

私隱專員簡報

Privacy Commissioner's Overview



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong



“今天，在很多社會議題及公司管治中，資料私隱已經成為重要的元素。這不單反映人們對私隱意識的提高，亦反映更多人對私隱權這項在社會上被確認的人權有更高的期望。

Today, data privacy has become a vital element in many social issues and corporate governance. It reflects not only the higher level of awareness but also the higher level of expectation of privacy rights as an established human right in our community. ”

計 起來，公署今年已經成立了十年，但我們沒有花錢去慶祝。其實我們在亞洲區仍是獨一無二的機構，因為在公私營機構收集及使用個人資料方面，區內再沒有任何獨立的監管機構，保障個人的私隱。所以我認為與國際上其他私隱及資訊專員保持緊密的聯繫，是非常重要的工作，因為只有在國際及地區層面上積極參與，公署才可以掌握世界其他地方在保障個人資料方面的最新發展。

因此，我很高興於2006年11月在香港主持第二十六屆亞太區私隱機構論壇。在本年報期內，論壇的成員包括新西蘭、澳洲、澳洲各省及南韓的私隱機構。新成員則有加拿大及英屬哥倫比亞省。

香港是亞太區經濟合作組織（簡稱「亞太經合組織」）的成員之一，組織的宗旨是持續發展區內的經濟。近年，亞太經合組織愈來愈體會到電子商貿的發展及使用對成員帶來的益處，因此成立了電子商貿督導小組。小組之下需要一個資料私隱分組，因為個人資料受到保障，電子商貿才能得以蓬勃發展。香港政府認為，公署具備代表香港參與這個分組的最佳條件，所以讓我和我上一任的私隱專員擔任其代表。我和前任的專員都曾經參與制定保障私隱機制，該機制已由亞太經合組織各成員國的部長核准。要在亞太區內建設有規律、具透明度及一致性的法律、監管及政策環境，還有很多工作要做。最終目標應該與公署在保障個人資料方面（尤其是跨境傳送資料）的職能及責任一致。無容置疑，資料私隱分組的成功，最終會促進香港及其他亞太經合組織成員的電子商貿發展及經濟增長。

Without any fanfare, my Office celebrated its 10th anniversary this year. We are unique in Asia, since there is no other independent regulatory body protecting individuals' privacy in relation to personal data collected and used in the private as well as the public sectors. It is imperative for me to liaise with and be part of the international gathering of privacy and information commissioners. It is only by remaining an active player in the international and regional level of commissioners that my Office can keep abreast of developments in personal data protection work in different parts of the world.

It was therefore with great pleasure that I hosted the 26th Asia Pacific Privacy Authorities (APPA) Forum in Hong Kong in November 2006. Membership of this Forum during the reporting year included the privacy authorities in New Zealand, Australia, various Australian states and South Korea. Canada and the state of British Columbia are new members.

Hong Kong is a member economy in the Asia Pacific Economic Co-operation (APEC) which aims to sustain the economic growth of the region. In recent years, there is a growing realization within APEC that member economies will benefit from the development and use of electronic commerce. Accordingly the Electronic Commerce Steering Group (ECSG) was set up. E-commerce cannot hope to prosper unless personal data can be secured and for this reason, a Data Privacy Subgroup was formed under ECSG. The Hong Kong Government considers that this Office is best equipped to represent Hong Kong in this Subgroup and has asked that successive Commissioners to be its representative. My predecessor and I have contributed to the formulation of a set of data privacy framework which has now been endorsed by the ministers of the various member economies in APEC. There is still a lot of work to be done in creating legal, regulatory and policy environments in the APEC region that are predictable, transparent and consistent. The ultimate goal should be consistent with this Office's functions and responsibilities in protecting personal data, particularly when they are transported across borders. It is without doubt that the success of the Data Privacy Subgroup will eventually contribute to the e-commerce and the economic growth of Hong Kong and other member economies in APEC.

明顯地，網上資料洩漏事件有上升的趨勢。在2006年，公署處理有關個案的宗數破了紀錄。在警監會事件中，約二萬名曾經投訴警方的市民的個人資料遭外洩。在該事件之後，公署決定與三個著名的資訊科技專業團體，包括國際資訊系統審計協會（香港分會）、互聯網專業協會及香港工程師學會合作，舉辦「資訊保安關注行動」。活動的目的是提高資訊科技專業人員對保障資料私隱的意識。是次活動亦安排了一場大型的公開研討會，出席人士非常踴躍，包括來自資訊科技保安團體、政府部門、金融機構及電訊公司的專家。

公署深信，應該向需要處理大量個人資料的行業，提供更多實際支援，從而向該等行業的從業員提供實際的工作指引。我們選擇了酒店業作為首個對象，儘管這個行業向來享有良好的聲譽。原因是香港的酒店每年處理大量旅客的個人資料，還要加上本身員工的個人資料。我們亦希望可以藉著這次活動提高香港作為旅遊熱點的美譽。在香港酒店業協會的鼎力支持和合作下，整個活動得以成功舉行。在六個月的活動期間，得到超過44間酒店的積極參與。其實，我為另一個揀選的行業籌劃新活動之餘，亦沒有忽略對年青一代的教育。我有信心這個雙管齊下的方法一定會非常成功，而且具有成本效益。

前任的專員曾考慮出版書籍，詳述我們的監管經驗及私隱專員在應用《個人資料（私隱）條例》的六項保障資料原則時的立場。雖然條例並沒有賦予專員權力，為條文下決定性的詮釋。不過，我認為專員公開述明公署應用條例的準則、原則及情況，會有明顯的好處。為了謹慎行事，在最後定稿之前，我把草稿送交相關的學者、法律專家及機構，請他們給予意見。我非常感謝他們撥出寶貴的時間，並提供有用的建議。《個人資料（私隱）條例中的保障資料原則 — 私隱專員的觀點》

It is all too apparent that online data leakage is on the rise. In 2006, my Office handled a record number of cases involving such leakages. Following the Independent Police Complaints Council (IPCC) incident where personal data of some 20,000 citizens who had lodged complaints against police officers were leaked, my Office decided to launch an "Information Security Enhancement Campaign" with the co-operation of three substantial IT professional organizations, viz. Information Systems Audit and Control Association (HK Chapter) ("the ISACA"), Internet Professional Association ("the iProA"), Hong Kong Institute of Engineers ("the HKIE"). The campaign's objective was to promote data privacy awareness among IT professional. The campaign included a large-scale public seminar which was exceedingly well attended by experts from IT security bodies, government departments, financial institutes, and telecommunication companies.

My Office is convinced that more practical assistance should be given to specific industries which by the nature of their work handle a large quantity of personal data. In so doing, we can give practical guidance which has realistic application to the practitioners in such industries. We picked the hotel industry first even though it has hitherto enjoyed a very good reputation. From year to year, Hong Kong hotels handled vast quantities of visitors' personal data, not to mention their staff's. The campaign was also intended to enhance the good name of Hong Kong as a popular tourist destination. In our effort to wage a successful campaign, we were fortunate enough to secure the staunch support and co-operation of the Hong Kong Hotels Association. The Campaign received overwhelming responses and over a period of 6 months more than 44 hotels took part in the activities organized by this Office. While I intend to organize more campaigns with other selected industries, the education of the younger generation has not been overlooked. I am confident that our two-prong approach will prove to be highly successful and cost-effective.

My predecessors had considered the publication of a book detailing our regulatory experience and the stance of the Privacy Commissioner in applying the six Data Protection Principles of the Personal Data (Privacy) Ordinance. Notwithstanding the fact that the Commissioner is not empowered under the Ordinance to give definitive interpretation of the provisions of the Ordinance, I decided that there were obvious benefits in the Commissioner stating openly the criteria, principles and circumstances in which his Office has applied the provisions of the Ordinance. I proceeded cautiously and before the text was finalized, I sent the draft manuscript to selected academics, legal professionals, organizations and institutions for their comments. I am grateful for the time and helpful suggestions many of them had kindly

書是香港同類型唯一的書籍，獲得廣泛的支持。這本書是公署現任及已離職同事的合作成果，沒有他們的資料搜集、撰寫及籌備，相信難以出版，我對他們的努力衷心感激。

在檢討的年度內，我留意到查詢數字沒有多大變動，而投訴數字則有顯著的上升。當我們細看查詢的內容時，發覺查詢的性質比以前複雜。我們亦收到並深入及詳盡地解答了很多政府和公營機構的查詢。我很高興公署迅速地提供支援給他們，因為政府部門及有關的機構在遇到法律問題時，通常是會諮詢政府律師，而不是向獨立機構諮詢的。

去年，根據私隱條例成功定罪的個案共有三宗。有關懲罰顯示，法庭不會容許任何資料使用者不當處理個人資料的行為。不過，我希望採取積極主動的態度，以達到預防勝於治療的效果。為了確保機構（尤其是管理龐大個人資料的機構）遵從法律，我考慮實施資料使用者登記計劃。這個計劃是私隱條例第IV部規定的，但至今仍未推行。根據這個計劃，資料使用者必須提供他們所持有的個人資料的種類及持有資料的目的。設立一個更具透明度的系統，把有關資料載列於中央登記冊，讓公眾查閱，可以為社會帶來整體利益。我希望能夠早日向立法會提交推行條例這部份的計劃書，並作出討論。

在過去十年，香港在經濟上及社會上經歷了很多史無前例的轉變，對我們的生活造成相當大的影響。瞬息萬變的環境亦對《個人資料(私隱)條例》帶來考驗。今天，在很多社會議題及公司管治中，資料私隱已經成為重要的元素。這不單反映人們對私隱意識的提高，亦反映更多人對私隱權這項在社會上被確認的人權有更高的期望。

given me. *"Data Protection Principles in the Personal Data (Privacy) Ordinance – from the Privacy Commissioner's perspective"* is the only book of its kind in Hong Kong and has been well received. This book is a joint effort of members of the staff of my Office, past and present, and without their research, writing and preparation, the publication of this book would not have been possible. A debt of gratitude is owed to them.

I note that in the year under review, while the number of enquiries had remained constant, there had been a noticeable increase in the number of complaints received. Even as we examined the content of the enquiries, they were much more sophisticated than before. We also received and entertained from the public sector many enquiries of some complex nature. I am glad my Office was able to provide assistance to them in a timely fashion because normally government departments and government-related organizations would consult government lawyers instead of an independent body in relation to legal issues.

Last year there were 3 successful convictions of offences under the Ordinance. The penalties demonstrated that the Court would not tolerate any malpractice on the part of data users in handling personal data. Still, I am inclined to take a more proactive approach to prevent rather than cure the problems. To ensure compliance of the law among organizations, in particular those who manage large quantities of personal data, I consider the implementation of the Data User Registration Scheme. This Scheme is provided for in Part IV of the Ordinance but so far has not been put into operation. Under the Scheme, data users are required to submit the types of personal data they hold and the purposes for which they are held. A more transparent system in making such information available on a central register to which the public has access will bring benefits to society as a whole. I hope the proposal to kick start this Part of the Ordinance can be tabled and discussed at the Legislative Council in good time.

In the past decade, Hong Kong has experienced many unprecedented economic and social changes that impact upon our life considerably. This rapidly evolving landscape has also put the Personal Data (Privacy) Ordinance to a test. Today, data privacy has become a vital element in many social issues and corporate governance. It reflects not only the higher level of awareness but also the higher level of expectation of privacy rights as an established human right in our community.

隨著科技的進步，學校及工作間採用生物辨識系統，例如指紋掃描器越趨普遍，引起社會爭議及對私隱的關注。為了以無私的態度執行調查的職能，我時刻提醒自己不要對任何新科技產生偏見。我會嚴格執行法律要求資料使用者採取的保障私隱措施。這些措施包括考慮進行私隱影響評估、效果相同但私隱侵犯程度較低的方案、向資料當事人提供其他選擇、資料當事人的同意及足夠的保障措施。

私隱條例已經生效超過十年，但由於「個人資料」、「私隱」及相關的問題在世界上仍然在發展中，我們需要對條例作出檢討。我們於2006年成立的內部工作小組已經對條例進行全面的檢討，確保我們最終的建議能夠修訂法例，以保障廿一世紀的個人資料私隱權，並符合已提升的公眾期望。有關工作已經進入最後階段。我希望在稍後的公眾諮詢期間，公眾可以踴躍給予回應。

吳斌

香港個人資料私隱專員

With the aid of technological advancement, the use of biometric identification systems e.g. fingerprint scanner is prevailing in schools and workplaces, which has begun to generate debates and raised privacy concerns. In discharging my investigatory role in an impartial manner, I caution myself not to have any bias or prejudice regarding any form of new technology. I intend to keep a firm hand on privacy protections measures which data users are required by law to take. These should include the consideration of adopting privacy impact assessments, less privacy intrusive alternatives which are equally effective, options made available to data subjects, consent of data subjects and adequate security measures.

Having been in force for over ten years, the Ordinance needs to be reviewed since the subject matters of "personal data", "privacy" and related issues are still in an evolutionary stage around the globe. Our internal working group formed in 2006 has undertaken a comprehensive review of the Ordinance to ensure that our ultimate proposals are capable of updating the law in coping with the protection of personal data privacy right in the 21st Century and can meet the heightened public expectations. The work is in its final stages. It is my hope that the public will be generous in giving its considered responses during the course of the public consultation which should take place before long.

Roderick B. Woo

Privacy Commissioner for Personal Data, Hong Kong