

私隱專員的話 Privacy Commissioner's Message

要維持客戶的信任和信心，所有機構（公營和私營，牟利與非牟利）的管理層有責任主動制定機構性的私隱策略，著重收集客戶個人資料的透明度及尊重由客戶決定如何使用其個人資料的權利。傳統模式需要改變，每間機構的業務及營運程序必須顧及保障私隱和個人資料。

To maintain customer trust and confidence, it is incumbent upon senior management of all organisations, public and private, profit and non-profit, to proactively ensure that a corporate-wide privacy strategy is in place which emphasizes transparency in the collection of their customers' personal data and respects their right to determine how their personal data is used. A paradigm shift is called for which requires privacy and data protection to be woven into the fabric of every organisation's business processes and operational procedures.

私隱情況

在現今的數碼紀元，資訊及通訊科技的使用方式日新月異。這種趨勢有助我們更容易快捷收集及使用大量個人資料。根據一項估計，過去七年所收集回來的資料，比過往整個人類歷史所收集得到的還要多。而全球數碼資訊的總量預計在十年內增加逾40倍。



蔣任宏
Allan CHIANG
個人資料私隱專員
Privacy Commissioner for Personal Data

The Privacy Landscape

The pervasive use of new information and communications technologies in today's digital society has enabled the collection and use of vast amounts of personal data with phenomenal ease and efficiency. According to one estimate, more data has been collected in the last seven years than in the whole of previous human history. In ten years' time, the global volume of digital data is expected to increase more than 40-fold.

資訊以驚人的速度暴增，身處這個Web 2.0的新時代，透過資訊網絡，越來越多的人與事物都能夠即時連接起來，當中蘊含龐大商機。《經濟學人》最近曾評論，資訊正逐漸成為一種相等於資本和勞動力的新品種原材料。同樣地，《世界經濟論壇》亦預言個人資料會成為「21世紀新型資產」。

無可否認，收集、儲存及深入分析個人資料，能創造經濟及社會價值，並能以創新的方法大幅提升公司的生產力及競爭力。但與此同時，卻對私隱構成巨大的風險，並令人極度關注個人資料的保障。

重大的侵犯私隱事件

儘管公署作出不少教育及推廣工作，個人資料私隱權利在香港一直都不是熱門議題，直至近年傳媒廣泛報道連串的私隱外洩事件後，情況才有所扭轉。在本年報期內發生了兩宗重大的侵犯私隱事件，值得在此討論。

首先，2010年5月Google的街景拍攝車輛被揭發在香港街道穿梭拍攝相片，以提供定位資訊服務時，不恰當地收集及記錄了Wi-Fi網絡資料。這事件嚴重違反了私隱權利，因為該等網絡資料包含個人資料，例如附有姓名、地址及電話號碼的電郵，而Google本應只需收集位置資料。這不是個別事件，因為世界其他地方亦發生類似情況，事件引起國際關注。從這些不論是意外或故意的濫用情況可以看到，瞬息萬變的科技對現代生活無疑帶來刺激，但如果在發展及使用這些科技時沒有全面考慮和妥善控制對私隱的影響，則對個人資料保障產生嚴重的後果。

The opportunities brought about by this astounding increase in the volume of data and the onset of an era where more and more people and objects are connected in real time to information networks are immense. *The Economist* recently commented that data is becoming a new type of raw material that is on par with capital and labour. In a similar vein, the *World Economic Forum* also predicted that personal data would emerge as a new asset class of the 21st century.

No doubt, the collection, storing and mining of personal data can create economic and societal value, and enhance the productivity and competitiveness of enterprises in ways previously beyond our imagination. At the same time, they pose immense risks to privacy and raise serious concerns about the protection of personal data.

Major Privacy Intrusions

Despite the educational and promotional efforts of my office, privacy rights in relation to personal data had not been a hot topic in Hong Kong until recent years when we witnessed a series of privacy catastrophes which gained widespread media attention. Two major privacy intrusions in the year under review are worth noting here.

First, it was revealed in May 2010 that Google's Street View vehicles had inappropriately collected and recorded Wi-Fi payload data when taking pictures of the streets of Hong Kong as part of their operations to provide geographic information services. This incident represented a serious violation of privacy rights, as the payload data contained personal data, such as email messages with names, addresses and phone numbers, when only the addresses of Wi-Fi routers should have been recorded. This was not an isolated incident, as similar occurrences have been reported in other parts of the world, attracting international attention. Among other things, these abuses, accidental or intentional, highlight the fact that while the impact of new and rapidly evolving technologies on modern life is undeniably exciting, the consequences for personal data protection can be grave if the privacy implications are not thoroughly considered and properly managed when these technologies are developed and used.

第二宗重大的侵犯私隱事件是八達通公司在收集及使用「八達通日日賞」客戶的個人資料方面違反了保障資料原則。更具體地說，八達通未經客戶的明確同意，把客戶的個人資料轉移予多間夥伴公司，用作促銷後者的產品及服務。八達通在促銷過程中參與很少或沒有參與，但卻因轉移資料而從夥伴公司獲得金錢收益。該等交易本質上是銷售個人資料。

分水嶺

八達通事件長時間吸引了傳媒的關注及香港不同利益團體的強烈抗議，是有多項獨特的原因。第一，它只是冰山一角，因為其濫用客戶個人資料的做法在商業機構（例如擁有龐大客戶資料庫的銀行）並不罕見。第二，事件涉及為巨額金錢收益而處理二百四十萬人（香港整體人口的三分之一）的個人資料。第三，八達通這個品牌是所有香港市民熟悉和重視的。因此，當他們發覺其個人資料被八達通常商品般出售，以牟取私利，他們感到被出賣和憤怒，是可以理解的。

八達通事件在香港保障個人資料的歷史上是一個重要的里程碑，因為它具有深遠的影響。這事件將公眾對個人資料私隱權利的意識及了解提高至前所未有的水平。這結論從一間互聯網保安公司於2011年首季所進行的調查的結果獲得印證。受訪的香港市民中，85%表示「非常關注」或「極度關注」未經准許查閱或濫用其個人資料。

In the second major privacy-intrusion incident, the Octopus group of companies contravened the Data Protection Principles in the collection and use of the personal data of customers registered in their Octopus Rewards programme. Specifically, Octopus, without its customers' explicit consent, transferred their personal data to a number of partner companies for use in the marketing of the latter's products and services. Octopus played little or no part in the marketing process but received monetary gains from the partner companies in exchange for the data transfer. The transaction, in essence, was a sale of private personal data.

The Watershed

The Octopus incident attracted prolonged media attention and strong protests from different interest groups in Hong Kong for a number of unique reasons. First, it represented only the tip of the iceberg, as the misuse of customers' personal data in the manner identified was not uncommon in business enterprises such as banks with a huge customer database. Secondly, it involved the handling of the personal data of 2.4 million people, one-third of the entire population of Hong Kong, for substantial monetary gain. Thirdly, Octopus is a household name which all Hong Kong citizens are familiar with and have high regard for. Therefore, it was no surprise that they reacted with a sense of betrayal and fury when they found out that their personal data had been traded like a commodity for the private gain of Octopus.

The Octopus incident is a milestone event in the history of personal data protection in Hong Kong because of its far-reaching consequences. It raised public awareness and understanding of individuals' privacy rights concerning personal data to an unprecedentedly high level. This conclusion was corroborated by the findings of a survey conducted by an internet security company in the first quarter of 2011 that 85% of Hong Kong people surveyed indicated that they were "very concerned" or "extremely concerned" about unauthorized access to, or misuse of, their personal data.

相應地，公署的工作量亦顯著上升。例如，我們接獲的投訴數字較前一年上升20%。很明顯，公眾較以前更關注其私隱權利及更敢於表達保護這權利的意見。此外，公眾對私隱教育的需求，及機構資料使用者對遵從法律規定的專業意見和協助的需求都很龐大。為回應需求，我們把提供予公眾及機構的講座和工作坊增加約80%。我們亦發出一份有關收集及使用個人資料作直接促銷的指引。

我希望八達通事件對於以往忽略個人資料私隱的機構資料使用者響起一個警號。現時，機構應該知道私隱違規對聲譽的影響是非常大，他們在企業管治中實難以忽略私隱考慮，或只交由法律及循規專才處理私隱議題。要維持客戶的信任和信心，所有機構（公營和私營，牟利與非牟利）的管理層有責任主動制定機構性的私隱策略，著重收集客戶個人資料的透明度及尊重由客戶決定如何使用其個人資料的權利。傳統模式需要改變，每間機構的業務及營運程序必須顧及保障私隱和個人資料。

檢討《個人資料（私隱）條例》

從另一角度看，八達通事件發生的時間正好，因為政府剛好進行修訂《個人資料（私隱）條例》的公眾諮詢，以確保條例在不斷轉變的關注私隱大環境下仍然提供足夠的保障及與時並進。為回應公眾對收集、使用及出售個人資料作直接促銷的關注，政府提出一系列建議，透過加強保安措施及制裁，提昇對個人資料私隱的保障。

Correspondingly, there has been a marked increase in the workload of my office. For example, the number of complaints we received increased by 20% compared with the previous year. Apparently, members of the public are more aware of their privacy rights and more vocal about protecting them than before. Also, the demand for general education from the public, and advice and assistance from organizational data users for compliance with legal requirements has been overwhelming. In response, we increased by some 80% the number of seminars and workshops we offered to the public and to organisations. We also issued a Guidance Note on the collection and use of personal data in direct marketing.

I hope that the Octopus case has served as a wake-up call to corporate data users which neglected the issue of personal data privacy in the past. By now, they should have come to realize that the reputational risk associated with privacy contraventions is so high that they can ill-afford to ignore privacy issues in their corporate governance, or just to leave them in the hands of their legal and compliance professionals. To maintain customer trust and confidence, it is incumbent upon senior management of all organisations, public and private, profit and non-profit, to proactively ensure that a corporate-wide privacy strategy is in place which emphasizes transparency in the collection of their customers' personal data and respects their right to determine how their personal data is used. A paradigm shift is called for which requires privacy and data protection to be woven into the fabric of every organisation's business processes and operational procedures.

Review of the Personal Data (Privacy) Ordinance

From one perspective, the Octopus incident could not have happened at a better time, because it coincided with the Government's public consultation exercise to overhaul the Personal Data (Privacy) Ordinance, with a view to introducing amendments to ensure the legislation is still adequate and relevant in an evolving privacy landscape. In response to grave public concern over the collection, use and sale of personal data for direct-marketing purposes, the Government came up with a set of proposals to tighten control of personal data privacy through a combination of procedural safeguards and sanctions.

在諮詢過程中，我們亦提出連串加強資料保障的建議，包括建議賦予私隱專員就嚴重侵犯個人資料私隱處以罰款的權力，及向受屈的資料當事人判給償的權力。這些建議似乎切合公眾及議員的期望，在八達通違反保障資料原則的事件中，我們無能力對八達通施以此等制裁，他們曾對此表示失望。

為此，我們展開了一個密集的公眾參與活動，解釋我們的建議，包括政府表明不予跟進的建議。我們出席了41個公開論壇及與持份者和有關人士會面，並透過問卷及網上調查，收集公眾意見。我們已向政府提交詳細及經充分研究的意見書，希望最終的修訂會納入我們的建議，從而符合公眾要求更多資料保障的期望。

前瞻

由於公署的資源不足及制裁權力有限，在推廣和監管法律循規方面，我們要面對不少挑戰。為了以具成本效益及有效的方式達成使命，以及珍惜公眾對我們的信任，我們會繼續善用在過去多年所累積的經驗和專業知識，特別採取下述多項策略：

- (1) 維持高度的企業管治標準；
- (2) 遵守高透明度及問責的原則；
- (3) 善用資源，以達至經濟效益、效率及營運果效；
- (4) 繼續致力簡化工作程序；
- (5) 在安排工作的優先次序方面，採取「有效選擇性」策略，重點處理影響最大的工作；

In the consultation process, we also championed a great number of initiatives to enhance data protection, including the recommendation to give the Privacy Commissioner the power to impose monetary penalties for serious privacy contraventions and to award compensation to aggrieved data subjects. These seem to be in accord with the aspirations of the public and legislators, who expressed dismay at our inability to impose such sanctions on Octopus for its contravention of the Data Protection Principles.

To this end, we embarked on an intensive public engagement exercise to explain our proposals, including those that the Government had indicated not to pursue further. We attended a total of 41 public forums and meetings with stakeholders and other interested parties, and solicited public views through a written questionnaire and an online survey. Having made a comprehensive and well-researched submission to the Government, we hope that its final proposals will duly incorporate our contributions and thereby meet the public's rising expectations for greater data protection.

Looking Ahead

Given our insufficient resources and limited sanctioning powers, we face considerable challenges in our efforts to promote and supervise compliance with the law. To pursue our mission in a cost-effective and efficient manner and to preserve the trust the public has bestowed on us, we will continue to capitalize on the experience and expertise we have gained over the years, specifically, by adopting the following multi-pronged strategy:

- (1) maintain high standards of corporate governance;
- (2) adhere to the principles of transparency and accountability;
- (3) maximize utilization of our resources to achieve economy, efficiency and effectiveness;
- (4) make continuous efforts to streamline work procedures;
- (5) apply a "selective in order to be effective" approach in prioritizing work, with an emphasis on assignments that will have the greatest impact;

- | | |
|---|---|
| (6) 主動尋求持份者的全面參與； | (6) be proactive in seeking the holistic engagement of stakeholders; |
| (7) 夥拍其他規管者，借助他們的法定權力、建制及執法方面的權力； | (7) partner with other regulators, leveraging their legislative mandates, institutional tools and enforcement powers; |
| (8) 與海外的保障資料機構結成策略聯盟，處理跨境私隱事宜； | (8) enter into strategic alliances with overseas data protection authorities for handling cross-border privacy issues; |
| (9) 在合乎最低的法律要求之外，向機構資料使用者推廣最佳的行事方式；及 | (9) promote best practices among organizational data users, on top of meeting minimum legal requirements; and |
| (10) 透過刊物、傳媒及社會參與，尤其多接觸年青人，增加宣傳及教育的影響力。 | (10) maximize the impact of publicity and education through publications, media exposure and community engagement to inform, in particular, young people. |

結語

最後，我希望多謝個人資料(私隱)諮詢委員會的成員、科技發展常務委員會的成員，以及所有一直支持我們達成使命的持份者和夥伴。我亦特別多謝歷任專員，他們多年的艱辛工作，為公署奠立鞏固根基，讓我得以順利接任。此外，我要向公署一群全情投入工作的同事致敬，感謝他們時刻以無比的韌力和決心，應付較以前繁重和複雜的工作。

蔣任宏

個人資料私隱專員

Closing Remarks

In closing, I would like to thank the members of the Personal Data (Privacy) Advisory Committee, members of the Standing Committee on Technological Developments, and all our stakeholders and partners for their unrelenting support for our mission. I would also like to pay special tribute to my predecessors, whose painstaking work over the years laid a solid foundation for this office, enabling me to take over the leadership at a time of strength. Finally, I salute our team of dedicated staff, who have shown incredible resilience and determination in coping with their work, which has grown both in volume and complexity.

Allan Chiang

Privacy Commissioner for Personal Data