

私隱專員的話

Privacy Commissioner's Message



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我一直堅持兩個理想。我希望看見一個尊重和保護個人資料私隱的社會。我亦希望看見香港成為國際認可擁有可靠資料保障系統，可以安全傳輸個人資料的地方。我相信這兩個理想的實現，定能提高香港的人權及商貿發展。
I want to see a society where personal data privacy is respected and protected. I also want to see Hong Kong internationally recognized as having a dependable system of data protection and a place to which personal data can be safely transmitted. Any progress towards these goals will surely enhance human rights and trade developments for Hong Kong.

我 在2005年接受這個職位時已經很清楚，個人資料在日常生活中被普遍收集及使用，已經成為社會上一種新的生活方式。私隱專員需要面對和處理的關鍵議題，是瞬息萬變的科技和生物辨識技術發展。私隱專員有責任支援及指導商業機構和政府部門在尊重個人私隱權利的大前提下有效地處理個人資料。私隱權是香港《人權法案條例》下的基本權利之一，它讓我們實踐我們珍惜及理應擁有的其他權利。換句話說，無論就自由民主或業務及企業管治而言，個人資料私隱都是不可或缺的。

It was plain to me when I accepted this post in 2005 that a brave new world had dawned in which the pervasive gathering and use of personal information would be a way of life. The ever faster changing technologies and biometric developments are critical issues to be handled constructively. The role for a privacy commissioner must be to support and guide businesses and government to efficiently process personal information with due respect for the individual's right to privacy which is a fundamental right under the Bill of Rights Ordinance that helps us to realize other rights that we value and take for granted. In that sense, personal data privacy is essential for freedom and democracy as well as for business and corporate governance.

自擔任個人資料私隱專員以來，我一直堅持兩個理想。我希望看見一個尊重和保護個人資料私隱的社會。我也希望看見香港成為國際認可擁有可靠資料保障系統，可以安全傳輸個人資料的地方。我相信這兩個理想的實現，定能提高香港的人權及商貿發展。

我的使命和職能，是保護這個城市七百萬名市民的個人資料私隱。這是一項有挑戰性而又艱巨的工作，因為我只有少數的員工，但卻要處理社會上很多不同類型，不同複雜程度的事件和投訴。

上任後不久，我即發覺私隱專員最重要和長遠的目標，是要徹底檢討授予他職能的《個人資料(私隱)條例》。香港是歐洲以外第二個擁有詳盡私隱法例的地區，這是我們值得引以為傲的。但是，全球資訊科技這十多年來的發展帶來前所未有的轉變，令香港需要對條例進行全面的法律改革，而不是零碎的修訂。不過，我不以為要等待法律改革委員會去進行這項工作，因為他們的工作一向都是排得密麻麻的。而個人資料私隱專員公署在過去多年所累積的經驗和專長，倒是最適合帶動這次法律改革的機構。

我在2006年6月成立了一個內部的工作小組，在沒有任何額外資源下，以一年半的時間完成了檢討整條條例的工作。2007年12月，我向政府提交一份詳細的報告，提出超過50項修訂條例的建議。政府也花了一年多的時間去考慮，隨之下來，公署和政府與有關界別展開連串討論。我很高興政府最後接納了大部分建議，會作出相應的法例修訂。

要低成本高效率地建立一個尊重個人資料私隱的社會，就必須用實際及具創意的方方法，培養保護個人資料私隱的正面意識。在2006年，我和同事嘗試為特定行業舉辦保障私隱活動。很高興夥拍到香港酒店業協會，為每年處理數以百萬計旅客個人資料的

I have held fast to an ideal since my appointment as the Privacy Commissioner for Personal Data. I want to see a society where personal data privacy is respected and protected. I also want to see Hong Kong internationally recognized as having a dependable system of data protection and a place to which personal data can be safely transmitted. Any progress towards these goals will surely enhance human rights and trade developments for Hong Kong.

My mission and my functions are to protect the personal data privacy of individuals in this city of seven million people. It is an exciting but daunting task considering that I have only a handful of officers to deal with whatever incidents and complaints, big or small, simple or complex, which may come our way from one day to the next.

It soon occurred to me after I took office that the Privacy Commissioner's most fundamental and long term objective must be a thorough review of the Personal Data (Privacy) Ordinance which mandates his operations. Hong Kong may take pride in being the second economy outside of Europe to have a comprehensive set of privacy law, but after a decade of unprecedented global changes in information technology, she needs to consider a holistic law reform and not just piecemeal changes. It did not however seem right to me to wait for the attention of the Law Reform Commission which, as always, had a very full agenda. After all, I considered that my Office, which had gathered expertise and experience over the years, was uniquely suited to initiate such a law reform.

I proceeded to form an internal working group in June 2006. For a year and a half this group toiled away, in a critical examination of the entire Ordinance, aided by other members of my Office but unaided by any extra government resources allocation. By Christmas 2007 the Government received from me a detailed report containing more than fifty proposals to amend the Ordinance. A marathon of discussions then ensued involving my Office and the Government as well as various stakeholders. I was very happy that finally the Government was persuaded to support most of the proposals and consider corresponding legislative amendments.

To create an environment that nurtures personal data privacy I have to weave a healthy awareness of the need for personal data privacy into the fabric of our society with practical and innovative means. Back in 2006 my colleagues and I started to experiment with an idea of mounting industry-specific privacy awareness campaigns. We were fortunate in having the Hong Kong Hotels Association as our partner in organizing

酒店從業員舉辦活動，提高他們保障私隱的意識及知識。酒店業保障私隱活動獲得空前成功。在隨後的三年，我們得到地產代理監管局、醫院管理局及香港保險業聯會的鼎力支持，分別為地產代理、醫護人員及保險從業員舉辦同類活動。我的同事為這些活動特別設計「自學」教材，即使活動完結，這些教材仍可發揮其教育意義。

公署只得一位專責培訓／教育人員，負責籌辦私隱研討會及講座，因此其他同事都要提供協助。我也出席了許多演講場合。為了吸引公眾注意，我比以往發表更多根據私隱條例第48(2)條發表的調查報告。我很高興國際上的私隱評論員也有留意到這些改進。同時，我向公眾發表更多的個案簡述。行政上訴委員會在處理反對私隱專員的決定的上訴所作出的判決，以前是不公開的，現在我已計劃在公署網站全部公開。我亦會適時發出新聞稿，向公眾發表及解釋我就一些私隱議題的觀點和意見。例如在2008/9年度，我共發出42篇新聞稿。這都顯示我通過傳媒向市民大眾傳遞訊息的新作風。2006年8月，我作出大膽的嘗試，出版了《個人資料(私隱)條例中的保障資料原則——私隱專員的觀點》一書，開啟了一個新的書種，可以說是獨一無二的。修訂版將於2010年7月面世，除了印刷版外，市民並可在公署網站免費下載電子版。順帶一提，公署的網站榮獲國際「無障礙優異網站2009」銀獎，表揚公署推動無障礙網站及關懷社群的努力。

所有政府資助機構必須印製年報，報告其工作成績。我個人的理念是因為私隱專員不用對任何官員負責，所以應該對每個市民負責，而私隱專員的年報作為對市民的業績報告是尤其重要。因此，我們花了很多心思和努力製作我們的年報。我和同事的努力在過去三年都得到令人鼓舞的成果。在沒有增加支出的情況下——而再，再而三的奪得國際獎項，證明我們的年報的設計賞心悅目，能夠吸引人閱讀。相反來說，很多年報不受垂青而被束之高閣，實在可惜。

activities to enhance the awareness and knowledge of hoteliers who handle the personal data of millions of travelers and guests each year. The Hotel Privacy Campaign was a roaring success. In the years that followed we directed our efforts to doing the same for estate agents, medical practitioners and insurance operators. We had the strong support from the Estate Agents Authority, the Hospital Authority and the Hong Kong Federation of Insurers. My colleagues designed specific “self-learning” materials for these campaigns and these continue to educate long after the campaigns are over.

My Office has only one regular trainer/educator to conduct privacy seminars and talks on a full time basis. Other officers help out when they can. I also take on many speaking engagements. To help attract the public attention, I make sure that ever more of the investigation results be published under Section 48(2) of the Ordinance. I am glad that this fact has not escaped the notice of international privacy commentators. More case notes have likewise been made available to the public. Decisions of the Administrative Appeals Board on appeals against the Privacy Commissioner’s determinations had not previously been made public. I planned to publish them all on our website. Whenever appropriate I would issue media statements to publicise and explain my views and comments on privacy issues. In 2008/9 there were altogether 42 media statements. This reflects a brand new approach, attempting to reach out to the public through the media. In August 2006 I took the bold step of publishing the book “Data Protection Principles in the Personal Data (Privacy) Ordinance – from the Privacy Commissioner’s perspective”. It remains the only book of its kind in print. A second revised edition will become available in 2010 both in book and electronic forms. It shall be freely accessible on our website which incidentally won the international “Web Care Award 2009 – Silver Award” in recognition of its efforts in maintaining a barrier-free website and in caring for the community.

All publicly funded organizations are required to publish an annual report setting out the work they have performed. To me, the Privacy Commissioner’s Annual Report has a special significance because I reckon that while the Commissioner is not accountable to anyone, he must surely be accountable to everyone. It is for that reason that a great deal of thoughts and care are put into the preparation of our annual reports. The efforts of my colleagues and mine have produced encouraging results. Much to our delight, the last three annual reports have all won international awards without an enlarged budget. This I take as proof that the reports are attractive enough to be picked up and read. The very thought of many annual reports being put away without being looked at or read can be depressing.

我認真地實行「選擇性的有效處理」策略。我清楚知道，在回應私隱議題時，必須採取迅速及主動的措施，才能引起公眾關注。處理個人投訴當然是專員其中一項主要職責，但處理涉及整個社會的議題猶如進行成本低效率高的私隱教育。因此，我成立了審查部，調查嚴重的資料違規事故，向公眾的諮詢作出深入的回應。

在2007/8年度，鑑於多間公立醫院發生連串病人資料外洩事件，我決定首次行使條例賦予專員的視察權力，視察管理全港公立醫院及診所的醫院管理局的個人資料(病人)系統。這次視察結果很好，醫院管理局接納了專員視察報告裏全部37項建議。政府亦同意撥款讓公署每年進行最少一至二次視察。另外，我就爭議性的議題發表意見，證實有喚醒作用，提醒所有機構在展開任何涉及大量個人資料的新計劃之前，應適當考慮個人在法律下的私隱權利。從政府贊同我就校園驗毒試驗計劃給教育局局長的訊息，以及對擬推行的電腦健康記錄互通計劃所表達的私隱關注來看，政府似乎已完全認同我的看法。

在我撰寫這最後一篇「私隱專員的話」時，我很高興看到這個城市已經順利地跨越了一個重大的改革，人們確實比以前更關心及尊重自己及他人的資料私隱權利。

為了實現我的第二個理想，我一直積極參與國際及區域性的私隱保障活動，並與海外的資料保障機構合作，建立有意義的聯繫和有效的合作關係。我們的工作在國際間得到認同。加拿大卑斯省前資訊及私隱專員曾表示：「香港擁有一個積極進取、在推行私隱保障方面獲得國際尊崇的監管機構，實在是香港的福氣。」其他海外私隱保障機構的讚賞，可參閱公署2007/8年度的年報。我覺得建立聯繫的實質好處是可以與世界各地的私隱專員分享意見和經驗。

I take the maxim of "selective to be effective" quite seriously. I have been conscious of the importance of taking prompt and proactive measures to address privacy-related issues which have caught the attention of the general public. Dealing with individual complaints is of course one of the Commissioner's main functions, but dealing with issues that concern the entire community is like conducting a cost-effective lesson in privacy education. For this purpose, I set up the Compliance Division to investigate into serious data breaches as and when they occur and to respond to public enquiries and consultations in greater depth.

In the wake of the spate of data leakage incidents in 2007/8, I decided to exercise for the first time in history the Commissioner's statutory power of carrying out an inspection of the personal data (patients) system run by the Hospital Authority that manages all public hospitals and clinics in Hong Kong. It was so successful that the Hospital Authority accepted all 37 recommendations and the Government was persuaded to allocate new funding to allow at least one to two inspections to be carried out annually in the future. My interventions in controversial issues have served as a wake-up call that before embarking on any new project involving a substantial amount of personal data, the individuals' privacy rights under the law should be given proper consideration. I hope that the Government has been fully converted on this point as evidenced not only by its concurrence to my message to the Secretary for Education in the school drug test trial scheme but also the primary concern it has shown in the proposed e-health record sharing programme.

I am satisfied, as I write my final "Commissioner's Message", that a peaceful revolution has been underway and people care and respect more about privacy rights in this city.

In translating my other vision into reality, I have conscientiously taken an active role in international and regional privacy protection activities and worked with overseas data protection authorities. The ties that have been established have certainly brought Hong Kong international recognition in the sphere of personal data protection. To quote the then Information and Privacy Commissioner for British Columbia, "Hong Kong is fortunate to have an oversight agency that is active, innovative and highly respected internationally for its leadership in privacy enforcement." Other messages reflecting the special relationships that exist between Hong Kong and other notable privacy jurisdictions are found in our annual report for 2007-8. The ties also brought substantive benefit and that is the ability to share views and experience with privacy commissioners around the world.

在亞太區域層面，香港是亞太區私隱機構論壇的核心成員。我在任內主持了兩屆會議。這個論壇不斷成長，在亞太區內推廣私隱意識的熱誠亦不斷提高。我和同事亦定期出席亞太區經濟合作組織電子商貿督導小組成立的資料私隱分組的會議。正如該分組的主席所說，香港對該分組這些年來的工作成果作出了重大的貢獻。亞太區經濟合作組織各部長在2007年核准「資料私隱路向」計劃，並於2009年11月核准「跨境私隱合作安排」。有關安排將會於2010年7月16日在區內實施。

在國際層面，香港是「國際資料保障及私隱專員研討會議」的認可成員。這是全球最大型及最具影響力的私隱專員會議。目前，該研討會議設有兩個常務委員會，分別是資格審查委員會（由三名成員組成）及督導小組（由十二名成員組成）。該研討會議有80多名成員，而香港私隱專員在該研討會議分別獲選為兩個委員會的成員，足以反映我們在這國際活動的積極參與。

我期望在五年任期內實現這兩個理想，可能是野心太大。但在任滿離開時看見公署的工作比我初到任時有顯著改善，我已經有很大的滿足感。讓我的繼任人繼續肩負使命，實踐更遠大的抱負。可以這麼說，我的繼任人在條例修改後會有更佳的保障私隱的材料與工具，亦有一班經驗豐富、瞭解保障個人資料的重要性的員工。

在我鞠躬道別時，我衷心向所有同事致以萬分感謝，多謝他們對我的忠誠和支持。沒有他們的努力，我不可能達致工作上的成果。

吳斌

香港個人資料私隱專員

On a regional level, Hong Kong is a core member of the Asia Pacific Privacy Authorities Forum, and has during my tenure of office hosted two meetings. The Forum is growing and the enthusiasm to promote privacy awareness across the Asia-Pacific region is spreading. My colleagues and I have also regularly attended meetings of the Data Privacy Sub-group set up by the Electronic Commerce Steering Group within the Asia Pacific Economic Co-Operation. As remarked by the Chair, Hong Kong has made an important contribution to the success of the Sub-group's work which has borne fruit in recent years. The Ministers of APEC endorsed the Data Privacy Pathfinder in 2007 and the Cross-Border Privacy Cooperation Arrangement in November 2009. The Region will witness the implementation of the Arrangement on 16 July 2010.

On the international front, Hong Kong is an accredited member of the International Conference of Data Protection and Privacy Commissioners. It is the world's biggest and most influential gathering of privacy commissioners. Currently the Conference has two standing committees namely, the Credentials Committee (3 members) and the Steering Committee (12 members). Considering that there are altogether some eighty members, the fact that the Hong Kong Privacy Commissioner has been voted as a member of both Committees reflects our positive involvement within this international group.

I may have been overly ambitious in hoping to realize both visions within my tenure of five years, but I feel content to depart leaving the Office of the Privacy Commissioner for Personal Data in an improved state from when I found it. Let my successors continue with the mission and fulfill grander visions of their own. Suffice it to say, they can expect to work with a set of better legislative tools and an experienced team of dedicated officers who believe in the importance of personal data protection.

As I take my last bow, I wish to acknowledge my deep gratitude to my colleagues, one and all, for the steadfast loyalty and support they have given me without which I could not have achieved much.

Roderick B. Woo

Privacy Commissioner for Personal Data, Hong Kong