



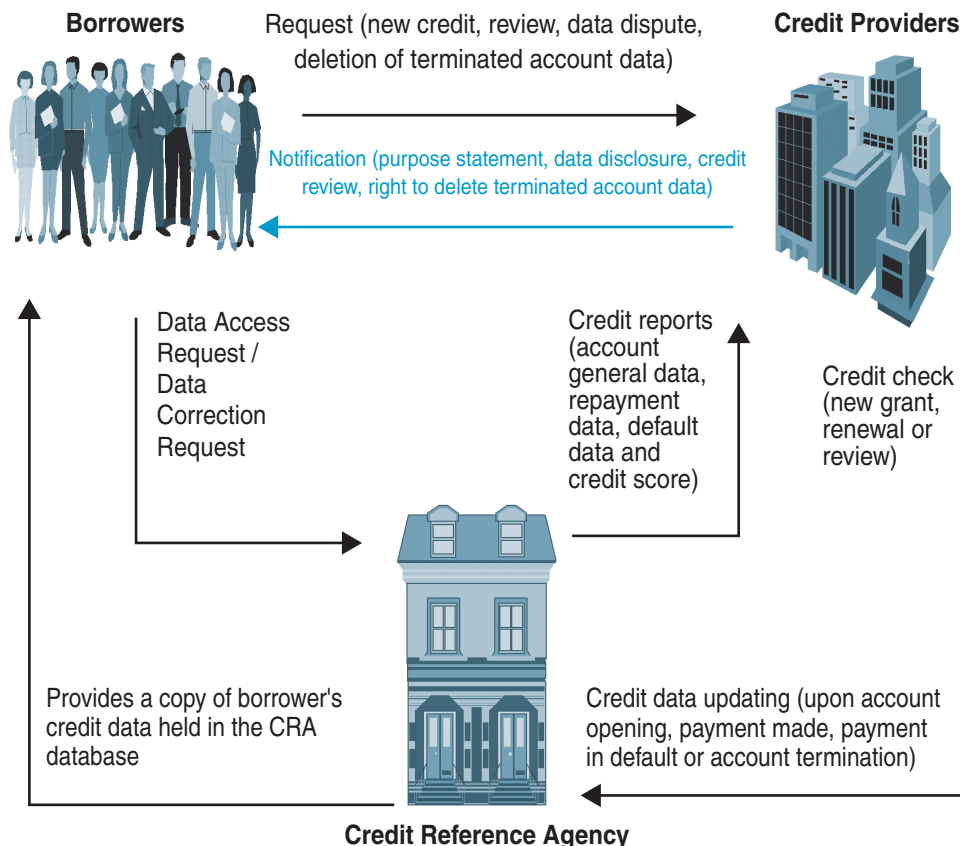
Code of Practice on Consumer Credit Data: How Does It Affect You?

The Office of the Privacy Commissioner for Personal Data (the "PCO") first issued a Code of Practice on Consumer Credit Data (the "Code") under the Personal Data (Privacy) Ordinance ("the Ordinance") in February 1998. The second revision of the Code takes effect on 2 June 2003.


The Code governs the sharing and use of consumer credit data by credit providers through a credit reference agency ("CRA"). It also sets out the necessary privacy safeguards required by credit providers and the CRA to protect your credit data.

Under the Code, consumer credit data refer to personal data relating to an individual's consumer credit transactions collected by a credit provider in connection with the provision of consumer credit. Credit providers, who subscribe to the service of a CRA, may provide consumer credit data to the CRA and in return obtain credit reports of individuals for credit checking and assessment purposes.

For example, when you apply for a credit card, loan or overdraft facility, hire purchase or leasing arrangement with a bank, the bank may obtain a credit report about you from a CRA. The bank makes reference to information in your credit report to assess your credit worthiness and repayment ability. If you are granted with the credit facility, the bank may report your credit data to the CRA and in the event of any default in repayment, the bank may also pass your credit information to a debt collection agency for collection action. The bank may also obtain a credit report about you when it reviews or renews any credit facilities you have with it.



How information is passed between borrowers, credit providers and credit reference agencies

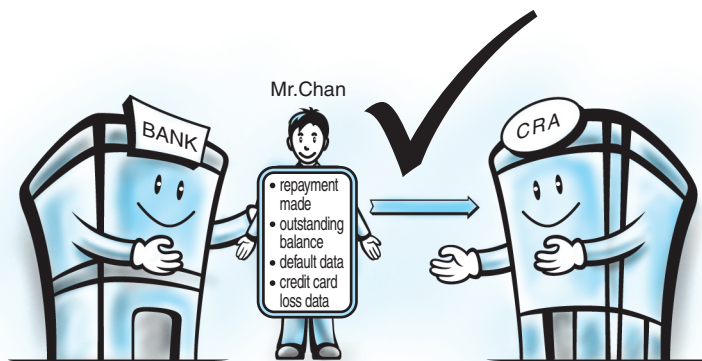
The following questions will help you understand how your credit data should be handled and what safeguards there are to protect them. 

1. Will my lender tell me that it may disclose my credit data to a CRA?

When you apply for a credit or loan facility with a lender, it should tell you in the application form or in the terms and conditions of a credit or loan agreement that it may disclose your personal data to a CRA (*Clause 2.1.1 of the Code*).

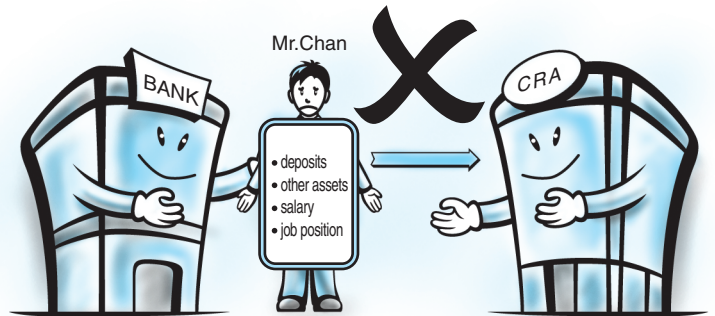
2. What kind of information about me can a credit provider disclose to a CRA?

When you are granted a loan, e.g. a tax loan, your lender may report your personal particulars and the loan account data to the CRA. Your personal particulars include data such as your name, Hong Kong identity card number and contact details. The loan account data include general particulars of the account such as account opening date, repayment terms as well as the approved loan amount. As you repay your loan, your lender may report the account repayment data such as the amount you repay and the outstanding balance of the loan account until you settle the loan account by full repayment. If you fail to repay an amount that is due for payment, your lender may also report the account default data such as the amount past due and the number of days past due to the CRA (*Clause 2.4 of the Code*).



3. Is there any information that a credit provider should not report to a CRA?

A credit provider should not disclose to a CRA account data about your residential mortgage loan (unless you have defaulted in repayment for a period in excess of 60 days) and personal information such as your personal income, deposits, other assets or non-credit based information such as your employment information.



4. What other information can a CRA collect?

In addition to consumer credit data provided to it by credit providers, a CRA may also collect information about an individual from official public records such as any legal action for recovery of a debt, judgements for monies owed, and any declaration or discharge of bankruptcy (*Clause 3.1.3 of the Code*).

5. Will the credit provider tell me that it has referenced my credit report when it considers my credit application?

A credit provider should inform you of the fact that a credit report on you has been considered in the course of processing your credit application when it notifies you of its

decision on the application. It should also let you know how to contact the CRA, which provided the credit report, for the purpose of making a data access and correction request (*Clause 2.13 of the Code*).

6. Does it mean that credit providers can obtain a credit report about me anytime they want?

No. Credit providers can only obtain a credit report about you under limited situations (*Clause 2.9 of the Code*). The Code allows a credit provider to obtain a credit report about you when it considers your application for a new credit facility and when your lender conducts a credit review on your existing credit facilities or a renewal of those facilities when due. Your lender may also access your credit report when you default in repaying an amount that is overdue so that it can monitor your indebtedness. However, credit providers are not allowed to access your credit data for other purposes such as using the data for direct marketing purpose (*Clause 2.12 of the Code*).



7. Will my lender tell me that it will access my credit data when it conducts a credit review of my credit accounts?

Credit review is a legitimate activity carried out by your lender when you maintain a credit or loan facility with it. To safeguard your credit data from being arbitrarily accessed with the reason of a credit review, the Code provides that a review should relate to circumstances concerning an

increase/decrease in credit amount, the cancellation of credit or an arrangement governing a restructuring or modification of terms in relation to your existing credit facilities (*Clause 2.9.3 - 2.9.5 of the Code*). Your lender is required to give prior notification to you about its access to your credit report for the purpose of conducting credit reviews unless the review is conducted in response to your request or it is carried out pursuant to an existing loan restructuring arrangement that you have entered with your lender (*Clause 2.14 of the Code*).

8. How can I ensure that information about me provided in a credit report is accurate?

You can make a request to the CRA for a copy of your own credit report. The Ordinance provides that a data user, in complying with a data access request, may impose a reasonable charge on the supply of the data. Upon receipt of your request the CRA should provide you with a copy of the report immediately if you make the request in person or within 3 working days (*Clause 3.18 of the Code*). (For details, please refer to the "Exercising Your Data Access Rights" information booklet.)

9. What can I do if I find that information reported in my credit report is not accurate?

If you find any information inaccurate, you should always raise it with your lender who provided the information to the CRA in the first instance. Your lender is required to include an indication of the existence of a dispute by you on any data that it provides to the CRA (*Clause 2.6 of the Code*). Alternatively, you may make a correction request with the CRA concerned with appropriate supporting documents. Upon receipt of your request, the CRA should promptly verify the data with your lender. If it does not receive from your lender any written confirmation or correction of the disputed data within 40 days from the correction request, the relevant data should upon expiry of

the 40 days be deleted or otherwise amended as requested by you (*Clause 3.19 of the Code*).

10. How long can a CRA retain my credit data?

A CRA can retain your personal particulars and account general data for credit reporting purposes as long as you have a borrowing relationship with a lender. The general rule on data retention is that the account repayment data may be retained for 5 years from the date of creation of such data or until the expiry of 5 years after account termination (*Clause 3.4 of the Code*). However, there are certain exceptions. For example, if you have defaulted in repayment for a period in excess of 60 days, then such account default data may be retained until the expiry of 5 years after the amount in default is fully settled (*Clause 3.3 of the Code*). On the other hand, if you have settled your account by full repayment and you have never defaulted in any payment for a period more than 60 days, then you have a right to instruct your lender to make a request to the CRA to delete your closed account data from its database (*See also question 12*).

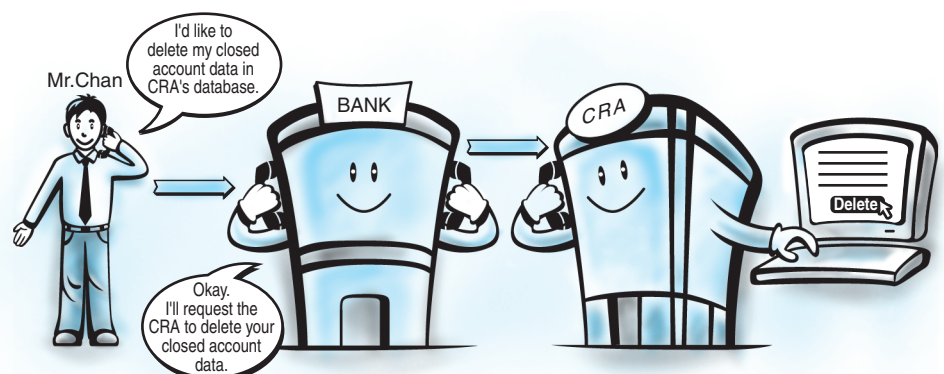
11. If I go bankrupt, will my credit data held by a CRA be deleted from its database?

Your declaration of bankruptcy is made available in official public records. A CRA may collect this type of information from public sources for credit reporting purposes. The Code provides that public record data relating to a declaration of bankruptcy may be retained for a period of 8 years from the relevant declaration of bankruptcy (*Clause 3.6 of the Code*). You should note that, despite your lender might have written off your defaulted accounts

pursuant to your bankruptcy, the CRA can continue to retain your account repayment data of those defaulted accounts so long as you have not settled the amount in default. It is incumbent upon you to provide evidence about your discharge from bankruptcy (either a certificate of discharge issued by the Court of First Instance or a written notice from the Official Receiver) to the CRA, and in that case, the CRA will delete such account repayment data upon the expiry of 5 years from the date of your discharge (*Clause 3.3 of the Code*).

12. If I settle my loan account, will my credit data held by a CRA be deleted from its database?

When you settle your loan account, you have a right to instruct your lender to make a request to the CRA to delete the closed account data from its database. Your lender should have informed you of this right at the time when you apply for the loan (*Clause 2.1.4 of the Code*) or you may expect to receive from your lender a written reminder upon your settlement of the account (*Clause 2.3 of the Code*). However, you should note that the right is conditional upon there have been, within 5 years immediately before account termination, no default in repayment for a period more than 60 days on the account and you have settled the account by full repayment (*Clause 2.15 of the Code*). You should also note that your lender may retain your closed account data in its own system for internal accounting purpose notwithstanding that you have a right to request deletion of the data from the database of the CRA.



13. What is the benefit of keeping my closed account data in the CRA's database?

If you settle your loan account with no record of late repayments, it is a good credit history record that you may wish to retain in the database of the CRA. When you subsequently apply for credit with other lenders, your closed account information, with record of no late repayments, would put you in a stronger position to negotiate better terms of credit.

14. I have a tax loan with a bank which I fully repaid in January 2003. I also have a credit card with the bank for many years. Can my bank provide all these account data to the CRA when the Code takes effect on 2 June 2003?

When the Code takes effect on 2 June 2003, your bank may provide to the CRA your credit account or loan account data which you have a current borrowing relationship with it. However, the bank is not allowed to report account data of any account that has been settled by full repayment prior to the effective date (*Clause 2.4.3.1 of the Code*). As regards an account that remains current after the effective date, the bank cannot report its past repayment data unless there is a current outstanding default on the account, in which case, the bank can report such default data (*Clause 2.4.3.2 of the Code*). In your case, since you fully repaid your tax loan before 2 June 2003, the bank is not allowed to report the loan account data to the CRA. As regards your credit card account, provided you have no current outstanding default in any card payment, your past payment transactions will not be reported by your bank.

15. Are there other restrictions on access to my credit card/personal loan account data by credit providers during the transitional period?

The Code provides for a 24-month transitional period following the effective date during which the sharing of your account data will be restricted. Access to account data may be made in the following situations: (a) when you apply for a new credit or loan facility (excluding increase in any existing credit amount), (b) when your lender reviews your existing credit facility, which you have defaulted in repayment for a period in excess of 60 days, to assist you with a loan restructuring arrangement, (c) when your lender and you have entered a loan restructuring arrangement and (d) when you request a restructuring or modification to the terms of any existing credit or loan facilities with your lender (*Clause 2.10 of the Code*).

16. I have a savings deposit account with a bank but I have not applied for any credit card or personal loan with any lender, will other lenders be allowed to access my data from the database of the CRA?

No. If you have not made any application for consumer credit, the database of the CRA will not contain any information about you at all. Your bank is not allowed to provide any information about your savings deposit account to the CRA.

17. Are there any safeguards to protect my credit data against improper access by credit providers?

Credit providers and credit reference agencies are governed by the Code and the Ordinance. Under the Code, a credit provider is required to specify to the CRA, on each occasion of accessing its credit reference database, the reason and circumstances under which the access has been made (*Clause 2.11 of the Code*). The CRA is required to maintain a log of all instances of access to its database by credit providers. In the event of there being any suspected abnormal access by a credit provider

it should report such incident to the senior management of the credit provider and the Privacy Commissioner. To ensure compliance with the requirements of the Code, the CRA is required to conduct a compliance audit at intervals not exceeding 12 months and to submit an audit report for consideration by the Privacy Commissioner.

18. What can I do if I find a credit provider or a CRA not handling my data properly?

If you are unable to resolve the matter with the credit provider or CRA concerned, you may make a complaint in writing to the PCO. To obtain the complaint form, please visit the PCO office or download it from the PCO web site at www.pco.org.hk.

19. What would happen to a credit provider or a CRA if it does not comply with the Code?

A breach to the Code by a data user will give rise to a presumption against the data user in any legal proceedings under the Ordinance. Aside from legal proceedings, failure to observe a Code of Practice by a data user will weigh unfavourably against the data user in any case before the Privacy Commissioner.

The information provided in this Fact Sheet is only for general guidance. For a complete and definitive statement of the provisions of the Code of Practice on Consumer Credit Data please refer to the published version of the Code itself.

To obtain more PCO information booklets, please visit the PCO Office at Unit 2401, 24/F, Office Tower, Convention Plaza, 1 Harbour Road, Wan Chai, Hong Kong, or download from the PCO web site at www.pco.org.hk.

© Office of the Privacy Commissioner for Personal Data, Hong Kong - June 2003

Reproduction of all or any part of this publication is permitted on the conditions that it is done for a non-profit making purpose and due acknowledgement of this work is made as the source.