

# 提供投訴之門

PROVIDE A CHANNEL TO  
LODGE COMPLAINTS



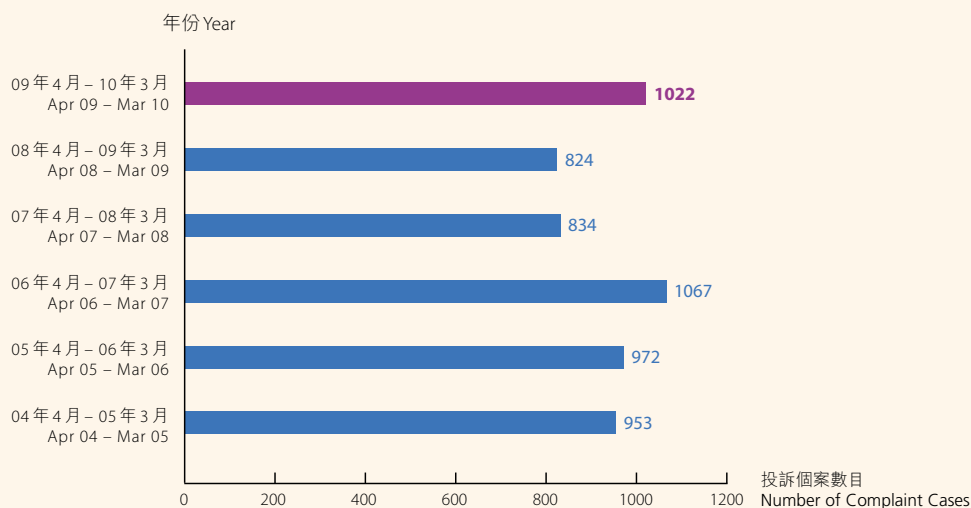


## 在二零零九至一零年度接獲的投訴個案 Complaints Received during 2009-2010

圖表 FIGURE

1

### 每年的投訴個案 Annual Complaint Caseload



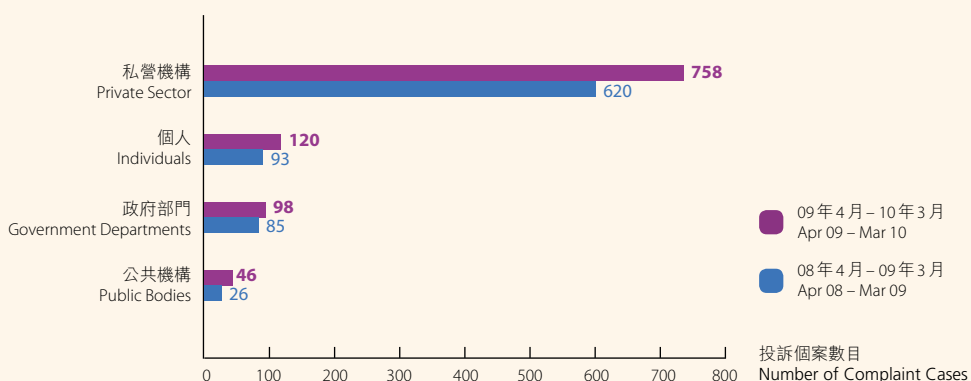
在二零零九至一零年度公署共接獲 1,022 宗投訴個案(較去年上升了 24%)。

A total of 1,022 complaint cases were received in 2009-2010 (an increase of 24% on the previous year).

圖表 FIGURE

2

### 被投訴者的類別 Types of Party Complained Against



- 758宗(74%)個案投訴私營機構。
- 144宗(14%)個案投訴公營機構(即政府部門及其他公共機構)。
- 120宗(12%)個案投訴個人。

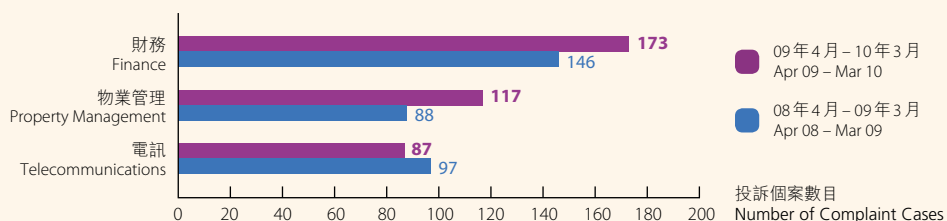
- 758 (74%) complaint cases were against private sector organizations.
- 144 (14%) complaint cases were against public sector organizations (i.e. government departments and other public bodies).
- 120 (12%) complaint cases were against individuals.

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。在投訴私營機構的個案中，較上年度大幅上升的是指稱資料使用者持有不準確個人資料及不必要地保留個人資料(100%)，以及過量或不公平收集個人資料(78%)的個案數目，惟較上年度下降的是與不符收集目的及未取得當事人同意而使用或披露個人資料(40%)的個案數目。

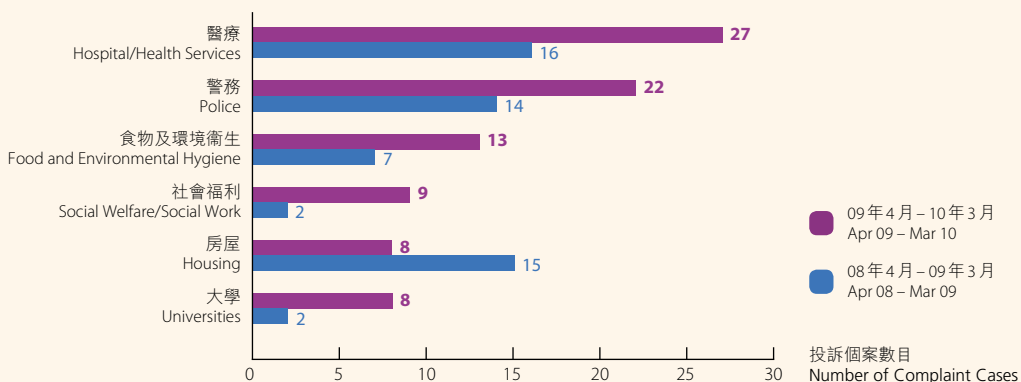
The majority of complaints against the telecommunications and financial sectors alleged the unlawful use or disclosure of customers' personal data. Among the complaints against private sector organizations, it is noted that there have been considerable increases in the numbers of allegations of inaccurate personal data held by the data users and unnecessary retention of personal data (100%) and excessive or unfair collection of personal data (78%) but a decrease in the number of allegations of use or disclosure of personal data beyond the scope of collection purpose and without the consent of the individual (40%) as compared with the previous year.

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或披露個人資料(35%)；
- 過量或不公平收集個人資料(30%)；
- 未能遵守查閱資料要求或改正資料要求(15%)；及
- 欠缺保障個人資料的保安措施(14%)。

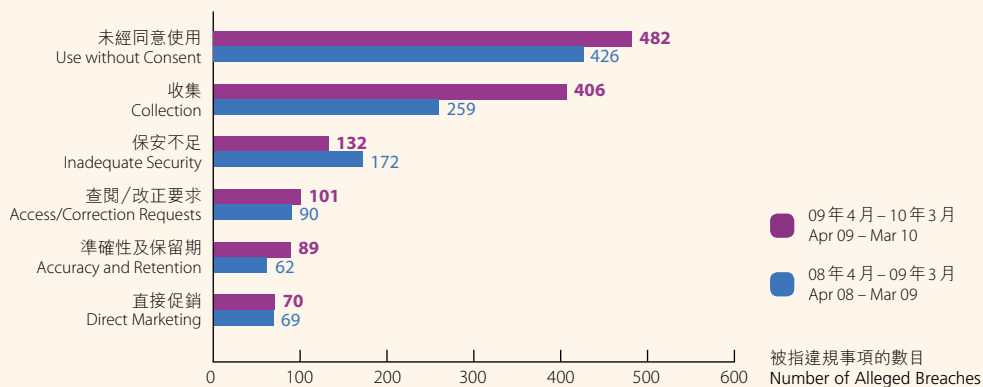
The majority of complaints against public sector organizations involved allegations of:

- use or disclosure of personal data beyond the scope of collection purpose and without the consent of the individual (35%);
- excessive or unfair collection of personal data (30%);
- non-compliance with data access or correction requests (15%); and
- lack of security measures to protect personal data (14%).

圖表 FIGURE

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## 投訴的性質 Nature of Complaints



二零零九至一零年度接獲的1,022宗投訴個案共涉及1,280項被指違反條例的規定。在這些事項中，1,109項(87%)被指違反保障資料原則的規定，以及171項(13%)被指違反條例的主體條文。

在1,109項被指違反保障資料原則的事項中，406項(37%)涉及過度或不公平收集投訴人的個人資料。在這類個案中，61項(15%)主要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。此外，條例並無條文規定資料使用者需向資料當事人披露他取得個人資料的來源。

The 1,022 complaint cases received in 2009-2010 involved a total of 1,280 alleged breaches of the requirements of the Ordinance. Of these, 1,109 (87%) were alleged breaches of the data protection principles and 171 (13%) were alleged contraventions of the provisions in the main body of the Ordinance.

Of the 1,109 alleged breaches of the data protection principles, 406 (37%) concerned the alleged excessive or unfair collection of personal data of complainants. In this category, 61 (15%) involved allegations, most of them are against financial institutions or telecommunications companies, of 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. Moreover, there is no provision in the Ordinance that requires a data user to disclose to the data subject the source from which the data user obtained the personal data.

## 調查投訴 Complaint Investigations

圖表 FIGURE

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二零零九至一零年度處理的投訴摘要  
Summary of Complaints Handled in 2009-2010

	2006-07	2007-08	2008-09	2009-10
上年轉來的投訴 Complaints carried forward	188	188	148	<b>173</b>
接獲的投訴 Complaints received	1067	834	834	<b>1022</b>
經處理的投訴的總數 Total complaints processed	1255	1022	972	<b>1195</b>
已完結的投訴 Complaints completed	1067	874	799	<b>955</b>
處理中的投訴 Complaints in process	188	148	173	<b>240</b>

在本年報期開始時，公署正處理上年度帶下來的173宗投訴，加上新收到的1,022宗投訴，私隱專員在本年報期內共須處理1,195宗投訴。在這些個案中，955宗(80%)在本年報期內已經完結，而餘下的240宗(20%)在二零一零年三月三十一日時仍在處理中(圖表6)。

At the beginning of the reporting year, 173 complaints were being processed. With the 1,022 new complaints received, the Privacy Commissioner handled a total of 1,195 complaints during the reporting period. Of these, 955 (80%) cases were completed during the reporting year while the balance of 240 (20%) cases were still being processed on 31 March 2010 (Figure 6).

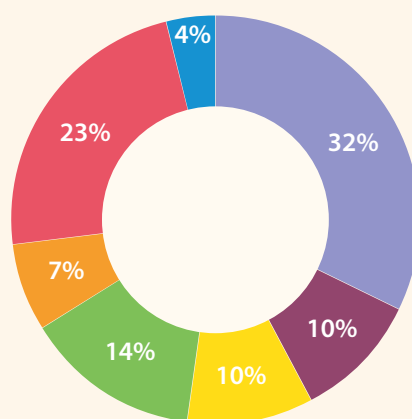
圖表 FIGURE

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## 投訴結果

## Outcome of Investigations

沒有表面證據 No <i>prima facie</i> case	32%
沒有管轄權 No jurisdiction	10%
證據不足 Unsubstantiated	10%
調解 Mediation	14%
撤回 Withdrawn	7%
沒回應/其他規管機構處理 No response/other authority	23%
正式調查 Formal investigation	4%



在本年報期內完結的955宗個案：

- 308宗(32%)沒有表面證據；
- 90宗(10%)不在條例的管轄範圍；
- 129宗(14%)透過調解得到解決；
- 40宗(4%)在進行正式調查後得到解決；
- 98宗(10%)在向被投訴者查詢後發現證據不足；
- 69宗(7%)在初步查詢期間由投訴人撤回；及
- 餘下的221宗(23%)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 955 cases completed during the reporting period:

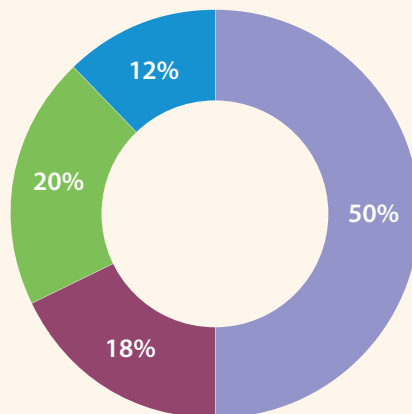
- 308 (32%) cases were found to have no *prima facie* case;
- 90 (10%) cases were outside the jurisdiction of the Ordinance;
- 129 (14%) cases were resolved through mediation;
- 40 (4%) cases were resolved after formal investigations;
- 98 (10%) cases were found to be unsubstantiated after enquiries with the parties being complained against;
- 69 (7%) cases were withdrawn by complainants during preliminary enquiries; and
- the remaining 221 (23%) cases involved mostly complaints where the complainants did not respond to the Privacy 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

違反保障資料原則的規定 Contravention (Data Protection Principles)	50%
違反條例主體條文的規定 Contravention (Provisions)	18%
無違例 No contravention	20%
中止調查 Discontinued	12%



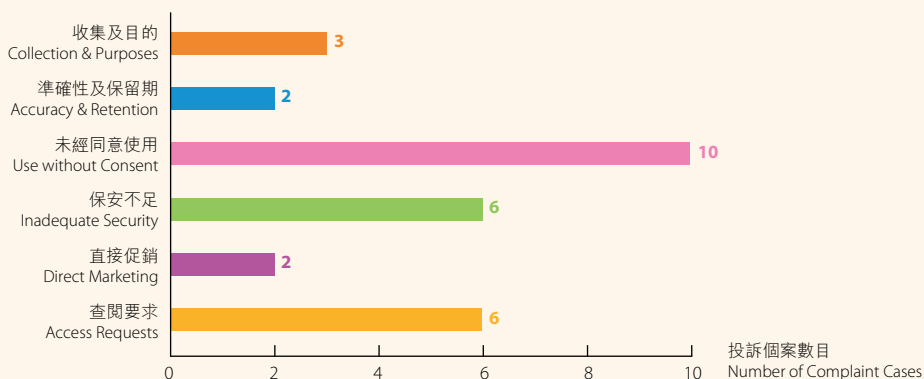
在本年報期內完成正式調查的40宗個案中，私隱專員發現其中27宗(68%)違反了條例的規定，8宗(20%)並無違例或因缺乏證據而無法證明有違例情況。餘下5宗(12%)則是因投訴人決定不再跟進有關事項而中止調查。

Of the 40 formal investigations completed during the reporting period, the Privacy Commissioner found contravention of the requirements of the Ordinance in 27 (68%) cases. In eight (20%) cases, either no contravention was found or contravention was not established due to insufficient evidence. The five (12%) 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27宗個案中，19宗違反一項或以上保障資料原則，其餘8宗違反了條例主體條文的規定，所涉及的違例事項與直接促銷及依從查閱資料要求有關(圖表9)。

Of the 27 cases where the requirements of the Ordinance were found to have been contravened, 19 cases involved contravention of one or more of the data protection principles. The remaining eight cases involved contravention of the requirements of the main body of the Ordinance relating to direct marketing and compliance with data access requests (Figure 9).

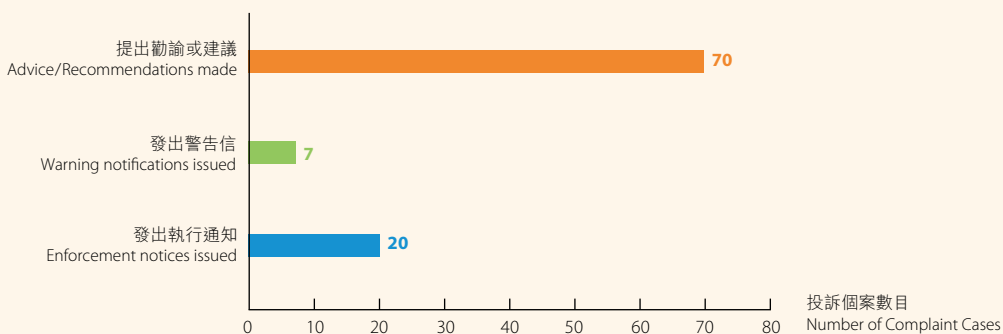


圖表 FIGURE

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## 根據調查結果採取的行動

## Actions Taken as a Result of Investigation



在 129 宗透過調解得到解決的個案中，私隱專員向 70 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 129 cases resolved through mediation, the Privacy Commissioner provided advice and/or recommendations to 70 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 27 宗個案中，私隱專員向被投訴的資料使用者發出 20 份執行通知，以防止它們繼續或重複違反規定。至於餘下的 7 宗個案，被投訴者已採取或書面承諾採取糾正措施，私隱專員因而無須作出強制性行動，發出執行通知，而只是向有關資料使用者發出警告信。

Of the 27 cases in which requirements of the Ordinance were found to have been contravened, the Privacy Commissioner issued enforcement notices on the parties complained against in 20 cases to prevent continuation or repetition of the contraventions. In the remaining seven 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

以下是本年報期內的一些個案，闡明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，實行改善保障個人資料私隱的措施。

The following cases in the reporting year illustrate how data users made prompt responses to complaints and implemented measures under the guidance of the Commissioner to improve personal data privacy protection.



**物業管理公司收集訪客的個人資料：不應為識辨目的而收集超乎適度的個人資料 — 保障資料第 1(1) 原則**

***Building management company collecting personal data from visitors: should not collect excessive personal data for identification purpose – Data Protection Principle (“DPP”) 1(1)***



### 投訴內容

投訴人為一家銀行的客戶，該銀行位於一幢商業大廈18樓。投訴人一次前往該銀行時，雖然已有一名銀行員工陪同，且該員工確認投訴人為該銀行之客戶，惟該大廈的物業管理人員仍要求記錄投訴人的香港身份證號碼及聯絡電話號碼，方許可投訴人進入該大廈。投訴人認為大廈管理公司向他收集上述個人資料超乎適度，遂向公署投訴。

大廈管理公司解釋，為了核實訪客的身份及向他們發放門禁卡，他們要求訪客提供附有相片的識辨文件及聯絡電話號碼。訪客需使用門禁卡操作升降機以進入所要前往的樓層。如訪客離開大廈後忘記交回門禁卡，大廈管理公司可透過訪客所提供的電話號碼，聯絡有關訪客以要求交回門禁卡，或如訪客已遺失該卡，則要求支付換卡費用。

### The Complaint

The Complainant was a customer of a bank located on the 18/F of a commercial building. On a visit to the bank, a property management staff of the building asked to record the Complainant's Hong Kong Identity Card number and his contact telephone number before allowing the Complainant to enter into the building despite a staff member of the bank had come to accompany the Complainant and confirmed that the Complainant was a customer of the bank. The Complainant considered the collection of the above personal data from him by the building management company excessive, thus lodged a complaint with the PCPD.

The building management company explained that it required visitors to provide their identification documents with photographs and contact telephone numbers for the purpose of verifying their identities and issuing electronic access cards to them. Visitors needed to use the access card to operate the elevator to gain access to the floor they intended to visit. In case a visitor forgot to return the access card when he/she left the building, the building management company could contact the visitor through the telephone number of the visitor asking for the return of the access card or payment for a replacement if the visitor had lost the access card.





### 結果

私隱專員認為，投訴人的身份已獲大廈的租客確認，而大廈管理公司可聯絡相關租客要求交回門禁卡或支付任何換卡費用。大廈管理公司應接納由他們所認識的其他人士識辨訪客的身份，作為較不侵犯私隱的辦法。

大廈管理公司採納私隱專員的建議，在有任何較不侵犯私隱的辦法時，停止收集訪客的識辨文件號碼。大廈管理公司進一步同意，如訪客由租客之員工陪同，他們將僅會收集訪客的名片及租客的聯絡號碼。

### Outcome

The Commissioner considered that the identity of the Complainant had been confirmed by the tenant of the building and the building management company could contact the tenant concerned for return of the access card or reimbursement of any replacement cost. The building management company should accept the identification of a visitor made by someone known to them as a less privacy intrusive alternative.

The building management company took the advice of the Privacy Commissioner and ceased the practice of collecting visitor's identification document number if any less privacy intrusive alternative was available. It further agreed that if a visitor was accompanied by a staff member of a tenant, it would only collect the name card of the visitor and the contact number of the tenant.





商戶向使用信用卡作分期付款的顧客收集個人資料：必須確保所收集的資料屬足夠但不超乎適度 – 保障資料第 1(1) 原則

*Shops collecting personal data from customers who made installments with credit cards: must ensure that the data collected are adequate but not excessive – DPP1(1)*



### 投訴內容

投訴人於一間電訊公司以信用卡分期付款方式購買手提電話時，應店員要求出示他的身分證作核實身分用途，隨後有關店員將他的身分證號碼抄寫在信用卡存根上。投訴人不滿該電訊公司收集他的身分證號碼，遂向私隱專員公署作出投訴。

該電訊公司解釋是根據私隱專員發出的《身分證號碼及其他身分代號實務守則》(下稱「實務守則」)第 2.3.3.3 段所准許的情況，即「為避免對資料使用者造成損害或損失，而該損害或損失在有關情況下是超過輕微程度的」，而收集投訴人的身分證號碼。該電訊公司續解釋，為了向銀行證明他們有核對使用信用卡的顧客的身分，以防止有關信用卡是被盜用，他們會在顧客使用信用卡購物超過港幣 1,000 元時，要求顧客出示身分證作核對並記錄其身分證號碼。

### The Complaint

When buying a mobile phone by credit card installments at a telecommunications company, the salesman required the Complainant to show his identity card for identity verification purpose. The relevant salesman then wrote down his identity card number on the credit card sales slip. The Complainant was dissatisfied with the collection of his identity card number by the telecommunications company, and lodged a complaint with the PCPD.

The telecommunications company explained that it collected the Complainant's identity card number according to the situation as permitted under paragraph 2.3.3.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (the "Code") issued by the Commissioner, i.e. "to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances". The telecommunications company further explained that to prove to the bank that it had verified the identity of the customer for avoidance of credit card embezzlement, it would require the customer to show his identity card for identity verification purpose and record the identity card number for any purchase amount over HK\$1,000 which was paid by credit card.



## “ 結果

該電訊公司未能提供任何證據證明他們曾因顧客盜用他人的信用卡而招致損失。該電訊公司並確認銀行沒有要求他們記錄以信用卡付款的顧客之身分證號碼。

雖然實務守則第2.3.2.2段准許資料使用者在為了防止或偵測罪行的目的而收集有關個人的身分證號碼，但私隱專員認為只可在有實際需要收集身分證號碼的真實情況下，才可引用實務守則第2.3.2.2段。案中該電訊公司從沒有遇到因顧客盜用他人的信用卡而招致損失的情況。有鑑於此，專員認為就核實顧客身分的目的而言，該電訊公司要求顧客出示身分證以核對其使用的信用卡上的姓名便已足夠。經公署的查詢及解釋後，該公司已停止收集使用信用卡的顧客的身分證號碼及刪除以往所收集得的該等顧客的身分證號碼資料。

## Outcome

The telecommunications company failed to provide any evidence to prove that it suffered losses arising out of customers' embezzlement of other people's credit card. It also confirmed that the bank did not require it to record the identity card number of customers who made payment by credit card.

Although paragraph 2.3.2.2 of the Code allows data users to collect identity card numbers of individuals concerned for the purpose of prevention or detection of crime, the Commissioner considers that the application of paragraph 2.3.2.2 of the Code can only be invoked when there is an actual need to collect identity card numbers. In this case, the telecommunications company had not suffered losses arising from customers' embezzlement of other people's credit cards. In view of this, the Commissioner considered that for identity verification purpose, it would be sufficient for the telecommunications company request the customer to show his identity card for verifying the name appeared on the credit card used by the customer. Upon enquiries and explanations made by the PCPD, the telecommunications company had ceased collecting the identity card numbers of customers using credit cards, and destroyed all the identity card numbers so collected.





教師於課堂上與學生談話：必須保障學生個人資料不受可能洩露予其他學生所影響 — 保障資料第4原則

*Teacher having conversation with student during lesson: must protect student's personal data from possible leakage to other students – DPP4*



### 投訴內容

投訴人的兒子就讀於一家中學。為獲得學費補助，投訴人告知校方她是綜合社會保障援助(下稱「綜援」)的受助人(下稱「該資料」)。投訴人稱，校方的一名老師在課堂上對投訴人的兒子說：「你母親領取綜援。如果你不上學，她就得不到援助金」。

校方解釋，事件源於投訴人的兒子上課時不守紀律。校方稱，該名老師無意向在班房內的其他學生披露該資料。這只是該名老師與投訴人的兒子的私人談話。

### The Complaint

The Complainant's son was studying at a secondary school. With a view to receiving school fee subsidy, the Complainant informed the school that she was a Comprehensive Social Security Assistance ("CSSA") recipient (the "Information"). The Complainant stated that a teacher of the school had spoken to the Complainant's son during a lesson that: "Your mother was receiving CSSA. If you don't go to school, your mother will not get the money".

The school explained that the incident was stemmed from the misbehaviour of the Complainant's son during the lesson. The school stated that the teacher did not intend to disclose the Information to other students in the classroom. It was only a private conversation between the teacher and the Complainant's son.



### 結果

私隱專員認為，事件是由該名老師與投訴人的兒子上課時的談話而引起，導致可能洩漏該資料予班房內的其他同學。經這次投訴後，校方已發出通告，提醒員工不得向第三者披露學生的個人資料。該名老師亦承諾適當處理學生的個人資料。

### Outcome

The Commissioner considered that the incident originated from the conversation between the teacher and the Complainant's son during the lesson, resulting in the possible leakage of the Information to other students in the classroom. As a result of the complaint, the school had issued a memorandum to remind its staff not to disclose students' personal data to third parties. The teacher also undertook to properly handle students' personal data.





業主立案法團向業戶匯報訴訟結果：不應公開張貼或披露載有個人資料的法院裁決判令 — 保障資料第3原則

*Incorporated Owners reporting litigation result to residents: should not publicly post or disclose court order containing personal data – DPP3*



### 投訴內容

投訴人因欠繳大廈維修費用而被業主立案法團入稟小額錢債審裁處索償。投訴人投訴該法團在案件審結後，將一份載有投訴人的姓名及判定款項的裁決判令張貼於大廈大堂。

該法團解釋他們是根據《建築物管理條例》(第344章)第26A條的規定，而張貼上述裁決判令。

### The Complaint

The Incorporated Owners of a residential building filed a claim against the Complainant for failure to pay building maintenance cost at the Small Claims Tribunal. The Complainant complained that the Incorporated Owners had posted an award containing his name and judgment sums in the building lobby.

The Incorporated Owners explained that it posted the above award in accordance with Section 26A of the Building Management Ordinance (Chapter 344).



### 結果

私隱專員認為該裁決判令並不屬於《建築物管理條例》第26A條訂明的「開展該法律程序的任何法院文件」，故該法團不能引用有關條例張貼載有投訴人的個人資料的裁決判令。該法團接納私隱專員的意見，並承諾日後在處理同類事件時，不會於大廈的公眾地方張貼及／或公開披露載有業戶個人資料的法院裁決判令。

### Outcome

The Commissioner was of the view that the above award did not fall within the scope of “any court documents commencing the proceedings” as specified under Section 26A of the Building Management Ordinance, thus the Incorporated Owners could not apply the relevant provisions to post the award containing the Complainant’s personal data. The Incorporated Owners accepted the advice of the Commissioner and undertook that it would not post and/or disclose court award containing residents’ personal data in the public areas of the building when handling similar cases in the future.





信貸資料機構收集信貸報告申請人的個人資料：不應為查核目的而收集超乎適度的個人資料 – 保障資料第 1(1) 原則

**Credit reference agency collecting personal data of credit report applicants: must not collect excessive personal data for verification purpose – DPP1(1)**



### 投訴內容

信貸提供者通知投訴人其信貸額申請已被拒絕。為核實一所信貸資料機構所持有的其信貸資料，投訴人要求該信貸資料機構以郵寄方式向他提供一份「免費信貸報告」。該信貸資料機構要求投訴人提供包括銀行出具的最近期信用卡結單(下稱「結單」)，以及投訴人開出的個人支票(下稱「支票」)用於支付郵費。投訴人投訴該信貸資料機構要求結單及支票屬收集超乎適度的個人資料。

該信貸資料機構解釋，收取信貸報告申請人的結單及支票旨在核實申請人的地址及身份，以保障其信貸資料不受未獲授權的披露所影響。

### The Complaint

The Complainant was informed by a credit provider that his credit line application was unsuccessful. For the purpose of verifying his credit data held by a credit reference agency (the “CRA”), the Complainant requested for a “Free of Charge Credit Report” from the CRA by mail. The CRA requested the Complainant to provide them with, among other things, a copy of his most recent credit card statement (the “statement”) issued by his banker; and a personal cheque (the “cheque”) in the Complainant’s name for settling the mailing charge. The Complainant complained against the CRA for collection of excessive personal data by requesting for the statement and the cheque.

The CRA explained that the purpose of obtaining the statements and the cheques from credit report applicants was to check their addresses and verify their identities in order to protect their credit data against unauthorized disclosure.



### 結果

私隱專員認為，該信貸資料機構在為查核目的而收集個人資料時應採納風險基準法，以代替在處理申請郵遞信貸報告時，無差別地收集所有申請人的結單及支票。該信貸資料機構已採納私隱專員的建議，停止收取結單及支票的做法，並刪除已收集得的有關資料。

### Outcome

The Commissioner considered that the CRA should adopt a *risk-base approach* in the collection of personal data for verification purpose, instead of collecting the statement and the cheque from all applicants indiscriminately, when handling applications for credit reports by mail. The CRA accepted the advice of the Commissioner and ceased the said practice of obtaining the statement and the cheque and deleted the data previously collected.





## 從投訴中學習 Lessons Learnt from Complaints

以下投訴個案能舉例說明本年報期內一些資料使用者被確定違反條例規定的各種作為或行為。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)管限的行為之多樣性。

The following complaint cases illustrate some data users' 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 matters and demonstrate the wide variety of conducts that are subject to the provisions of the Ordinance, including those of the Data Protection Principles ("DPPs").



**資料使用者接到「拒收直銷訊息」要求：須確保資料當事人的相關個人資料記錄於「拒收直銷訊息」名單內以依從該要求 — 第 34 條**

***Data user receiving opt-out request : must ensure that relevant personal data of the data subject are recorded in its opt-out list for complying with the request – section 34***



### 投訴內容

投訴人在某瑜伽會所(下稱「該會所」)的會員資格屆滿多年後決定再次修習瑜伽。她前往該會所並在一份表格內填寫其姓名及流動電話號碼等個人資料。該會所向投訴人提供一個免費體驗課程，此後，該會所多次致電投訴人提醒她就該免費體驗課程進行預約。投訴人其後決定不參加該免費體驗課程，並要求該會所不要再致電給她。

數月後，投訴人開始於其流動電話號碼收到該會所多個員工的推銷電話，向她提供免費體驗課程。投訴人向該會所發出兩封電子郵件，要求該會所刪除她的記錄及停止再致電給她。儘管投訴人已向該會所作出多次要求，惟促銷電話仍未停止。投訴人因此向公署作出投訴。

### The Complaint

The Complainant decided to pick up yoga again after her membership with a yoga club (the "Club") had expired for several years. She paid a visit to the Club and fill in her personal data, including her name and mobile telephone number in a form. The Club offered the Complainant with a free trial class and since then, the Complainant received telephone calls from the Club reminding her to make appointment for the free trial class. The Complainant later decided not to take the free trial class and requested the Club not to call her again.

Few months later, the Complainant started to receive marketing calls at her mobile telephone number from different staff members of the Club offering her free trial classes. The Complainant wrote two emails to the Club requesting them to remove her records and stop calling her again. Despite her repeated requests made to the Club, the marketing calls did not cease. The Complainant therefore lodged a complaint with the PCPD.

### 投訴內容 (續)

該會所確認，自收到投訴人上述電子郵件後，已更新其「拒收直銷訊息」名單，加入投訴人的英文名字及電郵地址。然而，該會所卻沒有採取任何步驟以識辨投訴人的全名及流動電話號碼，以便將該等資料一併加入該名單內。

### The Complaint (continued)

The Club confirmed that upon receipt of the said emails from the Complainant, it had updated its opt-out list by adding an entry of the Complainant's Christian name together with her email address. The Club however failed to take any steps to identify the Complainant's full name and mobile telephone number so that the information could be included in its opt-out list.



### 結果

私隱專員認為，投訴人已在其電郵中明確要求該會所「停止致電」。雖然電郵中並無提及電話號碼，任何合理的人應明白投訴人希望該會所停止使用其電話號碼作進一步促銷用途。當投訴人是就該等促銷電話向該會所提出投訴時，該會所在其「拒收直銷訊息」名單中記錄投訴人的電郵地址實在毫無意義。若該會所能花些時間透過電郵聯絡投訴人，以確認其身份及取得其全名及電話號碼作更新「拒收直銷訊息」名單之用，則投訴本可避免。

儘管投訴人已作出「拒收直銷訊息」要求，該會所仍不斷向投訴人發出促銷電話，該會所已違反條例第34(1)(ii)條的規定。私隱專員認為，雖然該會所就處理潛在客戶的「拒收直銷訊息」要求已採取若干措施，但該等措施顯然並不足夠。因此，公署向該會所發出執行通知，指示該會所改善他們在進行電話促銷及處理「拒收直銷訊息」要求方面的政策、指引及程序。

### Outcome

The Commissioner was of the view that the Complainant had clearly stated in her email that she requested the Club to “stop calling” her again. Although no telephone number was provided in the emails, any reasonable man would understand that the Complainant wished the Club to stop using her telephone number for further marketing approaches. It was meaningless for the Club to record the Complainant's email address in its opt-out list when her complaints were about the marketing telephone calls made to her. The complaint could have avoided if the Club had made the minimum effort to contact the Complainant via email to confirm her identity and obtain her full name and telephone number for the purpose of updating its opt-out list.

By making repeated marketing telephone calls to the Complainant despite her opt-out requests, the Club had contravened the requirement of section 34(1)(ii) of the Ordinance. The Commissioner considered that although the Club had taken some measures in relation to the handling of opt-out requests from prospective customers, those measures were clearly inadequate. Hence, an enforcement notice was served on the Club directing it to improve its policy, guidelines and procedures on conducting marketing call exercise and handling opt-out request.





財務機構記錄與客戶的電話對話：須提供載於有關電話錄音的客戶個人資料的複本，以依從客戶查閱相關電話錄音複本的要求 — 第 19 條

*Financial institution recording telephone calls with its customers : should comply with customer's data access request for a copy of the relevant telephone recordings by supplying a copy of the customer's personal data contained in such recordings – Section 19*



### 投訴內容

投訴人在一家銀行設有投資帳戶(下稱「該帳戶」)，並授權另一人士(下稱「X先生」)代她處理有關該帳戶的所有交易，包括作出指示。投訴人其後向該銀行提出查閱資料要求，索取有關兩宗交易的錄音複本(下稱「該等錄音」)。在回應該查閱資料要求時，該銀行聲稱該等錄音不屬條例下「個人資料」的範疇，並拒絕向投訴人提供有關複本。然而，該銀行提出可讓投訴人在銀行的辦公室內聆聽該等錄音。投訴人投訴該銀行沒有依從其查閱資料要求。

### The Complaint

The Complainant maintained an investment account (the "Account") with a bank and had authorized another person ("Mr.X") to handle all transactions, including giving instructions, in relation to the Account on her behalf. The Complainant later made a data access request (the "DAR") to the bank for copies of tape recordings regarding two transactions (the "Recordings"). In response to the DAR, the bank claimed that the Recordings did not come within the ambit of "personal data" under the Ordinance and refused to provide copy of the same to the Complainant. However, the bank offered to let the Complainant listen to the Recordings at its office. The Complainant complained that the bank had failed to comply with her DAR.



### 結果

該等錄音可分為三類：(a) X先生代表投訴人向該銀行發出有關該帳戶的指示；(b)該銀行的員工對上述指示作出的確認；及(c)該銀行的員工與X先生於作出上述指示前就相關投資產品的對答。私隱專員認為(a)及(b)類屬投訴人的個人資料，因為當中明顯涉及投訴人將會及已透過該銀行投資何種產品。(c)類未必涉及投訴人，除非該等資料構成上述指示的一部分或在上述指示中曾被提及。

### Outcome

The Recordings could be divided into three categories: (a) the instructions given by Mr. X to the bank on behalf of the Complainant in relation to the Account; (b) confirmation of the said instructions made by the bank staff; and (c) questions and answers between the bank staff and Mr. X relating to the relevant investment products conducted before Mr. X had given the said instructions. The Commissioner considered that categories (a) and (b) were the Complainant's personal data as it obviously related to the Complainant as to what she was going to invest and had invested through the bank. Category (c) did not necessarily relate to the Complainant unless the information formed part of or was referred to in the said instructions.

### 結果 (續)

條例第18(1)(b)條規定，依從查閱資料要求是向提出要求者提供一份所要求資料的複本。雖然該銀行已讓投訴人聆聽該等錄音，但這並非等同已按照條例第18(1)(b)條依從該查閱資料要求。私隱專員因此認為，該銀行並未於40日內依從該查閱資料要求，故違反條例第19(1)條的規定。

公署向該銀行發出執行通知，指示該銀行向投訴人提供載於該等錄音中有關投訴人的個人資料的複本。

### Outcome (continued)

Section 18(1)(b) of the Ordinance requires that compliance with a data access request is by supplying the requestor with a copy of the requested data. Although the bank had offered to allow the Complainant to listen to the Recordings, such offer did not amount to compliance with the DAR under section 18(1)(b) of the Ordinance. The Commissioner was therefore of the view that the bank had failed to comply with the DAR within 40 days, contrary to section 19(1) of the Ordinance.

An enforcement notice was served on the bank directing it to provide the Complainant with a copy of the Complainant's personal data contained in the Recordings.



**醫務所持有病人病歷檔案：須確保病人的個人資料不受未獲准許或意外的查閱所影響－保障資料第4原則**

***Clinic holding patients' medical records: must ensure the patients' personal data are protected against unauthorized or accidental access – DPP4***



### 投訴內容

投訴人到一間醫務所求診時，發現該醫務所遺失了他的病歷檔案。在事發後，該醫務所曾多次以不同方式進行搜索，但始終無法尋回該病歷檔案，亦無法確定最後接觸該病歷檔案的人是誰及推斷任何可能導致該病歷檔案遺失的原因。

### The Complaint

The Complainant visited a clinic and found that the clinic lost his medical record. Thereafter, the clinic had searched several times in different ways, but still could not locate the medical record nor confirm who was the last person that accessed the medical record. The clinic also failed to infer any reason that could result in the loss of the medical record.



## “ 結果

有關資料顯示該醫務所每日求診者眾，而職員亦會就應診以外的不同目的取用病歷檔案，因此病歷檔案每日在該醫務所內被頻繁使用。然而，公署的調查發現，在收到有關投訴前，該醫務所並沒有採取措施以監控病歷檔案的去向，故即使遺失了某一病歷檔案，亦不容易被察覺及追蹤。

私隱專員認為，該醫務所沒有採取合理可行的步驟，以確保病人的個人資料在妥善及安全的情況下存取，因而違反了條例保障資料第4原則的規定。

公署在向該醫務所解釋保障資料第4原則的規定後，該醫務所積極採取針對性的補救措施，特別是在每天辦公時間後派員檢查當日曾經取出的病歷檔案是否已放回原處，以及其職員在非應診的情況下取出病歷檔案，須在指定的記錄冊中登記有關詳情，以監察病歷檔案的去向及確保病歷檔案盡快放回原處，因此專員決定不向該醫務所發出執行通知，但發信予以警告。

## Outcome

Relevant information indicated that there were many patients in the clinic every day and the clinic staff might access the medical records for purposes other than diagnosis. As such, the medical records were frequently used in the clinic every day. However, investigation conducted by the PCPD revealed that the clinic had not taken measures to monitor the movement of the medical records before receiving the complaint. Therefore, even if a medical record was lost, it could not be noticed or traced easily.

The Commissioner opined that by failing to take reasonable and practical steps to ensure that the patients' personal data are stored and accessed properly and safely, the clinic had contravened DPP4 of the Ordinance.

After the PCPD had explained the requirement of DPP4 to the clinic, the clinic actively took corresponding remedial measures, in particular, to designate a person after working hours each day to check whether the medical records being accessed on that day have been returned to its original place and its staff must record relevant information in the specified register log book in case of accessing the medical records for purposes other than diagnosis, so as to monitor the movement of the medical records and ensure the timely return of these records to their original place. Therefore, the Commissioner decided not to issue an enforcement notice, but a warning letter to the clinic instead.





地產代理從事物業租賃中介服務：須確保向租客所收集的個人資料屬足夠但不超乎適度－保障資料第 1(1) 原則

*Estate agent engaging in property rental agency services: must ensure that the personal data collected from tenants are adequate but not excessive – DPP1(1)*



### 投訴內容

投訴人透過一間地產代理公司洽租一個住宅單位。投訴人在簽訂臨時租約時，該地產代理公司的一名營業員要求投訴人出示其身分證作核對身分及填寫租約之用，隨後並影印其身分證。投訴人不滿該營業員收集她的身分證副本作記錄。

該營業員向公署解釋，投訴人在簽訂租約時曾要求他代辦有關物業的食水及電力供應事宜(下稱「該些手續」)，故此他在投訴人同意及已告知相關收集資料目的之情況下才影印投訴人的身分證。但投訴人堅稱該營業員是在完成影印其身分證後，才詢問她是否需要該地產代理公司代辦該些手續。此外，該地產代理公司表示，他們一直將投訴人的身分證副本存檔，直至私隱專員作出查詢後才將之銷毀。而他們亦未能引用個人資料私隱專員發出的《身分證號碼及其他身分代號實務守則》(下稱「實務守則」)中的相關條文以支持上述收集身分證副本的作為。

### The Complaint

The Complainant negotiated for leasing a residential premises via an estate agency. When the Complainant signed the provisional tenancy agreement, a sales agent of the estate agency asked the Complainant to show her identity card for the purposes of identity verification and completion of the tenancy agreement, and then made a copy of the same. The Complainant was dissatisfied with the agent's collection of her identity card copy for record.

The agent explained to the PCPD that the Complainant asked him to perform the formalities ("the formalities") for the water and power supply of the premises concerned on her behalf when she signed the tenancy agreement. Therefore, he only copied the Complainant's identity card upon having her consent and informed her of the relevant data collection purpose. However, the Complainant insisted that the agent asked her whether she needed the estate agency to perform the formalities on her behalf after he had copied her identity card. In addition, the estate agency stated that the Complainant's identity card copy had all along been filed for record by it and such data was not destroyed until the PCPD made enquiries. Moreover, the estate agency failed to apply the relevant provisions of the Code of Practice on the Identity Card Number and other Personal Identifiers (the "Code") issued by the Commissioner to support the above act of collecting identity card copy.



## “ 結果

根據調查所得的資料，私隱專員認為該營業員當初收集投訴人的身分證副本的目的是作為該地產代理公司處理有關物業的租賃合約的紀錄。就填寫該租賃合約而言，該營業員理應已即場對照投訴人身分證上的相片以核實其身分，並將所需的身分證資料抄寫在該租賃合約內，除非符合實務守則的有關規定，該地產代理公司不應再進一步收集投訴人的身分證副本。鑑於實務守則第3.2段並無容許資料使用者可基於記錄存檔的目的而收集個人身分證副本的規定，因此，該營業員在實務守則第3.2段容許以外的情況下收集投訴人的身分證副本的做法，已違反了保障資料第1(1)原則的有關規定。而根據條例第65(1)條的規定，該地產代理公司需為其營業員的有關作為負責。

私隱專員向該地產代理公司發出執行通知，要求它終止就記錄存檔的目的向租客收集身分證副本的做法，並銷毀所收集得的身分證副本。

## Outcome

Having regard to the information available, the Commissioner was of the view that the purpose of collection of the Complainant's identity card copy by the agent was for the estate agency to keep record in relation to its handling of the tenancy agreement in question. For the purpose of completion of the tenancy agreement, the agent should have inspected the photo on the Complainant's identity card on site to verify her identity and transcribed the necessary data in the identity card onto the tenancy agreement. Unless otherwise in compliance with the relevant requirement of the Code, the estate agency should not further collect the Complainant's identity card copy. As there is no provision under paragraph 3.2 of the Code permitting a data user to collect identity card copy of individual for record purpose, the agent's collection of the Complainant's identity card copy was beyond the situations specified in paragraph 3.2 of the Code and contravened the relevant requirement of DPP1(1). According to section 65(1) of the Ordinance, the estate agency is liable for the act done by its agent in the incident.

An enforcement notice was served on the estate agency directing it to stop collecting tenants' identity card copies for record purpose and to destroy all the identity card copies so collected.





推銷公司使用個人資料為某公司進行電話促銷：必須確保收集資料的原有目的包括促銷該公司的服務 – 保障資料第3原則

*Marketing Company using personal data to make marketing calls for a company: must ensure the original purpose of collection of such data included the promotion of services of that company – DPP3*



### 投訴內容

投訴人曾為某酒店(下稱「X酒店」)的會員。投訴人接到一名電話推銷員的電話，聲稱曾代表X酒店為投訴人提供服務。該電話推銷員對投訴人表示，他現為另一酒店(下稱「Y酒店」)工作，並向投訴人推銷Y酒店的服務。投訴人懷疑該電話推銷員可能自X酒店竊取其個人資料，因此向X酒店及Y酒店作出投訴。投訴人其後收到由Y酒店所聘用的一間推銷公司(下稱「A公司」)的一封電子郵件，就其電話推銷員向投訴人進行電話推銷作出道歉。投訴人於是就事件向公署投訴，A公司因此受到調查。

### The Complaint

The Complainant was previously a member of a hotel ("Hotel X"). The Complainant received a call from a telemarketer claiming that he had served the Complainant before on behalf of Hotel X. The telemarketer told the Complainant that he was now working for another hotel ("Hotel Y") and promoted the services of Hotel Y to the Complainant. The Complainant suspected that the telemarketer might have stolen his personal data from Hotel X, hence he complained to Hotel X and Y. The Complainant then received an email from a company ("Company A"), a marketing company engaged by Hotel Y, apologizing for the marketing call made to the Complainant by its telemarketer. The Complainant lodged a complaint to the PCPD about the incident and an investigation was carried out against Company A.





## “ 結果

調查顯示該電話推銷員在受僱於X酒店聘用的另一推銷公司(下稱「B公司」)時自B公司收集得投訴人的姓名及流動電話號碼。該電話推銷員其後為A公司工作，並認為投訴人可能會對Y酒店的服務感興趣，遂向投訴人作出上述促銷電話。該電話推銷員亦確認，A公司為推銷Y酒店服務而向他提供的聯絡名單上並無投訴人的資料。

B公司最初為推銷X酒店的服務之目的，而收集得投訴人的姓名及流動電話號碼。在未有投訴人的訂明同意的情況下，使用投訴人的個人資料以推銷Y酒店的服務，該電話推銷員已違反條例保障資料第3原則的規定。根據條例第65(1)條，A公司須對事件中該電話推銷員的行為負責。

雖然聯絡名單是由A公司提供予其僱員為Y酒店作電話促銷之用，但A公司同時允許其僱員使用從自己的渠道收集得的個人資料聯絡潛在客戶。案中並無證據顯示A公司曾採取任何步驟核實其僱員在使用該等個人資料推銷Y酒店的服務前，是否已獲得資料當事人的訂明同意。因此，公署向A公司發出執行通知，指示該公司採取執行通知所指明的步驟，以糾正違例事項及導致違例的事宜。

## Outcome

The investigation revealed that the telemarketer had collected the Complainant's name and mobile telephone number from another marketing company ("Company B") engaged by Hotel X while he was under Company B's employment. The telemarketer later worked for Company A and thought that the Complainant might be interested in the services of Hotel Y, thus he made the said marketing call to the Complainant. The telemarketer also confirmed that the Complainant was not on the contact list which was provided to him by Company A for marketing the services of Hotel Y.

Company B originally collected the Complainant's name and mobile telephone number for the purpose of promoting the services of Hotel X. By using the Complainant's personal data to promote the services of Hotel Y without the Complainant's prescribed consent, the telemarketer had contravened the requirements of DPP3 of the Ordinance. In accordance with section 65(1) of the Ordinance, Company A is liable for the act of the telemarketer in the incident.

Although contact lists were provided by Company A to their employees for making marketing calls for Hotel Y, Company A also allowed its employees to contact prospective customers by using personal data they collected from their own sources. There was no evidence indicating that Company A had taken any steps to verify whether its employees had obtained prescribed consent of the data subjects before using such personal data for marketing the services of Hotel Y. As a result, an enforcement notice was served on Company A directing it to take steps as specified therein to remedy the contravention and matters occasioning it.



## 根據《個人資料(私隱)條例》第48(2)條發表的報告 Reports 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。

在本年報期內，私隱專員發表了五份報告，分別關於(i)傢俬公司收集僱員的指紋資料作考勤用途；(ii)補習社刊登學生考試成績通知書作宣傳用途；(iii)食品公司在抽獎活動中收集參加者的個人資料；(iv)收數公司在追收欠款過程中披露欠款人的家庭成員的個人資料；及(v)銀行就依從查閱資料要求而徵收劃一費用。

Under section 48(2) of the Ordinance, the Commissioner may, after completing an investigation and if he opines that it is in the public interest to do so, publish a report ("Report") setting out the investigation results and any recommendations or comments arising from the investigation that he sees fit.

During the reporting year, the Commissioner published five Reports regarding (i) collection of employees' fingerprint data for attendance purpose by a furniture company; (ii) publication of student's examination results notice for promotion by a tutorial centre; (iii) collection of participants' personal data in lucky draw activity by a food company; (iv) disclosure of personal data of debtor's family members by a debt collection agency during debt recovery; and (v) imposition of a flat fee by a bank for complying with a data access request respectively.

### 傢俬公司收集僱員的指紋資料作 考勤用途

2009年7月13日，私隱專員發表一份報告，公布私隱專員就一間傢俬公司(下稱「該公司」)收集僱員的指紋資料作考勤用途所作出的調查結果。

#### 背景

投訴人是該公司的僱員。在投訴人上班的首天，該公司收集及記錄了他的指紋資料。投訴人在接受聘用時，該公司沒有告知他須收集及記錄他的指紋資料。投訴人認為指紋資料是十分敏感的個人資料，他對該公司的有關做法感到十分詫異。投訴人因此向私隱專員作出投訴。

#### 調查

雖然該公司採用的指紋識辨系統(下稱「該系統」)不是收集整個指紋影像，但是該系統所收集的指紋資料仍可確定僱員的身分。私隱專員認為此等資料符合條例下的「個人資料」的定義。

### Collection of employees' fingerprint data for attendance purpose by a Furniture Company

On 13 July 2009, the Commissioner published a Report in respect of an investigation into the practice of collecting employees' fingerprint data by a furniture company ("the company") for the purpose of recording attendances.

#### Background

The Complainant was an employee of the company. On the first day the Complainant reported duty, the company collected and recorded his fingerprint data. The company had not informed the Complainant that it would need to collect and record his fingerprint data when he accepted the employment offer. The Complainant was of the view that fingerprint data were sensitive personal data and he was astonished by such collection. Therefore, the Complainant lodged a complaint with the PCPD.

#### The Investigation

Although the fingerprint system (the "System") adopted by the company did not collect the whole image of a fingerprint, the identity of the employee could still be identified from the fingerprint data collected by the System. The Commissioner was of the view that such data satisfied the definition of "personal data" under the Ordinance.

在考慮收集指紋資料是否超乎適度時，資料使用者須衡量如此收集所帶來的益處，及對個人資料私隱的不利影響。如有其他私隱侵犯程度較低的方案，資料使用者應該考慮使用，以杜絕或減少對個人資料私隱的不利影響。安裝該系統的唯一目的是用作僱員的考勤記錄，而該公司的辦公室／店舖並不是一些高度設防的地方。該公司收集了超過400名僱員的指紋資料，所形成的龐大資料庫無可避免會帶來更高的私隱風險。該公司沒有採取合適的保安措施，防止僱員的指紋資料被意外查閱及濫用。該公司沒有告知僱員該系統如何運作及他們的指紋資料會被如何處理。

除了指紋外，該系統可選擇以密碼作身分識辨。由於該公司已裝有監控鏡頭監察僱員記錄出勤的情況，即使讓僱員選擇使用密碼或打咭系統，也可防範有僱員代替他人打咭的情況。

### 私隱專員的調查結果

私隱專員在仔細考慮上述因素後，認為對個人資料私隱的不利影響大於使用該系統據稱會帶來的益處。該公司收集僱員指紋資料並非必須，屬超乎適度，違反了保障資料第1(1)原則。

私隱專員亦考慮在個案的情況下，僱員是否真正同意該公司收集他們的指紋資料。該公司表示，僱員並無反對該公司使用該系統。關於真正的知情同意，該公司必須向僱員提供資訊，讓他們清楚了解收集其指紋資料對其個人可能的影響包括不利的影響，亦應向他們提供其他私隱侵犯程度較低的方案。由於僱主及僱員雙方本身存有談判力不均的情況，除非該公司有提供收集指紋資料以外的其他考勤方法給僱員選擇，否則有關的同意未必是真正自願及自由地作出的。在考慮到該公司在僱員守則中列明，如僱員不合

When considering whether the collection of fingerprint data is excessive, data users should balance the benefits brought by such collection against the adverse impact on personal data privacy. If there are other less privacy intrusive options, data users should consider using them so as to eliminate or mitigate the adverse impact on personal data privacy. It was noted that the sole purpose of installing the System was to record staff attendance and the company's offices/shops were not high-security places. More than 400 employees' fingerprint data were collected, the huge database so formed would inevitably bring higher privacy risk. The company had not taken appropriate security measures to guard against accidental access and abuse of employees' fingerprint data. Employees were not given information on how the System works and how their fingerprint data would be handled.

The System offered the alternative of using passwords instead of fingerprint for identification. As surveillance cameras were installed to monitor the employees' registration of attendance, even if the company allows its staff to choose the use of passwords or time clock system, it could still prevent the practice of recording attendance for one another among its employees.

### The Commissioner's Findings

Having carefully considered the above factors, the Commissioner was of the view that the adverse impact on personal data privacy exceeds the benefits which were allegedly brought by the System. The collection of employees' fingerprint data by the company was unnecessary and excessive, and the company had contravened DPP1(1).

The Commissioner had also considered whether the employees had truly consented to have their fingerprint data collected in the circumstances of the case. The company stated that there was no objection from the employees for using the System. For a true informed consent, information must be provided to the employees to let them clearly understand the possible impact of collection of their fingerprint data, including any adverse impact, and other less privacy intrusive options should also be provided. As there was disparity in bargaining powers between the employer and the employees, unless the company had offered other options of recording attendance apart from taking fingerprint data, the consent might not be given voluntarily and freely. Taking into consideration that the company had specified, in its code of

作使用該系統作考勤，會遭到即時解僱，私隱專員認為僱員是在受到不恰當的壓力及威迫下而不敢反對使用該系統。在進一步考慮到該公司沒有提供該系統如何運作的資訊，私隱專員認為該公司收集僱員指紋資料的手法屬不公平，違反了保障資料第1(2)原則的規定。

私隱專員向該公司送達執行通知，指令他們立即停止收集僱員指紋資料作考勤記錄的做法。

### 調查引致的建議

私隱專員建議僱主在決定收集僱員的指紋資料之前，進行嚴謹的評估，以決定收集這些個人資料是否符合條例的規定。僱主應小心評估收集僱員指紋資料就達成收集目的來說，是否弊多於利。私隱風險須與收集目的相稱。尤其當收集指紋資料的目的只是為了考勤，對私隱所造成的風險輕易超越收集目的所帶來的益處。審慎的行事方式是，僱主應該小心考慮是否有其他私隱侵犯程度較低的方案，以達致同樣的收集目的。

收集僱員的指紋資料的廣泛程度及範圍，應該在切實可行的情況下加以限制，並制定足夠的保安措施，保障收集的資料免受不當的使用、非法或未獲准許的查閱、處理或刪除等。有關評估過程最好記錄存檔，並諮詢僱員對私隱的合理期望。如僱員真正同意僱主收集其指紋資料用於述明的目的，私隱專員是尊重其自主決定的權利。不過，私隱專員強調僱員必須是自由及自願地作出有關同意。在此方面，僱主必須小心考慮僱主及僱員本身存在談判能力不均的特殊關係，避免向僱員施予任何不恰當的壓力或影響。最重要的是僱主必須向僱員提供除收集指紋外，其他較不侵犯私隱的方法予僱員自由選擇。

practice to the employees that those who did not cooperate in using the System for recording attendance might be dismissed immediately, the Commissioner was of the view that the employees were under undue pressure and threat and dare not object to the use of the System. Having further considered that the company had failed to provide information about how the System works, the Commissioner found that the means of collection of the employees' fingerprint data was unfair and the company had contravened the requirements under DPP1(2).

An enforcement notice was served on the company directing it to cease the practice of collecting employees' fingerprint data for the purpose of recording attendance.

### Recommendations Arising from the Investigation

Before deciding to collect employee's fingerprint data, employers are advised to carry out serious and cautious assessment to determine whether the collection of such personal data is in compliance with the requirements of the Ordinance. Employers should carefully assess whether the advantages of collecting employee's fingerprint data outweighed by the attendant disadvantages. Privacy risk must be proportionate to the purpose of collection. When fingerprint data are collected merely for attendance recording purpose, the privacy risk caused will likely exceed the benefits brought under the purpose of collection. To act prudently, employers should consider if there are any other less privacy intrusive options for fulfilling the same purpose of collection.

The scope and extensiveness of the collection of employee's fingerprint data should be restricted as far as practicable, and adequate security measures should be put in place to protect the data collected against improper use, unlawful or unauthorized access, processing or erasure, etc. It is better to keep records of the relevant assessment process and to consult employees about their reasonable expectation towards privacy. If employees genuinely consent to the use of their fingerprint data by their employers for stated purpose(s), the Commissioner respect their right of self-determination. However, the Commissioner would like to stress that the relevant consent must be given freely and voluntarily. In this connection, employers have to consider carefully the disparity in bargaining powers between employers and employees, and avoid exerting undue pressure or influence on employees. The most important thing is that employer must provide the employees with other less privacy intrusive options in addition to the collection of their fingerprints for employees to choose freely.

私隱專員已發出一份《個人資料私隱：收集指紋資料指引》，為需要收集指紋資料的資料使用者提供須注意的要點。該指引內說明條例的相關規定，為資料使用者在考慮應否收集指紋資料時，提供有用的參考。該指引可於公署網頁(www.pcpd.org.hk)下載。

The Commissioner has issued a guidance note, "Personal Data Privacy: Guidance on Collection of Fingerprint Data", to highlight the salient points for data users who need to collect fingerprints data. The guidance note, which specifies relevant requirements of the Ordinance, provides a useful reference for data users in considering whether to collect fingerprints data. The guidance note is available for download from the website of the PCPD (www.pcpd.org.hk).

### 補習社刊登學生考試成績通知書作宣傳用途

### Publication of a student's examination results notice for promotion by a Tutorial Centre

2009年8月3日，私隱專員發表一份報告，公布私隱專員就一間補習社在未取得資料當事人的同意前，擅自於雜誌刊登其香港中學會考成績通知書所作出的調查結果。

On 3 August 2009, the Commissioner published a Report in respect of an investigation against a tutorial centre for publishing a student's Hong Kong Certificate of Education Examination ("HKCEE") Results Notice in a magazine without the data subject's consent.

#### 背景

投訴人就讀一間補習社的一個英文會考課程，其後在香港中學會考英文科考獲5\*成績。

#### Background

The Complainant took a HKCEE English course at a tutorial centre and subsequently obtained grade Level 5[\*] result in the subject of English Language in HKCEE.

投訴人在得知成績後，收到該補習社職員來電查詢她的會考英文科的成績，並告知她可向該補習社領取二千元的獎金。投訴人前往該補習社辦公室辦理領取獎金的手續及接受雜誌訪問。此外，投訴人亦應要求提供其香港中學會考成績通知書(下稱「該通知書」)作核對之用。

Upon receiving the result, the Complainant received a telephone call from a staff member of the tutorial centre enquiring about her result in the English Language and was informed that she could receive an award of \$2,000 from the tutorial centre. The Complainant went to the office of the tutorial centre to go through the formalities for receiving the award and attend a magazine interview. Moreover, the Complainant presented her HKCEE Results Notice (the "Notice") to the tutorial centre for verification at its request.

投訴人其後發現該補習社在某雜誌(下稱「該雜誌」)中刊登了一份載有該通知書副本及她與該補習社某導師的合照。廣告上的該通知書副本清楚顯示投訴人的姓名、學校名稱、會考各科成績等資料。投訴人投訴該補習社在未取得她的同意前，擅自將該通知書副本用作廣告用途。

The Complainant later discovered that the tutorial centre had placed an advertisement in a magazine (the "Magazine") displaying a copy of the Notice, a photo of hers and a tutor of the tutorial centre. The Notice in the advertisement clearly showed the Complainant's name, school name, HKCEE results of different subjects, etc. The Complainant complained that the tutorial centre had used the copy of the Notice for promotional purpose without her prior consent.

## 調查

就該補習社有否違反條例的保障資料第3原則，私隱專員須考慮的是該補習社將該通知書內有關投訴人的個人資料刊登於該雜誌中作廣告宣傳用途，是否與其當初收集該些資料的目的直接或有關。若否的話，私隱專員便須進一步考慮該補習社事前有否獲得投訴人的訂明同意。

## 私隱專員的調查結果

該補習社曾在向投訴人收集該通知書時，告知她收集該通知書的目的是作核實其身分及會考英文科的成績，以發放獎金。該補習社指收集的目的亦包括在遇到傳媒查詢時，使用該通知書的副本作為證明。私隱專員認為收集該通知書以核實投訴人的身分還可以接受，因為是與領取該獎金有關，但私隱專員不接納有關向傳媒作為證明的說法，這明顯地不會在投訴人作為有關的資料當事人的合理期望之內。

從有關情況來看，私隱專員認為該補習社是為了核實投訴人的身分及成績以發放獎金的目的是而收集該通知書之資料。案中並無任何資料顯示該補習社當時是為了其他目的而收集該些資料。明顯地，該補習社是為了宣傳其課程及服務的目的，而在廣告中刊登該通知書副本。有關用途與該補習社當初收集該些資料的目的並不一致，亦非直接有關。

關於該補習社有否根據保障資料第3原則的規定，事先得到投訴人的訂明同意，根據條例第2(3)條，訂明同意是指自願給予的明示同意。私隱專員不接納該補習社辯稱投訴人接受獎金及訪問就等同同意該補習社使用該通知書副本於廣告宣傳上。事實上，該補習社亦承認並沒有將刊登該通知書副本一事通知投訴人。

## The Investigation

To ascertain whether the tutorial centre had contravened DPP3 of the Ordinance, the Commissioner had to consider whether the publication of the Complainant's personal data in the Magazine for advertisement and promotional purposes was consistent with the original collection purposes of the data or a directly related purpose. If not, the Commissioner had to further consider whether the tutorial centre had obtained the prescribed consent of the Complainant beforehand.

## The Commissioner's Findings

The tutorial centre informed the Complainant that the Notice was collected for the purpose of verifying her identity and her English Language subject examination result for releasing the award to her. The tutorial centre stated that the collection purposes also covered the use of the copy of the Notice as evidence in answering media enquiries. The Commissioner found that while the use of the Notice for verifying the Complainant's identity for releasing the award was acceptable because it related to the receipt of the award, he did not accept that the Notice was collected for using the same as evidence for the media because it was apparently not within the reasonable expectation of the Complainant as the data subject.

Judging from the circumstances, the Commissioner was of the view that the tutorial centre's collection of the Complainant's personal data contained in the Notice was for the purpose of verifying the Complainant's identity and her examination result in order to release the award to the Complainant. There was no information showing that the tutorial centre collected the data at the material time for other purpose. It was obvious that the tutorial centre published the copy of the Notice for the purpose of promoting its courses and services and such use of the Complainant's personal data was not consistent with or directly related to the original collection purpose.

As to whether the tutorial centre had obtained the Complainant's prior prescribed consent in accordance with DPP3, according to section 2(3) of the Ordinance, prescribed consent is the express consent given voluntarily by the data subject. The Commissioner did not accept the argument of the tutorial centre that the Complainant's acts of receiving the award and attending the interview could be taken as her consent to the use of the Notice for the advertisement or promotion of the tutorial centre. The tutorial centre had indeed admitted that it had not informed the Complainant about the publication of the copy of the Notice.

在考慮過所獲得的資料及個案的整體情況後，私隱專員認為該補習社違反了保障資料第3原則的規定，向該補習社送達執行通知。

該補習社在收到執行通知後以書面確定會在其櫃台張貼通告，提醒員工及通知學生該補習社不會刊登載有學生個人資料的考試成績通知書作宣傳用途，除非收集該些資料的目的包括此用途，或事先已獲得有關學生的訂明同意作此用途。

### 調查引致的建議

有些補習社為了加強宣傳力度，罔顧學生的個人資料私隱，在廣告中公開展示學生的成績通知書(例如本個案所涉的補習社)。成績通知書中列有報考學生所有科目的成績、就讀學校、身分證號碼等重要及敏感個人資料，故有關作為不應提倡。私隱專員希望促請各補習社尊重學生的個人資料私隱，如有必要使用學生的成績作宣傳及推廣業務的用途，事前必須清楚向有關學生及家長講解會使用學生哪些個人資料及如何使用有關資料，並且在使用前明確地獲取有關學生及其家長的訂明同意。此外，補習社亦須避免過度披露學生的個人資料，以保障學生的私隱。

私隱專員亦希望提醒莘莘學子，在遇到補習社向其查詢或收集成績資料時，應主動向補習社了解收集有關個人資料的目的及將會使用有關資料於何等用途上。如學生不願意自己的身分及成績被公開披露，便應明確地向補習社說明，以保障自己的個人資料私隱。

### 食品公司在抽獎活動中收集參加者的個人資料

2009年8月7日，私隱專員發表一份報告，公布私隱專員就一間食品公司在抽獎活動中收集參加者的個人資料所作出的調查結果。

Having considered the information obtained and all the circumstances of the case, the Commissioner found that the tutorial centre was in contravention of DPP3. An enforcement notice was served on the tutorial centre.

After receiving the enforcement notice, the tutorial centre confirmed in writing that it would post a notice at its counter to remind and inform its staff and students that it would not publish students' examination results notices which contained their personal data for promotional purposes unless the purposes of collection of the data include such use or prior prescribed consent for such use has been obtained from the student concerned.

### Recommendations Arising from the Investigations

To boost publicity, some tutorial centres disregard the personal data privacy of their students and display the notices of their examination results in advertisements (such as the tutorial centre in the case). Since important and sensitive personal data of a candidate, such as grades of all subjects, school name, identity card number, etc. are shown in an examination results notice, such practices must not be encouraged. All tutorial centres are urged to respect students' personal data privacy. If they wish to use students' examination results for publicity and business promotional purposes, tutorial centres must clearly explain to the students concerned as well as their parents in advance what personal data will be used and how the data concerned are used, and seek their express consent. Moreover, tutorial centres should avoid excessive disclosure of students' personal data so as to protect their privacy.

The Commissioner also wishes to remind students that in case the tutorial centres enquire about or collect their personal data in relation to the examination results, they should ascertain the purposes of such collection and the intended use of the data. If he is not willing to disclose his identity or examination results to the public, he should explicitly tell the tutorial centres in order to protect his personal data privacy.

### Collection of Participant's Personal Data in Lucky Draw Activity by a Food Company

On 7 August 2009, the Commissioner published a Report in respect of an investigation into the collection of a participant's personal data in a lucky draw activity by a food company.

## 背景

投訴人曾購買一間食品公司的產品，並根據包裝盒上的指示致電該公司熱線登記參加抽獎。投訴人表示該食品公司的職員於她登記參加該抽獎的電話通話中，要求她提供姓名、地址、聯絡電話號碼、出生日期(年、月、日)及詳盡身分證號碼等資料。投訴人認為一般抽獎也不須提供出生日期，因此拒絕提供。該食品公司職員向她表示如她拒絕提供該資料，則不能參加該抽獎。

該食品公司表示必須收集參加該抽獎的人士的姓名、通訊地址、聯絡電話號碼及身分證號碼，是確保可以聯絡得獎者及核實換領獎品者的身分。調查所得的資料顯示，當參加者致電該食品公司的抽獎熱線時，會獲邀加入成為該公司的會員，但該公司在取得參加者加入成為會員的明確同意之前已收集他們的出生日期。

## 調查

私隱專員同意，為確保可以聯絡及核實得獎者的身分，該食品公司有需要收集參加者的姓名、通訊地址及聯絡電話號碼。因此私隱專員必須決定的是，該食品公司收集參加者(包括投訴人)的身分證號碼及出生日期的做法，是否必需或直接與當初的收集目的(即為該抽獎)有關，以及所收集的資料是不超乎適度，從而符合保障資料第1(1)原則的規定。在此方面，私隱專員須考慮該食品公司是否有實際需要收集該等個人資料，以達至有關目的。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。

## Background

The Complainant purchased a product of a food company and called the hotline of the company to register for a lucky draw in accordance with the instructions on the package box. According to the Complainant, during the telephone conversation for the lucky draw registration, she was requested by the food company to provide information such as name, address, telephone number, date of birth (including the day, month and year) and full identity card number. As the Complainant believed that date of birth was not generally required for lucky draws, she refused to provide this data. Staff of the food company told her that if she refused to provide her date of birth, she could not participate in the lucky draw.

The food company stated that it had to collect the names, correspondence addresses, telephone numbers and identity card numbers of the participants in the lucky draw to ensure the contact with and verification of the winners. Information obtained during the investigation showed that when participants called the lucky draw hotline of the food company, they were invited to join the membership of the company, but the company collected the dates of birth of the participants before obtaining their expressed consent to join the membership.

## The Investigation

The Commissioner agreed that to ensure the contact with and verification of the identity of the winners, it was necessary for the food company to collect the names, correspondence addresses and telephone numbers of the participants. Therefore, the Commissioner had to decide whether the collection of the identity card numbers and dates of birth of the participants (including the Complainant) by the food company was necessary for or directly related to the original collection purpose, i.e. the lucky draw and the data so collected was not excessive in relation to such purpose and thus in compliance with the requirement of DPP1(1). In this connection, the Commissioner had to consider whether the food company had any actual need to collect those data in order to achieve the relevant purpose. Moreover, as the personal data collected included identity card numbers, the Commissioner also needed to consider if such collection complied with the requirements under paragraph 2.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (the "PI Code").



### 私隱專員的調查結果

有關收集參加該抽獎人士的身分證號碼（無論是完整或部分號碼）一事，私隱專員得悉該抽獎的抽獎單事實上分為兩類：一類為附於產品內的同一編號的抽獎單號碼，另一類為附於其他產品外盒、屬獨一無二的抽獎號碼。

一般來說，如參加抽獎者獲發出獨一無二的抽獎號碼，則在領獎時，舉辦抽獎的單位可憑該抽獎號碼，連同得獎者已登記的姓名、聯絡地址及電話號碼，及再核對其出示的身分證上的姓名便可識辨其身分。在此情況下，舉辦抽獎的單位實毋須再向參加者收集其整個或部分身分證號碼。就投訴人的個案，由於她的抽獎號碼屬獨立的抽獎號碼，故此，該食品公司為該抽獎的目的而收集她的身分證號碼是不必要的，因而違反了保障資料第1(1)原則的規定。

關於收集參加者的出生日期，該食品公司表示，有關抽獎登記(包括接聽該食品公司的登記熱線)是由外判商負責的。該食品公司表示已就處理有關抽獎的電話查詢向外判商提供指引。該食品公司指該外判商的職員要求投訴人提供其出生日期的做法違反該指引。不過，該指引沒有清楚指明毋須收集參加者的出生日期。

該食品公司亦表示，根據提供予外判商與參加者的標準對話，外判商只有在非會員身分的參加者接受邀請成為會員時才會收集其出生日期。私隱專員認為該食品公司所提供的標準對話內容本身並不清晰。在考慮個案的所有情況後，私隱專員認為該食品公司純粹為該抽獎的目的而透過外判商收集非會員參加者的出生日期是不必要的，因而違反了保障資料第1(1)原則的規定。

### The Commissioner's Findings

Regarding the collection of identity card numbers (whether in full or in part) of the participants, the Commissioner noted that there were in fact two categories of lucky draw tickets: one was that the tickets were placed inside the package of the products all bearing the same lucky draw number; and the other was that the tickets were attached to the package boxes with unique lucky draw numbers for other products.

Generally speaking, if participants are issued with unique lucky draw numbers, the organizer can identify the winners by the lucky draw numbers, together with the registered names, correspondence addresses and telephone numbers of the winners, and also by checking the names on the identity cards produced by the winners. In the circumstances, it is not necessary for the organizer to collect the full or partial identity card numbers of the participants. In the Complainant's case, as her lucky draw number was a unique number, the collection of her identity card number for the purpose of the lucky draw was not necessary thus in contravention of the requirements under DPP1(1).

As for the collection of dates of birth of the participants, the food company stated that matters with regard to the lucky draw registration, including answering the registration hotline of the food company, were outsourced to and managed by a contractor. According to the food company, a set of guidelines was provided to the contractor for handling telephone enquiries about the lucky draw. The food company stated that the staff of the contractor had violated the guidelines by requesting the Complainant's date of birth. However, the guidelines did not clearly specify that the collection of participants' dates of birth was not required.

The food company also stated that in accordance with the standard dialogue with the participants given to the contractor, the contractor would collect the dates of birth from non-member participants only when participants accepted the membership invitation. The Commissioner found that the standard dialogue provided by the food company was unclear. Having considered all the circumstances of the case, the Commissioner found that the collection of the dates of birth of non-members participants by the food company through its contractor for the sole purpose of the lucky draw was not necessary and thus in contravention of DPP1(1).

由於該食品公司已銷毀所有非會員的參加者的個人資料，並承諾在日後所舉行的抽獎活動中，向參加者分發獨一無二的抽獎號碼以識辨得獎者，避免收集他們的身分證號碼（或其他個人身分代號）及出生日期，私隱專員在調查後並無發出執行通知。

### 調查引致的建議

很多商業機構為了推銷其產品及招募會員而以抽獎的名義作招徠。不過，商業機構在向參加抽獎人士收集其個人資料時，必須仔細及個別地考慮每項個人資料是為何目的而收集，不要將所有資料混為一談，因所收集的資料就有關目的而言不可超乎適度。對於較敏感的個人資料，如身分證號碼，更須嚴格考慮是否有實際需要收集，以及如此做法是否符合實務守則的有關規定。

此外，機構在向資料當事人收集其個人資料時，須採取所有切實可行的步驟，以確保有關的資料當事人獲告知該等資料將會用於甚麼目的。

As the food company had destroyed the personal data of all non-members and undertook to assign unique lucky draw numbers to participants for identification of winners in future lucky draw activities so as to avoid collecting their identity card numbers (or other personal identifiers) and dates of birth, no enforcement notice was issued in consequence of the investigation.

### Recommendations Arising from the Investigation

Many business organizations promote their products by holding lucky draws and recruiting members to their loyalty clubs. However, when they collect the personal data of the participants in lucky draws, they have to consider carefully the purpose of collection because the data collected should not be excessive in relation to the collection purpose. For sensitive data, such as identity card number, it is essential to consider seriously whether there is any actual need for their collection, and whether such collection is in compliance with the PI Code.

Organizations are also reminded that when they collect the personal data of their customers, they have to take all practicable steps to ensure that they are clearly informed of the purpose for which the data are to be used.

### 收數公司在追收欠款過程中披露欠款人的家庭成員的個人資料

2010年2月24日，私隱專員發表一份報告，公布私隱專員就一間財務公司的收數活動主動作出調查所得的結果。

#### 背景

該財務公司委託一間收數公司向欠款人追收一筆欠款，並向該收數公司提供欠款人的個人資料及欠款人的父親、母親、哥哥及祖父的資料，例如姓名、年齡、與欠款人的關係、地址及電話號碼。在追數過程中，該收數公司在欠款人的父親居所外張貼欠款人的父母的姓名及住址，以及欠款人的哥哥及祖父的姓名。

### Disclosure of personal data of debtor's family members by a Debt Collection Agency during debt recovery

On 24 February 2010, the Commissioner published a Report in respect of a self-initiated investigation against a finance company in relation to its debt collection activities.

#### Background

The finance company appointed a debt collection agency to recover a debt on its behalf and provided the latter with the personal data of the debtor and information of the debtor's father, mother, elder brother and grandfather such as name, age, relationship with the debtor, address and telephone number. In the course of its debt recovery operation, the debt collection agency posted outside the premises of the debtor's father the names and address of the debtor's parents, as well as the names of the debtor's elder brother and grandfather.

## 調查

為了決定該財務公司在事件有否違反條例的規定，私隱專員須考慮(i)該財務公司是否資料使用者；(ii)該收數公司的做法是否違反保障資料第3原則；及(iii)該財務公司是否需為該收數公司的作為負責。

## 私隱專員的調查結果

毫無疑問，該財務公司是因為委託該收數公司追收欠款而向其提供載有該些家庭成員的個人資料。而且，該財務公司以它與該收數公司簽訂的委託協議書，規限該收數公司須就該財務公司所提供的資料遵守保密協議。在個案的情況下，該財務公司屬資料使用者。

據資料顯示，該財務公司當初是為了「記錄性質」而收集該些家庭成員的個人資料。該財務公司其後卻以追收欠款為理由而把該些家庭成員的個人資料交予該收數公司。私隱專員認為該收數公司公開張貼或披露該些家庭成員的個人資料，與當初收集的目的(即作記錄用途)並非一致。在個案的情況下，私隱專員認為該收數公司如此使用該些家庭成員的個人資料違反了保障資料第3原則的規定。

在決定該財務公司是否須根據條例第65(2)條為該收數公司的違反行為負責時，私隱專員需考慮的是該收數公司是否屬該財務公司的代理人，以及該收數公司的上述作為是否獲該財務公司的授權。私隱專員知道該財務公司是該收數公司的主事人，又由於該財務公司沒有限制該收數公司在追收欠款時向第三者披露該些家庭成員的個人資料，私隱專員認為該財務公司有默示授權該收數公司公開展示／張貼／披露該些家庭成員的個人資料。因此，私隱專員認為憑藉條例

## The Investigation

In order to determine whether the finance company was, in the incident, in contravention of the requirements under the Ordinance, the Commissioner had to consider whether (i) the finance company was the data user; (ii) the act of the debt collection agency contravened DPP3; and (iii) the finance company was liable for the act of the debt collection agency.

## The Commissioner's Findings

There is no doubt that the finance company provided the debt collection agency with the personal data of the family members with a view to recovering the debt on its behalf. Moreover, by virtue of the authorization agreement signed between the finance company and the debt collection agency, the finance company restricted the debt collection agency to maintain secrecy of the information provided by the finance company. In the circumstances, the finance company was the data user in this case.

Information revealed that the finance company originally collected the personal data of the family members for "record" purpose. However, the finance company subsequently passed those data to the debt collection agency for debt recovery. The Commissioner considered that the public display or disclosure of the personal data of the family members made by the debt collection agency was not consistent with the original collection purpose, i.e. for record purpose. In the circumstances, the Commissioner was of the view that the debt collection agency's use of the personal data of the family members was in contravention of DPP3.

In order to determine whether the finance company was liable for the act of the debt collection agency under section 65(2) of the Ordinance, the Commissioner needed to consider whether the debt collection agency was the agent of the finance company, and whether the above act of the debt collection agency was authorized by the finance company. It is noted that the finance company was the principal of the debt collection agency and since it did not restrict the disclosure of the personal data of the family members to third parties by the debt collection agency in the course of debt recovery, the Commissioner was of the view that the finance company had impliedly authorized the debt collection agency to publicly display/post/disclose the personal data of the

第65(2)條，該財務公司亦已違反了保障資料第3原則的規定。私隱專員向該財務公司送達執行通知，指令該財務公司以書面指示該收數公司及其他所委託的追收欠款的公司停止將欠款人的家庭成員的個人資料公開展示／張貼／披露。

### 調查引致的建議

財務機構在委託收數公司追收欠款人的債項時，必須採取實質措施以防止該等公司在追收欠款時違反條例的有關規定。如財務機構純粹依賴與該等公司簽訂的一紙簡單書面委託協議，籠統地訂立一些免責條款，而沒有就該等公司應如何處理或使用個人資料作出實質的指引或限制，財務機構也可能需為該等公司所作出的違反行為負上法律責任。

私隱專員亦向廣大市民說明，收數公司的不合法行為並不屬條例及公署的處理範疇，如個案涉及刑事行為，應向警方報案。

family members. Therefore, the Commissioner found that the finance company had also contravened DPP3 by virtue of section 65(2) of the Ordinance. An enforcement notice was served on the finance company directing it to instruct the debt collection agency and other authorized debt collection agents in writing to stop publicly displaying/posting/disclosing the personal data of family members of debtors.

### Recommendations Arising from the Investigation

Financial institutions are advised that when they authorize debt collection agents to recover debts from debtors, they need to take measures to prevent those agents from contravening the requirements of the Ordinance in the course of debt recovery. If a financial institution just relies on some general exemption clauses included in a simple authorization agreement signed with those agents and does not put in place practical guidelines or limitations in respect of the handling or use of personal data by those agents, the financial institution may still be held liable for the contravening acts committed by those agents.

The Commissioner also advised the public that unlawful behaviours by debt collection agents do not fall within the jurisdiction of the Ordinance or this Office. Anyone who believes himself to be the victim of such unlawful behaviours should make a report to the police.

## 銀行就依從查閱資料要求而徵收劃一費用

2010年2月24日，私隱專員發表一份報告，公布私隱專員就一間銀行在依從查閱資料要求方面徵收劃一費用主動作出調查所得的結果。

### 背景

一間銀行的顧客告知公署，該銀行向他發出新收費通知，表示會就依從顧客提出的每項查閱資料要求徵收200港元(下稱「該費用」)。由於該顧客沒有向該銀行作出查閱資料要求，故沒有被收取該費用。私隱專員認為該銀行就依從查閱資料要求而收取該費用在某些情況下可能屬超乎適度，於是根據條例第38(b)條，對該銀行進行調查。

## Imposition of a flat fee by a Bank for complying with a data access request

On 24 February 2010, the Commissioner published a Report of the findings of a self-initiated investigation against a bank on charging fee at a flat rate for complying with a data access request.

### Background

A customer of a bank informed the PCPD that the bank had sent a notification to him stating that it would impose a new charge of HK\$200 (the "Fee") for complying with each data access request ("DAR") lodged by its customers. The customer was not charged with the Fee as he did not make a DAR. It appeared to the Commissioner that the Fee imposed by the bank for complying with a DAR may in some cases be excessive, he therefore carried out an investigation in relation to the bank in accordance with section 38(b) of the Ordinance.

## 調查

條例第 28(3) 條規定，為依從查閱資料要求而徵收的費用不得超乎適度。但條例並沒有對「超乎適度」一詞下定義。私隱專員在評估該資料使用者收取的費用是否超乎適度時，參考了法律改革委員會(下稱「法改會」)於 1994 年發表的《有關保障個人資料的法律改革報告書》中就資料使用者依從查閱資料要求可收取的費用的適度水平提出的建議。此外，私隱專員亦曾向香港金融管理局(下稱「金管局」)及香港銀行公會(下稱「銀行公會」)查詢他們對依從顧客的查閱資料要求而徵收費用的意見。

## 私隱專員的調查結果

考慮過法改會的建議，私隱專員認為資料使用者只可以取回在依從查閱資料要求過程中涉及尋找、提取及複印所需資料(下稱「該等工作」)的勞動成本及實付費用。勞動成本只應反映執行該等工作所需的技能及勞動力，因此勞動成本應僅指文書或行政人員在執行該等工作上的合理薪金。雖然金管局及銀行公會均表示銀行為依從查閱資料要求所招致的實際成本高昂及可能超越他們向顧客所收取的費用，但這並不表示銀行有權根據條例第 28(3) 條向顧客收取為處理查閱資料要求而招致的任何勞動成本。

私隱專員原則上並不接納該銀行指可向顧客收取其一名資料保障主任在每項要求中分析和詮釋條例，以及考慮法律規定的應用的時間成本。資料使用者編輯資料或篩選應否披露的個人資料所花的時間是為了其自身的保障及利益，確保他能根據條例適當履行其責任。有關的時間成本不應轉嫁只是行使法定查閱資料權利的要求者。

## The Investigation

Section 28(3) of the Ordinance provides that no fee imposed for complying with a DAR shall be excessive. However, the word “excessive” is not defined in the Ordinance. In assessing whether a fee charged by a data user is excessive or not, the Commissioner would make reference to the recommendations made by the Law Reform Commission’s *Report on Reform of the Law Relating to the Protection of Personal Data 1994* in relation to the appropriate level of fees chargeable by data users for complying with a DAR. Moreover, the Commissioner has enquired both the Hong Kong Monetary Authority (“HKMA”) and The Hong Kong Association of Banks (“HKAB”) about their views on charging of a fee for complying with a customer’s DAR.

## The Commissioner’s Findings

Having considered the Law Reform Commission’s recommendations, the Commissioner took the view that a data user may be allowed to recover only the labour costs and the actual out-of-pocket expenses involved in complying with a DAR in so far as they related to the *location, retrieval and reproduction* of the data requested (“the Tasks”). The amount of the labour costs should reflect only the necessary skills and labour for performing the Tasks, and therefore, should only refer to the reasonable salary of the clerical or administrative staff member in performing the Tasks. Although both HKMA and HKAB advised that the actual costs incurred by banks in complying with DARs are high and may exceed the fees they charge their customers, it does not follow that banks are entitled under section 28(3) of the Ordinance to charge their customers whatever the amount of labour costs they incurred for processing the DARs.

The Commissioner did not, in principle, accept the bank’s contention that it might charge its customers for the time costs of its Data Protection Officer for analyzing and interpreting the Ordinance as well as considering the application of the statutory requirements in each request. The time costs spent by the data user in redacting data or deciding which personal data should or should not be disclosed is for the data user’s own protection and benefits in ensuring proper discharge of its obligations under the Ordinance. The costs of such time should not be transferred to the requestor, who is merely exercising his statutory data access right.

鑑於以上所述，私隱專員對該銀行計算該費用的基準有保留。不過，該銀行從沒有真正就依從查閱資料要求而向顧客收取任何費用，私隱專員亦沒有收到有關某查閱資料要求被收取該費用的投訴。因此，私隱專員不能裁定該銀行已違反了條例第28(3)條的規定。

### 調查引致的建議

由於條例沒有對「超乎適度」下定義，目前，私隱專員是以上文所載列的原則來評估就一項查閱資料要求所收取的費用是否超乎適度。因此，私隱專員建議資料使用者在決定就依從查閱資料要求而徵收費用時，應考慮所有相關因素，以遵從條例的規定。

私隱專員在詳細研究過海外私隱法例有關查閱資料要求費用之規定後，建議修訂條例，加入收費表，列明資料使用者依從查閱資料要求可收費項目的最高收費額。建議的最高收費額可參考涉及的成本，包括尋找、提取及複印所要求的資料的勞動成本及實付費用。私隱專員亦建議不時在考慮消費物價指數及其他相關因素後修訂該收費表。政府於2009年8月就檢討條例發表的諮詢文件載有這項建議。

上述各份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](http://www.pcpd.org.hk/chinese/publications/invest_report.html))下載。

In view of the above, the Commissioner has reservation on the bank's basis of the calculation of the Fee. However, the bank had never actually charged its customers any fees for complying with a DAR at all, nor had the Commissioner received any complaint about the Fee charged for a specific DAR. Therefore, the Commissioner was not able to form a view that a contravention of section 28(3) of the Ordinance on the part of the bank had been established.

### Comments Arising from the Investigation

In the absence of a clear definition of "excessive" in the Ordinance, the Commissioner at present applies the principles as set out above in assessing whether a DAR fee is excessive. Therefore, when a data user decides to impose a fee for complying with a DAR, he/she is advised to take all the relevant factors into consideration so as to comply with the requirement of the Ordinance.

Having conducted a detailed study on overseas privacy legislation on access fee, the Commissioner proposes to amend the Ordinance by introducing a fee schedule setting out the maximum levels of fees for chargeable items that may be imposed by a data user in complying with a DAR. The suggested maximum for chargeable items may be set by reference to the costs involved including labour costs and actual out-of-pocket expenses involved in locating, retrieving and reproducing the requested personal data. It is also proposed that the fee schedule may be amended from time to time taking into account the consumer price index and other relevant factors. The Government's consultation document on review of the Ordinance published in August 2009 contained this suggestion.

Copies of the Reports are 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](http://www.pcpd.org.hk/english/publications/invest_report.html)).