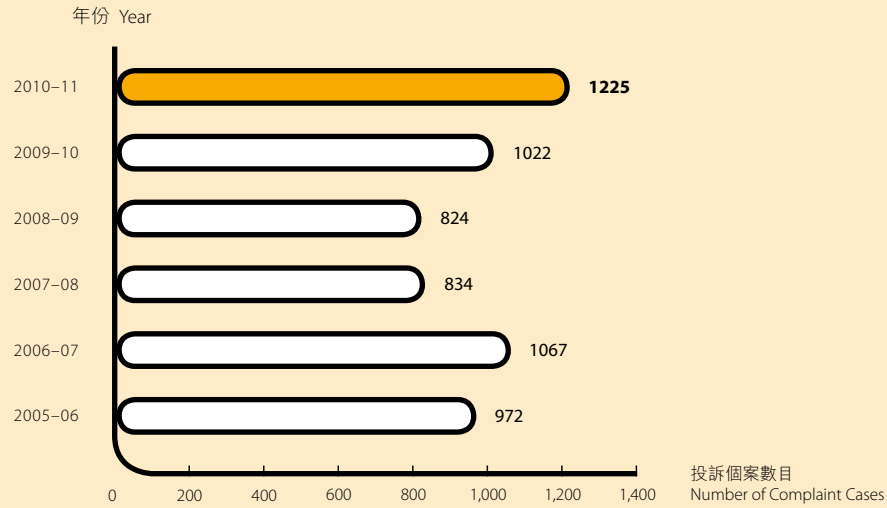
在二零一零至一一年度接獲的投訴個案
Complaints received during the 2010-2011 financial year

圖表 FIGURE 1

每年的投訴個案
Annual Complaint Caseload

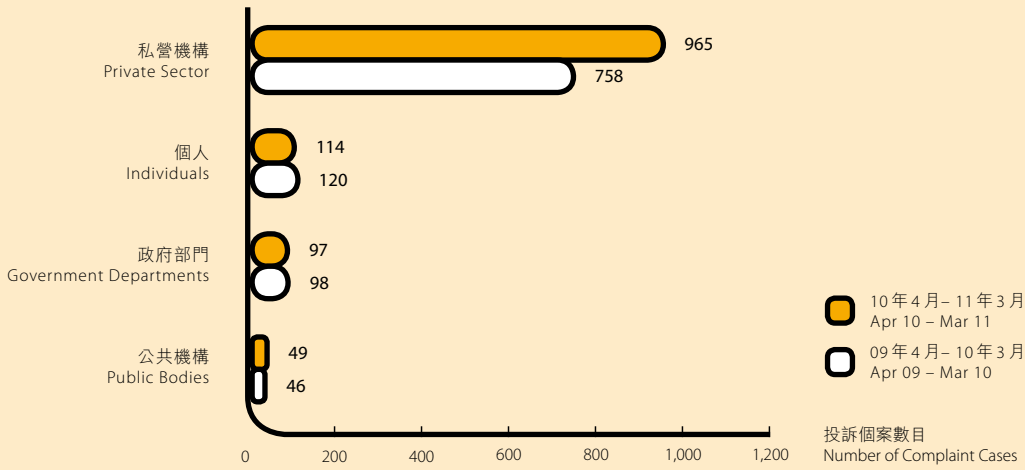


在二零一零至一一年度公署共接獲1,225宗投訴個案(較去年上升了20%)。

A total of 1,225 complaint cases were received in 2010-2011 (an increase of 20% on the previous year).

圖表 FIGURE 2

被投訴者的類別
Types of Parties Complained Against

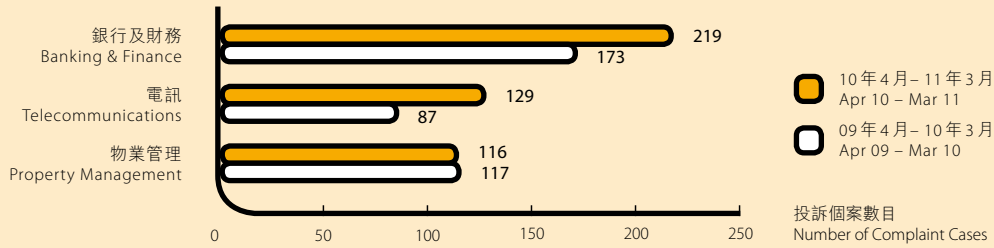


- 965宗(79%)個案投訴私營機構。
- 146宗(12%)個案投訴公營機構(即政府部門及其他公共機構)。
- 114宗(9%)個案投訴個人。

- 965 (79%) complaint cases were against private-sector organizations.
- 146 (12%) complaint cases were against public-sector organizations (i.e. government departments and other public bodies).
- 114 (9%) complaint cases were against individuals.

圖表 FIGURE 3

對私營機構的投訴
Complaints Against Private-Sector Organisations

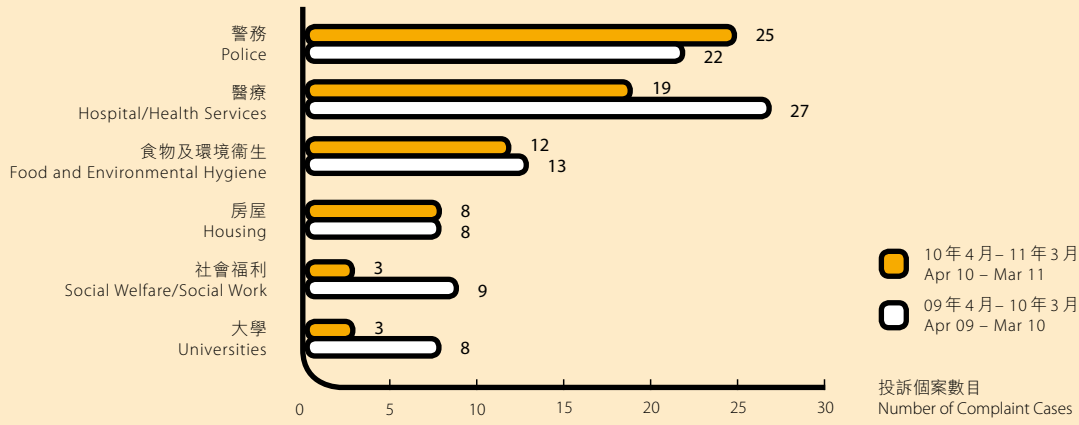


大部分投訴電訊業及財務機構的個案被指非法使用或披露客戶的個人資料。較上年度大幅上升的是使用個人資料作直接促銷(158%),以及過度或不公平收集個人資料(33%)的個案數目,惟較上年度下降的是沒有依從查閱資料或改正資料要求(12%)的個案數目。

The majority of complaints against companies in the telecommunications and financial sectors alleged the unlawful use or disclosure of customers' personal data. There was a considerable increase in the number of allegations of the use of personal data in direct marketing (158%), and excessive or unfair collection of personal data (33%), but a decrease in the number of allegations of non-compliance with data access or correction requests (12%) compared with the previous year.

圖表 FIGURE 4

對公營機構的投訴
Complaints Against Public-Sector Organisations



在投訴公營機構的個案中,大部分涉及:

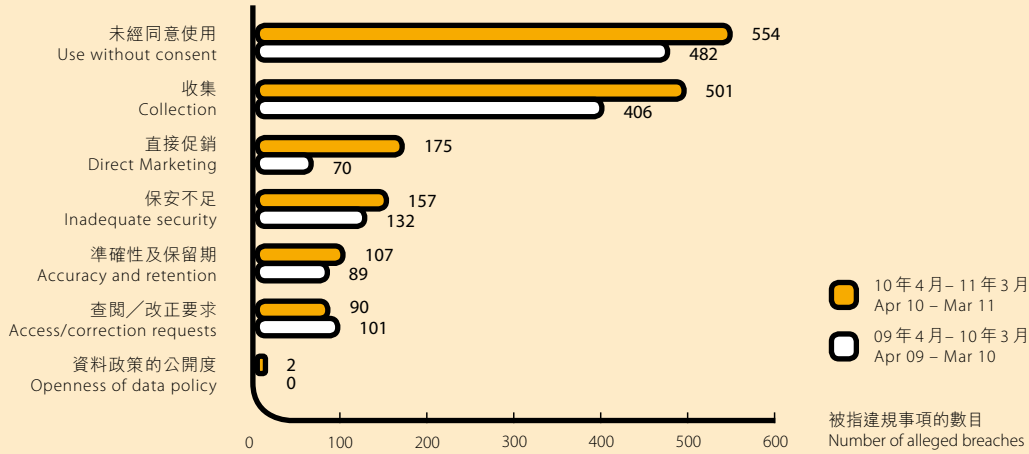
- 與不符收集目的及未取得當事人同意而使用或披露個人資料(37%);
- 過度或不公平收集個人資料(30%);
- 欠缺保障個人資料的保安措施(15%);及
- 未能遵守查閱資料要求或改正資料要求(13%)。

The majority of complaints against public-sector organisations involved allegations of:

- the use or disclosure of personal data beyond the scope of the collection purpose and without the consent of the individual (37%);
- the excessive or unfair collection of personal data (30%);
- the lack of security measures to protect personal data (15%); and
- non-compliance with data access or correction requests (13%).

圖表 FIGURE 5

投訴的性質
Nature of Complaints



二零一零至一一年度接獲的1,225宗投訴個案共涉及1,586項被指違反條例的規定。在這些事項中，1,321項（83%）被指違反保障資料原則的規定，以及265項（17%）被指違反條例的主體條文。

在1,321項被指違反保障資料原則的事項中，501項（38%）主要涉及過度或不公平收集投訴人的個人資料。在這類個案中，60項（12%）主要涉及財務機構或美容院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。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 1,225 complaint cases received in 2010-2011 involved a total of 1,586 alleged breaches of the requirements of the Ordinance. Of these, 1,321 (83%) were alleged breaches of the data-protection principles and 265 (17%) were alleged contraventions of the provisions in the main body of the Ordinance.

Of the 1,321 alleged breaches of the data protection principles, 501 (38%) concerned mainly the alleged excessive or unfair collection of complainants' personal data. In this category, 60 (12%) involved allegations, most of them against financial institutions or beauty salons, of the collection of complainants' personal data from unknown sources for the recovery of debts or for direct marketing purposes.

There is a misunderstanding among some complainants regarding the application of the Ordinance to the collection of personal data. The Ordinance does not require a data user to obtain the consent of the data subject for collection from a 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 the 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 6

二零一零至一一年度處理的投訴摘要
Summary of Complaints Handled in 2010-2011

	2007-08	2008-09	2009-10	**2010-11**
上年轉來的投訴 Complaints carried forward	188	148	173	**240**
接獲的投訴 Complaints received	834	824	1022	**1225**
經處理的投訴的總數 Total complaints processed	1022	972	1195	**1465**
已完結的投訴 Complaints completed	874	799	955	**1089**
未完結的投訴 Complaints outstanding	148	173	240	**376**

在本年報期開始時，公署正處理上年度帶下來的240宗投訴，加上新收到的1,225宗投訴，私隱專員在本年報期內共須處理1,465宗投訴。在這些個案中，1,089宗（74%）在本年報期內已經完結，而餘下的376宗（26%）在二零一一年三月三十一日時仍在處理中（圖表6）。

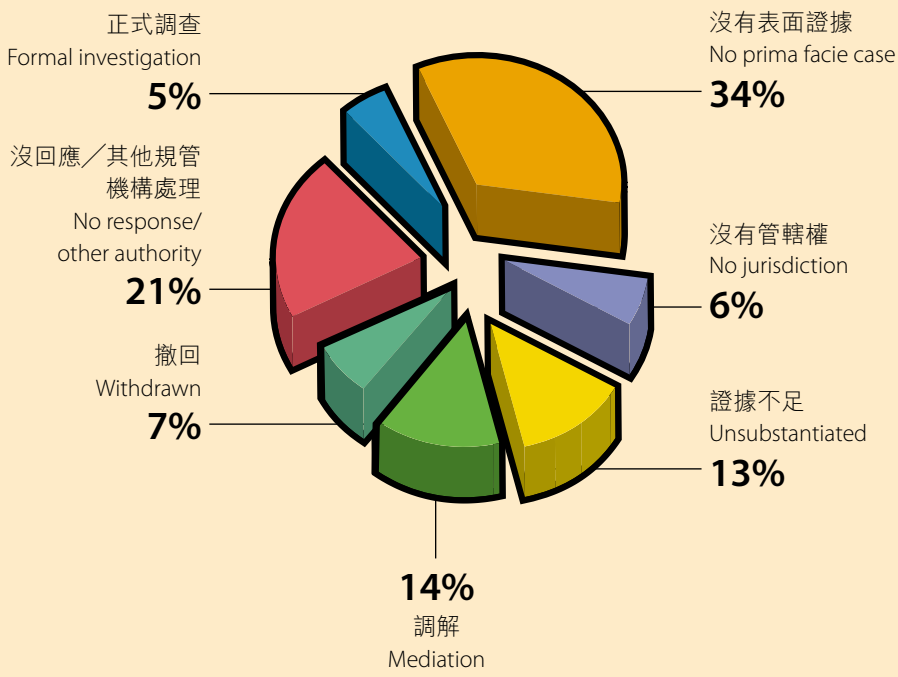
At the beginning of the reporting year, 240 complaints were being processed. With the 1,225 new complaints received, the Commissioner handled a total of 1,465 complaints during the reporting period. Of these, 1,089 (74%) cases were completed during the reporting year, and 376 (26%) cases were still being processed on 31 March 2011 (Figure 6).

二零一一年二月，公署修訂《處理投訴政策》，澄清投訴人須提供的資料，讓公署根據條例第37條處理投訴；並闡釋私隱專員在條例第39(2)條下的酌情權，可以拒絕對投訴進行或繼續進行調查。修訂的《處理投訴政策》於二零一一年二月十一日刊憲。

In February 2011, the PCPD revised the Complaint Handling Policy to clarify the information that the complainant has to provide before the PCPD proceeds to handle the complaint under section 37 of the Ordinance, and to elaborate on the Commissioner's discretion under section 39(2) of the Ordinance to refuse to carry out or continue an investigation into a complaint. The revised Complaint Handling Policy was gazetted on 11 February 2011.

圖表 FIGURE 7

投訴結果
Outcome of Investigations



在本年報期內完結的1,089宗個案：

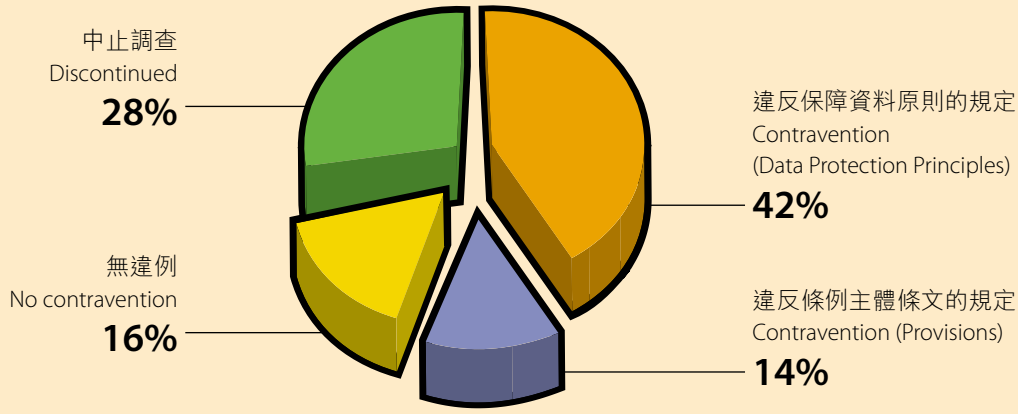
- 366宗（34%）沒有表面證據；
- 71宗（6%）不在條例的管轄範圍或者是匿名投訴；
- 151宗（14%）在初步查詢期間透過調解得到解決；
- 231宗（21%）投訴個案，大多涉及投訴人不回應私隱專員的查詢或個案已由其他規管機構，例如警方跟進；
- 142宗（13%）在向被投訴者查詢後發現證據不足；
- 78宗（7%）在初步查詢期間由投訴人撤回；及
- 餘下的50宗（5%）在進行正式調查後得到解決。

Of the 1,089 cases completed during the reporting period:

- 366 (34%) cases were found to have no prima facie case;
- 71 (6%) cases were outside the jurisdiction of the Ordinance or were made anonymously;
- 151 (14%) cases were resolved through mediation during preliminary enquiries;
- 231 (21%) cases involved mostly complaints where the complainants did not respond to the Commissioner's inquiries, or where the matter had been transferred or reported to other authorities: e.g. the Hong Kong Police Force;
- 142 (13%) cases were found to be unsubstantiated after enquiries with the parties being complained against;
- 78 (7%) cases were withdrawn by the complainants during preliminary enquiries; and
- the remaining 50 (5%) cases were resolved after formal investigation.

圖表 FIGURE 8

正式調查結果
Results of Formal Investigations

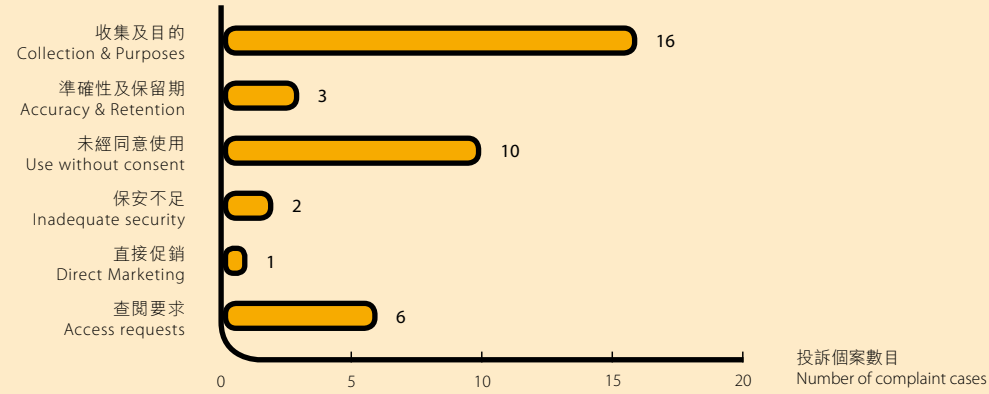


在本年報期內完成正式調查的50宗個案中，私隱專員發現其中28宗（56%）違反了條例的規定，8宗（16%）並無違例或因缺乏證據而無法證明有違例情況。餘下14宗（28%）則是因投訴人決定不再跟進有關事項而中止調查。

Of the 50 formal investigations completed during the reporting period, the Commissioner found contravention of the requirements of the Ordinance in 28 (56%) cases. In eight (16%) cases, either no contravention was found or no contravention was established due to insufficient evidence. The 14 (28%) remaining cases were discontinued, as the complainants decided not to pursue the matter further.

圖表 FIGURE 9

違例事項的性質
Nature of Contravention

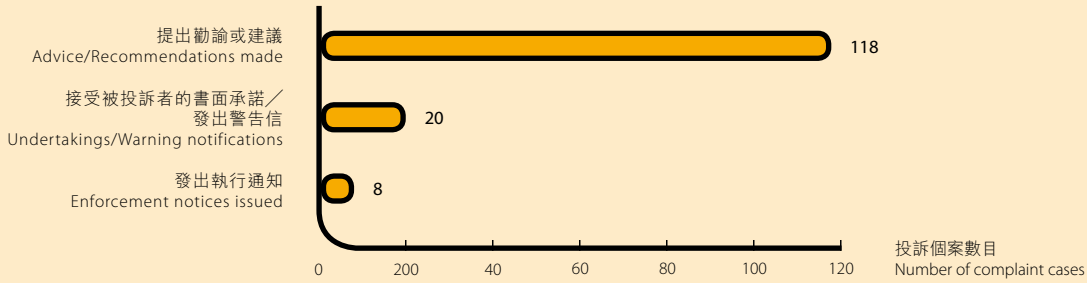


在被確定違反條例規定的28宗個案中，21宗違反一項或以上保障資料原則，其餘7宗違反了條例主體條文的規定，當中所涉及的違例事項與直接促銷及依從查閱資料要求有關（圖表9）。

Of the 28 cases where the requirements of the Ordinance were found to have been contravened, 21 cases involved contravention of one or more of the data protection principles. The remaining seven 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 10

根據投訴結果採取的行動
Action Taken as a Result of Complaints



在151宗於初步查詢期間透過調解得到解決的個案中，私隱專員向118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 151 cases resolved through mediation during preliminary enquiries, the Commissioner provided advice and/or recommendations to 118 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28宗個案中，私隱專員就8宗個案向被投訴者發出執行通知，以防止它們繼續或重複違反規定。

Of the 28 cases in which requirements under the Ordinance were found to have been contravened, the Commissioner issued enforcement notices to the parties complained against in eight cases to prevent continuation or repetition of the contraventions.

至於餘下的20宗個案，私隱專員在被投訴者採取糾正措施後向他們發出警告信，或接受被投訴者書面承諾採取糾正措施。不過，如他們未能將情況糾正至私隱專員滿意的程度，私隱專員仍可向他們發出執行通知。

In the remaining 20 cases, the Commissioner either issued warning notices to the parties complained against after they had taken measures to remedy the contraventions, or dealt with the contraventions by way of written undertakings given by the parties complained against to implement the remedial measures. However, the Commissioner may still issue an enforcement notice to them if they fail to remedy the situation to the satisfaction of the Commissioner.

定罪個案
Conviction Cases

為提高檢控違規個案的成效，私隱專員曾於2011年3月與警方及律政司會面，就調查及檢控公署轉介的違規個案商討制定政策和指引。與會者確認過去的檢控成功率偏低，同意繼續合作，以改善情況。

In an effort to enhance the effectiveness of prosecution for offences under the Ordinance, the Commissioner had a meeting with the Police and Department of Justice in March 2011 to discuss the formulation of policies and guidelines for the investigation and prosecution of offence cases referred by the PPCD. The meeting noted that the success rate of prosecution in the past was low and agreed to continue the dialogue to improve the situation.

下述個案是本年報期內一些資料使用者違反條例的主體條文，構成犯罪。私隱專員在考慮個案的特定情況後，決定將個案轉介予警方作刑事調查。犯罪人士在被檢控後被定罪。

The following are cases in the reporting year where the data users were found to have contravened the provisions in the main body of the Ordinance, which constitutes an offence. After considering the particular circumstances of the cases, the Commissioner decided to refer them to the Police for criminal investigation. As a result, the offenders were prosecuted and convicted of the offences.

電話促銷公司被控沒有依從拒收直銷訊息要求
A telemarketing company was summonsed for failing to comply with an opt-out request

投訴內容
The Complaint

2010年6月，投訴人收到一間電話促銷公司來電促銷美容及纖體計劃。儘管投訴人已要求他們不要再致電給她作直接促銷，但該電話促銷公司在2010年7月仍再向投訴人發出兩個促銷電話。

In June 2010, the Complainant received a telephone call from a telemarketing company promoting a beauty and body-slimming program. Despite the Complainant's request not to call her again for direct marketing, the telemarketing company made two further marketing calls to the Complainant in July 2010.

條例第34(1)(ii)條規定，如資料當事人要求資料使用者停止使用其個人資料作直接促銷用途，資料使用者須照辦。

Section 34(1)(ii) of the Ordinance requires a data user who uses personal data for direct marketing purposes to cease to use the data if the data subject so requests.

結果
Outcome

該電話促銷公司被控兩項違反條例第34條的罪行。該電話促銷公司承認控罪，被判罰款5,000元。

Two summonses were issued against the telemarketing company for contravening Section 34 of the Ordinance. The telemarketing company pleaded guilty and was fined $5,000.

美容院沒有依從客戶的拒收直銷訊息要求
A beauty salon failed to comply with a customer's opt-out request

投訴內容
The Complaint

2009年，一間美容院（下稱「該美容院」）收集了投訴人的個人資料，並向她提供一個免費面部美容療程。投訴人接受該療程後，儘管已提出拒絕服務要求，但仍多次收到該美容院的促銷電話。投訴人最後一次收到該美容院的促銷電話是在2010年8月。

In 2009, a beauty salon (the Salon) collected personal data from the Complainant and offered a free facial-treatment course. The Complainant took up the offer and thereafter received repeated business promotion calls from the Salon despite her opt-out request. The last promotion call that the Complainant received from the Salon was in August 2010.

結果
Outcome

經調查後，該美容院被控觸犯條例第34條的規定。該美容院承認控罪，被判罰款1,000元。

After investigation, the Salon was summonsed for an offence under Section 34 of the Ordinance. The Salon pleaded guilty and was fined $1,000.

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 responded promptly to complaints and implemented measures under the guidance of the Commissioner to improve personal data privacy protection.

個案 CASE 1

導遊向團員展示入境表格樣本：沒有保障內載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
Tourist guide displaying sample disembarkation form to tour members: failure to protect personal data contained therein from unauthorized or accidental access – Data Protection Principle ("DPP") 4

投訴內容
The Complaint

投訴人與家人參加一間旅行社舉辦的台灣團。在集合地點，投訴人依從導遊的指示，交出其護照作登機之用。投訴人其後發現導遊將其護照中的個人資料用於入境表格上，然後向其他團員展示該張載有其個人資料的表格，以教導他們如何填寫表格。投訴人不滿該導遊的做法沒有保障她的個人資料，因此向公署作出投訴。

The Complainant and her family members joined a guided tour to Taiwan operated by a travel agency. At the gathering point at the start of the tour, the Complainant followed the tour guide's instruction to submit her passport for embarkation. The Complainant later found that the tour guide had used the personal data in her passport in a disembarkation form which the guide used to show the tour members how to complete the form. The Complainant was aggrieved that the tour guide, by doing so, had failed to protect her personal data, and thus lodged a complaint with the PCPD.

該旅行社解釋，該導遊是無意向其他人展示投訴人的個人資料的。該導遊相信在展示該表格時，已將該表格高舉至一定高度，其他團員未必可以看到有關資料。

The travel agency explained that the tour guide had not intended to show the Complainant's personal data to the others. The tour guide believed that the form was held up in such a position that the tour members would not be able to read the data during the demonstration.

結果
Outcome

私隱專員認為展示載有投訴人的個人資料的入境表格，或不經意將投訴人的個人資料披露予其他團員。在私隱專員的建議下，該旅行社已指示其導遊在向團員作出類似講解時使用載有虛擬資料的表格樣本。

The Commissioner was of the view that by showing the disembarkation form containing the Complainant's personal data, there might be an unintended risk of disclosing the Complainant's personal data to other tour members. Upon the advice of the Commissioner, the travel agency instructed their guides to use a sample form with dummy data when providing similar explanations to tour members.

個案 CASE 2

比賽主辦單位轉移參加者的個人資料予贊助商以促銷贊助商的服務：沒有取得參加者的訂明同意 — 保障資料第 3 原則
Competition organizer transferring participants' personal data to the event sponsor for promoting the latter's services: failure to obtain prescribed consent from the participants – DPP 3

投訴內容
The Complaint

投訴人提供她及兒子的個人資料，讓兒子參加一間棋藝學院（下稱「該學院」）舉辦的公開棋藝比賽（下稱「該比賽」）。在該比賽完結後不久，該比賽的其中一個贊助商（下稱「該贊助商」）致電投訴人，推廣其課程。來電者告訴投訴人，他們是從該學院取得其個人資料的。投訴人不滿該學院未取得其訂明同意，便讓贊助商使用其個人資料。

The Complainant's son participated in an open chess competition (the Competition) organised by a chess college (the College), which collected personal data from the Complainant and her son. Shortly after the Competition, one of the sponsors of the Competition (the Sponsor) telephoned the Complainant to promote its courses. The caller told the Complainant that the Sponsor had obtained her personal data from the College. The Complainant was dissatisfied that the College had, without her prescribed consent, shared her personal data with the Sponsor.

該學院承認向一間由他們委託的推廣公司（下稱「該推廣公司」）提供該比賽約 300 名參加者的個人資料。該推廣公司其後將有關個人資料轉移予該贊助商。

The College admitted having provided the personal data of some 300 Competition participants to a marketing company (the Marketing Company) appointed by them. The Marketing Company subsequently transferred the personal data to the Sponsor.

結果
Outcome

明顯地，該學院收集該比賽的參加者的個人資料，目的是處理與該比賽有關的事宜。因此，其後披露參加者的個人資料以促銷該贊助商的課程，並不是與原本的收集資料目的直接有關。

Obviously, the purpose of collecting the personal data of the participants of the Competition by the College was for matters relating to the Competition. Therefore, the subsequent disclosure of the participants' personal data for the purpose of promoting the Sponsor's courses was not directly related to the original data-collection purpose.

該學院接納私隱專員的建議，承諾日後不會使用在比賽中收集得的個人資料作直接促銷用途。他們亦向該推廣公司及該贊助商發信，要求他們刪除有關個人資料。

The College accepted the advice of the Commissioner and undertook not to use the personal data collected in competitions for direct marketing purposes in future. They also issued letters to the Marketing Company and the Sponsor asking them to erase the personal data in question.

個案 CASE 3

僱主向職員介紹新員工：不得披露超乎適度的個人資料 — 保障資料第3原則

Employer introducing newcomer to staff members: must not disclose excessive personal data – DPP 3

投訴內容 The Complaint

投訴人是一間公司（下稱「該公司」）的新員工。在上班首日，她發覺該公司的辦公室經理在數日前曾向所有其他職員發出電郵（下稱「該電郵」）介紹她。該電郵提及她的前僱主名稱、以前的職位及海外工作年期（下稱「該等資料」）。因此，她投訴該公司事前未取得其同意，將該等資料披露予其他職員。

The Complainant was a new employee of a company (the Company). On the first day of work, she found that the Office Manager of the Company had sent an email (the Email) to introduce her to all other staff members a few days earlier. In the Email, her previous employer's name, her previous posting and the number of years she had worked overseas (the Information) were mentioned. She complained that the Company had disclosed the Information to other staff members without her prior consent.

該公司解釋，其辦公室經理向所有其他職員發出該電郵的目的是向他們介紹投訴人，而加入該等資料是讓職員對投訴人的背景有概括認識。

The Company explained that its Office Manager had sent out the Email for the purpose of introducing the Complainant to all other staff members and that the Information was included so that the staff members could have a brief understanding of the Complainant's background.

結果 Outcome

該公司最初收集該等資料的目的是用作招聘用途。私隱專員認為該公司以該電郵向所有其他職員披露投訴人的該等資料，並不是以「有需要知道」的基礎作出的，亦不是與原本的收集資料目的直接有關。

It was noted that the Information was initially collected by the Company for recruitment purposes. The Commissioner considered that the Company's disclosure of the Complainant's Information by sending the Email to all other staff members was not on a "need-to-know" basis, nor was it for the purpose directly related to the original purpose of collecting the data.

該公司接納私隱專員的建議，並即時採取措施，在取得新員工的訂明同意前，只會披露新員工的姓名、座位位置及辦公室電話內線號碼，而不會披露其他個人資料。

The Company accepted the advice of the Commissioner and adopted an immediate measure of disclosing only the names, office seat locations and office telephone extension numbers of new staff members, without disclosing their other personal data, unless prior consent had been obtained.

個案 CASE 4

機構發出會員證：會員證不應以會員的身分證號碼作為會員號碼 — 保障資料第3原則

Institution issuing membership cards: the cards should not bear members' Hong Kong Identity Card numbers as membership numbers – DPP3

投訴內容 The Complaint

投訴人是一間專業機構（下稱「該機構」）的會員。她獲發的會員證印有她的全名及身分證號碼。投訴人認為其身分證號碼屬敏感個人資料，不應在會員證上展示。該機構表示他們是以會員的身分證號碼作為管理會員記錄的索引碼，因此他們在會員證上印上身分證號碼，以便容易識辨會員。

The Complainant was a member of a professional organization (the Organization). She was issued a membership card embossed with her full name and Hong Kong Identity Card (HKIC) number. The Complainant considered that her HKIC number was sensitive personal data and should not be shown on her membership card. The Organization stated that they used the HKIC numbers of their members as index numbers for maintaining their members' records; hence, they embossed the HKIC numbers on the membership cards for the ease of identifying their members.

結果 Outcome

《身分證號碼及其他身分代號實務守則》（下稱「實務守則」）第2.6段載列資料使用者可使用個人的身分證號碼的情況。雖然實務守則第2.6.4段規定，資料使用者可使用一名個人的身證號碼，以聯繫、檢索或以其他程序處理其持有關乎該名個人的紀錄，但該機構沒有合理理由在會員證印上身分證號碼。此外，上述做法會增加會員的身分證號碼被其他非指定人士看到的風險。

Paragraph 2.6 of the Code of Practice on the Identity Card Number and other Personal Identifiers (the PI Code) sets out situations in which a data user may use the HKIC number of an individual. Although under paragraph 2.6.4 of the PI Code, a data user may use the HKIC number for linking, retrieving or otherwise processing records it holds relating to an individual, the Organization had no justification for embossing the HKIC on the membership card. Furthermore, the said practice may increase the risk of the members' HKIC numbers seen by other unintended parties.

在私隱專員的建議下，該機構停止在會員證印上身分證號碼的做法。該機構其後採用新的會員證編號系統，該系統是不會涉及會員的身分證號碼。

Upon the advice of the Commissioner, the Organization stopped issuing membership cards embossed with members' HKIC numbers. The Organization subsequently adopted a new membership card numbering system which did not use the HKIC numbers of its members.

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' actions or practices that were found to have contravened the requirements of the Ordinance during the reporting period. They were selected on the basis of the subject matter and demonstrate the wide variety of conduct that is subject to the provisions of the Ordinance, including those of the Data Protection Principles (DPPs).

個案 CASE 1

政府部門未得資料當事人的訂明同意向第三者披露個人資料：須確保條例下的豁免適當地使用 — 保障資料第3原則及第58條
A government department disclosing personal data to a third party without the data subject's prescribed consent: must ensure the exemptions under the Ordinance are applied appropriately – DPP3 and section 58

投訴內容
The Complaint

投訴人因乘搭巴士時受傷而去信巴士公司（下稱「該公司」）索償。他亦向某政府部門（下稱「該部門」）報告事件，要求刑事調查。

The Complainant wrote to a bus company (the Company) to claim compensation for an injury sustained while travelling on one of the Company's buses. He also reported the case to a government department (the Department) for criminal investigation.

投訴人作出書面口供時，明確表明他不同意將其供詞向有關其索償的第三者披露。

A written statement was taken from the Complainant, who explicitly stated therein that he did not consent to disclosing his statement to any third party relating to his claim.

在該部門調查後，雖然沒有對該公司或該巴士司機提出檢控，但卻將該供詞披露予代表該公司的公證行，理由是有關資料或可協助投訴人向有關人士進行民事索償。該部門聲稱有關披露是根據第58(1)(d)條獲得豁免的。

Although no prosecution was brought against the Company or the bus driver after the Department's investigation, the statement was released to a loss adjustor acting for the Company on the ground that the information might assist the Complainant to carry out his civil claim against the parties concerned. The Department claimed that the disclosure was exempt under Section 58(1)(d).

結果
Outcome

私隱專員認為有關披露為了協助投訴人進行民事索償，既不屬於該部門原本收集資料的目的（即確定是否涉及刑事罪行），亦不是與此目的直接有關。由於該部門沒有取得投訴人的訂明同意，除非條例下的豁免適用，否則該部門便違反了保障資料第3原則的規定。

The Commissioner was of the view that the disclosure for the purpose of assisting the Complainant to carry out a civil claim was neither the Department's original purpose for collection (i.e. to ascertain whether any criminal element was involved), nor a directly related purpose. Given that no prescribed consent from the Complainant had been obtained, the Department had contravened DPP 3, unless an exemption under the Ordinance was applicable.

關於第58(1)(d)條的豁免，私隱專員須考慮的是如依從保障資料第3原則的規定，則是否相當可能會損害第58(1)(a)條所提述的任何事宜（即不合法或嚴重不當行為的防止、排除或糾正）。由於該部門不能確立為何向該公證行披露該供詞便相當可能會損害該等事宜，私隱專員最終認為有關披露不獲第58(1)(d)條所豁免，該部門因而違反了保障資料第3原則的規定。

In relation to the exemption under Section 58(1)(d), the Commissioner had to consider whether the application of DPP 3 in relation to such use would likely to prejudice any of the matters referred to in this section (i.e. the prevention, preclusion or remedying of unlawful or seriously improper conduct). As the Department had failed to establish why disclosure of the statement to the loss adjustor would likely to prejudice those matters, the Commissioner concluded that the disclosure was not exempt under Section 58(1)(d) and that the Department had contravened DPP 3.

私隱專員向該部門送達執行通知，指令它制定政策指引，規定其職員向第三者披露個人資料前，須取得有關資料當事人的訂明同意（除非條例下的豁免適用）。2010年10月，該部門遵從了執行通知的規定。

An enforcement notice was served on the Department directing it to formulate a policy guidance note requiring its staff to obtain the prescribed consent of data subjects before releasing their personal data to third parties (unless an appropriate exemption under the Ordinance applies). In October 2010, the Department complied with the terms of the enforcement notice accordingly.

私隱專員亦建議該部門在應用第58條的豁免時，須記錄支持其決定的證據，並在適當情況下諮詢法律意見。

The Commissioner also advised the Department that when applying the exemption under Section 58, it should record evidence in support of its decision and obtain legal advice where appropriate.

個案 CASE 2

金融公司沒有保持資料的準確性：須採取所有合理地切實可行的步驟，確保地址資料的準確性 — 保障資料第2(1)原則

A financial company failing to maintain data accuracy : must take all reasonably practicable steps to ensure the accuracy of address data – DPP2(1)

投訴內容
The Complaint

2008年12月，投訴人向一間金融公司(下稱「該公司」)申請信用卡。她向該公司提供在「A地區」的地址，作為通訊地址。

In December 2008, the Complainant applied for a credit card from a financial company (the Company). She provided the Company with her address in "District A" as her correspondence address.

後來，投訴人從該公司發出的信件得悉她的地址區域被錯誤寫成「B地區」(下稱「該錯誤地址」)。她於是親身向該公司作出改正要求，提交了「要求更改客戶資料表格」(下稱「該表格」)及地址證明。

Later, the Complainant noted, from a letter issued by the Company, that the district of her address had been wrongly written as "District B" (the Wrong Address). She then made a correction request to the Company in person by submitting a "Change of Customer Information Request Form" (the Form), with address proof.

2009年1月，投訴人收到該公司的信件，發覺地址仍然是該錯誤地址，因此她致電該公司，要求改正。

In January 2009, the Complainant received a letter from the Company and found the address was still the Wrong Address. So she telephoned the Company and requested a correction.

2009年2月，投訴人收不到2009年1月份的信用卡結單。她其後從該公司得悉1月份結單被寄往一個沒有層數及室號的地址(下稱「該不全地址」)。

In February 2009, the Complainant did not receive her credit card statement for the month of January 2009. She subsequently learnt from the Company that the January statement had been sent to an address without flat and floor information (the Incomplete Address).

該公司凍結投訴人的信用卡戶口，再向她發出新信用卡。投訴人後來收到新信用卡，但沒有1月份結單。當她到該公司取回1月份結單時，她發現結單上的地址是該不全地址。投訴人感到受屈，於是向私隱專員提出投訴。

The Company froze the credit-card account and issued a new credit card to the Complainant. Later, the Complainant received the new credit card but not the January statement. When she went to the Company to collect the January statement, she found that the address printed on the statement was the Incomplete Address. Feeling aggrieved, the Complainant lodged a complaint with the Commissioner.

結果
Outcome

在回應私隱專員的查詢時，該公司解釋，其僱員收到投訴人的改正地址要求時，誤將「B地區」輸入電腦系統。負責隨機檢查的僱員卻沒有發現錯誤。

In response to the Commissioner's enquiry, the Company explained that upon receipt of the Complainant's address-correction request, its employee had mistakenly input "District B" as the address district into its computer system. The employee responsible for random checks was unable to spot the mistake.

該公司進一步解釋，1月份結單被寄往該不全地址是因為其僱員在收到該表格後沒有填上層數及室號的資料。

The Company further explained that the January statement had been sent to the Incomplete Address because its employee had failed to fill in the flat and floor information upon receipt of the Form.

該公司已安裝隨機檢查客戶地址是否準確的電腦軟件。不過，沒有記錄顯示該公司曾以該軟件檢查投訴人的地址。為補救這情況，該公司主動實施措施，強制規定其職員使用該軟件檢查所有客戶的地址，並採取雙重檢查的程序。

The Company had installed a computer software to randomly check the accuracy of its customers' addresses. However, there was no record showing that the Company had used the software to check the Complainant's address. To remedy the situation, the Company took initiative to implement new procedures to require its staff members, on a compulsory basis, to use the software to check all customers' addresses, and adopt a double-checking procedure.

私隱專員認為該公司的僱員作出的錯誤是因為該公司的僱員不小心及該公司沒有進行檢查程序。由於該公司沒有採取所有合理地切實可行的步驟，以確保投訴人的地址準確，該公司違反了保障資料第2(1)原則的規定。

The Commissioner found that the mistakes were made by employees of the Company due to carelessness on the part of the Company's employees and the failure of the Company's checking procedures. By failing to take all reasonably practicable steps to ensure that the Complainant's address it used was accurate, the Company had breached DPP 2(1) of the Ordinance.

私隱專員向該公司送達執行通知，指令它每月對更改地址要求進行10%的隨機檢查，然後向高層匯報檢查結果。該公司同意私隱專員的指示，並遵從執行通知的規定。

The Commissioner served an enforcement notice on the Company directing it to conduct a monthly 10% random check on requests for change of address and report the random check results to top management. The Company agreed with the directions issued by the Commissioner and complied with the enforcement notice accordingly.

個案 CASE 3

打印產品供應商收集客戶的個人資料：不得以防騙為藉口收集超乎適度的個人資料 — 保障資料第1(1)原則

Printing consumables supplier collecting personal data of customers: must not collect excessive personal data for fraud and loss prevention – DPP1(1)

投訴內容 The Complaint

投訴人到一個打印產品供應商（下稱「該供應商」）的服務中心更換損壞的打印機墨盒。該服務中心要求投訴人在該供應商的登記表格提供其個人資料，包括身份證號碼。

The Complainant visited the service centre of a printing-consumables supplier (the Supplier) to replace bad cartridges. The service centre asked the Complainant to provide personal information, including his Hong Kong Identity Card (HKIC) number, on the Supplier's registration form.

投訴人不肯提供其身份證號碼，因此該服務中心拒絕向投訴人提供更換服務。投訴人不滿，於是向私隱專員提出投訴，指稱該供應商試圖收集超乎適度的個人資料。

The Complainant did not accede to the request for his HKIC number, so the service centre refused to provide the Complainant with replacement service. The Complainant was dissatisfied and filed a complaint with the Commissioner alleging the Supplier had tried to collect excessive personal data.

私隱專員的調查顯示，該供應商收集客戶的身份證號碼是為了識別沒有銷售收據的客戶（或其送遞人員），以避免有人更換假墨盒。根據該供應商所述，該服務中心即場不能判斷損壞的墨盒是正貨還是假貨，該中心需要時間將損壞的墨盒送回測試中心核實。

The Commissioner's investigation revealed that the Supplier had collected customers' HKIC numbers to identify customers (or their couriers) without sale receipts, in order to avoid replacing fake cartridges. According to the Supplier, the service centre could not determine on the spot whether the defective cartridges were genuine or fake, adding that it took time to deliver defective cartridges to its test centres for verification.

結果
Outcome

私隱專員裁定該供應商收集客戶的身份證號碼是不必要的，因為該供應商可以在核實後才提供更換服務。私隱專員向該供應商發出執行通知，要求它採取適當的補救行動。

The Commissioner ruled that it was not necessary for the Supplier to collect customers' HKIC numbers because the Supplier could provide replacement service after the verification process. An enforcement notice was issued requiring the Supplier to take appropriate remedial action.

該供應商後來將事件交由行政上訴委員會仲裁。私隱專員在行政上訴委員會初審後，將執行通知的規定作出修訂，而該供應商亦隨即遵從有關規定。

The Supplier later took the matter before the Administrative Appeals Board (AAB) for adjudication. After a de novo hearing at the AAB, the Commissioner varied the terms of the enforcement notice, which was then agreed to and complied with by the Supplier.

該供應商修改其措施，向客戶提供私隱侵犯程度較低的選擇，以代替收集他們的身份證號碼。這些選擇包括(a)提供地址證明，(b)繳付按金，及(c)將損壞的墨盒留在服務中心14天，待核實後才更換。故此，除非客戶已完全明白但明確拒絕該些選擇，否則該供應商不會收集客戶的身份證號碼。

The Supplier's revised practice is to offer less privacy-intrusive options to customers in lieu of collecting their HKIC numbers. The options include (a) providing proof of address, (b) paying a deposit, or (c) leaving the defective cartridges with the service centre for 14 days for verification before replacement. The Supplier agreed not to collect HKIC numbers from its customers except when the customers completely understood but explicitly rejected the other three options.

個案 CASE 4

電訊店在公眾地方處理客戶的個人資料：須採取所有合理地切實可行的步驟，保障客戶的個人資料免受未經准許及意外的查閱 — 保障資料第4原則

Telecommunication shop processing customers' personal data in public area: must take all reasonably practical steps to prevent customers' personal data from unauthorized and accidental access – DPP4

投訴內容
The Complaint

投訴人到一間電訊店（下稱「該店」）訂購寬頻及固網電話服務。該店採用開放式設計，在公眾地方設置一些電腦終端機，訪客可以自由在那些終端機附近行走。

The Complainant visited a telecommunication shop (the Shop) to subscribe for broadband and fixed-line phone services. The Shop adopted an open-plan design. Some computer terminals were set up in a public area and visitors were free to circulate around those terminals.

投訴人的訂購申請是在其中一部電腦終端機處理的。在過程中，投訴人留意到當客戶服務員在電腦終端機工作時，站在服務員旁邊或後面的人是可以看到他的個人資料的。他在翌日到該店實地觀察，確定訪客可以輕易從站在客戶服務員的身後看到電腦屏幕顯示的客戶個人資料（下稱「該等資料」）。投訴人感到不滿，於是向私隱專員作出投訴。

The Complainant's subscription request was processed at one of the computer terminals in the public area. During the process, he noticed that his personal information was visible to people standing next to or behind the customer-service officer working at the computer terminal. He made an on-site observation at the Shop the following day and confirmed that a visitor could easily read the customers' personal data (the Data) displayed on a computer screen by standing behind a customer-service officer. The Complainant was upset and complained to the Commissioner.

該店在回應投訴時表示已安裝偏光濾鏡、屏幕保護裝置，及自動隱藏資料軟件功能，以保護該等資料免被非指定人士看到。該店亦調較了電腦屏幕的高度及角度，令它們不易被旁觀者看到。不過，這些措施證實是不足以防止該等資料免受未經准許或意外的查閱。

In response to the complaint, the Shop stated that it had installed polarised filters, a screen saver and a software function that automatically hid the Data to prevent it from being viewed by unintended people. The Shop also adjusted the height and angle of the computer screens to make them less visible to bystanders. However, these measures proved insufficient to prevent unauthorised or accidental access to the Data.

結果
Outcome

私隱專員認為該店沒有提供足夠的保安措施，違反了保障資料第4原則的規定。調查確定有關電腦屏幕所擺放的位置不佳，訪客有可能從屏幕看到該等資料。

The Commissioner found that the Shop had contravened the requirements of DPP 4 by failing to provide adequate security. The investigation established that the computer screens in question were badly situated, and that it was possible for visitors to see the Data on the screens.

由於該店所採取的補救措施不能防止違規行為再發生，因此私隱專員向該店送達執行通知，指令它改變電腦終端機的設計，令旁觀者不能從電腦屏幕看到該等資料。

As the remedial measures taken by the Shop had not been able to prevent a recurrence of the contravening act, an enforcement notice was served on the Shop directing it to remodel the design of its computer terminals so that the Data on the computer screens could not be viewed by passers-by.

該店同意私隱專員的調查結果，並遵從執行通知的規定，將面向客戶的電腦終端機的輸入及提取個人資料的功能關閉。

The Shop agreed with the Commissioner's findings and complied with the enforcement notice by disabling the functions of entering and retrieving of the Data at all the computer terminals which faced the public.

個案 CASE 5

電訊公司使用客戶的個人資料促銷與其行業或業務無關的產品：須在使用前徵求客戶的訂明同意 — 保障資料第 3 原則

Telecommunications company using customers' personal data for marketing products unrelated to its trade or business : must seek customers' prescribed consent before use – DPP3

投訴內容
The Complaint

投訴人是一間電訊公司（下稱「該公司」）的流動電話用戶。2009 年 3 月，投訴人收到該公司的電話，邀請她參加由一間保險代理（下稱「該代理」）舉辦的抽獎。該抽獎的參加者可獲免費的意外保險。

The Complainant was a subscriber of the mobile phone service of a telecommunications company (the Company). In March 2009, the Complainant received a telephone call from the Company inviting her to join a lucky draw held by an insurance agency (the Agency), offering free accident insurance to participants in the lucky draw.

投訴人同意參加該抽獎後，該通話被轉駁至該代理。在登記參加該抽獎後，該代理向她推介一項保險產品（下稱「該保險產品」）。投訴人不滿其個人資料被用作促銷該保險產品，於是向私隱專員作出投訴。

The Complainant agreed to join the lucky draw and the call was transferred to the Agency. After registering her in the lucky draw, the Agency promoted an insurance product to her. The Complainant was displeased that her personal data had been used in the promotion of the insurance product and filed a complaint with the Commissioner.

私隱專員的查詢確定該公司與該代理進行一項聯合促銷計劃（下稱「該計劃」），以推廣該保險產品。該計劃採取「雙層」通話方式。在第一層通話中，該公司會致電目標客戶，邀請他們參加由該代理舉辦的抽獎。如客戶接受邀請，該通話便會被轉駁至該代理，以進行第二層通話，推廣該保險產品。

Enquiries by the Commissioner established that the Company had entered into a joint marketing program (the Program) with the Agency to promote the insurance product. A "two-level" calling approach was adopted under the Program. In the level-one call, the Company would telephone a target customer inviting him/her to join a lucky draw held by the Agency. If the customer accepted the invitation, the telephone line would be transferred to the Agency for the level-two call to promote the insurance product.

結果
Outcome

在調查之後，私隱專員總結認為該公司違反了保障資料第3原則的規定，原因如下：

(a) 該公司會就該代理向投訴人促銷該保險產品而從該代理取得金錢收益；

(b) 該保險產品與電訊服務無關；

(c) 該公司沒有明確通知投訴人，其個人資料會被用作促銷保險產品；

(d) 投訴人只同意轉駁該通話作抽獎登記；及

(e) 該公司沒有取得投訴人的訂明同意，將其個人資料用於促銷該保險產品。

After investigation, the Commissioner concluded that the Company had contravened the requirements under DPP 3 because:

(a) the Company had received monetary gains from the Agency in return for promoting the insurance product to the Complainant;

(b) the insurance product was unrelated to the telecommunications service;

(c) the Company had not explicitly informed the Complainant that her personal data would be used in the promotion of insurance products;

(d) the Complainant had consented only to the transfer of the line for registration in the lucky draw; and

(e) the Company had not obtained the Complainant's prescribed consent for her personal data to be used for marketing the insurance product.

在回應私隱專員的決定方面，該公司向私隱專員提供承諾書，確認日後在聯合促銷計劃中，使用現有客戶的個人資料促銷與電訊服務無關的產品或服務（例如金融及保險產品）前，會先取得客戶對有關使用的明確及自願同意。

In response to the Commissioner's decision, the Company provided the Commissioner with a written undertaking confirming that if the personal data of its existing customers were used under any joint-marketing program promoting products or services unrelated to telecommunications services (e.g. financial and insurance products), it would first obtain explicit and voluntary consent to such use from its customers.

個案 CASE 6

主題公園收集訪客的指紋資料作入場用途
A Theme Park collecting visitors' fingerprint data for admission purpose

投訴內容
The Complaint

投訴人一家四口（包括他自己在內）購買了四張可多次進入公園的門券。投訴人一家使用門券進入該公園時，被要求進行指紋掃描。投訴人不滿該公園並沒有提供其他較不侵犯私隱的方式以代替提供指紋資料。

更令投訴人不滿的是當他行使《個人資料（私隱）條例》第18條賦予他的查閱資料的權利，要求該公園提供他的「指紋掃描」（fingerprint scan）複本時，遭該公園拒絕。該公園告知投訴人他們並無收集或儲存他的指紋掃描。

在調查期間，該公園解釋它有提供另一選擇，讓訪客出示附有相片的身份證明文件，例如護照或身份證，代替掃描其指紋作再入場之用。該公園進一步解釋，它沒有收集訪客的完整指紋影像，只是從訪客的食指表面讀取一些點數以產生指紋模板作其後的對比。

The complainant was dissatisfied that his family of four (including himself) had bought four multiple-entry tickets to a Theme Park, but were required to have their fingerprint image scanned at the entrance gate without being provided with a less privacy-intrusive alternative.

The complainant felt further aggrieved when his request for a copy of his "fingerprint scan" pursuant to the data-access right to which he is entitled under Section 18 of the Ordinance was denied. The Park told the complainant that it had not collected or stored his fingerprint scan.

During the investigation, the Park explained that it offered the alternative of allowing visitors to show photo identification, such as a passport or HKID card, instead of having their fingerprint scanned for subsequent admission use. The Park further explained that it had not collected the complete fingerprint images of visitors, but only some sample points from the surface of a visitor's index finger to create a fingerprint template for subsequent comparison.

專員就此議題的觀察
The Commissioner's General Observations

該公園可讓訪客選擇以附有照片的身份證明文件以代替掃描收集訪客的指紋資料。這選擇已清楚地在入場證及該公園的網頁上顯示，及已向首次進入該公園的訪客講解。

The Park provides the alternative of photo identification in lieu of collecting a visitor's fingerprint data. This option is expressly stated on the ticket and on the Park's website, and is orally conveyed to ticket-holders upon their first entrance to the Park.

專員尊重資料當事人自願提供其指紋資料作特定用途的決定。該公園只是一個娛樂服務提供者，有別於其他特定關係（例如：僱主和僱員，學校和學生）。在這情況下，並不存在因雙方談判能力不均而產生的不當影響的合理懷疑。因此，如訪客同意提供指紋資料，有關的同意應被視為真正的同意，因為訪客可自由地選擇以附有照片的身份證明文件作為代替，或甚至選擇不遊覽該公園。

The Commissioner respects the decision made by a data subject to voluntarily supply his fingerprint data for specific purposes. Unlike other cases where a special relationship exists (e.g. employer and employees, school and pupils), the Park is only an amusement service provider to the visitor, so there is no reasonable suspicion of undue influence due a disparity in bargaining power. Hence, a visitor's consent to provide their fingerprint data is considered a genuine consent since a visitor has the alternative of photo identification or simply not visiting the Park.

儲存於生物特徵／指紋識辨系統的資料是否屬個人資料經常引起爭議，因為有人認為儲存的模板只是一些無意義的數字，因此並不屬於個人資料。再者，指紋影像並沒有被儲存，而儲存的模板又不能將指紋影像重現。

There are arguments that the data stored in a biometric/fingerprint-recognition system may not be personal data because the stored template is just meaningless numbers and therefore not personal data. Furthermore, a fingerprint is not stored and cannot be reconstructed from the stored template.

專員的看法是，雖然個人的指紋影像已轉化成數字代碼，但該些從該名個人的手指表面所讀取的點數亦可能足以辨識其身份。畢竟，使用指紋識辨系統的目的在於識辨或核實一名個人的身份。因此，指紋模板如與該名個人的其他身份識辨資料聯繫起來時，便會被認為屬於個人資料。

It is the established view of the Commissioner that although the individual's fingerprint image is converted into a numeric value, the sample points taken from the surface of a finger may still be adequate to establish a positive identification. After all, the purpose of a fingerprint recognition system is to identify or verify the identity of an individual. Hence, fingerprint templates are considered personal data when combined with other identifying particulars of a data subject.

結果
Outcome

專員所得的證據及資料顯示投訴人曾購買四張門票（有效期為兩天）供他及家人到訪該公園。該四人中無人選擇於入場證上登記姓名。該公園只收集了他們的指紋資料以產生模板，用以核實入場證是否有效，除此之外該公園並無於入口處收集投訴人及其家人其他可識辨他們身份的資料。

The evidence and information before the Commissioner indicated that the complainant had bought four tickets (valid for two days each) for him and his family to visit the Park. None of the four persons chose to register his/her name on the ticket. The Park only collected fingerprint data from them in order to create a template for ticket validation and did not collect any other personal identifying particulars from them at the entrance gate.

雖然該公園持有投訴人作為酒店住客的資料，然而該公園並不能切實可行地將有關模板與投訴人聯繫，因為該公園不能識辨四張門票中哪張是投訴人所使用的。要構成條例下的「個人資料」的其中一項要求是，從有關資料可直接或間接識辨該名人士的身份是切實可行的。在本案中，由於該公園不能切實可行地獨一無二識辨投訴人的指紋模板，因此有關資料並不構成條例下的「個人資料」。

Despite the Park having the personal details of the complainant when he registered as a guest of the Park's hotel, it was not practicable for the Park to link the template to the complainant because the Park could not identify which of the four tickets was used by the complainant. To constitute personal data under the Ordinance, one of the conditions is that it is practicable for the identity of the individual to be directly or indirectly ascertained from the data. As it was not practicable for the Park to uniquely identify the complainant's fingerprint template, the data did not fall within the definition of personal data under the Ordinance.

專員補充表示，在其他個案，例如當只有一名訪客購買門票及被掃描其指紋，其指紋模板便會被視為其個人資料，因為該公園可以將購票資料（包括其個人資料）與儲存的指紋模板連繫。

The Commissioner added that, in other cases, such as when only one guest bought one ticket and had his fingerprint scanned, his fingerprint template would then be regarded as his personal data because the Park could link the purchase details (including his personal data) to the stored fingerprint template.

不過，專員認為本投訴個案並無違反條例，因為沒有涉及個人資料。

However, insofar as this complaint is concerned, the Commissioner found that the Ordinance had not been contravened at all, as no personal data were involved.

專員的觀點
The Commissioner's View

專員尊重個人的自由意願去提供其指紋資料以進出設施及獲得服務，前提是有關決定必須是在獲得充分的知會及沒有受到不當的影響下而作出的。本個案的一個重要因素是，該公園已向訪客提供選擇以決定是否使用其指紋資料進入該公園。該公園並無強迫訪客提供其指紋資料。

The Commissioner respects the free will of an individual to provide his fingerprint data for access to facilities and services if this is an informed decision, made without undue influence being exerted upon him. An important factor in this case is that the Park had provided options for its visitors to choose from before deciding whether to use the fingerprint scan to gain access to the Park. Visitors are not compelled to provide the fingerprint data.

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

條例第48(2)條訂明，私隱專員在完成一項調查後，如認為如此行事是符合公眾利益的，可發表報告(下稱「報告」)，列明該項調查的結果及由該項調查引致的、私隱專員認為適合作出的任何建議或其他評論。在本年報期內，私隱專員發表了兩份報告。

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, as he sees fit. During the reporting year, the Commissioner published two Reports.

電訊公司委託另一公司進行電話直接促銷

A telecommunications company authorised another company to conduct a telemarketing campaign.

2010年11月17日，私隱專員發表一份報告，事件涉及一間電訊公司在客人作出「拒收直銷電話」要求後，仍透過其代理向他進行電話直銷。

On 17 November 2010, the Commissioner published a Report in respect of an investigation into a complaint against a telecommunications company for making a telemarketing call through its agent to a customer who had earlier made an opt-out request.

背景

投訴人為一間電訊公司(下稱「該電訊公司」)的流動電話服務客戶。2001年，投訴人曾向該電訊公司表示不願意再接收任何促銷電話，而該電訊公司亦向投訴人確認停止向他發出促銷電話。

投訴人其後接獲一間促銷公司(下稱「該促銷公司」)的來電，代表該電訊公司進行電話促銷。投訴人不滿該電訊公司沒有依從他早前作出的「拒收直銷電話」要求，遂向私隱專員投訴該電訊公司。

Background

The Complainant was a subscriber of the mobile-phone service of a telecommunications company (the Telecom). In 2001, the Complainant informed the Telecom that he did not want to receive any further direct-marketing calls, and the Telecom confirmed to him that it would cease making such calls to him.

Later on, the Complainant received a telemarketing call from a telemarketing company representing the Telecom. Dissatisfied with the Telecom's non-compliance with his previous opt-out request, the Complainant lodged a complaint with the Commissioner.

調查

私隱專員向該電訊公司及該促銷公司取得相關文件。根據兩間公司的協議，該促銷公司會以隨機抽樣的方式致電本港的流動電話用戶，向用戶推廣該電訊公司的流動電話服務。

該電訊公司規定該促銷公司依從其指引，處理「拒收直銷電話」的要求。該促銷公司在使用任何隨機產生的「致電號碼清單」進行促銷前，必須先將號碼清單交予該電訊公司審批。該電

The Investigation

The Commissioner obtained relevant documents from the Telecom and the telemarketing company. According to the agreement between the two companies, the telemarketing company would make calls to mobile-phone users in Hong Kong based on random selection to promote the mobile-phone service of the Telecom.

The Telecom required the telemarketing company to follow the Telecom's guidelines for handling opt-out requests. Before proceeding with the direct-marketing campaign, the telemarketing company had to give the call list generated by random selection to the Telecom for

訊公司會剔除所有拒絕接收直接促銷人士的電話號碼，才交還該促銷公司使用。

approval. The Telecom would delete the phone numbers of people who had opted out of the direct marketing before returning the call list to the telemarketing company for use.

不過，該促銷公司在事發當日使用有關號碼清單進行促銷前，並沒有按照指引先將有關號碼清單交予該電訊公司審批，以致重複使用投訴人的個人資料進行直接促銷。

However, the telemarketing company had failed to give the call list used on the incident date to the Telecom for approval in accordance with the guidelines, resulting in the Complainant's personal data being repeatedly used for direct marketing.

私隱專員的調查結果

私隱專員認為有關號碼雖然是該促銷公司以隨機方式產生的，但基於有關號碼正是投訴人早於 2001 年向該電訊公司作出「拒收直銷電話」要求的個人資料，故就該電訊公司而言，事發當日該促銷公司代表該電訊公司作促銷時屬使用了投訴人的個人資料，因而抵觸了投訴人當初向該電訊公司提出「拒收直銷電話」的要求。

The Commissioner's Findings

The Commissioner was of the view that although the number was generated by random selection by the telemarketing company, it was the personal data that the Complainant had asked the Telecom to stop using for telemarketing in 2001. Hence, when the telemarketing company made the marketing call on behalf of the Telecom on the incident date, it was contrary to the opt-out request made by the Complainant.

根據條例第 65（2）條的規定，任何作為另一人的代理並獲該另一人授權的人所作出的任何作為或行為，須視為亦是由該另一人作出的。雖然該促銷公司的做法明顯地違反了該電訊公司的指引，但是該電訊公司並無積極採取措施確保該促銷公司嚴格遵從指引。私隱專員認為單憑協議中要求該促銷公司有責任遵守條例及該電訊公司的指引，並不足以把該促銷公司的作為括出該電訊公司授權的服務範疇。

Section 65(2) of the Ordinance provides that any act or practice by a person as the agent for another person with the authority of that other person shall be treated as having been performed by that other person, as well as by the agent. While the act of the telemarketing company had obviously contravened the Telecom's guidelines, the Telecom had failed to take active measures to ensure that the telemarketing company would strictly follow the guidelines. The Commissioner took the view that the terms in the agreement requiring the telemarketing company to comply with the Ordinance and the guidelines of the Telecom alone were not sufficient to place the actions of the telemarketing company outside the sphere of the service authorised by the Telecom.

條例第 34（1）（ii）條訂明，如資料使用者從任何來源取得個人資料及將該等資料用於直接促銷的目的，則有關資料當事人可要求該資料使用者停止如此使用該等資料，而該資料使用者須在不向該當事人收費的情況下停止如此使用該等資料。由於該電訊公司須為該促銷公司的行為負責，因此該電訊公司違反了條例第 34（1）（ii）條的規定。

Section 34(1)(ii) of the Ordinance stipulates that if a data user has obtained personal data from any source and uses the data for direct-marketing purposes, the data subject may ask the data user to stop using the data for this purpose. In such cases, the data user must stop using the data without charge to the data subject. As the Telecom was liable for the act of the telemarketing company it had engaged, it contravened section 34(1)(ii) of the Ordinance.

私隱專員向該電訊公司送達執行通知，指示該電訊公司在與被委託進行促銷的公司簽訂的委託協議中，清楚規定有關公司在使用任何號碼清單進行促銷前，必須先將號碼清單交予該電訊公司審批，以剔除所有「拒收直銷電話」的客戶的電話號碼，以及述明如有關公司違反此規定的罰則，並定期抽查所委託的公司的電話促銷記錄。

調查引致的建議

私隱專員察覺到，為了提升促銷活動的成本效益，商業機構委託代理人（例如本案所涉及的促銷公司）進行電話直接促銷的趨勢日益普遍。商業機構必須採取所有切實可行的步驟，以防止其代理對已作出「拒收直銷訊息」要求的人士進行直接促銷，以免違反條例的規定；並應揀選信譽良好、能有效監察前線職員的促銷公司，以確保有關直接促銷活動合符條例的規定。

An enforcement notice was served on the Telecom directing it to clearly specify in the authorisation agreements signed between the Telecom and the companies engaged to conduct direct marketing on its behalf that the companies are required (i) to pass the call list to the Telecom for deletion of the phone numbers of customers who have made opt-out requests before using it in direct marketing, (ii) to specify the penalty for violation of the requirement, and (iii) to conduct regular random checks on the direct-marketing records of the companies.

Recommendations Arising from the Investigation

The Commissioner appreciates that to enhance the cost effectiveness of direct marketing activities, it is common for commercial organizations to engage agents (e.g. the telemarketing company in this case) to conduct telemarketing on their behalf. Commercial organizations are advised to take all practicable steps to prevent their agents from making direct marketing approaches to those customers who have made opt-out requests, in order to avoid contravening the Ordinance. Commercial organizations should select reputable marketing companies that can effectively monitor the performance of frontline staff to ensure that their direct marketing activities comply with the requirements under the Ordinance.

美容中心未獲取客人的同意把其個人資料移轉至第三者

Transfer of Customers' Personal Data by Beauty Centre without Customers' Consent

2010年7月30日，私隱專員發表一份調查報告，事件涉及一間美容中心（下稱「A美容中心」）在未獲取客人的同意下，將客人的個人資料移轉至另一間美容中心（下稱「B美容中心」）。

On 27 October 2007, the Commissioner published a Report concerning a beauty centre (Beauty Centre A) that transferred a customer's personal data to another beauty centre (Beauty Centre B) without the customer's consent.

背景

該名客人（下稱「投訴人」）向A美容中心購買了為期三年的會籍。投訴人購買A美容中心的會籍時，提供了自己的個人資料，

其後，A美容中心因進行裝修而暫時遷至另一地址營業。但當投訴人前往A美容中心所述的地址時，卻發現在該處經營的是B美容中心。B美容中心的職員更向投訴人展示他與A美容中心簽訂的服務合約、他在A美容中心的簽到記錄及會籍申請表之正本，當中載有他的姓名、住址、電話號碼等資料。

該客人不滿A美容中心在未有取得他的同意下，把他的個人資料移轉予B美容中心，遂向私隱專員投訴。

Background

The customer (the Complainant) purchased a three-year membership from Beauty Centre A. When he purchased the membership, he provided his personal data to Beauty Centre A.

Subsequently, Beauty Centre A informed the Complainant that it was moving temporarily to another address while its premises were being renovated. However, when the Complainant went to the address provided by Beauty Centre A, he found that the operator there was Beauty Centre B, whose staff showed the Complainant the original copies of the service agreement which he had entered into with Beauty Centre A, his sign-in record at Beauty Centre A, and his membership application form, containing his name, address, telephone number, etc.

The Complainant was dissatisfied that Beauty Centre A had transferred his personal data to Beauty Centre B without his consent, so he lodged a complaint with the Commissioner.

調查

本案的關鍵是A美容中心收集及使用投訴人的個人資料是否只限於原本的目的或與此直接有關的目的。如不是，根據保障資料第3原則，必須取得投訴人的訂明同意。

投訴人向A美容中心提供其個人資料，是為了購買該中心的會籍及美容服務。因此，投訴人會合理地預期其個人資料只會由A美容中心用於提供服務方面。投訴人不會預期其個人資料會被交給與A美容中心無關的第三者（除非A美

The Investigation

The crux of this case is whether the collection and use of the Complainant's personal data by Beauty Centre A were limited to the original purpose or any purpose directly related to it. If not, the Complainant's prescribed consent had to be sought in accordance with the requirements of DPP 3.

The Complainant provided his personal data to Beauty Centre A for the purchase of the membership and beauty services of Beauty Centre A. Hence, the Complainant's reasonable expectation was that his personal data would be used only by Beauty Centre A for the provision of its services. The Complainant would not expect

容中心在收集投訴人的個人資料時已向他述明有關情況）。

that his personal data would be passed to a third party which had no relationship with Beauty Centre A (unless Beauty Centre A had informed the Complainant of the arrangement at the time when it collected his personal data).

A美容中心指他們向B美容中心移轉客人的個人資料的目的是讓客人在A美容中心裝修期間，仍可繼續到B美容中心享用服務。有關資料是暫時寄存在B美容中心作「內部使用」，故無須另外取得投訴人的同意。

According to Beauty Centre A, the purpose of the transfer of its customers' personal data to Beauty Centre B was to allow the customers to continue to enjoy beauty services at Beauty Centre B during the renovation of Beauty Centre A. Beauty Centre A claimed that the customers' data were only temporarily kept by Beauty Centre B for "internal use", and that therefore, it was not necessary to seek the Complainant's prescribed consent.

不過，公署調查顯示A美容中心與B美容中心簽訂了協議書，以港幣100,000元轉讓A美容中心的儀器、客人資料及產品予B美容中心。因此，A美容中心向B美容中心移轉客人資料的目的，屬進行商業交易的一部分。

However, our investigation revealed that Beauty Centre A had signed an agreement with Beauty Centre B to sell its equipment, customer data and products to Beauty Centre B for HK$100,000. Therefore, the transfer of customers' personal data to Beauty Centre B by Beauty Centre A was part of a business transaction.

私隱專員的調查結果

明顯地A美容中心將投訴人的個人資料移轉予B美容中心，是出售資產的一部分及為B美容中心提供新客戶。因此，這已超越了投訴人對A美容中心如何使用其個人資料的合理期望。

The Commissioner's Findings

It is clear that Beauty Centre A transferred the Complainant's personal data to Beauty Centre B as part of a sale of assets and to provide Beauty Centre B with a new customer. Therefore, the act exceeded the Complainant's reasonable expectation on the use of his personal data

私隱專員認為，A美容中心將投訴人的個人資料移轉給B美容中心的目的與收集目的無直接關係。

by Beauty Centre A. The Commissioner considered that the purpose of transferring the Complainant's personal data to Beauty Centre B by Beauty Centre A was not directly related to the purpose of collection.

私隱專員認為，A美容中心在未有取得投訴人的同意下，將他的個人資料移轉予B美容中心，違反了保障資料第3原則的規定。

The Commissioner was of the view that in transferring the Complainant's personal data to Beauty Centre B without the Complainant's consent, Beauty Centre A had acted in contravention of DPP 3.

私隱專員向A美容中心發出執行通知，指示它停止在類似本案的情況下移轉客人的個人資料予第三者，除非事先獲取有關客人的訂明同意；並按上述指令制定相關的公司政策。

An enforcement notice was served on Beauty Centre A directing it to stop transferring customers' personal data to a third party under similar circumstances without the prescribed consent of its customers, and to devise a relevant company policy in accordance with the above direction.

A美容中心在收到執行通知後，已停止在類似本案的情況下移轉客人的個人資料予第三者，並就此制定相關的公司政策，以確保在收集客人的個人資料時，明確通知客人其個人資料會用於甚麼目的。

Upon receipt of the enforcement notice, Beauty Centre A stopped transferring its customers' personal data to third parties under similar circumstances, and devised a company policy to ensure that when collecting personal data, its customers would be explicitly informed of the purpose for which their data would be used.

調查引致的建議

美容業經營者（下稱「經營者」）最初收集客人的個人資料的時候，應向客人清楚說明：若未能為客人完成承諾的服務，或會考慮將其資料移轉予第三者繼續提供相同或類似的服務。如經營者沒有這樣做，日後在移轉客人的個人資料予第三者前，必須取得客人的訂明同意，以免違反第3原則的規定。

Recommendation Arising from the Investigation

When beauty services operators (the Operators) first collect personal data from their customers, the Operators should clearly inform their customers that if they are unable to complete the promised services, they may consider transferring their customers' personal data to a third party for provision of the same or similar services. If the Operators have not done so, they must ensure that prescribed consent has been obtained before transferring their customers' personal data to a third party in future to avoid contravening DPP 3.

如客人不同意有關移轉，經營者應提出其他處理方案，並就銷毀或歸還資料的安排與客人達成協議。至於未能聯絡得上的客人，經營者應該在繼續嘗試聯絡客人之餘，亦妥善保存其資料，以便日後處理。未能聯絡客人，並不是向第三者轉移客戶個人資料的理由。這是不負責任的做法，亦會違反保障資料第3原則的規定。

In cases where customers do not agree to the transfer, the Operators should propose other options and reach an agreement with their customers on the destruction or return of the data. For those customers who cannot be contacted, the Operators should continue to try to contact them, and meanwhile, take steps to ensure their data are kept safely and properly for future handling. The inability to reach a customer is not an excuse to transfer the customer's personal data to a third party. Such transfers are irresponsible and contravene DPP 3.