

Introduction 引言

私隱專員簡報 Privacy Commissioner's Overview



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私隱專員簡報

這是個人資料私隱專員公署(「公署」)第八份年報，匯報了公署在二零零三年四月一日至二零零四年三月三十一日期間的工作。

過去一年，公署的財政預算緊絀，但所承擔的工作並無減少，意味公署各同事須認識到新經濟秩序的影響，並且迅速回應由此產生的需求。年內，我們繼續實行多項削減開支的方案，同時致力尋求提高效益的新方法。為此，公署重組了部份架構，又調整了本身的工作政策、程序及制度。我們既堅持為社會提供一貫的優質服務，自然要勇於開拓，以更少資源達至更大效益。正如我在二零零二至二零零三年年報所述，在困難的經濟條件下工作，反可讓我們從學習中得到寶貴經驗。我們努力累積經驗之餘，同時亦嘗試學以致用，積極迎接轉變，時刻保持靈活，採取新的辦事方式。

新的考驗當然會影響各同事的工作，值得欣慰的是，各同事能夠齊心合力應付這些挑戰，明白到社會上是經常存在很多轉變的。我們清楚明白未來工作的艱巨，但我會竭盡所能，在工作計劃資源分配方面作出謹慎安排，以取得有價值的成果及達致最佳的效益。本人謹此再次多謝各同事能夠以正面的態度去面對各種無可避免的改變，同時還要感激他們的忍耐和理解。假使沒有堅毅的精神，沒有細心思考事情的輕重緩急，我們決無可能實現既定的目標。我希望本報告能夠顯示出公署既能維持高水平的效率，同時又能夠拓展新計劃，積極參與本港以至國際社會上的私隱權推廣活動。

Privacy Commissioner's Overview

This is the PCO's eighth annual report and covers the period 1st April 2003 to 31st March 2004.

The events of the year have taken place against the backdrop of budgetary constraint. With no diminution in the activities of the PCO, this has meant that staff have had to adjust to a new economic order and become responsive to the demands that it makes upon them. Over the course of the year we remained committed to programmes designed to trim costs and to look for new efficiencies. In turn this has necessitated some organizational restructuring and a fine-tuning of our operational policies, procedures and systems. We remain steadfast in our commitment to providing high quality services to the community and have therefore had to be enterprising in our approach to doing more, with less. As I mentioned in the 2002-2003 annual report, I think the experience of operating under different economic circumstances has provided us with valuable learning. We seek to both enhance that learning and apply the lessons drawn from it by being proactive towards change and mindful of the need to remain flexible in terms of new ways of doing things.

Of course new challenges have impacted upon staff. Nonetheless, I am heartened by the collective resolve of the team I lead in terms of their recognition of the view that change is the only constant. All of us remain aware of the magnitude of the task that lies ahead and I am keen to ensure that we are judicious in the resources we allocate to projects, the value of their output and the outcomes achieved. Once again, I must record my appreciation of the positive approach taken by staff in accommodating the changes that have been necessary. I am also grateful for their patience and understanding. Without a good measure of fortitude and the acceptance of the need to reflect carefully upon our priorities I do not think we would have been capable of meeting the targets we set ourselves. As I hope this annual report demonstrates, we have maintained a high level of productivity and, at the same time, managed to take on new projects that have sustained our visibility both in the local community and the international arena.

年內活動概覽

執行部是公署履行其法定職責的核心，因此我會先報告該部門的工作。

在本年度內，我們收到的查詢數字輕微下降，而接到的投訴個案則較上一年輕微上升。然而，各個類別的總數表明，社區各界對於個人資料私隱的意識與日俱增，並熱切期望《個人資料(私隱)條例》(「私隱條例」)底下的條文能夠保障他們的私隱權。以我看來，市民大眾關注保障個人資料的表現，證明我們在機構傳訊方面的努力已經奏效。過往，我們的工作重點是實行不同溝通策略，藉此增強市民的私隱意識。現在，我們根據社會不同階層的需要，在人口(例如不同年齡)或特定經濟領域(例如信貸提供機構)方面，以不同渠道滿足不同社群的需要。這個工作重點的轉移，說明我們已跨越了提高公眾意識的階段，邁進了一個嶄新階段，就是社會或部份階層已經更深刻瞭解個人資料私隱問題及其相應權利。我相信，社會各界對私隱權加深理解後，會逐步轉化對本身權利的熟悉。這樣，公眾在私隱權受到嚴重侵犯時，會更覺需要保護自身的權利，主動向公署報告任何違反個人資料私隱權利的事件。我認為，這個過程是互利的，因為此舉促進了在遵守及執法方面專業能力的發展，從而保證了我們工作的相關性。

The Year at a Glance

I would like to begin this report by commenting on the work of our Operations Division which remains central to discharging the PCO's statutory duties.

For the year in question the number of enquiries received declined marginally whereas the number of complaints increased marginally over the preceding year. Nonetheless, the gross figures in each category suggest a continuing interest in personal data privacy and a strong desire on the part of the community to protect the privacy rights afforded them under the provisions of the Personal Data (Privacy) Ordinance ("the PD(P)O"). In my view, this indicates that our investment in corporate communications has paid off in terms of the willingness demonstrated by the general public to exercise their rights. At one time we were largely in the business of engaging communications strategies to create awareness. Today we are more concerned with segmenting the community as an audience and addressing the needs of particular subsets whether they be in terms of demographics e.g. age, or in terms of a particular economic sector e.g. credit providers. This shift in emphasis has moved us beyond the awareness stage to one in which the community, or segments of it, have developed a more profound understanding of personal data privacy issues and attendant rights. Depth of understanding in the community does, I believe, translate into sophistication of understanding. In turn, this will reaffirm the need felt among members of the public to better protect their privacy, in the face of myriad challenges to it, and draw to the attention of the PCO any violation of their personal data privacy rights. I feel this process is mutually beneficial in that it will ensure the continued relevance of our work by facilitating the development of more specific expertise in the areas of compliance and enforcement.



以下我將概述公署在本年度內進行的一些較重要的計劃。

《個人信貸資料實務守則》的修訂

繼一九九八年二月面世後，《個人信貸資料實務守則》在二零零三年六月頒布了修訂本。該守則的修訂是為了使信貸提供者可以共用正面信貸資料，此舉在美國、英國等發達司法區早已實行，可以為有關新信貸申請及繼續給予信貸安排的決定提供更具體資料。

目前，信貸提供者可向信貸資料服務機構提供客戶的個人資料，但至今仍未可以全面使用資料庫內的資料，只有在某些情況下才可使用，例如：批授新貸款或債務重組安排。這是因為公署相信，在參加該計劃的信貸提供者可以全面使用這些個人信貸資料前，必須經過二十四個月的過渡期。因此，信貸提供者要到二零零五年六月，才能全面使用由信貸資料服務機構提供的服務。

Let me now summarise some of the more significant projects that the PCO has been involved in over the course of the year.

Revisions to the Code of Practice on Consumer Credit Data

A revised version of the Code of Practice on Consumer Credit Data, first published in February 1998, was issued in June 2003. It will be recalled that the revisions to the Code were designed to enable credit providers to share positive credit data. Sharing of such data, which is an established practice in developed jurisdictions such as the USA and UK, would better inform decisions associated both with new applications for credit and the renewal of existing credit facilities.

At the moment credit providers are contributing personal data to the credit reference agency but are not, as yet, permitted to make full use of the data except under certain circumstances e.g. the granting of new credit or the restructuring of existing credit arrangements. This is because the PCO held to the view that there should be a twenty-four month transitional period before there could be full usage by those credit providers subscribing to the scheme. In effect therefore credit providers will only be able to make full use of the services provided by the credit reference agency in June 2005.



公署採取保障措施，要求信貸資料服務機構每年向具備專業資格的獨立第三者提交有關其營運程序及系統的資料，以便進行循規審核，並向私隱專員呈交報告副本，供其考慮，或在適當時給予意見。目前在港經營的唯一一間信貸資料服務機構已經完成及向公署呈交首份循規審核報告。而專員在審閱後亦已於二零零四年四月予以核准。

監察活動及工作期間的個人資料私隱 指引草擬本

我們早前曾就監察活動及工作期間的個人資料私隱實務守則草擬本進行公眾諮詢，有關報告已於二零零三年十二月發表。經過廣泛研究及分析公眾的意見後，公署決定以現階段而言，發出良好實務指引較具約束性的守則為佳。我們相信指引可以在僱主的法定權益與僱員的個人資料私隱權之間取得平衡，是最佳的解決方案，因此作出這個決定。

僱主有權按本身認為合適的方式管理機構的資源及資產，對此公署從未質疑。然而，基於同樣理由，我們並不同意僱員在進入工作地點後即等同自動放棄所有個人資料私隱的權利。我們一貫認為，僱主最基本的做法是採取具透明度的手法，向員工公布及傳達一份清晰的監察僱員活動政策。

公署現正草擬上述指引。

A precautionary measure taken by the PCO was the requirement for the credit reference agency to submit its operational procedures and systems to an annual audit undertaken by an independent third party that possesses the requisite expertise. A copy of the audit report must be provided to the Privacy Commissioner for scrutiny and, where appropriate, his comment. The first independent audit has recently been completed for the sole credit reference agency currently operating in Hong Kong and the audit report submitted to the PCO. This was subsequently reviewed and approved by the Privacy Commissioner in April 2004.

Draft Guidelines on Monitoring and Personal Data Privacy at Work

The report on the public consultation conducted in conjunction with the Draft Code of Practice on Monitoring and Personal Data Privacy at Work was published in December 2003. After extensive review and analysis of the submissions made the PCO decided that, at this point in time, it would be preferable to issue good practice guidelines rather than a binding code. This decision was taken in the belief that guidelines would offer an optimal solution in terms of balancing the legitimate interests of employers and the personal data privacy rights of employees.

The PCO has never disputed the right of employers to manage the resources and assets of the business as they see fit. However, by the same token we do not subscribe to the view that, upon entering the workplace, employees automatically forfeit all rights to personal data privacy. Our consistent view remains that, at a very minimum, the employer should adopt a transparent approach to employee monitoring by promulgating and disseminating a lucid employee monitoring policy.

The guidelines are currently being drafted by the PCO.



越境資料傳輸意見調查

公署注意到，越來越多工商機構將業務工序外判給本港境外的其他公司。外判業務工序通常涉及將客戶、僱員等的個人資料傳送到其他司法區。隨著科技發展一日千里，這種做法已漸趨普遍。電子商貿正不斷發展，商界亦日益依賴這種營商方式，種種跡象顯示，此趨勢未來數年會大幅增長。那些進行越境資料傳輸的公司經常指出，這種方式能夠使企業架構更加精簡，業務過程可以發揮更大的成本效益，從而帶來顯著的經濟效益。相信大家不會奇怪這種手法為何開始迅速普及，並已成為香港多元化經濟商業模式中一個不可或缺的元素。



公署目前尚未透徹瞭解越境傳輸資料的普遍程度，亦未完全掌握工商企業將工序外判給境外公司時所涉及的個人資料傳輸過程，以及保障有關個人資料的情況。為了更深入瞭解實際情況，公署決定進行一項探討性的意見調查，評估越境資料傳輸的普遍程度和發展趨勢，希望調查結果能夠加深對現時越境外判工作的瞭解，並探討實施保障個人資料措施可能引起的困難。公署對問題瞭解越深，便越能提供合適的指引及協議，協助資料使用者遵從有關條例。長遠來說，公署相信此舉有助消費者建立信任和信心，明白當個人資料傳送到其他司法區或在其他司法區處理時，亦會受到有關條例保障。

意見調查的設計工作已經完成，預期將於二零零四年下半年展開實地意見調查工作。

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Trans-border Data Flow Survey

The PCO is aware of the fact that there has been a significant increase in trans-border outsourcing of business processes to third parties that are located outside Hong Kong. Frequently, this practice involves movement of personal data of customers, employees etc. across jurisdictional boundaries; a movement that has, of course, been made routine by advances in technology. All indications are that, with the growth of e-business, and the reliance placed upon it, this trend will increase significantly in coming years. Organizations engaged in trans-border data flow frequently cite the economic benefits to be derived from the practice resulting in leaner organizations and more cost effective business processes. Not surprisingly, this type of arrangement has rapidly diffused and is now an essential component of business models in diverse economic sectors in Hong Kong.

At present, the PCO does not fully comprehend the pervasiveness of trans-border data flows, the processes involved in the transfer of personal data and the issues pertaining to its protection, that organizations may encounter when engaging in offshore outsourcing. In seeking to obtain a more thorough understanding of the picture on the ground the PCO have decided to embark upon an exploratory survey to assess the prevalence of, and trends in, trans-border data flows. It is hoped that the findings of this research will result in an enhanced understanding of current practices in trans-border outsourcing and any difficulties that may arise in applying adequate safeguards to the personal data involved. With a deeper understanding the PCO will be in a better position to provide appropriate guidance and assistance to data users in their endeavours to remain compliant. In the longer term, the PCO also see benefits that would contribute to establishing greater consumer trust and confidence in those situations where personal data are transferred to, or processed in, other jurisdictions.

The design of this survey has been finalized and it is anticipated that fieldwork will commence in the second half of 2004.

亞太區經濟合作組織的私隱原則 以及實施架構

公署在二零零三年初開始參與亞太經合組織的工作，主要任務是制訂一套私隱保障原則，讓組織內二十一個成員體系共同遵守。電子商貿日趨蓬勃，加上商界殷切期望在進行商業貿易時資料能夠自由流通之餘，亦希望個人資料得以受到保障，尤其是當個人資料須要傳送到其他國家的時候。有見及此，亞太經合組織便著手制訂有關原則。

經過多輪討論和修訂後，工作小組終於草擬了九項原則，奠定了這個項目的基石。有關原則很有機會在今年稍後時間提交高級官員會議正式批准。一旦獲得正式批准，有關原則便會成為一個藍本，讓各成員國據此協調本身的私隱制度，求同存異，保持各國在憲法和法律制度上的完整。話雖如此，各成員體系之間的個人資料私隱制度仍然存在相當的差異，這一點值得注意。

這個項目現已踏入補充階段，當中涉及制訂實施大綱，詳細闡述可切實推行的方案。按照現況估計，整個項目可於二零零五年大功告成。其後，各成員體系便須採納有關原則和實施大綱，並決定落實執行的具體方法。期望在不久將來，有關措施能夠取得預期成果，加強各界對電子商貿的信任和信心。長遠來說，我們期望能夠推動亞太經合組織各成員體系之間的電子商貿交易量和價值。

APEC Privacy Principles and Implementation Framework

In early 2003 the PCO became involved in an APEC initiative whose primary purpose was to develop a set of privacy principles that could be subscribed to by all twenty-one member economies. This exercise was principally driven by e-business considerations and the desire to reconcile the free flow of essential information needed for business transactions while at the same time protecting the personal data of the individual, notably in those situations where personal data are transferred across national boundaries.

After numerous rounds of discussions and revisions to the nine principles that form the bedrock of the project, it looks very much as if they will be submitted to senior officials for ratification later this year. If the principles are endorsed then a basis will have been laid that will enable member economies to harmonise their privacy regimes, without compromising national integrity insofar as constitutional and legal systems are concerned. Having said that, it is worth pointing out that there is a good deal of variation in the extent to which personal data/information privacy has been institutionalized within member economies.

A complementary phase of this project is on-going and involves developing an implementation framework that will depict the methods that may be engaged to set this initiative in motion. The current expectation is that the project will be concluded in 2005. It will then be for member economies to take the principles and implementation framework and determine how to operationalise them. In the immediate short-term it is hoped that the outcome of this initiative will be to increase trust and confidence in e-business. In the longer term the outcome sought is to boost the volume and value of e-business activity within and between the member economies constituting APEC.





前瞻

在作結之前，我想談談公署未來一年的工作方向，透露一些我們對個人資料私隱問題的關注，以及我們將投放更多資源的政策範疇。

身為私隱專員，我覺得我有責任對現時的私隱發展情況作概括介紹。自二零零一年「九一一」事件後，全球掀起了翻天覆地的變化，許多國家都為了盡量減低恐怖主義的威脅，引入多項反恐措施。國家安全的重要性當然無可置疑，國際社會必須以堅定立場對抗恐怖主義。然而，縱使全球各地政府對此均表關注，但我認為，我們不應輕忽漠視私隱權在文明社會的價值。否則，我們便會走回頭路，多年來在爭取和保障私隱權上的努力將付諸東流。因此，我們在鞏固國家安全上所採取的法律及科技程序必須適度，並且充份顧及對個人私隱的影響。

有人以「全面監控社會」，作為未來社會發展的極端寫照。舉例來說，市民的活動很多時都被數碼攝錄，並儲存在大型的數據庫內，而這個數據庫將儲存整個人口的大量個人資料或生物基因數據。在最差的情況下，「全面監控社會」裡的市民可能會全日二十四小時被追蹤。雖然這個日子並未來臨，但由於要顧及本土安全問題（例如機場保安），又要履行國際義務（例如引入反恐法例），普遍採用監控措施是難以避免。大多數的監控措施均屬善意，目的是保障市民的安全及財產。不過，社會各界須保持警覺，注意監控措施可能變成無處不在，嚴重侵犯個人私隱。我們固然不應過於敏感，但監控設施的普及和擴散帶來之兆確令許多人感到不安。

The Outlook

I would like to close by making mention of the work that is on the horizon for the PCO over the forthcoming year and impart some understanding of our concerns for personal data privacy and the policy areas that we will likely invest resources in.

Let me just say that I think it is the duty of people in my position to provide some broad brush picture of the backdrop against which developments in privacy are taking place. Since the events of 11th September 2001 the world has changed irreversibly, most notably in terms of the measures introduced in many countries to minimize the threats from terrorism. National security is of course non-negotiable and there must be a resolute stand against terrorism by the international community. However, irrespective of the importance of this concern to governments around the world it should not, in my view, be prefaced on the belief that there should be a casual disregard for the value placed upon privacy in an enlightened society. That would turn the clock back and nullify the significant advances that have been made in securing and protecting privacy rights over the years. It is important therefore that the largely legal and technological steps taken to reinforce national security are proportional and give due consideration to their impact upon the privacy of the individual.

The phrase that has been coined to describe a rather extreme version of the future is the "surveillance society". This is exemplified by a society in which a great deal of human activity would be digitally recorded and stored in large databases that could contain massive amounts of personal information or bio-genetic profiles of entire populations. In a worst-case scenario, the surveillance society could result in members of the community being tracked twenty-four hours a day. Although that day has not yet dawned it is evident that both internal concerns, such as airport security, and the need to meet international obligations, such as the introduction of anti-terrorism legislation, will inevitably result in the more pervasive use of surveillance. In most instances this will be for well-intentioned purposes that are designed to ensure that the safety of people and property are not compromised. Nonetheless, it is important that the community is alert to the potential for surveillance to become a ubiquitous and highly privacy-intrusive technology. One does not want to be unduly dramatic about this but there is a potentially sinister dimension to surveillance that many people are uncomfortable with; myself included.

監控措施即使不致侵犯私隱，也有可能變得日漸普及。公署除了向公眾發出這個訊息外，更應扮演更積極的角色，提供盡量保障私隱的解決方案。換句話說，每當有重大決定時，私隱問題應屬解決方案中必需的一環，而非可有可無的附帶考慮因素。因此，我希望得到各公私型機構的支持，確保在進行電子監控或其他監控計劃時，從一開始便把私隱問題列為計劃內必需的一部份。在一個理想的大同世界裡，我盼望見到私隱問題成為一項計劃的重要表現指標或者是明確成果。故此，我希望明年可以調配部份資源，傳達這方面的訊息。

走筆至此，我想談談公署另一個工作範疇，我希望這方面的工作可帶來重大貢獻，推動社會各界遵守私隱條例的規定。明年我們會著手推行一項社區教育計劃，向社會各界，尤其是公私型機構，灌輸「私隱影響評估」的概念。「私隱影響評估」的定義是「識別現行或建議行動日後可產生的影響」，目的是採納一個有系統的程序，評估任何涉及個人資料的計劃對私隱權的影響。公署的立場是「私隱影響評估」理應成為所有計劃的策劃程序中的一個主要部份。

「私隱影響評估」有潛力成為一種有效的新工序，能找出及處理計劃中對私隱有不良影響的地方，尤其是對一些以電腦網絡或電子監察方法來收集個人資料的計劃而言。因此，未來一年我們將以「私隱影響評估」作為工作重點，而長遠來說，我們會進而研究私隱循規的相關課題，例如對經由「私隱影響評估」評定的計劃進行循規審核。

總括而言，我有信心公署可以應付面前種種可能危害個人資料私隱的考驗。我們將秉承一貫宗旨，致力為社會提供卓越服務，爭取每一個機會與本港及區內其他機構合作，確保公眾得悉個人資料私隱的發展進程，以及可採取的步驟，盡量減低由此引起的不良後果。要達到此目標，我認為應集教育、培訓及溝通三方面的力量，逐漸改變個人的觀念與行為，從而培養出一套彼此尊重私隱的社會文化。

Other than signaling to the community the prospect of surveillance becoming more pervasive, if not invasive, of our daily lives I think that the PCO can take a more proactive role by contributing towards security solutions that are, as far as possible, privacy-friendly. This means that privacy issues must feature as an integral part of the solution to a given problem rather than some adjunct to it once all the important decisions have been taken. I hope therefore to enlist the support of the private and public sectors in ensuring that projects that resort to one form of electronic surveillance or another have privacy concerns inbuilt at the outset as an integral part of the project. In an ideal world I would like to see privacy issues enumerated as a key performance indicator or explicit outcome of a project. I hope therefore in the year ahead that we will be able to deploy some of our communications resources in getting this message across.

This takes me to an aspect of our work that I hope will make a strong contribution to privacy compliance. Over the course of the next year we will embark upon a programme to educate the community, private and public sectors in particular, about Privacy Impact Assessment ("PIA"). PIA has been defined as "the identification of future consequences of a current or proposed action" and implies the adoption of a systematic process that evaluates any project proposal in terms of its impact upon privacy. The position taken by the PCO is that PIA should become a constituent component of the project planning process.

PIA has the potential to become a major force in identifying and managing the "downstream" privacy impact of projects, especially those that make use of computer-based or surveillance technologies that capture and collect personal data. We will therefore make PIA a focus of our efforts over the year and, in the longer term, move on to consider the related aspect of privacy compliance or the auditing of projects that have been evaluated by PIA.

In conclusion, I remain confident that the PCO will rise to the varied challenges that lie ahead: challenges that have the potential to threaten our personal data privacy in Hong Kong. We remain committed to maintaining a high level of service to the community and will be taking every opportunity to work with other organizations, both local and regional, to ensure the public remain informed of developments in personal data privacy and the steps that can be taken to minimize any adverse consequences arising from them. I see education, training and communications as an essential mix in achieving that objective and in the gradual modification of personal behaviours that will work towards a society in which there is a culture of respect for privacy in all its forms.