). Some electoral documents (including the Marked FR) could not be located after repeated searches.
21 and 24 October 2016	<p>In view that Cornwall House in which CH Store was located was about to be demolished, the REO relocated the electoral documents (2,208 suitcases and 426 ballot boxes, including the marked final registers of electors) from CH Store to Koon Wah store¹⁷ (KW Store). (4th transfer)</p> <p>Searching work was resumed after the relocation exercise.</p>
October 2016	A Senior Electoral Officer (SEO) reported to the Deputy Chief Electoral Officer (DCEO) about the failure to locate the Marked FR (but did not disclose the name and code of the Polling Station until February 2017).
November 2016 – February 2017	Searching work continued. Some electoral documents and marked final registers of electors requested by the ICAC were found but a total of nine (including the Marked FR) were not located.
March – November 2017	Extensive searches were conducted for the Marked FR. Seven, out of nine marked final registers of electors were found but the remaining two (including the Marked FR) had not been located.

¹⁷ Koon Wah Mirror Factory The Third Industrial Building in Kwai Chung.

18 April 2017	The ICAC requested a number of marked final registers of electors of the 2016 Election for inspection including the Marked FR (i.e. the ICAC's second request for the Marked FR).
July 2017	The DCEO reported to the Principal Electoral Officer (PEO) that the Marked FR could not be located.
September 2017	One of the two remaining marked final registers of electors was found in a packet containing ballot papers, leaving only the Marked FR could not be located.
November 2017	Completion of inspecting suitcases.
December 2017 – November 2018	Preparatory work for 2018 Legislative Council By-election ¹⁸ and the Legislative Council Kowloon West Geographical Constituency By-election ¹⁹ (collectively By-elections).
10 January 2018	The PEO sent an email to the CEO making a brief report on the Incident.
December 2018	Searching work was suspended to prepare for the 2019 District Council Ordinary Election.
25 March 2019	The REO received a media enquiry concerning whether there was a loss of document(s) containing personal data of electors of the 2016 Election.
29 March 2019	The REO issued the reply to the media enquiry.
1 April 2019	The CEO ordered to conduct a further thorough search which included an inspection of about 13,000 ballot boxes and 3,400 suitcases.

¹⁸ Held in March 2018.

¹⁹ Held in November 2018.

4 April 2019	Written notification of possible data breach was given to the Commissioner in the evening.
5 April 2019	The REO issued a press statement to the public responding to the media enquiries relating to the Marked FR which had not been located.
9 April 2019	The REO (i) reported the Incident to the Commissioner by way of a DBN, the Police and Government Records Service Director; (ii) issued another press statement confirming that the Marked FR could not be found after a thorough search; (iii) issued letters to notify all affected electors while the same were uploaded to the REO's website; and (iv) wrote to various government departments and organisations in different sectors in relation to the Incident.
10 April 2019	The REO reported the Incident to the Government Security Officer.

Re-locations of Electoral Documents

27. The electoral documents were transferred from one location to another after the close of the 2016 Election at the Polling Station.

The 1st transfer

28. In the morning of 5 September 2016, the Polling Station was relocated to the Reserve Station for counting votes as the venue had to be returned to the school by 6:00 am for resuming classes at normal time. The REO stated that the PRO had delivered the Marked FR and other electoral documents from the Polling Station to the Reserve Station under police escort and accompanied by some of the counting staff. The REO stated that the PRO had followed the standing procedures set out in the Operational Manual for the transfer, which included properly packing and sealing the electoral documents in accordance with a checklist of the items.

The 2nd transfer

29. After the counting results had been declared on the same day, the electoral documents were delivered from the Reserve Station to Cheung Fat DCC under police escort for temporary storage. The Delivery Note indicating the types and quantity of the electoral documents, including the Marked FR was signed by the PRO of the Polling Station and the Responsible Officer of the DCC. According to the Delivery Note, the transfer was completed on 5 September 2016.
30. It was found that an amendment was made to item no. 2 of the Delivery Note²⁰, in which the term “*Red Plastic Bag(s)*” had been crossed out and replaced by “*suitcase*”. According to the REO’s Report, the PRO of the Polling Station explained that the amendment was made by the Responsible Officer of Cheung Fat DCC. The Responsible Officer could not recall the details and claimed that all electoral documents delivered by the PRO had been sealed and locked inside the suitcases. Both officers claimed that they had followed the standing procedures.
31. The REO admitted that the PRO should not have placed the sealed packet containing the Marked FR, together with the ballot papers, in a red plastic bag as reflected by the amendment made on the Delivery Note, contrary to the Operational Manual.

The 3rd transfer

32. The electoral documents at Cheung Fat DCC were subsequently collected and transported to CH Store for storage. As a result of the delay in the completion of counting process, the transportation of the documents could not start until at about 1:30pm on 5 September 2016 and finished on 6 September 2016.

²⁰ See Appendix 1.

33. The REO admitted that there was no other document indicating specifically the movement of the Marked FR than the Delivery Note. The 3rd transfer was recorded by a bearer memo dated 5 September 2016²¹ but it did not specify the kinds of documents being transferred.
34. The REO also stated that the officer responsible for the transfer confirmed that no record had been made for the quantity of marked final register of electors or electoral documents delivered to CH Store.

The 4th transfer

35. According to the REO, due to the scheduled demolition of Cornwall House, CH Store loaned from the Technical Services Team of the REO was only for temporary use from early September to mid-October 2016. On 21 and 24 October 2016, the REO relocated the electoral documents (2,208 suitcases and 426 ballot boxes collected from 18 DCCs, including the marked final registers of electors) from CH Store to KW Store.
36. The REO explained that due to the limited size of KW Store, around 100 suitcases had to be emptied before the transfer. The REO admitted that there might have been mixing up of materials from different stations.
37. Although there were procedural guidelines in place governing the record management process, the REO admitted that no detailed stocktaking was conducted before and after the return of the electoral materials to CH Store after the 2016 Election and subsequent relocation from CH Store to KW Store.

ICAC requests for electoral documents

38. The ICAC requested the REO on 26 occasions to make available a total of 547 marked final registers of electors for inspection into alleged offences under the Elections (Corrupt and Illegal Conduct) Ordinance by phases. The ICAC

²¹ See Appendix 2.

requested specifically the Marked FR for inspection to facilitate its investigation on two occasions: 3 October 2016 and 18 April 2017.

39. On 3 October 2016, the ICAC requested the inspection of six marked final registers of electors, including the Marked FR. Subsequently, the ICAC requested a number of marked final registers of electors of the 2016 Election for inspection including the Marked FR on 18 April 2017.

The missing Marked FR

40. The search for the Marked FR started from October 2016 till November 2017 but it had not been located. The search included opening all sealed packets containing ballot papers pending disposal, all suitcases and ballot boxes. Some other misplaced marked final registers of electors and other electoral documents were however found during the search.
41. The REO stated that the responsible team for the search was subsequently directed to conduct preparatory work for the By-elections scheduled to be held in March 2018 and November 2018. This preparatory work was carried out from December 2017 to November 2018.
42. The search was suspended in December 2018 because of the need to tidy up the electoral materials returned from the polling stations of the By-elections and to conduct stocktaking of electoral materials so as to facilitate subsequent preparatory work for the 2019 District Council Ordinary Election.
43. The REO stated that during the extensive search conducted from March to November 2017, some missing marked final registers of electors had been successfully located one after another. On this basis, the subject officers might have reasonable expectation that the Marked FR was also misplaced and could eventually be found and therefore did not conclude that this Marked FR was lost when responding to ICAC's request of 18 April 2017.

Internal communication relating to the Incident

44. The REO provided the following internal communications in relation to the Incident:-
- (i) In October 2016, the SEO reported to the DCEO on the failure to locate the Marked FR but the name and code of the Polling Station was not disclosed until February 2017.
 - (ii) The DCEO reported the missing of the Marked FR to the PEO.
 - (iii) The PEO sent an email to the CEO making a brief report on the Incident on 10 January 2018. The REO claimed that details of the Incident and previous searches were not provided in the email;
 - (iv) On 25 March 2019, the media enquiry mainly about whether there was a loss of document(s) containing personal data of electors of the 2016 Election was discussed at the weekly meeting chaired by the CEO and attended by the division and unit heads on 27 March 2019. Considering that the scope of the enquiry was wide and the information made available was limited, the CEO formed the view that the Marked FR was possibly misplaced and a loss could therefore not be confirmed without further searches, which formed the basis of the REO's reply to the media on 29 March 2019; and
 - (v) Upon receipt of the follow-up enquiry made by the media on 29 March 2019, the REO conducted a further thorough search which included an inspection of 13,000 ballot boxes and 3,400 suitcases that were provided to the PROs for transporting polling materials at six warehouses of the REO.

The REO's security measures

Physical measures

45. The REO stated that the PRO was personally responsible for the safe custody of the electoral documents including the Marked FR in the counting station (i.e.

the Polling Station) and the Reserve Station till handing them to the Responsible Officer of Cheung Fat DCC.

46. The REO stated that the electoral documents delivered to DCCs had to be stored in a secure locked environment. The electoral documents including the Marked FR were stored in the hall of Cheung Fat DCC which would be locked when not in use. Security guards were stationed at Cheung Fat DCC.
47. In both CH Store and KW Store, closed-circuit television system and engagement of security guards were in place.

Procedures and guidelines

48. The REO provided the Commissioner with security procedures and guidelines covering (i) the manner and ways in which records should be stored so as to facilitate user access and ensure that they were protected from unauthorised access, use, disclosure, removal, deterioration, loss or destruction and (ii) the security measures dealing with its handling and storing of records and information containing personal data.
49. The REO also provided two other administrative circulars requiring that special care must be taken to guard against unauthorised use or disclosure of personal data, and that the handling procedures were to be reviewed by division/unit heads on an annual basis, with a view to devising and implementing in their respective divisions/units appropriate procedures and data protection measures having regard to their operational needs, and to ensure compliance with the Ordinance including its Data Protection Principles (**DPP**). The circulars were scheduled to be re-circulated to REO's staff at half-yearly intervals.

Polling Station Staff

50. During the 2016 Election, the Polling Station was assigned with a PRO, who was the officer-in-charge of the polling and counting station on all polling and counting procedures; two Deputy Presiding Officers (**DPRO**), who were the

seconds-in-charge of the polling and counting station and the officers-in-charge for collection of statistics; an Assistant Presiding Officer (Statistics) who was responsible to collect, collate and compile statistical returns; six Assistant Presiding Officers (**APRO**) who were to assist the PRO and DPRO in ensuring the smooth and efficient operation of the polling and counting station; a Polling Officer (Statistics) to assist in the collation of statistical information and compilation of returns; 24 Polling Officers who were responsible to issue ballot papers to the electors and mark the final register of electors (which would later become the marked final register) and to sort ballot papers and count the votes in accordance with the instructions given by the PRO, the DPRO or the APRO; and 5 Polling Assistants.

51. The REO stated that polling staff had been asked to study and familiarise themselves with the Operational Manual thoroughly. The Operational Manual was issued to PROs, DPROs, APROs and District Liaison Officers (**DLOs**) of DCCs.
52. To ensure relevant polling staff would be familiar with the requirements of the Operational Manual, they were briefed through PowerPoint presentation at “*Polling Management Training*” (for PROs and DPROs), and training video and PowerPoint presentation at the “*General Briefing*” (for all polling staff) conducted before the 2016 Election. DLOs and officers-in-charge of DCCs from the HAD also received briefing on the logistical arrangements of election materials.
53. The REO also sent emails and fax messages reminding polling staff to follow the standard packing procedures at the close of the poll.

Remedial measures after the Incident

Immediate follow-up actions

54. In addition to notifying the Commissioner, the Police and Government Records Service Director, the REO also issued notification letters to all affected electors

on 9 April 2019 to mitigate any possible damage brought about by the Incident. Affected electors were advised to log on the Online Voter Information Enquiry System²² to check their registration status and the latest registration information.

55. The REO also wrote to various government departments and organisations in different sectors²³ in relation to the Incident to appeal for their adopting appropriate measures to prevent the relevant information from being used as a means of identity theft in criminal activities.

Additional Measures implemented since 2018 Legislative Council By-election held on 11 March 2018

56. To enable easy identification of the packet containing marked final register of electors, polling staff were requested in the 2018 Legislative Council By-election to put the sealed packet(s) of marked final register, together with updates to the marked final register, inside a yellow plastic bag and seal it with a sealing certificate.
57. To facilitate the retrieval of relevant documents after the by-election, polling staff were required to put the yellow plastic bag, together with all polling/counting/statistical forms, etc., into locked red plastic document box. APROs were deployed to DCCs to check specifically the electoral documents returned from the polling stations against the information on the Delivery Notes and were required to sign on the Delivery Notes after checking.

Additional Measures implemented since 2018 Legislative Council By-election for Kowloon West Geographical Constituency held on 25 November 2018

58. Bar-locked filing cabinets were delivered to DCCs for storage of sealed yellow plastic bags, polling/counting/statistical forms and other electoral documents with personal data.

²² www.voterinfo.gov.hk

²³ Including finance, insurance, telecommunications, retail, estate agents, information technology, etc.

III. The Relevant Law

Personal Data

59. “*Personal data*”, as defined in section 2(1) of the Ordinance, means “*any representation of information in any document –*
(a) relating directly or indirectly to a living individual;
(b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
(c) in a form in which access to or processing of the data is practicable.”
60. As mentioned above, the personal data in the Incident included the name, gender, address, HKID card number, number of ballot papers entitled by 8,136 electors, and the information of whether the elector had casted his vote, which were contained in the Marked FR.

Data Subject

61. The “*living individual*” referred to above is also statutorily known as “*data subject*” as defined in section 2(1) of the Ordinance.
62. In the Incident, the data subject referred to the 8,136 individual electors assigned to the Polling Station.

Data User

63. The Ordinance, including the DPP, aims to regulate the acts and practices of a data user being, as defined in section 2(1) of the Ordinance, “*a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data*”.
64. The REO was the data user in the Incident.

Data Retention

65. Once personal data is collected, the data user will have to consider, inter alia, how long it should be kept, as unnecessary and excessive period of retention of personal data would inevitably create or increase the risk of data security.
66. DPP 2(2) lays down the principle of data retention which provides that:

“All practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used”.

Data Breach

67. Not being defined in the Ordinance, a data breach generally refers to a suspected or actual breach of data security concerning personal data held by a data user; the exposure of the data to the risk of loss, unauthorised or accidental access, processing, erasure or use; the unauthorised access and transfer; the improper disposal or management of documents containing personal data, etc.

Data Breach Notification

68. Although it is not mandatory under the Ordinance for data users to report a data breach to the Commissioner or the affected data subjects, the Commissioner has issued a revised *Guidance on Data Breach Handling and the Giving of Breach Notifications*²⁴ containing recommended steps to follow in the event of a data breach.

²⁴ https://www.pcpd.org.hk/english/resources_centre/publications/files/DataBreachHandling2015_e.pdf

Data Security

69. DPP 4(1) – Security of Personal Data provides as follows:

“All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user is protected against unauthorized or accidental access, processing, erasure, loss or use having particular regard to –

- (a) the kind of data and the harm that could result if any of those things should occur;*
- (b) the physical location where the data is stored;*
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data is stored;*
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and*
- (e) any measures taken for ensuring the secure transmission of the data”.*

70. “Practicable” is defined in section 2(1) of the Ordinance to mean “*reasonably practicable*”.

71. The “*harm*” test in DPP 4(1)(a) calls for the consideration whether the security measures undertaken by the data user with respect to the personal data held were proportionate to the degree of sensitivity of the data and the harm that might result from unauthorised or accidental access to such data.

IV. Views, Findings and Contravention

Unique Personal Data

72. There is no dispute that the Marked FR is, by design, a record of information (personal data) relating to the registered electors (data subjects), from which their identity is to be ascertained and to which access of the data is practicable within the meaning of section 2(1) of the Ordinance.
73. In addition to the name, gender, address and HKID card number, the Marked FR contained information about the elector in relation to whether he had collected ballot paper(s) and the number of ballot papers he could collect, and most important of all a mark was entered accordingly as appropriate. The Commissioner considers that the nature and the reasons for marking make the personal data of electors unique, if not merely sensitive.

The REO as Data User

74. There is also no dispute that the REO was at the material time the data user or controller of the personal data of the electors within the meaning of section 2(1) of the Ordinance. The REO was therefore obliged to observe and comply with the relevant provisions and requirements under the Ordinance.

Data Retention

75. The Commissioner accepts that it was the REO's practice to regard the marked final registers of electors (including the Marked FR) as important documents in elections and retain the registers in accordance with the requirements under section 88 of the EAC Regulation for at least six months from the date of the election before destruction, unless directed by an order of court in proceedings relating to an election petition or criminal proceedings.
76. Given the intervening factor of the ICAC in the manner aforesaid, the Commissioner accepts that when the REO failed to provide the ICAC for

inspection with the Marked FR on 3 October 2016, which was within the statutory six-month period under section 88 of the EAC Regulation, it would be necessary for the REO to retain the personal data as contained in the Marked FR. The Marked FR having not been located despite repeated searches thereafter, the REO was not in a position to control the retention or destruction of the personal data contained in the Marked FR. The Commissioner finds that there was **no contravention** of the data retention principle under DPP 2(2) of Schedule 1 to the Ordinance.

Data Breach Notification

77. Notwithstanding that there is no statutory requirement under the Ordinance for a data user to notify the Commissioner and the data subjects of a data breach, and there is no statutory requirement for the data user to so notify within a prescribed period of time either, the REO did lodge a DBN with the Commissioner on 9 April 2019 and take steps to notify the data subjects (i.e. the affected electors). The Commissioner finds that there is **no contravention** of the Ordinance in this connection.
78. The Commissioner notes that the REO had been able to locate most of the missing marked final registers of electors and other electoral documents during the period from October 2016 till November 2017 since the ICAC's intervention, and this was the REO's reason for not giving notification of the loss of the Marked FR until April 2019 as it believed that the Marked FR would eventually be located.
79. Considering the unique and sensitive nature of the personal data involved, the sequence of events relating to the Incident and the reasons for not formally notifying the Commissioner and other authorities, as well as the affected electors of the data breach until 9 April 2019, the Commissioner finds that whilst there is **no contravention** of the Ordinance, the REO could have given data breach notification to him and the affected electors earlier especially where the relevant improvement measures had been put in place at the By-elections respectively held in March and November 2018.

Data Security

80. All data users, having collected and retained personal data, should map out their risk management policies and carry out their own due diligence exercise and data protection impact assessment to ensure that they identify potential risks and circumstances that may lead to unauthorised or accidental loss or use of the data, and to take reasonably practicable steps and implement appropriate security measures to minimise, if not avoid, such risks.
81. DPP 4(1) does not require the REO to provide an absolute guarantee for the security of the personal data held by it, but rather, only to take such steps as may be reasonably practicable in the circumstances, having regard to the matters set out in paragraphs (a) to (e) of DPP 4(1). What “reasonably practicable” steps are will turn on the facts of each case.
82. The “reasonably practicable” test necessarily refers to the legal standard whereby a reasonable or prudent data user would exercise average care, skill and judgement in ensuring data security that society requires of it for the protection of data subjects’ fundamental human right of privacy. It is generally accepted that a reasonable data user will weigh before taking or not taking actions concerning personal data the following factors (not being exhaustive):-
- the foreseeable risk of harm resulting from its actions or omissions;
 - the extent of the risk so created;
 - the likelihood such risk will actually cause harm to the persons affected;
 - and
 - any other alternatives of lesser risks.
83. DPP 4(1) sets out the “particular regard” that must be had in the context of data security. The Commissioner considers that the steps required to be taken must be proportionate to the degree of sensitivity of the data and harm that will result from such loss. As in many previous cases, how and why the data was lost might not be known before a data breach notification was made. The Commissioner is also mindful that all reasonably practicable steps are not intended to be the perfect or watertight risk-proof ways of handling data

subjects' personal data. Every system or step taken may have some known or unknown shortcomings. Provided that the steps are reasonably practicable in all the circumstances of the case, such steps are not amenable to any challenge under DPP 4(1).

a) The kind of data and harm that could result from the data breach

84. As explained in paragraph 73 above, the data included the unique information about an elector's identity card number and his election or polling status as a registered voter, not limited to the activities that he might or might not have engaged in at the relevant polling station. Whilst the peril of the identity theft and other possible misuse of the identity card number are alarming enough, the implications of any disclosure and use of the election or polling status cannot be underrated. It is not inconceivable that the loss of the kind of data in question may cause more than monetary or psychological harm to the data subjects concerned.

b) The physical location where the data was stored

85. The facts show that the data was recorded in a form of a paper register – one single volume of open records. Whilst it would be made reference to readily, it would also be easy to be accessed without authorisation or lost. The Marked FR did not appear to be locked in or secured to a safe place before it was used. The safe custody of it in the Polling Station and the Reserve Station rested on the PRO personally²⁵. After use, the Marked FR was admittedly not placed in the designated red plastic bag as required.

86. The Commissioner also finds that the four relocations and related transfers of the Marked FR, amongst other electoral documents, for storage did not help meet the high standard of data security expected of the kind of data in question and of the REO, being a public body of its kind. The multiple transfers and storage venues for large number of documents, of which the Marked FR was one would by necessary implications increase the risk and harm of losing the

²⁵ See para. 45.

documents, in particular when it was no longer required after the close of the poll.

87. Having the storage of the documents, including the Marked FR albeit not identifiable amongst them, relocated from one place to another several times was unhelpful enough for the purposes of data security; having the existing minimum security measures not complied with and their implementation not effectively monitored would only be deplorable, not to mention the additional risks created by emptying 100 suitcases of documents without proper logging for relocation from the temporary CH Store to the limited size of KW Store.

c) The security measures

88. In relation to the safe custody of documentary records, the REO made reference to a general circular entitled “*Mandatory Records Management Requirements*” dated 22 April 2009 and the Operational Manual. Unlike security management of electronic or digital data which evolves with the development of technology, management of tangible records of data should not be a non-standard management issue. What was lacking was, as the Commissioner finds, that there were no specific guidelines or standing procedures for managing the security measures for documentary data of the kind in question, in that its inventory and movements were not properly and adequately documented except the filing of the Delivery Note, there were no dossier reviews and the retrieval systems were not put in place in the storerooms.
89. The Commissioner accepts that mixing up of electoral documents was not unusual as the REO explained that many of the seemingly lost documents had been recovered after searches. The Commissioner does not, however, accept that this could be the right attitude for not placing adequate and sufficient weight to formulating effective and updated security measures, monitoring and reviewing the implementation thereof, the unique and sensitive nature of this kind of data in particular considered.

d) The integrity, prudence and competence of persons having access to the data

90. Human factors always play a significant role in data breaches. DPP 4(1) specifically sets out that particular regard must be had to “*any measures taken for ensuring the integrity, prudence and competence of persons having access to the data*” for the purpose of data security. Indeed, this is part and parcel of data governance within an organisation even where the relevant persons come from the same establishment.
91. The efficacy of this part of human-related data governance could be complicated, if not undermined by the fact that other persons than those in the same organisation are involved. The Commissioner notes that at the polling stations, officers from different government departments were pooled to carry out different jobs and duties. These polling staff might have access to the Marked FR for different purposes or at different stages. After the close of the poll and count, they would pack the electoral documents, including the Marked FR, into sealed packets, put these packets inside sealed red plastic bags and put the bags inside locked ballot boxes or suitcases and deliver them to the designated DCC.
92. For this process, various staff would have to be involved, including (i) those who completed the Delivery Notes recording the quantities of sealed packets, red plastic bags and ballot boxes or suitcases etc.; and (ii) those who were at the designated DCC responsible for checking the returned items by opening the ballot boxes or suitcases to verify the number of sealed red plastic bags. After checking, both the PRO and the Responsible Officer of the designated DCC would sign in the Delivery Note to complete the handover process.
93. The issue of staff handling the electoral materials (including the Marked FR) should be straightforward when these materials were collected from the DCCs by the REO staff for storage, who would collect all the Delivery Notes, add up the total numbers of ballot boxes or suitcases to ensure accuracy of items collected.

94. However, the entire chain of movements of the Marked FR firstly involved various persons from various departments before it was collected by the REO and persons within the REO, and in both stages, proper inventory records and retrieval systems were at issue. This chain of movements was further complicated by the involvement of those not forming part of the established staff of the Polling Station or Reserve Station. The Commissioner finds that the relevant training regarding the secure handling of personal data was conducted once only at the Polling Station prior to the 2016 Election. For these purposes, their integrity, prudence and competence are of significance. The Commissioner finds that there were physical vulnerabilities in the transfers of the Marked FR, which included the loose control of physical storage, transportation and security measures.
95. Communication relating to data security amongst all persons involved, whether within the REO or amongst all DCC staff but not limited to the period when the poll took place, would also be pivotal to meeting the statutory standard set out in DPP 4(1).

Contravention of the Ordinance

96. The Commissioner takes the view that the “reasonably practicable steps” as defined under section 2(1) and explained in DPP 4(1) refer not only to formulating such steps but also effectively taking such steps on the part of the data user or controller for the security of personal data held.
97. In light of the facts found and all the relevant circumstances of the data breach in this case, the Commissioner concludes that the REO **contravened DPP 4(1)** of Schedule 1 to the Ordinance by not taking all reasonably practicable steps to ensure that the personal data of the registered electors contained in the Marked FR was protected against its loss or not being located after repeated searches over a period of time of 30 months in that it: -

- failed to have in place clear and adequate policies and handling practices, procedures and systems to protect personal data of this unique and sensitive nature;
- failed to assess and evaluate the security risks and the potential impacts of the risks on the personal data handled in relation to the multiple physical locations where the data was held and the corresponding multiple movements;
- failed to maintain proper records of inventory and retrieval systems by both internal and external staff handling the data;
- failed to consider formulating and implementing separate and specific security measures for the unique and sensitive data in the Marked FR especially where it would not be required after the poll;
- failed to assess the risk of inadvertent human error;
- failed to communicate with all relevant persons and conduct adequate training on the secure handling of the data; and
- failed to have in place a data breach response plan.

V. Enforcement Action

98. Section 50(1) of the Ordinance provides that in consequence of an investigation, if the Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under the Ordinance, he may serve on the data user a notice in writing, directing the data user to remedy and, if appropriate, prevent recurrence of the contraventions.
99. Finding that the REO contravened DPP 4(1) of Schedule 1 to the Ordinance as aforesaid, the Commissioner exercises his power pursuant to section 50(1) of the Ordinance to serve an **Enforcement Notice (EN)** on the REO directing it to:
- (1) Separate the handling and storage of the marked final register of electors from other electoral documents including separate packing and centralising storage of all marked final registers of electors in designated and adequate storage locations;
 - (2) Set up procedures governing properly and effectively the logistical management as stated in (1) above;
 - (3) Set up procedures in respect of proper recording of movements of electoral documents, retrieval systems and dossier reviews;
 - (4) Set up personal data audit directives to address, in particular, the issue of loss of personal data and the associated searching process;
 - (5) Set up and implement effective and sufficient measures and training to ensure the REO, polling station and other related staff's compliance with the above procedures and directives; and
 - (6) Provide documentary proof within three months from the date of the EN showing the completion of items (2) – (5) above.

VI. Recommendations

100. Having considered all the circumstances of the Incident, the Commissioner makes the following recommendations:

Consider digitalising physical marked final register of electors

101. Digitalisation of the marked final register of electors could reduce the risk arising from the loss of the physical copy and the associated logistical arrangements. The REO is recommended to carry out a feasibility study on the use of electronic register at the polling stations so as to prevent recurrence of the Incident in future. Naturally, the electronic register is still protected under the Ordinance.

102. Should the marked final register of electors continue to remain in the form of a physical document, the following recommendations should be considered.

Handle and store the marked final register of electors separately from other electoral documents

103. Given that the marked final register of electors contain unique and sensitive personal data of all electors registered to cast their votes in particular polling stations and each polling station would only be entrusted with one marked final register, not to mention that it is not required after the close of the poll, it should not be difficult to establish a separate set of policies and procedures for the security management of the registers and to centralise the storage of the registers in a separate location immediately after the close of the poll.

Maintain proper data audit and record of movements and conduct dossier reviews of the electoral documents containing personal data

104. In the similar vein, the Commissioner recommends that the REO should establish an effective mechanism to record all movements associated with the electoral documents containing personal data beginning from its distribution to

polling stations before elections to its disposal. Such mechanism could serve as an audit trail and alert staff attention whenever irregularities arise during the recording.

105. On top of recording the movements, the REO is also recommended to conduct regular data audits and dossier reviews to ensure all movements of the electoral documents containing personal data are in fact accurately and properly documented.

Draw up simple, clear and easy-to-follow guidelines and procedures, enhance training and supervision

106. The REO should review the contents of its standing procedures and to remind polling and other responsible staff for compliance with the requirements of the Ordinance. Given the bulky Operational Manual which consists of nearly 500 pages, it might not be easy for staff to “*familiarise themselves with the Operational Manual thoroughly*”. The REO should draw up simple, clear and easy-to-follow guidelines and procedures for future elections, and provide sufficient and effective training for polling and other responsible staff with a view to heightening data protection sensitivity.

Review the loss report mechanism for data breach incidents

107. Two-and-half years having lapsed before the REO confirmed and reported the loss of the Marked FR, this apparent delay, whatever the reasons for the loss should have been addressed in any loss report mechanism. The Commissioner recommends that the REO should define clearly a policy on what constitutes a loss of personal data in its report procedures of data breaches and conduct effective and sufficient training to ensure that its staff members follow to report incidents in a timely manner. In particular, the Commissioner recommends that the REO should conduct internal investigation once it suspects that a data breach might have occurred. A time cap of 30 calendar days should be imposed on the duration for investigation, which is a reasonable period for an intensive investigation. After completion of investigation, the Commissioner

recommends that the loss should be reported to the relevant authorities and the affected data subjects as soon as practicable.

Adopt Privacy Management Programme (PMP)

108. The global data protection landscape has evolved to an extent that the accountability principle, essentially putting in place appropriate technical and organisational measures to ensure, and to demonstrate compliance with the data protection law, is increasingly seen as an effective management tool to proactively protect personal data privacy right and prevent data breaches in particular. The Commissioner recommends that the REO should adopt a PMP, as set out in the “General Reference Guide – PMP Manual”²⁶.

Have due regard to the integrity, prudence and competence of persons having access to and being responsible for the security of the data

109. It is not uncommon that data breaches are attributable to the inevitable human factor, particularly in the case of physical and tangible, as opposed to online digital, record of personal data. Notwithstanding the express provision in DPP 4(1) that “particular regard” must be had to, amongst others, the “integrity, prudence and competence” of the relevant persons, data users often fail to accord the due regard. It may well be that human errors could have been caused, and human integrity, prudence and competence compromised by intense work load, overly long work hours, scarce resources, inexperienced or not-well-trained staff, or unexpected contingencies.
110. The Ordinance provides that it is the duty and responsibility of data users to take all practicable steps and measures to ensure the right persons are engaged to protect the personal data privacy right of data subjects. Data subjects do not expect to find out exactly why and how their data is lost, or see the right or fair apportionment of blame amongst those involved in the data breach, they simply expect that their personal data is safely kept and properly used once collected,

²⁶ A manual devised by the Commissioner and provided to all Government bureau and departments to facilitate their implementation of PMP.

especially where their data involved is unique and sensitive. The Ordinance does not require a data user to provide an absolute guarantee for the security of personal data held by it, but only to take such steps as may be reasonably practicable in the circumstances, having regard to the matters mentioned in paragraphs 69 – 70; 82 – 83 above. The Incident occurred in the midst of a pack of factors (albeit unfavourable), including nature of data, physical locations, timings and human elements, which are covered by DPP 4(1), and reasonably practicable steps should have been taken to prevent or reduce the risk of losing the Marked FR. The Commissioner recommends that the REO should have particular regard to taking measures for ensuring the integrity, prudence and competence of persons having access to the data as required by DPP 4(1)(d) of Schedule 1 to the Ordinance.

— End —

2016 Legislative Council General Election

DELIVERY NOTE TO DESIGNATED COLLECTION CENTRE

(for Geographical Constituency)

To: Responsible Officer at Designated Collection Centre ("DCC")

SKH TSING YI ESTATE

Name and Code of Polling Station:

HO CHAK WAN PRIMARY SCHOOL S2001

Part I: Reception of Electoral Documents

Item No.	Packed into	Description	Quantity	Unit *	Remarks (DCC to put a "✓" to confirm receipt)	
1.	Beige Non-woven Bag(s)	C(I) Envelope	Counting Records – [F1(GC) – F4(GC)] and [P(18)(GC)]	1	Sealed C(I) Envelope	✓
		C(II) Envelope	Claim Forms – [P(1)], [P(2)], [G.F.51], [CF(1)] and [CF(2)]	1	Sealed C(II) Envelope	✓
		C(V) Envelope	Forms – [P(22)] and [REO-1]	1	Sealed C(V) Envelope	✓
		"Statistics(GC)"-Folder (Blue)	Statistical Forms – [P(12)(GC), P(14)(GC), P(15)(GC), P(16), P(17) and P(19)]	1	Folder	✓
		"P"-Folder (Green)	Other Forms	1	Folder	✓
2.	Sealed Red Plastic Bag(s) Placed in Locked Ballot Box(es)/ Suitcase(s)	Counted GC Ballot Papers			Sealed Packet	✓
		Un-issued GC Ballot Papers	4		Sealed Packet	
		Unused GC Ballot Papers	0		Sealed Packet	
		Spoilt GC Ballot Papers	1		Sealed Packet	
		Invalid/Rejected GC Ballot Papers	1		Sealed Packet	
		Counterfoils of Issued GC Ballot Papers	1		Sealed Packet	
		Marked Copy of Final Register of Electors	1		Sealed Packet	
					In 5 No(s) of Sealed Red Plastic Bag(s) Suitcase Belly	

* "Sealed packet" refers to sealed envelope or sealed tamper-proof plastic bag.

Note to DCC: Please do not open the sealed envelopes / red plastic bags. Verification of the quantity of sealed packets inside the sealed red plastic bags is not required.

PLEASE TURN OVER

Part II: Reception of Ballot Box(es) and/or Suitcase(s)

Item No.	Description	Quantity	Unit	Remarks (DCC to put a "✓" to confirm receipt)
1.	Blue Ballot Box(es)	0	Box	
2.	Suitcase(s)	5	No.	✓

Completed by Presiding Officer

*Received by Responsible Officer
at Designated Collection Centre*

Signature: _____

Signature: _____

Name in Block Letters: _____

Name in Block Letters: _____

Date: _____

Date: _____

MEMO

Chief Electoral Officer
 () in REO PC/88/40/1 (S)
 a. 2511 4087
 b. 2834 0934
 5 Sep 2016

To District Office (Kwai Tsing)
 (Attn: ACO)
 Your Ref. _____ in _____
 dated _____
 Fax No. _____ Total Pages 1

2016 Legislative Council General Election
Collection of Electoral Materials from the Designated Collection Centres to REO

Please let _____ bearer of this memo collect from your office the electoral items that were returned from the Presiding Officers.

 for Chief Electoral Officer