彰顯公義　無私無畏
Upholding Justice without Fear or Favour

1 法律工作
Legal Work

最佳政府夥伴 — 政制及內地事務局

政制及內地事務局在公署的協助下，檢討了《個人資料（私隱）條例》，並向立法會提交《2011年個人資料（私隱）（修訂）條例草案》，對個人資料私隱提供更大保障。此外，在落實資料使用者申報計劃中，政制及內地事務局擔當了領導及統籌角色。

Best Government Partner: Constitutional & Mainland Affairs Bureau (CMAB)

CMAB has reviewed the Personal Data (Privacy) Ordinance with the support of the Office of the Privacy Commissioner for Personal Data ("PCPD") and introduced the Personal Data (Privacy) (Amendment) Bill 2011 into the Legislative Council, proposing legislative amendments required to afford greater protection to personal data privacy. It is also taking a leading and coordinating role in the implementation of the Data User Return Scheme.

左: 政制及內地事務局副局長黃靜文女士
Left: Ms. Adeline Wong, Under Secretary for Constitutional & Mainland Affairs

檢討《個人資料(私隱)條例》
REVIEW OF THE PERSONAL DATA (PRIVACY) ORDINANCE

2011年4月18日，政府發出「檢討《個人資料(私隱)條例》的進一步公眾討論報告」(下稱「進一步討論報告」)。這報告重申政府會跟進各項建議(大部分由公署提出)，以對個人資料私隱提供更大保障，及提高公署運作的有效性及效率。不過，政府維持其立場，擱置部分對個人資料私隱有重大影響的建議。這些被擱置的建議包括：(1)設立全港適用的拒收直接促銷電話登記冊；(2)對敏感個人資料更嚴格規管；(3)授權私隱專員向受屈的資料當事人判給補償；(4)授權私隱專員就嚴重違反保障資料原則處以罰款；及(5)直接規管資料處理者及分判活動。

On 18 April 2011, the Government released its "Report on Further Public Discussions on the Review of the Personal Data (Privacy) Ordinance" ("Further Discussions Report"). This report reaffirms the Government's pursuit of various proposals (the majority of which originated from the PCPD) to provide greater protection for personal data privacy, and enhance the effectiveness and efficiency of the operation of the PCPD. However, the Government maintained its stance to shelve certain PCPD proposals, which would have a significant impact on personal data privacy. These shelved proposals included: (1) setting up a territory-wide Do-Not-Call register; (2) imposing more stringent regulations on sensitive personal data; (3) empowering the PCPD to award compensation to aggrieved data subjects; (4) empowering the PCPD to impose monetary penalties on serious contraventions of data-protection principles; and (5) imposing direct regulation on data processors and sub-contracting activities.

公署就進一步討論報告提交意見書

2011年5月31日，公署向政府及立法會政制事務委員會提交意見書(見http://www.pcpd.org.hk/chinese/files/review_ordinance/legco_paper_20110531_c.pdf)，回應進一步討論報告，請他們留意公署對被擱置建議的意見，及指出就授權售賣／使用個人資料作直接促銷活動所建議的規管機制中的一些關鍵性缺點。

THE PCPD'S SUBMISSIONS IN RESPONSE TO THE FURTHER DISCUSSIONS REPORT

On 31 May 2011, the PCPD made a detailed submission to the Government and the Legislative Council's Panel on Constitutional Affairs (available at http://www.pcpd.org.hk/english/files/review_ordinance/legco_paper_20110531_e.pdf) in response to the Further Discussions Report, drawing their attention to the PCPD's views on the shelved proposals and pointing out some crucial flaws in the proposed regulatory regime for the authorized sale/use of personal data in direct-marketing activities.

政府在收集及使用個人資料作直接促銷的建議

根據政府的建議，如資料使用者打算使用(包括移轉)個人資料作直接促銷，他應在使用(或移轉)之前，依從新規定通知資料當事人有關使用(或移轉)及向他們提供選擇，可以不同意資料使用者如此使用(或移轉)。在這方面，政府建議一個「拒絕服務」的方式，如資料當事人沒有在30日內回應有關資訊及選擇，則會被視為沒有拒絕服務(「被視為同意」)，資料使用者就可以使用及/或移轉有關個人資料。資料當事人也可隨時根據現時

The Government's proposal on the regulation of the collection and use of personal data in direct marketing

Under the Government's proposal, if a data user intends to use (including transfer) personal data for direct marketing, he should, *before the use (or transfer)*, comply with the new requirements to inform the data subjects of such use (or transfer) and provide them with an option to choose not to agree to the use (or transfer) of their personal data. In this connection, an "opt-out" approach was proposed by the Government, whereby data subjects who fail to respond within 30 days to the information and option given to them are deemed to have not opted out ("deemed consent") and hence, the data user may proceed to use and/or transfer the personal data.

檢討《個人資料(私隱)條例》
REVIEW OF THE PERSONAL DATA (PRIVACY) ORDINANCE

條例第34(1)(ii)條規定，向資料使用者提出拒絕服務；若他如此要求，資料使用者必須依從其要求，停止使用其個人資料作直接促銷。此外，資料當事人可要求資料使用者通知其個人資料的承轉人停止如此使用其資料，而承轉人必須依從有關通知。

A data subject may opt out at any time and if he so requests, the data user has to comply with his request to cease to use his personal data for direct marketing, as currently required under section 34(1)(ii) of the Ordinance. In addition, the data subject may request the data user to notify the transferee of his personal data to cease to so use the data and the transferee has to comply with the notification.

建議的關鍵性缺點

公署對執行建議的幾項關鍵性缺點表達極度關注。

Crucial flaws in the proposal

The PCPD expressed its serious concern about several crucial flaws in the implementation proposal.

(a) 首先，條例附表1的保障資料第1(3)原則規定，資料的使用目的(直接促銷或其他用途)須於收集資料之時或之前告知資料當事人。政府的建議令資料使用者可延遲至收集資料後才通知資料當事人收集目的的做法合法化(「延遲通知」)。若實行這個延遲通知的做法，資料使用者可以在收集資料後的任何時間通知資料當事人其資料會被用於直接促銷上。因應該等通知而作出特定的「拒絕服務」要求的責任，便落在資料當事人身上，否則「被視為同意」的推定便適用。因此，資料使用者很可能會較多利用延遲通知的手法，而不是在收集資料之時或之前給予通知。資料使用者或會故意延遲通知，政府必須在草擬修訂草案時處理這個可能出現濫用的問題。

(a) First, while Data Protection Principle ("DPP") 1(3) in Schedule 1 of the Ordinance requires the purpose of the use of the data (direct marketing or otherwise) to be made known to the data subject on or before collecting the personal data, the Government's proposal legitimizes the data user to delay informing the data subject of the collection purpose until any time after the data collection ("delayed notification"). With this delay approach, the data user's notification of the use of the data for direct marketing can take place at any un-predetermined time after the data collection. In addition, it would be incumbent on the data subject to make a specific opt-out request in response to the notification or the deeming rule would apply. As such, data users would be more likely to make use of delayed notification than notification on or before data collection. There could be attempts to deliberately delay notification and this possible abuse should be addressed by the Government when drafting the amendment bill.

(b) 第二，要建立一個公平而有效的延遲通知系統，會面對不少困難。資料使用者可能沒有資料當事人的最新聯絡資料，作出通知的方式也可能會因不同原因而失敗。因此，資料當事人可能會因為收不到資料使用者的通知而未能作出「拒絕服務」選擇，若因此而被視為同意，會對資料當事人不公平。要解決這個對資料當事人不利的情況，可能需要資料使用者保留文件證據，證明已正確地發出通知，但這樣做的成本可能會非常昂貴。

(b) Secondly, there are conceivable difficulties in coming up with a fair and effective system of delayed notification by data users. They may not have the updated contact particulars of the data subjects, and the means of notification may fail for one reason or another. As such, failure of the data subject to exercise the opt-out option may be due to non-receipt of the data user's notification and the application of the deeming rule would be unfair to the data subject. To address this imbalance against the data subject, the data user may be asked to maintain documentary proof of the correct issue of the notification, but the cost of doing so may be disproportionately high.

(c) 第三，如資料當事人沒有在首個機會(即資料使用者給予通知後30日內)作出「拒絕服務」選擇，而是在以後時間作出這項選擇，他可能會面對難以解決的困難。在這個較後時期，他可能要接觸其個人資料的承轉人，而不是移轉資料的資料使用者。他甚至未必能夠識別資料的源頭，從問題的根源作出解決，反而要在個別的資料承轉人向他進行直接促銷時，逐一與他們交涉。為了協助資料當事人解決這個難題，公署曾建議賦予資料當事人法律權利，可以要求資料承轉人提供資料的來源，但可惜政府選擇不跟進這項建議。

(c) Thirdly, if a data subject does not opt-out at the first opportunity (that is, within 30 days after the data user gave the notification) and only exercises this option later, the difficulties he faces could well be insurmountable. At this late stage, he may be dealing with the transferee(s) of his personal data, rather than the data user making the data transfer. He may not even be able to identify the original data source and tackle the problem at its root. Instead, he may have to deal with individual data transferees as they make direct marketing approaches. To assist the data subject in this uphill struggle, the PCPD has proposed giving the data subject the legal right to demand the data transferee trace the source of the data. Regrettably, the Government has chosen not to pursue this proposal.

(d) 根據政府的建議，如資料使用者打算售賣個人資料予第三者以獲取金錢或實物收益，收集及使用個人資料作直接促銷的「拒絕服務」機制及「被視為同意」的推定同樣適用。因此，這建議同樣出現上述(a)至(c)段所指出的缺點。此外，在大多數關於資料當事人在收集資料之前或之時沒有獲告知其資料會被售賣的個案中，售賣資料作為資料的用途是超越資料當事人的合理期望，因此與資料的原本使用目的並不一致，亦非直接有關。在這情況下，根據條例附表1的保障資料第3原則規定，資料使用者在售賣資料前便須取得資料當事人的*訂明同意*。條例第2(3)條規定，一名個人的*訂明同意*指自願給予的明示同意。換言之，訂明同意是不能從行為或沉默來推斷或暗示。因此，在目前機制下，除非資料使用者收到資料當事人的正面表示，否則資料使用者不能售賣資料當事人的個人資料。相比下，政府所提出的「被視為同意」的推定實際上是繞過訂明同意的規定，令資料使用者在沒有尋求資料當事人的事前同意下售賣個人資料合法化：這並不是保障資

(d) Under the Government's proposal, the same opt-out mechanism and deeming rule for the collection and use of personal data for direct marketing apply where a data user intends to sell personal data to third parties for a monetary or in kind gain. Hence, the same flaws pointed out above (paragraphs (a) to (c)) apply. In addition, in most, if not all, cases where the data subject is not informed before or at the time of data collection that the data would be sold, sale of data as the purpose of use would fall outside the reasonable expectation of the data subject and therefore not consistent with or directly related to the original purpose of use of the data. In the circumstances, DPP 3 in Schedule 1 of the Ordinance requires the data user to obtain the *prescribed consent* of the data subject before the data could be sold. Section 2(3) of the Ordinance stipulates that *prescribed consent* of an individual means express consent given voluntarily. In other words, *prescribed consent* cannot be inferred or implied from conduct or silence. Hence, under the current regime, unless the data user receives a positive indication from the data subject, the data user cannot sell the personal data of the data subject. In contrast, the Government's deeming rule, as laid down in the proposal, in effect obviates the requirement for prescribed consent and legalizes the sale of personal data by data users without seeking the data subject's prior consent: an act which is not permissible under DPP3. In sum, it falls short of

料第3原則所允許的。總的來說，這與公眾在八達通事件後所表達的強烈期望有落差，而在加強管制資料使用者售賣個人資料方面，是一個倒退。

《2011年個人資料(私隱)(修訂)條例草案》

2011年7月，政府將《個人資料(私隱)(修訂)條例草案》(下稱「草案」)刊憲。立法會於2011年10月成立法案委員會審議草案。

私隱專員於2011年11月26日出席法案委員會會議，並提交載列他對草案主要關注的文件(請參閱http://www.pcpd.org.hk/chinese/files/review_ordinance/legco_paper_20111108_c.pdf)。他集中討論草案的新條文所引發的實際施行問題，並指出建議的直接促銷規管機制的基本缺點。他進一步表示，草案規定資料當事人以*書面*向直銷商提出「拒絕服務」要求，會對資料當事人造成障礙，尤其是當直銷商是以電話接觸他們時。為方便法案委員會進一步考慮他的意見，私隱專員於2011年12月6日擬備另一份文件，概述他對會議中提出的各項議題的立場(請參閱http://www.pcpd.org.hk/chinese/files/review_ordinance/standpoint_annex_c.pdf)。

私隱專員於2011年11月26日出席會議前，曾與法案委員會個別委員分別會面，解釋他對草案的立場及與他們交換意見。他亦向政府當局及大部分曾向法案委員會提交意見的機構(包括香港直銷市場推廣商會、香港保險業聯會、香港銀行公會，及香港客戶中心協會)的代表交換意見。

the strong public expectation revealed in the Octopus incident and represents a retrograde step in tightening up control over the sale of personal data by data users.

PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011

In July 2011, the Government gazetted the Personal Data (Privacy) (Amendment) Bill ("Bill"). A Bills Committee in the Legislative Council was formed in October 2011 to scrutinize the Bill.

The Commissioner attended the Bills Committee meeting on 26 November 2011 and submitted a paper setting out his major concerns on the Bill (available at http://www.pcpd.org.hk/english/files/review_ordinance/legco_paper_20111108_e.pdf). He focused on the practical implementation issues arising from the new provisions in the Bill and pointed out the fundamental flaws of the proposed regulatory regime on direct marketing. He further expressed that the new requirement under the Bill to require the data subjects to make their opt-out requests to direct marketers *in writing* would create an undue hurdle for the data subjects, especially if the direct marketers approach them by phone. To facilitate the Bills Committee further consider his views, the Commissioner prepared another paper on 6 December 2011 summarizing his standpoint on various issues raised at the meeting (available at http://www.pcpd.org.hk/english/files/review_ordinance/standpoint_annex_e.pdf.)

Before the Commissioner attended the meeting on 26 November 2011, he had separate meetings with individual members of the Bills Committee to explain his positions and exchange views with them on the Bill. He also exchanged views with the Administration and the representatives of most of the organizations which had made submissions to the Bills Committee, namely the Hong Kong Direct Marketing Association, the Hong Kong Federation of Insurers, the Hong Kong Association of Banks, and the Hong Kong Call Centre Association.

為進一步確保公署的所有意見獲全面考慮，私隱專員於2011年12月12日向法案委員會提交另一份文件，按草案的條文逐一提出他的意見（請參閱http://www.pcpd.org.hk/english/files/review_ordinance/legco_paper_20111212_e.pdf）。

As a further step to ensure all the PCPD's views would be thoroughly considered, the Commissioner submitted another paper to the Bills Committee on 12 December 2011 to provide his clause-by-clause comments on the Bill (available at http://www.pcpd.org.hk/english/files/review_ordinance/legco_paper_20111212_e.pdf).

直接促銷活動規管機制的修訂建議

因應公署表達強烈保留，政府於2012年2月22日建議修訂草案中有關規管使用個人資料作直接促銷及售賣個人資料的條文，釋除了公署大部分的疑慮。有關修訂載列於立法會CB(2)1169/11-12(01)號文件（http://www.legco.gov.hk/yr10-11/chinese/bc/bc58/papers/bc580224cb2-1169-1-c.pdf）。

REVISED PROPOSAL OF THE REGULATORY REGIME ON DIRECT MARKETING ACTIVITIES

In response to PCPD's strong reservations, the Government proposed on 22 February 2012 changes to the provisions in the Bill regulating the use of personal data in direct marketing and the sale of personal data as outlined in LC Paper No. CB(2)1169/11-12(01) (http://www.legco.gov.hk/yr10-11/english/bc/bc58/papers/bc580224cb2-1169-1-e.pdf), allaying most of the PCPD's concerns.

延遲通知及被視為同意

根據政府當局的新建議，有關「*延遲通知*」及「*被視為同意*」的條文會被刪除。根據新建議，如資料使用者擬(a)使用或提供客戶的個人資料予他人作直接促銷，或(b)售賣客戶的個人資料，資料使用者只可以在(i)取得資料當事人的書面回應，及(ii)該回應無表示反對（拒絕服務）下才可以這樣做，否則即屬犯罪。

Delayed Notification and Deemed Consent

Under the Administration's new proposal, the provisions regarding "*delayed notification*" and "*deemed consent*" will be deleted. If a data user intends to (a) use, or provide a customer's personal data to others for use, in direct marketing, or (b) sell a customer's personal data, the data user can-only do so if (i) he has received a written response from the data subject, and (ii) there is no objection indicated in the response (opt-out); or else the data user commits an offence.

其後以書面「拒絕服務」

公署關注到很多直接促銷活動是以電話進行的，因此，原本的建議會更不便利資料當事人向資料使用者提出反對使用／售賣其個人資料作直接促銷。政府當局知悉公署的關注後，建議撤回「*書面*」拒絕的規定。

Subsequent Opt-out in Writing

Noting the PCPD's concern that many direct marketing activities are conducted over the phone and that the original proposal may make it more inconvenient for data subjects to indicate their objection to the data user's use/sale of their personal data in direct marketing, the Administration proposed withdrawing the "*in writing*" requirement.

檢討《個人資料(私隱)條例》
REVIEW OF THE PERSONAL DATA (PRIVACY) ORDINANCE

其他更改

草案沒有明確規定資料使用者在提供予資料當事人的資訊中*明確述明*資料使用者有意使用／售賣資料當事人的個人資料作直接促銷，或向其他人提供此等資料作直接促銷。政府當局採納公署的建議，同意在草案中加入這項規定，以免含糊不清。

根據草案，「售賣」一詞指「*為金錢得益或其他財產得益而向某人提供該資料，而不論(a)該項得益的取得，是否視乎某項條件；或(b)提供者是否保留該資料的管有權*」。有關注表示「售賣」的建議定義可能太寬，會不經意地把資料當事人普遍接受的活動及資料當事人合理預期內的活動也納入在內。為回應關注，政府當局建議修訂草案，限定規管機制只適用於售賣個人資料作直接促銷用途。

最後階段

在法案委員會完成審議後，草案會進入最後階段。公署會繼續密切留意法案委員會會議的討論，並在有需要時向法案委員會提出意見及向政府當局提供協助，令草案在本立法會會期獲得通過。

Other changes

The Bill does not explicitly require data users *to state explicitly in* the information to be provided to data subjects that the data user intends to use/sell the data subject's personal data, or provide such data to other persons for use in direct marketing. Taking the PCPD's suggestion, the Administration agreed to add this requirement to the Bill to remove any ambiguity.

Under the Bill, the word "sell" is defined to mean "*to provide the data to a person for gain in money or other property; irrespective of whether (a) the gain is contingent on any condition; or (b) the provider retains possession of the data*". There was concern that the proposed definition of "sell" in the Bill may be too wide to inadvertently catch activities which are generally accepted by, and fall within the reasonable expectation of, data subjects. To address this concern, the Administration proposed amending the Bill to confine the proposed regulatory regime to the sale of personal data for direct marketing purposes.

FINAL STAGE

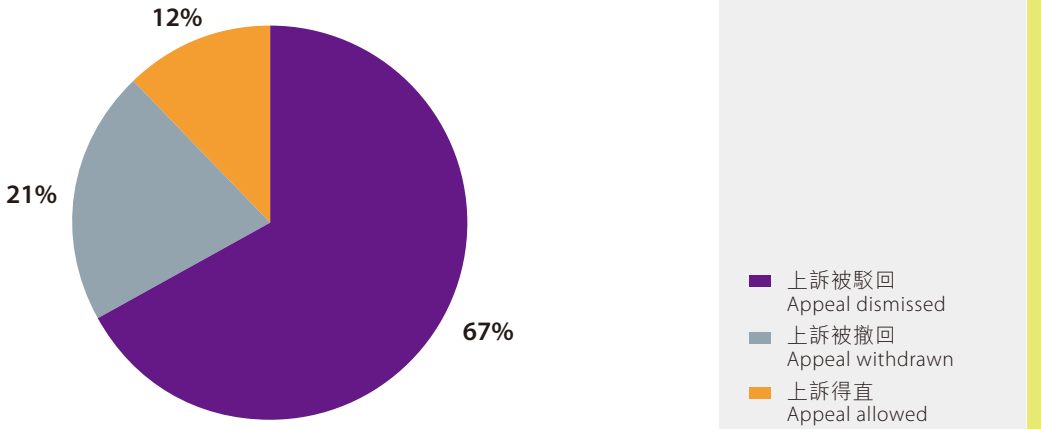
The Bill will proceed to its final stage after the Bills Committee has completed its scrutiny. The PCPD will continue to keep in view the discussions at the Bills Committee meetings and, where necessary, to provide comments to the Bills Committee and render assistance to the Administration for passage of the Bill within the current legislative session.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

在二零一一至二零一二年度決定的／接獲的行政上訴案件的統計資料
STATISTICS OF ADMINISTRATIVE APPEAL BOARD CASES CONCLUDED/ RECEIVED DURING THE YEAR 2011-12

圖表 Figure 1.1

上訴的結果
RESULT OF THE APPEALS



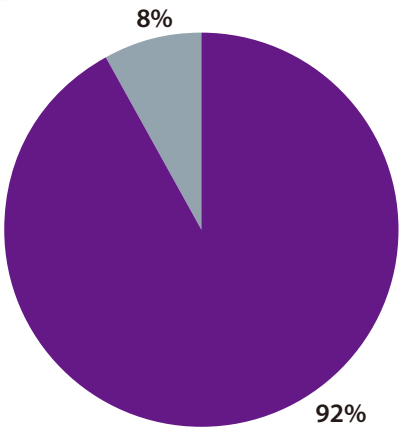
在本年報期間，共有24宗上訴個案完結，其中88%最終被行政上訴委員會駁回或由上訴人撤回。

During the reporting year, 24 appeal cases were concluded, of which 88% were eventually dismissed by the Administrative Appeals Board or withdrawn by the appellants.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

圖表 Figure 1.2

上訴所涉的性質
NATURE OF THE APPEALS



在本年度，共接獲38宗上訴個案。

A total of 38 appeal cases were received during the year.

在這些上訴個案中，35宗是反對專員不進行正式調查的決定，而專員作出有關決定的理由包括(i)沒有表面證據支持所指稱的違反行為及／或(ii)已採取補救行動糾正所指稱的違反行為。

Of these, 35 cases were made against the Commissioner's decision not to carry out a formal investigation, based on the following reasons: (i) there was no *prima facie* evidence to support the alleged contravention, and/or (ii) remedial action had been taken to rectify the alleged contraventions.

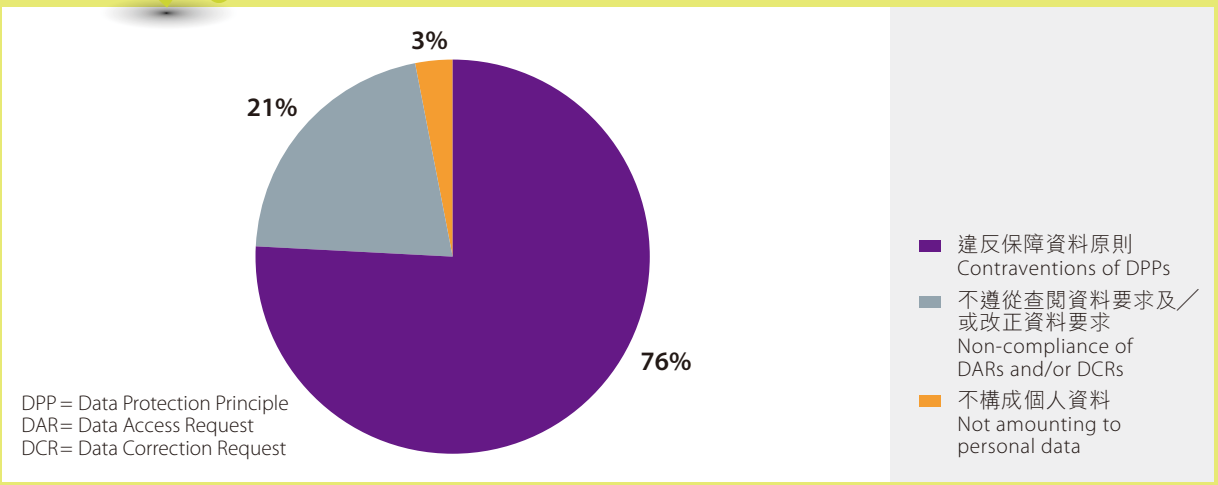
餘下3宗上訴個案涉及反對專員在完成調查後送達執行通知的決定。

The three remaining cases involved appeals made against the Commissioner's decision to serve an enforcement notice after the conclusion of the investigation.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

圖表 Figure 1.3

上訴所涉及條例的規定
THE PROVISIONS OF THE ORDINANCE INVOLVED IN THE APPEALS



在38宗上訴個案中，29宗涉及指稱違反條例附表1的保障資料原則。一宗上訴可能涉及多個保障資料原則。在這些上訴個案中，17宗涉及超乎適度及／或不公平收集個人資料；2宗涉及不準確的個人資料及保留資料的期間；21宗涉及未經資料當事人事前同意而使用其個人資料，以及4宗涉及個人資料的保安。

Twenty-nine out of 38 appeal cases involved the alleged contravention of DPPs in Schedule 1 of the Ordinance. One appeal might involve more than one DPP. Of these appeal cases, 17 involved excessive and/or unfair collection of personal data; two involved inaccuracy and retention of personal data; 21 involved the use of personal data without the data subject's prior consent; and four involved the security of personal data.

在餘下9宗上訴個案中，8宗涉及指稱不依從查閱資料要求及／或改正資料要求，而另1宗是關於是否涉及「個人資料」。

For the remaining nine appeal cases, eight involved alleged non-compliance with DAR and/or DCR and one was about whether or not "personal data" was involved.

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以下選取數個上訴個案作出簡述：
CASE NOTES ON SELECTED CASES ARE PRESENTED BELOW:

一名居民因不滿其屋苑的管理而多次作出投訴。她去信業主立案法團的成員，要求個別回覆。有關信件其後被轉交管理處回覆。上訴是關於業主立案法團是否因轉交有關信件予管理處而違反保障資料第3原則。

A resident was dissatisfied with the management of her residential complex and filed numerous complaints. She wrote to the members of the Incorporated Owners and asked for individual responses. The letters were subsequently passed to the management office for reply. The appeal related to whether there was a breach of DPP3 by the Incorporated Owners as a result of the transfer of the letters.

個案 CASE 1

（行政上訴委員會上訴案件第4/2010號）
(AAB Appeal No. 4 of 2010)

投訴內容 THE COMPLAINT

投訴人居於某屋苑一個單位，該單位由她的丈夫及另一人擁有。她不滿該屋苑的管理，曾多次投訴及查詢，這些投訴及查詢均由管理處處理。投訴人不滿有關回覆及處理其投訴的方式，她於是向業主立案法團的成員發出兩封信件，要求他們不要委派其他人回覆，而是由他們個別回覆她。業主立案法團其後將信件轉交管理處回覆。投訴人不滿業主立案法團的處理方式，於是向私隱專員作出投訴。

The complainant resided in a flat at a residential complex which was owned by her husband and another person. She was dissatisfied with the management of the residential complex and made numerous complaints and enquiries, which were all being dealt with by the management office. The complainant was not satisfied with the replies and the way in which her complaints were being dealt with. She therefore sent two letters to the members of the Incorporated Owners and asked them not to appoint others to respond but to provide their own individual responses to her. The Incorporated Owners subsequently passed the letters to the management office for reply. Dissatisfied with the treatment, the complainant lodged a complaint with the Commissioner.

私隱專員的調查結果 FINDINGS OF THE COMMISSIONER

私隱專員認為業主立案法團收集有關信件(載有她的個人資料)的原本目的是處理她對屋苑管理事宜的查詢，其後把有關信件披露予管理處，也是為了處理她的查詢，這目的與原本的收集資料目的直接有關。因此，沒有違反保障資料第3原則的規定。儘管投訴人要求業主立案法團不要委派其他人回覆她，但監督法團是否依循其要求並不在私隱專員的管轄範疇之內。因此，私隱專員根據條例第39(2)(d)條決定毋須就投訴進行正式調查。投訴人不滿決定，提出上訴。

The Commissioner was of the view that the original purpose of the collection of the letters (which contained her personal data) by the Incorporated Owners was to deal with her enquiries regarding the management issues of the residential complex. The subsequent disclosure of the letters to the management office by the Incorporated Owners was for the purpose of handling her enquiries, which was directly related to the original purpose of the collection of the data. Hence, there was no contravention of DPP3. Even though the complainant had requested the Incorporated Owners not to appoint others to reply to her, it was not within the jurisdiction of the Commissioner to oversee such compliance. The Commissioner thus decided under section 39(2)(d) of the Ordinance that it was unnecessary to carry out a formal investigation of the complaint. Dissatisfied with the decision, the complainant appealed.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

上訴 THE APPEAL

上訴的主要爭論是投訴人在發給業主立案法團的信件尾部所作出的聲明。投訴人辯稱，她的聲明是禁止業主立案法團把她的信件轉交管理處，但私隱專員認為沒有這項禁令。行政上訴委員會在審閱該聲明後，認為它是一項「要求」，不應被詮釋為「禁止」向管理處披露信件。

The major argument in the appeal was about the declaration made by the complainant at the end of her letters sent to the Incorporated Owners. The complainant argued that her declaration was to "prohibit" the Incorporated Owners from passing her letters to the management office, while the Commissioner considered that there was no such prohibition. Upon examination of the declaration, the AAB found that it was a "request" and should not be interpreted as a "prohibition" against the disclosure of the letters to the management office.

業主立案法團的律師認為該法團須依賴管理公司確認有關信件(載有批評及評論)的發信人的身份。行政上訴委員會接納有關看法，並進一步表示《建築物管理條例》賦權業主立案法團委派專業人士協助處理大廈管理事宜，而且委派管理公司處理業主及其他有關人士的查詢或投訴，是非常普遍的情況，亦具有效法律理據。禁止業主立案法團讓管理處核實發信人的身份，參考、參看信件，會令業主立案法團得不到應有的協助，亦會令它無法提高工作效率。

The solicitor of the Incorporated Owners submitted that the Incorporated Owners had to rely on the management company to confirm the identity of the writer of the letters, which contained criticisms and comments. The AAB accepted the submission and stated further that the Building Management Ordinance conferred power on the Incorporated Owners to appoint professionals to assist in the handling of building management matters and that the appointment of a management company to handle enquiries or complaints made by owners and other related persons was very common and was based on valid legal grounds. To prohibit the Incorporated Owners from allowing the management office to verify the identity of the writer of the letters or to refer to the letters would render the Incorporated Owners not being able to obtain the necessary assistance and would make it impossible to enhance work efficiency.

行政上訴委員會認為沒有表面證據證明業主立案法團或個別成員違反規定。私隱專員無權強制個別成員回覆投訴人的信件。行政上訴委員會裁定私隱專員根據條例第39(2)(d)條拒絕展開正式調查的決定是符合其既定政策，因此是正確的決定。

The AAB found that there was no prima facie evidence of contravention on the part of Incorporated Owners or its individual members. It concluded that the Commissioner had no power to compel individual committee members to respond to the complainant's letter. The AAB decided that the Commissioner's decision under section 39(2)(d) of the Ordinance to refuse to initiate a formal investigation was in accordance with its established policy and hence the correct decision.

行政上訴委員會的決定 THE AAB'S DECISION

行政上訴委員會維持私隱專員拒絕進一步跟進投訴的決定，駁回上訴。

The AAB upheld the Commissioner's decision in refusing to pursue the complaint further and dismissed the appeal.

投訴人到一間銀行開立定期存款戶口。他拒絕向銀行提供婚姻狀況、流動電話號碼及住宅擁有權的資料。上訴是關於不提供有關資料是否會令投訴人的個案不符合條例第37條下的「投訴」。

A complainant went to a bank to open a fixed deposit account. He refused to provide the bank with his marital status, mobile phone number and residential ownership. The appeal related to whether non-provision of the data would render the complainant's case not a "complaint" under section 37 of the Ordinance.

個案 CASE 2

（行政上訴委員會上訴案件第27/2010號）
(AAB Appeal No. 27 of 2010)

投訴內容 THE COMPLAINT

投訴人到該銀行做定期存款，他曾在該銀行有一定期存款戶口，但戶口存款已悉數提取良久。該銀行要求投訴人重辦開戶手續，並向投訴人索取一些個人資料。投訴人拒絕向該銀行提供婚姻狀況、流動電話號碼及住宅擁有權的資料。但該銀行堅持認為投訴人必須在申請表提供該等資料，才可以處理其申請。投訴人沒有開立定期存款戶口便離開了該銀行。他向私隱專員作出投訴，聲稱該銀行收集其個人資料是超乎適度、不合理及不合法。

The complainant went to the Bank to make a fixed deposit where he once had a fixed deposit account was, but the deposit concerned was completely withdrawn a long time ago. The Bank requested the complainant to reopen a fixed deposit account and asked for certain personal information from the complainant. The complainant refused to provide his marital status, mobile telephone number and proof of residential property ownership to the Bank. The Bank, however, insisted that such information had to be provided in the application form for his application to be processed. The complainant left the Bank without opening the fixed deposit account. He subsequently lodged a complaint with the Commissioner, claiming that the Bank's request for collection of his personal data was excessive, unreasonable and illegal.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

私隱專員的調查結果 FINDINGS OF THE COMMISSIONER

私隱專員在初步查詢後認為毋須調查該投訴。他的理據有二。第一，由於投訴人沒有向該銀行提供其個人資料，他的個案並沒有涉及任何個人資料，因此不符合條例第37條下的「投訴」的要求。私隱專員倚仗*Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data [2000] 2 HKLRD 83*一案支持其決定。第二，由於私隱專員會就該銀行開立定期存款戶口的做法進行循規查察，調查該投訴是不必要的。

After making preliminary enquiries, the Commissioner determined that it was not necessary to investigate the complaint for two reasons. First, as the complainant had never provided his personal data to the Bank, his case did not involve any personal data and therefore failed to qualify as a "complaint" under section 37 of the Ordinance since it. He relied on the case of *Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data [2000] 2 HKLRD 83* to support his decision. Second, as he was to conduct a compliance check with regard to the Bank's practice of opening fixed deposit accounts, an investigation of the complaint was unnecessary.

上訴 THE APPEAL

雖然在聆訊期間，投訴人已獲告知公署已完成循規查察，有關結果亦正寄付給他，但投訴人堅持繼續上訴。他表示該銀行企圖收集其個人資料。他認為東周刊個案的裁決並不禁止私隱專員對該投訴進行正式調查，他舉警方為例，指警方是有權調查各類未逐罪。投訴人亦認為循規查察與正式調查其投訴相比，是次一等的調查。

Although the complainant was notified during the hearing of the completion of the compliance check and the result was already on its way to him by mail, the complainant insisted on continuing the appeal. He stated that the Bank had attempted to collect his personal data. He submitted that the decision in the Eastweek case did not prevent the Commissioner from conducting a formal investigation regarding the complaint and he quoted the Police as an example who had the power to investigate attempted crimes. The complainant said he also believed that a compliance check was an investigation of an inferior nature, when compared with a formal investigation of his complaint.

私隱專員拒絕進行調查的首個理據的主要爭議是，究竟該銀行所作的作為或所從事的行為在法律上是否構成收集投訴人的個人資料。私隱專員認為該銀行沒有取得投訴人的個人資料。但投訴人認為該銀行曾試圖收集其個人資料，而有關收集不單超乎適度，而且是以不公平方式進行。行政上訴委員會認為第37條沒有規定關乎某人的作為必須收效，該人才可提出投訴。此外，沒有跡象顯示投訴人作出投訴後，該銀行會停止要求他提供有關資料。根據這兩點，行政上訴委員會認為該銀行已經從事關乎投訴人個人資料的行為。因此，私隱專員拒絕調查該投訴的第一個理據不成立。

On the first ground of the Commissioner's refusal to carry out an investigation, the main dispute in the case was whether the act done by or the practice engaged by the Bank would legally amount to collection of the complainant's personal data. The Commissioner considered that the Bank had not obtained the complainant's personal data. The complainant, however, contended that the Bank had attempted to collect his personal data and that such collection was not only excessive but also by unfair means. The AAB was of the view that section 37 did not require the act relating to a particular individual to be effective in order for the individual to make a complaint. In addition, there was not any indication that after the complainant had made the complaint, the Bank would cease requesting him to provide the information. On the basis of these two points, the AAB found that the Bank had engaged in matters relating to the complainant's personal data. Hence, the Commissioner failed in his first ground of refusal to carry out an investigation of the complaint.

關於第二個拒絕理據，行政上訴委員會認為由於私隱專員已決定就該銀行為開立定期存款戶口而收集個人資料的做法進行循規查察，拒絕調查該投訴的決定屬技術性質。有關循規查察會更廣泛，更符合公眾利益。投

As for the second ground of refusal, the AAB considered that given the Commissioner had decided to conduct a compliance check on the practice of the Bank in collecting personal data for opening a fixed deposit account, the refusal to carry out investigation of the complaint was technical in nature. Such a compliance check

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訴人指稱，如調查不是以其投訴進行，他便不能參與過程。在這一點上，行政上訴委員會認為，私隱專員如有需要會在過程中尋求投訴人的協助。較為重要的是，最終結果是否會有任何分別。行政上訴委員會認為不論調查是以投訴人的投訴進行，抑或是以循規查察進行，最終結果都會一樣，即是如發現違規，會向該銀行發出執行通知。

would have been more comprehensive and in the public interest. The complainant alleged that if the investigation was not carried out under his complaint, he would not be able to participate in the process. On this point, the AAB considered that the Commissioner would, if necessary, seek the complainant's assistance during the process. The more important issue was whether the final result would cause any difference. The AAB found that no matter whether the investigation was carried out in the name of the complainant's complaint or by way of a compliance check, the end result would be the same, i.e. to issue an enforcement notice against the Bank if a contravention was found.

因此，行政上訴委員會裁定毋須以投訴人的名義進行調查。

Hence, the AAB decided that it was unnecessary to conduct an investigation under the name of the complainant.

行政上訴委員會的決定 THE AAB'S DECISION

上訴被駁回。

The Appeal was dismissed.

投訴人是一個業主委員會(下稱「業委會」)的成員，她向一名業主提出查閱資料要求，索取她在兩個業委會會議上的意見及談話。該業主拒絕依從該要求。上訴是關於該查閱資料要求是否涉及投訴人的個人資料。

The complainant, a member of an owners' committee, lodged a data access request with an owner requesting access to her views and conversations at two owners' committee meetings. The owner refused to comply with the request. The appeal related to whether the subject data access request involved the complainant's personal data.

個案 CASE 3

（行政上訴委員會上訴案件第28/2010號）
(AAB Appeal No. 28 of 2010)

投訴內容 THE COMPLAINT

投訴人是一個業委會的成員。一名業主在兩次業委會會議中把她對不同事宜所表達的意見錄音。她向該業主提出查閱資料要求，索取她在該兩次會議中的意見及談話，但該業主以有關錄音不含她的個人資料為理由而拒絕。投訴人指稱(i)該業主沒有依從該查閱資料要求，違反了條例第18及19條，及保障資料第6原則；及(ii)該業主在她反對(沒有她的明確同意及在她不知情)下把她的說話錄音，是不合法及不公平地收集她的個人資料，違反了保障資料第1原則。

The complainant was a member of an owners' committee. She was tape-recorded by an owner during two owners' committee meetings in which she expressed her views on various matters. She lodged a data access request with the owner requesting access to her views and conversation at the two meetings but was refused on the ground that the recording did not contain her personal data. The complainant alleged that (i) the owner had breached sections 18 and 19, and DPP6 under the Ordinance for failing to comply with the data access request; and (ii) the owner had breached DPP1 for collecting her personal data unlawfully and unfairly by tape-recording what she said without her explicit consent and knowledge, and despite her protest.

私隱專員的調查結果 FINDINGS OF THE COMMISSIONER

私隱專員就投訴進行初步查詢後，通知投訴人依據條例第39(2)(d)條，對她的投訴進行全面調查是不必要的。私隱專員認為投訴人在會議上表達的意見及觀點並不構成她的個人資料，而且該業主收集有關資料是作私人用途，因此憑藉條例第52條，有關資料是獲得豁免，不受保障資料原則所管限。

The Commissioner conducted a preliminary enquiry into the circumstances giving rise to the complaint and notified the complainant of his decision that it was unnecessary to carry out a full investigation of her complaint pursuant to section 39(2)(d) of the Ordinance. The Commissioner was of the view that the opinions and views expressed by the complainant at the meetings did not amount to her personal data and that in any event, the owner was collecting the data for her personal use, and therefore, such data were exempted from the application of data protection principles by virtue of section 52 of the Ordinance.

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上訴 THE APPEAL

投訴人提出三個上訴理據，以支持其個案。第一，由於有關觀點及意見與投訴人有關，私隱專員應判定是她的個人資料。第二，第52條的豁免範圍是有限制的，在個案的情況下，豁免並不適用。第三，私隱專員沒有妥善處理關於投訴人指稱其個人資料被不公平及不合法地收集。因此，公署理應展開正式調查。

The complainant raised three grounds of appeal to support her case. The first ground was that since the views and opinions related to the complainant, the Commissioner should conclude that they were her personal data. The second ground was that the scope of the section 52 exemption was limited and that in the circumstances of the case, the exemption should not apply. The third ground concerned the Commissioner's failure to properly address the main concern of the complainant regarding her allegation of the unfair and unlawful collection of personal data. Hence, a formal investigation ought to have been launched.

沒有爭議的是，有關錄音是載有投訴人的觀點及意見，而該等觀點及意見是關於業委會的表現及出席會議人士的操守。投訴人辯稱，在會議上表達的觀點及意見是與她有關。她聲稱這是她的個人資料，並依據*Wu Kit Ping v Administrative Appeals Board* [2007] 5 HKC 450一案的論點：「如觀點及意見直接或間接與資料當事人有關，該等觀點及意見可構成個人資料」。行政上訴委員會認為該上訴案中的觀點及意見是直接或間接與該病人有關，因為那是關於她的醫療狀況，而不是因為她是有關觀點及意見的發表人。行政上訴委員會接納私隱專員的結論，認為有關觀點及意見並不是直接或間接與她有關，因為那是關於業委會應如何運作及觀察者在會議上的行為舉止應如何。

It was not in dispute that the tape recordings contained the views and opinions of the complainant, and that such views and opinions were about the performance of owners' committee and about the conduct of those present at the meetings. The complainant argued that the views and opinions expressed at the meetings related to her, and that she claimed that they were her personal data, relying on the proposition that "views and opinions can constitute personal data if they relate directly or indirectly to the data subject" in *Wu Kit Ping v Administrative Appeals Board* [2007] 5 HKC 450. The AAB opined that the views and opinions in Wu Kit Ping's case were held to be relating directly or indirectly to the patient because they were about her medical condition and not because she was the author of the views and opinions. The AAB accepted the Commissioner's conclusion that the views and opinions in question did not relate directly or indirectly to the complainant because they were about how the owners' committee should be conducted and how the observer should behave during the meetings.

行政上訴委員會亦贊同私隱專員認為條例第52條豁免適用的決定，因為該業主所指有關錄音是作私人用途，這點是沒有甚麼可令人懷疑的，而且投訴人亦沒有提出其他說法。由於在豁免情況下，保障資料原則並不適用，收集資料的公平性及合法性的問題不再是有關。行政上訴委員會認為私隱專員考慮所有情況的做法適當，尤其是投訴人是知悉

The AAB also decided in favour of the Commissioner's decision that the exemption under section 52 of the Ordinance did apply as there was nothing to cast doubt on the claim by the owner that she held the tape recordings for record purposes to manage her personal affairs, and there was no suggestion otherwise by the complainant. Since the DPPs did not apply in light of the exemption, the question of fairness and lawfulness in collecting the data ceased to be relevant. The AAB found that it was proper for the Commissioner

業委會的慣常做法是容許錄音及部分出席的業主會把過程錄音。行政上訴委員會認為如一個人知道自己的談話被錄音，或會感到受威脅或氣餒，這是可以理解的。不過，在個案的情況下，錄音的做法沒有對講者做成不公平。

to take all circumstances into account, in particular the practice of the owners' committee to permit such recordings and that some of the owners present would tape record the proceedings was known at the time to the complainant. The AAB observed that it was understandable that a person might be intimidated or somewhat discouraged knowing his speech had been recorded. However, the recording was not unfair to the speaker in the circumstances.

行政上訴委員會的決定 THE AAB'S DECISION

行政上訴委員會認為私隱專員的決定合理，沒有錯誤，因而駁回上訴。

The AAB dismissed the appeal and was of the view that the decision of the Commissioner was reasonable and could not be faulted.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

一間流動電話公司以電話聯絡投訴人，向他推銷保險產品。他不滿該公司使用其個人資料，向私隱專員作出投訴。私隱專員裁定該公司違反保障資料第3原則。上訴是關於應否向該公司送達執行通知，即使該公司已採取補救行動糾正違反事宜。

A mobile telephone company contacted the complainant by phone to try to sell him insurance products. Dissatisfied with the use of his personal data, he complained to the Commissioner, who found that the company had contravened DPP3 of the Ordinance. The appeal related to whether an enforcement notice should be served despite the fact that the company had taken remedial action to remedy the contravention.

個案 CASE 4

（行政上訴委員會上訴案件第4/2011號）
(AAB Appeal No. 4 of 2011)

投訴內容 THE COMPLAINT

投訴人是一間流動電話公司的客戶。他收到該公司的電話，向他推銷保險產品。他懷疑該公司未經他的同意使用其個人資料。因此，他向私隱專員作出投訴。

The complainant was a customer of a mobile telephone company. He received a telephone call from the company marketing to him insurance products. He suspected that the company had used his personal data without his consent, and therefore lodged a complaint with the Commissioner.

私隱專員的調查結果 FINDINGS OF THE COMMISSIONER

私隱專員調查該公司，發現該公司在沒有投訴人的訂明同意下使用其個人資料，違反了保障資料第3原則。在私隱專員完成調查前，該公司修訂了其私隱保障政策及《收集個人資料聲明》，明確指明使用客戶個人資料的目的。該公司亦向私隱專員簽署承諾書，確保日後在直接促銷活動中遵從條例規定。鑑於該公司已採取措施，私隱專員決定不向該公司發出執行通知。投訴人不滿私隱專員的決定，向行政上訴委員會提出上訴。

The Commissioner investigated the company and found that it had contravened DPP3 of the Ordinance by having used the complainant's personal data without his prescribed consent. Prior to the Commissioner's conclusion of his investigation, the company revised its privacy protection policy and personal information collection statement to specify explicitly the purpose of use of its customers' personal data. The company also signed an undertaking to the Commissioner to ensure compliance with the Ordinance while engaging in direct-marketing activities. In view of the measures taken by the company, the Commissioner decided not to issue an enforcement notice against the company. The complainant was dissatisfied with the Commissioner's decision and appealed to the AAB.

上訴 THE APPEAL

投訴人在上訴理據中表示，他授權一份報章向私隱專員索取其個案的資料及詳情，以作新聞報道，但私隱專員拒絕回應，亦拒絕向該報提供該公司所簽署的承諾書副本。投訴人在上訴理據中進一步表示，他授權該報向該公司查詢其個案，但他從新聞報道中獲悉該公司向該報所提供的資料是虛假的。這顯示該公司對其作為沒有悔意。因此，私隱專員應向它發出執行通知。

The complainant stated in his grounds for appeal that he had authorized a newspaper to ask the Commissioner about the information and details of his case for a news report, but that the Commissioner had refused to respond. He stated that the Commissioner had also refused to provide the newspaper with a copy of the undertaking signed by the company. The complainant further stated in his grounds of appeal that he had authorized the newspaper to enquire with the company about his case and noted from the news report that the information provided by the company to the newspaper was false. It showed that the company was not remorseful about its act. Hence, the Commissioner should have issued an enforcement notice against it.

行政上訴委員會表示私隱專員依據條例第50(1)條決定不向該公司送達執行通知，是因為該公司已採取補救行動及簽署承諾書，私隱專員信納違反行為持續或重複發生不太可能。關於重複發生的可能性，行政上訴委員會認為私隱專員的主觀判斷，要有客觀理據支持，方能合理。行政上訴委員會認為私隱專員在作出決定之前，考慮違反行為的情況、該公司採取的補救行動及簽署的承諾書，是公平的做法。行政上訴委員會亦提醒，私隱專員的主觀判斷須公正地作出，不應受其他無關的因素影響。

The AAB stated that the Commissioner's decision not to serve an enforcement notice against the company was made pursuant to section 50(1) of the Ordinance after he was satisfied that it was unlikely that the contravention would continue or be repeated in view of the remedial action taken by the company and its undertaking to the Commissioner. In respect of the likelihood of repetition, the AAB opined that the Commissioner's subjective decision must be supported by objective reasoning in order to be reasonable. The AAB found that it was fair for the Commissioner to take into consideration the circumstances of the contravention, remedial action taken and undertakings given by the company before the Commissioner arrived at his decision. The AAB also reminded that the Commissioner's subjective assessment should be impartial and should not be affected by other unrelated factors.

向行政上訴委員會提出的上訴
APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

行政上訴委員會接納私隱專員解釋其拒絕向該報提供承諾書副本的做法，是履行條例第46條下私隱專員的保密責任。至於該公司向該報所提供的假資料，私隱專員不知是何所指，而行政上訴委員會也看不出有證據指該公司不知悔改。行政上訴委員會因此認為私隱專員的決定是公正的主觀判斷，有足夠的理據支持。

The AAB accepted that the Commissioner's refusal to provide a copy of the undertaking to the newspaper was in compliance with the Commissioner's secrecy duty under section 46 of the Ordinance, and that the Commissioner did not know what false information had been provided by the company to the newspaper. Also, the AAB found that there was no evidence to show that the Company was not remorseful. The AAB therefore found that the Commissioner's decision was a fair subjective judgment supported by sufficient reasoning.

行政上訴委員會的決定 THE AAB'S DECISION

上訴被駁回。

The Appeal was dismissed.

公署就公眾諮詢所提交的意見書

SUBMISSIONS MADE BY THE PCPD IN RESPONSE TO PUBLIC CONSULTATIONS

電子健康記錄互通的法律、私隱及保安框架諮詢文件

政府建議建立的電子健康記錄互通系統，是要作為香港醫療系統的主要基礎設施，用以提高公私營醫療服務的質素及效率。電子健康記錄是以電子方式儲存的記錄，內載參加病人的健康資料。醫療服務提供者取得病人的同意後，可取覽與該人健康有關的資料作提供醫護用途。

作為籌劃過程的一部分，法律、私隱及保安問題工作小組（下稱「工作小組」）由政府成立，負責研究電子健康記錄互通基建平台有關的法律、私隱、保安及相關事宜，並制定建議。

公署參與了工作小組的工作，就開發電子健康記錄的法律、私隱及保安框架所涉及的保障個人資料私隱事宜提供意見。在工作小組過往的會議中，公署就連串受《個人資料（私隱）條例》規管的事宜向政府作出建議，包括誰可給予同意把健康記錄上載至電子健康記錄系統，及誰可代表資料當事人提出查閱資料要求。公署亦對私隱框架及私隱影響評估策略計劃提供意見。

在2011年12月，政府發出法律、私隱及保安框架公眾諮詢文件（下稱「諮詢文件」）。諮詢文件概述一些私隱指導原則，涉及病人自願參加、醫療服務提供者只可以在獲得接受其護理的病人同意後取覽病人資料，及只可取覽提供護理所需的病人資料。

私隱專員歡迎訂立私隱指導原則，及政府建議訂立專門規管電子健康記錄互通的法例，與《個人資料（私隱）條例》相輔相成。私隱專員在回應諮詢文件時，從《個人資料（私隱）條例》的政策、法律及循規角度向政府提交意見。

CONSULTATION DOCUMENT ON THE LEGAL, PRIVACY AND SECURITY FRAMEWORK FOR THE ELECTRONIC HEALTH RECORD

The Electronic Health Record (eHR) Sharing System is proposed as a key infrastructure for Hong Kong's healthcare system to enhance the quality and efficiency of healthcare in both the public and private sectors. An eHR is a record in electronic format containing the health-related data of participating patients. With the patient's consent, healthcare providers may access the patient's health-related data in the provision of patient care.

As part of the planning process, the Working Group on Legal, Privacy and Security Issues (WG) was formed by the government, with the responsibility to examine and formulate recommendations on the legal, privacy and security issues relating to the eHR sharing infrastructure.

The PCPD took part in the WG to advise on issues related to personal data privacy protection when developing the legal, privacy and security framework for the eHR. In past WG meetings, the PCPD advised the government on a range of issues governed by the PD(P)O, including who can give consent to upload health records to the eHR and who can make data access requests on behalf of the data subjects. The PCPD also commented on the privacy framework and the Privacy Impact Assessment Strategy Plan.

In December 2011, the government issued a Public Consultation Document on the Legal, Privacy and Security Framework for the eHR (Consultation Document). The Consultation Document outlined the privacy guiding principles, naming, voluntary participation by patients, access by healthcare providers to the health data of only patients for whom they are delivering care and with their consent, and only those health data that are necessary for the delivery of care for the patients.

The Commissioner welcomed these privacy guiding principles and the government's proposal to enact specific legislation for the eHR to complement and supplement the PD(P)O. In response to the Consultation Document, the Commissioner submitted comments to the government from the policy, legal and compliance perspectives of the PD(P)O.

公署就公眾諮詢所提交的意見書
SUBMISSIONS MADE BY THE PCPD IN RESPONSE TO PUBLIC CONSULTATIONS

私隱專員進一步認為沒有足夠理據不設立保管箱，令某些敏感健康資料不會讓無需要取覽的人士取得。私隱專員亦建議應提供更多理由解釋為何醫院管理局及衞生署可「無限期」取覽電子健康記錄，而病人可選擇給予其他醫療服務提供者「一年」或「無限期」的取覽資料時限。

The Commissioner further commented that there was insufficient justification for not implementing a "safe deposit box" to allow certain sensitive health information to be withheld from those who do not need access to it. The Commissioner also suggested more justification should be provided for why the Hospital Authority and the Department of Health must be given "open-ended" access to eHR, while patients could choose whether to give "one-year rolling" or "open-ended" access to other healthcare providers.

最後，私隱專員重點指出回應病人的改正資料要求權利的重要性。根據政府建議，醫療服務提供者（而不是電子健康記錄互通系統營運機構）會負責依從病人的改正資料要求。私隱專員建議設置安全網，萬一醫療服務提供者失去聯絡、不作回應甚或拒絕依從改正資料要求，電子健康記錄互通系統營運機構可「標籤」資料，顯示正有爭議。

Finally the Commissioner highlighted the importance of addressing the data correction request (DCR) rights of patients. Under the government proposal, healthcare providers, instead of the eHR operating body (eHR OB), would be responsible for complying with the patients' DCR. The Commissioner recommended, in the event the healthcare providers cannot be located, do not respond, or even refuse to comply with the DCR, that there should be a safety net in place for the eHR OB to "red flag" the data to signal that it is in dispute.

有關改善免入息審查貸款計劃的諮詢

2011年11月，政府就改善學生資助辦事處（下稱「學資處」）管理的免入息審查貸款計劃的各項建議，進行第二階段公眾諮詢。其中一項降低拖欠還款比率的建議是在清晰闡明的特定情況下，把拖欠還款者的負面信貸資料提供予信貸資料機構（下稱「該建議」）。個人資料私隱專員就該建議提出下述意見。

CONSULTATION ON THE IMPROVEMENT OF NON-MEANS-TESTED LOAN SCHEMES

學生資助辦事處
Student Financial Assistance Agency

In November 2011, the Government issued for Phase 2 public consultation various proposals to improve the operation of non-means-tested loan schemes administered by the Student Financial Assistance Agency ("SFAA"). One of the proposals for stepping up efforts to reduce the loan default rate was the sharing of the negative data of defaulters with the credit reference agency ("CRA") under clearly defined circumstances ("the Proposal"). In response, the Privacy Commissioner for Personal Data made the following observations.

遵從《個人資料（私隱）條例》方面

該建議並沒有清楚界定運作框架、適用範圍及共用的資料數量。如該建議適用於現時的借款人，那麼把有關資料提供予信貸資料機構是否符合收集借款人個人資料的原本目的。如並不符合，學資處未經借款人的訂明同意而向信貸資料機構披露資料，會構成違反保障資料第3原則的規定。

Compliance with the Personal Data (Privacy) Ordinance (PD(P)O)

The framework of operation, extent of application, and amount of information to be shared under the Proposal are not well-defined. If the Proposal was to be applied to existing borrowers, the question to be asked was whether the sharing of the data with the CRA accords with the original purpose of collection of the borrowers' personal data. If not, the disclosure of data by the SFAA to the CRA without the prescribed consent of the borrowers would constitute a breach of Data Protection Principle (DPP)3.

如學資處只打算把該建議應用於新的貸款申請人，學資處需要採取所有切實可行的步驟，通知申請人，在出現拖欠還款時，其負面信貸資料會被提供予信貸資料機構。可是，借款人的個人資料是否在公平的方式或情況下收集（保障資料第1(2)原則）則有待商確。正如一些學生代表指出，很多學生除了免入息審查貸款外，別無其他途徑可獲取學費資助。

If the SFAA intends the Proposal to cover only new loan applicants, the SFAA will need to take all practicable steps to inform the applicants of the arrangement for the transfer of their negative credit data to the CRA in the event of default. However, the issue then arises whether the borrower's personal data are collected by means which are fair in the circumstances of the case (DPP1(2)). As some student representatives pointed out, often students have no means of finance for tuition other than non-means-tested loans.

其他私隱關注

香港唯一具規模的個人信貸資料機構是環聯資訊有限公司（下稱「環聯」）。環聯目前的運作系統是密閉式的，主要限於香港的銀行及持牌放債人參與。這些信貸提供者透過環聯共用客戶的信貸資料。這個信貸資料共用系統令銀行及持牌放債人可評估和監察其客戶的信貸風險、貸款信譽及信貸能力。向信貸資料機構提供負面信貸資料以阻嚇拖欠還款，並不是這系統的功能。公署擔心落實該建議會開放密閉運作的信貸資料系統，引致下述各方提出類似性質的要求：(i)其他政府部門，以追討欠稅、差餉及地租、水費等；及(ii)私營機構，例如從事零售、小企業、電訊、公共事業及其他行業的機構，均渴望向客戶追討欠款。

Other Privacy Concerns

There is only one major consumer CRA in Hong Kong, namely, TransUnion Limited (TransUnion). TransUnion presently operates in a closed system almost exclusive to the banks and licensed money lenders in Hong Kong. These credit providers share their customers' credit data among themselves through TransUnion. This credit data sharing system serves the banks and licensed money lenders themselves in assessing and monitoring their customers' credit risk, credit-worthiness and credit capacity. However, providing negative credit data to a CRA to deter a loan default is not an intended function of this system. The PCPD fears that the Proposal would open the floodgates of a closed system to requests of a similar nature from (i) other government departments for recovery of overdue taxes, government rents and rates, water charges, etc. and (ii) private sector sources such as retail stores, small businesses, telecoms, utilities and others which are also keen to recover outstanding debts from their customers.

該建議亦涉及由政府部門向環聯（一間不受作為財經規管者的香港金融管理局直接監管的商業機構）轉移借款人非常私人及敏感的資料。重要的是，環聯的主要股東並非以香港為基地。

The Proposal also entails the transfer of the borrowers' very private and sensitive data from a Government agency to TransUnion, a commercial enterprise which is not subject to the direct oversight of the Hong Kong Monetary Authority, the financial regulator. Importantly, TransUnion's majority shareholder is not Hong Kong based.

最後，環聯根據其資料庫持有的信貸資料，對個別消費者給予信貸評分，但評分的計算方式是專有及機密的資訊，不會向消費者披露。換言之，該建議會對借款人造成微不足道抑或不成正比的負面影響，是難以評估的。

Last, but not least, TransUnion assigns a credit score to individual consumers based on the credit information held in its database, but the computation of the score is proprietary and confidential information not to be disclosed to consumers. In other words, whether the Proposal would produce an insignificant or a disproportionately negative effect on the borrower cannot be assessed.

公署就公眾諮詢所提交的意見書
SUBMISSIONS MADE BY THE PCPD IN RESPONSE TO PUBLIC CONSULTATIONS

公眾意見調查

政府的公眾諮詢文件及新聞稿指，有明確的公眾支持以該建議作為打擊拖欠還款的有效措施。不過，由於信貸資料機構的獨有性質及密閉式運作，公眾在給予支持前是否完全知悉上述的私隱影響值得商確。在這背景下，公署於2012年2月初進行一項調查，以確定公眾及學生對該建議的態度。

公署的調查顯示，在不甚瞭解或不知道該建議的私隱影響的情況下，有60%受訪者支持該建議。但當他們獲告知有關私隱關注後，表示支持的受訪者即降至35%。有關數字更顯示公眾的態度轉變（由77%降至40%）比身為直接持份者的學生（由53%降至33%）更為顯著。

總結

該建議對整個社會有重大的私隱影響，但由於信貸資料機構的運作不具透明度，該建議能產生的阻嚇作用並不清晰。此外，很明顯的是大部份學生及公眾在完全知悉該建議的私隱影響後都不支持該建議。因此，公署建議政府應另尋同樣或更有效但侵犯私隱程度較低的方法，應付學生拖欠還款問題。

Public Opinion Survey

According to the Government's public consultation documents and its media releases, there was clear public support to pursue the Proposal as an effective deterrent measure against default. However, given the unique nature of the CRA and its closed system of operation, it is doubtful whether the support was given in full knowledge of the privacy implications pointed out above. Against this background, the PCPD commissioned a study in early February 2012 to ascertain the attitude of the general public and students towards the Proposal.

The PCPD's survey identified support for the Proposal from 60% of the respondents who had little or no knowledge of its privacy implications. However, after they had been informed of the privacy concerns, the percentage of respondents indicating support dropped to only 35%. A breakdown of these figures shows that the swing of views is in fact sharper in the case of the general public (from 77% to 40%) than in the case of students (from 53% to 33%), who are the immediate stakeholders.

Conclusion

Whilst the Proposal's deterrent effect against default is unknown due to the non-transparency of the operations of the CRA, it has important privacy implications for the whole community. There are also clear indications that when students and the general public have full knowledge of these privacy implications, they do not support the Proposal. The PCPD therefore recommended that the Government look for other less privacy-intrusive measures to tackle the student-loan problem, which could be equally if not more effective.

有關《慈善組織》的諮詢

法律改革委員會（下稱「法改會」）發表諮詢文件，就改革有關慈善組織的法律及規管框架徵詢意見。法改會建議規定註冊慈善組織向日後成立的慈善事務委員會呈交周年活動報告，而有關報告可供公眾取覽，私隱專員就這項建議提交意見書。

CONSULTATION ON CHARITIES

The Law Reform Commission issued a consultation paper seeking views on the reform of the laws and regulatory framework relating to charities. In response, the Commissioner made a submission regarding the recommendation that registered charitable organizations be required to file an annual activity report to the future charity commission and that the report be made accessible to the public for inspection.

法改會建議周年活動報告應以標準表格提供，涵蓋的事項包括組織的董事資料。私隱專員建議，周年活動報告中所收集的董事個人資料應在未來的法例中具體闡述。所收集的資料就報告目的而言，須屬必需及足夠的，但不超乎適度，以依從保障資料第1(1)原則的規定。

It was recommended that the annual activity report be provided in a standard form and that the matters covered should include, among other things, information about directors of the organizations. The Commissioner advised that the personal data of directors to be collected in the annual activity report be specifically spelt out in the future legislation. To be compliant with DPP1(1), the data so collected must be necessary, adequate and not excessive for reporting purposes.

私隱專員進一步建議在周年活動報告的標準表格中加入《收集個人資料聲明》，載列保障資料第1(3)原則規定的資訊，包括但不限於：(i)有責任提供該等資料抑或是可自願提供該等資料；(ii)如有責任提供該等資料，不提供該等資料會承受的後果；(iii)該等資料將會用於甚麼目的；及(iv)該等資料可能移轉予甚麼類別的人。

The Commissioner further advised to include a "Personal Information Collection Statement" in the standard form for annual activity report, setting out the information as required under DPP1(3), including, but not limited to: (i) whether it is obligatory or voluntary to supply the data; (ii) where it is obligatory to supply the data, the consequences for failing to so supply; (iii) the purpose(s) for which the data are to be used; and (iv) the classes of persons to whom the data may be transferred.

法改會亦建議註冊慈善組織呈交的周年活動報告可供公眾取覽，以確保透明度。私隱專員知悉未來的慈善事務委員會須為註冊及規管慈善活動的目的而收集董事的個人資料。他指出應小心考慮公開個人資料是否適合，如是的話，應小心考慮公開甚麼種類的個人資料（例如全名、地址、身份證明文件編號等）。

It was also recommended that the annual activity reports of registered charitable organizations might be accessible to the public to ensure transparency. While the Commissioner noted the necessity for the future charity commission to collect the directors' personal data for the purpose of registration and regulation of the charity's activities, he pointed out that due consideration should be given to whether public disclosure of the personal data is appropriate and if so, what kinds of personal data of the directors (such as full name, address, identification document number, etc.) should be made available for public inspection.

此外，為確保建議公眾登記冊內個人資料的使用遵從保障資料第3原則的規定，私隱專員建議下述事項：(i)考慮把董事個人資料的披露只限於規管慈善組織所必需的情況；及(ii)在日後的法例中指明設立公眾登記冊的目的及濫用登記冊內個人資料的制裁。

Furthermore, to ensure that the use of the personal data contained in the proposed public register complies with the requirements under DPP3, the Commissioner suggested the following: (i) to consider restricting the disclosure of directors' personal data only in circumstances that are necessary for regulating the charitable organizations; and (ii) to specify in the future legislation the purpose of setting up the public register and the sanction imposed against misuse of personal data contained therein.

公署就公眾諮詢所提交的意見書
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有關發出車輛登記細節證明書事宜的諮詢

運輸及房屋局發表諮詢文件，就該局建議改善發出車輛登記細節證明書（下稱「證明書」）的安排徵詢意見。有關建議的目的是(i)加強保障私隱；及(ii)確保車輛登記冊內的登記車主個人資料用得其所。在完成諮詢後，政府會修訂《道路交通（車輛登記及領牌）規例》（第374E章）（下稱「該規例」）。私隱專員就有關諮詢提交意見書，重點指出下述涉及個人資料私隱的事宜：

(1) 私隱專員支持該局建議在該規則中指明設立車輛登記冊的目的。在指明目的後，任何未經車主同意而將個人資料使用於其他目的的做法，會構成違反保障資料第3原則的規定，這是無可爭議的。

(2) 私隱專員大致支持該局建議只向符合下述其中一項情況的申請人發放登記車主的個人資料：(i)申請人為有關車輛的登記車主；(ii)申請人能提交有關登記車主的書面同意書；或(iii)申請人向運輸署署長聲明，表示有關個人資料只會於指明的情況下用以核實登記車主的身份。建議適用的情況包括就交通意外所招致的任何傷亡、損失或損壞而提出保險索償或申索賠償、糾正車輛出現於不適當地方的問題、就提供予個別車輛的服務追討逾期的費用、罰款或收費、車輛涉及法律程序及協助確認登記車主的身份，以便召回有安全問題的車輛。私隱專員認為這些情況普遍針對防止不合法或嚴重失當的行為，看來符合條例第58(2)條的規定，不受保障資料第3原則的管限。

CONSULTATION ON ARRANGEMENTS FOR ISSUING A CERTIFICATE OF PARTICULARS FOR MOTOR VEHICLES

The Transport and Housing Bureau issued a consultation paper seeking views on its proposal to improve the arrangements for issuing a Certificate of Particulars for Motor Vehicles ("the Certificate") with the aim of: (i) enhancing privacy protection; and (ii) ensuring that the personal data of registered owners contained in the register of vehicles are properly used. Legislative amendments would then be introduced to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) ("the RT Regulations"). In the Commissioner's submission in response to the consultation, he highlighted the following matters concerning personal data privacy:-

(1) The Commissioner supported the proposal to specify in the RT Regulations the purpose of setting up the register of vehicles. Once the purpose is specified, any use of the personal data inconsistent with the purpose and without the vehicle owners' consent, which constitutes a breach of DPP3, can be indisputably identified.

(2) The Commissioner generally supported the proposal to limit the release of registered owners' personal data to applicants who satisfy any one of the following situations: (i) he is the registered owner of the relevant vehicle; (ii) he can present a written consent of the relevant registered owner; or (iii) he declares to the Commissioner of Transport that the personal data so obtained would be used only to certify the identity of the registered owner in specified scenarios. The proposed scenarios include insurance claims in respect of any casualty, loss or damage arising from traffic accident or seeking compensation thereof, rectification of improper presence of a vehicle, recovery of overdue fees, fines or charges for services provided for a particular vehicle, legal proceedings involving the vehicle, and facilitating the identification of registered vehicle owners for safety recalls of the vehicles in question. The Commissioner recognized that these scenarios are generally targeting the prevention of unlawful or serious improper conduct, which falls within the exemption from DPP3 under section 58(2) of the Ordinance.

(3) 私隱專員知悉傳媒的關注，傳媒認為它們亦應獲准為新聞活動的目的而取得車輛資料，包括登記車主的個人資料。私隱專員向政府當局重點指出條例第61(2)條豁免個人向傳媒披露個人資料，只要是有合理理由相信發表該等資料是符合公眾利益的。

(3) The Commissioner noted the concern from the media sector that they should also be allowed to obtain particulars of vehicles, including personal data of registered owners for the purpose of news activities. The Commissioner highlighted to the Administration the exemption under section 61(2) of the Ordinance concerning the disclosure of personal data to the media by a person with reasonable grounds to believe that it is in the public interest to publish such data.

(4) 私隱專員亦歡迎該局建議加入制裁，如登記車主的個人資料被用於申請人聲明以外的用途（即上文指明情況以外的用途），即會受到制裁。私隱專員進一步請政府當局考慮規定申請人在申請表上聲明其提供的資料的真確性。

(4) The Commissioner also welcomed the proposal to introduce sanctions against the use of registered owners' personal data for purposes other than those as declared by the applicants mentioned above. The Commissioner further invited the Administration to consider requiring the applicants to make a declaration on the truthfulness of the information provided in the application form.

(5) 為進一步提供保障，防止有人以虛假聲明不當查閱個人資料，私隱專員建議把每個證明書的申請通知登記車主。

(5) As a further safeguard against wrongful access to personal data under false declarations, the Commissioner suggested to keep the registered owners informed of individual applications for a certificate.

有關聯線服務提供者《實務守則》第二稿的諮詢

商務及經濟發展局發出諮詢文件，就聯線服務提供者（下稱「服務提供者」）的《實務守則》第二稿徵詢公眾意見。《實務守則》第二稿旨在釐清服務提供者的角色及他們在版權問題方面的責任。私隱專員就下述私隱議題提交意見書：

CONSULTATION ON THE SECOND DRAFT OF THE CODE OF PRACTICE FOR ONLINE SERVICE PROVIDERS

The Commerce and Economic Development Bureau issued a consultation paper inviting submissions on the Second Draft of the Code of Practice ("Second Draft CoP") for Online Service Providers ("OSPs"), which purports to clarify the role of OSPs and their liabilities regarding copyright issues. The Commissioner made a submission and raised the following privacy issues:-

(i) 私隱專員得悉《實務守則》第二稿訂明的表格內會提供某些個人資料，包括姓名、地址及電話號碼。因此，私隱專員提醒該局，在有關表格提供《收集個人資料聲明》，以符合保障資料第(1)3原則的規定，是可取的做法。關於收集的個人資料的種類，私隱專員建議指明所需的資料種類，而不是如其中一份表格採用「額外資料」這個通稱。這有助確定額外資料對擬使用目的是否必需及不超乎適度。

(i) The Commissioner noted that certain personal information, including name, address and telephone number, would be provided under the forms prescribed in the Second Draft CoP. In this connection, the Commissioner reminded that it would be desirable to provide a Personal Information Collection Statement in the forms for the purpose of compliance with DPP1(3). In relation to the kinds of personal data to be collected, the Commissioner suggested that specifying the kind of information required rather than using the generic term "additional information" in one of the forms, pointing out that this would help to ascertain whether the additional information is necessary and not excessive for the intended purpose of use.

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(ii) 私隱專員對服務提供者使用用戶的個人資料送達指稱侵權通知(下稱「通知」)表示關注。他認為有需要確定收集用戶個人資料的原本目的,如服務提供者在收集用戶的個人資料時沒有指明這項使用目的,但其後更改個人資料的使用目的(即用作送達通知),則可能構成違反保障資料第3原則,除非服務提供者已取得用戶的同意。由於建議的運作會影響《版權條例》修訂前已存在的用戶,該局必須保障這群用戶的個人資料私隱權利。

(ii) The Commissioner raised concerns about the use of subscribers' personal data by OSPs for serving notice of alleged copyright infringement ("Notice"). He considered it necessary to ascertain the original purpose of collection of the subscribers' personal data and where no such purpose of use was specified at the time of collection of their personal data, the subsequent change in the purpose of use of the personal data (i.e. for use in serving the Notice) might constitute a breach of DPP3 except with the consent of the subscribers. As the proposed operation would affect subscribers who existed prior to the amendment to the Copyright Ordinance, it would be necessary to address the issue to safeguard the personal data privacy rights of those pre-existing subscribers.

(iii) 私隱專員留意到建議的安排會涉及服務提供者儲存及轉移大量個人資料。他提醒服務提供者在過程中須採取所有切實可行的措施,以保障他們持有或轉移的個人資料的安全,以依從保障資料第4原則的規定。

(iii) The Commissioner observed that the proposed arrangement would involve the storage and transfer of a substantial amount of personal data on the part of the OSPs. He reminded that in order to comply with DPP4, the OSPs would have to take all practical measures to safeguard the security of personal data held or transmitted by them during the process.

(iv) 私隱專員留意到根據《實務守則》第二稿,服務提供者或會指派代理以電子或其他方式收取通知及/或異議通知及處理其他工作。由於條例規定主事人對其代理所作的作為負有替代責任,私隱專員認為服務提供者有責任確保其代理熟悉條例下有關保障個人資料私隱的條文。

(iv) The Commissioner noted that under the Second Draft CoP, the OSPs might designate an agent to receive a Notice and/or Counter Notice by electronic or other means and perform other tasks. In view of the vicarious liability of a principal for the acts done by its agent under the Ordinance, the Commissioner submitted that it would be incumbent on the OSP to ensure that its agent was well versed in the Ordinance regarding personal data privacy protection.

有關纏擾行為的諮詢

政制及內地事務局發表有關纏擾行為的諮詢文件，就法改會在《纏擾行為》報告書中的建議，徵詢公眾意見。私隱專員就下述議題提交意見書：

更嚴格監管纏擾行為

私隱專員對政府當局建議立法禁止纏擾行為及訂立制裁措施表示支持。他認為把纏擾行為視為獨特議題，以獨立方式處理，可以堵塞現時民事及刑事法未能全面涵蓋纏擾行為或提供足夠保障的漏洞，從而提高對個人私隱的保障。

傳媒的侵犯私隱行為

私隱專員表示在公署根據條例處理的投訴中，有兩類可以歸入纏擾行為的範疇。第一類投訴是透過有系統監察及使用特別攝影器材，如長焦距鏡及放大器，偷拍名人或藝人的照片。第二類投訴是惡劣的收數手段。這兩類個案的投訴人普遍認為條例現時的條文在保障私隱方面不足夠。如纏擾行為採納較寬的定義，則資料使用者的持續不公平地收集資料當事人的個人資料會被視為纏擾行為的一部分。

私隱專員同意，如採訪目標拒絕就涉及公眾利益事宜溝通，傳媒可能須要鍥而不捨地追求回應。不過，如只是關於某人的私生活，而不涉及公眾利益，傳媒是不應追訪該人至「驚恐」或「困擾」程度。如傳媒透過騷擾或持續追訪，以收集某公眾人物的私生活資料，私隱專員認為傳媒須說服法庭其追訪行為是合理的，這才算公平。

CONSULTATION ON STALKING

The Constitutional and Mainland Affairs Bureau issued a consultation paper on Stalking to gauge public views on the recommendations of the Law Reform Commission in its report on "Stalking". The Commissioner made a submission raising the following issues.

More stringent regulation on stalking

The Commissioner expressed his support for the Administration's proposal to legislate and formulate sanctions against stalking. He took the view that to treat stalking as a unique issue and deal with it in an independent manner would be able to plug the loophole of insufficient coverage or protection under the existing civil and criminal law, and thereby enhancing privacy protection for individuals.

Media Intrusion and Privacy

The Commissioner stated that his Office has been dealing with two types of complaints under the Ordinance which could well fall within the ambit of stalking. The first type of complaint refers to the clandestine taking of photos of celebrities and artistes through systematic surveillance and using special photographic equipment such as long focus lens and magnifiers. The second type of complaint refers to abusive debt collection practices. In both cases, the complainants generally felt that the existing provisions of the Ordinance are inadequate for safeguarding privacy. If a broad definition of stalking is adopted, a data user's persistent unfair collection of the data subject's personal data would then be taken as stalking.

The Commissioner agreed that the media might need to be persistent when trying to solicit responses from their reporting targets who refuse to communicate over a matter of public interest. However, if the story was about the private life of an individual, with no public interest involved, the media should not pursue the individual to the point of causing "alarm" or "distress". If the media sought to obtain information about a public figure's private life through harassment or persistent pursuit, the Commissioner considered that it would only be fair that the media be required to account for its conduct by convincing the court that its pursuit was reasonable.

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私隱專員同意，一個單一行為，不論有多怪異，也不應被界定為纏擾行為，從而要負上刑事責任。

The Commissioner agreed that a single act, no matter how bizarre, should not be classified as stalking and thereby attract criminal liability.

私隱專員亦認同傳媒向社會傳遞公眾關注的訊息的關鍵角色。在言論自由與其他基本人權（包括私隱權）兩者之間是需要取得平衡的。為顧及傳媒關注建議的法例會損害合法的新聞活動，私隱專員支持對傳媒的工作獨立提供免責辯護，而不是歸納於「在案中的情況下做出該一連串行為是合理的」這類一般性免責辯護之下。為滿足傳媒明確表示需要清楚界定「正當的新聞採訪活動」，私隱專員建議政府當局考慮制定一份清單(非包羅無遺)，詳列為公眾利益而進行新聞採訪的題目。為此，他提供Harrison, J 在 *CanWest TV Works Ltd. v.XY [2008] NZAR*一案的判決中所列的事宜作為參考：

The pivotal role that the media plays in conveying information of public concern to the society is also recognized. A balance is needed between press freedom and other fundamental human rights, including the right to privacy. To cater for the specific concern of the media that the proposed legislation would jeopardize legitimate journalistic activities, the Commissioner supported the creation of a separate defence, rather than having it subsumed under the general defence of the "pursuit of a course of conduct that is reasonable in the particular circumstances". To meet the media's expressed needs to define clearly "legitimate news-gathering activities", the Commissioner suggested the Administration consider drawing up a non-exhaustive list of subjects for which news-gathering would serve the public interest. For this purpose, he provided reference to the list included in the judgment of Harrison, J in *CanWest TV Works Ltd. v.XY [2008] NZAR*:-

- 刑事事宜；
- 公眾健康及安全議題；
- 政治、政府或公共行政事宜；
- 與對公眾造成影響的行為或機構有關的事宜；
- 揭露個人或機構作出的誤導性申索；及
- 揭露嚴重的反社會及有害行為。

- criminal matters;
- issues of public health and safety;
- matters of politics, government or public administration;
- matters relating to the conduct or organizations which impact on the public;
- exposing misleading claims made by individuals or organizations; and
- exposing seriously anti-social and harmful conduct.

與收數有關的活動

惡劣的收數手段是另一種纏擾行為，這行為干擾私隱，及可能間接違反個人資料私隱權利。惡劣的收數手段是侵犯個人私隱的嚴重社會問題，公署在處理公眾查詢及投訴的經驗支持這個看法。投訴指稱收數公司的不當手段包括不斷致電、向投訴人的工作地點或鄰居派發收數信件、張貼投訴人的身份證副本連同惡意訊息，以及要求諮詢人（非擔保人）償還債款。雖然上述活動可能屬於條例的管轄範疇，但把纏擾行為定為刑事罪行是較直接的制裁，可以防止對受害人造成騷擾及煩厭的活動。

Debt collection–related activities

Abusive debt-collection practices are other forms of stalking behaviour which interfere with privacy and may be collateral to a breach of personal data privacy rights. The PCPD's experience in handling enquiries and complaints from the public supports the view that abusive debt collection is a serious social problem infringing the privacy of individuals. Malpractice alleged in complaints involving debt collecting agencies include repeated telephone calls, dispatching debt recovery letters to a complainant's workplace or neighbours, posting copies of a complainant's identity card with an abusive message, and demanding repayment of a debt from a referee who was not a guarantor. While the above-mentioned activities may be caught under the Ordinance, establishing stalking as a criminal offence would be a more direct sanction and will deter activities which cause harassment and annoyance to the victims.

受害人的民事補救

私隱專員認為沒有理由纏擾行為的受害人不能獲得民事補救，纏擾者應向該一連串行為的目標人物負上侵權法下的民事責任。如纏擾者的行為並非嚴重至須以刑事法干預，則民事補救會較為合適。

Civil Remedies for Victims

The Commissioner believed that there is no reason why victims to stalking should not be entitled to civil remedies which the perpetrator should be liable in tort to the object of the pursuit. A civil remedy would be more appropriate in circumstances where the stalker's behaviour is not sufficiently serious to warrant the intervention of the criminal law.

公署就公眾諮詢所提交的意見書
SUBMISSIONS MADE BY THE PCPD IN RESPONSE TO PUBLIC CONSULTATIONS

有關「$6,000計劃」的諮詢

因應政府及立法會財經事務委員會的查詢，私隱專員就政府向每名年滿18歲持有香港永久性居民身份證的人士發放$6,000的計劃（下稱「該計劃」）作出回應。該計劃規定合資格人士進行登記，而不同人士就登記可否透過政府現有的發放款項系統(例如發放綜援及公共福利金的系統)進行表達了意見。私隱專員認為使用現有的發放款項系統，涉及使用以前從受惠人所收集的個人資料，例如銀行帳戶資料。根據條例的保障資料第3原則，除非受惠人同意，否則只有是該計劃的目的是與原本收集資料的目的相同或直接有關時，才可以如此使用相關的個人資料。由於政府原本收集資料的目的是為了提供綜援及公共福利金，而兩者的本質皆屬社會福利，關鍵問題是：發放$6,000的目的是否亦是與社會福利有關？政府表示此舉是「藏富於民」，不是社會福利或包含社會福利的意思。因此，為符合保障資料第3原則的規定，登記是必須的。

CONSULTATION ON THE "$6,000 SCHEME"

The Commissioner responded to the Government's enquiries and those of the Legislative Council Panel on Financial Affairs as regards the Government's scheme ("the Scheme") to give a sum of $6,000 to each Hong Kong Permanent Identity Card holder aged 18 or above. The Scheme required registration by eligible persons, and different views were expressed as regards whether registration could be dispensed with by the use of the Government's existing payment systems, such as the system for disbursing Comprehensive Social Security Assistance ("CSSA") and Social Security Allowance ("SSA"). The Commissioner advised that the use of existing payment systems involved the use of personal data previously collected from the payment recipients, such as bank account details. Under DPP3 of the Ordinance, such use of personal data, unless consented to by the recipients, is only permissible if the purpose of the Scheme is the same as, or directly related to, the original purpose of the collection of the data. As the original purpose of the data collection is for the Government to provide CSSA and SSA, both being social welfare in nature, the critical question was whether the purpose of the $6,000 handout was also related to social welfare. In this regard, the Government stated that the purpose of the handout was to "leave wealth with the people", not that it was meant to be social welfare or to include the meaning of social welfare. Hence, in order to comply with DPP3, separate registration was necessary.

公署對建議中的法例及行政措施所作的評論

COMMENTS MADE BY THE PCPD ON PROPOSED LEGISLATION AND ADMINISTRATIVE MEASURES

選舉委員會界別分組選舉、區議會選舉及村代表選舉的選舉活動指引

選舉管理委員會(下稱「選管會」)曾就相關指引徵詢私隱專員的意見。選管會已知悉或採納私隱專員的意見,並在指引中作出相關修訂。有關修訂包括在指引的正文加入具體的保障個人資料私隱的規定、按私隱專員的建議以詳細描述取代「資料」或「資訊」等一般詞語、在向候選人提供的正式選民登記冊摘要中刪除選民性別,以及在指引附上由公署發出最新版本的《競選活動指引》。

選管會在指引中加入前述修訂後,曾諮詢公眾對建議指引的意見,經修訂的指引已經發出。

GUIDELINES ON ELECTION-RELATED ACTIVITIES IN RESPECT OF THE ELECTION COMMITTEE SUB-SECTOR ELECTIONS, DISTRICT COUNCIL ELECTION AND VILLAGE REPRESENTATIVE ELECTIONS (THE "GUIDELINES")

The Electoral Affairs Commission ("EAC") previously sought the Commissioner's comments on the respective Guidelines. The Commissioner's comments were either noted or adopted by the EAC and relevant amendments were made to the Guidelines. Such amendments include specific highlights of the requirements to protect personal data privacy in the main body of the Guidelines, replacement of general terms such as "particulars" or "information" with a detailed description, as suggested by the Commissioner, removal of the gender of electors from the extract of the Final Register to be supplied to Candidates, attachment of the updated version of the Guidance Note on Electioneering Activities to the Guidelines issued by the PCPD, etc.

Members of the public were consulted on the proposed Guidelines with the incorporation of the aforementioned amendments, and the respective revised Guidelines were duly published.

《2011年強制性公積金計劃(修訂)(第2號)條例草案》

私隱專員曾就強制性公積金計劃管理局(下稱「積金局」)設立及維持一個供轉移累算權益的電子系統(下稱「電子傳送系統」)的立法建議提出意見。財經事務及庫務局局長在諮詢積金局後回應私隱專員的意見。

局長表示為了提供彈性,他們不偏向按私隱專員的建議,在擬議法例中指明為電子傳送系統處理轉移累算權益而收集的特定個人資料的種類。不過,積金局會採取措施,確保選擇轉移其權益的計劃成員完全知悉需為轉移權益目的而收集其個人資料的種類及範圍,及其受託人(轉移受託人)可能轉移予承轉受託人的個人資料的種類及範圍。這些措施包括就草擬積金局指引及相關表格和備註諮詢持份者,及將有關

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2011

The Commissioner previously commented on the legislative proposal of the Mandatory Provident Fund Schemes Authority ("MPFA") to establish and maintain an electronic system for the transfer of accrued benefits ("the ePass"). The Secretary for Financial Services and the Treasury ("the Secretary") consulted the MPFA and responded to the Commissioner on his comments.

強制性公積金計劃管理局
MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

The Secretary stated that to allow flexibility, it was not preferable to specify in the proposed legislation the particular kinds of personal data to be collected for the purpose of processing the transfer of accrued benefits under the ePass, as advised by the Commissioner. However, MPFA would take measures to ensure that a scheme member who elected to transfer his benefits would be fully aware of the kind and scope of his personal data that needed to be collected for the transfer of benefits purpose and which may be passed by his trustee (the transferor trustee) to the transferee trustee. Such measures include consulting different stakeholders on drafting the

公署對建議中的法例及行政措施所作的評論
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指引及表格供公眾閱覽及作為指導。該局更擬在指引內清楚說明個人資料的使用目的及有關資料將會轉移予的人士。	MPFA Guidelines and election forms with explanatory notes, and making the said Guidelines and forms available for public viewing and guidance. Specifically, it was intended to make clear in the Guidelines the purpose for which personal data are to be used and to whom the data would be transferred.
積金局知悉私隱專員對保留及使用個人資料的意見。積金局會確保個人資料不會保留超過貫徹該等資料被使用於或會被使用於的目的所需的時間。由電子傳送系統轉移的資料，只會由積金局保留一段時間，以確保系統運作有效，而保留時期會在該系統的應用技術規格中指明，有關規格會派發予強積金受託人。	The MPFA noted the Commissioner's comments in relation to the retention and use of personal data. Specifically, the MPFA would ensure that personal data would not be retained longer than is necessary for the fulfilment of the purpose for which the data are or are to be used. Data relating to the transfer elections transmitted through the ePass system would only be retained by the MPFA for a limited period to ensure the effective operation of the system, and that the retention period would be specified in the Application Technical Specifications of the system that would be distributed to MPF trustees.
關於個人資料的保安，積金局會採取足夠的保安措施，並因應科技的新發展不時檢討系統，以確保透過系統傳送的個人資料獲得高度保障。特別是，強積金受託人與積金局之間會使用虛擬專用網絡傳送所有轉移資料；強積金受託人與積金局之間傳送的所有成員資料會被加密，以及積金局不能查閱電子傳送系統內的成員資料。	With regard to security of personal data, MPFA would put in place adequate data-security measures and review the system from time to time in light of new technological development to ensure a high level of security for the personal data transmitted through the system. Particularly, a Virtual Private Network (VPD) between MPF trustees and the MPFA will be used for transmission of all transfer data; all member data transmitted between MPF trustees and the MPFA will be encrypted and MPFA will not have access to member data in the ePass system.
私隱專員滿意積金局已考慮其意見，並提醒積金局考慮對電子傳送系統進行私隱影響評估及保安風險評估。	The Commissioner was satisfied that his comments had been addressed and reminded MPFA to consider conducting privacy impact assessment and security risk assessment on the ePass.
草案於2011年12月9日提交立法會。	The Bill was introduced in the Legislative Council on 9 December 2011.

甄別酷刑聲請審核機制的立法建議

聯合國《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》（下稱「公約」）自1992年起適用於香港。根據公約第3條，如有充分實質理由相信有人士被遣返至另一國家將有遭受酷刑的危險，香港具有國際責任，不將該人遣送至該國。保安局局長建議就這項責任訂定法定的甄別審核程序。《入境條例》將予以修訂，以訂明審核酷刑聲請的程序。根據新程序，入境事務主任或助理可索取酷刑聲請人的相片和指紋，及可要求聲請人出席面談，提供有關酷刑聲請的資料及回答問題。此外，聲請人或會被要求驗身或向入境事務主任披露驗身報告。

私隱專員對收集指紋資料的必要性表達關注，並建議應考慮其侵犯個人資料私隱的程度及對個人資料私隱做成的風險。關於驗身問題，私隱專員進一步建議應依據保障資料第1(3)原則給予聲請人《收集個人資料聲明》；如收集屬強制性的，則清楚通知聲請人如不提供其個人資料便會承受的後果；資料將會用於甚麼目的；資料可能移轉予甚麼類別的人；及他要求查閱及改正其個人資料的權利。

私隱專員亦建議在切實可行的情況下，限制收集個人資料的種類，而不是賦予入境事務處廣闊的酌情權在考慮酷刑聲請時才指定需提供的資料種類。關於所收集資料的保安，私隱專員建議局長參考公署發出的《收集指紋資料指引》所建議的措施，包括避免濫收指紋、採取適當加密及只限獲授權人士查閱資料。在保留資料方面，私隱專員建議局長在達成收集目的後定期及經常刪除資料。

LEGISLATIVE PROPOSAL TO UNDERPIN THE TORTURE CLAIM SCREENING MECHANISM

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention") has been applied to Hong Kong since 1992. Under Article 3 of the Convention, Hong Kong has an international obligation not to remove a person to another state where there are substantial grounds for believing that he/she would be in danger of being subjected to torture. The Secretary for Security proposed to underpin this obligation by statutory screening procedures. The Immigration Ordinance would be amended to prescribe the procedures for screening torture claims. Under the new procedures, an immigration officer or assistant may take the photographs and fingerprints of a torture claimant and may require the claimant to attend an interview to provide information and answer questions relating to the torture claim. Besides, the claimant may be required to attend medical examination or disclose to the immigration officer the medical report of the examination.

The Commissioner expressed concern about the necessity of collection of fingerprint data, and advised that the extent of intrusion into personal data privacy and the exposure to personal data privacy risks should have to be considered. As for the medical examination, the Commissioner further advised that claimants should be given a Personal Information Collection Statement in accordance with DPP1(3), to be informed explicitly of the consequences of failing to supply his personal data when the collection is mandatory, the purpose for which the data are to be used, the classes of persons to whom the data may be transferred, and his right of access and correction of his personal data.

The Commissioner also recommended limiting the kinds of personal data to be collected as far as practicable, instead of conferring a wide discretionary power upon the Immigration Department to specify the kind of information to be supplied when considering the torture claims. As for the security of the data collected, the Secretary was advised to review the list of measures recommended in the "Guidance Note on Collection of Fingerprint Data" issued by the PCPD, including avoidance of universal or indiscriminate collection of fingerprint, adoption of proper encryption and restricting access of the data to authorized person only. Regarding retention of data, the Secretary was advised to erase the data regularly and frequently upon fulfilment of the purpose of collection.

《2011年入境(修訂)條例草案》已於2011年7月8日刊憲。在年報期內，並無其他進展。

The Immigration (Amendment) Bill 2011 was gazetted on 8 July 2011 and there was no further development during the reporting period.

《2011年漁業保護(修訂)條例草案》

政府提出《2011年漁業保護(修訂)條例草案》，建議實施連串漁業管理措施，以規管香港的漁業活動。私隱專員之前曾就修訂《漁業保護條例》(第171章)的草擬委託書擬稿提出意見，現再獲食物及衞生局的漁農自然護理署邀請對草案提出意見。

FISHERIES PROTECTION (AMENDMENT) BILL 2011

The Fisheries Protection (Amendment) Bill 2011 was introduced to implement a series of fisheries management measures to regulate fishing activities in Hong Kong. The Commissioner, who had previously commented on the Draft Drafting Instructions for amending the Fisheries Protection Ordinance, Cap. 171, was further invited by the Agriculture, Fisheries and Conservation Department, Food and Health Bureau to comment on the Bill.

草案規定公開船隻登記冊予公眾查閱。該登記冊載有已登記船隻證明書持有人的姓名或名稱及船隻其他資料。為規管登記冊內個人資料的使用，私隱專員建議草案應列明設立登記冊的目的，及應制定濫用登記冊內個人資料的制裁條文。

The Bill provides that a register of registered vessels containing the name of certificate holders of registered vessels and other information of the vessels will be made available for public inspection. To regulate the use of personal data contained in the register, the Commissioner advised that the purpose of setting up the public register should be spelt out in the Bill and there should be sanction provisions against misuse of personal data contained therein.

草案亦規定海事處處長可向漁農自然護理署署長提供關乎船隻的任何詳情或資料(包括其船東的詳情)。為確保遵從保障資料第3原則的規定，私隱專員建議在漁船船東為船隻申請登記時，應就有關資料的發放／轉移徵求船東的訂明同意。

The Bill also provides that the Director of Marine may supply any particulars or information relating to a vessel (including particulars of its owner) to the Director of Agriculture, Fisheries and Conservation. To ensure compliance with the requirements under DPP3, the Commissioner advised that prescribed consent of the vessel owners on such release/transfer of information should be sought when they apply for registration of their vessels.

草案於2011年10月21日提交立法會。

The Bill was introduced into the Legislative Council on 21 October 2011.

《法律執業者(修訂)條例》– 較高級法院出庭發言權規則

較高級法院出庭發言權評核委員會(下稱「委員會」)於2010年7月2日成立，以制定包括申請較高級法院出庭發言權的規則及裁定律師申請較高級法院出庭發言權的規則。按較高級法院出庭發言權規則草稿的建議，委員會會收集及使用申請人的個人資料，委員會因而就此徵詢私隱專員的意見。

Legal Practitioners (Amendments) Ordinance Higher Rights of Audience Rules

The Higher Rights Assessment Board (the "Board") was established on 2 July 2010 to, among other things, make rules in relation to applications for higher rights of audience and determination of the applications by solicitors for higher rights of audience. The Commissioner's comments were sought on the collection and use of personal data by the Board from the applicants as proposed under the draft Higher Rights of Audience Rules (the "draft HRA Rules").

私隱專員建議在該規則草稿中指明須提供的個人資料的特定種類，及此等資料就處理較高級法院出庭發言權的申請而言應是必需及足夠，但不超乎適度。

The Commissioner recommended specifying in the draft HRA Rules the particular kinds of personal data that were required to be provided and advised that such data should be necessary, adequate and not excessive for the purpose of processing applications for higher rights of audience.

私隱專員亦知悉，根據該規則草稿，香港律師會理事會在回覆委員會有關申請較高級法院出庭發言權申請人的書面查詢時，或會向委員會披露資料。就此，私隱專員提醒委員會可能需要就有關披露取得申請人的訂明同意，因為律師會如此使用其會員的個人資料可能與原本的收集目的（即會籍申請或規管目的）不相同，亦非直接有關。

The Commissioner further noted that under the draft HRA Rules, the Council of the Law Society of Hong Kong may disclose information to the Board in reply to a written enquiry made by the Board in relation to an applicant for higher rights of audience. In this connection, the Commissioner reminded the Board that prescribed consent of the applicant might need to be obtained for the disclosure as it appeared that such use of its members' personal data by the Law Society might not be the same as or directly related to the original purpose of collection, namely, for membership application or regulation purpose only.

該規則在2012年3月23日刊憲及於2012年3月28日呈交立法會進行先訂立後審議的程序。

The Higher Rights of Audience Rules were gazetted on 23 March 2012 and tabled in the Legislative Council for negative vetting on 28 March 2012.

《殘疾人士院舍規例》

勞工及福利局局長提出《殘疾人士院舍規例》，以釐訂殘疾人士院舍在營辦、管理及監管方面的要求（包括人手及空間的規定、保健及安全規定、罰則及費用等）。根據該規例，如某人要註冊成為保健員，以便在殘疾人士院舍任職，該人須符合一些規定。

RESIDENTIAL CARE HOMES (PERSONS WITH DISABILITIES) REGULATION

The Secretary for Labour and Welfare has introduced the Residential Care Homes (Persons with Disabilities) Regulation (the "RCH Regulation") to stipulate the requirements on the operation, management and supervision of residential care homes for persons with disabilities (including staffing and space requirements, health and safety requirements, penalties and fees, etc.). Under the RCH Regulation, a person has to meet certain requirements before he can be qualified to be registered as a health worker for the purposes of employment at a residential care home for persons with disabilities.

私隱專員提醒勞工及福利局局長，為決定註冊申請而從申請人收集的個人資料應只限於該目的所必需或與之直接有關，而且就該目的而言，有關資料屬足夠但不超乎適度。

The Commissioner reminded the Secretary for Labour and Welfare that personal data to be collected from the applicants for determining the applications for registration should be limited to the extent necessary for or directly related to that purpose, and that data are adequate but not excessive in relation to that purpose.

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關於建議設立公開的保健員註冊紀錄冊，私隱專員建議局長留意民政事務局就保障公共登記冊所載的個人資料而發出的指引。

Concerning the proposed public register of health workers, the Commissioner advised the Secretary to take heed of the "Guidelines on protection of privacy in relation to personal data contained in public registers" issued by the Home Affairs Bureau.

該規例於2011年11月18日生效。

The RCH Regulation came into force on 18 November 2011.

全面檢討《截取通訊及監察條例》

保安局局長就《截取通訊及監察條例》的修訂建議所涉及的個人資料私隱事宜徵詢私隱專員的意見。以下是私隱專員提出的意見：

(i) 局長就賦權截取通訊及監察專員（下稱「專員」）為防止有關執法機構失實陳述而隨機取用及聆聽截取成果徵詢私隱專員的意見。私隱專員對此有所保留，認為隨機檢查可能賦予專員不受約束的酌情權。私隱專員建議專員以客觀的取樣方法選擇截取成果進行隨機檢查。局長亦應小心考慮加入一些條件，規定專員在行使權力進行檢查前，必須符合有關條件。

(ii) 關於保留及銷毀截取成果內受法律專業特權保護的資料，私隱專員關注，如沒有為這些成果所包含的資料指明保留時期，現時《截取通訊及監察條例》的銷毀資料規定會過於寬鬆，這可能會損害有關個人的私隱權益及法律諮詢保密權。私隱專員請保安局局長留意保障資料第2(2)原則，該原則規定個人資料的保存時間不得超過將其保存以貫徹該等資料被使用於或會被使用於的目的（包括任何直接有關的目的）所需的時間。

COMPREHENSIVE REVIEW ON THE INTERCEPTION OF COMMUNICATIONS AND SURVEILLANCE ORDINANCE

The Secretary for Security sought the Commissioner's comments on the personal data privacy issues involved in the proposed amendments to the Interception of Communications and Surveillance Ordinance ("ICSO"). The comments made by the Commissioner include the following:

(i) Comments were sought in respect of empowering the Commissioner on Interception of Communications and Surveillance (the "ICS Commissioner") to access and listen to intercept products on a random basis for the purpose of guarding against any misrepresentation by the law enforcement agency concerned. The Commissioner had reservations that random checking might vest the ICS Commissioner with unfettered discretion. The ICS Commissioner was advised to adopt an objective sampling method for selecting intercept products for random checking. Due consideration should also be given to introduce some conditions which the ICS Commissioner has to meet before exercising his power to conduct checking.

(ii) As for retention and destruction of information subject to Legal Professional Privilege ("LPP") contained in intercept products, the Commissioner was concerned that, without specifying a retention period for the information contained in these products, the existing ICSO destruction requirements are too relaxed which may possibly undermine the privacy interests and right to confidential legal advice of the individuals concerned. The Secretary for Security's attention was drawn to DPP2(2), which provides that personal data shall not be kept longer than is necessary for the fulfilment of the purpose (including any directly related purpose) for which the data are or are to be used.

(iii) 私隱專員支持該局的建議，專員在聆聽涉及法律專業特權資料或有可能取得法律專業特權資料的截取成果前，須向小組法官取得授權。透過訂立這項規定，專員的申請會由第三者就專員聆聽截取成果的適合性及必要性作出獨立評估，從而避免專員可能遭人詬病濫用權力。

(iii) The Commissioner supported the proposal to obtain authorization from panel judges as a pre-requisite for the ICS Commissioner to listen to intercept products of cases which involve LPP information or have the likelihood of obtaining LPP information. By imposing this requirement, the ICS Commissioner's application will be independently assessed by a third party on the appropriateness and necessity to his listening to the intercept products, thereby avoiding possible challenges on arbitrary use of power.

(iv) 關於該局建議專員檢查隱蔽監察成果，以(a)調查某執法機構是否違反訂明授權的條款；及(b)確定有否取得任何法律專業特權資料，私隱專員建議採取的保障私隱措施應與檢查截取成果的保障私隱措施一致（例如訂立一些查閱及檢查條件、制定匯報及／或紀律安排、保留及銷毀政策），並在修訂法例中清楚列明。

(iv) Concerning the proposal of empowering the ICS Commissioner to check covert surveillance products for the purposes of: (i) investigating whether a law enforcement agency has contravened the terms of a prescribed authorization; and (ii) ascertaining whether any LPP information has been obtained, the Commissioner advised that privacy protective measures to be adopted should be in line with those for checking intercept products (such as formulation of conditions for access and checking, reporting and/or disciplinary arrangements, and retention and destruction policy), and spelt out clearly in the legislative amendments.

《一手住宅物業銷售條例草案》

根據草案，發展項目的賣方須就有關發展項目的成交備存一份紀錄冊，供公眾閱覽。該紀錄冊包含的資料包括買方是否賣方的有關連人士。雖然買方的姓名或名稱不會在紀錄冊內顯示，但私隱專員關注買方的身份可經由土地註冊處的查冊而間接得知。

因此，私隱專員向運輸及房屋局局長建議，草案應列明備存該紀錄冊的目的及可允許的資料的用途。私隱專員亦建議應採取步驟，確保所有查閱或要求查閱紀錄冊的人士知悉指定的目的及需要把資料的使用限於有關目的。私隱專員亦建議局長就不當使用紀錄冊內的個人資料在草案訂立制裁，為個人資料私隱提供足夠的保障。

RESIDENTIAL PROPERTIES (FIRST-HAND SALES) BILL

Under this Bill, the vendor of a development is required to maintain a register for public inspection in relation to transactions for the relevant development. The register will contain information on whether the purchaser is or is not a related party to the vendor. Although the name of the purchaser is not revealed in the register, the Commissioner was concerned that their identity would be indirectly ascertained by way of carrying out a land search against the property at the Land Registry.

The Commissioner therefore advised the Secretary for Transport and Housing that the Bill should state the purpose of keeping the register and specify the permissible secondary uses of the data of the register. The Commissioner also suggested that steps should be taken to ensure that all persons accessing or requesting to access the register are aware of the specific purpose and the need to confine the subsequent usage of the data to such purpose. The Commissioner further advised the Secretary to impose sanctions in the Bill against improper use of the personal data contained in the register so as to provide sufficient privacy protection and safeguards for the personal data.

《個人信貸資料實務守則》的第三次修訂
3rd REVISION TO THE CODE OF PRACTICE ON CONSUMER CREDIT DATA

《個人信貸資料實務守則》(下稱「守則」)於1998年11月首次實施。守則規管關於個人信貸交易的記錄資訊的使用,目的是確保信貸資料機構處理個人資料的手法是公平及遵從條例的規定。

The Code of Practice on Consumer Credit Data ("the Code") first came into operation in November 1998. It regulates the use of recorded information relating to an individual's credit transactions and aims to ensure that the handling of personal data by the Credit Reference Agencies ("the CRA") is fair and in line with the requirements of the Ordinance.

2011年3月,私隱專員對守則作出第三次修訂。有關修訂分為三個階段。首階段的修訂的生效日期為2011年4月1日,是有關擴大信貸提供者透過信貸資料機構共用的按揭資料,包括住宅物業及非住宅物業的正面及負面按揭資料。擴大共用資料是由金融服務業界提出,目的是對申請按揭信貸的借款人進行更全面的信貸評估,從而鼓勵負責任的借款及審慎的貸款。

In March 2011, the Commissioner approved the 3rd revision to the Code, which involved three sets of amendments to it. The first set, which took effect on 1 April 2011, relate to the expansion of the sharing of mortgage data among credit providers through the CRA to include both positive and negative mortgage data for both residential and non-residential properties. The expanded data sharing was proposed by the financial services industry to facilitate comprehensive credit assessments of applicants for mortgage loans, thereby promoting responsible borrowing and prudent lending.

第二階段的修訂於2011年7月1日生效。該修訂規定信貸提供者當出現一些情況(例如拖欠還款金額全部或部分清還)時,從速更新信貸資料機構的有關資料。如有關更新的要求是個人提出的話,信貸提供者須在不得超過收到要求後14日更新。另外,在同一生效日期,信貸資料機構收集及保留的個人資料的類別中,須刪除「性別」一項。

The second set of amendments, which took effect on 1 July 2011, obliges the credit providers to update promptly the CRA database upon the occurrence of certain events (e.g. repayment in full or in part of any amount in default) and in the case where a request for updating is made by an individual, not later than 14 days from the date of receiving the request. With effect from the same date, "gender" was excluded from the scope of personal data to be collected and retained by the CRA.

第三階段的修訂會在私隱專員另外指定的日期生效。此修訂是有關保留因破產令而撇帳的帳戶資料。根據信貸資料機構和金融服務業界提供的資訊及估計資料,第三階段的修訂很可能會於2013年初生效。

The third set of amendments, which will take effect from a date to be further notified by the Commissioner, relate to the retention of data in relation to write-off accounts due to a bankruptcy order being made. Based on the information and estimates provided by the CRA and the financial services industry, it is likely that the third set of amendments will take effect in early 2013.

不遵從守則的規定本身並非違法。不過,在任何涉嫌違反條例的法律程序中,這可導致對當事人不利的推定。這些法律程序可以是行政上訴委員會、法官或法庭處理的程序。

Non-compliance with the Code is not in itself unlawful. However, in any proceedings involving an alleged breach of the Ordinance, evidence of non-compliance with the Code will give rise to a presumption against the party concerned. These proceedings can come before the Administrative Appeals Board, a magistrate or a court.

守則(第三修訂版)及資料概覽可從公署網站下載。

The Code (3rd revision) and the fact sheet are available for download from the PCPD website.