

Legislative Council Panel on Constitutional Affairs

**Report on the Work
of the Office of the Privacy Commissioner for Personal Data in 2015**

Members were briefed at the meeting of the Legislative Council Panel on Constitutional Affairs on 16 February 2015 by the Privacy Commissioner for Personal Data (“**the Commissioner**”) on the activities of his office (“**PCPD**”) in 2014. This paper serves to update Members of PCPD’s work in 2015.

Enquiries

2. In 2015, the PCPD received a total of 18,456 enquiries, representing an increase of 7% as compared with 17,328 enquiries in 2014. They were mainly concerned with data access requests (14%), employment (12.7%), use of personal data in direct marketing (11.9%), and collection / use of Hong Kong Identity Card numbers or copies (6.5%).

3. There was an increase of 18.8% in internet related enquiries from 611 cases in 2014 to 726 cases in 2015. They were mainly concerned with cyber-profiling, mobile apps and cyber-bullying.

Complaints

4. During the same year, the PCPD received a record high of 1,971 complaints, which represented an increase of 16% as compared with 1,702 complaints in 2014.

5. Of the complaints received, 74% were made against the private sector (1,461 cases), 11% against the public sector / government departments (210 cases) and 15% against individuals (300 cases).

6. Among the private sector organisations, the financial industry received the most complaints (390 cases), followed by property management (156 cases) and telecommunications (115 cases).

7. Regarding the nature of the complaints, 40% related to the use of personal data without the consent of data subjects (786 cases), 37% to the purpose and manner of data collection (722 cases), 13% to data security (252 cases) and 8% to data access/correction requests (156 cases).

Complaints Related to Direct Marketing (“DM”)

8. DM-related complaints outnumbered complaints of other substance. The PCPD received in 2015 a total of 322 DM-related complaints, which represented an increase of 16% as compared with 277 cases in 2014. By the end of the year, 305 of these cases have been processed and closed while 17 are being considered. The PCPD noted that not every DM case would involve personal data.

9. A substantial portion of DM-related complaints concerned DM calls offering personal loans purportedly made by banks. However upon investigation, it was revealed that such loans were not offered by banks but money lenders, sometimes in collaboration with accounting firms and other intermediaries which charged customers unreasonably high consultation fee. 45 of these cases were referred to the PCPD by Legislative Councillors. Other DM-related complaints concerned various organisations’ DM activities such as DM calls made by fitness centres, beauty salons or estate agencies promoting their respective services. Despite the complainants’ opt-out requests, they still received related DM messages.

Complaints Related to Use of Information and Communications Technology (“ICT”)

10. Over the past few years, the PCPD has seen an upward trend in ICT-related privacy complaints, and received a record high of 241 complaints in 2015, representing an increase of 17%, as compared with 206 cases in 2014.

11. Common privacy disputes arose from the use of mobile apps and social networking websites (161 cases), the disclosure or leakage of personal data on the Internet (85 cases), and cyber-bullying (22 cases), a breakdown of which over the last four years is at **Annex A**.

Complaints Related to Electioneering

12. A total of 115 electioneering-related complaints were received, the majority (106 cases) of which related to the 2015 District Council Election registered in the fourth quarter of 2015. Most of the complainants objected to their personal data having been used in electioneering activities without their consent. Except six cases which are under processing, the rest (109 cases) have been processed and closed.

13. The PCPD updated its Guidance Note on Electioneering Activities in August 2015 to provide candidates and their election agents with practical guidance on compliance with the requirements under the Personal Data (Privacy) Ordinance (“**the Ordinance**”).

Enhancement of Operational Efficiency

14. **Annex B** summaries the key performance indicators of the PCPD in handling complaints in the past five years. In brief,

- (a) the total number of complaint cases closed has increased from 1,450 in 2011 to 1,970 in 2015;
- (b) the percentage of complaint cases closed within 180 days has increased from 88% in 2011 to 96% in 2015; and
- (c) the average time taken to conclude simple and complicated cases has shortened from 37 and 162 days respectively in 2011 to 25 and 87 days respectively in 2015.

Compliance Checks and Self-initiated Investigations

15. 98 data breach incidents affecting 871,000 Hong Kong individuals were reported to the PCPD in 2015, as compared with 70 incidents involving 47,000 individuals in 2014. These incidents involved the loss of documents, hacking, inadvertent disclosure of personal data by fax, email or post, and system failure. Some major data leakage incidents occurred in the fourth quarter of 2015 which attracted much attention. These included the possible personal data leakage involving the contactless credit cards and data breach caused by security vulnerability and malware found on websites and computer networks. The PCPD has commenced compliance checks or self-initiated investigations¹ on these cases.

16. The PCPD completed 284 compliance checks and 76 self-initiated investigations in 2015, as compared with 217 checks and 102 investigations in 2014.

Inspection

17. During the year, the PCPD took the initiative to conduct an inspection² of a travel operator in view of the vast amount of travellers' personal data it

¹ When the Commissioner has reasonable grounds to believe that there may have been contravention of a requirement under the Ordinance, which involves personal data other than that of the complainant, he may conduct a compliance check against the data user's practice concerned and/or commence an investigation into the matter on his own initiative under section 38(b) of the Ordinance.

² Pursuant to section 36 of the Ordinance, the Commissioner may carry out an inspection of any personal data system used by a data user for the purpose of making recommendations relating to the promotion of the compliance with the provisions of the Ordinance.

collected and retained. The purpose of the inspection was to assist the Commissioner in making recommendations to the travel industry with a view to promoting compliance with the provisions of the Ordinance.

18. The PCPD had inspected the personal data protection practices of the operator concerned and observed that a number of its practices could serve as reference by others in the industry. Recommendations for tightening up certain specific areas have been provided to the operator.

Investigation Reports

19. The Commissioner published two investigation reports³ in 2015 (five in 2014). These reports covered:-

- (a) 59 “blind” recruitment advertisements (“**Blind Ads**”) placed in major advertising platforms soliciting personal data of job applicants but without revealing the employers’ identities; and
- (b) Excessive and unfair collection of fingerprint data by a fashion trading company for safeguarding office security and monitoring staff attendance.

20. The self-initiated investigations into Blind Ads were a continuation of a similar operation in 2014. The Commissioner was pleased to find that the recruitment media have played an instrumental role in reducing the number of Blind Ads (from 3.45% (311 cases) in the 2014 survey to 0.46% (59 cases) in the 2015 survey) and praised them in the report accordingly.

21. The investigation report on fingerprint data showed that the company concerned had taken advantage of the convenience and affordability of such devices and neglected the protection of employees’ privacy. Given its highly sensitive nature, fingerprint data should be collected only when justifiable with appropriate procedural and technological safeguards to prevent unauthorised access to or misuse of the data.

Enforcement Action and Prosecution

22. In 2015, the PCPD issued 17 warnings and 67 enforcement notices to organisations as compared with 20 warnings and 90 enforcement notices in

³ Under section 48(2) of the Ordinance, the Commissioner may, after completing an investigation, and if he opines that it is in the public interest to do so, publish a report setting out the investigation results, and any recommendations or comments arising from the investigation, as he sees fit.

2014. The number of the enforcement notices served in connection with the investigation of Blind Ads had dropped from 69 in 2014 to 57 in 2015.

23. During the same period, 30 cases were referred to Police for criminal investigation and prosecution (20 in 2014), of which, 28 cases related to contraventions involving the use of personal data in direct marketing (17 in 2014). The total number of prosecutions in 2015 was six (one in 2014).

24. Among the prosecution cases, there were four convictions in 2015, all of which concerned the use of personal data in direct marketing. They were the first four convictions after the penalty level of the offence was raised under the new direct marketing regulatory regime of the Personal Data (Privacy) (Amendment) Ordinance 2012 which took effect on 1 April 2013.

25. The offences related to (i) failing to comply with the requirement from the data subjects to cease to use their personal data in direct marketing, (ii) using personal data of a customer in direct marketing without taking specified actions, and (iii) providing personal data to a third party for use in direct marketing without taking specified actions and obtaining the data subject's consent.

Response to Consultations

26. During the year, the PCPD vetted 118 bills and regulations, provided comments on seven Bills and made submissions on four proposed legislative and administrative measures, as well as responded to four public consultations that had an impact on personal data privacy. Details are set out in **Annex C**.

Electronic Health Record Sharing System (“eHRSS”) Bill

27. In 2015, the PCPD continued to participate in the deliberations of the Bills Committee on the eHRSS Bill in relation to personal data privacy protection. The Bill was passed in July 2015 and the eHRSS Ordinance came into operation on 2 December 2015. The sharing system is planned to be launched in March 2016 and the PCPD has set in train measures and resources to take up the enforcement work relating to the eHRSS under the Ordinance.

Regulating Cross-border Flows of Personal Data

28. Section 33 of the Ordinance provides a stringent regulatory framework for the transfer of data outside Hong Kong. However, section 33 has yet to be brought into force since its enactment in 1995.

29. To prepare for the commencement of operation of section 33, the PCPD commissioned a consultancy study on drawing up a ‘white list’ of jurisdictions with privacy protection standards comparable to that of Hong

Kong, delivered the consultancy report to the Government and issued a Guidance Note on Personal Data Protection in Cross-border Data Transfer. The PCPD will continue to promote and gather feedback on voluntary compliance with the Guidance Note in different sectors, while a consultant commissioned by the Government is conducting a business impact assessment for the implementation of section 33 in parallel. The PCPD will continue to work with the Government in monitoring the development of international protocols on cross-border data transfer, studying the relevant practices of compliance and enforcement in other jurisdictions, etc.

Progress of Work Relating to the “45-day statutory time limit”

30. Under section 39(3) of the Ordinance, if the Commissioner decides not to carry out an investigation initiated by a complaint, he has to notify in writing the complainant within 45 days after receiving the complaint. However, as pointed out by the PCPD in the 2014 work report, it was not always possible to reach a conclusion within 45 days. Instead of a mechanical application of the 45-day time frame, the PCPD has been stepping up efforts to enhance operational efficiency including substantiating investigative inquiries, streamlining of work procedures and redeployment of staff. Separately, the PCPD has also proposed to amend the 45-day statutory requirement.

31. In 2015, the compliance rate in this item is 86% which is higher than that of the previous years as shown in **Annex B**.

32. The PCPD has since September 2015 taken steps to introduce further improvement measures such as restructuring of the Operations Division, work flow revamp and complaint form redesign. The PCPD is determined to further streamline the existing operational practice and procedure with a view to complying, with no exception, with the 45-day statutory requirement. The PCPD will closely monitor the effect of this new arrangement on the other performance targets. The proposed amendment to the 45-day statutory requirement is temporarily on hold.

Legal Assistance Scheme

33. The Legal Assistance Scheme commenced on 1 April 2013. Under the scheme, the PCPD may provide assistance to a person who has suffered damage by reason of a contravention of a requirement under the Ordinance by a data user and intends to institute proceedings to seek compensation from the relevant data user. The PCPD received 16 new applications for legal assistance in 2015. Together with three applications brought forward from 2014, the PCPD handled 19 applications in 2015. Of these applications, nine were rejected, four were withdrawn by the applicants and six are being considered. Legal proceedings are expected to commence in respect of one case approved in 2014.

Privacy Management Programme (“PMP”)

34. In April 2015, the PCPD conducted a Hong Kong Accountability Benchmarking Micro-Study on the current status of PMP. Organisations which pledged for PMP and selected Data Protection Officers’ Club members were invited to join. 30 organisations participated and 16 of which fully completed the Study. To share the results of the Study and promote the best practice of PMP, two workshops and one webinar were held in 2015.

35. In order to further assist organisations to implement PMP in a systematic way, the Government and the PCPD collaborated in engaging an external consultant to assist government departments to develop, review, implement and/or refine their PMP.

Promotion and Public Education

36. During the year, a total of 20 major promotional and education programmes were organised to cater for the various needs of the individuals (including students) and organisations, reaching over 260,000 participants (compared with 20 activities and over 141,000 participants in 2014). Promotion of youth privacy has always been one of the PCPD’s priorities. The University Privacy Campaign was held, attracting participation of over 39,600 staff and students from the 10 local universities. Further, the “Student Ambassador for Privacy Protection Programme” continued, with an increase in participation by 118%, from 7,593 students in 2014 to 16,528 students in 2015. **Annex D** shows the PCPD’s efforts in promotion and public education in the past five years.

37. The PCPD conducted 276 talks, seminars and workshops, with a total of about 18,700 participants coming from over 450 organisations. The PCPD also made use of the online training platform to help stakeholders understand and apply the Ordinance in a cost-effective manner. Apart from a module dedicated for the small and medium sized enterprises, three ICT-related courses were also launched in the fourth quarter of 2015.

Industry-specific Campaign

38. A major strategic focus of the PCPD in 2015 was promoting and ensuring the compliance with the provisions of the Ordinance by stakeholders in the mobile apps industry. In January 2015, the PCPD launched a privacy awareness campaign with the theme “Developing Mobile Apps: Privacy Matters”. The campaign was co-organised by 10 leading trade associations and supported by 10 professional and academic institutions in the field of ICT. 13 activities were held in 2015 reaching more than 2,400 participants. The campaign will continue till April 2016.

Data Protection Officers' Club ("DPOC")

39. The DPOC had over 500 members in 2015. Three themed seminars were held for DPOC members and a special supplement was published in a newspaper in May to acknowledge their efforts made in the protection of personal data privacy. A bi-weekly DPOC e-Newsletter has been launched since July.

Other Promotional Activities

40. A new TV Announcement in the Public Interest ("**API**") entitled "Stay Smart. Mind Your Digital Footprint" was launched in the end of November, calling on members of the public to go online vigilantly, with intent to nourish a culture of protecting their own and respecting others' personal data.

41. The PCPD website continues to serve as an important channel for the PCPD to reach out to the community. The website won the Silver Award (Website Stream) in the Web Accessibility Recognition Scheme 2015 and the Government Standard of Excellence in 2015 Web Award for Outstanding Achievement in Web Development.

42. The PCPD conducted an exploratory study on Children Privacy and the report was published in May. In response to the findings, two publications were released in December, namely, "Collection and Use of Personal Data through the Internet – Points to Note for Data Users Targeting at Children" and "Children Online Privacy – Practical Tips for Parents and Teachers".

43. A report of the survey on the public perception of the work of the PCPD and various topical privacy issues was published in July.

Strategic Focus for 2016

44. The Hong Kong privacy landscape has been evolving rapidly in the past years. In 2016, the PCPD will keep pace with the developments in the protection of personal data in other overseas jurisdictions, take proactive steps to strike the balance between privacy protection and free flow of information, and respond positively to meet the challenges ahead. Special focus will be placed on:

- (a) Comparative researches and analyses such as development and impact of European Commission's Reform of Directive 1995, big data and internet of things,
- (b) Further promotion of the Privacy Management Programme and exploring the feasibility of awarding a Privacy Mark to exemplary stakeholders,

- (c) Public education campaigns such as the TV programme partnered with RTHK, and
- (d) Support to the commencement of operation of the Electronic Health Record Sharing System.

**Office of the Privacy Commissioner for Personal Data, Hong Kong
2 February 2016**

Privacy Complaints in relation to Use of ICT

Year	Use of social networking websites	Use of smartphone applications	Disclosure or leakage of personal data on Internet	Cyber-bullying	Total*
2012	16	18	12	13	50
2013	45	22	42	6	93
2014	99	58	57	34	206
2015	90	71	85	22	241

* As a complaint may cut across different categories, figures in the categories added up may exceed the total number of complaints.

Annex B**Enhancement of Efficiency in Complaint Handling**

	2011	2012	2013	2014	2015
Complaints received	1,486	1,213	1,792	1,702	1,971
Investigations completed	1,450	1,268	1,783	1,774	1,970
Closing a complaint case within 180 days of receipt (% of cases)	88%	88%	89%	95%	96%
Average time taken to settle a simple complaint case (days)	37	39	43	30	25
Average time taken to settle a complicated complaint case (days)	162	219	195	122	87
Investigations in progress by year-end	398	343	352	280	281
Complaint cases closed within 45 days without commencing formal investigation (% of compliance)	72%	69%	62%	77%	86%

Responses to Consultations / Vetting of Bills in 2015

PCPD vetted altogether 118 bills and regulations published in the Government Gazette. PCPD provided comments on the following Bills in light of their personal data privacy implications.

- (1) Interception of Communications and Surveillance (Amendment) Bill 2015
- (2) Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015
- (3) Bankruptcy (Amendment) Bill 2015
- (4) Securities & Futures (Amendment) Bill 2015
- (5) Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015
- (6) Patents (Amendment) Bill 2015
- (7) Electoral Legislation (Miscellaneous Amendments) (No.2) Bill 2015

PCPD also provided comments in response to 4 proposed legislations and government administrative measures listed as follows:-

- (1) Financial Services and The Treasury Bureau : Privacy issues involved in the proposed Bank of Communications (Hong Kong) Limited (Merger) Bill
- (2) Financial Services and the Treasury Bureau : Legislative Proposals to Allow the Securities and Futures Commission to Provide Supervisory Assistance to Regulators outside Hong Kong

- (3) Marine Department : Legislative Proposal for Requirement of Installation Automatic Identification System on Large Local Passenger Vessels
- (4) Food and Health Bureau : Regulation of Private Healthcare Facilities Bill - Drafting Instructions

Furthermore, PCPD responded to the following public consultations from the perspective of personal data protection:-

- (1) Voluntary Health Insurance Scheme
- (2) Regulation of Private Healthcare Facilities
- (3) Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong
- (4) Enactment of Apology Legislation in Hong Kong

Promotion and Public Education

	2011	2012	2013	2014	2015
Major Promotional Activities					
- University Privacy Campaign (Participants)	2 726	2 570	33 299	35 000	39 626
- Student Ambassador for Privacy Protection Programme (Participants)	700+	2 000+	4 840	7 593	16 528
- Number of Other Activities	14	14	14	18	18
- Total Number of Participants	17 316	46 657	58 979	141 443	260 223
Education					
- Professional Workshops	52	71	95	90	77
- Seminars and Talks	212	167	184	155	199
- Total Number of Participants	21 141	16 311	20 898	14 845	18 708
Industry-specific Campaign (Participants)	1 158	1 369	1 302	1 018	2 473
Data Protection Officers Club (Membership)	376	386	357	557	535
PCPD Websites (Visits per Month)	39 909	45 192	75 912	55 000	50 804
Information leaflets, guidance notes and Codes of Practice issued (Cumulative)	21	32	39	52	70

