



# 執法保障資料

## Enforcing Data Protection



### 調查不偏不倚

#### Thorough and Impartial Investigations

執行部分為投訴審閱組和調查組，職責是制訂行動方針及程序來執行私隱條例的規定。對於市民的投訴，我們會作出具效率、公平公正的調查及處理。若發現有顯著私隱風險的情況存在，我們更會主動作出調查。

The Operation Division, comprising the Complaint Screening Team and the Investigation Team, formulates operational policies and procedures to implement the provisions of the Ordinance. We investigate and resolve complaints efficiently, in a manner that is fair to all parties concerned, and proactively investigate areas where privacy risks are significant.



調查組  
Investigation Team



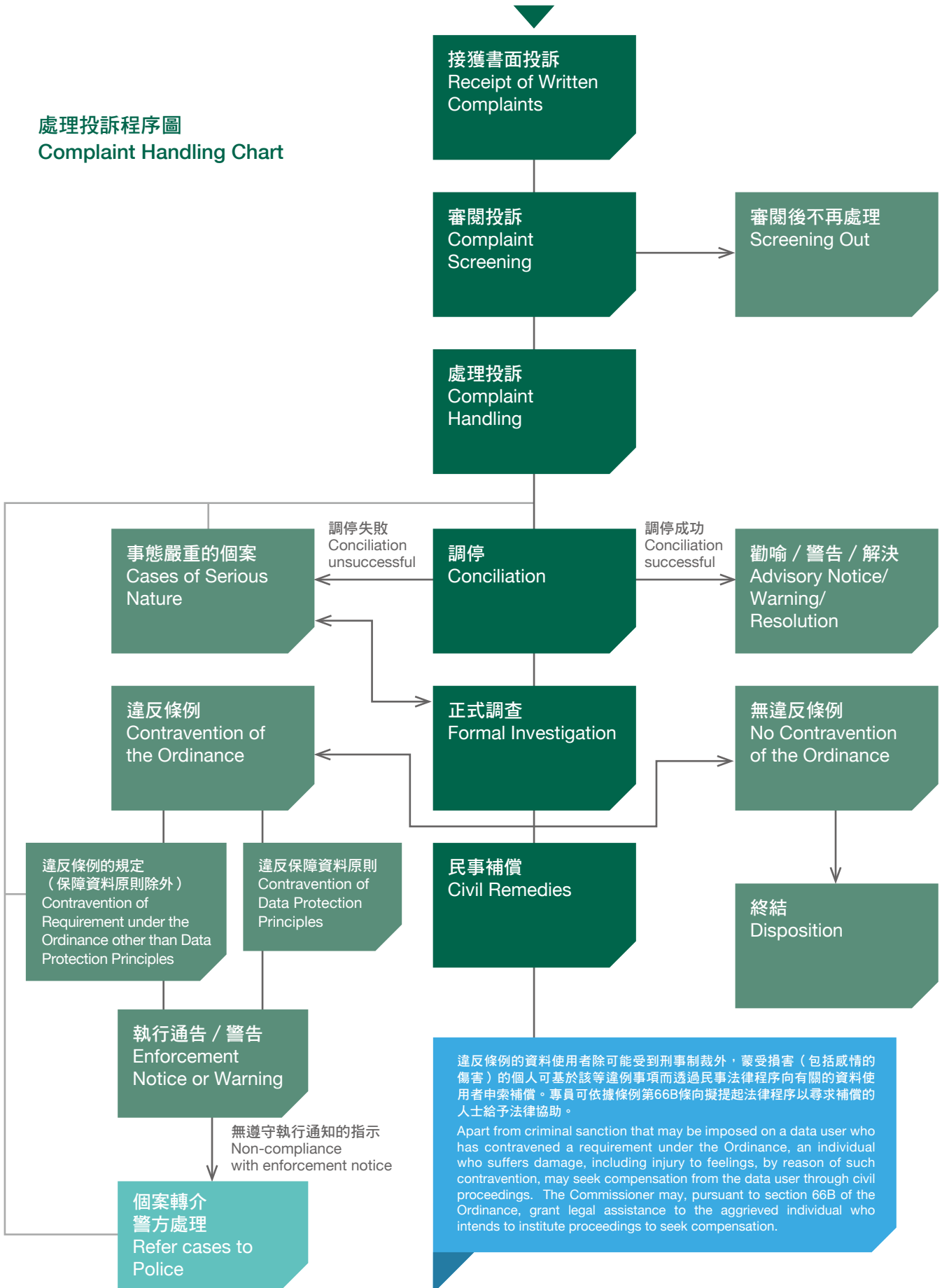
投訴審閱組  
Complaint Screening Team



香港個人資料私隱專員公署  
Office of the Privacy Commissioner  
for Personal Data, Hong Kong



處理投訴程序圖  
Complaint Handling Chart



## 調查投訴

### 接獲有關個人資料私隱的投訴

公署在 2013 至 14 年度共接獲 1,888 宗投訴個案，較上年度增加了 53%，原因是《2012 年個人資料（私隱）（修訂）條例》有關規管在直接促銷中使用個人資料的新條文自 2013 年 4 月 1 日生效後，投訴個案大幅增加。（圖 3.1）

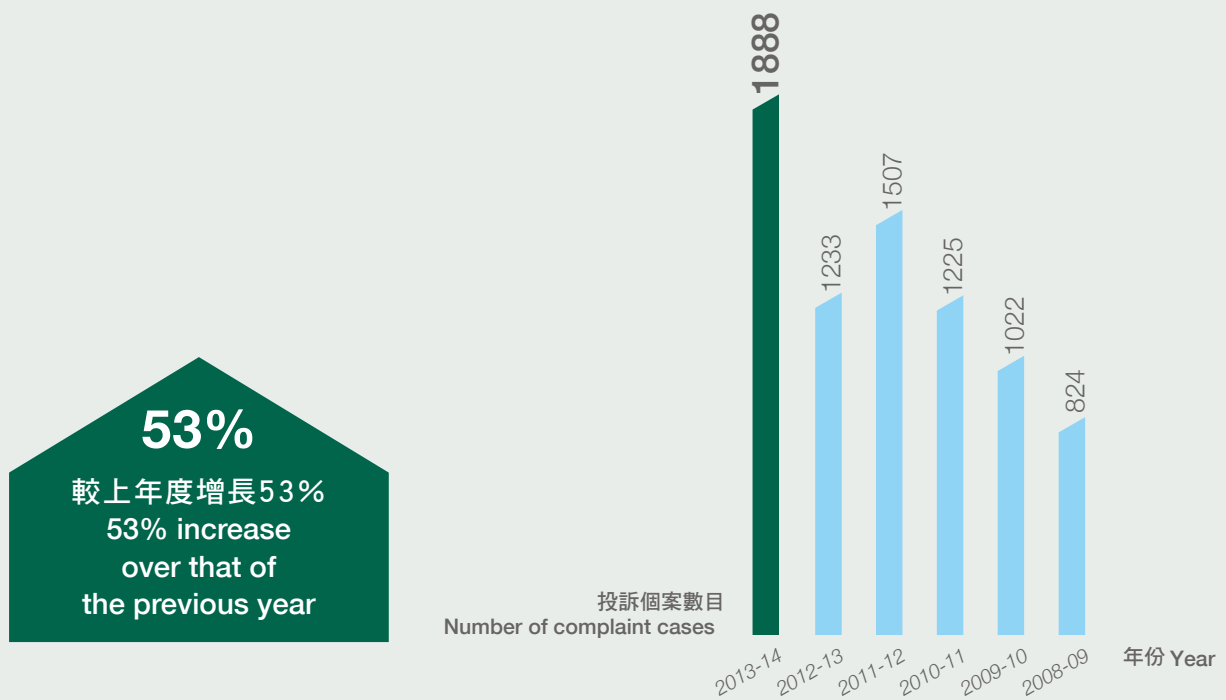
## COMPLAINT INVESTIGATIONS

### Data privacy complaints received

A total of 1,888 complaint cases were received in 2013-14, a 53% increase over that of the previous year. The upsurge can be explained by the substantial number of complaints related to the new provisions of the Personal Data (Privacy) (Amendment) Ordinance 2012 governing the use of personal data in direct marketing, which took effect on 1 April 2013. (Figure 3.1)

圖 3.1：投訴個案數字

Figure 3.1: Number of complaint cases received

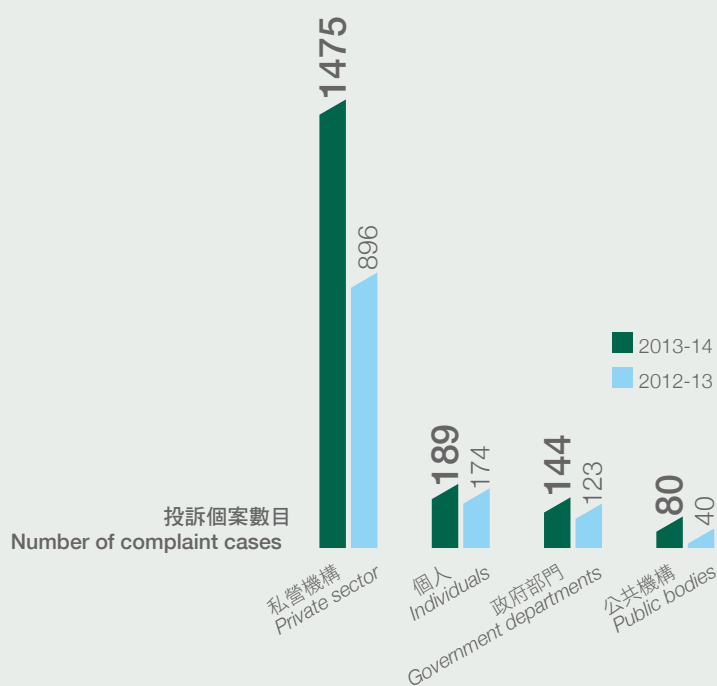


本年度大多數個案都是投訴私營機構，共有 1,475 宗，佔 78%；另有 224 宗個案投訴公營機構（即政府部門及公共機構），佔 12%；及 189 宗個案投訴個人，佔 10%。（圖 3.2）

During the year, the majority (78%) of the complaint cases were against private-sector organisations (1,475 cases); 12% were against public-sector organisations (224 cases), including government departments and public bodies; and 10% were against individuals (189 cases). (Figure 3.2)

圖 3.2：被投訴者類別

Figure 3.2: Types of parties complained against

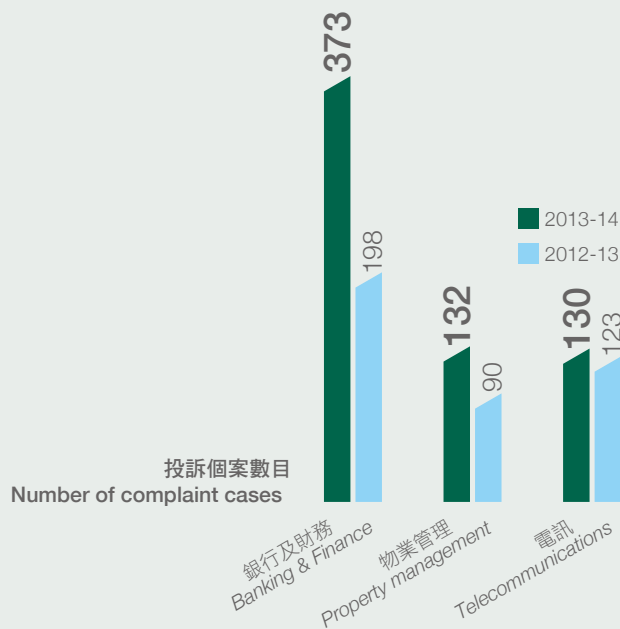


在私營機構方面，銀行及財務機構接獲最多投訴；其次是物業管理及電訊。而針對電訊及財務機構的投訴個案，**大部分都是涉及違反條例有關直接促銷新條文的指控。**（圖 3.3）

The private-sector organisations generating the most complaints were in banking and finance, followed by property management and telecommunications. **The majority of the complaints made against companies in the telecommunications and financial sectors were related to alleged breaches of the new direct marketing provisions of the Ordinance.** (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（32%）；
- 過度或不公平收集個人資料（31%）；
- 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（12%）。

涉及醫院 / 醫療服務、警務及大學的投訴最多。（圖 3.4）

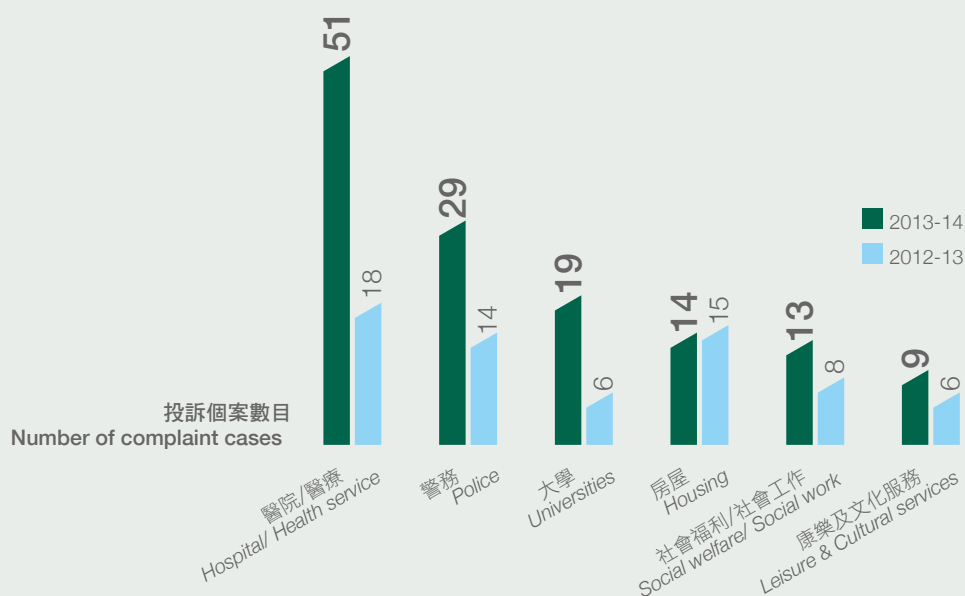
The majority of complaints made against public-sector organisations involved allegations of:

- use or disclosure of personal data beyond the scope of the collection purpose and without the consent of the individual (32%);
- excessive or unfair collection of personal data (31%);
- non-compliance with data access or correction requests (19%); or
- lack of security measures to protect personal data (12%).

Hospital/health service organisations, the police force and universities 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





公署於 2013 至 14 年度接獲的 1,888 宗投訴個案，涉及 2,360 項違反條例規定的指稱。當中，1,697 項（72%）指稱違反保障資料原則（本身不構成刑事罪行），其餘 663 項（28%）則指稱違反條例的條文。

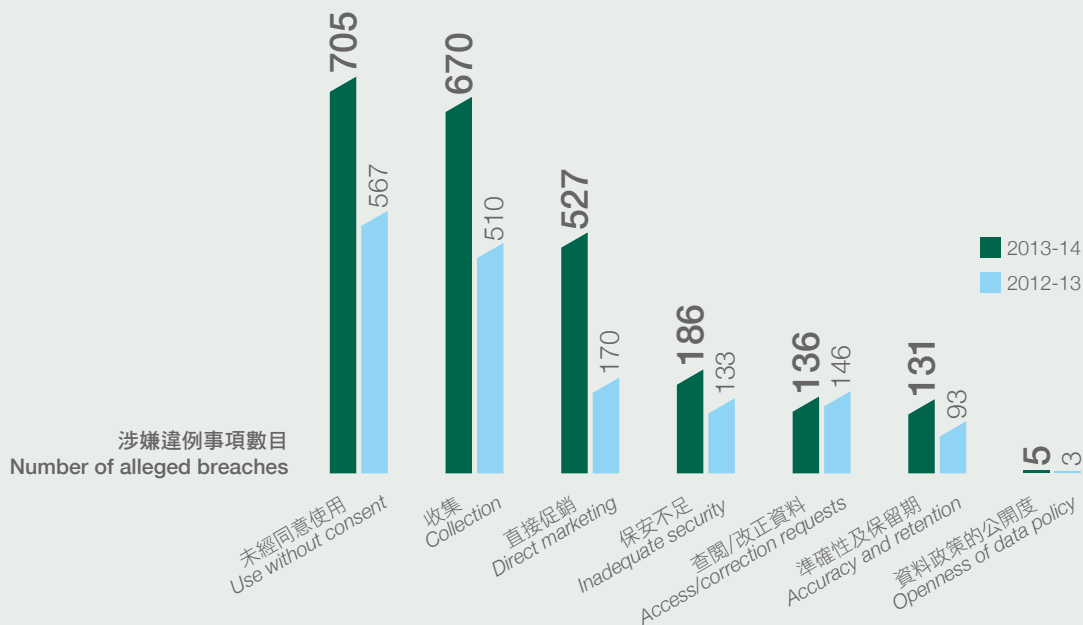
至於投訴性質方面，最多是有關指稱個人資料在未經同意的情況下遭使用，佔 705 項，其次是有關收集資料的目的及方式，有 670 項；直接促銷佔 527 項；資料保安有 186 項；依從查閱或改正資料要求有 136 項，以及 131 項有關資料準確性及保留期。（圖 3.5）

The 1,888 complaint cases received in 2013-14 involved a total of 2,360 alleged breaches of the requirements under the Ordinance. Of these, 1,697 (72%) were alleged breaches of the data protection principles (not a criminal offence) and 663 (28%) were alleged contraventions of the provisions of the Ordinance.

With regard to the nature of complaints, the cases involved mostly the use of personal data without the consent of the individual concerned (705 alleged breaches), followed by complaints about the purpose and manner of data collection (670 alleged breaches), direct marketing (527 alleged breaches), data security (186 alleged breaches), compliance with data access or correction requests (136 alleged breaches), and accuracy and period of data retention (131 alleged breaches). (Figure 3.5)

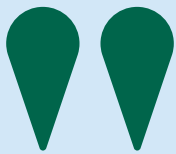
圖 3.5：投訴的性質

Figure 3.5: Nature of complaints



值得注意的是，投訴總數大幅增加主要是因為規管直接促銷的新條文開始實施。**公署於 2013 至 14 年度接獲有關直接促銷的投訴共 527 宗，較上年度增加 357 宗（210%），平均每月接獲 44 宗這類個案。**由於很多機構為應付有關直接促銷活動的新規定，於 2013 年 3 月底至 4 月初就使用個人資料作直接促銷向客戶發出大量通知，公署於 2013 年 4 月份更接獲創紀錄 109 宗有關直接促銷的投訴。隨著資料使用者與資料當事人對直接促銷新規管機制的認識提高，公署接獲的投訴數字自 2013 年 9 月開始穩定。其後的投訴集中於資料使用者進行的直接促銷活動。

It is worth noting that the substantial increase in the total number of complaints was attributable mainly to the implementation of the new provisions governing direct marketing. **A total of 527 complaints related to direct marketing were received in 2013-14, an increase of 357 cases (210%) over that of the previous year. On average, 44 such cases were received per month in 2013-14.** Specifically, in April 2013 the number of complaints related to direct marketing received hit a record 109 cases. This was largely a response to the massive number of customer notifications sent in late March 2013 and early April 2013 by many organisations on the use of personal data for direct marketing as part of the transitional arrangements to cope with the new direct marketing requirements. With enhanced familiarisation of the new direct marketing regime by both data users and data subjects, the number of incoming complaints began to level off starting in September 2013. Subsequent complaints focused on the direct marketing activities carried out by data users.



自從條例的修訂條文實施後，有關直接促銷的投訴個案大幅上升。作為個案主任，在處理投訴個案時，一方面需要向資料當事人清楚解釋新條文的規定，同時必須把握接觸資料使用者的機會，提高他們在直銷活動中保障客戶個人資料的意識。對於當時剛加入公署投訴審閱組的我，要應付隨條例修訂而增加的工作量，確是個巨大的挑戰。在這過程中，同事們之間的互助互勉，令我感到公署上下的團隊精神及迎难而上的決心。

Since the amendment of the Ordinance, the number of complaint cases about direct marketing has increased sharply. When handling complaint cases, on the one hand, I have to clearly explain the new provisions to the data subjects, and on the other hand, I have to use the opportunity to educate the data users on the importance and methods of protecting their customers' personal data in direct marketing activities. As I joined the PCPD's Complaint Screening team shortly after the amendments took effect, it was really a big challenge for me to handle the increase in workload that followed. However, through cooperation with my colleagues, I feel the PCPD team spirit and determination to overcome any difficulties along the way.

容潔瑩 助理個人資料主任  
Natalie YUNG Assistant Personal Data Officer



在該 527 宗有關直接促銷的投訴中，289 宗（55%）關於資料使用者沒有依從拒絕直銷服務要求；178 宗（34%）關於資料使用者在使用資料當事人的個人資料作直接促銷前沒有採取指明行動；及 31 宗（6%）是投訴資料使用者未經資料當事人的書面同意，而提供其個人資料予另一人以供用於直接促銷。

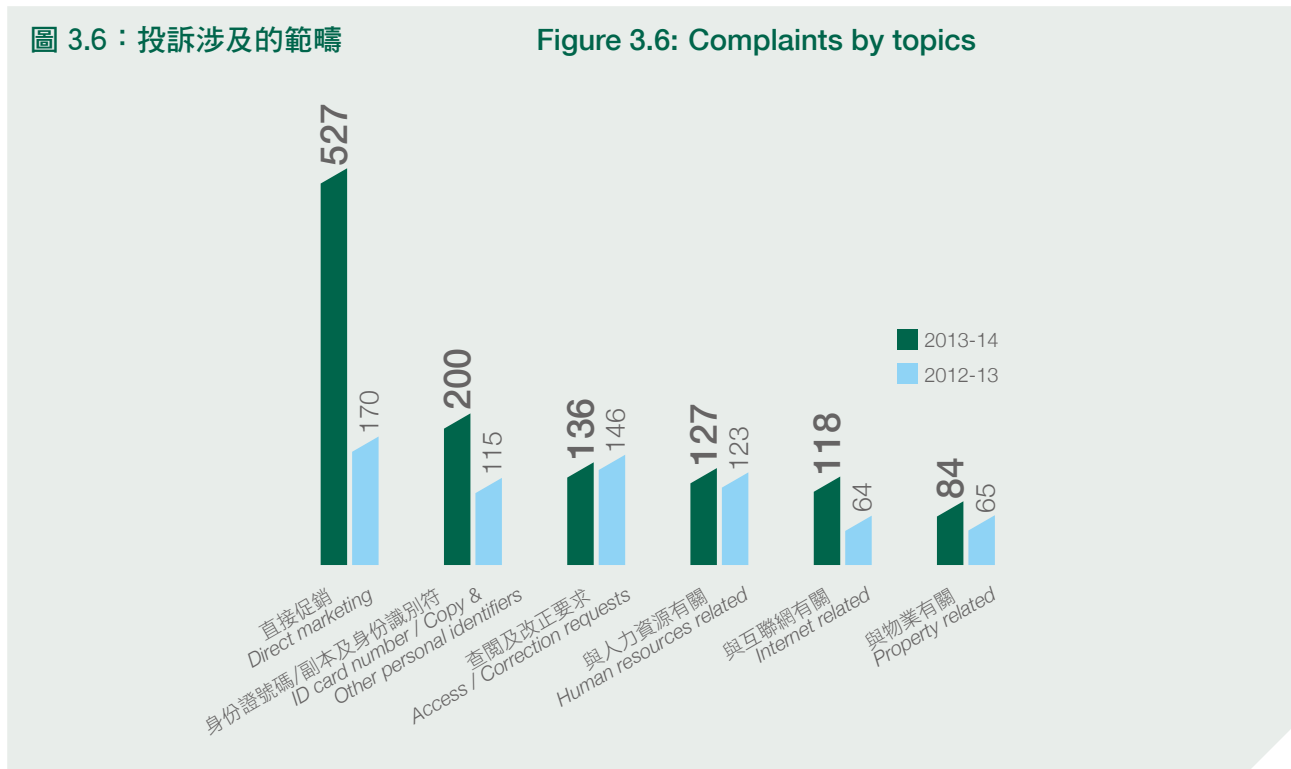
Of the 527 complaints related to direct marketing in 2013-14, 289 (55%) concerned data users' failure to comply with opt-out requests; 178 (34%) related to data users' failure to take specified action before using their data subjects' personal data for direct marketing, and 31 (6%) complained about data users' providing personal data to others for use in direct marketing without the data subjects' written consent.

圖 3.6 顯示投訴涉及的範疇，尤其是隨著現今智能電話及互聯網的普及，2013 至 14 年度接獲 118 宗有關互聯網的投訴數字與上年度的 64 宗相比，進一步飆升 84%。在該 118 宗有關互聯網的投訴中，52 宗關於在互聯網上披露或洩漏個人資料；37 宗關於社交網絡；24 宗關於智能電話應用程式；三宗關於網絡欺凌，其餘二宗屬其他事項。

Figure 3.6 shows the breakdown of complaints by topics. In particular, with the ubiquitous use of smartphones and the Internet nowadays, the number of Internet-related complaints in 2013-14 soared 84% (118 cases) over that of the previous year (64 cases). Of these Internet-related complaints, 52 concerned disclosure or leakage of personal data on the Internet, 37 related specifically to social networks, 24 were about smartphone applications, three involved cyber bullying and two related to other sub-topics.

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 393 宗由上年度帶下來的投訴，加上新接獲的投訴，年內共需處理 2,281 宗投訴。在這些個案中，1,952（86%）在本年報期內已經完結，而餘下的 329 宗（14%）截至 2014 年 3 月 31 日，仍在處理中。

In addition to the new complaints received, the PCPD handled 393 complaints carried forward from the previous year, bringing the total number of complaints handled during the year to 2,281. Of these, 1,952 (86%) cases were completed during the reporting year, and 329 (14%) cases were in progress on 31 March 2014.

### 年度投訴摘要

#### Summary of complaints handled in the year

	2013-14	2012-13	2011-12	2010-11
上年轉來的投訴 Complaints carried forward	<b>393</b>	381	376	240
接獲的投訴 Complaints received	<b>1888</b>	1233	1507	1225
經處理的投訴 Total complaints processed	<b>2281</b>	1614	1883	1465
已完結的投訴 Complaints completed	<b>1952</b>	1221	1502	1089
未完結的投訴 Complaints outstanding	<b>329</b>	393	381	376

## 投訴結果

在本年報期內結案的 1,952 宗個案中，193 宗（10%）在初步查訊期間經公署調停而得到解決，被投訴者對投訴人提出的問題已作出適當的糾正，私隱專員並向其中 163 間機構提出勸喻及／或建議。另外 115 宗個案（6%）在正式調查後獲得解決（當中有 53 宗（46%）經公署調停後得到解決（見下文「正式調查結果」））；及 19 宗（1%）交由警方跟進。（圖 3.7）

有關被投訴者經公署調停後所採取的糾正行動分類，可參考圖 3.10。

不能展開調查的投訴個案：

- 797 宗（41%）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；
- 262 宗（13%）沒有表面證據證明違規；
- 214 宗（11%）在初步查詢期間投訴人撤回投訴；
- 191 宗（10%）不在條例的管轄範圍；
- 161 宗（8%）在公署向被投訴者查詢後發現證據不足。

## Outcome of complaint handling

Of the 1,952 cases completed during the reporting period, 193 (10%) were resolved through conciliation during preliminary enquiries, with the problems raised by the complainants remedied by the parties complained against, and the Commissioner provided advice and/or recommendations to 163 organisations involved in these cases; 115 (6%) were resolved after formal investigation (of which 53 (46%) were resolved through conciliation (see below “Results of formal investigations”)); and 19 (1%) were transferred or reported to the Hong Kong Police Force. (Figure 3.7)

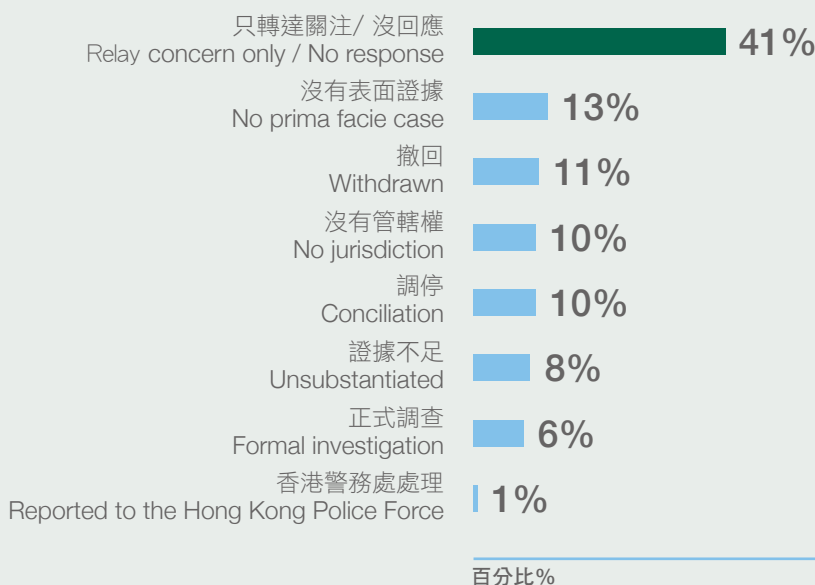
Please refer to Figure 3.10 for the breakdown and categorisation of remedial actions taken by the parties complained against in conciliation.

Among the other cases which were not investigated:

- 797 cases (41%) involved mostly complaints where the matter at issue had been dealt with by relaying the complainants’ concern to the parties complained against, or the complainants did not respond to the Commissioner’s inquiries after being invited to provide evidence to support the allegations;
- 262 cases (13%) were found to have no prima facie case of contravention;
- 214 cases (11%) were withdrawn by the complainants during the preliminary enquiries;
- 191 cases (10%) were outside the jurisdiction of the Ordinance; and
- 161 cases (8%) were found to be unsubstantiated after enquiries with the parties complained against.

圖 3.7：投訴結果

Figure 3.7: Outcome of complaint handling



## 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 115 宗正式調查，當中 30 宗 (26%) 有違反條例規定的情況 (包括違反保障資料原則及違反條例主體條文的規定)，八宗 (7%) 沒有違例或因證據不足而無法證明有違例情況。另外 53 宗 (46%) 則在調查期間因雙方經調停後解決糾紛 (被投訴者為調停而採取的糾正措施的歸類詳見圖 3.10)，其餘 24 宗 (21%) 因投訴人決定不再跟進事件等原因而終止調查 (圖 3.8)。

在該 53 宗經公署調停而得到解決的個案中，私隱專員對 27 宗個案的被投訴者發出警告。

## RESULTS OF INVESTIGATIONS OF COMPLAINT CASES

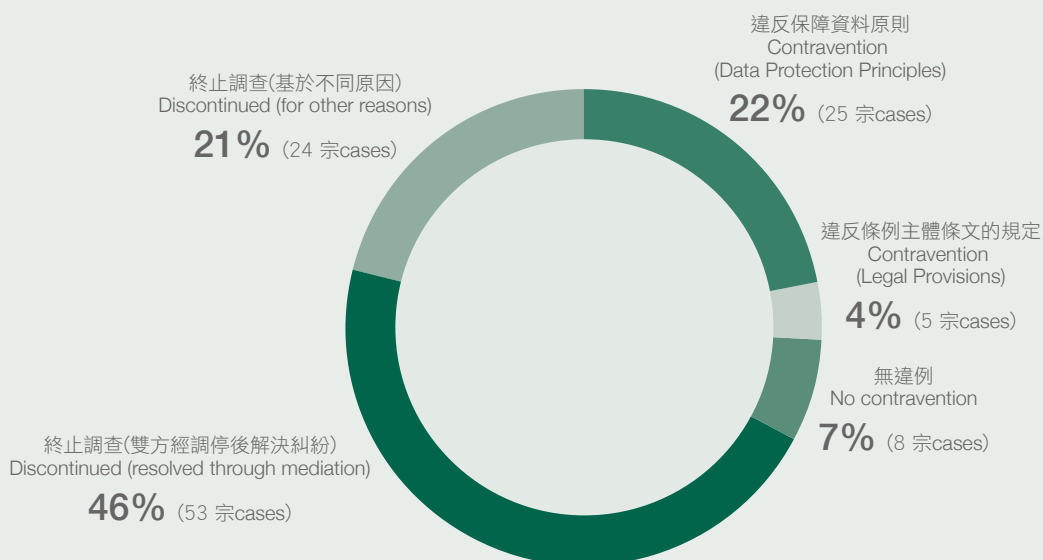
### Results of formal investigations

The PCPD completed 115 formal investigations during the reporting period. In 30 cases (26%), it found a contravention of the requirements under the Ordinance (including contravention of Data Protection Principles and legal provisions); in eight cases (7%), either no contravention was found or no contravention was established due to insufficient evidence. 53 cases (46%) were resolved through conciliation during investigation (the remedial actions taken by the parties complained against are categorised in Figure 3.10), and the remaining 24 cases (21%) were discontinued for various reasons, such as the complainant having decided not to pursue the matter further during investigation (Figure 3.8).

Of the 53 formal investigations resolved through conciliation, the Commissioner issued warning notices to the parties complained against in 27 cases.

圖 3.8：正式調查結果

Figure 3.8: Results of formal investigations



## 違例事項的性質

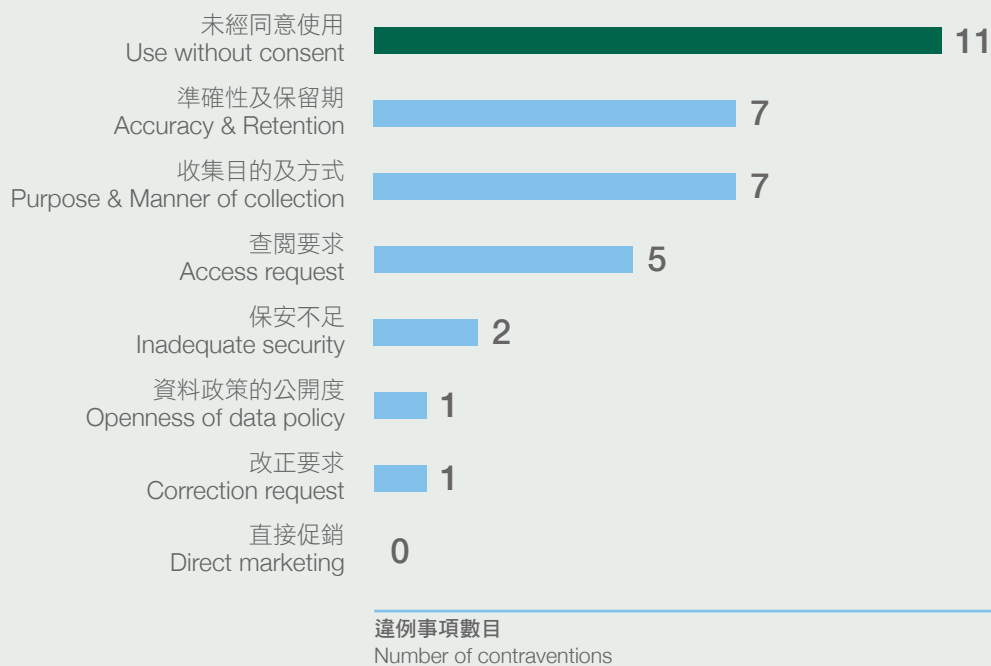
確定違例的 30 宗個案，共涉及 34 項違例事項。當中 24 宗個案違反一項或以上保障資料原則，一宗違反保障資料原則及條例有關依從改正資料要求的條文，五宗涉及違反條例中有關依從查閱資料要求的條文。至於有關個案所涉及各項違規性質的詳細分類，請見圖 3.9。

## Nature of contravention

Of the 30 cases where the requirements under the Ordinance were found to have been contravened, a total of 34 contraventions were involved. Among these, 24 cases involved a contravention of one or more of the Data Protection Principles; one involved contravention of a Data Protection Principle and provisions about compliance with data-correction requests; and five involved contravention of the requirements under the main body of the Ordinance relating to compliance with data-access requests. The classification of the nature of all the contraventions involved in these cases could be found in 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了執法行動。

在確定違反條例規定的 30 宗個案中，私隱專員就 18 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 12 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。

## Enforcement action

The PCPD takes enforcement action in cases of contravention.

Of the 30 cases found to have contravened the requirements under the Ordinance, the Commissioner issued enforcement notices to the parties complained against in 18 cases to stop or prevent contraventions. In the remaining 12 cases, the Commissioner issued warning notices to the parties complained against after they had taken measures to remedy the contraventions.

### 經公署調停而得到解決的個案結果

在本年報期間，共有 246 宗個案於初步查訊或調查期間經公署調停而得到解決（當中包括 193 宗在初步查詢期間得到調解的個案，及 53 宗在調查期間得到調解的個案），被投訴者對投訴人提出的問題作出了適當的糾正。被投訴者所採取的糾正行動歸類如圖 3.10（在一宗個案中，被投訴者採取的糾正行動可能多於一項）：

- 被投訴者修訂運作措施，以免日後再發生同類違規事件（121 宗）；
- 被投訴者向有關職員發出適當指引，確保他們遵從條例規定（100 宗）；
- 刪除被投訴者不必要地收集或向第三者披露的個人資料（75 宗）；
- 被投訴者承諾停止被投訴的不當行為（59 宗）；
- 被投訴者按投訴人的查閱資料要求提供個人資料，或減低依從查閱資料要求的費用（26 宗）；
- 符合投訴人期望的其他糾正行動（15 宗）。

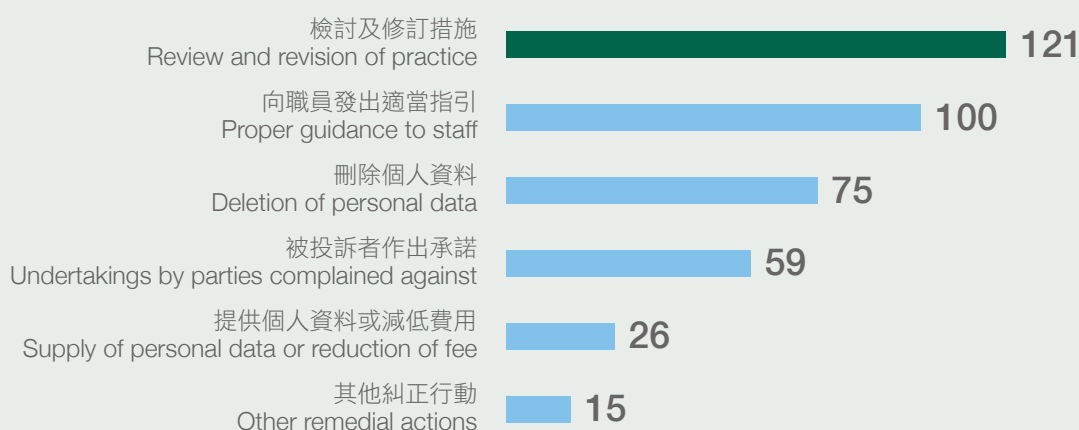
### Outcome of cases resolved through conciliation

During the reporting period, 246 cases were resolved through conciliation (193 during the preliminary enquiries and 53 during formal investigations), with the problems raised by the complainants remedied by the parties complained against. The remedial action taken by the parties complained against are categorised as figure 3.10 (note that more than one type of remedial action may have been taken by the party complained against in some cases):

- Revision of operational practices by the parties complained against to prevent recurrence of a similar breach in the future (121);
- Proper guidance given by the parties complained against to the staff concerned to ensure their compliance with the Ordinance (100);
- Deletion of personal data unnecessarily collected by the parties complained against or disclosed to third parties (75);
- Undertakings made by the parties complained against to cease the malpractice leading to the complaint (59);
- The supply of personal data by the parties complained against as per the complainants' data access requests, or reduction in the fee for complying with the data access requests (26); or
- Other remedial action taken which met the complainants' expectations (15).

圖 3.10：經公署調停而得到解決的個案結果

Figure 3.10: Outcome of cases resolved through conciliation



投訴個案數目  
Number of complaint cases



## 個案研究：指導資料使用者遵守條例規定

私隱專員可根據條例第 39 條拒絕對某投訴進行調查或決定終止調查。在這類個案中，私隱專員的決定及建議對資料保障仍可帶出正面的訊息，此有助資料使用者明白在實務上應如何提升個人資料的保障，以遵從條例的相關規定。

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

## CASE STUDY: GUIDING DATA USERS TOWARDS COMPLIANCE

The Commissioner may decline to investigate a complaint or decide to terminate an investigation under section 39 of the Ordinance. In such cases, the Commissioner's decision and recommendation can still have a positive impact by helping data users understand in practice how to enhance personal data protection in order to comply with the requirements of the Ordinance.

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

### 僱主不應公開家庭傭工的個人資料 以發表意見－保障資料第 3 原則

#### 投訴內容

投訴人曾獲被投訴人（「該前僱主」）聘請為陪月員，其後該前僱主因不滿投訴人的工作表現而要求與投訴人提前解約。投訴人在離職後發現該前僱主在網上討論區（「該討論區」）就她的工作表現發表意見（「該些意見」），並披露了她的姓名及身份證號碼（「該些資料」）。就此，投訴人向公署投訴該前僱主在沒有取得她的同意下於網上披露她的個人資料。

在回應公署的查詢時，該前僱主確認曾在該討論區披露投訴人的該些資料。

#### 結果

一般而言，僱主收集僱員的個人資料應與僱傭及人力資源管理的目的有關，故該前僱主在本案中於投訴人離職後在網上披露她的該些資料已超乎該些資料的原本收集目的。

在私隱專員的建議下，該前僱主已在該討論區刪除該些意見及該些資料，並書面要求該討論區刪除其他人士就該些意見作出回應時所顯示的該些資料。此外，該前僱主書面向公署承諾日後不會再任意公開他人（包括受其僱用人士）的個人資料。

### An employer should not disclose the personal data of a domestic helper in a discussion forum – DPP3

#### The Complaint

The Complainant was once a post-natal care worker for the party complained against ("the Former Employer"), but her contract was terminated early as the Former Employer was not satisfied with her performance. The Complainant subsequently found that the Former Employer had expressed views ("the Views") in respect of her performance in an online discussion forum ("the Discussion Forum"). In the process, the Complainant's name and identity card number ("the Data") were disclosed. The Complainant therefore lodged a complaint against the Former Employer for disclosure of her personal data on the internet without her consent.

In response to the PCPD's enquiry, the Former Employer admitted disclosure of the Data of the Complainant in the Discussion Forum.

#### Outcome

Generally speaking, the collection of an employee's personal data by an employer should be related only to employment and human resource management. The disclosure of the Data on the internet after the Complainant had left the job exceeded the original purpose of the collection of the Data.

Under the recommendation of the Commissioner, the Former Employer deleted the Views and the Data, wrote to the administrator of the Discussion Forum to request deletion of the Data and the Views, and made an undertaking to the PCPD that there would be no further disclosure of the personal data of others (including persons employed by the Former Employer).





## 旅行社不應在沒有實際需要的情況下劃一收集所有報團人士的護照副本－保障資料第 1(1) 原則

### 投訴內容

投訴人向一家旅行社報名參加一個旅行團，報名過程中該旅行社要求投訴人必需提供護照給他們複印。投訴人認為該旅行社並無必要收集他的護照副本，因而向公署作出投訴。

該旅行社向私隱專員解釋，他們是應航空公司、酒店及某些外地旅遊景點的管理機構的要求而收集報團人士的旅行證件（例如身份證、回鄉卡或護照）副本。

### 結果

由於該旅行社未能向私隱專員解釋他們所提供的理據如何適用於投訴人的情況，而事實上他們根本無需要劃一收集所有報團人士的旅行證件副本，私隱專員因而認為該旅行社違反了保障資料第 1(1) 原則。

在回應公署的查訊過程中，該旅行社已停止劃一收集所有報團人士的旅行證件的行事方式，除非遇有下列情況則屬例外：(i) 旅行團行程安排乘搭的交通工具的相關營運部門有此特定要求（如內地高鐵）；(ii) 客戶欲享受某些服務提供者（如航空公司）的長者優惠；或 (iii) 客戶委託該旅行社代為辦理入境簽證。此外，該旅行社亦已銷毀過往從報團人士收集得的旅行證件副本或相關影像。私隱專員在完成查訊後決定向該旅行社發出警告，提醒他們在收集客戶資料時必須緊遵條例的規定。

## A travel agency should not indiscriminately collect passport copies of its package tour customers – DPP1(1)

### The Complaint

The Complainant joined a tour organised by a travel agency. In the course of registration, the travel agency required the Complainant to provide a copy of the complainant's passport. The Complainant considered it unnecessary for the travel agency to collect a copy of his passport, so he lodged a complaint with the PCPD.

The travel agency explained to the Commissioner that it collected copies of travel documents (e.g. identity card, Home Visit Permit or passport) from package tour customers to fulfil the requirements of airlines, hotels and administrative organisations of some overseas scenic spots.

### Outcome

As the travel agency could not show how its justification applied to the Complainant's case, and as there was in fact no need to indiscriminately collect copies of the travel documents of all of its package tour customers, the Commissioner held that the travel agency had contravened DPP1(1).

In the course of responding to the PCPD's enquiry, the travel agency stopped the practice of indiscriminate collection of travel document copies of all package tour customers, except under the following circumstances: (i) for the operation units of certain modes of transport arranged in the tour (e.g. high-speed rail in the Mainland); (ii) for customers who want to enjoy special discounts offered to senior citizens by service providers (e.g. airlines); or (iii) for customers who want to authorise the travel agency to apply for entry visas for them. Moreover, the travel agency destroyed all travel document copies and images collected in the past. After the enquiry, the Commissioner decided to issue a warning to the travel agency to remind it to comply with the Ordinance in the collection of customer data.



### 一間攝錄服務公司不應播放客人 結婚日的錄像，以作推廣—保障 資料第 3 原則

#### 投訴內容

投訴人聘請一間公司（「該公司」）提供婚禮攝影及錄影服務。投訴人後來得悉，該公司公開播放一段在他結婚當日拍攝及經剪輯的錄像（「該錄像」），內裏並有投訴人及賓客的容貌。就此，投訴人投訴該公司未經他同意透過該錄像披露其個人資料。

該公司解釋確曾收過投訴人就該錄像的內容作出的投訴。該公司的職員（「該職員」）於是把該錄像複製到一個 USB 裝置（「該 USB」），以觀看有關細節。不過，該職員之後忘記從該 USB 刪除該錄像。由於該公司會在店舖播放該 USB 內的錄像檔案作推廣用途，無意地該個複製至該 USB 的錄像也被播放。該公司確認在投訴人告知事件後，已立即從該 USB 刪除該錄像。此外，該公司向投訴人提供經最後剪輯的相片及錄像後，已把有關投訴人的婚禮相片及錄像全部銷毀。

#### 結果

由於該公司收集該錄像內投訴人個人資料的原本目的，是處理向投訴人提供服務的事宜，私隱專員認為該公司其後未經投訴人的事先同意而公開播放該錄像，違反了保障資料第 3 原則。

該公司接納私隱專員的建議，並向職員發出指引，提醒他們不得為處理投訴而把任何相片或錄像複製至 USB 裝置，及在使用 / 播放該 USB 內的錄像檔案前檢查該 USB，以免同類事件重演。

### A photography and video recording service company should not display a video of a client for promotional purposes without the client's consent – DPP3

#### The Complaint

The Complainant engaged a company (“the Company”) to provide wedding photography and video recording services. The Complainant subsequently learnt that an edited video (“the Video”), which contained his images and those of his guests on his wedding day, was being displayed publicly in the Company’s shop. The Complainant filed a complaint with the PCPD against the Company for disclosing his personal data through the display of the Video without his consent.

The Company explained that it had previously received a complaint (“the Complaint”) from the Complainant in relation to the contents of the Video taken during his wedding ceremony. Its staff (“the Staff”) then copied the Video to a USB device (“the USB”) in order to examine the video. However, when the analysis was complete, the Staff forgot to remove the Video from the USB. Since this was also the USB the Company used to display video files at its shop for promotional purposes, the Video copied to the USB was inadvertently displayed. The Company confirmed that after having being informed by the Complainant of the matter, it had immediately deleted the Video from the USB. Moreover, the Company had destroyed all copies of the photographs and videos in its possession in relation to the Complainant’s wedding after providing the Complainant with the final edited photographs and videos.

#### Outcome

Given that the Company’s original purpose of collection of the Complainant’s personal data contained in the Video was for handling matters related to its services provided to the Complainant, the Commissioner held that the subsequent public display of the Video by the Company without the Complainant’s prior consent had violated DPP3.

The Company accepted the Commissioner’s recommendations and issued guidelines to its staff reminding them not to copy any photographs or videos to USB devices for complaint-handling purposes, and to check the contents of USBs before using / displaying the video files therein in order to prevent the recurrence of a similar incident.

## 從調查投訴中學習

## LESSONS LEARNT FROM FORMAL INVESTIGATIONS INTO COMPLAINTS



### 投訴個案 1

#### 過度收集求職者的諮詢人個人資料－保障資料第 1(1) 原則

##### 投訴內容

一間執法機構要求求職者在求職表格上提供兩位諮詢人的姓名及身份證號碼。身份證號碼在其後的會面中用來核實諮詢身份。

##### 結果

私隱專員認為該機構透過申請人在申請表上所填寫的資料，已可聯絡諮詢人進行會面。實際上，該機構可在會面時檢視諮詢人的身份證及核對申請表上的資料，來核實諮詢人的身份。因此，該機構並無必要預先收集諮詢人的身份證號碼來核實諮詢人的身份。私隱專員裁定該執法機構因過度收集諮詢人的個人資料而違反條例的保障資料第 1(1) 原則，並向該機構送達執行通知，指令它停止有關做法，及銷毀以前所收集的資料。

### Complaint Case 1

#### Excessive collection of personal data from job applicants' referees - DPP1(1)

##### The Complaint

In its job application form, a law enforcement agency required job applicants to provide the names of two referees and the referees' Hong Kong Identity Card ("HKID Card") numbers. The HKID Card numbers were to be used for identity verification during subsequent interviews with the referees.

##### Outcome

The Commissioner took the view that the referee's contact information was sufficient to contact the referee for an interview, and the agency could verify the identity of the referee by cross checking his details in the application form with his HKID Card during the interview. Therefore, it was not necessary for the agency to collect the referees' HKID Card numbers in advance to verify their identity. The Commissioner therefore found that the law enforcement body had contravened Data Protection Principle 1(1) of the Ordinance by collecting excessive personal data of the referee and issued an enforcement notice to the law enforcement body directing it to cease the malpractice and to destroy the data previously collected.



## 投訴個案 2

### 接聽市民電話投訴時收集對方的出生日期 — 保障資料第 1(1) 原則

#### 投訴內容

投訴人向公署投訴某政府部門在接聽他的電話投訴時，要求他提供中英文姓名及出生日期等個人資料。投訴人質疑該部門收集其出生日期屬超乎適度。

該部門向私隱專員解釋，收集投訴者的出生日期，目的是確保與他的會面或所錄取的口供均合乎該部門程序手冊及其他有關規定：如投訴者未滿 16 歲，他的口供應在其家長或監護人在場的情況下錄取（下稱「該等規定」）。因此，該部門在登記投訴時便要確定投訴者是否已年滿 16 歲。此外，該部門的有關人員在收集投訴者的個人資料前，會告知投訴者可自願提供個人資料。若投訴者拒絕提供出生日期，該部門並不會立即中止處理或不接納其投訴。

#### 結果

私隱專員認為，該等規定的重點是確定投訴者是否已年滿 16 歲，而不是投訴者的實際年齡及出生年、月及日。特別是對於已年滿 16 歲的投訴者，該等規定並不適用。此外，該部門根本無法在電話中核實投訴者所提供的出生日期是否真確。該部門的有關人員可在電話中簡單地向投訴者聲明他必須年滿 16 歲，否則必須由家長或監護人陪同下作出投訴。事實上，該部門在與投訴者會面錄取口供時，才須要求投訴者出示其身份証核實他是否已年滿 16 歲，以確保合乎該等規定。

私隱專員總結，該部門收集投訴者的出生日期屬超乎適度，違反了保障資料第 1(1) 原則。私隱專員向該部門送達執行通知，指令他們停止透過投訴熱線的電話對話收集投訴者的出生日期，並刪除以往透過該方式收集的出生日期紀錄。該部門已遵從執行通知的要求。

## Complaint Case 2

### Collection of callers' date of birth when answering public calls – DPP1(1)

#### The Complaint

The Complainant complained that a government department had required him to provide his Chinese and English name and date of birth when answering his complaint call. The Complainant alleged that the collection of his date of birth by the department was excessive.

The department explained to the Commissioner that the date of birth was collected to ensure that the interview with him or the statement taken from him was in compliance with the procedural manual and other requirements of the department; that is, if a complainant is aged under 16, his statement should be taken in the presence of his parents or guardian ("the Requirements"). Therefore, when the department receives a complaint, it has to ascertain whether the complainant is aged 16 or above. The department added that before collecting complainants' personal data, its staff would inform them that the provision of personal data is voluntary. Even if the complainant refuses to provide his date of birth, the department will not stop handling the complaint and will not reject it immediately.

#### Outcome

The Commissioner opined that the purpose of the Requirements was to ascertain whether the complainants were aged 16 or above, and that the focus was not on the actual age and date of birth. For complainants who were aged 16 or above, the Requirements were not applicable. Moreover, the department could not verify the correctness of the date of birth provided on the phone. Its staff could briefly tell complainants on the phone that they must be aged 16, otherwise they would have to make the complaint in the presence of a parent or guardian. In fact, in order to ensure compliance with the Requirements, the department could request the complainants to present their identity cards for verification when it took statement from them in an interview.

The Commissioner concluded that the collection of the Complainant's date of birth was excessive and that the department had contravened DPP1(1). The Commissioner served an enforcement notice on the department, directing it to cease collecting complainants' date of birth in hotline conversations and to destroy the records of date of birth previously collected by such means. The department complied with the enforcement notice.



### 投訴個案 3

#### 一間信貸資料機構和一間銀行沒有確保客戶的信貸資料準確及依從其改正資料要求

##### 投訴內容

投訴人從一間信貸資料機構取得其信貸報告（「該報告」）。他發現自己被錯誤標示為一間銀行（「該銀行」）的信用卡帳戶（「該帳戶」）的「主持卡人」，以及尚有一些欠款（「該等不準確資料」）。投訴人及其母親分別是該帳戶的附屬卡持卡人及主卡持卡人。他指稱，在該帳戶開立時，他未滿 18 歲，他不可能是該帳戶的主卡持卡人。其後，他向該信貸資料機構作出改正資料要求，要求後者改正該等不準確資料。

投訴人不滿 (a) 該信貸資料機構沒有確保從該銀行所收到的資料準確；(b) 該信貸資料機構沒有按條例第 23(1)(c) 條規定，向之前曾就他的信貸申請而向該信貸資料機構作出查詢的銀行（「該等查詢銀行」）提供已改正的資料；及 (c) 該銀行向該信貸資料機構提供該等不準確資料。

##### 結果

該信貸資料機構

私隱專員認為，確保向該信貸資料機構提供準確資料的首要責任，肯定是在於每個信貸提供者身上；在本個案而言，就是該銀行。私隱專員得悉該信貸資料機構的信貸資料庫是設有自動篩選功能及識別異常情況的程序，因此裁定該信貸資料機構沒有違反保障資料第 2(1)(a) 及 (b) 原則。

不過，私隱專員認為該信貸資料機構仍要依從條例第 23(1)(c) 條及保障資料原則第 2(1)(c) 的規定。該信貸資料機構假設該等查詢銀行在考慮投訴人其後的信貸申請時只依賴最新的信貸報告，完全不理會他之前的申請結果，是不能令人接受的。該信貸資料機構不能說它沒有理由相信該等查

### Complaint Case 3

#### A credit reference agency and a bank failed to ensure the accuracy of a customer's credit data and failed to comply with his data correction request

##### The Complaint

The Complainant obtained a copy of his credit report (the "Report") from a credit reference agency (the "CRA"). He found that he was erroneously shown as the "Principal" of a credit card account (the "Account") of a bank (the "Bank") with a certain past due amount (the "Inaccurate Data"). The Complainant and his mother were the supplementary and principal card holders of the Account, respectively. He alleged that he could not possibly be named as a Principal of the Account as he was under the age of 18 when the Account was opened. Later, he made a data correction request (the "DCR") to the CRA asking it to correct the Inaccurate Data.

The Complainant was dissatisfied that (a) the CRA had failed to ensure the accuracy of the data received from the Bank; (b) the CRA had not supplied a copy of the corrected data to the banks (the "Enquiring Banks") that had previously made enquiries with the CRA in relation to his credit applications, as required by section 23(1)(c) of the Ordinance; and (c) the Bank had provided the Inaccurate Data to the CRA.

##### Outcome

The CRA

The Commissioner considered that the primary responsibility for ensuring accuracy in the data provided to the CRA rested with each credit provider, i.e. the Bank in the present case. It was noted that the credit database of the CRA was equipped with automatic screening functions and procedures to identify abnormalities. He therefore found that the CRA had not contravened DPP2(1)(a) and (b).

However, the Commissioner was of the view that the CRA still had to comply with the requirements under section 23(1)(c) and DPP2(1)(c) of the Ordinance. It was not acceptable for the CRA to have assumed that the Enquiring Banks, in considering the Complainant's subsequent credit applications, would have relied solely on the most updated credit report and wholly disregarded the results in his previous applications. The CRA could not say it had no reason



詢銀行已停止使用該等不準確資料，又拒絕向該等查詢銀行提供已改正的資料。因此，該信貸資料機構違反了第 23(1)(c) 條及保障資料第 2(1)(c) 原則。私隱專員向該信貸資料機構送達執行通知，指令它向該等查詢銀行提供已改正的有關資料。該信貸資料機構已依從執行通知，並已提升其系統及修訂工作程序，每當依據改正資料要求改正個人資料後，即根據第 23(1)(c) 條發出通知。

#### 該銀行

在調查過程中，該銀行認為即使投訴人是附屬卡持卡人，他在成年後亦須為他所作的交易指示的所有應付款額負責。由於在應付款項尚未清付時，投訴人已屆成年，該銀行把投訴人的負面信貸資料交予該信貸資料機構，方法是在該信貸資料機構訂明的提交形式中，選擇最適用的代碼。該銀行最後匯報的代碼顯示該帳戶是「個人帳戶」，完全由投訴人負責，而這代碼在該信貸資料機構的報告中被轉換為「主卡人」。

私隱專員認為投訴人作為附屬卡持卡人，不應完全負責該帳戶的欠款。事實上，該銀行所選的代碼不能準確地描述投訴人的狀況。如該信貸資料機構提供的代碼沒有一個能準確地描述投訴人的狀況，該銀行應聯絡該信貸資料機構，另訂新代碼或在找到適合解決辦法之前，避免把投訴人的信貸資料交予該信貸資料機構。因此，私隱專員裁定該銀行違反保障資料第 2(1)(a) 原則及《個人信貸資料實務守則》第 2.5 條。鑑於該信貸資料機構已從該報告刪除該等不準確資料，及根據現時行業做法，該銀行只把主卡持卡人的信貸資料交予該信貸資料機構，私隱專員認為該銀行的違規行為已停止，同類違規情況日後不太可能發生。因此，私隱專員決定不向該銀行送達執行通知，但發出警告。

to believe that the Enquiring Banks had ceased using the Inaccurate Data and thus refused to supply the Enquiring Banks with a copy of corrected data. Hence, the CRA contravened the requirements under section 23(1)(c) and DPP2(1)(c). An enforcement notice was served on the CRA directing it to supply the Enquiring Banks with a copy of the corrected data. The CRA complied with the enforcement notice accordingly and also upgraded its system and revised its working procedures by giving the notification under section 23(1)(c) whenever correction to personal data is made pursuant to a DCR.

#### The Bank

During the course of the investigation, the Bank submitted that even though the Complainant was a supplementary card holder, he would also be liable for all sums payable in respect of the transaction instructions given by him after he ceased to be a minor. As the Complainant was no longer a minor when the charges payable under the payment fell due and remained unsettled, the Bank contributed the negative credit data of the Complainant to the CRA by choosing the most applicable code pursuant to the contribution format prescribed by the CRA. The Bank eventually reported a code indicating that the Account was an “Individual Account” for which the Complainant was solely responsible, and it was translated into “Principal” in the Report by the CRA.

The Commissioner took the view that as a supplementary card holder, the Complainant was not solely responsible for the outstanding amount under the Account and that the code chosen by the Bank did not accurately describe the actual status of the Complainant. If no code provided by the CRA could accurately describe the status of the Complainant, the Bank should have either liaised with the CRA to create a new code or refrained from contributing the Complainant’s credit data to the CRA until there was an appropriate solution. Hence, the Commissioner found that the Bank had contravened DPP2(1)(a) and clause 2.5 of the Code of Practice on Consumer Credit Data Code. Since the CRA had deleted the Inaccurate Data from the Report, and according to the current industry practice, the Bank contributed only the credit data of the principal card holder to the CRA, the Commissioner opined that the contravention on the part of the Bank had ceased and that similar contraventions would be unlikely in the future. Hence, the Commissioner decided not to serve an enforcement notice, but a warning was issued to the Bank.



## 投訴個案 4

### 獸醫診所劃一收集客戶的身份證號碼 — 保障資料第 1(1) 原則

#### 投訴內容

投訴人帶其貓兒到一間獸醫診所（「該獸醫診所」）診治。投訴人到達該診所後被要求填寫登記表格，提供其身份證號碼，否則該診所不會提供服務。

該獸醫診所在回覆公署的查詢時解釋，收集寵物主人的身份證號碼除了確保所帶來寵物的醫療記錄正確外，亦為了依從《危險藥物規例》（第 134A 章）（「該等規例」）第 3(1)(d) 及 7 條的規定。該等規例規定註冊獸醫必須備存登記冊，指明獲交付處方危險藥物的人的姓名、身份證號碼及地址。

#### 結果

私隱專員在調查過程中知悉根據該等規例，獸醫只須收集獲交付處方危險藥物的人的身份證號碼。然而，該獸醫診所在一開始，不管會否向寵物處方危險藥物，便收集投訴人的身份證號碼。因此，該獸醫診所違反保障資料第 1(1) 原則。

在調查過程中，該獸醫診所已停止收集寵物主人的身份證號碼，除非向其寵物處方危險藥物，並銷毀以前曾收集但其寵物沒有被處方危險藥物的寵物主人的身份證號碼。鑑於上述案情，私隱專員決定向該獸醫診所發出警告，而不是送達執行通知。

## Complaint Case 4

### No indiscriminate collection of clients' identity card numbers by a veterinary hospital – DPP1(1)

#### The Complaint

The Complainant brought his cat to a veterinary hospital (“the Vet Hospital”) for a consultation. Upon his arrival, the Complainant was required to complete a registration form which required his Hong Kong Identity card number (“HKID Card Number”) or no consultation would be provided.

In response to the PCPD’s enquiry, the Vet Hospital explained that in addition to ensuring the correct attribution of medical records to the pet being brought for a consultation, it collected the pet owners’ HKID card numbers to comply with the requirements under regulations 3(1)(d) and 7 of the Dangerous Drugs Regulations (Cap 134A) (“the Regulations”), which require a registered veterinary surgeon to keep a register specifying the name, HKID Card Number and address of any person to whom dangerous drugs are prescribed and delivered.

#### Outcome

It transpired in the course of the Commissioner’s investigation that a registered veterinary surgeon is required under the Regulations only to collect the HKID Card Number of a person to whom dangerous drugs prescribed are to be delivered. However, the Vet Hospital collected the Complainant’s HKID Card Number at the outset without knowing whether dangerous drugs would be prescribed for his pet. Therefore, the Vet Hospital contravened DPP1(1).

In the course of investigation, the Vet Hospital ceased the practice of collecting pet owners’ HKID Card Numbers unless dangerous drugs were prescribed for their pets, and it destroyed the records of HKID Card Numbers previously collected from pet owners whose pets had not been prescribed any dangerous drugs. In the circumstances, the Commissioner decided to put the Vet Hospital on warning instead of serving an enforcement notice on it.



## 根據第 48(2) 條發表的調查報告

調查報告：智能手機應用程式容許用戶隨意搜尋個人的訴訟及破產資料，嚴重侵犯目標人士的私隱

## PUBLICATION OF INVESTIGATION REPORTS UNDER SECTION 48(2)

Investigation Report: A smartphone application enabled its users to search the litigation and bankruptcy records of individuals at will, which seriously invaded the privacy of the target persons.



私隱專員就四宗投訴主動向匯煌投資有限公司及 Glorious Destiny Investments Limited 展開正式調查。

2012 年，匯煌投資有限公司（「匯煌」）推出一個名為「起你底」的智能手機應用程式（「該程式」）。該程式聲稱有二百萬宗民事、刑事訴訟及破產案件的紀錄供用戶搜尋。用戶只需輸入目標人士的姓名，便可搜索該人的紀錄。搜尋結果顯示該人的姓名、部分身份證號碼、地址、法庭類別、案件編號、案件性質、刑事案件等。該程式容許用戶為招聘員工、處理物業租務或商業交易而進行盡職審查及背景審查。

The Commissioner initiated a formal investigation against Brilliant United Investments Limited and Glorious Destiny Investments Limited in respect of four complaints.

In 2012, Brilliant United Investments Limited (“BUI”) launched a smartphone application known as “Do No Evil” (“the App”). The App allowed users to search a database which claimed to have two million records of civil and criminal litigation, as well as bankruptcy cases. Users could search a target person’s record simply by using the person’s name as the search criterion. The search results could reveal the target person’s name, partial identity card number, address, court type, action number, nature of case, and more. The App enabled users to carry out due diligence and background checks for decisions involving offering a job to a potential employee; signing a tenancy agreement with a potential tenant; or signing a contract with a business partner.

公署調查顯示，該程式推出後一年，有逾四萬人次下載，索閱資料次數超過 20 萬。事實上，匯煌並無擁有資料庫，而是從其業務夥伴 Glorious Destiny Investments Limited（「GDI」）取得紀錄的。GDI 收集訴訟及破產資料，建立資料庫，讓法律及會計行業的客戶對目標人士進行盡職審查及背景審查。為拓展業務至全港智能手機用戶，GDI 與匯煌簽訂了一份合作夥伴關係及以利潤分享形式合作的協議。根據協議，匯煌負責開發該程式及承擔開發成本，而 GDI 則負責從不同公共途徑，包括司法機構、憲報、破產管理署及公司註冊處收集訴訟、破產及公司董事資料，提供予匯煌。

由於有關紀錄是由 GDI 收集、編纂及控制，故 GDI 在本案中為條例下所指的「資料使用者」；而匯煌的角色只是智能手機程式的開發及管理商而不是條例下所指的「資料使用者」。

即使資料當事人的個人資料於公共領域供人查閱，但並不表示資料當事人已同意其個人資料可被毫無限制地使用於任何目的。使用從公共領域取得的個人資料時，必須遵從條例下的保障資料第 3 原則 [ 資料使用 ]。因此，GDI 使用從司法機構、破產管理署及公司註冊所收集的紀錄，必須與這些機構原初直接向資料當事人收集個人資料，並將該等資料公開的目的相符。例如，破產管理署在憲報刊登破產通知的主要原因，是讓公眾知悉被公開姓名的人士何時被法院頒令破產或解除破產令，及所有應付予破產人的債款在破產期間應付予信託人。因此，破產紀錄只可用於該些破產個案。然而，該程式沒有限制經該程式取得的破產資料的使用，容許任何人隨意為任何目的搜尋他人的破產紀錄。這做法與破產管理署披露破產人士的目的不相符，因此違反保障資料第 3 原則。

The PCPD's investigation revealed that the App had had more than 40,000 downloads and more than 200,000 search requests after one year of the launch of the App. In fact, BUI did not own the database, but obtained the records from its business partner, Glorious Destiny Investments Limited ("GDI"). The litigation and bankruptcy records were collected by GDI to build a database for performing due diligence reviews and background checks on target persons by its professional customers in the legal and accounting industries. In order to expand its business to include all smartphone users in Hong Kong, GDI entered into a profit-sharing partnership agreement with BUI. According to the agreement, BUI was responsible for developing the App and would bear the development costs involved, whereas GDI would provide and update the litigation, bankruptcy and company directors' records from different public sources, including the Judiciary, the Government Gazette, the Official Receiver's Office ("ORO") and the Companies Registry.

Since the records were collected, compiled and controlled by GDI, GDI was the "data user" in this case within the definition under the Ordinance. BUI, on the other hand, was no more than a smartphone application developer and administrator, and did not qualify as a "data user" under the Ordinance.

While an individual's personal data may be open for access or viewing in the public domain, this does not mean that the individual has given blanket consent for use of the information for other purposes. Anyone who uses the information in the public domain is required to follow the requirements of Data Protection Principle 3 ("DPP3") [on Data Use] under the Ordinance. Hence, the purpose of use of the records obtained by GDI from the Judiciary, the ORO and Companies Registry must be consistent with the original purpose of collection of the records by these organisations, as well as their purposes for making the records publicly available. For example, the main purpose of ORO in publishing a the specific bankruptcy notice in the Government Gazette is to let the public know when the named person was adjudicated bankrupt or discharged, and that all debts due to the bankrupt should be paid to the trustee during the bankruptcy period. Hence, bankruptcy records can be used only for the purposes of the specific bankruptcy cases concerned. However, the App did not restrict the use of the bankruptcy data obtained via the App from the relevant bankruptcy case. The App went far beyond the restriction by letting any person freely search the bankruptcy records of an individual for any purpose, a practice inconsistent with the purpose of disclosing the bankrupts' data by the ORO, thereby contravening DPP3.

該程式的運作明顯超乎當事人對訴訟和破產資料被公開的合理期望，引伸以下多項私隱風險：

- 該程式把法院的審訊案件資料及憲報刊登的破產案資料整合，公眾人士本應不會從單一途徑查閱得某人在不同資料來源的紀錄，但「起你底」的姓名索引讓用戶輸入目標人物姓名，便可對不同來源的紀錄一目了然。這些零碎的個人資料被整合之後，其侵犯個人私隱的程度增加。
- 該程式讓用戶隨時查閱他人所涉的訴訟和破產資料，而無須當事人同意或知道。
- GDI 與用戶之間就個人資料的使用幾乎全無規範，資料被查閱後有可能被濫用。
- 即使目標人物曾經牽涉訴訟，而最終獲判無罪或索償不成立，該程式資料庫的資料未必有相應的更新和澄清，用戶無從得知事實。另外，在同名同姓的情況下，搜尋結果可能會令用戶「馮京作馬涼」，誤以為無辜人士是有官非或破產紀錄的人士。
- 根據《罪犯自新條例》，如犯事者的判刑不超過監禁 3 個月或罰款一萬元，三年內又沒有再被定罪，須被視為「沒有就該項罪行被定罪」。但該程式資料庫的紀錄不設保存期限和刪除失效資料的安排，其標籤化作用有礙當事人更生。

考慮到受影響人數眾多和侵犯私隱的嚴重程度，私隱專員發出執行通知，指令 GDI 停止向該程式的用戶披露其持有的訴訟及破產資料，而 GDI 其後遵從指令，停止向用戶披露有關資料。

私隱專員在公佈這項調查報告的同時，發出《使用從公共領域取得的個人資料指引》，讓資料使用者了解條例的規定。

調查報告：

[www.pcpd.org.hk/tc\\_chi/enforcement/commissioners\\_findings/investigation\\_reports/files/R13\\_9744\\_c.pdf](http://www.pcpd.org.hk/tc_chi/enforcement/commissioners_findings/investigation_reports/files/R13_9744_c.pdf)

The App obviously exceeded the reasonable expectation of the data subjects on the public disclosure of their litigation and bankruptcy data as it brought about the following privacy risks:

- The App aggregated the litigation information from different courts and the bankruptcy data published in the Government Gazette, allowing users of the App to view all this multi-sourced data of a target person in one go simply by entering the individual's name. The aggregation of such fragmented information increases the severity of the privacy intrusion.
- The App enabled users to access others' litigation and bankruptcy data at any time without the data subjects' consent or knowledge.
- GDI imposed hardly any restrictions on the use of the personal data, thus allowing the potential for misuse of the data accessed.
- Where the target person involved in litigation cases was finally acquitted or the claim was not substantiated, the App would not always update or clarify the situation, thus misleading users. Moreover, the search result inevitably returned all persons in the database with the same name, which could lead to an innocent person being mistaken as litigants or bankrupts with the same name as that of the innocent person.
- Under the Rehabilitation of Offenders Ordinance, an offender who is sentenced to imprisonment not exceeding three months or to a fine of less than \$10,000 is treated as not having been convicted of the offence, if that individual is not again convicted of an offence within three years. However, the App used a database with no prescribed retention period for the data and no arrangement for deletion of invalid data. This would adversely affect the rehabilitation of some data subjects.

Considering the large number of people affected and the severity of the privacy intrusion risk, the Commissioner served an enforcement notice on GDI directing it to cease disclosing to the App users the litigation and bankruptcy data it held. GDI subsequently complied with the enforcement notice by ceasing to disclose the data to the App users.

To help data users comply with the requirements of the Ordinance, the Commissioner published a guidance note entitled *Guidance on the Use of Personal Data Obtained from the Public Domain* concurrently with the publication of this investigation report.

Investigation Report:

[www.pcpd.org.hk/english/enforcement/commissioners\\_findings/investigation\\_reports/files/R13\\_9744\\_e.pdf](http://www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/R13_9744_e.pdf)

調查報告：連鎖健身中心向會籍申請人收集過度的個人資料違反私隱條例規定

Investigation Report: A Fitness Centre Chain Collected Excessive Personal Data from Membership Applicants in Contravention of the Ordinance



私隱專員就投訴主動對 California Fitness（「CF」）展開正式調查，以確定為處理會籍及續會申請和相關合法的目的而收集申請人的完整出生日期（包括年月日）、身份證號碼及身份證副本，是否屬必需及不超乎適度。

本調查的源起是兩宗對 CF 會籍申請及續會政策和程序的投訴，涉及收集上述個人資料。在其中一宗投訴，投訴人拒絕提供其身份證副本，CF 以其回鄉證副本替代。

The Commissioner initiated a formal investigation in response to complaints against California Fitness (“CF”) to ascertain whether the collection of personal data including the full date of birth particulars (year, month and date), Hong Kong Identity Card (“HKID Card”) number and HKID Card copy from members was necessary and not excessive for the purpose of membership application/renewal and other lawful activities of CF.

The investigation stemmed from two complaints against CF’s policies and procedures for membership application and renewal which involved the collection of the above personal data. In one of the complaints, the complainant refused to provide his HKID Card copy, so CF collected a copy of his Home Visit Permit instead.

## 調查結果

### 完整出生日期

CF 聲稱收集完整出生日期是必需的，以便在與申請人簽訂合約前確定其法定年齡。不過，CF 可以即場檢視其身份證以查證年齡。

CF 又以兩個例子證明收集完整出生日期是為了向會員設計和推廣產品及服務。一是為了提供適合某年齡層的健身課程，二是向會員在其生日月份內提供服務優惠。在此情況下，私隱專員認為收集會員的年齡範圍及出生月份已經足夠；收集會員的出生年份及日期屬超乎適度。

### 身份證號碼

CF 解釋以往曾有會員拖欠會費或損壞器材或設施。因此 CF 把會員的身份證號碼寫在會籍協議書內，以確立合約關係。鑑於會員須與 CF 簽訂正式會籍協議書，規範重要的權利及責任，私隱專員不反對 CF 收集會員的身份證號碼以加進協議書之中。

### 身份證及回鄉證副本

首先，CF 辯稱，由於會員可以在會員卡及會籍協議書中使用別名，該公司需要保留會員的身份證副本，以便在某些情況下（例如法律程序）可以確定會員的法定姓名（即身份證上的姓名）。但私隱專員認為 CF 當初可在會籍協議書中加入法定姓名。

其次，CF 指稱其審計人員需要以會員的身份證副本核實會籍收入，但 CF 不能確認這是法定規定或標準的會計及審計做法。然而，其他核實會籍收入的方法（例如審視銀行結單）亦同樣有效。

## Findings of the investigation

### Full Date of Birth Particulars

CF claimed that the collection of full date of birth particulars was necessary to establish the legal age of the applicant before signing the membership agreement. However, it should be noted that the applicant's age could be verified by checking the applicant's HKID Card on the spot.

CF provided two examples to show why collecting full date of birth particulars was necessary for designing and promoting its products and services to its members. The first example referred to age-specific classes. The second was a promotional offer which was provided in the birthday month of the member. Under the circumstances, the Commissioner considered that the collection of the members' age range and month of birth would suffice, and that the collection of the member's year and date of birth was excessive.

### HKID Card Number

CF explained that it had experienced cases of unpaid fees or damage to equipment or facilities by members in the past. Therefore, CF inserted the members' HKID Card numbers in the membership contracts for contract enforcement. As members have to enter into a formal agreement with CF which entails significant rights and obligations, the Commissioner had no objection to collecting the members' HKID Card number for inclusion in the agreement.

### Copies of HKID Card and Home Visit Permit

CF argued that since members were permitted to use pseudonyms on membership cards and membership agreements, it had to retain a copy of their HKID Card so that their legal names (the name appearing on the HKID Card) could be ascertained, as required in certain circumstances, such as legal proceedings. However, the Commissioner concluded that CF could include the legal names in the membership agreement at the outset.

Secondly, CF alleged that a HKID Card copy was required by its auditor to verify membership income, but it did not confirm whether this was a statutory requirement, or a standard accounting and audit practice. It was found that alternatives for verification of membership income, such as examination of bank statements, were equally effective.

第三，CF 解釋有需要收集會員的身份證副本，以配合職員的銷售獎賞制度。在該制度下，銷售職員達到的銷售目標越高，可獲的獎金便越多。由於達到較高銷售目標所得的額外獎金遠較入會成本為高，該制度提供極大誘因，誘使職員遞交虛假會籍申請。為杜絕這種詐騙的出現，CF 堅持銷售職員需要向會籍申請人索取身份證副本，作為交易的證明。不過，私隱專員認為例如致電申請人以查證會籍申請真偽等替代方法，同樣有效。

由於回鄉證副本載有類似的個人資料，同樣限制適用於回鄉證副本的收集。

私隱專員總結認為，CF 收集會員的完整出生日期及身份證副本的做法並非必需，構成超乎適度的個人資料收集，因而違反保障資料第 1(1) 原則。私隱專員同時認為 CF 收集身份證號碼並無違反規定。

#### **執行通知及建議**

私隱專員向 CF 送達執行通知，指令它採取步驟，對違規行為作出補救及防止事件重演。但 CF 就執行通知向行政上訴委員會提出上訴，但其後撤回上訴。

Thirdly, CF explained that HKID Card copies had to be collected from members to support its staff reward for achievement of sales targets. The system was tiered according to different levels of sales targets -- the higher the sales, the larger the bonus. As the bonus for reaching a higher sales target could far exceed the relevant membership fee payment, the system provides a great incentive for staff to submit bogus membership applications. To prevent such possible fraud, CF insisted that its sales staff had to obtain HKID Card copies from the membership applicants as proof of transaction. The Commissioner, however, considered that alternative measures, such as calling the applicants to verify the authenticity of the applications, could be equally, if not more, effective.

As Home Visit Permit copies contain personal data similar to that of HKID Cards, the same restrictions would apply to the collection of copies from CF members.

The Commissioner concluded that CF's collection of members' full date of birth particulars and copies of their HKID Cards was unnecessary and amounted to excessive collection of personal data, thus contravening the DPP1(1) on data collection.

#### **Enforcement note and advice**

An enforcement notice was served on CF directing it to take steps to remedy the contravention and prevent its recurrence. In response, CF lodged an appeal against the enforcement notice with the Administrative Appeals Board, but subsequently withdrew the appeal.

私隱專員建議，機構的客戶 / 會員認證程序，在設計和執行上都應該尊重私隱，確保個人資料在過程中的每個環節均獲保障。這涉及把個人資料的收集、使用、儲存、轉移及披露限於達致核實目的所需。核實的嚴密程度（即為認證過程而收集個人資料的量）應與交易的性質和價值相稱，並考慮資料的敏感度。

The Commissioner advised organisations engaged in the design or operation of an authentication process to respect personal privacy and ensure personal data protection at every stage of the process. This involves limiting the collection, use, storage, transfer and disclosure of personal data to the purposes deemed necessary for authentication. The level of authentication (and, by definition the amount of personal data collected for that authentication process) should be in proportion to the nature and value of the transaction, and take into account the sensitivity of the personal data.

調查報告：

[www.pcpd.org.hk/tc\\_chi/enforcement/commissioners\\_findings/investigation\\_reports/files/R13\\_12828\\_c.pdf](http://www.pcpd.org.hk/tc_chi/enforcement/commissioners_findings/investigation_reports/files/R13_12828_c.pdf)

Investigation Report:

[www.pcpd.org.hk/english/enforcement/commissioners\\_findings/investigation\\_reports/files/R13\\_12828\\_e.pdf](http://www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/R13_12828_e.pdf)

## 回響 Feedback

**「專員是次提醒香港人平日很少留意的事情，值得讚賞。」**

**“It is commendable that the Commissioner has alerted the public to things they seldom pay attention to.”**

立法會議員涂謹申

The Honourable James TO, Legislative Council

摘自 Quote: 明報 *Ming Pao* (2013.12.06)

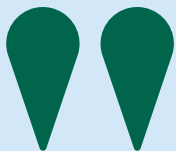
**「是次個案將為部分設有會籍制的企業機構提供重要指引，『令有關機構意識到，替市民登記及續會時，不能再收取過多資料，亦不可再抱寧濫勿缺心態。』」**

**“The case provides important guidance to organisations which run membership schemes. They should be aware that in processing membership registrations and renewals, they cannot collect excessive information and should stop thinking that more is better.”**

香港中文大學工商管理學院市場學系冼日明教授

Professor SIN Yat-ming, Leo, Department of Marketing, Faculty of Business Administration, The Chinese University of Hong Kong

摘自 Quote: 晴報 *Sky Post* (2013.12.06)



“隨著市民日漸重視私隱及了解條例的保障範圍，公署日常處理投訴的工作也愈富挑戰性。每個投訴個案俱有獨特的問題需要分析及拆解，成功緩解對立雙方的分歧往往給我無盡滿足感；而更重要的是，在調停過程中向機構及市民傳達正確的條例的釋義。我希望藉著處理投訴個案時與涉案雙方溝通，把個人資料私隱的理念植根到普羅市民的心中，從而令大眾提高在日常生活中保障其個人資料私隱權利的意識。”



“As the public come to value personal privacy more, the daily handling of complaints by the PCPD gets more challenging. Each complaint case has a unique issue that needs to be analysed and resolved. But success in the mediation of disputes always gives me enormous satisfaction. More importantly, in the course of mediation, organisations and individuals receive a proper interpretation of the Ordinance. I hope that both parties have a good understanding of the concept of personal data privacy, so that public awareness of the right to protection of personal data privacy is enhanced.”

**黃駿霆** 助理個人資料主任  
Austin WONG Assistant Personal Data Officer