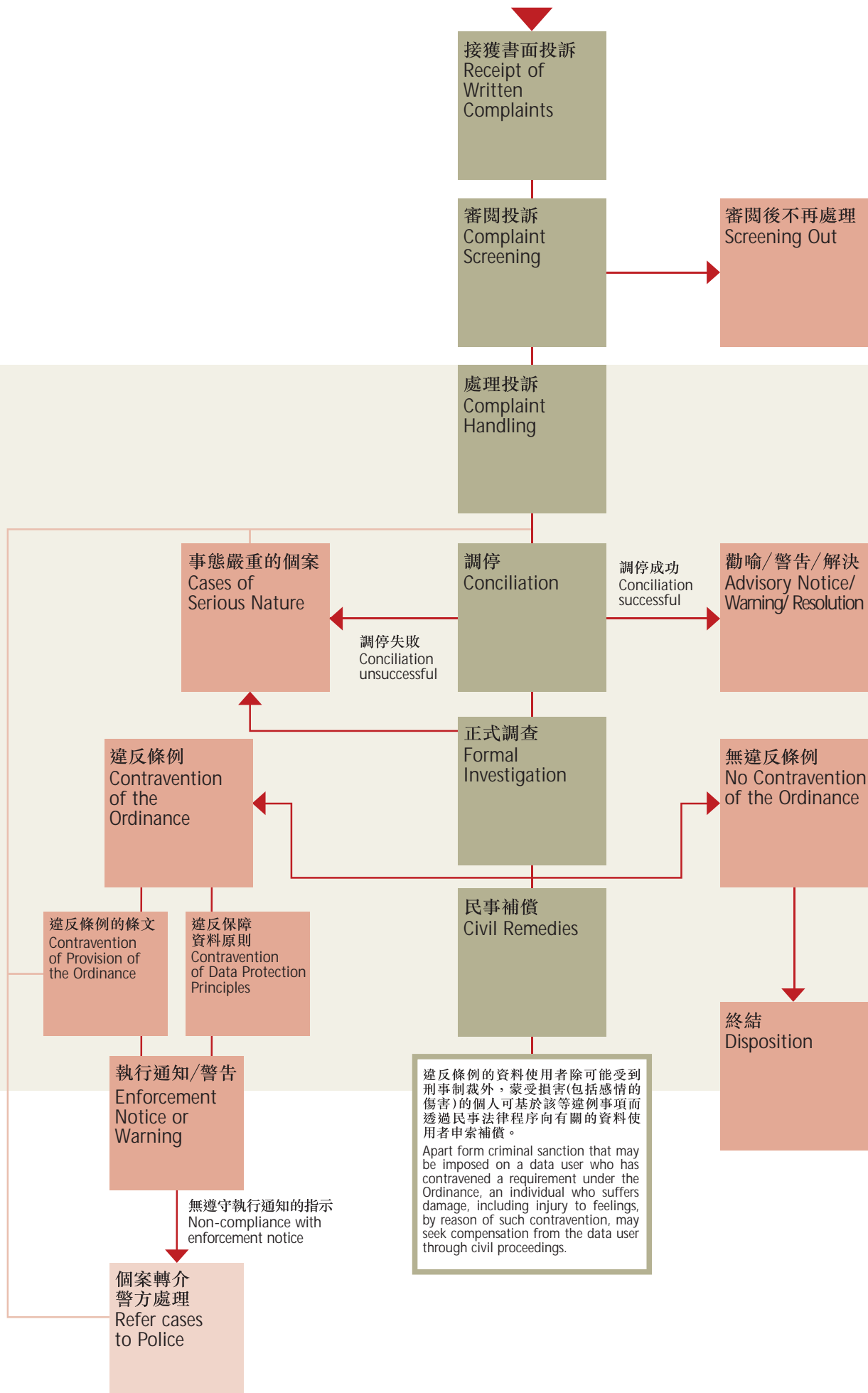




執法保障資料

Enforcing
Data
Protection



處理投訴程序圖 Complaint Handling Chart

調查不偏不倚

Impartial Investigation

執行部接收及處理投訴，對涉嫌違反條例的事件進行調查，並採取適當行動，以確保各界遵從條例的規定。

The Operations Division receives and takes action on complaints lodged with the PCPD. We conduct investigations of suspected breaches of the Ordinance and take appropriate action to ensure compliance.

調查投訴

接獲有關個人資料私隱的投訴

公署在2012至13年度共接獲1,233宗投訴個案，較上年度下降18%，原因是上年度八達通事件後，投訴個案大幅增加。(圖3.1)

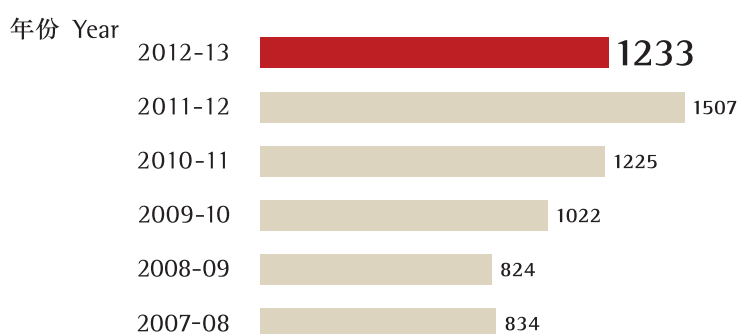
COMPLAINT INVESTIGATION

Data privacy complaints received

A total of 1,233 complaint cases were received in 2012-13, an 18% drop compared with that of the previous year. This can be explained by the exceptional increase in complaint cases in the previous year after the Octopus incident. (Figure 3.1)

圖 3.1 – 接獲投訴個案數目

Figure 3.1 - Number of Complaint Cases Received



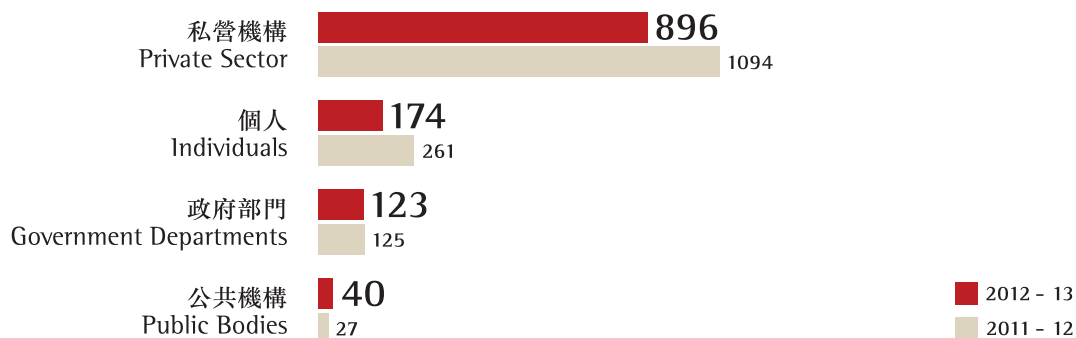
投訴個案數目 Number of Complaint Cases

投訴私營機構的個案佔73%，共896宗；174宗個案投訴個人，佔14%；163宗個案投訴公營機構（即政府部門及公共機構），佔13%。(圖3.2)

The majority (73%) of the complaint cases (896) were made against private-sector organisations; 174 (14%) were against individuals; and 163 (13%) were against public-sector organisations, including government departments and public bodies. (Figure 3.2)

圖 3.2 – 被投訴者類別

Figure 3.2 - Types of Parties Complained Against



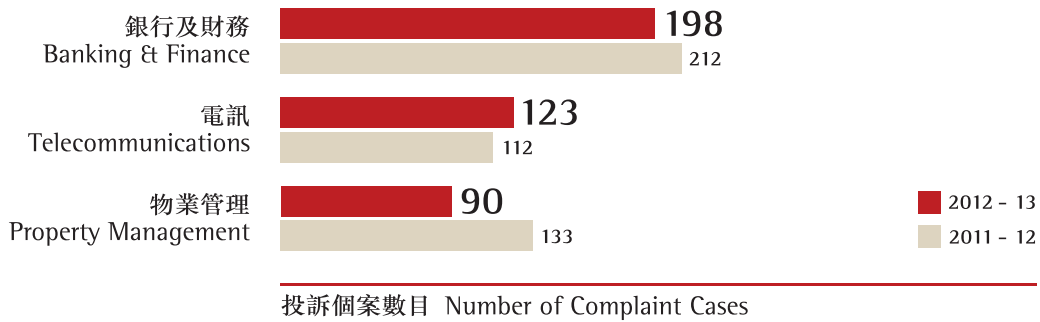
投訴個案數目 Number of Complaint Cases

最多投訴的私營機構是銀行及財務機構；其次是電訊及物業管理。投訴電訊及財務機構的個案大部分涉及非法使用或披露客戶的個人資料的指稱。(圖3.3)

The private-sector organisations generating the most complaints were the banking and finance industry, followed by telecommunications and property management. The majority of the complaints made against companies in the telecommunications and financial sectors were about the alleged unlawful use or disclosure of their customers' personal data. (Figure 3.3)

圖 3.3 – 對私營機構的投訴

Figure 3.3 - Complaints Against Private-Sector Organisations



投訴公營機構的個案中，大部分涉及：

- 不符收集目的，及未取得當事人同意而使用或披露個人資料(40%)；
- 過度或不公平收集個人資料(25%)；
- 未能遵守查閱資料要求或改正資料要求(19%)；或
- 欠缺保障個人資料的保安措施(11%)。

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

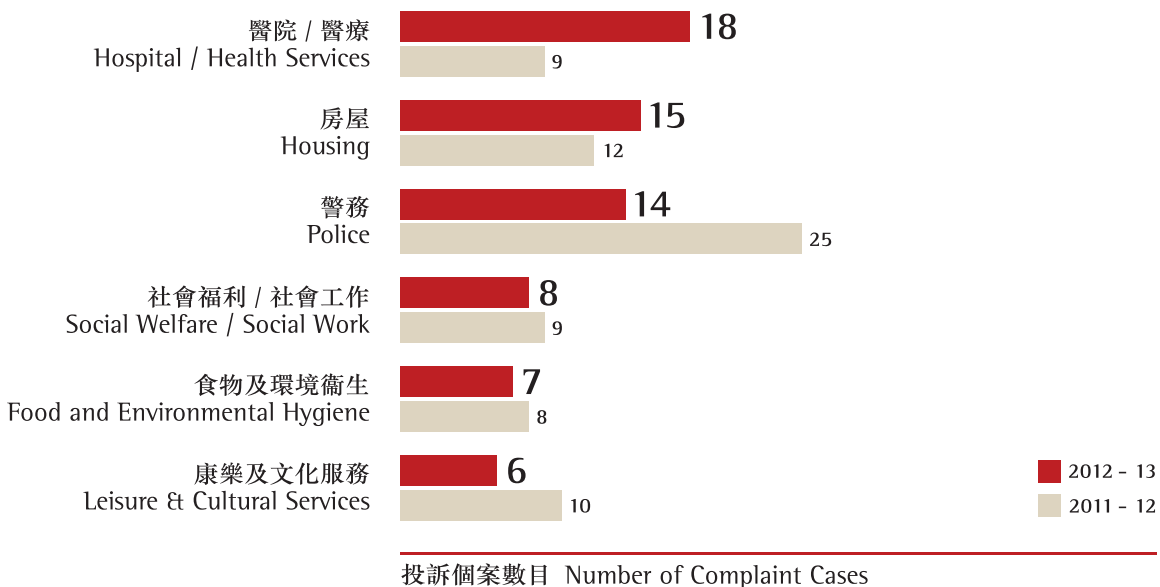
- use or disclosure of personal data beyond the scope of the collection purpose and without the consent of the individual (40%);
- excessive or unfair collection of personal data (25%);
- non-compliance with data access or correction requests (19%); or
- lack of security measures to protect personal data (11%).

醫院/醫療服務、房屋及警務的投訴最多。(圖3.4)

Hospital /health service organisations, housing authorities and the police force generated the most complaints. (Figure 3.4)

圖 3.4 – 對公營機構的投訴

Figure 3.4 - Complaints Against Public-Sector Organisations



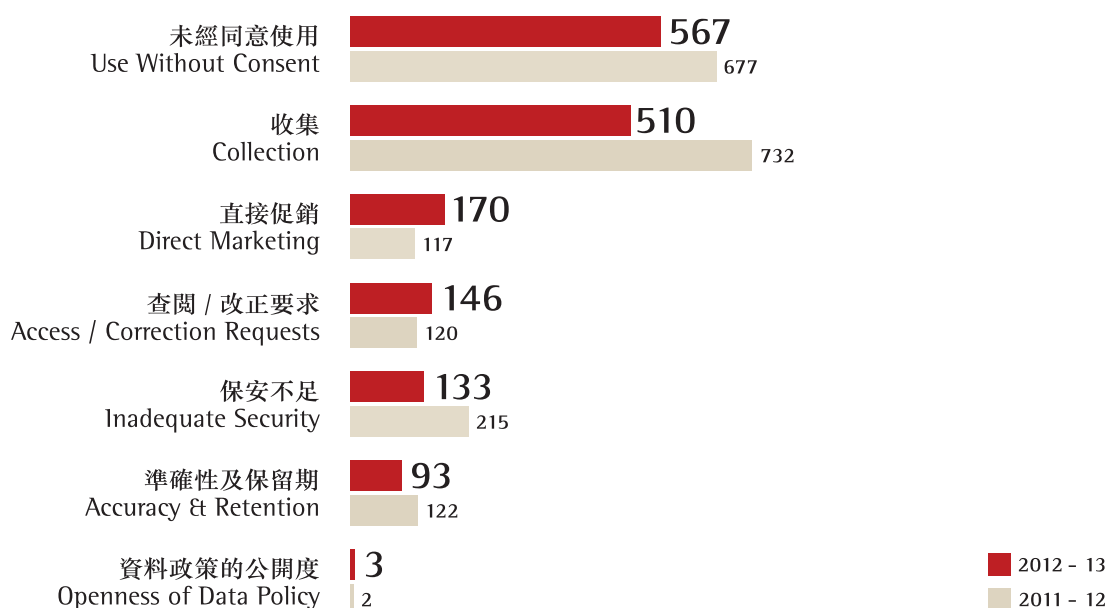
投訴的性質

公署於2012至13年度接獲的1,233宗投訴個案，涉及1,622項違反條例規定的指稱。當中1,305項(80%)指稱違反保障資料原則(非刑事罪行)，其餘317項(20%)則指稱違反條例的條文。

至於投訴性質方面，最多是有關個人資料在未經同意的情况下遭使用佔567項，其次是投訴有關收集資料的目的及方式，有510項；直接促銷佔170項；依從查閱或改正資料要求有146項；資料保安有133項，以及93項有關資料準確性及保留期。儘管整體數字有下降趨勢，但與上年度相比，投訴濫用個人資料作直接促銷用途和有關查閱或改正資料要求的投訴，皆有增長。(圖3.5)

相較上年度，有關資料保安不足和資料準確性的投訴個案則分別下降38%及24%；有關直接促銷的投訴數字則大幅增加45%。(圖3.5)

圖 3.5 – 投訴的性質



涉嫌違例事項數目 Number of Alleged Breaches

Nature of Complaints

The 1,233 complaint cases received in 2012-13 involved a total of 1,622 alleged breaches of the requirements under the Ordinance. Of these, 1,305 (80%) were alleged breaches of the data protection principles (not a criminal offence) and 317 (20%) were alleged contraventions of the provisions of the Ordinance.

With regard to the nature of the complaints, the cases involved mostly the use of personal data without consent (567 alleged breaches), followed by complaints about the purpose and manner of data collection (510 alleged breaches), direct marketing (170 alleged breaches), compliance with data access or correction requests (146 alleged breaches), data security (133 alleged breaches), and accuracy and duration of retention (93 alleged breaches). Notwithstanding the overall downward trend, there were more complaints against the misuse of personal data for direct marketing purposes and complaints relating to data access or correction requests compared with the previous year. (Figure 3.5)

The number of allegations of data security and inaccuracy of personal data decreased by 38% and 24% respectively, compared with that of the previous year. There was a surge (45%) in the number of allegations of misuse of personal data in direct marketing activities. (Figure 3.5)

Figure 3.5 - Nature of Complaints

直接促銷的投訴大增，部分原因是條例中有關直接促銷的新條文於2013年4月1日開始實施，很多機構基於各種原因於2013年3月底向顧客發出有關在直接促銷中使用個人資料的通知，而在大部分情況中，收件者誤以為發出直接促銷通知是違反條例的規定，因而向公署作出投訴。

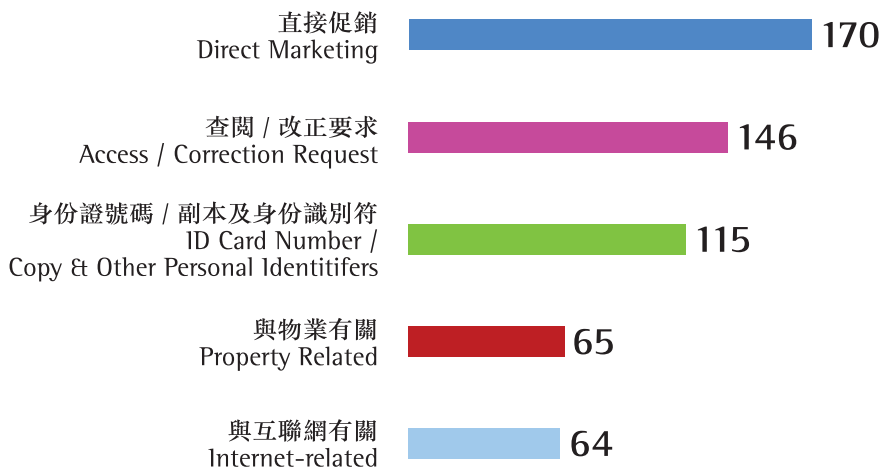
此外，隨著以智能電話上網愈來愈普及，2012至13年度與互聯網有關的投訴數字有上升趨勢。在64宗與互聯網有關的投訴中，19宗是關於智能電話應用程式，17宗關於網絡欺凌，16宗與社交網站有關，例如未經資料當事人同意而於討論區張貼其個人資料。(圖3.6)

The upsurge of complaints relating to direct marketing is partly attributable to the commencement of the new direct marketing provisions of the Ordinance, which was implemented on 1 April 2013. It was observed that many organisations, for various reasons, sent notifications to their customers on use of personal data in direct marketing in late March 2013, and in many cases, the recipients mistook that sending the direct marketing notifications was contrary to the requirements under the Ordinance, and hence, lodged complaints with the PCPD.

Further, following the increasing popularity of smartphones to access the Internet, there was an upward trend in 2012-13 in the number of Internet-related complaints. Of the 64 Internet-related complaints, 19 concerned smartphone applications, 17 were about cyber bullying, and 16 related to social networks, such as the posting of personal data in discussion forums without the data subjects' consent. (Figure 3.6)

圖 3.6 – 投訴涉及的範疇

Figure 3.6 - Complaints by Topics



在本年度，公署處理了381宗上年度帶下來的投訴，加上新接獲的投訴，年內共需處理1,614宗投訴。在這些個案中，1,221宗(76%)在本年報期內已經完結，而餘下的393宗(24%)截至2013年3月31日，仍在處理中。

In addition to the new complaints received, the PCPD handled 381 complaints carried forward from the previous year, bringing the total number of complaints handled during the year to 1,614. Of these, 1,221 (76%) cases were completed during the reporting year, and 393 (24%) cases were in progress on 31 March 2013.

年度投訴摘要

Summary of Complaints Handled in the year

	2012-13	2011-12	2010-11	2009-10
上年轉來的投訴 Complaints Carried Forward	381	376	240	173
接獲的投訴 Complaints Received	1233	1507	1225	1022
經處理的投訴的總數 Total Complaints Processed	1614	1883	1465	1195
已完結的投訴 Complaints Completed	1221	1502	1089	955
未完結的投訴 Complaints Outstanding	393	381	376	240

投訴結果

在本年報期內完結的1,221宗個案中，179宗(15%)在初步查訊期間經公署調停而得到解決，被投訴的一方對投訴人提出的問題作出適當的糾正；80宗(7%)在正式調查後得到解決；及16宗(1%)交由警方跟進(圖3.7)。

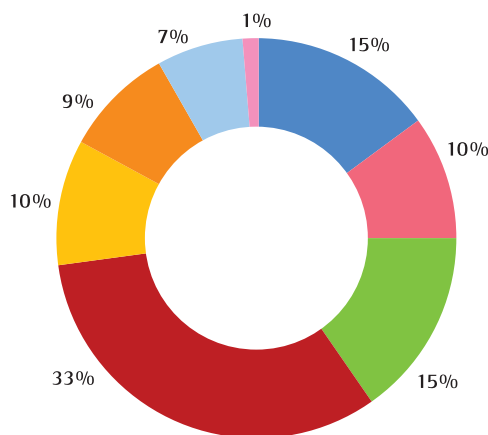
Outcome of complaint handling

Of the 1,221 cases completed during the reporting period, 179 (15%) were resolved through conciliation during the preliminary enquiry with the problems raised by the complainant remedied by the party being complained against; 80 (7%) were resolved after formal investigation; and 16 (1%) were transferred or reported to the Hong Kong Police Force (Figure 3.7).

圖 3.7 – 投訴結果

Figure 3.7 - Outcome of Complaint Handling

- 沒有表面證據
No Prima Facie Case
- 沒有管轄權 / 匿名投訴
No Jurisdiction / Anonymous
- 調停
Conciliation
- 只轉達關注 / 沒回應
Relay Concern Only / No Response
- 證據不足
Unsubstantiated
- 撤回
Withdrawn
- 正式調查
Formal Investigation
- 其他規管機構處理
Report to Other Authorities



不能展開調查的投訴個案：

- 399宗 (33%) 個案大多經由公署把投訴人的關注轉達至被投訴一方後得到解決，或私隱專員要求投訴人提供證據支持其指稱，但投訴人未有回應；
- 189宗 (15%) 沒有表面證據；
- 120宗 (10%) 不在條例的管轄範圍，或是匿名投訴；
- 128宗 (10%) 在公署向被投訴者查詢後發現證據不足；
- 110宗 (9%) 在初步查詢期間投訴人撤回投訴。

Among the other cases which were not investigated:

- 399 (33%) cases involved mostly complaints where the matter had been dealt with by simply relaying the complainant's concern to the party being complained against, or the complainant did not respond to the Commissioner's inquiries after being invited to provide evidence to support the allegations;
- 189 (15%) were found to have no prima facie case;
- 120 (10%) were outside the jurisdiction of the Ordinance or were made anonymously;
- 128 (10%) were found to be unsubstantiated after enquiries with the party being complained against;
- 110 (9%) cases were withdrawn by the complainant during the preliminary enquiry.

“這一年，我們跨躍了另一階段，修訂條例終獲通過。屈指一算，由諮詢、草擬、繼而立法的過程長達五年之久，同事們付出的辛勞，終告有成。為配合加強直銷活動對個人資料使用的規管及法律協助計劃的推出，我們編製了單張和指引。相信隨之而來的投訴會帶來更多挑戰。

We entered a new phase during the year with the Amendment Ordinance coming into force. The legislative process, from consultation to drafting and deliberation took as long as five years. It's rewarding to see the outcome of all the effort my colleagues at the PCPD put into this. We produced leaflets and guidelines on the enhanced regulations on the use of personal data in direct marketing and on the legal assistance scheme. We anticipate privacy complaints to increase and more challenges ahead.”

盧迪凡 個人資料主任
LO Dik-fan
Personal Data Officer

個案研究：指導資料使用者作出改善

私隱專員可根據條例第39條拒絕對某投訴進行調查。在這類個案中，私隱專員的決定及建議對資料保障帶正面的訊息。

以下個案顯示資料使用者如何在私隱專員的指導下，採取措施改善其保障資料的做法。

CASE STUDY: GUIDING DATA USERS TO IMPROVE

The Commissioner may decline to investigate a complaint under section 39 of the Ordinance. In such cases, the Commissioner's decision and recommendation can still have a positive impact on data protection.

The following cases in the reporting year illustrate how the data user being complained against improved its data protection practices by taking measure under the Commissioner's guidance.



個案研究 1 Case Study 1

保險公司不應讓前保險代理無限制地查閱保單資料 — 保障資料第3原則

An insurance company should not grant indiscriminate access rights to policy-related data to former insurance agents of insurance customers – DPP3

投訴內容

投訴人是一間保險公司（「該公司」）的保單持有人，她曾經指示該公司撤換代理A作為她的保險代理。但投訴人其後依然收到代理A以該公司名義發出的推廣資料。投訴人因此投訴該公司容許代理A（不再是她的保險代理）繼續查閱及使用有關其保單的個人資料。

該公司在回覆公署查詢時解釋，其做法是容許前保險代理（首次為該公司與該客戶簽訂保單）及其上司從該公司的客戶資料庫查閱與客戶保單有關的個人資料，以便跟進保單事宜。

結果

私隱專員認為，該公司在有需要時只披露與保單相關的資料，乃合理切實可行的，但在本案的情況下，該公司容許保險代理及其上司無限制地查閱前客戶保單資料的政策違反了保障資料第3原則。

該公司接納私隱專員的建議，並承諾檢討其查閱權機制，撤銷前保險代理及其上司的查閱權，以及只容許現任保險代理及其上司查閱及使用保單持有人的個人資料。該公司亦發出通告，提醒所有保險代理有關指示已生效。

The Complaint

The Complainant was a policyholder of an insurance company ("the Company") and had instructed the Company to discharge Agent A as her insurance agent. However, the Complainant continued to receive promotional materials from Agent A under the Company's name. The Complainant therefore complained against the Company for allowing Agent A, who was no longer her insurance agent, to continue to access and use her policy-related personal data.

In response to the PCPD's enquiry, the Company explained that it was its practice to allow former insurance agents (who had first signed the customer up with the Company) and their supervisors to access customers' policy-related personal data from the Company's customer database in order to follow-up with policy-related matters.

Outcome

The Commissioner held that it was reasonably practicable for the Company to arrange disclosure of relevant policy-related data only when such needs arise, and that the Company's granting of indiscriminate access rights to policy related data to insurance agents and their supervisors of former customers under the circumstances of the case had violated DPP3.

The Company accepted the Commissioner's recommendations and undertook to review its access-rights mechanism, remove the access right of former insurance agents and their supervisors, and allow only current insurance agents and their supervisors to access and use the personal data of their policyholder customers. The Company also issued notices to all of its insurance agents to put into effect this instruction.



個案研究 2

Case Study 2

銀行向信貸資料機構提供個人信貸資料：須確保所提供的資料屬準確－保障資料第2(1)原則

A Bank should ensure the consumer credit data it provided to credit reference agency was accurate – DPP2(1)

投訴內容

投訴人曾於2003年就他於某銀行開設的兩個賬號與該銀行達成債務重組議案(下稱「2003年債務重組議案」)，其後由於投訴人每月的還款額不足，因而導致該債務重組議案失敗。2006年，投訴人透過電話與該銀行達成每月還款安排協議(下稱「2006年還款協議」)，而此後投訴人有按時還款。

投訴人多年後從環聯資訊有限公司(下稱「環聯」)取得他的個人信貸報告中，發現該銀行(i)沒有向環聯申報2003年債務重組議案及2006年還款協議的資料；及(ii)就其中一個賬號向環聯申報不一致的過期欠款日數(包括30日及1日)資料。

該銀行解釋在與投訴人達成2003年債務重組議案後，有按時向環聯申報投訴人的還款記錄，惟由於當時他們的系統未能支援申報與客戶訂立的債務償還安排(包括自願安排債務重組議案)，故他們未有向環聯申報2003年債務重組議案的資料。此外，該銀行認為2006年還款協議是透過電話達成之口頭還款協議，不屬正式的債務安排計劃，故他們未有向環聯申報有關資料。

此外，該銀行稱當他們與客戶達成個人自願安排債務重組議案後，他們會在有關客戶的欠款戶口作出撇賬。由於環聯設定撇賬戶口之過期欠款日數不可等同「0日」，該銀行遂於還款期內向環聯申報有關戶口之過期欠款日最少為「1日」，直至客戶清還有關戶口之所有結欠為止。該銀行解釋由於他們收到投訴人就有關賬號的還款，遂向環聯申報將該賬戶的過期欠款日數由「30日」更改為「1日」，並繼續於還款期內向環聯申報該賬戶的過期欠款日數「1日」，直至投訴人悉數清繳該賬戶的所有結欠為止。

The Complaint

The Complainant entered into a debt restructuring agreement (“the 2003 Agreement”) with the Bank with respect to two bank accounts he had opened at the bank in 2003. The Complainant could not repay the monthly amount as required, and the debt restructuring agreement failed. In 2006, the Complainant made a monthly repayment agreement (the “2006 Agreement”) with the Bank over the phone, and thereafter made repayment accordingly.

A few years later, the Complainant obtained his personal credit report from TransUnion Limited (“TransUnion”), and he found that the Bank (i) had not provided to TransUnion the information about the 2003 Agreement and the 2006 Agreement; and (ii) had reported inconsistent information about the number of days past due (including 30 days and 1 day) to TransUnion regarding one of the bank accounts.

The Bank explained that after it made the 2003 Agreement with the Complainant, it had regularly reported the repayment records of the Complainant to TransUnion. However at that time the Bank’s system did not support the reporting of debt repayment arrangement (including Individual Voluntary Arrangement) between the Bank and its clients, and therefore it did not notify TransUnion of the information about the 2003 Agreement. Furthermore, the Bank considered that the 2006 Agreement was a verbal agreement made over the phone, other than a formal debt arrangement so that it did not notify TransUnion of the related information.

Moreover, the Bank claimed that after it made an Individual Voluntary Arrangement with a client, it would write off the payment in default in his account. Since TransUnion set the number of days past due for a write-off account should not equal to “0”, the Bank reported the minimum number of days past due to be “1 day” until the client settled all the amounts in default. The Bank explained that as it received repayment from the Complainant in relation to the accounts, it reported to TransUnion that the number of days past due was changed from “30 days” to “1 day” for the account, and throughout the repayment period continued to notify TransUnion that the account had “1 day” past due until the Complainant settled all the payments in default.



結果

私隱專員認為即使2006年還款協議並非透過該銀行所指的正式還款協議程序而達成，但考慮到該銀行其後確實接納了此還款協議中所協定的還款模式以繼續管理相關賬戶(包括到期日及分期還款金額等)，而該銀行亦有就2006年還款協議的資料存檔，故有關還款協議的本質與債務重組或重新安排無異。因此，該銀行在本案中沒有向環聯申報2003年債務重組議案及2006年還款協議的做法，有違《個人信貸資料實務守則》的規定。

就該銀行指環聯設定撇賬戶口之過期欠款日數至少為「1日」一事，環聯曾就本署的循規審查，於2008年書面通知其會員(包括該銀行)應選擇在已撇賬的賬戶達成債務重組安排後，將原來的已撇賬賬戶結束，並開設一個循環貸款賬戶，以向環聯如實申報有關賬戶在達成債務安排計劃後是否仍有逾期還款情況。就此，專員認為該銀行在投訴人有按時還款的情況下，仍向環聯申報投訴人有過期欠款日數「1日」的做法，是未有如實反映投訴人的還款狀況。

因應本個案，該銀行已通知環聯刪除上述涉及不準確申報的賬戶資料，並向專員承諾日後會按時向環聯申報與現有客戶達成的債務安排計劃(包括口頭還款協議)。

Outcome

The Commissioner held that even though the 2006 Agreement was not made in accordance with the formal procedure for repayment agreement that the Bank referred to, considering that the Bank subsequently accepted the mode of repayment under the agreement and continued to manage the relevant accounts (including the due date and instalment), and that the Bank also recorded the 2006 Agreement, the nature of the repayment agreement was by no means different from a debt restructuring or a re-arrangement. Hence in this case the Bank's failure to notify TransUnion of the 2003 Agreement and the 2006 Agreement was a contravention of the requirements of the Code of Practice on Consumer Credit Data.

As regards the fact that the Bank had set "1 day" as the minimum day of past due of a write-off account, TransUnion, following the PCPD's compliance check, had notified its members (including the Bank) in 2008 that they should terminate the write-off account after the account was entered into a debt restructuring arrangement, and should open an evolving credit account so as to report to TransUnion whether overdue repayment still existed in the account concerned after entering into the debt restructuring arrangement. In this regard, the Commissioner considered that the Bank's notification to TransUnion of the Complainant having a record of "1 day" past due while the Complainant made repayment on time did not accurately reflect the repayment status of the Complainant.

Accordingly, the Bank had asked TransUnion to delete the account information that involved inaccurate reporting, and undertook to the Commissioner that it would notify TransUnion of any debt arrangement including verbal repayment agreement it made with its clients.

投訴個案的調查結果

正式調查結果

公署在本年報期內完成調查80宗個案，發現11宗(14%)有違反條例規定的情況，12宗(15%)沒有違例或因證據不足而無法證明有違例。其餘57宗(71%)則在調查期間因為雙方經調停後解決糾紛，或投訴人決定再不跟進事件等原因而終止調查(圖3.8)。

圖 3.8 – 正式調查結果

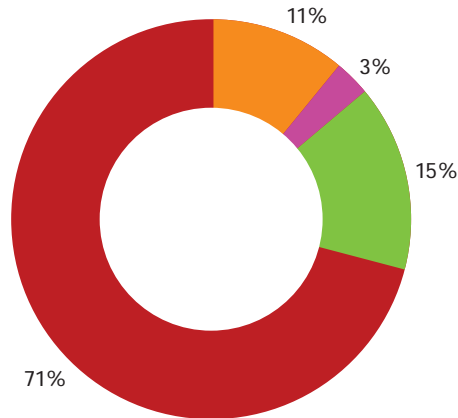
- 違反保障資料原則的規定
Contravention
(Data Protection Principles)
- 違反條例主體條文的規定
Contravention (Provisions)
- 無違例
No Contravention
- 終止調查(基於不同原因)
Discontinued (for various reasons)

RESULTS OF INVESTIGATIONS OF COMPLAINT CASES

Results of Formal Investigations

The PCPD completed 80 formal investigations during the reporting period. In 11 cases (14%), it found a contravention of the requirements under the Ordinance; in 12 cases (15%), either no contravention was found or no contravention was established due to insufficient evidence. The remaining 57 cases (71%) were discontinued for various reasons, such as the dispute between the parties having been resolved through conciliation or the complainant having decided not to pursue the matter further during the investigation (Figure 3.8).

Figure 3.8 - Results of Formal Investigations



違例事項的性質

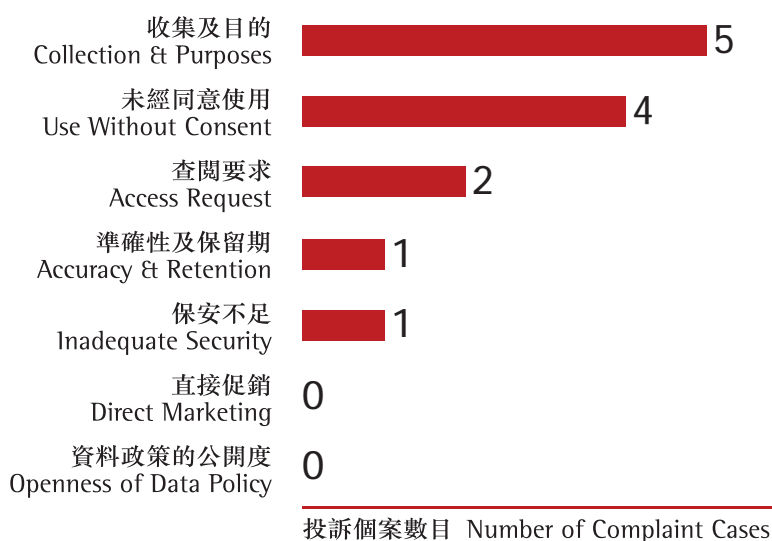
確定違反條例規定的個案有11宗，其中九宗違反一項或以上保障資料原則，兩宗涉及違反了條例中有關依從查閱資料要求的條文(圖3.9)。

Nature of Contravention

Of the 11 cases where the requirements under the Ordinance were found to have been contravened, nine involved a contravention of one or more of the Data Protection Principles. The remaining two cases involved contravention of the requirements under the main body of the Ordinance relating to compliance with data access requests (Figure 3.9).

圖 3.9 – 違例事項的性質

Figure 3.9 - Nature of Contravention



執法行動

公署對違反條例規定的個案採取執法行動。

Enforcement action

The PCPD takes enforcement action in cases of contravention.

在確定違反條例規定的11宗個案中，私隱專員就七宗向被投訴者發出執行通知，以制止或防止他們的違規行為。至於餘下的4宗個案，在被投訴者採取糾正措施後，私隱專員向他們發出警告信。

Of the 11 cases found to have contravened the requirements under the Ordinance, the Commissioner issued enforcement notices to the parties complained against in seven cases to stop or prevent the contraventions. In the remaining four cases, the Commissioner issued warning notices to the parties complained against after they had taken measures to remedy the contraventions.

就投訴採取的其他行動

在179宗於初步查訊期間經調停而解決的個案中，私隱專員向160間機構提出勸諭及/或建議，協助它們在行事方式及程序上遵守保障資料原則及條例的其他規定。

Other action taken as a result of complaints

In the 179 cases resolved through conciliation during preliminary enquiries, the Commissioner provided advice and/or recommendations to 160 organisations on their practices and procedures to assist them in complying with the Data Protection Principles and other requirements of the Ordinance.

在本年報期間終止正式調查的57宗個案中，私隱專員認為適合對22宗的被投訴者發出警告信。

Of the 57 formal investigations discontinued during the reporting period, the Commissioner saw fit to issue warning notices to the parties complained against in 22 cases.

檢控及定罪個案

在本年度內並沒有投訴個案被確立違反條例主體條文而被定罪。惟有一名人士被控違反條例的第50B(1)(a)條[之前為第64(9)條]，妨礙公署人員根據條例第44(1)條向受調查機構的兩名員工發出傳票。被告人為該機構的當值辦公室助理。

在2012年6月觀塘裁判法院的聆訊中，控辯雙方經商討後，同意控方不提證供起訴兼被告人簽保守行為。被告人不承認控罪，但同意案情，裁判官下令被告自簽港幣二千元擔保，守行為12個月。

根據第48(2)條發表的調查報告

調查報告：體檢服務公司聯同保險顧問公司，以儼如欺詐手法收集市民個人資料作直接促銷

私隱專員就三宗投訴個案而對「香港預防協會有限公司」(「預防協會」)與「翔滙保險策劃有限公司」(「翔滙策劃」)展開正式調查。

在過去兩年，預防協會共收集了約36萬名市民的個人資料，以轉售給翔滙策劃促銷保險產品之用。公署共收到11宗相關的查詢及五宗投訴個案。

PROSECUTION AND CONVICTION CASES

During the year, there was no complaint case which involved contravention of the provisions in the main body of the Ordinance, leading to conviction. However, one person was charged under section 50B(1)(a) [formerly section 64(9)] with the offence of obstructing a PCPD officer whilst serving summonses to two staff members of an organisation under section 44(1) of the Ordinance in the course of investigating complaints. The defendant was an on-duty office assistant of the organisation.

At the hearing in June 2012 at the Kwun Tong Magistrates' Courts, the Prosecution and the Defence agreed to an O.N.E. (Offer No Evidence) Bind Over on the basis that the defendant had pleaded not guilty while agreeing with the facts of the case, and the Magistrate ordered the defendant to pay a surety of HK\$2,000 and to be bound over for 12 months.

PUBLICATION OF INVESTIGATION REPORT UNDER SECTION 48(2)

Investigation Report: A Medical Check-up Service Company and an Insurance Broker Collected Personal Data for Use in Direct Marketing by Arguably Deceitful Means

The Commissioner initiated a formal investigation against Hong Kong Preventive Association Limited ("HKPA") and Aegon Direct Marketing Services Insurance Broker (HK) Limited ("Aegon Direct") in respect of three complaints.

Over the previous two years, HKPA had obtained personal data from about 360,000 people and sold the data to Aegon Direct for use in the direct marketing of insurance products. The PCPD received 11 enquiries and five complaints in this regard.



在新聞發佈會上公佈調查報告。
Release of the investigation report at a media conference.

調查發現預防協會及翔滙策劃皆違反了條例訂出的保障資料原則：

預防協會

- 預防協會的電話推廣員訛稱為響應「全民驗身運動」而推廣免費驗身計劃，誤導投訴人相信該計劃獲政府認許，推廣員亦沒有清楚交代個人資料會轉移給翔滙策劃作直銷用途，上述不公平手法違反第1(2)原則(收集資料原則)；
- 預防協會沒有採取合理切實可行的步驟明確告知當事人，其個人資料會被轉移給第三者；提及翔滙策劃時沒有交代其業務性質，違反第1(3)原則(收集資料原則)；及
- 轉售投訴人的個人資料，與原先收集個人資料的目的(登記免費驗身服務)不相符，亦沒有直接關係，而事前未有取得當事人明確和自願的同意，違反第3原則(使用資料原則)。

The PCPD's investigation found that both companies, as data users, had contravened the Data Protection Principles ("DPPs") set out in the Ordinance:

HKPA

- HKPA's telemarketers offered a free medical check-up in support of a "universal medical check-up scheme" which did not exist and misled the complainants into believing that the scheme had the blessing of the Government. It failed to explain clearly that the data would be transferred to Aegon Direct for use in direct marketing activities. Such unfair means of collection constitutes a contravention of DPP1 (2) [on Data Collection];
- HKPA failed to take all practicable steps to explicitly inform the complainants of its intention to the transfer their personal data to a third party, and when mentioning Aegon Direct as the transferee, it did not say what kind of business Aegon Direct was engaged in. It thus contravened DPP1 (3) [on Data Collection]; and
- Such transfer of the complainants' personal data was neither consistent with, nor directly related to, the original purpose of the data collection (namely, registration for a free medical check-up). As this was done without the explicit and voluntary consent of the complainants, it constituted a contravention of DPP3 [on Data Use].

“評估私隱專員公署現行的行事方式……縱然有局限，(私隱專員)似乎亦十分積極地運用使其權力，在過去18個月，條例下所有的執法機制，應用也增加了。他又一直尋求更有效方法，以行使多一點權力，他根據第48(2)條發表「點名批評」的調查報告便是佳例……公署匯報工作的做法與其他亞洲司法管轄區一樣詳盡，跟全球保障私隱機構的最佳行事方式比較也毫不遜色。

Assessing the PCPD's Current Practices... Within these constraints (the Commissioner) seems to be making vigorous use of his powers, as indicated by the increasing use of all of the enforcement mechanisms of the Ordinance over the past 18 months. He has also been looking for more effective ways to use additional powers, of which the making of detailed s48(2) "name and shame" reports is a high value example... The PCPD's reporting practices are at least as informative as other Asian jurisdictions, and are comparable with the best practices of DPAs globally.”



Professor Graham Greenleaf

澳洲新南威爾斯大學法律及資訊系統

Law & Information Systems, University of New South Wales

(cited from Professor Greenleaf's article "Hong Kong's data protection enforcement: More bark and bite" published in Privacy Laws and Business International Report, August 2013)

翔滙策劃

- 為識別目標客戶以防止他們重複享用身體檢查優惠，而收集他們的部分身份證號碼是超乎適度(因客戶提供的其他聯絡資料已足夠認證之用)，違反第1(1)原則(收集資料原則)；及
- 使用投訴人的個人資料進行直接促銷活動，這用途與原本收集資料的目的(登記免費驗身服務)不相符和無直接關係，而事前亦未有取得他們自願及明示的同意，違反第3原則(使用資料原則)。
- 經公署介入後，翔滙策劃已停用投訴人的個人資料作直接促銷，並已銷毀他們的個人資料，及其他未有透過翔滙策劃購買保險產品的人士的部分身份證號碼。

不過，為了糾正違例事項，以及防止違例的事宜再發生，私隱專員分別向預防協會及翔滙策劃送達執行通知，指令兩者制定相關政策、工作指引及/或程序，防止日後在收集及使用個人資料進行推廣活動時(包括將個人資料轉移給他人作直接促銷之用)違反條例第VIA部有關直接促銷的規定。

另外，私隱專員亦指令翔滙策劃在六個月內，(a)銷毀所有在涉案的推廣計劃下從預防協會取得的個人資料(當中由預防協會轉介，已透過翔滙策劃購買保險產品的資料當事人的個人資料除外)；(b)除非翔滙策劃在該六個月內前遵守條例直銷規管新條文(第VIA部)的規定，使用有關個人資料作直接促銷，則作別論。翔滙其後已遵從執行通知將有關個人資料銷毀。

Aegon Direct

- The collection of partial identity card numbers from the complainants was held to be excessive, as the other contact data supplied already sufficed for the purpose of authenticating the claimants for the free medical check-up and preventing multiple claims. This constituted a contravention of DPP1(1) [on Data Collection]; and
- Without the complainants' voluntary and explicit consent, it used their personal data for direct marketing: a purpose which was different from, and not directly related to, the original purpose of the data collection (namely, registration for a medical check-up), thus contravening DPP3 [on Data Use].
- After the PCPD's intervention, Aegon Direct ceased using the complainants' personal data for direct marketing, and destroyed their personal data records, as well as the records of partial identity card numbers, of persons who had not purchased any insurance products through Aegon Direct.

However, in order to remedy the contraventions and prevent any recurrence, the Commissioner served on HKPA and Aegon Direct an enforcement notice directing both companies to formulate relevant policies, guidelines and/or procedures to prevent any contraventions of the requirements under Part VIA of the Ordinance when they collect and use personal data for direct marketing purposes in future.

The Commissioner also directed Aegon Direct to destroy the personal data provided by HKPA in six months' time, (a) except the personal data of the data subjects who, as a result of HKPA's referral, had purchased insurance products through Aegon Direct, and (b) unless such data would be used for direct marketing before expiry of these six months, in which case the provisions in Part VIA of the Ordinance must be complied with. Aegon subsequently complied with the enforcement notice by destroyed the data concerned.

“每項調查結果背後都需要調查人員抽絲剝繭，慎思明辨。早前我參與一宗案件的調查工作，我需要聽取多段投訴人與電話推廣員的電話錄音，推廣員草草交代收集個人資料的用途，或加快語速，甚至含糊其辭，即使我已全神貫注聆聽，也難以掌握他們欲表達的訊息。公署裁定這種收集個人資料的手法違反條例的規定，並由我親手向違規機構送遞執行通知。

Every investigation involves the painstaking process of evidence gathering and thoughtful analysis. In one investigation I took part in recently, I was required to listen to voice recordings of conversations between the complainants and telemarketers of the company complained against. When the telemarketers in question explained what the complainants' personal data was being collected for, they spoke so fast that it was very difficult to follow. Even though I paid very close attention to the recordings, it was very hard to grasp the message. The investigation ended up determining that the collection of personal information in such a way was a contravention, and I was assigned to deliver the Enforcement Notice to the company.”



黃彥俊 助理個人資料主任
Jeffrey WONG
Assistant Personal Data Officer

從投訴中學習

LESSONS LEARNT FROM COMPLAINTS



投訴個案 1

Complaint Case 1

美容中心過度收集顧客的身份證號碼作辨識身份用途—保障資料第1(1)原則

Excessive collection of customers' Hong Kong Identity Card numbers for authentication purposes by a beauty centre – DPP1(1)

投訴內容

投訴人是一間美容中心(「該美容中心」)的顧客，她在網上預約該美容中心的服務時被要求提供其身份證號碼。投訴人認為收集身份證號碼屬超乎適度，因而向公署作出投訴。

結果

私隱專員的調查顯示，該美容中心已向顧客發出載有顧客相片及獨特會員編號的會員卡。

私隱專員認為，收集顧客的身份證號碼作核實身份用途屬於不必要及超乎適度，因為會員卡編號足以達致同樣目的。即使投訴人在現場未能出示會員卡，該美容中心亦可以詢問其姓名、電話號碼及地址以核實其身份。因此，該美容中心違反了保障資料第1(1)原則。

在調查過程中，該美容中心已停止向顧客收集身份證號碼的做法，並銷毀之前收集的身份證號碼記錄，以作補救。在此情況下，私隱專員在調查本個案後決定向該美容中心發出警告，而沒有送達執行通知。

The Complaint

The Complainant, a customer of a beauty centre (the “Beauty Centre”), was required to provide her Hong Kong Identity Card number (“ID card number”) for online appointment bookings at the Beauty Centre. The Complainant considered the collection of her ID card number to be excessive, so she lodged a complaint with the PCPD.

Outcome

The Commissioner's investigation revealed that the Beauty Centre had issued a membership card to individual customers bearing the customer's photo and a unique membership number.

The Commissioner was of the view that the collection of customers' ID card numbers for authentication purposes was unnecessary and excessive, as the membership card number sufficed for the same purpose. Even if the Complainant could not produce her membership card on the spot, the Beauty Centre could ask for her name, telephone number and address to verify her identity. Therefore, the Beauty Centre had contravened DPP1(1).

In the course of the investigation, the Beauty Centre ceased the practice of collecting ID card numbers from customers and destroyed the records of ID card numbers previously collected to remedy the contravention. In the circumstances, the Commissioner decided to put the Beauty Centre on warning instead of serving an enforcement notice on it.



投訴個案 2 Complaint Case 2

公眾體育館為保安目的而過度收集儲物箱使用者的身份證號碼—保障資料第1(1)原則
Excessive collection of locker users' Hong Kong Identity Card numbers for security purposes by a public sports centre – DPP1(1)



投訴內容

投訴人欲使用某公眾體育館的儲物箱，場館職員要求他提供身份證號碼。投訴人已在登記使用儲物箱時提供姓名及電話號碼，他質疑是否有必要再收集其身份證號碼。

該體育館向私隱專員解釋，收集儲物箱使用者的身份證號碼，有助體育設施的管理及保安。不過，該體育館並無提供任何有關儲物箱使用者涉嫌犯罪的資料。

結果

私隱專員認為，該體育館不能純粹因為儲物箱使用者可能會犯罪而收集他們的身份證號碼。如儲物箱使用者報失儲物箱鑰匙，識別其身份的最有效方法是要求他們提供登記姓名及電話號碼，以作核實。如該體育館仍對他們的身份有懷疑，亦可要求他們出示附有相片的身分證明文件核對。

私隱專員總結，該體育館收集儲物箱使用者的身份證號碼，違反了保障資料第1(1)原則。私隱專員向該體育館送達執行通知，指令它停止有關做法及銷毀如此收集的所有身份證號碼記錄。該體育館已遵從執行通知的要求。

The Complaint

In response to the Complainant's request for use of a locker in a public sports centre, the serving staff asked for his Hong Kong Identity Card number ("ID card number"). The Complainant questioned the necessity of collecting his ID card number, as he had already provided his name and telephone number when registering for use of the locker.

The sports centre explained to the Commissioner that the collection of ID card numbers from locker users enhanced the management and security of the sport facility. However, the sports centre was unable to provide any information about suspected crimes committed by locker users.

Outcome

The Commissioner was of the view that the sports centre could not collect locker users' ID card numbers solely because of potential risk of crime committed by them. If locker users reported the loss of their locker keys, the most effective way to identify the locker users was to ask them to give the names and telephone numbers they provided upon registration for verification. If the sports centre still doubted their identity, it could also ask them to produce an identification document bearing their photos for verification.

The Commissioner concluded that the sports centre's collection of ID card numbers of locker users had contravened DPP1(1). An enforcement notice was served on the sports centre directing it to cease the practice and destroy all records of ID card numbers so collected. The sports centre complied with the enforcement notice.



投訴個案 3 Complaint Case 3

僱主向第三者出示前僱員的結婚證書副本—保障資料第3原則

An employer disclosed copies of the marriage certificate of a former employee to third parties – DPP3.

投訴內容

投訴人以工作簽證受聘於一間招聘公司（「該公司」）。投訴人在辭職前向該公司申請婚假，並提供其結婚證書（「該證書」）副本作為證明。其後，該公司與投訴人發生勞資糾紛。

在勞資審裁處的聆訊中，投訴人得悉該公司為取消其工作簽證而向入境事務處出示該證書；另外又向勞工處出示該證書，以反對該處向投訴人與其丈夫經營的職業介紹所發出牌照。因此，投訴人向公署投訴該公司未經她事前同意而向第三者出示該證書。

結果

私隱專員的調查顯示，僱主如要撤回某僱員的工作簽證，只需向入境事務處作出書面通知已經足夠。因此，該公司為撤回工作簽證而向入境事務處提供該證書副本是不必要的。

另一方面，私隱專員知悉，根據《僱傭條例》第53(1)條，如投訴人「於過去5年內，曾因對兒童、青年或婦女犯有侵害人身罪，或涉及身為三合會會員，或欺詐、不誠實行為或勒索罪而被定罪」，勞工處才可拒絕向投訴人的公司發出職業介紹所牌照或將牌照撤銷。私隱專員認為該公司與投訴人之間的糾紛只是關於違反僱傭合約條款、保密責任及約束性規定，並不屬於《僱傭條例》第53(1)條所指明的情況。

The Complaint

The Complainant was employed by a recruitment company (the "Company") on an employment visa. Prior to her resignation, the Complainant applied for marriage leave and produced a copy of her marriage certificate (the "Certificate") to the Company as proof of her marriage. Subsequently, the Company and the Complainant had a labour dispute.

During a hearing at the Labour Tribunal, the Complainant learned that the Company had disclosed the Certificate to the Immigration Department in connection with the cancellation of her employment visa and that the Company had disclosed the Certificate to the Labour Department to object to the grant of an employment agency license to a recruitment company run by the Complainant and her husband. Hence, the Complainant lodged a complaint with the PCPD against the Company for disclosing the Certificate to third parties without her prior consent.

Outcome

The Commissioner's investigation revealed that for the purpose of withdrawing sponsorship for the working visa of an employee, a written notification by the employer to the Immigration Department would suffice. Therefore, it was unnecessary for the Company to furnish a copy of the Certificate to the Immigration Department for the purpose of withdrawing its sponsorship.

On the other hand, the Commissioner noted that in accordance with section 53(1) of the Employment Ordinance, the Labour Department may only refuse or revoke the employment agency license of the Complainant's company if "*within the preceding five years, (the Complainant) has been convicted of an offence against a child, young person or woman, or of an offence involving membership in a triad society, fraud, dishonesty or extortion*". The Commissioner held that the dispute between the Company and the Complainant concerned only the breach of employment contract terms, duty of confidentiality and restrictive covenants, which did not fall within any of the specified situations under section 53(1) of the Employment Ordinance.

該公司以人力資源管理為理，評估投訴人是否符合享有婚假的資格而收集該證書的副本。該公司其後向兩個政府部門披露該證書，與投訴人當初向該公司提供該證書的目的不相符，亦沒有直接關係。因此，私隱專員認為該公司反了保障資料第3原則，因而向該公司發出執行通知，以補救違規情況。

Since the Certificate was collected by the Company in the course of and for the purpose of human resource management to assess the Complainant's entitlement to marriage leave, the subsequent disclosure of the Certificate to the two government departments by the Company was inconsistent with or did not bear any direct relationship with the purpose for which the Certificate was first provided to the Company by the Complainant. The Commissioner therefore found the Company in contravention of DPP3 and issued an enforcement notice to the Company to remedy the breach.



投訴個案 4

Complaint Case 4

一間學校沒有小心考慮第58(1)(d)、(e)及(f)條的豁免條文是否適用，便拒絕兩名老師的查閱資料要求。

A school refused data access requests made by two teachers without carefully considering whether the exemptions of sections 58(1)(d), (e) and (f) were applicable.

投訴內容

兩名投訴人是學校的老師。他們向校方作出查閱資料要求，要求查閱該校對他們作出紀律行動的文件內的個人資料。學校拒絕有關要求，理由是他們要求查閱的資料是獲條例第58(1)(d)、(e)及(f)條豁免的。投訴人不滿校方的回覆，於是向公署投訴該學校。

在調查過程中，該學校表示提供有關文件會暴露投訴兩名投訴人的學生及老師的身份，又指依從有關查閱資料要求，對於糾正及監察投訴人的不當行為等目的不利。該學校援引條例第58(1)(d)條，拒絕依從有關查閱資料要求。該學校進一步表示，向投訴人披露有關文件，會導致條例第58(1)(e)條所指的重大損失、打擊老師的士氣，以及身份因而被暴露的人士可能會向學校提出訴訟/法律行動。該校亦援引條例第58(1)(f)條而不披露有關文件，以確定投訴人的不當行為是否會對該校執行管理職能造成嚴重的負面影響。

結果

私隱專員認為，就條例第58(1)(d)條的應用而言，投訴人的行為並不屬於「嚴重不當的行為」，因為校方對他們所採取的紀律行動只是警告。

The Complaint

Two Complainants, who were teachers at the school concerned, made data access requests (the "DARs") to the school for their personal data contained in documents in relation to disciplinary action carried out by the school against them. The DARs were refused by the school on the ground that the requested data was exempt from sections 58(1)(d), (e) and (f) of the Ordinance. The Complainants were dissatisfied with the school's replies and lodged complaints with the PCPD against the school.

During the course of the investigation, the school submitted that provision of the concerned documents would reveal the identities of the students and teachers who had complained against the Complainants and that complying with the DARs would prejudice the purpose of rectifying the improper conduct and the monitoring of the behaviour of the Complainants. The school thus invoked section 58(1)(d) of the Ordinance to refuse to comply with the DARs. The school further submitted that the disclosure of the concerned documents to the Complainants would result in significant loss to the school within the terms of section 58(1)(e) of the Ordinance, that the morale of the teaching staff would be adversely affected, and that the school might be subject to litigation/legal action by the parties whose identities were thereby revealed. The school also relied on section 58(1)(f) of the Ordinance that the concerned documents were held to ascertain whether the misconduct of the Complainants was likely to have a significant adverse impact on the school in the exercise of its management functions.

Outcome

The Commissioner took the view that, in respect of the applicability of section 58(1)(d) of the Ordinance, the behaviour of the Complainants did not amount to "serious improper conduct", as the disciplinary action taken against them was merely a warning.

此外，該校只是臆測會招致「重大經濟損失」。私隱專員認為校方聲稱的潛在「損失」相當間接，並不符合條例第58(1)(e)條的規定。同樣，該校不能證明該兩名老師的不當行為如何會對該校的管理職能造成嚴重的負面影響，因此私隱專員最後駁回該校援引條例第58(1)(f)條的豁免理由。因此，私隱專員總結認為該校沒有遵從條例第19(1)條的法定要求。

私隱專員向該校送達執行通知，指令它依從有關查閱資料要求，及制訂處理查閱資料要求的指引，以供職員依從。該校同意私隱專員的指示，已遵從執行通知的要求。

Furthermore, the school only speculated about “*significant financial loss*”. The Commissioner considered that the potential “loss” asserted was too remote and did not satisfy the requirement of section 58(1)(e) of the Ordinance. Likewise, as the school had failed to prove how the misconduct of two individual teaching staff would have a significant adverse impact on the school’s management functions, and the Commissioner dismissed the ground for exemption under section 58(1)(f) of the Ordinance. Hence, the Commissioner concluded that the school had failed to fulfil the statutory requirements of section 19(1) of the Ordinance.

An enforcement notice was served on the school directing it to comply with the DARs and devise guidelines for handling DARs for its staff to follow. The school agreed with the direction given by the Commissioner and complied with the enforcement notice accordingly.