

聆聽分析 保障市民利益

Listen and
analyze
Protect
privacy rights

個人資料主任感言 Message from Personal Data Officer

我在公署擔任個人資料主任多年，一直秉承本署公平公義的執法精神辦事，竭誠為市民服務。日常的工作十分繁重，有些個案情況十分複雜，各同事必會細心研究案情，最後得出調查結果。我們的工作一方面能夠維護條例的精神，又可以保護申訴人的個人資料私隱權，箇中的滿足感實在令人振奮。

我想以一個個案作例。有一位投訴人，他任職多年的公司正面臨倒閉，有感生計頓成問題，他於是向僱主提出查閱資料要求，索取有關他過去的工作表現評核報告及升職記錄(統稱「要求資料」)，以助早日轉職。其僱主卻拒絕依從查閱資料要求。我深入了解案情，認為該僱主所持的理據不足，促請它提供要求資料，惟對方拒絕合作。公署即時展開全面調查，並向該僱主送達執行通知，指令它立即向投訴人提供要求資料，而該僱主最終亦依公署要求，向投訴人提供在條例下他有權取得的個人資料。

事後，投訴人寄上一張感謝咭，對我鏗而不捨的工作及公署辦事的公正及公義深表謝意。每次看見這張感謝咭，都會令我工作的動力倍增。原來我的工作不僅在維護法例，更能幫助許多市民。工作縱是挑戰重重，本著職責和使命，我必繼續全力以赴，做到最好。

羅美琪
個人資料主任

Being a Personal Data Officer in PCPD for many years, I have been serving the public whole-heartedly in the spirit of justice and fairness. My daily workload is very heavy. Some of the cases were so complicated that we had to analyze them carefully before reaching a conclusion. Indeed, we are inspired by the satisfaction derived from upholding the Ordinance and protecting the personal data privacy of the public.

I would like to illustrate it with an example. A complainant, whose company he worked for many years was on the verge of closure, made a data access request (“DAR”) to his employer for his past performance appraisal and promotion records (“the Requested Data”) so as to prepare for future job application. However, the employer rejected the DAR. After looking into the case, I found that there was no ground for the employer to refuse and he should comply with the DAR. The employer however refused to co-operate. The PCPD then carried out a full investigation and subsequently served the employer with an enforcement notice, asking the employer to provide the complainant with the Requested Data. The employer finally complied with the enforcement notice and provided the complainant with the personal data he rightfully requested.

When this was over, the complainant sent me a thank you card to express his gratitude for my perseverance in my work and high regards for the principles of justice and fairness upheld by the PCPD. It is good motivation for me whenever I look at the card now. I realize that my work is not just about upholding the Ordinance, but it also helps many other people. I have decided to do my utmost and strive for the best to carry out my duties in the PCPD, notwithstanding the heavy workload and challenges that I face everyday.

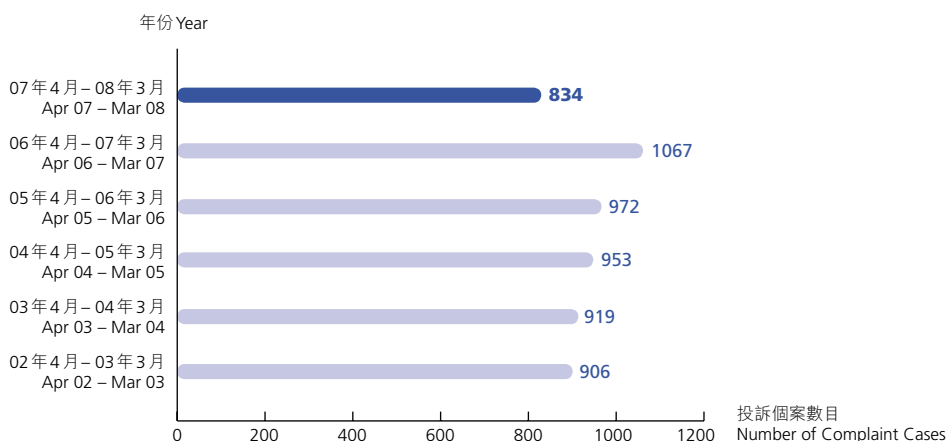
Maggie Lo
Personal Data Officer

在二零零七至零八年度接獲的投訴個案 Complaints Received 2007-2008

圖表FIGURE

1

每年的投訴個案 Annual Complaint Caseload



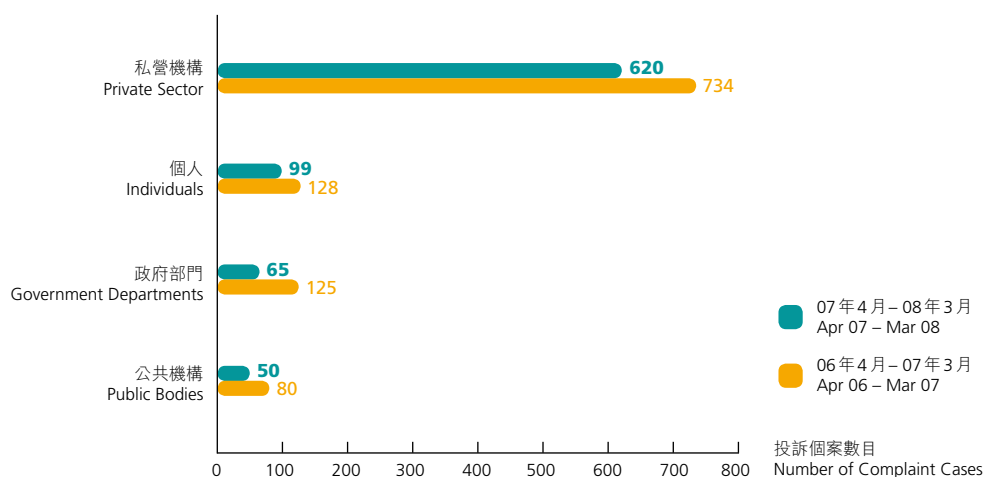
在二零零七至零八年度公署共接獲834宗投訴個案(較去年下降了22%)。

A total of 834 complaint cases were received in 2007-2008 (a decrease of 22% on the previous year).

圖表FIGURE

2

被投訴者的類別 Types of Party Complained Against

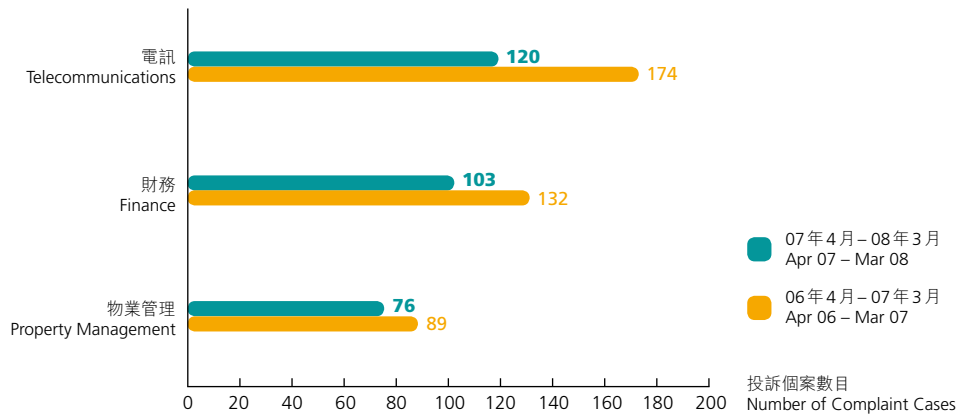


- 620宗(74%)個案投訴私營機構；
- 115宗(14%)個案投訴公營機構(即政府部門及其他公共機構)；
- 99宗(12%)個案投訴個人。

- 620 (74%) complaint cases were against private sector organizations.
- 115 (14%) complaint cases were against public sector organizations (i.e. government departments and other public bodies).
- 99 (12%) complaint cases were against individuals.

圖表FIGURE
3

對私營機構的投訴 Complaints Against Private Sector Organizations

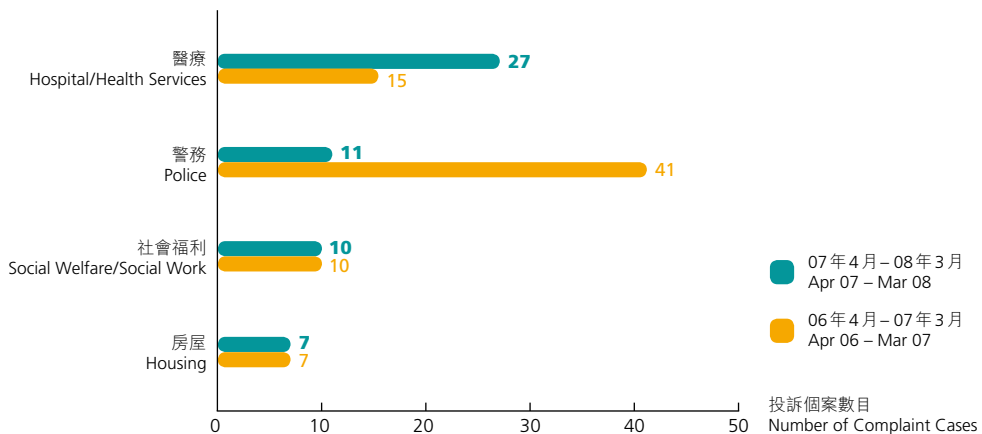


在投訴電訊業及財務機構的個案中，大部分被指非法使用或披露客戶的個人資料。

The majority of complaints against the telecommunications and financial sectors alleged the unlawful use or disclosure of customers' personal data.

圖表FIGURE
4

對公營機構的投訴 Complaints Against Public Sector Organizations



在投訴公營機構的個案中，大部分涉及：

- 被指與不符收集目的及未取得當事人同意而使用個人資料(46%)；
- 未能遵守查閱資料要求或改正資料要求(22%)；
- 過量或不公平收集個人資料(17%)；及
- 欠缺保障個人資料的保安措施(11%)。

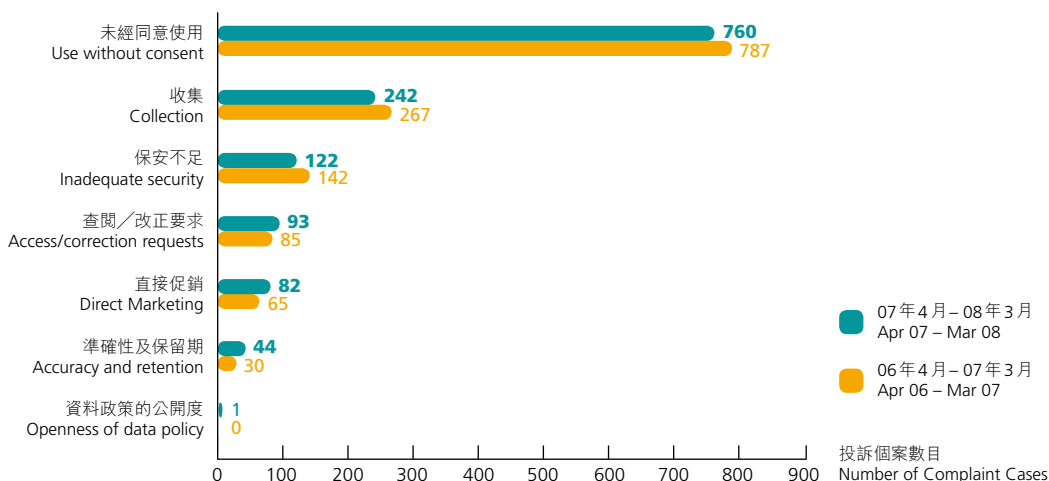
The majority of complaints against public sector organizations involved:

- the alleged use of personal data beyond the scope of collection purpose and without the consent of the individual (46%);
- non-compliance with data access or correction requests (22%);
- excessive or unfair collection of personal data (17%); and
- lack of security measures to protect personal data (11%).

圖表FIGURE

5

投訴的性質 Nature of Complaints



二零零七至零八年度接獲的834宗投訴個案共涉及1,344項被指違反條例的規定。在這些事項中，1,169項(87%)被指違反保障資料原則的規定，以及175項(13%)被指違反條例的主體條文。

在1,169項被指違反保障資料原則的事項中，242項(21%)涉及過度或不公平收集投訴人的個人資料。在這類個案中，45項(19%)部分涉及財務機構或電訊公司被指從不明來源收集投訴人的個人資料作追收欠債或直接促銷用途。

有些投訴人對條例在收集個人資料方面的適用範圍有所誤解。一個常見的例子是，有些投訴人認為他們的個人資料可以直接向他們收集、或在取得他們的同意後才可收集、或他們必須獲得知會。條例規定個人資料須以合法及在有關個案的所有情況下屬公平的方法收集。不過，條例並沒有規定資料使用者要得到資料當事人的同意才可向第三者收集他的個人資料，或將有關收集通知他。行政上訴委員會在一宗行政上訴個案中裁定，只是證明某人持有個人資料這點證據，不能證明他是用不公平或不合法的手段獲得該些資料。因此，單是從資料當事人以外的來源收集個人資料(資料當事人不知情或沒有給予同意)，並不算違反條例的規定。

The 834 complaint cases received in 2007-2008 involved a total of 1344 alleged breaches of the requirements of the Ordinance. Of these, 1169 (87%) were alleged breaches of the data protection principles and 175 (13%) were alleged contraventions of the provisions in the main body of the Ordinance.

Of the 1169 alleged breaches of the data protection principles, 242 (21%) concerned the alleged excessive or unfair collection of personal data of complainants. In this category, 45 cases (19%) involved allegations, some are against financial institutions or telecommunications companies, for collection of complainants' personal data from unknown sources for the recovery of debts or direct marketing purposes.

There is a misunderstanding among some complainants regarding the ambit of the Ordinance when applies to collection of personal data. A common example is that some complainants believe that their personal data can only be collected from them direct or after prior consent having been obtained from them or that they must be notified of it. The Ordinance provides that personal data shall be collected by means which are lawful and fair in the circumstances of the case. However, the Ordinance does not require a data user to obtain the consent of the data subject for collection from third party of his personal data or to notify him of the collection. In an administrative appeal case, the Administrative Appeals Board ruled that the mere evidence of the holding of personal data by a person could not prove that he had obtained the data by unfair or unlawful means. Accordingly, the collection of personal data from sources other than the data subject without his knowledge or consent, without more, does not suggest a contravention of the Ordinance.

調查投訴 Complaint Investigations

圖表FIGURE

6

二零零七至零八年度處理的投訴摘要 Summary of Complaints Handled in 2007-2008

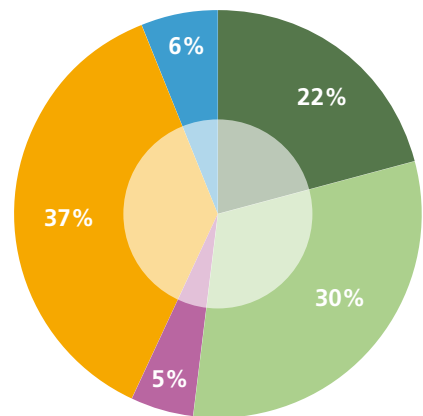
	2004-05	2005-06	2006-07	2007-08
上年轉來的投訴 Complaints carried forward	157	195	188	188
接獲的投訴 Complaints received	953	972	1067	834
經處理的投訴的總數 Total complaints processed	1110	1167	1255	1022
經審理後不再處理的投訴 Complaints screened-out	220	400	542	501
經審理後繼續處理的投訴或 正在審理的投訴 Complaints screened-in or being screened	890	767	713	521
完結 Completed	695	579	525	373
處理中 In process	195	188	188	148

在本年報期開始時，公署正處理上年度帶下來的188宗投訴，加上新收到的834宗投訴，私隱專員在本年報期內共須處理1,022宗投訴。在這些個案中，501宗(49%)經初步審閱後不獲受理，理由是其中的406宗的表面證據並不成立，無法支持有違條例規定的指控，另外94宗不屬私隱專員的權力範圍，而餘下一宗屬匿名投訴。其餘521宗(51%)正在審閱中或經審閱後獲進一步處理，其中373宗(72%)在本年報期內已得到解決，而餘下的148宗(28%)在二零零八年三月三十一日時仍在處理中(圖表6)。

At the beginning of the reporting year, 188 complaints were being processed. With the 834 new complaints received, the Commissioner handled a total of 1,022 complaints during the reporting period. Of these, 501 (49%) cases were declined for further action after preliminary consideration because 406 of them were found to have no *prima facie* case to support allegations of breaches of the Ordinance, 94 cases were outside the jurisdiction of the Commissioner, and the one remaining was an anonymous complaint. The other 521 (51%) cases were either in the preliminary screening process or screened-in for further consideration. Of these, 373 (72%) cases were resolved during the reporting year while the balance of 148 (28%) were still being processed on 31 March 2008 (Figure 6).

圖表FIGURE
7投訴結果
Outcome of Investigations

22%	證據不足 Unsubstantiated
30%	調解 Mediation
5%	撤回 Withdrawn
37%	沒回應／其他規管機構處理 No response/other authority
6%	正式調查 Formal investigation



在本年報期內完結的 373 宗個案：

- 113 宗 (30%) 透過調解得到解決；
- 22 宗 (6%) 在進行正式調查後得到解決；
- 81 宗 (22%) 在進行初步查詢後發現證據不足；
- 20 宗 (5%) 在初步查詢期間由投訴人撤回；及
- 餘下的 137 宗 (37%) 投訴個案，大多涉及投訴人不回應私隱專員的查詢或個案已由其他規管機構，例如警方跟進。

Of the 373 cases completed during the reporting period:

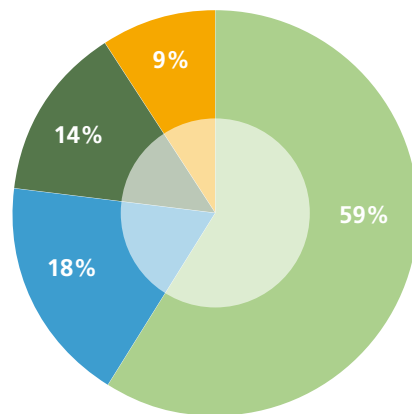
- 113 (30%) cases were resolved through mediation;
- 22 (6%) cases were resolved after formal investigations;
- 81 (22%) cases were found to be unsubstantiated after preliminary enquiries;
- 20 (5%) cases were withdrawn by complainants during preliminary enquiries; and
- the remaining 137 (37%) cases involved mostly complaints where the complainants did not respond to the Commissioner's inquiries or where the matter had been transferred or reported to other authorities e.g. the Hong Kong Police Force.



圖表FIGURE 8

正式調查結果 Results of Formal Investigations

- 59% 違反保障資料原則的規定
Contravention (Data Protection Principles)
- 18% 違反條例主體條文的規定
Contravention (Provisions)
- 14% 無違例
No contravention
- 9% 中止調查
Discontinued

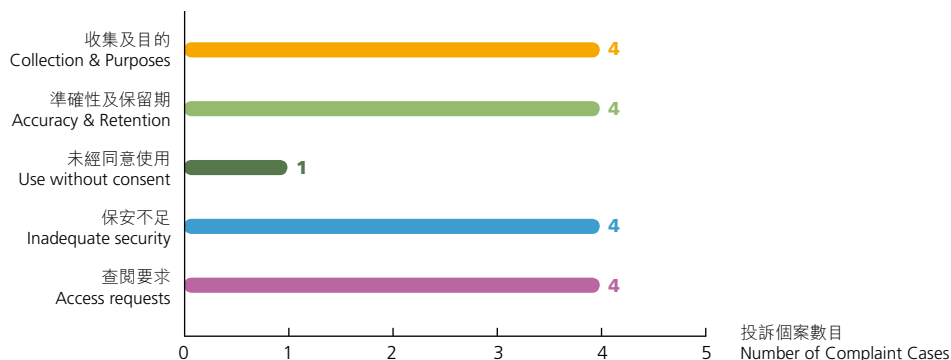


在本年報期內完成正式調查的22宗個案中，私隱專員發現其中17宗(77%)違反了條例的規定，3宗(14%)並無違例或因缺乏證據而無法證明有違例情況。餘下2宗(9%)則是因投訴人決定不再跟進有關事項而中止調查。

Of the 22 formal investigations completed during the reporting period, the Commissioner found contravention of the requirements of the Ordinance in 17 (77%) cases. In three (14%) cases, either no contravention was found or contravention was not established due to insufficient evidence. The two (9%) remaining cases were discontinued as the complainant decided not to pursue the matter further.

圖表FIGURE 9

違例事項的性質 Nature of Contravention

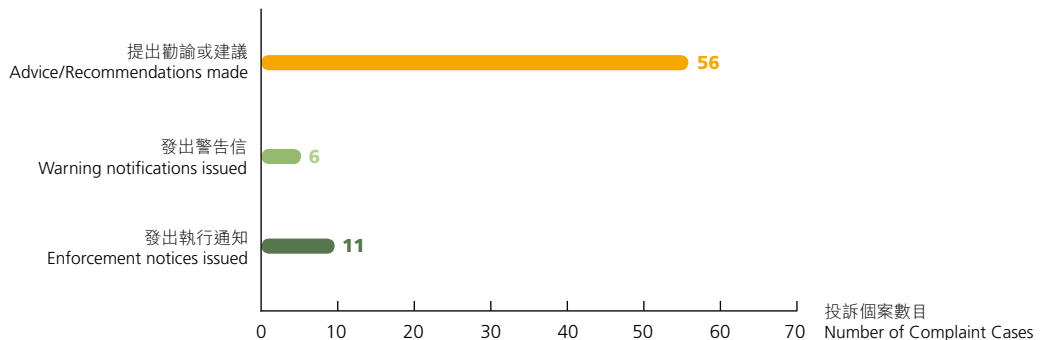


在被確定違反條例規定的17宗個案中，13宗違反一項或以上保障資料原則，其餘4宗違反了條例主體條文的規定，當中所涉及的違例事項與依從查閱資料要求有關(圖表9)。

Of the 17 cases where the requirements of the Ordinance were found to have been contravened, 13 cases involved contravention of one or more of the data protection principles. The remaining four cases involved contravention of the requirements of the main body of the Ordinance relating to compliance with data access requests (Figure 9).

圖表FIGURE
10

根據調查結果採取的行動 Actions Taken as a Result of Investigation



在113宗透過調解得到解決的個案中，私隱專員向56間機構提出勸諭及／或建議，以協助它們在行事方式及程序上遵守保障資料原則及條例的其他規定。

In the 113 cases resolved through mediation, the Commissioner provided advice and/or recommendations to 56 organizations on their practices and procedures in order to assist them in complying with the data protection principles and other requirements of the Ordinance.

在被確定違反條例規定的17宗個案中，私隱專員向被投訴的資料使用者發出11份執行通知，以防止它們繼續或重複違反規定。至於餘下的6宗個案，被投訴者已採取或書面承諾採取糾正措施，私隱專員因而毋須作出強制性行動，發出執行通知，而只是向有關資料使用者發出警告信。

Of the 17 cases in which requirements of the Ordinance were found to have been contravened, the Commissioner issued enforcement notices on the parties complained against in 11 cases to prevent continuation or repetition of the contraventions. In the remaining six cases, the parties complained against had either taken measures to remedy the contraventions, or given a written undertaking to implement them. As a result, enforcement action through the issuance of an enforcement notice was not necessary, and warning notices were issued.



處理資料方面的改善 Improvements in Data Handling

下述個案是本年報期內一些資料使用者在接獲投訴後迅速作出回應，並在私隱專員的指引下採取改善保障個人資料私隱的措施。

The following cases in the reporting year illustrate the improvements undertaken by some data users in protecting personal data privacy in prompt response to the complaints and with the guidance of the Commissioner.



經互聯網收集個人資料的機構：必須保障個人資料免受其他互聯網使用者未經准許或意外的查閱 — 保障資料第4原則

Organisations collecting personal data via the internet: must protect personal data from unauthorized or accidental access by unintended internet users – Data Protection Principle (“DPP”) 4



投訴內容

投訴人於2002年透過互聯網向一間珠寶公司提供其姓名、聯絡電話及電郵地址，參加有獎遊戲。2007年5月，投訴人發現，互聯網使用者可以透過搜尋器在網上查閱到她的個人資料。

The Complaint

The complainant provided her name, contact number and email address to a jewelry company through the Internet for entering into a prize-winning quiz in 2002. In May 2007, the complainant discovered that her personal data could be accessed on the Internet via a search engine by any Internet user.





結果

該珠寶公司解釋，投訴人的個人資料是儲存於其網站伺服器的資料庫內，以防火牆及密碼保護。不過，他們在2006年重新安裝運作系統後，沒有重設資料庫的查閱權限。因此，資料庫內的個人資料可以經由網上搜尋器查閱得到。經私隱專員建議後，該珠寶公司已從網站伺服器移除其資料庫，並要求互聯網搜尋器公司從搜尋結果中刪除與其資料庫有關的所有個人資料。該珠寶公司亦承諾：

- (a) 把載有個人資料的資料庫儲存於獨立的伺服器內，不會連接到互聯網；
- (b) 定期就伺服器的查閱權限進行檢查及測試；及
- (c) 修訂關於個人資料保安的內部政策，並採取步驟，確保員工遵守政策。

Outcome

The jewelry company explained that the complainant's personal data had been stored in their web server database protected by firewall and passwords. However, they failed to reset the access right to the database after they had reinstalled their operating system in 2006. As a result, the personal data stored in the database could be accessed by Internet search engines. Upon the advice of the Commissioner, the jewelry company removed their database from the web server and requested the Internet search engine companies to delete all personal data associated with their database from search results. The jewelry company also undertook to: -

- (a) store their personal data database in a standalone server which would not be connected to the Internet;
- (b) conduct regular checks and tests on access right to their servers; and
- (c) revise their internal policy on personal data security and take steps to ensure compliance of the policy by staff.





以郵寄方式發出個人資料：必須確保信封上的收件人準確無誤 — 保障資料第4原則

Sending personal data by post: must ensure that the envelop is addressed to the right person – DPP4



投訴內容

投訴人親自到一個政府部門提出投訴。該政府部門備妥投訴記錄後，打算把副本寄給投訴人。但載有投訴人個人資料的副本被誤放入另一個案投訴人的信封內，導致投訴人的個人資料被意外地向無關的人士披露。

The Complaint

The complainant lodged a complaint in person to a government department. The government department made a record of the complaint and intended to send a copy of the record to the complainant. The copy containing personal data of the complainant however was mistakenly placed in an envelop addressed to a complainant in another case, resulting in the complainant's personal data being accidentally disclosed to an unrelated party.



結果

該政府部門接納私隱專員的建議，規定所有信件在寄出之前，由另一名職員覆核。

Outcome

The government department accepted the advice of the Commissioner by requiring all letters be counterchecked by another staff before sending out.





在電話中披露個人資料：必須確保來電者不是冒充者 — 保障資料第4原則

Disclosing personal data over the telephone: must ensure that the caller is not a fake – DPP4



投訴內容

一名病人(投訴人)收到一名自稱是醫院醫生的男子來電，詢問她的性生活及生殖器官的狀況。投訴人其後收到醫院的通知，表示醫院的職員曾向一名假冒醫院醫生的不知名人士透露了她的電話號碼及身份證號碼。

The Complaint

A patient (the complainant) received a call from a male claiming himself to be a doctor of a hospital, and asking questions about her sexual life and the condition of her genital parts. The complainant was later notified by the hospital that its staff had disclosed her telephone number and Hong Kong identity card number to an unknown person who impersonated a hospital doctor.



結果

該醫院解釋，該名冒充者來電時所提供的資料及說話的語氣，令醫院職員相信他是該醫院的醫生。

私隱專員在檢討個案後，建議該醫院就處理有關個人資料的電話查詢制定詳細指引，特別是要求來電者提供聯絡電話，讓職員在核實來電者的身份後回電。該醫院接納私隱專員的建議，落實指引。

Outcome

The hospital explained that the imposter called the hospital and was able to provide certain information to the hospital staff and spoke in such manner that made her believe that he was a doctor of the hospital.

After reviewing the case, the Commissioner advised the hospital to devise detailed guidelines in relation to the handling of telephone enquiry requesting for personal data, in particular that callers would be asked to provide their contact numbers so that the staff could call back after proper verification of the callers' identities. The hospital accepted the Commissioner's advice and implemented the guidelines.





直接促銷活動：應備存一份「拒絕服務」名單，在進行任何直接促銷活動前核對該名單 — 第34條

Direct marketing activities: should maintain an opt-out list and check against the list before making any direct marketing approaches – Section 34



投訴內容

投訴人是一個專業組織的註冊會員。她曾以書面要求該組織不要再將促銷電郵發給她。儘管投訴人提出了要求，該組織在收到投訴人的「拒絕服務」要求的同一個星期內，繼續向投訴人發出促銷電郵。

The Complaint

The complainant is a registered member of a professional association. She had written to the association requesting not to receive any further marketing emails. Despite her request, the association continued to send marketing emails to the complainant within the same week of receiving the complainant's opt-out request.



結果

該組織解釋，他們需要 14 日來處理一項「拒絕服務」要求。在收到「拒絕服務」要求後，該組織會從資料庫中除去要求者的電郵地址。

該組織的會員會籍每年須續期，而新的會籍資料會上載至組織的資料庫。因此，該組織只從資料庫除去投訴人的電郵地址的做法，是不能有效地防止該組織在投訴人的會籍續期後再向她發出促銷資料。私隱專員建議該組織備存一份「拒絕服務」名單，在每次向會員發出促銷資料之前，核對該名單，以符合條例第 34 條的規定。

該組織接納私隱專員的意見，落實有關措施。

Outcome

The association explained that it took them 14 days to process an opt-out request. Upon receiving an opt-out request, it would simply remove the requestor's email address from its database.

It was noted that members of the association were required to renew their membership annually and the new membership data would be uploaded to the association's database. As a result, the association's practice of simply removing the complainant's email address from the database would not effectively prevent the association from sending marketing material to the complainant again after renewal of her membership. To comply with the requirement of section 34 of the Ordinance, the association was advised to maintain an opt-out list and check against the list every time before sending out marketing information to members.

The association accepted the view of the Commissioner and implemented the measures accordingly.



從投訴中學習 Lessons Learnt from Complaints

下述投訴個案是本年報期內一些資料使用者被確定違反條例規定的作為或行為。公署是基於有關事件的實況作出挑選，旨在述明受條例(包括保障資料原則)管限的各種行為。

The following complaint cases illustrate some data user acts or practices that were found to have contravened the requirements of the Ordinance during the reporting period. They are selected on the basis of subject content and demonstrate the wide variety of conduct subject to the provisions of the Ordinance, including those of the DPPs.



向信貸資料機構提供信貸資料的財務公司：必須確保信貸資料的準確性 — 保障資料第2(1)原則

Financial institution providing credit data to credit reference agency: must ensure accuracy of credit data – DPP2(1)



投訴內容

投訴人於1998年10月向一間財務公司借款，並在2002年10月開始拖欠還款，而其貸款帳戶最終在2003年4月被撇帳。在2003年5月，投訴人與該財務公司達成債務重組計劃。

其後，投訴人從信貸資料機構取得他的信貸報告，發現該財務公司並無將他們所達成的債務重組資料向信貸資料機構申報。此外，即使投訴人已按照債務重組計劃每月按時還款，但該財務公司仍繼續累計拖欠天數，並每月向信貸資料機構申報有關資料。此舉誤導了信貸報告的使用者，以為投訴人於2003年5月達成債務重組計劃後仍有持續拖欠還款的情況。

The Complaint

The complainant borrowed money from a finance company in October 1998 and started to be in arrears with payment in October 2002. His loan account was subsequently written off in April 2003. In May 2003, the complainant and the finance company entered into a scheme of arrangement for repayment of the loan.

Later, the complainant got his credit report from a credit reference agency (“CRA”) and found that the finance company had not reported the information of the scheme of arrangement to the CRA. Moreover, even though the complainant paid his debt every month on time according to the scheme of arrangement, the finance company still accumulated the number of days in arrears and reported the information to the CRA every month. Users of the complainant’s credit report would be misled by such data that the complainant was still in arrears with payment after the scheme of arrangement had been made in May 2003.





結果

該財務公司解釋，因其職員對《個人信貸資料實務守則》(下稱「信貸守則」)的規定認知不足，故未有按照信貸守則的規定向信貸資料機構申報投訴人的債務重組資料。此外，該財務公司亦因其會計系統及客戶信貸資料系統的技术限制，未有在投訴人的債務重組計劃帳戶生效後，停止計算投訴人原來欠款帳戶的拖欠天數，導致呈報給信貸資料機構有關投訴人的信貸資料並不準確。

根據私隱專員的調查結果，該財務公司在事發時誤以為信貸守則仍未生效，故沒有向信貸資料機構申報投訴人的債務重組計劃帳戶資料。這揭示了該財務公司對於處理個人信貸資料方面的法規缺乏認識，而其內部的監管薄弱亦導致是次誤報信貸資料事件。

其次，該財務公司在計算及申報投訴人的信貸資料時，並無顧及投訴人的貸款帳戶狀況的轉變，從而在其信貸資料申報方面作出調整，以致投訴人的原來欠款帳戶在被撇帳及重組後，其過往的欠款資料仍持續被累積計算及錯誤地反映在其信貸報告中。

Outcome

The finance company explained that as its staff did not have enough knowledge of the Code of Practice on Consumer Credit Data (the “CCD Code”), they had not reported the information of the scheme of arrangement to the CRA according to the requirements of the CCD Code. Moreover, due to technical restrictions of its accounting system and customer credit data system, the finance company had not terminated the calculation of accrued number of days in arrears of the complainant’s original loan account after his scheme of arrangement account became effective. Thus, the credit data of the complainant reported to the CRA were inaccurate.

According to the findings of the Commissioner, the finance company mistakenly believed that the CCD Code had not been effective yet, so it had not reported the information of the complainant’s scheme of arrangement account to the CRA. This revealed that the finance company lacked the knowledge of relevant laws and regulations when handling consumer credit data, and its weak internal supervision also led to the report of incorrect credit data to the CRA.

Furthermore, when finance company calculated and reported the complainant’s credit data, it had not taken the changes of the status of the complainant’s loan account into consideration and made adjustments accordingly in the report of credit data. Therefore, after the complainant’s original loan account had been written off and restructured, his past arrears were still accumulated and wrongly shown on his credit report.

結果(續)

基於以上所述，該財務公司違反了信貸守則2002年2月版本的第3.4條、2003年6月版本(最新版本)的第2.5及2.7條的規定，以及違反了保障資料第2(1)原則的規定。

私隱專員向該財務公司發出執行通知，指示它向信貸資料機構更正投訴人的信貸資料，制定呈報客戶債務重組計劃帳戶資料的政策，及確保其職員切實執行有關政策。此外，該財務公司亦需透過有效的管理監督、年度審核制度及系統的配合，確保客戶的信貸資料能根據信貸守則的規定，盡快及準確地向信貸資料機構作出申報。

該財務公司已遵從執行通知的要求。

Outcome (continued)

In view of the above, the finance company had contravened clause 3.4 of the February 2002 version of the CCD Code, clauses 2.5 and 2.7 of the June 2003 version (the latest version), as well as DPP 2(1).

An enforcement notice was served on the finance company directing it to correct the complainant's credit data with the CRA, to devise policy of reporting information to CRA on customers' scheme of arrangement accounts and to ensure implementation of the policy by its staff. Moreover, by means of effective supervision, annual audit and system support, the finance company needs to ensure timely and accurate reporting of customers' credit data to the CRA in accordance with the requirements of the CCD Code.

The finance company has complied with the enforcement notice.





保險公司：不能無限期地保留未能成功投保的申請人的個人資料 — 保障資料第2(2)原則

Insurers: cannot retain personal data of unsuccessful insurance applicants for indefinite period of time – DPP2(2)



投訴內容

一名未能成功投保的申請人向私隱專員投訴一間保險公司在拒絕他的申請後，仍然保留他的申請資料。

The Complaint

An unsuccessful insurance applicant complained to the Commissioner against an insurer for retaining his application data after rejection of his application.



結果

私隱專員調查發現，該保險公司的一貫做法是無限期地保留未能成功投保的申請人的個人資料。

該公司表示有需要無限期地保留有關資料，目的是為了(i)依從不同法律規定，保存帳簿；(ii)依從規管機構的指引及通告；(iii)處理潛在的訴訟、查詢及投訴，以及(iv)日後如同一申請人再提出申請時，檢查資料的完整性及準確性。

私隱專員的調查顯示，未能成功投保的申請通常有兩種情況。第一種是涉及有金錢交易(例如保費在申請時已繳交)，而第二種是沒有涉及金錢交易。

私隱專員曾就保留未能成功投保的申請人資料的需要及保留期向香港保險業聯會及保險業監理處徵詢意

Outcome

The Commissioner found that it was the practice of the insurer to retain personal data of unsuccessful insurance applicants for an indefinite period of time.

The company stated that it was necessary for them to retain the data indefinitely for the purpose of (i) complying with the various legal requirements for keeping books of accounts; (ii) for complying with the guidelines and circulars of the regulatory authorities; (iii) for handling potential litigations, enquiries and complaints and (iv) for checking completeness and accuracy of the information in the event of future applications from the same applicant.

Investigation by the Commissioner revealed that unsuccessful insurance applications generally comprised of two scenarios, the first is where money transaction is involved (e.g. where premium is paid together with the application) and the second is where there is no money transaction involved.

The Commissioner sought comments from the Hong Kong Federation of Insurers (“HKFI”) and Office of the Commissioner of Insurance (“OCI”) regarding

結果(續)

見；亦研究過規定保存交易記錄的多項條例。

第一種情況需要保存帳簿，私隱專員認為在有關條例規定的法定期間保留有關資料是合理的。不過，如沒有涉及金錢交易，私隱專員並不接受該公司純粹因為申請人日後可能再投保而無限期保留其個人資料，這等同批准任何服務提供者無限期保留個人資料。為了處理日後的查詢、投訴或法律行動，合理的保留期已經足夠。即使為依從香港保險業聯會及保險業監理處發出的指引及通告，資料使用者亦不應藉此而不依從保障資料第2(2)原則。

基於以上所述，私隱專員認為如未能成功投保的申請是涉及有金錢交易的，保留有關個人資料的理想期限應該不超過七年。至於沒有涉及金錢交易的申請，私隱專員認為兩年的保留期限一般足以滿足該公司所述的各項目的。

私隱專員向該公司送達執行通知，要求該公司刪除保留超過他建議的理想期限的個人資料(除非有特別的情況，容許較長的保留期)。該公司已遵從執行通知的要求，刪除超過7,000項記錄。

Outcome (continued)

the needs for retaining the data of unsuccessful insurance applicants and the period of retention; and studied the requirements of various ordinances which require records of business transactions to be kept.

In the former case where books of account have to be kept, the Commissioner found it justifiable that the relevant data be kept for the statutory period prescribed by the applicable ordinances. However, where no money transaction is involved, the Commissioner does not accept that the company should retain the personal data indefinitely simply for the reason that the person may apply in future as otherwise, it would tantamount to giving general sanction for retention of personal data indefinitely by any service provider. For the purpose of handling any future enquiry, complaint or legal action that may be lodged, a reasonable period of retention suffices. Insofar as compliance with the guidelines and circulars issued by HKFI and OCI is concerned, it is to be noted that these should not be applied out of context and they should not be construed as derogating the data user's duty to comply with the requirements of DPP2(2).

Premised on the above, the Commissioner took the view that for unsuccessful insurance applications where money transaction is involved, the optimal period of retention of the personal data concerned should generally not exceed 7 years. For cases where no money transaction is involved, the Commissioner found that an optimal retention period of two years generally sufficed for fulfilling the various purposes mentioned by the insurer.

An enforcement notice was served on the insurer requiring it to erase the personal data which had been retained longer than the optimal periods recommended by the Commissioner (unless special circumstances exist, justifying a longer retention period). The company complied with enforcement notice and erased more than 7,000 records.





處理 X 光底片的醫院：必須採取措施防止底片遺失 — 保障資料第 4 原則

Hospitals handling x-ray films: must take measures to prevent loss of the films – DPP4



投訴內容

一名病人向一間公立醫院要求索取她在 2000 年住院時所拍攝的 15 張 X 光底片。但該醫院找不到其中 6 張底片。

The Complaint

A patient made a request to a public hospital for copies for 15 X-ray films taken during her hospitalization in 2000. The hospital could not locate six of the films requested.



結果

私隱專員的調查顯示，所有 X 光檔案是儲存於該醫院的 X 光底片儲存室；X 光底片的借還是由該醫院一個指定部門管理，並記錄在該醫院的電腦系統內；X 光底片是按類別及檢驗時間放入不同信封的，每個信封都有編號，上面註明底片的類別、日期及數量；底片在歸還時，指定的職員只會核對信封上所註明的資料，而不是裏面的底片。

私隱專員認為，醫院沒有核實歸還底片的數目及信封內所有底片是否屬於指定的病人，在過程中沒有保障 X 光底片免遭遺失，因此違反了條例保障資料第 4 原則的規定。

Outcome

An investigation undertaken by the Commissioner revealed that all X-ray files were stored in the hospital's X-ray film storage room; the lending and borrowing of the X-ray films were overseen by a designated department of the hospital and recorded in the hospital's computer system; X-ray films were placed in different envelopes according to their types and time of examination, each envelop was numbered and the types, dates and number of films were marked on the envelop; on return of the borrowed X-ray films, designated staff would only verify the information marked on the envelop but not the contents.

The Commissioner opined that by failing to verify the number of returned films and that all the films in the returned envelop belonged to the particular patient, the hospital had failed to protect the X-ray films against loss during the process, thereby contravened DPP4 of the Ordinance.

結果(續)

私隱專員向該醫院送達執行通知，要求它採取措施：(1)確保借用人確認收到X光底片；(2)為外借X光底片制定借用時期、續借及過期通知等規則；(3)規定有關職員在收回外借X光底片時檢查底片是否屬於有關病人，以及底片有沒有遺失。

該醫院依從第(1)及(2)項指示，但向行政上訴委員會提出上訴，反對第(3)項指示。現有待上訴結果公布。

Outcome (continued)

An enforcement notice was served upon the hospital requiring it to take steps to: (1) ensure the borrowers acknowledge receipt of the X-ray films; (2) establish protocols on loan period, renewal of loan period and overdue notice for the borrowed X-ray films; (3) require the relevant staff to check, upon return of the borrowed X-ray films, that the returned films are those belonging to the relevant patient and that no borrowed item is missing.

The hospital complied with directions (1) and (2) but appealed to the Administrative Appeals Board against direction (3). The appeal decision is pending.





容許在辦公室以外處理客戶資料的機構：必須確保安全，慎防資料外洩 — 保障資料第4原則

Organisations allowing processing of customers' data outside office: must ensure security to prevent leakage – DPP4



投訴內容

一間保險公司一個載有約600名保單持有人個人資料(包括客戶姓名、地址、電話號碼及保額)的資料庫洩漏資料，公眾可以透過一個網站進入該資料庫。

The Complaint

A database containing personal data of about 600 policyholders of an insurance company including the customers' names, addresses, telephone numbers and insured amount had been leaked and was accessible by the public on the Internet via a website.



結果

公署的調查顯示，是次事件主要是該保險公司不恰當地讓其保險代理人查閱有關個人資料。涉案的保險代理人把有關個人資料上載並儲存於家中一個網頁檔案伺服器內，最後導致未獲授權人士可以透過互聯網搜尋器查閱有關資料。

私隱專員認為，該保險公司向保險代理人發出的指引及採取的監控措施實質上不足以防止保單持有人的個人資料不受未獲准許的查閱、移轉、儲存及移離該保險公司的辦事處，導致是次事件。在考慮到資料的敏感性及資料意外洩漏對資料當事人可能造成的損害，私隱專員認為該保險公司違反保障資料第4原則的規定，沒有採取

Outcome

An investigation carried out by the PCPD revealed that the leakage of personal data was caused by the inappropriate granting of access right to the personal data concerned by the insurance company to its insurance agent. The agent uploaded and stored the concerned personal data in a web file server at his home, and as a result, the data was accessible to unauthorized persons through the Internet search engines.

The Commissioner found that the guidelines issued to the insurance agents and control measures taken by the insurance company were substantially insufficient to guard against unauthorized access, transfer, storing and taking away of policyholders' personal data from office premises, which led to the happening of the incident. Taking into account the sensitivity of the data involved and the harm that is likely to be inflicted upon the data subjects on accidental

結果(續)

足夠的措施，保障其保單持有人的個人資料。

私隱專員向該保險公司發出執行通知，該保險公司依從通知的規定，實施相應的保障設施，包括檢討其運作程序及就保單持有人的個人資料的查閱、移轉及保安加強監控，尤其是清楚列明在何等情況下才准許在辦事處以外地方處理保單持有人的個人資料。

Outcome (continued)

data leakage, the insurance company was found in breach of the requirements of DPP4 in failing to take sufficient measures to safeguard the personal data of its policyholders.

An enforcement notice was issued, and in compliance the insurance company implemented corresponding safeguard measures, these included reviewing its operation procedures and strengthening controls over the access, transfer and security of policyholders' personal data, particularly to specify clearly the circumstances under which processing of policyholders' personal data out of the office premises would only be allowed.





處理僱員的查閱資料要求的僱主：應確保「職工策劃」的豁免條文的適當應用 — 第 19(1) 及 53 條

Employer handling employee's data access request: should ensure proper application of "staff planning" exemption – Sections 19(1) and 53



投訴內容

一名教師向學校提出兩項查閱資料要求，要求索取過去的工作表現評核報告及升職記錄(統稱「要求資料」)。不過，該校依賴條例第 53 條的豁免條文，拒絕依從查閱資料要求。

The Complaint

A school teacher submitted two data access requests (the "DARs") to a school for copies of his past performance appraisal reports and records relevant to his past promotions in the school (collectively the "Requested Data"). However, the school refused to comply with the DARs by relying upon the exemption provision of section 53 of the Ordinance.



結果

該校解釋，由於近年的縮班問題，他們要制定一份超額教師名單(下稱「該名單」)，以便有需要時向監管機構呈交「職工策劃」建議。校長認為教師過往的工作表現評核及升職記錄是制定該名單及「職工策劃建議」時要考慮的相關資料，因此有需要依賴條例第 53 條的豁免條文，拒絕向投訴人提供要求資料。

私隱專員調查後認為，該校只在監管機構要求時才需要編制該名單，而在收到查閱資料要求時，監管機構並無提出這個要求，因此看不到該校所言的「職工策劃」。此外，私隱專員認為升職記錄及過往的工作表現評核報告

Outcome

The school explained that since they encountered reduction of classes in recent years, they have to devise a list of surplus teacher (the "List") for "staff planning" proposal to be submitted to the governing body when required. The schoolmistress took the view that teachers' past performance appraisals and promotion records were relevant data to be considered for devising the List and for making the "staff planning proposal", it was therefore necessary to withhold the Requested Data from the complainant, in reliance of the exemption provisions of section 53 of the Ordinance.

After investigation, the Commissioner found that the school would only be required to compile the List if so required by the governing body and at the time of their receipt of the DARs, no such request was made by the governing body and hence no "staff planning" as averred to by the school was yet

結果(續)

只不過是僱用期間所編制或製作的日常人事記錄。它們顯然不是條例第53條所述的與「職工策劃」有關的個人資料。

私隱專員認為該校無權依賴條例第53條的豁免條文，不依從查閱資料要求。

私隱專員向該校發出執行通知，該校隨即向投訴人提供要求資料，並就處理個人(尤其是教師)提出的查閱資料要求而制定運作程序。

Outcome (continued)

in sight. Moreover, the promotion records and past appraisal reports are no more than routine personnel records compiled or created in the ordinary course of employment. They are not ex facie personal data relevant to "staff planning" as contemplated under section 53 of the Ordinance.

The Commissioner found that the school was not entitled to rely on the exemption provisions of section 53 of the Ordinance in not complying with the DARs.

The Commissioner issued an enforcement notice against the school and consequently, the school provided the Requested Data to the complainant immediately and also devised operational procedures in respect of the handling of data access requests made by individuals, in particular, the school teachers.





要求資料由其他資料使用者控制：必須於 40 日內通知資料要求者有關拒絕依從查閱資料要求的事宜 — 第 21(1) 條

Requested data controlled by other data user: must inform the data requestor about the refusal to comply with data access request within 40 days – Section 21(1)



投訴內容

投訴人按僱主(律師行)的安排到一間診所進行身體檢查。同日，他向該醫生提出查閱資料要求，要求索取其僱主與該醫生的來往信函副本。投訴人投訴沒有收到該醫生的實質回覆。

The Complaint

The complainant under the arrangement of his employer, a solicitors' firm, attended a doctor's clinic for a medical examination. On the same day, he made a data access request ("DAR") to the doctor for a copy of the correspondence regarding him sent to the doctor by his employer. The complainant complained that he had not received a substantive reply from the doctor.



結果

私隱專員的調查顯示，該醫生收到查閱資料要求後，曾向投訴人的僱主尋求建議。投訴人的僱主以法律專業保密權為理由，明確地要求該醫生不要披露有關資料，該僱主因此控制著有關資料的使用，而禁止該醫生依從查閱資料要求，向投訴人提供通訊資料副本。該醫生故有權依賴條例第 20(3)(d) 條，拒絕依從查閱資料要求。

不過，該醫生沒有在收到查閱資料要求後 40 日內，以書面通知投訴人他拒絕依從查閱資料要求，因此違反了條例第 21(1) 條的規定。

Outcome

Investigation by the Commissioner revealed that after the doctor had received the DAR, he sought advice from the complainant's employer on the matter. Since the complainant's employer had specifically asked the doctor not to disclose the correspondence on the ground of legal professional privilege, the employer controlled the use of the data and prohibited the doctor from complying with the DAR to provide a copy of the correspondence to the complainant. The doctor was therefore entitled to rely on section 20(3)(d) of the Ordinance to refuse to comply with the DAR.

However, the doctor failed to inform the complainant in writing about the refusal to comply with the DAR within 40 days after receiving it in contravention of section 21(1) of the Ordinance.

結果(續)

私隱專員向該醫生送達執行通知，要求他以書面通知投訴人他拒絕依從索取有關資料副本的查閱資料要求、拒絕的原因及根據條例第21(1)條提供其他有關資料使用者的姓名及地址。該醫生其後已遵從執行通知的要求。

Outcome (continued)

An enforcement notice was served on the doctor requiring him to inform the complainant in writing of his refusal to comply with the DAR for a copy of the correspondence; the reasons for the refusal; and the name and address of the other data user concerned in accordance with section 21(1) of the Ordinance. The doctor subsequently complied with the enforcement notice.



根據《個人資料(私隱)條例》第48(2)條發表的報告 Report Published under Section 48(2) of the Personal Data (Privacy) Ordinance

條例第48(2)條訂明，私隱專員在完成一項調查後，如認為如此行事是符合公眾利益的，可發表報告(下稱「報告」)，列明該項調查的結果及由該項調查引致的、私隱專員認為適合作出的任何建議或其他評論。

在年報期內，私隱專員發表了一份關於信貸公司為推廣業務而過度收集個人資料的報告。

不要過度收集個人資料作推廣業務用途

2007年9月21日，私隱專員發表一份報告，公布主動調查一間信貸公司為推廣業務而收集個人資料的結果。

背景

一名市民於2006年1月初收到本港一間信貸公司發出的一份沒有註明收件人的信件，內附一份表格(下稱「該表格」)，表示收信人只要於某指定日期或以前提供「簡單資料」即可獲高達港幣80元的超級市場禮券。根據該表格的指示，申請人需在表格上填上各類資料，包括身分證號碼及現職公司名稱。經核實資格後，申請人便可獲得港幣20元的超級市場禮券。每戶最多可提供四位人士資料，但每人只限填寫表格一次。雖然該市民只是向公署查詢，並無作出正式投訴，但私隱專員仍根據條例第38(b)條對該信貸公司作出調查。

調查

調查的重點是確定該信貸公司在是次推廣活動中，為達到有關目的而收集的個人資料是否超乎適度，以致違反條例附表1的

Section 48(2) of the Ordinance provides that the Commissioner may, after completing an investigation and if he believes that it is in the public interest to do so, publish a report (“Report”) disclosing the investigation results and any recommendations or comments that he sees fit.

During the reporting year, the Commissioner published one Report relating to the excessive collection of personal data by a credit provider for business promotion.

No Excessive Collection of Personal Data for Business Promotion

On 21 September 2007, the Commissioner published a Report of the findings of a self-initiated investigation into the collection of personal data by a credit provider for business promotion.

Background

A citizen received a letter without addressee issued by a credit company in Hong Kong in early January 2006. A form was enclosed in the letter (“the Form”), stating that the receiver could get supermarket gift coupons amounting to HK\$80 if “simple information” was provided on or before a specified date. According to the instructions on the Form, an applicant was required to fill in various information, including Hong Kong identity card number and name of employing company. Upon verification of the Form, the applicant would be offered a supermarket gift coupon of HK\$20. A maximum of four applicants were allowed in each household, but each applicant could only apply once. Although the citizen only made an enquiry about such activity but had not formally lodged a complaint, the Commissioner initiated an investigation on the credit company under section 38(b) of the Ordinance.

The Investigation

The focus of the investigation was to ascertain whether the personal data collected by the credit company in this promotion activity for the related purposes were excessive, contravening DPP1(1) in

保障資料第 1(1)原則的規定。在這方面，私隱專員須考慮該信貸公司是否有實際需要收集該等個人資料，以達至有關目的，抑或是否有其他方法可避免收集該等個人資料。此外，由於所收集的個人資料包括身分證號碼，私隱專員亦需要考慮有關做法是否符合《身分證號碼及其他身分代號實務守則》(下稱「實務守則」)第 2.3 段所列的有關規定。該段規定除在該段所述的情況之外，資料使用者不應收集任何個人的身分證號碼。

私隱專員的調查結果

私隱專員認為該信貸公司為推廣業務而收集申請人的身分證號碼及現職公司名稱，違反了保障資料第 1(1)原則的規定。有關收集是不必要及超乎適度的。

在調查期間，該信貸公司已刪除在是次推廣活動中所收集的申請人的身分證號碼及現職公司名稱資料，並停止在同類型的推廣活動中收集有關資料。

事件的教訓

鑑於現今的商業機構會為了推廣而收集及使用市民的個人資料，私隱專員提醒商業機構不應為此目的而隨意收集個人資料。對於較敏感的個人資料，如身分證號碼，商業機構應嚴格考慮是否有需要收集，以及有關做法是否符合實務守則的規定。

此外，市民應謹慎處理自己的個人資料，不應為資料收集者提供的眼前利益或誘惑而輕易提供個人資料。

本報告可以在公署的辦事處(香港灣仔皇后大道東 248 號 12 樓)索取，亦可以從其網站(http://www.pcpd.org.hk/chinese/publications/invest_report.html)下載。

Schedule 1 to the Ordinance. In this connection, the Commissioner has to consider if the credit company had any actual need to collect the personal data for the related purposes, or if there were any other alternatives that could avoid collection of those personal data. Moreover, as the personal data collected included identity card (“ID”) number, the Commissioner also needed to consider if such act complied with the requirements in paragraph 2.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (the “PI Code”), which provides that a data user should not collect the ID number of an individual except in the situations specified therein.

The Privacy Commissioner's Findings

The Commissioner found that the credit company had contravened DPP1(1) in relation to its collection of the ID number and name of employing company of the applicants for the purpose of business promotion. Such collection was unnecessary and excessive.

During the investigation, the credit company deleted the information on ID numbers and names of employing companies collected in the promotion activity, and ceased collecting such data in similar promotion activities.

Learning from this incident

In view of the fact that commercial organizations will collect and use citizens' personal data for the purpose of promotion, they are reminded that they should not collect personal data for such purpose at will. As for sensitive personal data such as ID number, commercial organizations should seriously consider whether the collection of the data is indeed necessary and in compliance with the PI Code.

On the other hand, the public should be mindful of the handling of their personal data. They should not rashly disclose their personal data for the benefits or temptations offered by the collecting party.

Copy of the Report is available from the PCPD at 12/F., 248 Queen's Road East, Wan Chai, Hong Kong. They are also available for download from the website of the PCPD (http://www.pcpd.org.hk/english/publications/invest_report.html).

檢控個案 Prosecution Cases

下述個案是本年報期內一些資料使用者違反條例的主體條文，構成犯罪。私隱專員在考慮個別個案的特定情況後，決定檢控犯罪人士。犯罪人士在裁判法院被起訴及定罪。

The following are cases in the reporting year where the data users were found to have contravened the provisions in the main body of the Ordinance which constitute offences. After considering the particular circumstances of the individual cases, the Commissioner decided to bring prosecution actions against the offenders. The offenders were prosecuted in the Magistrates' Courts and were convicted of the offences.



一名醫生沒有遵從查閱資料要求

A doctor failing to comply with data access request ("DAR")



投訴內容

一名病人向一名醫生提出查閱資料要求，索取其醫療記錄副本。由於該醫生沒有在收到查閱資料要求後的40日法定期限內作出回應，該病人於是向公署作出投訴。經公署介入後，該醫生向該病人提供了要求資料。公署並向該醫生發出警告信。

該病人其後再向該醫生提出另一項查閱資料要求，索取其醫療記錄副本。該醫生又沒有在指定時限內作出回應。該病人再次向公署作出投訴。

條例第19條規定，資料使用者須在收到查閱資料要求後的40日內依從該項要求。如資料使用者不能在法定期限內完全或部分依從該項要求，必須在該期間將這情況以書面通知資料當事人，並說明理由。

The Complaint

A patient made a DAR to a doctor for copies of her medical records. The doctor failed to respond within the statutory period of 40 days after receiving the DAR, so the patient lodged a complaint with the PCPD. Upon mediation of the PCPD, the doctor provided the patient with the requested data. A written warning was then issued to the doctor.

The patient later made another DAR to the doctor for copies of her medical records. The doctor again failed to respond to DAR within time. The patient made a second complaint to the PCPD.

Section 19 of the Ordinance requires a data user to comply with a DAR not later than 40 days after receiving the request. If the data user is unable to comply with all or part of the request within the statutory period, he must inform the data subject of the situation and the reasons in writing within the period.



結果

經調查後，該醫生被控違反條例第19條的罪行。該醫生承認控罪，被判罰款1,000元。

Outcome

After investigation, the doctor was summonsed for an offence under section 19 of the Ordinance. The doctor pleaded guilty and was fined \$1,000.





沒有依從「拒絕服務」要求

Failing to comply with opt-out request



投訴內容

投訴人曾透過一間雜誌促銷公司訂閱數本雜誌。投訴人三次收到該公司的營業代表的促銷電話。在每次談話中，投訴人都要求該公司不要再為直接促銷而聯絡他。但在2006年10月至11月期間，該公司仍然向投訴人發出兩次促銷電話，無視他早前提出的「拒絕服務」要求。

The Complaint

Having subscribed several magazines through a magazine marketing company, the complainant received three marketing calls from representatives of the company. On each of these occasions, the complainant requested the company not to call him again for direct marketing. However, between October and November 2006, the company made two further marketing calls to the complainant, disregarding his earlier opt-out requests.



結果

該公司被控兩項違反條例第34條的罪行。該公司在法庭承認，雖然投訴人曾提出「拒絕服務」要求，他們仍向投訴人發出促銷電話。該公司解釋，投訴人在該公司有數個帳戶，但他們只在其中一個帳戶記錄了他的「拒絕服務」要求。在2006年10月及11月所發出的兩個促銷電話，是根據投訴人在其他帳戶中的資料而發出的。

該公司在求情時表示，他們不是故意觸犯法律，只是職員疏忽所致。該公司表示已採取補救措施，包括整合客戶的資料庫，以防止日後再發生類似事件。

該公司在裁判法院被裁定有罪，共罰款6,000元。

Outcome

Two summonses were issued against the company for contravening section 34 of the Ordinance. The company admitted in court that they had made marketing calls to the complainant despite his opt-out requests. The company explained that the complainant had several customer accounts with them but they had only recorded his opt-out request in one of the accounts. The two telephone marketing calls in October and November 2006 were made by using the complainant's data in other accounts.

In mitigation, the company stated that it was not a deliberate act to break the law but due to negligence of their staff. The company stated that they had taken remedial actions, including the consolidation of customer databases, to avoid future recurrence.

The magistrate convicted the company of the offences and imposed a total fine of \$6,000.





一間信用卡公司被控沒有依從客戶的「拒絕服務」要求

A credit card company was summonsed for failing to comply with customer's opt-out request



投訴內容

2005年10月，投訴人在電話中向一間信用卡公司提出「拒絕服務」要求，要求該公司不要再將直接促銷郵件寄給他。但投訴人在2005年12月仍然收到該公司的促銷郵件，於是向公署作出首個投訴。該公司其後向投訴人發出道歉信，確認已從郵遞名單中刪除他的資料。然而，投訴人在2007年初仍然收到該公司兩封促銷郵件。投訴人因此向公署作出第二個投訴。

The Complaint

In October 2005, the complainant made an opt-out request over the telephone to a credit card company requesting them not to send further direct marketing mails to him. However, the company sent marketing mail to him in December 2005. The complainant thus lodged his first complaint to the PCPD. As a result, the company sent an apology later to the complainant confirming the removal of his data from their mailing list. In early 2007, the complainant received two further marketing mails from the company. The complainant thus lodged his second complaint to the PCPD.



結果

該公司被控兩項違反條例第34條的罪行。該公司在求情時表示，他們是備存了一份「拒絕服務」名單，以免把直銷郵件寄予曾提出「拒絕服務」要求的人士。在2007年的促銷活動中，該公司從一名郵遞名單擁有人取得投訴人的資料，並將資料與其「拒絕服務」名單核對。不過，由於投訴人的姓名及地址在兩份名單中呈現的版本不同，核對程序沒有把投訴人識別出來，該公司因而將直銷郵件寄予他。該公司在回應時表示已改善其「核對」系統，並會進行抽樣檢查，以防止類似事件再發生。

該公司在裁判法院被裁定有罪，共罰款7,000元。

Outcome

Two summonses were issued against the company for contravening section 34 of the Ordinance. In mitigation, the company stated that they maintained an opt-out list to avoid sending direct marketing mails to persons who had requested not to receive such mails from them. In their 2007 marketing exercise, the company obtained the complainant's data from a mailing list owner and matched the data with their opt-out list. However, due to the different versions of the complainant's name and address used in the two lists, the matching failed to identify the complainant and direct marketing mails were sent to him. In response to this case, the company improved their "matching" system and would conduct spot check to avoid recurrence.

The magistrate convicted the company of the offences and imposed a total fine of \$7,000.

