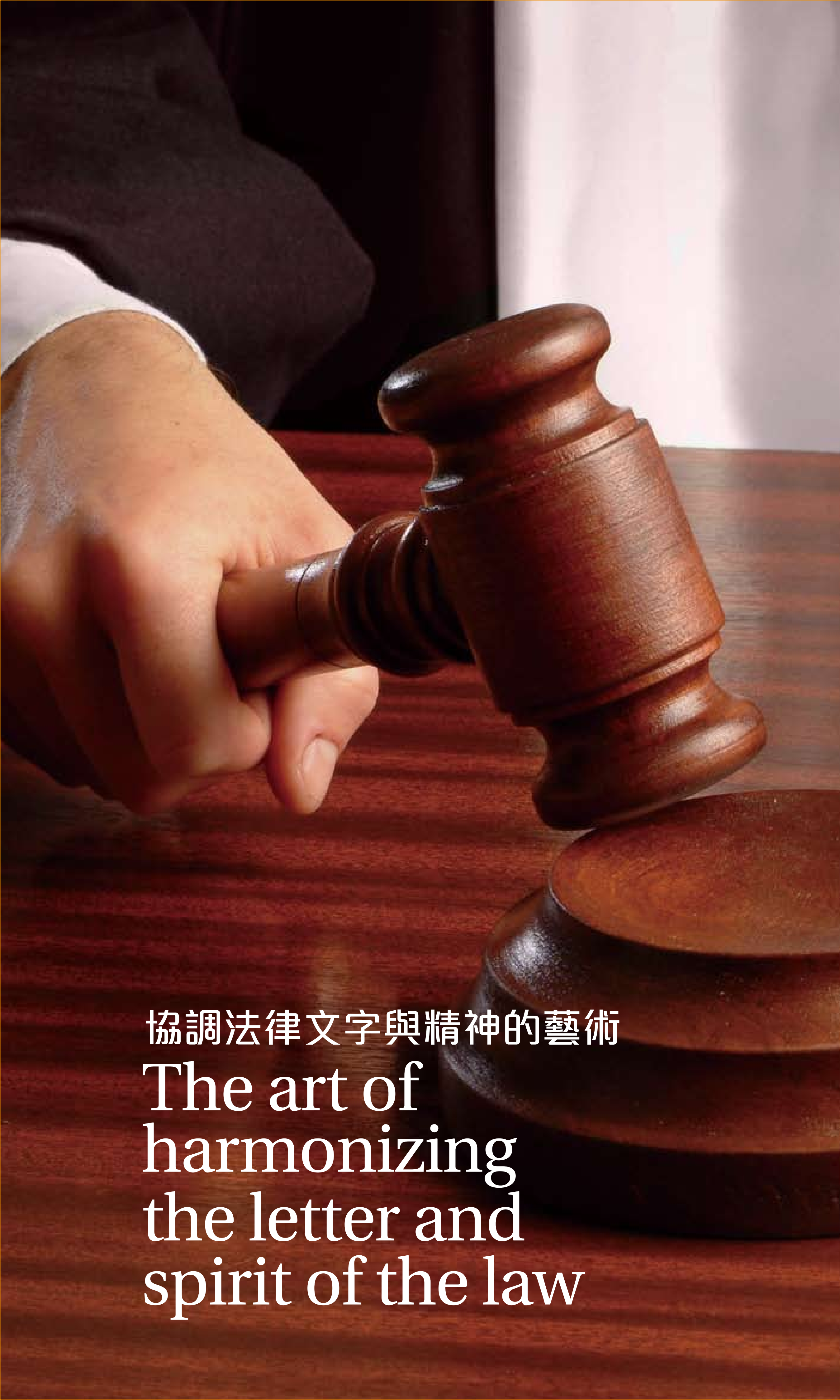

協調法律文字與精神的藝術

The art of harmonizing the letter and spirit of the law

法律部律師感言
Message from Legal Counsel

作為公署的律師，我的職責包括就資料私隱投訴所引致的法律議題提出意見、對可能影響資料保障的動議中的法律提供意見，以及檢視及比較海外的資料私隱發展，以提升我們的保障資料工作。

在我處理過的上訴個案中，很多是基於投訴人對專員在完成充分的查詢後不對他們的投訴進行全面調查的決定而提出的。在上訴過程中，我必須向行政上訴委員會及投訴人解釋有關決定的理據。有些上訴個案中，投訴人聘請了律師（有時是資深大律師）作為代表，因此我需要花很多時間及精神處理上訴中所提出的技術性法律問題。不過，令我覺得欣慰的是，有近九成的上訴個案，行政上訴委員會是認同專員的決定。

公眾比以前更關注其資料私隱權利。這可以從公署接獲的投訴內容中反映。雖然性質簡單直接的投訴數目下降了，但涉及法律灰色地帶及複雜問題的投訴數字正在上升。因此，我的工作會越來越具挑戰性。

李兆昇
法律部律師

As Legal Counsel my duties include advising on legal issues arising from data privacy complaints, commenting on proposed legislations which may have an impact on data protection, reviewing and comparing overseas data privacy development which can enhance the data protection work we do.

Many of the appeal cases I handled were lodged by complainants who were not satisfied with the decisions made by the Commissioner who, after completing sufficient enquiries, decided not to mount a full scale investigation into their complaints. I had to explain to the Administrative Appeals Board and the complainants the basis of the decisions. In some of these appeals, the complainants were legally represented, sometimes by senior counsel, and I had to spend extensive time and effort in dealing with some technical legal issues which were raised in the appeals. I am happy to say that the Administrative Appeals Board has validated the Commissioner's decisions in almost 90% of the appeals.

The public has become more aware of their data privacy rights. This is reflected in the substance of the complaints received by the PCPD. Complaints of a simple and straight forward nature have decreased while complaints involving grey areas of the law and complex issues are on the rise. My work has therefore become much more challenging.

Wilson Lee
Legal Counsel, Legal Division

個人資料私隱在今日已經不是嶄新的概念。科技發展及網上資訊無界限地流轉對個人資料私隱帶來的挑戰與日俱增。在年報期內，公署對《個人資料(私隱)條例》進行了全面檢討，以確保個人資料私隱的保障足夠，條例的條文與時並進。為了達致有關目標，公署提交了多項修訂建議予政府考慮。修訂條例的目的是藉以妥善照顧個人的合理私隱期望。公署作出修訂建議時，在尊重個人的「不被干涉的權利」之餘，亦顧及群體社會上其他公眾權利及利益。

Personal data privacy is no longer a novel concept these days. It is now faced with increasing challenges posed by technological development and the borderless flow of information on the Internet. In the reporting year, a comprehensive review of the Personal Data (Privacy) Ordinance was undertaken to ensure that protection of personal data privacy is adequate and to keep the provisions under the Ordinance up-to-date. Working towards these objectives, a number of legislative amendment proposals were delivered for Government's consideration. The proposed amendments aim at bringing about legislative revisions that properly address the reasonable privacy expectation of individuals. While respecting an individual's "right to be let alone", in proposing the amendments to the law, we do not lose sight of the existence of other public rights and interests in a society where "no man is an island".

條例檢討
Review of the Ordinance

條例自1996年12月20日生效至今已逾十年。隨著電子年代的降臨，科技及電子商貿的急速發展，引起全球對私隱的關注。

A decade has passed since the Ordinance came into force on 20 December 1996. The rapid technological and e-commerce developments that are taking place in this electronic era and the exponential rate with which it continues to progress give rise to global privacy concern.

有鑑於此，海外政府及私隱規管機構均認為有迫切需要檢討及改革私隱法例，以加強保障個人資料私隱權益。澳洲、加拿大、新西蘭及英國均積極對其本國法律進行檢討。為了妥善應付科技進步對私隱帶來的衝擊，國際私隱舞台上清晰地要求更全面地保障個人資料私隱和施行更嚴厲的法律制裁。

Overseas governments and privacy regulators see a pressing need for reviewing and reforming the privacy law in order to safeguard the personal data privacy interests of the individuals. Australia, Canada, New Zealand and the United Kingdom all embark actively on the review of their laws. The international privacy arena has clearly witnessed a call for higher level of personal data privacy protection and stronger sanction and legislation to properly address the privacy impact brought about by technological advancements.

個人資料私隱是個進化中的概念，隨著社會的改變及發展而轉變。私隱專員致力達至平衡個人資料私隱權和公眾利益以維持社會和諧的核心價值。經累積了逾十年監管執行條例的經驗，從逐漸成形的國際宏觀私隱角度，私隱專員認為現在是適當時候對條例作出全面檢討。為達到這些目標，公署於2006年6月成立了內部的條例檢討工作小組，以評估條例所提供的個人資料保障是否足夠。

Personal data privacy has been an evolving concept responding to changes and development in society. The Commissioner sees the core value of balancing the personal data privacy right with other rights and social interest in maintaining a harmonious society. With a decade of regulatory experience gained in discharge of his regulatory duties and without losing sight of the macro international privacy perspectives that are taking shape, the Commissioner finds it appropriate and timely to conduct a comprehensive review of the Ordinance. With these objectives in mind, an internal Ordinance Review Working Group was formed in June 2006 to assess the adequacy of the protection rendered to personal data privacy by the Ordinance.

在檢討條例的過程中，私隱專員考慮的因素如下：

(a) 條例的保障是否足夠，刑罰制裁是否適度；

(b) 條例實施以來，國際私隱法律及標準的發展；

(c) 私隱專員在履行職責及行使權力的過程中所累積的規管經驗；

(d) 應用條例內某些條文時所遇到的困難；

In the course of his review of the Ordinance, the Commissioner has taken into account the following factors:-

(a) the sufficiency of protection and the proportionality of penal sanction under the Ordinance;

(b) the development of international privacy laws and standards since the operation of the Ordinance;

(c) the regulatory experience of the Commissioner gained in the course of discharging his functions and powers;

(d) the difficulties encountered in the application of certain provisions of the Ordinance;

(e) 電子年代的科技發展，導致個人資料被輕易及以低成本地大量收集、持有及處理；

(f) 生物辨識科技的發展對維持個人資料私隱造成的挑戰；以及

(g) 經電子媒介儲存及傳送的個人資料，如何確保有適度的收集、使用及保安，以避免對個人造成傷害。

私隱專員進行檢討是要達致以下五個目標：

(1) 處理公眾關注的課題
(2) 平衡私隱與公眾利益
(3) 強化條例的管治效能
(4) 採取防患未然的措施
(5) 作出條例的細節修訂

私隱專員檢討的項目包括：

- 個人資料的範圍
- 在互聯網上洩漏個人資料
- 互聯網或電郵服務提供者披露個人資料
- 危急情況下個人資料的處理
- 個人給予的訂明同意
- 查閱資料要求
- 直接促銷活動
- 豁免
- 調查及檢控程序
- 執法及刑罰
- 資料的跨境傳輸

(e) the technological development in an electronic age facilitating the collection, holding and processing of personal data in massive quantum at a low cost;

(f) the development of biometric technology for the identification of an individual posing challenges to the maintenance of individuals' privacy; and

(g) the vulnerability of individuals in becoming less able to control and determine the collection, use and security of his personal data stored and transmitted through electronic means.

The Commissioner has five missions to achieve in undertaking the review exercise. They are: -

(1) To address issues of public concern.
(2) To safeguard personal data privacy rights while protecting public interest.
(3) To enhance the efficacy of regulation under the Ordinance.
(4) To harness matters that will have significant privacy impact.
(5) To deal with technical and necessary amendments.

The subjects reviewed by the Commissioner include, amongst others, the following: -

- scope of personal data
- leakage of personal data on the Internet
- disclosure of personal data by Internet or email service providers
- handling of personal data in times of crisis
- prescribed consent given by individuals
- data access request
- direct marketing activities
- exemptions
- investigation and prosecution procedures
- enforcement and penalty level
- transborder data flows

到目前為止，私隱專員已向政制及內地事務局局長提交52項修訂建議及3項額外的私隱議題。

私隱專員與政制及內地事務局局長就建議修訂進行多次商討。他相信條例的全面檢討，須配合公眾的參與，才會得出一套與時並進及充分地保障和體現香港的個人資料私隱權的私隱法例。

The Commissioner has since then presented to the Secretary for Constitutional and Mainland Affairs 52 amendment proposals and 3 additional issues of privacy concerns.

While engaging in a series of discussions with the Secretary for Constitutional and Mainland Affairs on the amendment proposals, the Commissioner is confident that a comprehensive review of the Ordinance with participation by the general public will bring about an updated piece of privacy legislation that amply protects and enforces personal data privacy right in Hong Kong.

司法覆核
Judicial Review

司法覆核 — 胡潔冰 訴 行政上訴委員會(法院案件編號HCAL 60/2007)
Wu Kit Ping v Administrative Appeals Board, HCAL 60 of 2007

一名投訴人申請司法覆核，反對行政上訴委員會作出的決定。

投訴人是一間醫院的病人，她向醫院提出查閱資料要求，但不滿醫院把她要求的陳述書及文件的部分內容刪去。爭議中的資料主要包含作者的姓名、職銜和聯絡資料、陳述書的收件人，及一名醫生在陳述書中所寫的數段內容。

聆訊中，主審法官審閱條例中關於資料當事人根據條例第18條提出查閱資料要求的權利、其行使範圍，及第20(1)(b)及20(2)條對第三者個人資料的保障條文。法庭裁定，根據第18(1)(b)條，資料當事人只是有權取得其個人資料的複本，而不是每份提及他的文件。條例的目的亦不是讓資料當事人行使查閱資料權利，以補充法律程序中的文件透露權，亦不是為找出違規者的身份或找尋資料作其他用途(例如訴訟)而放寬披露方面的限制。法庭裁定有關報告的作者及收件人的身份並不是直接或間接與投訴人有關的「個人資料」，因此有關刪剪是合法的。

第20(1)(b)條規定，如依從查閱資料要求必須披露另一名個人的個人資料，除非該另一名個人已同意披露其個人資料，否則必須拒絕依從該查閱資料要求。法庭認為，該條須在第20(2)條的規限下解讀，即如資料使用者在不披露資料來源的情況下，能夠向資料當事人提供其個人資料，

An application for judicial review was made by a complainant against the decision made by the Administrative Appeals Board ("AAB").

The crux of the complaint was that the complainant, a patient of a hospital clinic, was dissatisfied that certain parts of the statements and documents requested in her data access request ("DAR") made against the hospital were redacted by the hospital in compliance with her DAR. The data in dispute consisted essentially of the names, job title and contact details of the makers and recipients of the statements and certain paragraphs of a statement made by a medical doctor.

At the hearing, the presiding judge examined provisions of the Ordinance in relation to the right of a data subject to make a DAR under section 18, the scope of its exercise and the protection of third parties' personal data under section 20(1)(b) and 20(2). It was ruled that under section 18(1)(b), a data subject is only entitled to a copy of his personal data, not every document upon which there is a reference to the individual. It was also not the purpose of the Ordinance that the data access right be exercised by a data subject to supplement the right of discovery in legal proceedings nor to add any wider action for discovery for the purpose of discovering the identity of a wrongdoer or to locate information for other purposes, such as litigation. The Judge ruled that the identities of the maker and the recipients of the reports did not fall within the scope of "personal data" to relate directly or indirectly to the complainant, and hence the redaction was lawfully made.

Section 20(1)(b) provides that where in the course of complying with a DAR, the personal data of some other individual must be disclosed, then unless that other individual has consented to the disclosure of his personal data, the request must be refused. According to the Judge, the section was to be read subject to section 20(2) in that if the data user could supply to the data subject his personal data without disclosing the identity of the source of the information, then

就必須找出一個提供資料的方法，而最顯然易見的方法就是刪去資料來源者的身份。資料使用者不能以資料當事人可能推斷或推論資料來源者作為藉口，拒絕依從查閱資料要求。

就有關文件的作者表達的意見，法庭裁定，除非意見是間接與資料當事人有關，否則不構成資料當事人的個人資料。法庭在審閱未經刪剪的資料後裁定，除了陳述書中的一句句子應向投訴人披露之外，其餘由該醫院所作出的刪剪均屬恰當。

a means to supply the data must be found, and the obvious way to achieve this was by redaction of the identity of the source of the information. The fact that deduction or inference of the source of information might be drawn by the data subject was no barrier to compliance with the DAR.

In relation to expression of opinion by the maker of the document about himself, the Judge ruled that unless it related indirectly to the data subject, it would not constitute the personal data of the data subject. Having examined the unedited versions of the requested data, the Judge ruled that save for one sentence contained in the statement which should be disclosed to the complainant, the rest of the redaction was properly made by the hospital.

向行政上訴委員會提出的上訴個案的簡述
Notes on Appeal Cases Lodged with the Administrative Appeals Board

行政上訴委員會在年報期內共審理了20宗上訴個案。以下選取一些上訴個案作出簡述。

A total of 20 AAB appeal cases were heard during the reporting period. Case notes on selected cases are presented below.

個案 CASE 1

執法機構使用及保留一名被捕人士的個人資料

利用被捕人士的個人資料來搜尋其過往的定罪記錄 — 保留被捕人士的相片、身份證副本、電話號碼及地址 — 被捕人士不被起訴 — 保留資料12個月 — 保障資料第2(2)原則、保障資料第3原則、第58條(行政上訴委員會上訴案件第1/2007號)

A law enforcement agency's use and retention of personal data obtained during an arrest

Use of personal data of an arrested person to search for his past conviction records – retention of photographs, identity card copy, telephone number and address of an arrested person – arrested person not prosecuted – retain the data for 12 months – DPP2(2), DPP3, section 58 (AAB Appeal No. 1/2007)

投訴內容

投訴人曾於1991年被定罪，而於2006年因另一項罪行被執法機構(下稱「該機構」)拘捕。該機構拘捕投訴人後，拍下投訴人的相片，並取得其身份證副本、電話號碼及地址。該機構其後決定不檢控投訴人，但拒絕交還他的個人資料。

投訴人向私隱專員投訴：(i) 該機構利用在2006年取得的個人資料，搜尋他以前的定罪記錄，有關使用違反保障資料第3原則；及(ii) 該機構在決定不檢控他後，不應保留他的個人資料，有關保留違反保障資料第2(2)原則。

The Complaint

The complainant was previously convicted in 1991 and was arrested by a law enforcement agency ("the Agency") for another offence in 2006. After the arrest, the Agency took photographs of the complainant and obtained copy of his identity card, his telephone number and address. The Agency subsequently decided not to prosecute the complainant but refused to return the personal data to him.

The complainant complained to the Commissioner that: (i) the Agency had used his personal data obtained in 2006 to search for his previous conviction records and such use was prohibited by DPP3; and (ii) the Agency should not have kept the personal data after they decided not to prosecute him, and such retention was prohibited by DPP2(2).

私隱專員的調查結果

私隱專員認為，由於條例並沒有條文禁止資料使用者搜尋或翻查其過往曾收集的個人資料，而且事件中並沒有證據顯示該機構曾披露或移轉投訴人的個人資料作其他用途，因此該機構搜尋投訴人以前的刑事定罪記錄並沒有違反條例的規定。

關於保留投訴人的個人資料方面，該機構向私隱專員解釋，由於投訴人過往曾被定罪，他們是依據法律的規定保留投訴人的相片，並保留其他個人資料(即身份證副本、電話號碼及地址)12個月，以供日後可能進行的罪行調查或內部調查之用。私隱專員接納該機構有權根據該法定條文保留投訴人的相片，而且在有關情況下保留其他個人資料12個月屬於合理。因此，該機構並沒有違反保障資料第2(2)原則。

私隱專員在考慮所有情況後，決定不進行調查。投訴人提出上訴，反對私隱專員的決定。

Findings by the Commissioner

The Commissioner found that, as the Ordinance does not prohibit a data user from searching personal data kept in his records and there was no evidence to suggest that the Agency had disclosed or transferred the complainant's personal data for other purposes, the Agency's act of searching the complainant's previous criminal conviction records did not constitute a contravention of the Ordinance.

On the retention of the complainant's personal data, the Agency explained to the Commissioner that since the complainant was previously convicted, they would retain the complainant's photographs as prescribed by statute and that they would retain the other personal data (identity card copy, telephone number and address) for 12 months for possible use in future investigation of offence or internal investigation. The Commissioner was satisfied that the Agency was entitled to retain the complainant's photographs under the statutory provision and that the retention period of 12 months in relation to the other personal data was reasonable in the circumstances. Therefore, the Agency had not contravened DPP2(2).

Having considered all the circumstances, the Commissioner decided not to carry out an investigation. The complainant appealed against the Commissioner's decision.

上訴

行政上訴委員會同意私隱專員就該機構使用投訴人的個人資料的行為，作出不調查的決定，並補充表示，在2006年取得的個人資料是為了罪行的防止或偵測，或犯罪者的拘捕、檢控或拘留而被持有，因此該機構可以憑藉條例第58(2)條免受保障資料第3原則的管限。

行政上訴委員會亦接納該機構保留投訴人的相片是法定條文所准許的。此外，行政上訴委員會在進一步考慮該機構的內部指引明確訂明資料的保留期為12個月後，認為12個月的保留期屬於合理，並符合保障資料第2(2)原則的規定。

The Appeal

The AAB agreed with the Commissioner's findings on the Agency's use of the complainant's personal data and further added that, in any event, the personal data obtained in 2006 should be held for the purposes of the protection or detection of crime or the apprehension, prosecution or detention of offenders and, therefore, would be exempted from DPP3 by virtue of section 58(2) of the Ordinance.

The AAB was also satisfied that the Agency's retention of the complainant's photographs was permitted by the statutory provision. Moreover, having further considered that the Agency's internal guidelines in which the retention period of 12 months was expressly provided, the AAB found that the retention period of 12 months was reasonable and consistent with DPP2(2).

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 2

由於試卷沒載有學生的個人資料，校方拒絕依從學生的查閱資料要求

一名大學生提出查閱資料要求，索取試卷及校外主考人員的書信 — 大學沒有保留一年前的試卷 — 沒有發現相反證據 — 校外主考人員的書信並無包含上訴人的個人資料 — 沒有違反第19(1)條及第26條、保障資料第2(2)及4原則(行政上訴委員會上訴案件第7/2007號)

DAR to a school for examination script refused because it did not contain the student's personal data

Data access request made by a university student for examination script and external examiner's correspondence – university no longer held the examination scripts after 1 year – no evidence to the contrary found – external examiner's correspondence did not contain the Appellant's personal data – no contravention of sections 19(1) and 26, DPP2(2) and DPP4 (AAB Appeal No. 7/2007)

投訴內容

投訴人是一名大學生。她在考試之後一年向大學提出查閱資料要求，索取試卷(下稱「該試卷」)及相關的校外主考人員的書信(下稱「有關書信」)。大學回覆表示不能依從她的查閱資料要求，原因是(1)有關學系的一般政策是在考試之後一年銷毀試卷；(2)該試卷並無包含她的個人資料，以及(3)有關書信只含有對考試安排的意見，並沒有對個別試卷給予特定意見。投訴人對回覆不滿，向私隱專員投訴大學沒有依從她的查閱資料要求。

The Complaint

The complainant was a university student. She made a data access request ("DAR") to the university for copies of her examination script ("the Script") and the related external examiner's correspondence ("the Correspondence") one year after the examination. The university replied they were unable to comply with her DAR because (1) it was the normal policy of the university department in question to destroy examination scripts after 1 year; (2) the Script did not contain any personal data of hers; and (3) the Correspondence merely contained comments on the examination arrangements and did not give specific comment on individual script. Dissatisfied with the reply, the complainant lodged a complaint with the Commissioner for the failure of the university to comply with her DAR.

私隱專員的調查結果

一般而言，除非考試的答案載有關於考生的私人資料，否則答案不屬考生的個人資料。條例沒有規定資料使用者須保留個人資料。私隱專員在審閱大學的實務守則及有關書信之後，接納大學的實務守則沒有明確規定保留計分紙及試卷的時間，而且沒有相反證據證明大學在收到查閱資料要求時是持有該試卷。私隱專員亦審閱過有關書信，同意內裏沒有包含投訴人的個人資料。由於沒有表面證據證明大學違反第19(1)條，私隱專員根據第39(2)(d)條決定不對投訴進行調查。投訴人就私隱專員的決定提出上訴。

Findings by the Commissioner

Generally speaking, a student's answers in an examination do not amount to personal data of the student unless the answer contains information about the student personally. There is no provision in the Ordinance that requires a data user to retain personal data. Having examined the university's code of practice and the Correspondence, the Commissioner accepted that the university's code of practice did not impose any specific time limit for the retention of the mark sheets and examination scripts and there was no contrary evidence to show that the university did hold the Script at the time of receipt of the DAR. The Commissioner had also examined the Correspondence and agreed that it did not contain personal data of the complainant. Since there was no *prima facie* evidence of contravention of section 19(1), the Commissioner decided not to carry out an investigation of the complaint under section 39(2)(d). The complainant appealed against the Commissioner's decision.

上訴

大學解釋，該學系的做法是在考試後一年銷毀試卷，及他們並無持有該試卷。投訴人認為私隱專員錯誤地接納大學的解釋。投訴人稱，大學有責任保留該試卷，以依從保障資料第4原則的規定，保障個人資料不受「未獲准許的或意外的查閱、處理、刪除或其他使用所影響…」。她亦認為該試卷及有關書信含有她的個人資料。不過，投訴人不能提供任何證據支持她的說法。行政上訴委員會認為私隱專員接納大學的解釋，表示沒有持有該試卷及有關書信並不含有投訴人的個人資料，這做法並非不合理。

The Appeal

The complainant contested that the Commissioner was wrong in accepting the explanation of the university that the department's practice was to destroy examination scripts after 1 year and they no longer held the Script. She argued that the university had a duty to retain the Script in order to comply with DPP4 in protecting the personal data against "unauthorized or accidental access, processing, erasure or other use…". She also argued that the Script and the Correspondence contained her personal data. The complainant, however, could not supply any evidence to support her claims. The AAB was satisfied that the Commissioner did not act unreasonably in accepting the university's explanation that they did not hold the Script and that the Correspondence did not contain her personal data.

上訴*(續)*

行政上訴委員會表示，如果投訴人的試卷記載主考人員對答案的意見或評價，這些評價或意見或會是投訴人的個人資料。在本個案，由於主考人員不得在試卷上寫下任何評語，所以試卷只載有學生所寫下的答案。私隱專員認為投訴人在試卷上的答案並不構成她的個人資料，這決定是沒有犯錯的。

關於保留個人資料的責任，行政上訴委員會駁回投訴人的論點，裁定條例並沒有規定資料使用者有責任保存或保留某人的個人資料，直至完成原本的收集目的；亦沒有規定資料使用者須解釋不繼續保留某人的個人資料的理由。

The Appeal *(continued)*

The AAB remarked that if an examination script of the complainant was marked with the examiner's comments or evaluation of the complainant's answers, these evaluation or comments could be personal data of the complainant. In the present case, examination scripts contained only the materials written by students because examiners were not allowed to write any remarks on the scripts. The Commissioner did not err in holding that the complainant's answers in the Script did not amount to her personal data.

In relation to the duty to retain personal data, the AAB rejected the complainant's arguments and ruled that neither the provisions of the Ordinance imposed any positive duty on a data user to keep or retain one's personal data until the purpose for which the data was originally collected is exhausted; nor did they require a data user to justify its deliberate decision of not continuing to retain one's personal data.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 3

IP位址單獨而言或不構成「個人資料」

電郵服務提供者向內地機關提供IP位址及某些帳戶資料 — 無證據顯示有關帳戶資料載有該名用戶的個人資料 — 服務條款載有用戶的訂明同意披露資料 — 保障資料第3原則，第58(1)條（行政上訴委員會上訴案件第16/2007號）

IP address alone may not be "personal data"

Webmail service provider disclosed IP address and account holder information to PRC authorities – no evidence that the account holder information contained the subscriber's personal data – terms and conditions of subscription contained the subscriber's consent to the disclosure – DPP3, section 58(1) (AAB Appeal No. 16/2007)

投訴內容

投訴人是內地居民。他是雅虎中國的用戶。他投訴雅虎香港有限公司(下稱「雅虎香港」)。雅虎香港在香港註冊，擁有在內地營運電郵服務的供應商雅虎中國。投訴人投訴雅虎香港，指他們向內地機關披露了他的個人資料，導致他被內地機關逮捕及以洩漏國家機密入罪。案中沒有證據顯示任何資料處理環節是在本港進行的。到底雅虎香港如此披露個人資料有否違反保障資料第3原則，私隱專員在個案中考慮到：(i)投訴人的個人資料有否被披露，尤其是IP位址本身是否屬「個人資料」；(ii)當整個披露的行為都在香港以外發生，並為了遵從內地機關依法發出的調取證據通知書的規定作出，條例對此披露行為有否管轄權；(iii)案中使用資料的目的是否有所改變因而違反保障資料第3原則；及(iv)條例第58(1)條就「罪行」的防止和偵測，與及「犯罪者」的拘捕、檢控或拘留的豁免條文，是否伸展到境外的罪行。

The Complaint

The complainant, a PRC resident and subscriber of Yahoo! China, lodged a complaint against Yahoo! Hong Kong Limited ("YHHK"). YHHK is a Hong Kong registered company which owned Yahoo! China, a webmail service provider in PRC. The complainant complained that YHHK had disclosed his personal data to the PRC authorities, leading to his arrest and conviction of a PRC offence of leaking state secret. There was no evidence to show that any of the data cycle took place in Hong Kong. In determining whether YHHK had breached DPP3 in so disclosing personal data, the issues that the Commissioner had looked at were (i) whether personal data of the complainant were disclosed, in particular, whether IP address itself constituted "personal data"; (ii) whether the Ordinance had jurisdiction where the whole act of disclosure happened outside Hong Kong and in compliance with a Data Disclosure Order lawfully issued by the PRC authorities; (iii) whether there was any change in purpose of use contravening DPP3; and (iv) whether the exemption under section 58(1) in respect of prevention or detection of "crime" and apprehension, prosecution or detention of "offenders" extended to cover overseas crime.

私隱專員的調查結果

私隱專員認為，由於IP位址是被編配予沒有生命的電腦的特定機器的位址，而不是個人的位址，IP位址單獨而言並不符合條例中「個人資料」的定義。究竟IP位址加上其他辨識資料結合一起時會否構成投訴人的「個人資料」，這是事實的問題。在此案中，私隱專員認為沒有足夠證據支持投訴人的結論。就雅虎香港於案發時是否「*在本港或從本港控制*」個人資料的收集、持有、處理及使用這問題，私隱專員認為，由於在內地法律下他們必須遵從內地機關依法發出的調取證據通知書，所以即使雅虎香港有此控制權，這個控制權也因此而喪失。雅虎香港在喪失這控制權後，他們已不符合條例中「資料使用者」的定義，因此條例不適用於他們的行為。

至於個人資料的使用方面，私隱專員的觀點是，如果披露個人資料是依從法律的要求下作出的，披露資料的目的便與收集資料的目的一致。在理解條例第58(1)條下「罪行」及「犯罪者」的意思時，私隱專員依據領土原則，認為應該狹義地理解為香港的罪行，並可能伸延至包括《刑事事宜相互法律協助條例》(第525章)適用的罪行。投訴人不滿私隱專員的調查結果，向行政上訴委員會提出上訴。

Findings by the Commissioner

The Commissioner formed the view that IP address alone was not "personal data" as it is a specific machine address assigned to an inanimate computer, not to an individual. It was a question of fact whether IP address together with other identifying particulars constituted "personal data" of the complainant, for which the Commissioner found insufficient evidence to draw such conclusion in favour of the complainant. In relation to the issue of whether YHHK was able to *"control in or from Hong Kong"* the collection, holding, processing and use of the personal data at the material time, the Commissioner found that the control, if any, owned by YHHK was vitiated by the compulsion of PRC laws in complying with the Data Disclosure Order lawfully issued by the PRC authorities. Having lost control, YHHK was not "data user" under the Ordinance and as such, the Ordinance had no application to the act in question. As for use of personal data, the view taken by the Commissioner was that disclosure of personal data in compliance with the requirements of law was consistent with the purpose of collection. In construing the words "crime" and "offenders" under section 58(1), the Commissioner relied on the territorial principle and took the view that it was confined to Hong Kong crime and might be extended to cover those crimes to which the Mutual Legal Assistance in Criminal Matters Ordinance, Cap 525 applied. Dissatisfied with the Commissioner's findings, the complainant appealed to the AAB.

上訴

行政上訴委員會留意到，從表面看來，電郵地址或者IP位址都不能揭示投訴人的身份。被披露的資料是電郵從一台位於某商業機構的地址的電腦所發出，以及有關的日期和時間。行政上訴委員會表示：「在沒有閉路電視

The Appeal

The AAB noted that neither the email address nor the IP address apparently revealed the identity of the complainant. The information disclosed was that the email was sent from a computer located at the address of a business entity, and the date and time of the transaction. The AAB stated that *"short of CCTV*

上訴*(續)*

的證據下，要查明當時利用IP位址所指的電腦來發送有關電郵的人確是投訴人，並不是合理地切實可行的。任何曾使用該台電腦的人士，或者持有所需密碼(如需按入密碼才可使用電腦)的人士，也可能是發送有關電郵的人」。行政上訴委員會認為投訴人未能提出證據，證明雅虎香港據傳披露予內地機關的登記資料載有投訴人的個人資料。

雅虎香港是否「資料使用者」這問題上，就雅虎中國作為雅虎香港的代理這個事實，行政上訴委員會認為即使有關披露是受法律迫使，這也不代表雅虎香港喪失了他們對有關個人資料的控制。行政上訴委員會裁定，雅虎香港是條例所界定的「資料使用者」，而條例適用於此案。此外，行政上訴委員會認為，由於投訴人已接受雅虎中國的服務條款，內有條文授權雅虎香港「*根據法律程序*」作出有關披露，雅虎香港的披露行為已獲得投訴人的「訂明同意」，因此雅虎香港沒有違反保障資料第3原則。行政上訴委員會又同意，投訴人在內地干犯的罪行，並不構成香港法律下的罪行。

由於雅虎香港向內地機關披露的資料並不能視為條例下的「個人資料」，所以私隱專員認為雅虎香港沒有違反條例規定的決定是正確的。

The Appeal *(continued)*

evidence, it would not be reasonably practicable from such information to ascertain that it was actually the [complainant] who used the computer identified by the IP address to send out the relevant email at the material time. It could be anyone, as long as he had access to that computer (or had the necessary password if one was required at all)." The AAB ruled that the complainant had failed to provide evidence to show that the registration information purportedly disclosed by YHHK to the PRC authorities contained his personal data.

On the question whether YHHK was a "data user", insofar as the PRC operation of the website Yahoo! China was the agent of YHHK, the AAB did not accept that the mere fact that the PRC operation was compelled by PRC law to make the disclosure could "vitiate" the control of YHHK over the personal data. YHHK was therefore "data user" as defined under the Ordinance and that the Ordinance did apply to the present case. The AAB also found that prescribed consent of the complainant had been obtained by YHHK when he accepted the Terms of Service and Privacy Policy Statement of Yahoo! China so as to enable YHHK to make disclosure *"in accordance with legal procedure"*. Hence the disclosure by YHHK did not fall foul of DPP3. The AAB also accepted that crime committed by the complainant in the PRC did not amount to a crime under the laws of Hong Kong.

Since the information disclosed by YHHK's PRC operation to the PRC authorities could not be regarded as "personal data" under the Ordinance, the Commissioner was right to conclude there was no breach of the Ordinance by YHHK.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 4

倘已迅速作出充分的補救行動，私隱專員或不會進行調查

某政府部門在未得投訴人的同意及未作出解釋下拍攝投訴人的身分證 — 投訴初期已作出充分的補救行動 — 保障資料第1(1)原則、《身分證號碼及其他身分代號實務守則》的相關規定、第39(2)(d)條（行政上訴委員會上訴案件第17/2007號）

Investigation may not be carried out if sufficient remedial actions already taken

Government department took photograph of identity card without consent or explanation – sufficient remedial action already taken at an early stage – DPP1(1), relevant requirements of the Code of Practice on the Identity Card Number and other Personal Identifiers, section 39(2)(d) (AAB Appeal No. 17/2007)

投訴內容

投訴人向私隱專員投訴，指某政府部門（下稱「該部門」）的職員用數碼相機拍攝其身分證，侵犯其私隱權利，在過程中未徵得其同意，亦沒有明確透露拍攝目的及資料保安程序。

The Complaint

The complainant complained that the staff of a government department ("the Department") had intruded his personal data privacy by taking photograph of his ID card with a digital camera and during the course of which the staff had not clearly indicated to him the purpose of collection and the security procedure.

私隱專員的調查結果

根據私隱專員作出的查詢，該部門的職員是在履行職務時，用數碼相機拍攝投訴人的身分證作紀錄用途。經私隱專員向該部門解釋保障資料第1(1)原則關於收集個人資料的規定後，該部門同意其職員在該案中實毋須拍攝該身分證。該部門並採取下列的補救措施：(i)刪除該身分證照片紀錄，並書面通知投訴人他們已沒有保存他的身分證照片紀錄；(ii)訓示其職員日後在類似的事件中，不可拍攝有關人士的身分證；並(iii)修改其工作守則，以防止類似事件再發生。鑒於該部門已採取了恰當的補救行動，也沒有其他方法可達到更好的結果，私隱專員認為根據條例

Findings by the Commissioner

According to enquiries made by the Commissioner, the staff of the Department took a photograph of the complainant's ID card by digital camera for record purpose during the performance of his duty. Having explained to the Department the legal requirements on the collection limitation principle under DPP1(1) of the Ordinance, the Department admitted that it was not necessary for its staff to take the photograph in the instant case. With the view to making good the wrongful act, the Department took the following remedial steps: (i) deleting the photograph of the ID card and informing the complainant in writing that it no longer kept the photograph of his ID card; (ii) instructing its staff not to take photographs of other people's ID cards in similar cases in future; and (iii) amending its code of practice to make specific regulation preventing recurrence of the incident.

私隱專員的調查結果

（續）

第39(2)(d)條毋須就此個案作調查。私隱專員向該部門發出警告信，提醒他們須遵守條例及《身分證號碼及其他身分代號實務守則》的相關規定。

Findings by the Commissioner

(continued)

In view of the fact that the Department had taken proper remedial actions and no other better results could be achieved, the Commissioner found it unnecessary to carry out an investigation under section 39(2)(d). A warning notice was issued by the Commissioner to the Department reminding it of the obligation to comply with the Ordinance and the Code of Practice on the Identity Card Number and other Personal Identifiers.

上訴

投訴人不滿私隱專員的決定，向行政上訴委員會提出上訴。行政上訴委員會認為既然該部門已承認錯誤，他們應盡早向投訴人道歉及作出補救行動。概括來說，行政上訴委員會認為私隱專員在決定不展開或不繼續調查時，他的相關考慮因素包括：(i)若進行或繼續調查，會否達到實際效果；(ii)該部門是否已作出適當的補救行動；(iii)投訴人有否作出民事申索；(iv)有沒有其他可供投訴人或他應該尋求的糾正渠道。

鑒於該部門在聆訊時向投訴人公開道歉，而他們已作出適當的補救行動，行政上訴委員會認為私隱專員決定根據條例第39(2)(d)條不進行調查是恰當地行使其酌情權。

The Appeal

The complainant was not satisfied with the decision of the Commissioner and lodged an appeal with the AAB. The AAB was of the view that since the Department had admitted the wrongful act, it should apologize to the complainant and take remedial actions as soon as possible. In general, the AAB opined that the following factors were relevant for the Commissioner's consideration in deciding not to carry out or continue an investigation: (i) whether any practical effect will be achieved if the investigation is to be carried out or continued; (ii) whether the Department has taken appropriate remedial actions; (iii) whether the complainant has filed any civil claim; and (iv) whether there is any other proper redress channel that the complainant could or should resort to.

As the Department had made an open apology to the complainant at the hearing and having taken into account the appropriate remedial actions taken by it, the AAB was of the view that the Commissioner had exercised his discretion properly when he decided not to carry out an investigation under section 39(2)(d) of the Ordinance.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 5

資料使用者無須依從要求查閱不存在的文件或司法文件

向某司法機構要求查閱多種文件 — 拒絕依從查閱資料要求 — 司法文件 — 所要求查閱的文件不存在或不含個人資料 — 第18(1)(b)條及第39條(行政上訴委員會上訴案件第22/2007號)

Data user not required to comply with a DAR for non-existent documents or judicial documents

DAR requesting a judicial body to furnish various documents – refusal to comply with DAR – judicial documents – requested document not existed or available or no personal data contained – sections 18(1)(b) and 39 (AAB Appeal No. 22/2007)

投訴內容

投訴人是某審裁處法律程序中的申索人。她向該司法機構投訴其數名職員(下稱「該等投訴」)。在投訴人作出該等投訴當日，她向該機構提出查閱資料要求，其中要求索取包括下述文件的複本：(i)職員就該等投訴作出的解釋及跟進行動；(ii)該機構一名職員就該等投訴所撰寫的「投訴報告」；及(iii)審裁處聆訊的謄本。

該機構拒絕依從該查閱資料要求，理由是第(i)及(ii)項所要求查閱的文件並不存在，而第(iii)項要求所查閱的文件屬於司法文件，因此條例不適用。投訴人向私隱專員投訴該機構拒絕依從查閱資料要求。

The Complaint

The complainant was a claimant in a legal proceedings in a Tribunal. She made complaints to the judicial body ("the Body") against some staff of the Body ("the Complaints"). On the date she made the Complaints, the complainant made a data access request ("DAR") to the Body requesting for copies of, among other things, (i) the staff's explanation and follow-up action relating to the Complaints; (ii) a "complaint report" written by a staff of the Body relating to the Complaints; and (iii) transcript of proceedings in the Tribunal.

The Body refused to comply with the DAR on the grounds that items (i) and (ii) of the requested documents did not exist, and item (iii) was judicial documents to which the Ordinance did not apply. The complainant complained to the Commissioner against the Body for its refusal to comply with the DAR.

私隱專員的調查結果

由於該等投訴及該查閱資料要求是在同一日提出，在該機構接獲該查閱資料要求時，第(i)項的要求文件不可能存在。

在初步詢問時，投訴人補充表示，第(ii)項所查閱的資料可能是一張關於她要求覆核審裁處的程序的便箋或錄事，而不是她在查閱資料要求中所述的「投訴報告」。私隱專員認為該查閱資料要求中查閱的「投訴報告」並不包括投訴人所述的職員錄事。無論如何，有關的便箋或錄事屬於法庭文件，條例並不適用。

私隱專員亦同意第(iii)項屬於法庭案件的一部分，因此不受條例管轄。

在有關情況下，沒有表面證據顯示該機構因不依從查閱資料要求而違反條例的規定。私隱專員因此決定不進行調查。投訴人向行政上訴委員會提出上訴。

Findings by the Commissioner

Since the Complaints and the DAR were made on the same day, item (i) of the requested documents could not have existed when the Body received the DAR.

During preliminary enquiry, the complainant added that item (ii) could be a memo or minute regarding the complainant's request for review of the proceedings in the Tribunal rather than a "complaint report" as she specified in the DAR. The Commissioner considered that the "complaint report" requested under the DAR, did not cover minute of the staff. In any case, the memo or minute in question was court document to which the Ordinance did not apply.

The Commissioner also agreed that item (iii) formed part of the court case and, therefore, was not covered by the Ordinance.

In the circumstances, there was no *prima facie* evidence to show that the Body was in breach of the Ordinance for not complying with the DAR. The Commissioner, therefore, decided not to carry out an investigation. The complainant appealed to the AAB.

上訴

投訴人在上訴時稱，即使有關資料在她提出查閱資料要求時並不存在，該機構亦應在擬備資料後40日內向她提供該等資料。她又稱，私隱專員應進行調查，查看她要求的報告是否已編纂好；即使條例不適用於有關文件，私隱專員亦應告訴她提取有關文件的正確途徑。

行政上訴委員會認為私隱專員沒有責任對每宗投訴進行調查，並享有廣泛的酌情權，可以憑藉第39(2)(d)條，對投訴不進行調查。

關於第18(1)(b)條下的責任，行政上訴委員會認為該機構沒有違反條例的規定。如資料使用者不持有所要求資料，他不須依從該要求。如他沒有該等資料，要求他作出不可能的事，是十分荒謬的。行政上訴委員會亦認為，條例沒有規定資料使用者須查明所要求查閱的資料是否存在，或資料存在的話，保存該等資料以便依從查閱資料要求。根據事實情況，私隱專員有權作出他在本個案所作的決定。

The Appeal

In the appeal, the complainant argued that even though the data did not exist at the time of the DAR, the Body should have provided the data to her within 40 days after they are prepared. She also argued that the Commissioner should have investigated to find out whether the requested report had actually been compiled, and that the Commissioner should have advised her of the proper way to retrieve a document to which the Ordinance did not apply.

The AAB opined that the Commissioner had no duty to investigate every complaint, and he enjoyed a wide discretion not to investigate a complaint by virtue of section 39(2)(d).

As for the duty under section 18(1)(b), the AAB held that the Body had not breached the Ordinance. If a data user did not hold the data requested, he would not be obliged to comply with the request. It would be absurd to require him to do the impossible if he did not hold the data. The AAB also took the view that the Ordinance did not oblige a data user to find out whether the requested data existed or if they existed, to secure them for the purpose of complying with the DAR. In the light of the factual circumstances, the Commissioner was entitled to reach his findings as he did in this case.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 6

某報章拒絕依從要求查閱在新聞活動中收取的個人資料。該報章的做法並沒有犯錯

載有投訴人個人資料的電郵被發送到一份報章 — 所查閱的個人資料沒有被刊登 — 已刊登的個人資料不在查閱之列 — 查閱資料要求不是用來補充民事法律程序中的文件透露權 — 保障資料第6原則、第18(1)(b)及61(1)條(行政上訴委員會上訴案件第34/2007號)

A newspaper was not at fault in refusing to comply with a DAR for personal data it received for news activity purpose

Email containing the complainant's personal data sent to a newspaper – personal data requested under a DAR not published – published personal data not requested in the DAR - DAR not to supplement right of discovery in civil proceedings – DPP6, sections 18(1)(b) and 61(1) (AAB Appeal No. 34 of 2007)

投訴內容

一份報章刊登一篇載有X君對投訴人的評語。投訴人向該報提出查閱資料要求，要求查閱約在該文章刊登時X君向該報發出的電郵內所載關於她的個人資料。

該報拒絕依從查閱資料要求，理由是要求查閱的個人資料是為新聞活動的目的而持有的，因此獲得條例第61(1)條的豁免。投訴人聲稱，該報錯誤地拒絕依從查閱資料要求，於是向私隱專員作出投訴。

The Complaint

A newspaper published an article containing a person X's comments on the complainant. The complainant made a data access request ("DAR") to the newspaper requesting for access to her personal data contained in the emails which was sent by X to the newspaper around the publication date of the article.

The newspaper refused to comply with the DAR on the ground that the requested personal data were held by it for news activity, thus exempted from access by virtue of section 61(1) of the Ordinance. The complainant claimed that the newspaper had wrongfully refused to comply with the DAR and complained to the Commissioner.

私隱專員的調查結果

在考慮到(i)該報的業務包括新聞活動；(ii)該報是在履行新聞業職能時收到X君的電郵，因此屬於新聞活動的目的；及(iii)所要求查閱的個人資料沒有被刊登，私隱專員認為該報有權依據第61(1)條的豁免拒絕依從查閱資料要求。

Findings by the Commissioner

Having considered that (i) the business of the newspaper consists of news activity; (ii) the newspaper received X's email in the course of carrying out journalistic function, hence for news activity purpose; and (iii) the requested personal data were not published, the Commissioner took the view that the newspaper was entitled to claim exemption under section 61(1) of the Ordinance to refuse compliance with the DAR.

私隱專員的調查結果

(續)

私隱專員決定根據條例第39(2)(d)條對投訴不進行任何或進一步調查，理由是任何調查或進一步調查是不必要的。

投訴人向行政上訴委員會提出上訴。

Findings by the Commissioner

(continued)

The Commissioner decided not to investigate or further investigate the complaint under section 39(2)(d) of the Ordinance on the ground that any investigation or further investigation was unnecessary.

The complainant appealed to the AAB.

上訴

行政上訴委員會同意私隱專員的觀點，認為該報有權依賴第61(1)條的豁免。

行政上訴委員會補充表示，投訴人已清楚在查閱資料要求表格上表明她不是要求查閱已刊登的個人資料，該報對此有合理的詮釋及理解。行政上訴委員會並不接納投訴人的論據，就查閱資料要求內實際上本欲要求查閱的資料的恰當解釋。

關於投訴人表示會把要求查閱的個人資料用於一宗誹謗申索的論點，行政上訴委員會重申，以第18條賦予的查閱資料權利來補充法律程序中的文件透露權，從來不是條例的立法意圖。行政上訴委員會拒絕接納投訴人的論點。

The Appeal

The AAB agreed with the Commissioner's views that the newspaper was entitled to rely on the section 61(1) exemption.

The AAB added that the complainant had clearly indicated in the DAR form that she did not request for personal data that were published and this was reasonably interpreted and understood by the newspaper. The complainant's argument on the proper construction of the requested data actually intended by her in the DAR was not accepted by the AAB.

On the complainant's argument that the requested personal data would be used for a defamation claim, the AAB reiterated that it was never the legislative intent of the Ordinance that the data access right conferred under section 18 was to supplement the right of discovery in legal proceedings. The AAB rejected the complainant's argument.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 7

報章作為訴訟一方報導有關案件

保障資料第1(2)(b)原則中規定的「公平」乃指對資料當事人是否公平，不是對其他人是否公平 — 保障資料第1(3)原則只在個人資料是向資料當事人收集的情況下才適用 — 保障資料第3(a)原則所指的「目的」，乃資料使用者收集個人資料時的目的，而不是資料當事人的意願或目的 — 保障資料第1(2), 1(3)及第3原則（行政上訴委員會上訴案件第36/2007號）

A newspaper reported a legal action to which it is a party

"Fair" in DPP1(2)(b) refers to fairness to a data subject, not to others – DPP1(3) is only applicable to the situation where personal data are collected from a data subject – "Purpose" in DPP3(a) refers to the purpose at the time of the collection of the data by the data user, not the intention or purpose of the data subject – DPP1(2), DPP1(3) and DPP3 (AAB Appeal No. 36/2007)

投訴內容

投訴人循民事程序控告某報章，指該報章以負面方式報導有關精神病患者的新聞。投訴人依照法律程序把該訴訟的傳訊令狀送達該報章。該報章於收到傳訊令狀的翌日報導了該訴訟的資料，在報導中透露了投訴人的姓名及他是一名精神病患者（下稱「該等資料」）。投訴人認為該報章披露了該等資料的做法違反了條例的規定。

The Complaint

The complainant commenced civil proceedings against a newspaper for giving a negative report on mental patients. The complainant sent the writ of summons to the newspaper according to the legal process. Upon receipt of the writ of summons, the newspaper reported the action the next day, and disclosed in the report the name of the complainant and that he was a mental patient ("the data"). The complainant believed that the disclosure of the data by the newspaper had contravened the Ordinance.

私隱專員的調查結果

私隱專員考慮到：(i)該報章的職能及活動包括報導法庭新聞；(ii)該訴訟已展開，任何人也可以向法庭透過其提供的查冊服務，查閱有關的傳訊令狀，並獲得傳訊令狀內所載的該等資料；(iii)該等資料已載於有關傳訊令狀內，該報章在報導中披露了該等資料，既與該報章報導該宗訴訟的目的直接有關，亦無資料顯示該報章是為達到其他目的披露該等資料；(iv)沒有

Findings by the Commissioner

The Commissioner had considered the following: (i) the functions and activities of the newspaper included the reporting of court news; (ii) the action had commenced; anyone could have access to the writ of summons and obtain the data contained through the search service of the court; (iii) the data were set out in the writ of summons; the disclosure of the data by the newspaper was directly related to the reporting of the action, and there was no information showing that the newspaper disclosed the data for other

私隱專員的調查結果

（續）

法例或任何法庭命令禁止該報章在報導該訴訟時不能披露該等資料。

私隱專員在考慮投訴人提供的所有證據及一切情況後，認為沒有表面證據證明該報章在報導有關訴訟時披露該等資料的作為違反保障資料第3原則。因此，私隱專員決定根據條例第39(2)(d)條不進行調查。投訴人就有關決定向行政上訴委員會提出上訴。

Findings by the Commissioner

(continued)

purposes; (iv) no ordinance or court order prohibited the newspaper from disclosing the data when reporting the action.

Having considered all the evidence provided by the complainant and all the circumstances of the case, the Commissioner found that there was no *prima facie* evidence showing that the newspaper had contravened DPP3 in the disclosure of the data in reporting the action. Hence, the Commissioner decided not to carry out an investigation under section 39(2)(d) of the Ordinance. The complainant lodged an appeal with the AAB against the decision.

上訴

由於該報章是有關訴訟的被告，它是根據法律程序獲得該傳訊令狀的。該報章毋須按照一般報章的做法，在向法庭繳付有關查冊費用後才可從法庭存檔中獲得有關的傳訊令狀。行政上訴委員會認為該報章收集該等資料的方法沒有不合法的地方，故沒有違反保障資料第1(2)(a)原則的規定。

該報章作為該訴訟的被告，比其他報章更快獲得該等資料。即使這情況可能對其他報章造成不公平，這也只是對其他同業的不公平，不是對投訴人不公平，因此該報章也沒有違反保障資料第1(2)(b)原則的規定。

投訴人又指該報章沒有表示它會把該等資料用於新聞用途，故違反了第1(3)原則。行政上訴委員會認為保障資料第1(3)原則只在資料使用者向資料當事人直接收集個人資料的情況下才適用。由於該傳訊令狀是由投

The Appeal

As the newspaper was the defendant in the action, it received the writ of summons according to the legal process. The newspaper did not need to follow the general practice of other newspapers to obtain the writ of summons by payment of a search fee to the court. The AAB found that the means of collecting the data by the newspaper was not unlawful, therefore, there was no contravention of DPP1(2)(a).

As the defendant, the newspaper was quicker than other newspapers in getting the data. Even if it might be unfair to other newspapers, it was only unfair to those in the industry, not to the complainant. Therefore, the newspaper had not contravened DPP1(2)(b).

The complainant alleged that the newspaper had not indicated that the data would be used for news reporting purpose, so it had contravened DPP1(3). The AAB considered that DPP1(3) was only applicable to the situation where a data user collected personal data directly from a data subject.

上訴(續)

訴人派送予該報章，並非該報章主動向投訴人收集的，故第1(3)原則不適用。

行政上訴委員會認為，一般而言，報章的功能是報導新聞。就此案而言，該報章收集該等資料的目的也是為了報導新聞，而不是作其他用途。保障資料第3原則規定，如無資料當事人的訂明同意，個人資料不得用於在收集該等資料時會將其使用於的目的(即原來目的)或直接與其有關的目的以外的目的。行政上訴委員會認為該原來目的是指該報章當初的收集資料目的，而不是投訴人本身的意圖或目的。由於該報章將該等資料用於報導法庭新聞的用途與原先收集該訴訟時的目的一致或直接有關，行政上訴委員會認為該報章沒有違反保障資料第3原則的規定。

The Appeal *(continued)*

As the writ of summons was sent to the newspaper by the complainant and was not collected from the complainant by the newspaper at its own volition, DPP1(3) was not applicable.

The AAB considered that generally speaking, the function of a newspaper was news reporting. In the circumstances of the case, the newspaper collected the data for news reporting and not for other purposes. DPP3 stipulates that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data (i.e. the original purpose); or a purpose directly related to the original purpose. The AAB opined that the original purpose referred to the newspaper's original purpose of collecting the data but not the intention or purpose of the complainant. As the use of the data for reporting court news by the newspaper was consistent with or directly related to the original purpose of collection, the AAB found that the newspaper had not contravened DPP3.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

公署對建議中的法例所作的評論
Comments on Proposed Legislation by the PCPD

2007年建築物(修訂)條例草案

草案建議修訂《建築物條例》，就草案第3及8條建議備存名冊，屋宇署為此向私隱專員徵詢關於保障個人資料私隱的意見。私隱專員知悉屋宇署有意收集及披露名冊中資料當事人的個人資料，例如註冊承建商的認可簽名人、註冊人士的電話號碼、註冊人士願意承接的工程類別等。由於收集有關個人資料並非必需，私隱專員建議屋宇署在收集資料時在收集個人資料聲明中通知資料當事人，他們提供有關個人資料是完全屬於自願性質。此舉確保屋宇署遵從保障資料第1(3)(a)原則的規定，資料當事人在屋宇署收集資料時清楚知道他們可以選擇提供或不提供資料，而如果提供的話，有關個人資料會於名冊中披露。

私隱專員亦建議屋宇署就不當使用名冊中的個人資料在草案中加入制裁措施，防止他人將個人資料用於指明目的或直接有關目的以外的目的，違反保障資料第3原則，但有關建議在年報期內尚未併入草案中。

Buildings (Amendment) Bill 2007

The Buildings Department sought comments from the Commissioner on its proposed clauses 3 and 8 of the draft Bill on the maintaining of registers insofar as the protection of personal data privacy is concerned. The Commissioner noted that the Buildings Department intends to collect and disclose the data subjects' personal data in the registers such as the Authorized Signatory of the Registered Contractor, the telephone number of the Registered Parties, and the type of works that the Registered Parties are willing to carry out, etc. As the collection of such personal data is optional, the Commissioner advised the Buildings Department that it should inform the data subjects in the Personal Information Collection Statement at the time of collection that it is entirely voluntary for them to supply such personal data. This is to ensure compliance with DPP1(3)(a) so that the data subjects know full well at the time of collection that they can choose whether or not to supply such data; and if supplied, such personal data would be disclosed in the registers.

The Commissioner also advised the Buildings Department to impose sanctions under the Bill against improper use of personal data contained in the registers to guard against possible contravention of DPP3 on the use of personal data beyond its specified purposes or directly related purposes, but such advice has not been incorporated into the Bill during the period under review.

非應邀電子訊息規例草擬本

規例由工商及科技局局長(下稱「局長」)建議，目的是訂明商業電子訊息應包含的發訊人資料及取消接收選項應遵從的條件。規例建議有關資料應包括授權發送該訊息的個人或機構的姓名或名稱、地址及聯絡電子地址。「聯絡電子地址」在藉電郵傳送而發送的訊息中指電話號碼及電郵地址；在藉任何其他方法而發送的訊息中僅指電話號碼。

私隱專員提醒局長，收集的個人資料應屬足夠但不超乎適度。由於規例草擬本有條文容許發訊人在發送文字訊息至電話號碼時可以選擇不加入地址，令人存疑的是，究竟規定以其他方法發送訊息的發訊人披露其地址，以達到收集目的是否必需？私隱專員請局長重新考慮有關收集是否需要。

規例於2007年12月22日獲通過及生效。第5(4)條清楚規定，如商業電子訊息是短訊，而收訊人能夠用載於該訊息中的電話號碼，取得有關個人或機構的地址，則該地址可從該訊息中略去。

Draft Unsolicited Electronic Messages Regulation

The Regulation was proposed by the Secretary for Commerce, Industry and Technology Bureau ("the Secretary") for the purpose of prescribing the detailed sender information that a commercial electronic message should contain and the conditions with which the unsubscribe facility should comply. It was proposed that the information should include the name, address and contact electronic address of the individual or organization who authorized the sending of the message. "Contact electronic address" was defined to mean the telephone number and electronic mail address in case the message was sent by electronic mail transmission and in any other case, the telephone number only.

The Commissioner reminded the Secretary that collection of personal data should be adequate but not excessive. Since the draft Regulation contained provision to allow the sender to elect not to include the address if it was a text message sent to a telephone number, it raised doubt as to whether the requirement for disclosure of the address of the sender in other cases was at all necessary for attaining the purpose of collection. The Secretary was asked to re-consider the necessity for such collection.

The Regulation was passed and came into effect on 22 December 2007. It makes clear under section 5(4) that address of the individual or organization can be omitted from a commercial electronic message sent in the form of an SMS message if the recipient is able to obtain the address by using the telephone number included in the message.

通訊事務管理局條例草案

草案由工商及科技局局長(下稱「局長」)提出，將廣播事務管理局(下稱「廣管局」)及電訊管理局(下稱「電管局」)的個人資料移交新成立的規管機構，即通訊事務管理局(下稱「通訊局」)使用。

私隱專員原則上不反對有關合併對個人資料作出的轉移及使用。不過，他提醒局長，草案應有保留條文，訂明在草案的指定實施日期之前，私隱專員就廣管局及電管局違反或據稱違反條例或保障資料原則的規定而根據條例行使的權力不會受到影響。這樣可以保留私隱專員的權力，處理在廣管局及電管局合併前發生的違規事件，就兩者在合併前所作出的作為及所從事的行為而言，此舉對於保障個人資料私隱的權利非常重要。

預防及控制疾病條例草案

為防止任何疾病或污染傳入香港及在香港蔓延，草案賦權食物及衞生局局長(下稱「局長」)訂立規則(下稱《規則》)，規定醫護人員、旅客及運輸工具操作人員通報傳染病，以及賦權局長向公眾披露任何有關公共衞生緊急事態的資料。

私隱專員向局長提出下述個人資料私隱的關注事項：(i)根據保障資料第1原則，個人資料的收集，尤其是敏感的個人健康資料，應只限必需及足夠，不得超乎適度；(ii)只可向公眾披露達致法定目的所需的個人資料；(iii)對任何人進行醫學監察、檢驗及測試而可能收集的個人資料，均不可超越確定該人的健康狀況所需的目的；

Communications Authority Bill

The Bill was put forward by the Secretary for Commerce, Industry and Technology ("the Secretary") to effect the transfer of and use of personal data from the Broadcasting Authority ("BA") and Telecommunications Authority ("TA") to the new regulator, namely, the Communications Authority ("CA").

The Commissioner had no objection in principle to the transfer and use of personal data necessitated by the proposed merger. He however reminded the Secretary that the Bill should expressly contain a saving provision so that the Commissioner's exercise of power under the Ordinance which he could have exercised against BA and TA would not be affected in respect of a breach or alleged breach of the Ordinance or the data protection principles immediately before the appointed date for the Bill. This serves to preserve the Commissioner's powers in dealing with antecedent breaches which is essential for safeguarding personal data privacy rights of individuals for acts done or practice engaged in by BA and TA before the merger took place.

Prevention and Control of Disease Bill

For attaining the objective of preventing the introduction into and spread of any disease or contamination in Hong Kong, the Bill sought to confer powers upon the Secretary for Food and Health ("the Secretary") to make regulations ("the Regulations") requiring notification of infectious diseases from medical practitioners, travellers and operators of conveyance as well as the power to disclose to the public any information that is relevant to a public health emergency.

The Commissioner raised the following issues of personal data privacy concerns with the Secretary: (i) that any collection of personal data, in particular, sensitive health data of the individuals shall be necessary, adequate but not excessive under DPP1; (ii) that only necessary personal data for attaining the statutory purpose be disclosed to the public; (iii) that any medical surveillance, examination and test to be conducted on individuals whereby personal data may be collected shall not be more intrusive than is necessary for ascertaining that

(iv)有關個人需要為檢驗及測試而提供資料或樣本，應該盡可能在他們的訂明同意下獲得的；(v)所收集的個人資料應妥為保存，並於使用後適當地刪除；(vi)在行使權力進入非住宅處所之前，應先取得手令；及(vii)就草案建議衞生主任在其行使草案下的權力時免負個人法律責任方面，私隱專員認為這不應減損他們遵從條例規定的責任，及不妨礙資料當事人根據條例第66條申索賠償的權利。

person's health condition; (iv) that any information or samples to be submitted by these individuals for the purpose of examination and testing should as far as practicable be obtained with their prescribed consent; (v) that the personal data so collected should be safely kept and properly erased after use; (vi) that warrant should be obtained when exercising power of entry into non-residential premises; and (vii) that the proposed immunity of personal liability of health officers in purported exercise of the powers conferred under the Bill should not derogate their obligation to comply with the requirements of the Ordinance and the right of data subjects to claim damages under section 66 of the Ordinance.

關於第(i)及(ii)點，局長確認會在規例中加入足夠的保障，確保涉及個人資料的條文遵從條例的規定。關於第(iii)及(iv)點，規則的用語已被修訂，規定所進行的醫學監察、檢驗或測試「*的侵擾性或創傷性，**不得**超越確定該人的健康狀況所需者*」。

For (i) and (ii), the Secretary confirmed that sufficient safeguards would be included in the Regulations to ensure that where personal data were involved, the provisions would comply with the requirements of the Ordinance. For (iii) and (iv), the wording of the Regulations had been amended to require that the medical surveillance, examination or test conducted *"**must** not be more intrusive or invasive than is necessary for ascertaining the person's health condition"*.

至於第(v)點，局長表示衞生署已就個人資料的收集、保留、使用等制定清晰的保障資料政策及指引，並向私隱專員保證，所收集的個人資料不會保存超過所需的時間，並已制定保障措施，保障個人資料的安全。

For (v), the Secretary stated that the Department of Health had clear data protection policy and guidelines to cover collection, retention, use, etc. of personal data and assured the Commissioner that personal data collected would not be kept longer than is necessary and that relevant security measures are in place for safe custody of the personal data.

關於第(vi)點，局長認為阻止或控制疾病擴散的行動必須快速，但補充表示：(a)行使有關權力必須基於「合理的懷疑」；及(b)進入住宅處所仍然須向裁判法院取得手令，因此私隱權益可獲保障。關於免負法律責任的建議，局長確認，草案有明確條文訂明，有關保護「*並不影響政府須為有關的作為或不作為而承擔的侵權法律責任*」。因此，根據第66條向政府申索賠償的權利不受影響。

In relation to (vi), the Secretary maintained that quick response was required to contain or control the disease but added that the security of privacy interest was built in that (a) the exercise of such power must be based on "reasonable suspicion"; and (b) the entry into residential premises still required the obtaining of a warrant from Magistrate. In respect of the proposed immunity of liability, the Secretary confirmed that there was express provision in the Bill that such protection *"does not affect any liability in tort of the Government for that act or omission"*. The right to claim for damage under section 66 against the Government was therefore not affected.

強制性公積金計劃(修訂)條例草案

草案建議設立核准受託人的公開名冊，及擁有無人申索權益的計劃成員的記錄冊。草案建議賦權強制性公積金計劃管理局(下稱「管理局」)，決定有關名冊所包含的「有關資料」。由於可能涉及個人資料，私隱專員建議財經事務及庫務局局長(下稱「局長」)在草案中清楚説明設立這些名冊的目的，並盡可能限制收集個人資料的種類及數量，及公眾透過這些名冊查閱的個人資料的種類及數量。私隱專員亦建議局長考慮就不當使用有關資料在草案中加入制裁措施。局長亦應採取適當的行政措施，防止因大量查閱個人資料而增加私隱風險。

草案亦建議賦予管理局類似的廣泛權力，指明僱員在法定聲明中提供的資料種類，及名冊將包含的資料。草案亦賦予管理局特定的權力，可以要求僱主、自僱人士或任何其他人士提交記錄，以供查閱。私隱專員建議局長重新考慮以更清晰的用語指明個人資料的種類，確保沒有收集不必要或過量的個人資料。

草案亦建議容許管理局披露已可被公眾查閱的資料。私隱專員表示，條例並無條文豁免使用在公開領域的個人資料，資料使用者必須根據保障資料第3原則依從使用限制原則。有關方面必須小心確保個人資料的使用符合收集資料的目的。

Mandatory Provident Fund Schemes (Amendment) Bill

The Bill proposed to set up a public register of approved trustees and a register of scheme members who have unclaimed benefits. It was proposed to confer upon the Mandatory Provident Fund Schemes Authority ("the Authority") power to determine "such information" to be contained in the registers. As personal data might be involved, the Commissioner advised the Secretary for Financial Services and the Treasury ("the Secretary") to provide for a clear purpose statement in the Bill for the setting up of these registers and to limit as far as practicable the kind and amount of personal data to be collected and made available for public inspection through these registers. The Secretary was also asked to consider the imposition of sanction in the Bill on misuse of the data. Appropriate administrative measures should also be undertaken to prevent bulk inspection which might increase the privacy risks of the personal data available for public inspection.

Similar wide power was also proposed under the Bill to be conferred upon the Authority to specify the kind of information to be supplied in the statutory declaration to be given by the employee and the information to be contained in the registers. Specific power to require production of records for inspection from employer, self employed person or any other persons was also conferred upon the Authority. The Secretary was asked to reconsider specifying the kind of personal data in clearer terms so as to ensure that no unnecessary or excessive personal data are collected.

The Bill also proposed to permit the Authority to disclose information which has been made publicly available. The Commissioner advised that the Ordinance does not contain provisions exempting the use of personal data in public domain and a data user has to comply with the use limitation principle under DPP3. Due regard must be given to ensure that the use of the personal data was for a purpose consistent with the purpose of collection.

局長在回應時承諾會清楚列明各名冊的收集資料目的、以指引方式限制所收集的個人資料的種類，並表示政府有決心依從條例的規定處理個人資料。

In response, the Secretary promised to spell out in clear terms the purpose of collection of information under the various registers, to limit the kind of personal data to be collected by way of guidelines issued for such purpose and confirmed the Government's commitment to comply with the provisions of the Ordinance in handling personal data.

強制性公積金計劃（修訂）（第2號）條例草案

草案建議僱主向強制性公積金計劃管理局（下稱「管理局」）支付供款時，須附有包括有關僱員的姓名及身分證號碼的結算書。私隱專員建議財經事務及庫務局局長（下稱「局長」）留意他發出的《身分證號碼及其他身分代號實務守則》內訂明的收集身分證號碼的情況，以遵從保障資料第1原則的規定。

Mandatory Provident Fund Schemes (Amendment) (No.2) Bill

Under the proposed provision, an employer in paying contributions to the Mandatory Provident Fund Scheme Authority ("the Authority") shall accompany it with a statement including the name and HKID number of the relevant employee. The Commissioner asked the Secretary for Financial Services and the Treasury ("the Secretary") to take heed of the circumstances for collection of HKID number prescribed under the Code of Practice on the Identity Card Number and other Personal Identifiers issued by the Commissioner in order to comply with DPP1.

私隱專員重申他關注草案建議賦予管理局廣泛的權力，可以指明供款所附有的結算書包括甚麼「其他資料」，以及指明及批准《強制性公積金計劃條例》規定呈交的各種表格。私隱專員強調要在賦權條文中加入清晰的收集資料聲明，以及依從保障資料第1及3原則的責任。

The Commissioner also repeated his concerns on the wide power proposed to be conferred upon the Authority to specify "such other information" to be included in the statement accompanying the contributions paid to the Authority and the power to specify and approve the various forms required to be submitted under the Mandatory Provident Fund Schemes Ordinance. The provision of a clear collection statement in the enabling provision and the duty to comply with DPP1 and DPP3 were highlighted by the Commissioner.

局長同意在草案的賦權條文中加入清晰的收集目的聲明，並會在諮詢有權益關係者後所發出的指引中指明各種表格會包括的資料種類。

The Secretary agreed to incorporate clear collection purpose statement in the enabling provision of the Bill and would specify the kinds of information to be included in the various forms in the guidelines to be issued after consultation with stakeholders.

投訴警方獨立監察委員會條例草案

草案授權投訴警方獨立監察委員會(下稱「警監會」)可為考慮警務處處長呈交的調查報告而會見任何人、保存每次會面記錄，而有關記錄不得用於警監會履行草案所規定的職能以外的目的。

私隱專員注意到會面時通常會獲得個人資料，但草案沒有指明警監會保留有關個人資料不應超過的時限，以符合保障資料第2(2)原則的規定。此外，由於草案所規定的警監會職能廣泛，權力不只限於考慮調查報告，因此私隱專員關注到警監會會否將個人資料用於考慮調查報告以外的目的。

因此，私隱專員促請保安局重新考慮在草案中訂明一個可確定的資料保留時期，並限制會面記錄的許可使用範圍。

保安局局長在考慮私隱專員的關注後，修訂了草案，規定警監會只可在所需的期間內保存會面記錄，並不得用於必須為履行其職能以外的目的。

草案於2008年7月12日通過，但尚未生效。

Independent Police Complaints Council Bill

The previous draft of the Bill empowered the Independent Police Complaints Council ("the Council") to interview any person for the purpose of considering an investigation report submitted by the Commissioner of Police, to keep a record of every interview and such record must not be used for any purpose other than for performing the functions of the Council under the Bill.

The Commissioner noted that personal data would normally be obtained during an interview, but the Bill did not specify a period beyond which the Council should not retain the personal data in compliance with DPP2(2). Furthermore, given that the functions of the Council under the Bill were much wider than its power to consider an investigation report, the Commissioner was concerned if the Council used the personal data for purposes other than for considering an investigation report.

The Commissioner, therefore, urged the Security Bureau to reconsider prescribing in the Bill an ascertainable retention period and limiting the scope of permitted use of the record of interview under the Bill.

Having considered the Commissioner's concern, the Secretary for Security amended the draft Bill to the effect that interview records must be kept by the Council only for such period as may be necessary and must not be used by it for any purpose other than what is necessary for performing its functions.

The Bill was passed on 12 July 2008 but has not come into operation.

西九文化區管理局條例草案

根據草案成立的管理局(下稱「管理局」)將獲賦權決定董事或委員需要披露的利益關係的類別及細節。私隱專員提醒民政事務局局長(下稱「局長」)需要遵從保障資料第1原則的收集資料原則,盡可能清楚限定及界定個人資料的範圍,並應在賦權條文中加入明確的目的聲明。

由於管理局會備存一份載有「姓名」及「披露詳情」的登記冊供公眾查閱,私隱專員提醒局長有責任遵從保障資料第3原則,防止不必要披露與備存登記冊無關的個人資料。私隱專員亦建議局長加入清晰的聲明,説明設立登記冊的目的,防止任意或不當使用有關資料。為有效執法,可加入制裁措施。

在年報期內,草案並無進展。

West Kowloon Cultural District Authority Bill

The Authority to be established under the Bill ("the Authority") was to be conferred with power to determine the class and details of interest to be disclosed by Board or Committee members who may be individuals. The Commissioner advised the Secretary for Home Affairs ("the Secretary") of the need to comply with the data collection principle in DPP1 for the scope of personal data to be delimited and defined as clearly as practicable and that an express purpose statement should be spelt out in the enabling provision.

Since a register of "name" and "particulars of disclosure" would be maintained by the Authority and be open for public inspection, the Secretary was reminded of the duty to comply with DPP3 to prevent unnecessary disclosure of personal data which were not required for the purpose of maintaining the register. The Secretary was also advised to include a clear purpose statement for the setting up of the register to guard against indiscriminate or improper use of the data. Sanction might be imposed as a means of effective enforcement.

There was no further development during the reporting period.

《個人資料(私隱)條例》的修訂
Changes to the Personal Data (Privacy) Ordinance

1. 根據2007年8月1日生效的《人類生殖科技條例》(第561章)附表3，《個人資料(私隱)條例》已加入第63A條：

「63A. 人類胚胎等
(1)包含顯示某名身分可被辨別的個人是或可能是經由《人類生殖科技條例》(第561章)所指的生殖科技程序而誕生的資訊的個人資料，獲豁免而不受第6保障資料原則及第18(1)(b)條的條文所管限，但如根據該等條文而按照該條例第33條披露該等資料，則屬例外。

(2)凡查閱資料要求是關乎憑藉第(1)款獲豁免而不受第18(1)(b)條所管限的個人資料的，或是關乎假如存在便會獲該項豁免的個人資料的，則在披露該等資料的存在或不存在相當可能會損害受該項豁免保障的利益的情況下，該等資料亦獲豁免而不受第18(1)(a)條所管限。」

(1) By the operation of Schedule 3 to the Human Reproductive Technology Ordinance, Cap.561 on 1 August 2007, the following new section 63A was added to the Personal Data (Privacy) Ordinance: -

"63A. Human embryos, etc.
(1) Personal data which consist of information showing that an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure within the meaning of the Human Reproductive Technology Ordinance (Cap 561) are exempt from the provisions of data protection principle 6 and section 18(1)(b) except so far as their disclosure under those provisions is made in accordance with section 33 of that Ordinance.

(2) Where a data access request relates to personal data which are or, if the data existed, would be exempt from section 18(1)(b) by virtue of subsection (1), then the data are also exempt from section 18(1)(a) if the interest protected by that exemption would be likely to be prejudiced by the disclosure of the existence or non-existence of the data."

2. 根據《釋義及通則條例》(第1章)第54A條，立法會於2007年6月14日通過，並於2007年7月1日生效，《個人資料(私隱)條例》在下述各條提述的「民政事務局局長」已由「政制及內地事務局局長」取代：

(1) 第1(2)條；
(2) 第11(2)(b)條；
(3) 第11(3)條；
(4) 第11(4)條；
(5) 第14(6)條；
(6) 第70(1)條；
(7) 附表2第2(2)條；
(8) 附表2第2(3)條；及
(9) 附表2第3(2)條。

(2) By the resolution made and passed by the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap.1) on 14 June 2007, with effect from 1 July 2007, reference to "Secretary for Home Affairs" in the following sections of the Personal Data (Privacy) Ordinance have been substituted by "Secretary for Constitutional and Mainland Affairs": -

(1) Section 1(2);
(2) Section 11(2)(b);
(3) Section 11(3);
(4) Section 11(4);
(5) Section 14(6);
(6) Section 70(1);
(7) Section 2(2) of Schedule 2;
(8) Section 2(3) of Schedule 2; and
(9) Section 3(2) of Schedule 2.