

# Hong Kong Baptist University

Doxxing is an offence

Personal Privacy & Doxxing in the Digital Era

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**同心抗疫** *Together,  
We Fight the Virus!*



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# Introduction to the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”) Six Data Protection Principles (DPPs)



# 6 Data Protection Principles (DPPs)

- Any person who handles personal data (as a data user) **must comply** with the six DPPs
- The six DPPs cover the **whole data processing cycle** from collection, holding, processing, use till destruction



# 6 DPPs

## DPP1 Purpose and Manner of Collection of Personal Data

- Must be collected for a lawful purpose directly related to a **function** or **activity** of the data user
- The means of collection must be **lawful** and **fair**
- The data is **necessary, adequate** but **not excessive** in relation to the purpose of collection
- **All practicable steps shall be taken to notify** the data subjects whether it is obligatory to supply the personal data , the **purpose** of data collection, and the **classes of persons to whom the data may be transferred**, etc.

# 6 DPPs

## DPP2 Accuracy and Duration of Retention of Personal Data



- Data users should take all practicable steps to ensure:
  - the **accuracy** of the personal data
  - the personal data is **not kept longer than is necessary** for the fulfilment of the purpose for which the data is used
- If a **data processor** is engaged to process personal data, the data user must adopt contractual or other means to prevent the personal data from being kept longer than is necessary

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# 6 DPPs

## DPP3 Use of Personal Data



- Personal data shall not, without the **prescribed consent** of the data subject, be **used for a new purpose**

“*New purpose*” means any purpose which is *unrelated to the original purpose or its directly related purpose* when the data is collected



# 6 DPPs

## DPP4 Security of Personal Data



- Data users should take **all practicable steps** to ensure the personal data held by them is protected against **unauthorized or accidental access, processing, erasure, loss or use**
- **Adequate protection** must be given to the storage, processing and transfer of personal data
- If a **data processor** is engaged, the data user must adopt contractual or other means to prevent **unauthorized or accidental access, processing, erasure, loss or use** of the data transferred to the data processor for processing

# DPP5 Information to be generally available



## Transparency

Data users must provide information on: -

- 1) the **policies and practices** in relation to personal data;
- 2) the **kind** of personal data held; and
- 3) the **main purposes** for which personal data is used or to be used.

# 6 DPPs

## DPP6 Access to Personal Data



### Data subject's rights

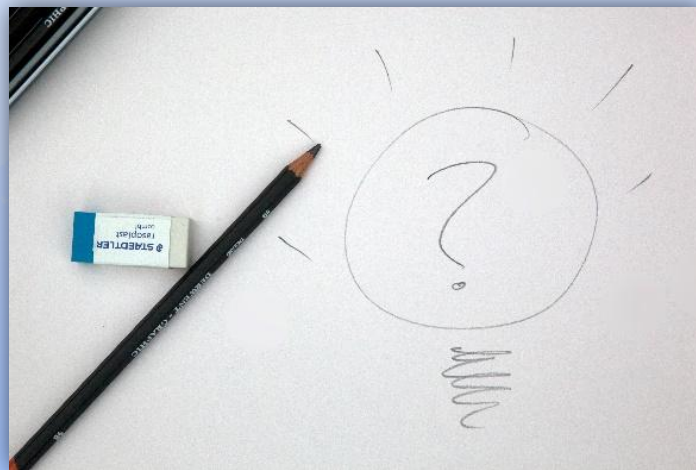
A data subject is entitled to request **access to** and **correction of his personal data** where the data is inaccurate

A data user must **comply with a data access/correction request within 40 days** after receipt of the request

(Sections 19 and 23 of the PDPO)

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# Background of Amending the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”)





# Purview of the Personal Data (Privacy) (Amendment) Ordinance 2021 ("Amendment Ordinance")



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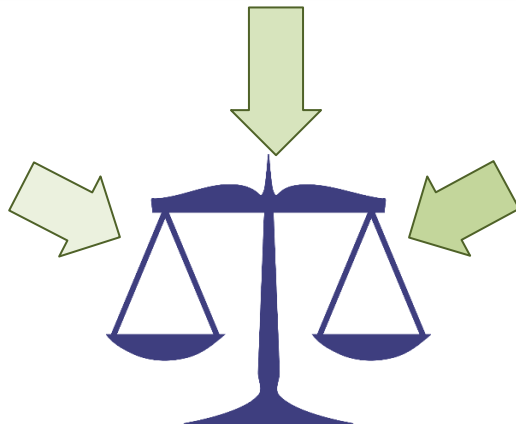
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# Three main objectives of the Amendment Ordinance

2. Empower the Commissioner to carry out criminal investigations and institute prosecutions

1. Create offences to curb doxxing acts



3. Confer on the Commissioner powers to issue cessation notices



# Commencement date of the Amendment Ordinance

8 October 2021:

The Amendment Ordinance was published in the Gazette and became effective immediately.



# Newly added and Amended Provisions of the Amendment Ordinance



# (I) Section 64 – Create offences to curb Doxing Acts

Two-tier

## New section 64(3A) of the Ordinance – first-tier offence (without actual harm)

A person commits an offence if the person discloses any personal data of a data subject **without the relevant consent** of the data subject –

- (a) with an **intent** to cause **any specified harm** to the data subject or any family member of the data subject; or
- (b) being **reckless** as to whether **any specified harm** would be, or would likely be, caused to the data subject or any family member of the data subject.

## New section 64(3B) of the Ordinance – Penalty

(3B) A person who commits an offence under subsection (3A) is liable on conviction to a fine at level 6 (\$100,000) and to imprisonment for 2 years.

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# (I) Section 64 – Create offences to curb Doxxing Acts

Two-tier

## New section 64(3C) of the Ordinance – second-tier offence (with actual harm)

A person commits an offence if –

- (a) the person discloses any personal data of a data subject **without the relevant consent** of the data subject –
  - (i) with an **intent** to cause **any specified harm** to the data subject or any family member of the data subject; or
  - (ii) being **reckless** as to whether **any specified harm** would be, or would likely be, caused to the data subject or any family member of the data subject; and
- (b) the disclosure causes any specified harm to the data subject or any family member of the data subject.

## New section 64(3D) of the Ordinance – Penalty

(3D) A person who commits an offence under subsection (3C) is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years.

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# (I) Section 64 – Create offences to curb Doxxing Acts

|    | First-tier - Summary Offence  | Second-tier – Indictable Offence   |
|----|---|--|
| 1. | Any personal data of a data subject is disclosed without the relevant consent of the <u>data subject</u>  |  |
| 2. | Has an <u>intent</u> or is being <u>reckless</u> as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject |  |
| 3. | N/A   | The <u>disclosure causes any specified harm</u> to the data subject or any family member of the data subject |

To determine the severity of the offence, the two-tier offence is differentiated by *whether actual harm has been caused to the data subjects or their family members.*

# (I) Section 64 – Create offences to curb Doxxing Acts

**Specified harm,  
in relation to a  
person, means-**

- (a) harassment, molestation, pestering, threat or intimidation to the person;
- (b) bodily harm or psychological harm to the person;
- (c) harm causing the person reasonably to be concerned for the person's safety or well-being; or
- (d) damage to the property of the person

(new section 64(6) of the Ordinance)



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# (I) Section 64 – Create offences to curb Doxxing Acts

## Example

### (a) Harassment, molestation or pestering to the person

- A complainant alleged that his and his family members' personal data were disclosed by netizens extensively; and as a result, he received over hundreds of nuisance calls and messages. His personal data was also misused for loan application and he received calls from financial institutions.





# (I) Section 64 – Create offences to curb Doxxing Acts

## Example



### (b) Bodily harm or psychological harm to the person

- Doxxers disclosed the personal data of the complainant’s children online. They also suggested various methods to bully and boycott the complainant’s children at school, including picking up his children from school with a gunny sack. The complainant suffered from psychological harm as a result.
- Expert evidence will generally be required to prove “psychological harm”.

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## Objectives of the Amendment Ordinance

- to **criminalise** doxxing acts and more **effectively combat** the crime by **increasing the enforcement powers** of the Commissioner;

## The Amendment Ordinance will not affect:

- **normal and lawful business activities** in Hong Kong;
- **freedom of speech** and **free flow of information** currently enjoyed by the public (as enshrined in the Basic Law and the Hong Kong Bill of Rights Ordinance).

## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

Issue written notice to request any person to provide relevant materials; or to answer relevant questions to facilitate investigation  
(new section 66D of the Ordinance)

Apply for warrant to enter and search premises and seize materials for investigation; or access electronic device  
(new section 66G of the Ordinance)



The Commissioner may

Prosecute in the name of the Commissioner a doxxing-related offence triable summarily in the Magistrates' Court  
(new section 64C of the Ordinance)

To stop, search and arrest any person who is reasonably suspected of having committed a doxxing-related offence  
(new section 66H of the Ordinance)

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## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions



### Powers to require materials and assistance (New section 66D of the Ordinance)

If the Commissioner reasonably suspects that, in relation to a **specified investigation**, a person –

- has or may have possession or control of any material relevant to that investigation;
- or
- may otherwise be able to **assist** the Commissioner in relation to that investigation

The Commissioner may, by **written notice** given to the person, require the person to **provide materials and assistance.**

Material: document, information or thing (new section 66C of the Ordinance)

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## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

### Powers to require materials and assistance (New section 66D of the Ordinance)

The Commissioner may by written notice given to the person, require the person to –

- provide any **material** in the person's possession or control;
- **attend** before the Commissioner at a specified time and place and answer any question;
- **answer** any written question;
- make a **statement**; or
- give the Commissioner all the **reasonable assistance**,

relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation.

## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

### Powers to require materials and assistance (New section 66D of the Ordinance)

Failing to comply with a written notice is an offence.  
(new section 66E(2) of the Ordinance)



#### On summary conviction

a fine at level 5 (\$50,000) and imprisonment for 6 months

#### On conviction on indictment

a fine of \$200,000 and imprisonment for 1 year

## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

### Powers to require materials and assistance (New section 66D of the Ordinance)

It is an offence where, with intent to defraud:

- (i) a person fails to comply with a written notice issued pursuant to section 66D; or
  - (ii) a person provides any answer or statement that is false or misleading in a material particular
- (new section 66E(6) of the Ordinance)



#### On summary conviction

- a fine at level 6 (\$100,000) and imprisonment for 6 months

#### On conviction on indictment

- a fine of \$1,000,000 and imprisonment for 2 years



## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

Powers exercisable in relation to premises under warrant  
(New section 66G(2) of the Ordinance)

To carry out specified investigation in the premises; and

To enter and search the premises;



To seize, remove and detain any material in the premises that the Commissioner or any prescribed officer reasonably suspects to be or to contain evidence for the purposes of the specified investigation

Under no circumstances shall the Commissioner or prescribed officers enter and search premises without a warrant.

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## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

### Powers exercisable in relation to electronic device under warrant (New section 66G(3) of the Ordinance)



- (a) To access the device;
- (b) To seize and detain the device;
- (c) To decrypt any material stored in the device;
- (d) To search for any material stored in the device that the Commissioner or any prescribed officer reasonably suspects to be or to contain evidence for the purposes of the specified investigation (relevant material);
- (e) To reproduce the relevant material in visible and legible form;
- (f) To reduce the relevant material into a written form on paper; and
- (g) To make copies of, or take extracts from, the relevant material and take away such copies or extracts.

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## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

Under what circumstances can powers be exercised in relation to electronic device without a warrant (New section 66G(8) of the Ordinance)

If the Commissioner or any prescribed officer reasonably suspects that

(i) A doxxing or a related offence (i.e. under section 64(1), (3A) or (3C), 66E(1) or (5), 66(I)1 or 66O(1)) has been, is being or is about to be committed;

(ii) Any material that is or contains evidence for the purposes of a specified investigation is stored in an electronic device; and

(iii) a delay caused by an application for a warrant is likely to defeat the purpose of accessing the device, or for any reason it is not reasonably practicable to make the application.

Reflects similar common law powers of the Police.

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## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

A person who, without lawful excuse, **obstructs, hinders or resists** any officer in exercising the powers under section 66G or 66H, commits an offence (new section 66I of the Ordinance)



### **On conviction**

a fine at level 3 (\$10,000) and imprisonment for 6 months

## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

The criminal investigation powers of the Commissioner under the Amendment Ordinance **reflects** the **powers of police officers** under the Police Force Ordinance (Cap. 232).



## (II) The Commissioner's powers to carry out criminal investigations and institute prosecutions

### Prosecution of offences by the Commissioner (New section 64C of the Ordinance)

- (1) The Commissioner may prosecute **in the name of the Commissioner**—
  - (a) an offence under section 64(1) or (3A), 66E(1) or (5), 66I(1) or 66O(1); or
  - (b) an offence of conspiracy to commit such an offence.
  
- (2) Any offence prosecuted under subsection (1) must be tried before a **magistrate** as an offence that is **triable summarily**.

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### (III) Confer on the Commissioner power to issue cessation notices

Under what circumstances can the Commissioner serve a cessation notice  
(New sections 66K and 66M of the Ordinance)

the message in question is a “subject message”

1. Personal data of a data subject was disclosed (**whether or not in Hong Kong**) without the **consent of the data subject** by means of a written message or electronic message

2. the discloser had an **intent** or was being **reckless** as to whether any specified harm would be or would likely be, caused to the data subject or any family member of the data subject

3. When the disclosure was made, the data subject was a **Hong Kong resident**; or was **present in Hong Kong**

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### (III) Confer on the Commissioner power to issue cessation notices

#### Under what circumstances can the Commissioner serve a cessation notice (New sections 66K and 66M of the Ordinance)

- When the Commissioner has reasonable ground to believe that there is a **“subject message”**, the Commissioner may serve a cessation notice on a person who is **able** to take a cessation action.

For electronic message

#### Hong Kong Person

- (a) an individual who is present in Hong Kong ;
- (b) a body of persons that is incorporated, established or registered in Hong Kong; or
- (c) a body of persons that has a place of business in Hong Kong

#### Non-Hong Kong service provider

A person (not being a Hong Kong Person) that **has provided or is providing any service** (whether or not in Hong Kong) **to any Hong Kong person**

Cessation notice has **extra-territorial application.**



### (III) Confer on the Commissioner power to issue cessation notices

Under what circumstances can the Commissioner serve a cessation notice  
(New sections 66K and 66M of the Ordinance)

#### A cessation notice may be served to the following persons :

##### *Hong Kong Person*

- an individual in Hong Kong;
- an internet service provider having a place of business in Hong Kong;

##### *Non-Hong Kong service provider (limited to electronic messages)*

- an operator of an overseas social media platform

## (III) Confer on the Commissioner power to issue cessation notices

### Cessation Action (New section 66L of the Ordinance)

(a) **Remove** the message from the electronic platform on which the message is published (relevant platform)

(b) **Cease or restrict** access by any person to –  
(i) the message via the relevant platform; (ii) the part of the relevant platform on which the message is published; (iii) the whole of the relevant platform

(c) **Discontinue** the hosting service for –  
(i) the part of the relevant platform on which the message is published; or (ii) the whole of the relevant platform

### (III) Confer on the Commissioner power to issue cessation notices

#### Offence for contravening a cessation notice

#### (New Section 66O(1) of the Ordinance)

##### On first conviction

- a fine at level 5 (\$50,000) and imprisonment for 2 years, and in the case of a continuing offence, a further fine of HK\$1,000 for every day during which the offence continues

##### On each subsequent conviction

- a fine at level 6 (HK\$100,000) and imprisonment for 2 years; and in the case of a continuing offence, a further fine of HK\$2,000 for every day during which the offence continues

### (III) Confer on the Commissioner power to issue cessation notices

#### Appeal against cessation notice

(New section 66N of the Ordinance)

Deadline for lodging  
an appeal:

- Within 14 days after the date on which a cessation notice is served

To whom the appeal  
is lodged:

- Administrative Appeals Board

Lodging an appeal does not affect the operation of the cessation notice.

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## (IV) Injunction (New section 66Q of the Ordinance)

**The Commissioner** may apply to the Court of First Instance for an **injunction**.

The Court may grant an injunction in any terms that the Court considers appropriate, if it is satisfied that a person (or any person falling within a category or description of persons) **has engaged, is engaging or is likely to engage**, in doxxing offence.



# Personal Data (Privacy) (Amendment) Ordinance 2021 Video



# Thank You!

## Contact Us

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