

私隱專員的話

# PRIVACY COMMISSIONER'S MESSAGE



採靈活蕪新方式 偕夥伴保障資料

*Personal data protection through  
Creativity and Partnership*

## 挑戰

正如世界其他人權組織一樣，我們有崇高的使命，可惜預算卻緊絀。我們經常處於以少量資源完成更多工作的壓力之中。這個挑戰在近幾年尤其嚴峻，因為在現今的數碼紀元，資訊及通訊科技的使用方式日新月異，對私隱構成巨大的風險。此外，過去幾年發生多宗重大的侵犯私隱事件，特別是2010年的八達通事件，提高了公眾及傳媒對私隱議題的敏感度和監察。公眾普遍期望我們在監察機構遵從私隱法律方面更為積極，在採取執法行動方面更為嚴厲。

## The Challenge

Like all other human rights organizations in the world, we have a noble mission but a lean budget. We have always been under pressure to do more with less. The challenge has been particularly onerous in recent years, as the pervasive use of new information and communication technologies in today's digital society poses immense risks to privacy. Further, due to a number of major privacy intrusion events in the past few years, notably the Octopus incident in 2010, public and media sensitivity and scrutiny related to privacy issues have heightened. The general public expectation is that we should be more proactive in monitoring corporate compliance with the privacy law and more rigorous in taking enforcement action.

蔣任宏

Allan CHIANG

個人資料私隱專員

Privacy Commissioner for Personal Data



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這個對私隱關注不斷轉變的情況，對我們的執法工作，和教育及推廣工作帶來很大的挑戰。

舉例來說，2011年個人資料私隱公署（下稱「公署」）接獲投訴侵犯個人資料私隱的數字較兩年前上升了48%。為應付這個工作量急增的問題，我們向政府要求額外的資源；雖然政府有提供額外資源，但只屬有限程度。事實上，近幾年政府撥給我們的額外款項，與增加的工作量並不相稱，而我對此並不感意外。

我們貫徹採取靈活嶄新的方式去面對這些挑戰，並與理念相近的機構結成合作夥伴。這正是我以「採靈活嶄新方式、偕夥伴保障資料」作為這份年報主題的原因。

### 私隱是超越法律及循規事宜

首先，我視保障私隱及資料為不只是法律及循規的事宜。

在日常工作中，我們在《個人資料（私隱）條例》（下稱「條例」）下執行規管職能經常受到法律挑戰。例如，2010年八達通管理層堅持他們在法律上沒有做錯，這點我們並不同意。但他們確實向公眾道歉，承認出售客戶資料於情不合，保證以後不再從事有關業務。

同樣地，在我們於2010年向Google初步查詢其街景拍攝車輛錯誤地收集Wi-Fi網絡資料一事時，它在回應時提出疑問：Wi-Fi網絡資料是否屬於「個人資料」？若否，我們在條例下是否有權干預此事。

This evolving privacy landscape has presented great challenges to our enforcement work, as well as to our education and promotion initiatives.

For example, the number of complaints about personal data privacy intrusion in 2011 increased by 48% compared with two years ago. To tackle this workload problem, we asked for additional resources from the Government, which were granted, but to only a limited extent. Not surprisingly, the extra funding allocated to us in recent years has not been commensurate with the increase in workload.

With the best will in the world, we continue to confront our challenges by adopting creative solutions and forging partnership with like-minded organizations. That is why I chose *Personal Data Protection through Creativity and Partnership* as the theme for this year's Annual Report.

### Privacy is more than a Legal and Compliance Issue

First and foremost, I treat privacy and data protection as more than simply a legal and compliance issue.

In our day to day work, we are always confronted with legal challenges related to our regulatory role under the Personal Data (Privacy) Ordinance ("the Ordinance"). For example, Octopus management in 2010 insisted that they had not done anything legally wrong, which we disagreed with. But they did apologize to the public, admitting that they could have been more sensitive to public sentiment concerning privacy, and could have handled the matter better.

Similarly, in the initial phase of our inquiries with Google on the wrongful collection of Wi-Fi payload data by its Street View car in 2010, it responded with a query as to whether the Wi-Fi payload data should be considered "personal data" and whether we had the authority to intervene under the Ordinance.

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較為近期的，在2011年中，當我們調查Sony的PlayStation® Network受黑客入侵一事（涉及約400,000個香港帳戶的資料外洩）時，我們面對法律專業人士的挑戰，我被質疑是否獲條例賦權調查此事。

我們對這些挑戰的回應很簡單。我們請這些公司反思，只把事情交由法律及循規專才處理，是否一個明智的商業決定呢？他們最終都會不期然了解到侵犯私隱對公司聲譽所帶來的風險是非常高，因此他們不應滿足於只符合他們認為最低的法律規定。最後，我們總得到高層的衷誠合作，用心處理有關的私隱及資料保障事宜。

我希望對商界發出一個重要訊息：企業應把私隱保障納入其商業程序，就如納入其他核心價值（如公平、透明及相稱）一樣，以此作為企業社會責任的一部份。要達致持續及更好的業績，企業必須將保障個人資料的概念納入為經營業務的必備議程內。

### 盡量發揮條例下專員可行使的權力

我的法定職能其中一項是促進對條例的認識、理解及遵守。這方面可發揮的空間是無限的。我相信預防勝於治療。因此針對機構資料使用者的教育及推廣工作，相較於對違規執法，應該會同樣有效，甚至更有效。

### 協助循規的指引

我們在公開發表對八達通事件的調查報告之餘，亦發出《收集及使用個人資料作直接促銷指引》。這指引對市務專業人員非常有用，因為它是根據我們的執法經驗及有關法律詮釋的發展而編製的，在遵從法律方面提供全面的實用建議。

More recently, in mid-2011, when we looked into the hacking of Sony's PlayStation Network, which involved a data breach of some 400,000 Hong Kong accounts, we were greeted with challenges from legal professionals as to whether I was empowered under the Ordinance to investigate the matter.

Our response to these challenges was simple. We asked these companies to reflect whether it really made business sense to them to simply leave the issue in the hands of their legal and compliance professionals. Invariably, they came to realize that the reputational risk associated with the privacy contraventions was so high that they should not be satisfied with merely meeting what they considered to be the minimum legal requirements. In the end, we secured the co-operation of their top management in addressing the relevant privacy and data-protection issues.

Indeed, one key message I would like to send to the business community is that enterprises should, as part of their corporate social responsibilities, incorporate privacy into their business processes in much the same way that they incorporate other core values such as fairness, transparency and proportionality. To achieve an enduring and higher level of success, enterprises have to embrace personal data protection as a business imperative.

### Unleashing the Full Potential of Existing Legislative Empowerment

One of my statutory duties is to promote awareness and understanding of, and compliance with, the provisions of the Ordinance. To this end, the sky is the limit. I believe prevention is better than cure. Hence, education and promotion targeted at corporate data users can be just as effective, if not more so, as enforcement against contraventions.

### Guidance to Assist Compliance

In parallel with our public release of the investigation report on the Octopus incident, we issued a Guidance Note on the Collection and Use of Personal Data in Direct Marketing. This has proved to be extremely useful to marketing professionals, as it provides comprehensive and practical advice on compliance with the law, based on our enforcement experience and developments in the interpretation of the law.

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在2010年之前，我們只有三份資料概覽及三份指引，在不同範疇為機構資料使用者提供遵從法律規定的指引。在2011-12年度末，指引的數量已增至10份，涵蓋直接促銷、流動通訊服務、競選活動、物業管理、收集指紋、資料外洩事故通報、閉路電視監察、互聯網服務、使用便攜式儲存裝置，及個人資料的刪除與匿名化。

我們亦推出保障個人資料專業研習班，以配合在不同工作範疇處理個人資料的專業人士的需要。課程涵蓋市務、物業管理、人力資源管理、資訊科技管理、處理查閱資料要求、保險，以及銀行及金融服務。

這系列的循規研習班是香港首創的。在2011-12年度，我們共舉辦了75場研習班。經八達通一事，在機構意識到保障私隱及資料對良好企業管治及業務成功的重要性之際，舉辦這些研習班是個適時的安排。

是項活動共得到26個專業組織及商會支持。這些支持機構協助我們向其成員推廣研習班，我們無需進行額外的推廣工作。研習班已成為我們的恒常教育活動，名額經常爆滿。

### 為特定行業而設的推廣活動

我們與機構資料使用者緊密合作的另一例子是，我們每年會揀選一個行業，向其成員推廣私隱及資料保障。我們是與那些涉及最多私隱投訴的行業合作。過去的合作夥伴包括醫院管理局及保險業聯會。在2011-12年度，我們與香港通訊業聯會合作，該會成員來自資訊及通訊科技界。

Before 2010, we had only three fact sheets and three guidance notes that provided corporate data-users with guidance on compliance with the law in various subject areas. By the end of 2011-12, the number of guidance notes had grown to 10. They cover direct marketing, mobile service operation, electioneering, property management, fingerprint collection, data-breach notification, CCTV surveillance, Internet services, the use of portable storage devices, and personal data erasure and anonymisation.

We also began running professional workshops on data protection, tailored to the needs of executives dealing with personal data in different work contexts. They cover the subject areas of marketing, property management, human resource management, I.T. management, handling data access requests, banking and financial services as well as insurance.

This compliance workshop series is the first of its kind in Hong Kong. In 2011-12, we held 75 such workshops. This was a timely response to the awakening of the corporate world to the importance of privacy and data protection in good corporate governance and business success.

The initiative has the support of 26 leading professional organizations, trade associations and chambers of commerce. These supporting organizations help to promote the workshops among their members so that little additional marketing effort on our part is required. The workshops have become part of our recurrent educational programme, and are always over-subscribed.

### Industry-specific Promotion Campaign

As a further example of how closely we partner with corporate data users, we select one industry every year to promote privacy and data protection among its members. We partner with those industries which attract the most privacy complaints. Past partners were the Hospital Authority and the Federation of Insurers. For 2011-12, we partnered with the Communications Association of Hong Kong, which comprises members from the information and communications technology sector.

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### 發表調查報告以推廣私隱循規

在我們的教育及推廣工作中，傳媒是重要的夥伴。透過傳媒，我們公布由投訴引發或由我們主動進行的調查的結果及建議。此舉有多重意義。首先，這可以鼓勵其他資料使用者迅速及認真地解決他們正面對的私隱議題，以避免被本公署正式調查及其後的負面報道。其次，這可以警告所有資料使用者不要繼續調查報告所述的不當做法。第三，這可以鼓勵公眾討論，從而提高公眾的私隱意識及促進循規行為。由1997年至2012年3月底，我們發表了27份調查報告，其中15份是在過去兩年（2010至2012年）發表的。

更重要的是，我們由2011年6月起開始在調查報告中披露違規機構資料使用者的名稱，這政策的目的是透過報告提升公眾監察之功能，以促進資料使用者遵守條例的行為，並提醒遇到同樣或近似問題的資料使用者，避免作出類似的違規行為。

### 與其他規管者合作

在執法方面，我知道我的執法權力有限，因此我選擇與其他監管機構合作，善用他們的法律授權、體制工具及執法權力。在適合的情況下，我們會把發表的調查報告送交相關的規管機構，看看它們可以就違規的資料使用者或有關行業行使甚麼額外的規管或諮詢職能。

### Publication of Investigation Report to Promote Compliance

The media is a critical partner in our educational and promotional work. Through the media we promulgate the findings and recommendations of our investigations initiated by a complaint or by ourselves. This serves multiple purposes. Firstly, it encourages other data users to promptly and genuinely engage in the resolution of privacy issues to avoid a formal investigation and the subsequent adverse publicity. Secondly, it warns data users against the malpractices featured in the investigation report. Thirdly, it promotes public discussion, thereby enhancing privacy awareness and compliant behavior. From 1997 to the end of March 2012 we published 27 investigation reports, of which 15 were published in the past two years.

More importantly, since June 2011, we have adopted the policy of naming in published investigation reports any corporate data users which have contravened the legal requirements. This practice serves to invoke the sanction and discipline of public scrutiny, and in turn, encourages compliant behavior by both the data user, as the subject of the investigation, and other data users facing similar investigation issues.

### Partnership with other Regulators

On the enforcement side, recognizing the limits of my enforcement power, I have resorted to partnering with other regulators, leveraging their legislative mandates, institutional tools and enforcement powers. Where appropriate, our published investigation report is sent to the relevant regulatory body to see what additional regulatory or advisory functions they could exercise in respect of the data user at fault or the industry concerned.

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例如，2010年年底的八達通事件揭示未經授權向第三者售賣客戶的個人資料作直接促銷在香港並非罕見。所涉行業包括銀行、電訊及保險業。正如我們一樣，這些行業的相關規管者，即香港金融管理局、電訊管理局及保險業監理專員，在處理有關問題時面對很大壓力。他們迅速有力地行動，以緩和公眾的憤慨。他們向有關企業發出指示及提示，確保企業遵從法律規定及我們的指引。香港金融管理局更指令銀行停止把個人資料轉移予不相關的第三者作促銷用途，除非及直至它們能夠確定完全遵從法律規定及我們發出的指引。

近期，在2011年11月，一間地產代理公司及一名地產經紀被法庭裁定違反條例第34(1)(ii)條。該條規定資料使用者在收到個人的拒絕服務要求後，須停止使用其個人資料作直接促銷用途。我們將這個案轉介至地產代理監管局，該局非常積極向地產代理從業員推廣保障客戶個人資料的重要。該局亦在這方面發出新的執業通告，於2011年10月1日生效。如從業員違反執業通告中的指引，可能會受到紀律處分。

### 與其他執法機構合作

我們是沒有刑事調查及檢控的權力。因此，根據條例表面證據成立的案件須轉介予警方及律政司跟進。我們的成功檢控記錄並不理想。由1996至2012年3月底，只有14宗定罪個案，即平均每年少於一宗。這是可以理解的，因為私隱及資料保障明顯不是這兩個政府部門優先處理的工作。

For example, the Octopus incident in late 2010 revealed that the unauthorized sale of customers' personal data to third parties for direct marketing purposes was not uncommon in Hong Kong. The trades involved included banking, telecommunications and insurance. Like us, the corresponding regulators for these trades, namely, the Hong Kong Monetary Authority, the Office of the Telecommunications Authority and the Commissioner of Insurance, were under great pressure to address the problems. They acted swiftly and forcefully in order to dampen the public outcry. They issued instructions and reminders to the enterprises concerned to ensure that they complied with the law and my guidance. The Hong Kong Monetary Authority went as far as directing the banks to suspend the transfer of personal data to unrelated third parties for marketing purposes unless and until they were able to confirm full compliance with the law and the Guidance Note I issued.

More recently, in November 2011, a property agency and an estate agent were together convicted of contravention of section 34(1)(ii) of the Ordinance, which requires a data user to stop using an individual's personal data for direct marketing purposes upon receipt of an opt-out request. The case was referred to the Estate Agents Authority, which has been very active in promoting among estate agency practitioners the importance of protecting clients' personal data. It issued a new practice circular in this regard, which took effect on 1 October 2011. A practitioner who breaches the guidelines in the practice circular may be subject to disciplinary action.

### Partnership with other Enforcement Agencies

We do not have criminal investigation and prosecution powers. Hence, a prima facie case of an offence under the Ordinance has to be referred to the Police and the Department of Justice for follow up. Our record of successful prosecution has not been impressive. From 1996 to end of March 2012, there have been only 14 convictions, that is, less than one conviction per year. This is understandable, as privacy and data protection have apparently not been accorded top priority on the agenda of these two government departments.

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針對這情況，我於2011年3月與警方及刑事檢控專員召開會議。會議很有成效，商討了簡化轉介程序及聯合制定處理轉介個案的政策及指引。在2011-12年度，我們共錄得四宗定罪個案。

### 與海外夥伴合作

保障資料是全球的使命。截至2012年1月，共有89個司法管轄區設有保障資料的法律。因此，香港並不是孤軍作戰。國際上在保障資料方面的合作是很重要的，尤其是現今跨境資料轉移十分普及，以及跨國企業、互聯網及流動通訊服務的運作是無分疆界。

公署是國際資料保障及私隱專員研討會的成員。我們致力於改善在各成員國執行保障資料法律的跨境合作。

在區域層面，香港是亞太區私隱機構的成員。亞太區私隱機構是私隱執法機構的非正式網絡，每年開會兩次，以促進合作、分享資訊、商討營運策略、推廣最佳行事方式，及支援聯合提升私隱意識的活動。關於區域上的執法合作，香港亦是亞太經合組織跨境私隱執法計劃的成員。該項計劃始於2010年7月，其他成員包括來自澳洲、加拿大、日本、新西蘭及美國的資料保障機構。這個統籌框架有助我調查涉及資料跨境轉移的侵犯個人資料私隱事件。我可以聯絡其他參與這計劃的私隱執法機構提供協助，就有關事宜作出轉介及聯合調查或執法行動。

To address this situation, I had a serious discussion in March 2011 with the Police and the Director of Public Prosecution. The meeting turned out to be fruitful as it culminated in the streamlining of the referral procedures and the joint formulation of policies and guidelines for the handling of referred cases. In 2011-12, we recorded a total of four convictions.

### Partnership with Overseas Counterparts

Data protection is a global mission. By January 2012, a total of 89 jurisdictions had data protection laws. So Hong Kong is not fighting a lonely battle. International cooperation in data protection is important, particularly in view of the prevalence of cross-border data transfer and the borderless operations of global corporations, as well as Internet and mobile services providers.

My office is a member of the International Conference of Data Protection and Privacy Commissioners. We are committed to improving cross-border co-operation in each member's enforcement of its national data protection laws.

At the regional level, Hong Kong is a member of the Asia-Pacific Privacy Authorities, an informal network of privacy enforcement authorities which meet twice a year to foster co-operation, share information, discuss operational strategies, promote best practices, and support joint awareness-raising campaigns. In terms of regional enforcement cooperation, Hong Kong is also a member of the APEC Cross-border Privacy Enforcement Arrangement (CPEA), which commenced in July 2010 and includes the data protection authorities from Australia, Canada, Japan, New Zealand and U.S. This co-ordination framework will help in my investigations of violations of personal data privacy that involve cross-border data transfer. I can contact the other participating authorities for assistance through referral of matters and through parallel or joint investigation or enforcement action.

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## 結語

最後，我衷心多謝所有合作夥伴及持份者對我們的保障個人資料私隱工作的大力支持。我亦衷心感謝公署全體同事專注辛勤的工作，在面對挑戰時表現出色。

## Concluding Remarks

I would like to offer my sincere thanks to all of our partners and stakeholders for their unstinting support for our work in protecting personal data privacy. I hasten to give my heartfelt gratitude also to all of my staff for their exemplary dedication and hard work in confronting our challenges.

## 蔣任宏

個人資料私隱專員

## Allan Chiang

*Privacy Commissioner for Personal Data*



2012年3月29日，個人資料私隱專員（下稱「專員」）蔣任宏（第一排中間）於「個人資料私隱專員公署合作夥伴頒獎禮」上，頒發獎項予合作夥伴。  
Privacy Commissioner for Personal Data ("the Commissioner"), Mr. Allan Chiang (middle, front row), presented awards to selected partners at the "PCPD Partnership Award" Ceremony on 29 March 2012.